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NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

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(Includes adopted rules filed through April 24, 1995)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 20, 1995
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On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 34(1995)
Governor's Advisory Council on Volunteerism and Community Service; Governor's Youth Advisory Council

Issued: April 10, 1995.
Effective: April 10, 1995.
Expiration: Indefinite.

WHEREAS, Governor Kean established the Governor's Advisory Committee on Public/Private Volunteer Partnerships ("Advisory Committee"); and

WHEREAS, Executive Order No. 71 of Governor Florio renamed the Advisory Committee the Governor's Advisory Council on Volunteerism and Community Service ("Advisory Council"); and

WHEREAS, thousands of citizens of the State from every age group and from all walks of life continue to volunteer countless hours of service in order to help others in their communities; and

WHEREAS, the promotion, support, and recognition of volunteerism in New Jersey is best achieved by the activities of the Advisory Council; and

WHEREAS, the National Service Trust Act of 1993 encourages Americans to join and serve together for the common good; and

WHEREAS, the notion "New Jersey—One Family" reflects a sense of common purpose among the State's diverse communities; and

WHEREAS, encouraging young people to be involved in volunteerism and community service will develop an underutilized source of leadership in communities throughout the State;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Advisory Council shall consist of not more than 42 members. The Commissioners of the Departments of Commerce, Community Affairs, Education, Health, Human Services and Labor, the Attorney General, the Chairperson of the State Employment and Training Commission, the Executive Director of the Administrative Office of the Courts and the Executive Director of the New Jersey Commission on Community Service, or their designees, as well as one representative of a Federal volunteer program, shall serve on the Advisory Council as ex officio members.

2. The public members of the Advisory Council shall be appointed by the Governor and shall consist of representatives from volunteer associations or organizations, youth-serving organizations, the non-profit sector and the State's business and education community. The Governor shall designate a Chairperson from among the public members of the Advisory Council.

3. Members of the Advisory Council shall serve without compensation. Public members shall serve for terms of three years and, upon a recommendation by the Executive Director of the Advisory Council, can be removed by the Governor for cause. Advisory Council vacancies shall be filled by the Governor for the remainder of the unexpired term.

4. The Advisory Council shall:

a. encourage the expansion of volunteerism and community service in the State by advising and supporting the Governor's Office of Volunteerism;

b. identify and prioritize community needs and identify the resources to meet those needs through volunteerism and community service;

c. recognize and reward successful examples of community partnerships, service projects, and volunteerism;

d. involve New Jersey's youth, senior citizens, businesses, individuals and groups in efforts to work together to strengthen and meet the needs of the State's communities through volunteerism and community service; and

e. advise the Governor on volunteerism and community service issues.

5. The Advisory Council shall set its own operating procedures and meeting schedule, except that it shall meet not less than four times each year, and one of these meetings shall give the public an opportunity to express views concerning volunteerism and community service.

6. The Advisory Council is authorized to solicit funding from private entities through donations supporting its activities as described in this Executive Order.

7. The Governor's Youth Advisory Council ("Youth Advisory Council") is hereby established as an ancillary body of the Advisory Council.

8. The Youth Advisory Council shall:

a. serve as an advisory body to the Advisory Council to identify and prioritize urgent social problems that can be addressed by youth through volunteerism and community service;

b. serve as an advocate for youth services throughout the State on behalf of the Governor and the Advisory Council;

c. recommend service programs to the Advisory Council; and

d. present recommenations to the Advisory Council for promoting youth service and related programs at the end of each of its terms.

9. The Youth Advisory Council shall be comprised of 25 members appointed by the Governor. The members shall serve for terms of three years, except that of those first appointed, eight shall serve for a term of one year, eight shall serve for a term of two years and the remainder shall serve for a term of three years.

10. The Youth Advisory Council shall include:

a. youth between the ages of 12 to 22 years old;

b. youth with demonstrated leadership abilities in the area of community service; and

c. youth reflecting the diversity of the State.

11. The Governor shall select annually a member of the Youth Advisory Council to serve as its Chairperson.

12. The Youth Advisory Council shall annually select two of its members to serve as public members on the Advisory Council.

13. The Youth Advisory Council shall set its own operating procedures and meeting schedule, except that it shall meet not less than three times per year.

14. The Advisory Council and the Youth Advisory Council shall receive administrative support from the Governor's Office of Volunteerism, but shall not obligate any funds of that office or of any other department, office, division or agency of the State.

15. The Governor, upon a recommendation by the Executive Director of the Advisory Council, may remove a member of the Youth Advisory Council for cause.

16. This Order shall take effect immediately.

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES
STATE SOIL CONSERVATION COMMITTEE

Soil and Water Conservation Project Cost-Sharing: Eligible Projects
Agrichemical Handling Facility
Proposed New Rule: N.J.A.C. 2:90-2.24
Proposed Recodification with Amendment: N.J.A.C. 2:90-2.24 as 2.25

Authorized By: State Soil Conservation Committee, Arthur R. Brown, Jr., Chairman.

Authority: N.J.S.A. 4:24-3 and 4:1C-24.

Proposal Number: PRN 1995-310.

Submit comments by June 14, 1995 to:
Samuel R. Race, Executive Secretary
State Soil Conservation Committee
CN 330
Trenton, N.J. 08625

The agency proposal follows:

Summary

N.J.A.C. 2:90-2 is comprised of the eligible conservation projects for voluntary implementation of the cost-share provisions of the Farmland Preservation Program pursuant to the Agricultural Retention and Development Act, N.J.S.A. 4:1C-11 (P.L. 1983, c.32). Subchapter 2 describes projects eligible for soil and water conservation cost sharing at 50 percent of actual cost. The State Soil Conservation Committee (SSCC) proposes to adopt new rule N.J.A.C. 2:90-2.24, Agrichemical handling facility (ACHF). The purpose of this rule is to establish specifications for a loading and mixing facility which will prevent nonpoint pollution.

This action is taken to further demonstrate a State committment to nonpoint pollution control, support the agricultural industry and promote landowner participation in farmland preservation programs. Much farmer interest has been generated as a result of a demonstration project jointly sponsored by the Department of Agriculture and the Department of Environmental Protection, which provided funding for installation of three agrichemical handling facilities in Atlantic, Burlington and Mercer Counties during 1994. This demonstration project has prompted development of this rule proposal.

Social Impact

Adoption of this new eligible conservation cost share practice will provide additional incentives for farmland owners to enroll in farmland preservation programs and to install this project. This nonpoint pollution control management practice provides water quality benefits. Adoption of this rule will provide an additional inducement for new lands to enter farmland preservation programs and retain land in agriculture thereby having a favorable social impact upon the citizens of New Jersey.

Economic Impact

A beneficial economic impact will result from adoption of N.J.A.C. 2:90-2.24 by encouraging landowners to make capital investments in nonpoint pollution control projects. The resulting state of the art project will enhance agricultural production efficiency and enable competitive marketing of products. Agricultural chemicals are a costly production input. Increased efficiency will result by more effective utilization of spray materials. Increased productivity and agricultural profitability will provide additional incentives for land to remain in agriculture and open space.

Environmental Impact

Adoption of N.J.A.C. 2:90-2.24 will have a positive environmental impact because its intrinsic purpose is to prevent nonpoint pollution. An agrichemical handling facility will enhance water quality resulting in a beneficial environmental impact.

Executive Order No. 27 Statement

The proposed new rule reflect the same standards and specifications established by the United States Department of Agriculture (USDA) Natural Resources Conservation Service, which are incorporated in these rules at N.J.A.C. 2:90-3. The standards and specifications are not mandated by USDA but are part of a voluntary program for agricultural producers. As a consequence this proposed new rule is neither mandatory, regulatory or restrictive but does provide the basis for cost sharing for applicants who have become eligible through voluntary action.

Regulatory Flexibility Analysis

The proposed new rule has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The majority of farmland owners are small businesses as defined by the Regulatory Flexibility Act. The application and compliance requirements for participating in the cost share programs are based on field proven standards. Participation in this program is voluntary and the benefits outweigh costs incurred. The new rules place no new requirements on the persons or businesses regulated by the rules, but sets forth approved practices and components for an agrichemical facility, and practices and components for which cost-sharing is not allowed.

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

2:90-2.24 Agrichemical handling facility

(a) The storage, handling, and mixing of agrichemicals and the cleaning of application equipment can constitute a pollution hazard to surface and ground water. This practice is designed to provide an impervious containment area for isolation of spillage from on-farm agrichemical mixing, loading, unloading, and rinsing operations in order to minimize pollution of soil, water, air, plant, or animal resources.

(b) The following types of practices and components are approved for an agrichemical facility:

1. Land shaping, leveling, and filling to permit installing the system;

2. Formed concrete, reinforcing, sump, sealant, gravel for subbase and access ramps;

3. Pumps, pipes, valves, and storage tanks permanently installed for use in the agrichemical facility;

4. Diversions, waterways, outlet structures, and similar measures to convey surface water away from the facility; and for fencing and vegetative cover including mulching;

5. Roof, including gutters and downspouts, and sidewalls to exclude precipitation from the facility; and for providing water and electric services from proximate locations.

(c) Cost-sharing is not authorized for the following:

1. Offsite disposal of rinsate and spillage; nor for remedial action to correct soil, water, or other resources affected by agrichemical spillage.

2. Agrichemical facilities that do not meet local or State regulations.

3. Non permanent interior wall partitions and enclosures, including insulation, ventilation, shelving, etc., for the storage of agrichemicals.

(d) The agrichemical facility shall be operated and maintained for a minimum of eight years following the calendar year of installation.

2:90-[2.24]**2.25** Cost share rates

(a) Projects as identified in N.J.A.C. 2:90-2.5 through [2:90-2.23] **2.24** shall be cost shared at 50 percent of the actual cost, not to exceed 50 percent of a maximum amount per project as estimated by the district in consultation with the United States Department of Agriculture, Soil Conservation Service District Conservationist and ASCS County Executive Director. Districts shall consult with authorized personnel within the New Jersey Bureau of Forest Management for forestry related practices.

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

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PERSONNEL

(a)

MERIT SYSTEM BOARD

Discipline
Major Discipline; General Causes
Drug and Alcohol Testing
Proposed Amendment: N.J.A.C. 4A:2-2.3

Authorized By: Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.
Authority: P.L. 102-143, Title V, 105 Stat. 917,952 (1991); 49 C.F.R. 382 et seq.; N.J.S.A. 11A:2-6(d) and 11A:2-20.
Proposal Number: PRN 1995-290.

A **public hearing** concerning the proposed amendment will be held on:

Tuesday, June 13, 1995 at 3:00 P.M.
Merit System Board Room
44 South Clinton Avenue
Trenton, New Jersey 08625

Please call the Regulations Unit at (609) 633-2640 if you wish to be included on the list of speakers.

Submit written comments by June 14, 1995 to:

Janet Share Zatz, Assistant Commissioner
Division of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Federal Omnibus Transportation Employee Testing Act of 1991 requires the United States Secretary of Transportation to promulgate regulations on drug and alcohol testing for employees in defined "safety sensitive positions," including employees who perform functions related to the operation of commercial motor vehicles. On February 15, 1994, the Federal Highway Administration of the United States Department of Transportation promulgated the required regulations. The regulations require large employers, including State governments, to implement their testing programs as of January 1, 1995. See 49 C.F.R. 382.115(a).

The Commissioner of Personnel established the Commercial Driver's License Drug and Alcohol Testing Committee (CDL Task Force) in the fall of 1994 to draft a policy applicable to State appointing authorities in accordance with the drug and alcohol testing requirements set down by Federal regulations. This policy was implemented as of January 1, 1995. It is noted that the Federal regulations do not require that employers take disciplinary action against employees who violate the drug and alcohol testing program set forth in the regulations. However, the regulations do not preclude the formulation of a disciplinary policy to address violations of the program. Accordingly, the Merit System Board proposes to amend N.J.A.C. 4A:2-2.3 to provide that any violation of Federal regulations on drug and alcohol testing of employees who perform safety sensitive functions related to the operation of commercial motor vehicles, or any violation of State or local policies issued pursuant to Federal regulations, may be a ground for disciplinary action.

Social Impact

The proposed amendment is intended to reflect the importance of compliance with Federal drug and alcohol testing requirements and the seriousness with which violations of these requirements is regarded. Drug and alcohol testing policies adopted by employers such as State and local governments, pursuant to Federal regulations, are designed to promote safety and protection of the public in the area of employment involving the operation of commercial motor vehicles. The proposed amendment indicates the sense of the Federal government that use of drugs or alcohol in the workplace or impacting on the workplace cannot be tolerated in the case of specifically defined safety sensitive positions, including those involving the operation of commercial motor vehicles.

Thus, the social impact of the proposed amendment should be to further discourage drug or alcohol abuse among State and local employees and to ensure that appointing authorities are aware that the option of disciplinary action in cases of violation of Federal regulations exists. Ultimately, the proposed amendment should promote a more safety conscious pool of employees involved in the operation of commercial motor vehicles, a result that should inure to the benefit of the general public.

Economic Impact

The proposed amendment should have a minimal economic impact. The amendment would provide a specific ground for discipline for a limited circumstance concerning violation of a drug and alcohol testing program. It is noted that the decision on whether to bring charges against an employee is discretionary on the part of the State or local appointing authority, so each appointing authority would be in control of the extent to which its resources would be occupied with such disciplinary matters. Appeals of such matters to the Merit System Board, and hearing referrals to the Office of Administrative Law, should marginally increase those agencies' caseloads with an attendant marginal increase of staff time to review these appeals.

Executive Order No. 27 Statement

Although Federal drug and alcohol testing requirements prompted the proposed amendment, Federal regulations do not require the imposition of discipline on employees who violate these requirements. Providing such violation as a ground for discipline is a policy judgment on the part of the Merit System Board squarely within its authority under N.J.S.A. 11A:2-6(d) to adopt and enforce rules to implement a "comprehensive personnel management system," and its authority under N.J.S.A. 11A:2-20 to establish by rule the general causes which constitute grounds for disciplinary action. In addition, the proposed amendment does not exceed Federal standards because Federal law sets no standards with respect to employee discipline.

Therefore, an Executive Order No. 27 Analysis is not required because the proposed amendment to N.J.A.C. 4A:2-2.3 is not mandated by Federal law or regulation.

Regulatory Flexibility Statement

A Regulatory Flexibility Analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule amendment would regulate employment in the public sector.

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

4A:2-2.3 General causes

(a) An employee may be subject to discipline for:

1.-8. (No change.)

9. Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment; [and]

10. **Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder; and**

11. Other sufficient cause.

(b)

MERIT SYSTEM BOARD

Major Discipline Appeals
Proposed Amendment: N.J.A.C. 4A:2-2.8

Authorized By: Merit System Board; Linda M. Anselmini, Commissioner, Department of Personnel.
Authority: N.J.S.A. 11A:2-6(d) and 11A:2-15.
Proposal Number: PRN 1995-291.

A **public hearing** on the proposed amendment will be held on:

Tuesday, June 13, 1995 at 3:00 P.M.
Merit System Board Room
44 South Clinton Avenue
Trenton, New Jersey 08625

Please call the Regulations Unit at (609) 633-2640 if you wish to be included on the list of speakers.

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Submit written comments by June 14, 1995 to:
Janet Share Zatz, Assistant Commissioner
Division of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 4A:2-2.8 currently provides that an appeal may be filed from a Final Notice of Disciplinary Action within 20 days of receipt of the Notice. This time limit is set by statute. See N.J.S.A. 11A:2-15. However, the recent court decision of *Loveman v. New Jersey State Prison*, Docket No. A-5656-91T2 (App. Div., October 25, 1993), permitted an appeal to be filed more than 20 days following receipt by the employee. The facts before the court were that the employee's attorney did not receive the copy of the Notice that was designated for the "employee's representative" until well over two months after the employee received the Notice. The attorney filed an appeal on behalf of the employee once he learned of the determination.

The Merit System Board proposes an amendment to N.J.A.C. 4A:2-2.8 to address the situation posed by *Loveman*. The amendment would provide that an appeal from a Final Notice of Disciplinary Action may be filed within 20 days of receipt of the Notice by the employee. This appeal period would not be affected by the date of receipt of the Notice by the employee's attorney or union representative.

Social Impact

The proposed amendment would clarify that the 20-day period for filing a disciplinary appeal is counted from the employee's receipt of the Final Notice of Disciplinary Action. The receipt of a copy of the Notice by the employee's attorney or union representative on an earlier or later date would not change this time frame. The amendment is not intended to change the procedures used in filing and accepting disciplinary appeals by the Board. Instead, the proposed amendment should serve to reestablish a longstanding principle concerning the filing of disciplinary appeals.

Economic Impact

It is not anticipated that the proposed amendment would have an economic impact. The principle that an employee must submit a disciplinary appeal to the Merit System Board within 20 days of the employee's receipt of the Final Notice of Disciplinary Action would be reconfirmed.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because major discipline appeals are not subject to any Federal requirement or standards.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required since the proposed amendment will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment will regulate employment in the public sector.

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

4A:2-2.8 Appeals to Merit System Board

(a) An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice **by the employee. Receipt of the Notice on a different date by the employee's attorney or union representative shall not affect this appeal period.**

(b) (No change.)

(a)

MERIT SYSTEM BOARD

Board Hearings

Proposed Amendment: N.J.A.C. 4A:2-2.9

Authorized By: Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d).

Proposal Number: PRN 1995-292.

A **public hearing** concerning the proposed amendment will be held on:

Tuesday, June 13, 1995 at 3:00 P.M.
Merit System Board Room
44 South Clinton Avenue
Trenton, New Jersey 08625

Please call the Regulations Unit at (609) 292-6568 if you wish to be included on the list of speakers.

Submit written comments by June 14, 1995 to:
Janet Share Zatz, Assistant Commissioner
Division of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Merit System Board proposes an amendment to N.J.A.C. 4A:2-2.9, Board hearings, to change the procedure by which requests for a Board hearing are currently reviewed and resolved. Presently, the Board itself reviews such requests. However, it only does so on its scheduled meeting dates, which fall twice each month, except for August, when the Board does not meet. August, then, is the only month during which the Commissioner of Personnel may grant hearings. See current N.J.A.C. 4A:2-2.9(a).

The proposed amendment would provide for review of all hearing requests by the Commissioner or Commissioner's designee. The purpose behind the proposed amendment is to expedite the hearing process. Appeals would be transmitted to the Office of Administrative Law for a hearing on an ongoing basis, as long as the Commissioner determines that the prerequisites for a hearing are satisfied. See N.J.A.C. 4A:2-1.1(d). Such appeal transmittals would no longer be dependent on the scheduled meeting dates of the Board.

Social Impact

The proposed amendment should have a positive social impact by helping to move the appeal process along for numerous appellants awaiting review of their respective matters. Regular review of these requests, and referrals of granted hearings to the Office of Administrative Law, would promote swifter resolution of many appeals.

Economic Impact

Employees should benefit economically from this proposed amendment, particularly if they are appealing a major disciplinary action and are in need of a more timely resolution of their employment status and the extent to which discipline will be imposed. Appointing authorities should also benefit economically from the proposed amendment with a more timely disposition of employees' discipline appeals. Expediting the hearing portion of the appeal process would enable both employees and appointing authorities to proceed with other responsibilities and concerns.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the Merit System Board hearing procedures are not subject to any Federal requirement or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment will regulate employment in the public sector.

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

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4A:2-2.9 Board hearings

(a) Requests for a Board hearing will be reviewed **and determined** by the [Board. However, the Commissioner may grant hearings during August when the Board does not meet] **Commissioner or Commissioner's designee.**

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

(a)

MERIT SYSTEM BOARD

Regular Reemployment

Proposed Amendment: N.J.A.C. 4A:4-7.10

Authorized By: Merit System Board; Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d) and 11A:4-9.

Proposal Number: PRN 1995-293.

A **public hearing** on the proposed amendment will be held on:

Tuesday, June 13, 1995 at 3:00 P.M.
Merit System Board Room
44 South Clinton Avenue
Trenton, New Jersey 08625

Please call the Regulations Unit at (609) 633-2640 if you wish to be included on the list of speakers.

Submit written comments by June 14, 1995 to:

Janet Share Zatz, Assistant Commissioner
Division of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

A review of merit system rules has revealed that the police and fire reemployment process is not codified in the rules, even though both police and fire reemployment list, and regular reemployment lists, are provided for in N.J.S.A. 11A:4-9(c) and (d) and are mentioned in the rule on types of eligible lists, N.J.A.C. 4A:4-3.3. Only the regular reemployment process is specifically provided for in N.J.A.C. 4A:4-7.10.

To address this issue, the Merit System Board proposes a clarification of the rules by proposing to amend N.J.A.C. 4A:4-7.10 to include a description of the police and fire reemployment process. This process permits an individual serving in a police or fire title who has resigned in good standing, retired or voluntarily demoted, to request placement on a police or fire reemployment list at any time following such action. The proposed amendments also would clarify that it is the Department of Personnel that places the name of an individual on a regular reemployment list or police or fire reemployment list, upon recommendation of the appointing authority that such reemployment is in the best interest of the service.

Social Impact

The social impact of the proposed amendment should be minimal. Its purpose is to clarify existing law with respect to police and fire reemployment lists. Both employees and appointing authorities should benefit from the proposed amendment to N.J.A.C. 4A:4-7.10, which will ensure that information about the police and fire reemployment process is readily available and understandable.

Economic Impact

It is not anticipated that the proposed amendment will have an economic impact. Existing rights under merit system law and rules will not be affected by the proposed amendment. The amendment simply provides a clearer presentation of police and fire reemployment rights.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because police and fire reemployment are not subject to any Federal requirement or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will regulate employment in the public sector.

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

4A:4-7.10 Regular reemployment

(a) A permanent employee who has resigned in good standing, retired or voluntarily demoted, may[, within three years of such action,] request consideration for reemployment by indicating availability to his or her appointing authority.

(b) Upon recommendation of the appointing authority that such reemployment is in the best interest of the service, the [employee shall have his or her name placed] **Department of Personnel shall place the employee's name** on a [regular] reemployment list [for up to three years from the date of resignation, retirement or voluntary demotion except if the list is extended under N.J.A.C. 4A:4-3.3(a)1].

(c) Police and fire reemployment lists shall have unlimited durations. Regular reemployment lists for all other titles shall have durations of three years from the date of resignation, retirement or voluntary demotion, unless the list is extended pursuant to N.J.A.C. 4A:3.3(a)1.

1. Requests for reemployment must be submitted within the duration of the applicable list.

[(b)]**(d)** Seniority commences as of the date of regular reemployment.

(b)

MERIT SYSTEM BOARD

Leaves, Hours of Work and Employee Development

Leave to Appear as a Witness

Proposed Amendment: N.J.A.C. 4A:6-1.20

Authorized By: Merit System Board; Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:6-1 and 11A:6-24.

Proposal Number: PRN 1995-294.

A **public hearing** concerning the proposed amendment will be held on:

Tuesday, June 13, 1995 at 3:00 P.M.
Merit System Board Room
44 South Clinton Avenue
Trenton, New Jersey 08625

Please call the Regulations Unit at (609) 633-2640 if you wish to be included on the list of speakers.

Submit written comments by June 14, 1995 to:

Janet Share Zatz, Assistant Commissioner
Division of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The current rule at N.J.A.C. 4A:6-1.20 on leave to appear as a witness provides that when such appearance is part of the job function and occurs during the employee's normal day off, the employee shall be compensated on a time-for-time basis. However, in some instances, this provision is inconsistent with the rules governing overtime compensation, under which an employee may be eligible for premium compensation for work performed beyond the normal workweek. For example, if an employee in a title with a workweek designation of 40 is required to appear at a proceeding during his or her normal day off, that employee would be entitled to overtime compensation in accordance with the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq. Accordingly, the Board proposes that the rule be amended to state that, in such situations, the employee shall be compensated as provided in the rules governing overtime compensation.

Social Impact

The proposed amendment would affect State service only, and would clarify that the rules governing overtime compensation govern the method and amount of compensation when an employee, as part of the job function, is required to appear before a judicial or administrative body or legislative committee during his or her normal day off. The

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Board believes that this amendment is consistent with current practice in most State agencies, and therefore the social impact of this amendment should be minimal.

Economic Impact

As noted above, the proposed amendment does not change current practice in most State agencies. However, in some cases, application of the amendment will mean that a State employee receives time-and-one-half for a court appearance instead of time-for-time compensation. In these few cases, there will be a minor economic impact.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because this amendment does not impose standards greater than Federal law. This amendment simply refers to other rules governing overtime compensation. Those rules, in turn, apply the standards set forth in the FLSA and the Federal regulations promulgated thereunder.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

4A:6-1.20 Leave to appear as a witness: State service

(a) State employees in the career or senior executive service shall be granted time off with pay to appear as a witness or a party before a judicial or administrative body or legislative committee when such appearance is part of the job function. If an employee appears as a witness or a party during his or her normal day off, the employee shall be compensated [on a time-for-time basis] **as provided in the rules governing overtime compensation. See N.J.A.C. 4A:3-5.**

(b) When appearance before a judicial or administrative body is not part of the job function, a State employee in the career or senior executive service shall be granted time off with pay when summoned as a witness in a proceeding to which he or she is not a named party, and shall be granted time off without pay to appear at a proceeding to which he or she is a party. However, an employee is entitled to time off with pay to attend his or her workers' compensation proceeding.

(c) State unclassified employees may be granted such leave with or without pay at the discretion of the appointing authority.

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Proprietary Campground Facilities

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

Authorized By: William M. Connolly, Director, Division of Codes and Standards, Department of Community Affairs.

Authority: N.J.S.A. 45:22A-52.

Proposal Number: PRN 1995-222.

Submit comments by June 14, 1995 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

Section 4 of P.L. 1993, c.258 (N.J.S.A. 45:22A-52) authorized the Division of Housing and Development of the Department of Community Affairs to adopt and enforce minimum health and safety standards for proprietary campground facilities and to charge fees sufficient to cover the cost of the inspection program. (Reorganization Plan 002-1994, issued by Governor Whitman on November 21, 1994, redesigned the Division as the Division of Codes and Standards.) A "proprietary campground facility" is defined by the act as "any real property designed and used for the purpose of camping and associated recreational uses under a condominium or cooperative form of ownership." In common with other properties in which interests or units are offered for sale to the public under a cooperative or condominium form of ownership, proprietary campground facilities are already subject to the requirements of the "Planned Real Estate Development Full Disclosure Act," P.L. 1977, c.419 (N.J.S.A. 45:22A-21 et seq.).

While enforcement of those provisions of P.L. 1993, c.258 that have to do with compliance with lawful requirements set forth in the organizational documents of the cooperative or condominium have been assigned to the Planned Real Estate Development section of the Bureau of Homeowner Protection, the enforcement of health and safety standards is, under the proposed new rules, being assigned to the Bureau of Housing Inspection, which currently enforces the Hotel and Multiple Dwelling Law, P.L. 1967, c.76 (N.J.S.A. 55:13A-1 et seq.). Since the registration form that would be required to be filed with the Bureau of Housing Inspection for each proprietary campground facility will include a request for information concerning registration under the "Planned Real Estate Development Full Disclosure Act," any enforcement activities undertaken by either of the two bureaus will be done in cooperation with the other.

The proposed new rules consist of two subchapters. Subchapter 1 contains rules pertaining to administration and enforcement, definitions and requirements for the filing of a certificate of registration for each facility. The purpose of this certificate, which must be amended whenever any of the information changes, is to make sure that the Bureau has current and accurate information concerning the management and control of the facility. Appointment of an agent and designation of an official in-state office are required. A $10.00 fee is required upon the initial filing of a registration certificate, but no fee is required for an amended certificate.

In accordance with the statute, facilities are to be inspected annually. After each inspection, an inspection fee must be paid. The amount of the fee is to be $100.00 per facility, plus $1.00/unit for each of the first 350 units and $.50/unit thereafter. If reinspection is required, the fee for each reinspection shall be $100.00 per facility plus $1.00 for each unit or structure requiring reinspection.

Section 7 of the Act (N.J.S.A. 45:22A-55) authorizes the Division to delegate enforcement authority to municipal and county government agencies. Under the proposed rules, a county or municipal agency performing inspections would receive 65 percent of the inspection fee paid for the facility. The balance would pay the cost of further enforcement by the Bureau. The proposed rules also provide for administrative hearings at N.J.A.C. 5:10A-1.6 in which aggrieved associations might contest notices and orders issued by the Bureau.

The maintenance standards themselves contained in subchapter 2 include the following: duties of the association; rules concerning access, parking areas and location of units; density, area and layout of units; fireplaces; water supply; sanitary facilities; water closet and shower building; holding tank emptying stations; storm drainage; solid waste disposal; insect, rodent and weed control; electrical installations; flammable liquids and gases; swimming and bathing; and other hazardous conditions. The standards have been taken from State Sanitary Code requirements enforced by the State Department of Health in non-proprietary campground facilities and from a model code for recreational vehicle parks and campgrounds published by the National Association of RV Parks and Campgrounds. Applicable provisions of the Rules for the Maintenance of Hotels and Multiple Dwelling (N.J.A.C. 5:10), the Uniform Fire Code (N.J.A.C. 5:18) and the State Uniform Construction Code (N.J.A.C. 5:23) are incorporated by reference.

Social Impact

The enforcement of health and safety standards in proprietary campground facilities was formerly within the jurisdiction of the State Department of Health. P.L. 1993, c.258 reassigned this function to the Division of Housing and Development (now Codes and Standards) of the Department of Community Affairs. These proposed new rules are intended to ensure that proprietary campground facilities will continue to be maintained in a manner that does not endanger the health or safety of persons using the facilities or of the general public.

Economic Impact

Since substantially equivalent rules were previously in effect when proprietary campground facilities were within the jurisdiction of the State

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Department of Health, it is not anticipated that any facility that was in compliance with those rules would incur any significant costs, other than in inspection fees, in order to be in compliance with these proposed new rules. The inspection fee is calculated in an amount that, as provided in the statute, will be sufficient to cover the cost of enforcement of the health and safety standards. The fee for an initial annual inspection consists of a base fee of $100.00, plus $1.00 per unit for each of the first 350 units, plus $.50 per unit for each unit thereafter. The fee for each reinspection consists of a base fee of $100.00 plus $1.00 for each unit or structure requiring reinspection. The cost to bring a facility into compliance with the rules will depend upon the extent to which a particular facility is not in compliance and it is, therefore, not possible to estimate what the "typical" cost of compliance would be.

Since all construction, including construction at campgrounds, is already subject to the State Uniform Construction Code (N.J.A.C. 5:23), there will be no new construction-related costs for new facilities as a result of the adoption of these rules.

Executive Order No. 27(1994) Statement

An Executive Order No. 27 (1994) analysis is not required because these rules are not being proposed for the purpose of implementing, complying with, or participating in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

Regulatory Flexibility Analysis

Many of the proprietary campground facilities that now exist, or that may exist in the future, are or will be "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All that is required of any facility, whether it is a "small business" or not, is compliance with basic health and safety standards, filing of a simple registration form and the payment of fees intended to cover the cost of enforcing the statute. In cases of non-compliance, the cost to come into compliance (which may involve employment of professional services) would be incurred. These rules concern health and safety and there is no basis for any special dispensation for "small businesses" with regard to any of the requirements.

Full text of the proposed new rules follows:

CHAPTER 10A
PROPRIETARY CAMPGROUND FACILITY HEALTH AND SAFETY STANDARDS

SUBCHAPTER 1. ADMINISTRATIVE PROVISIONS

5:10A-1.1 Administration and enforcement

(a) This chapter shall be administered and enforced by the Bureau of Housing Inspection.

(b) The Bureau may authorize any municipality or county, through its appropriate housing or health agencies, to perform maintenance inspections of proprietary campground facilities for the Bureau. Any authorization to perform inspections given to any municipality or county shall incorporate the provisions of N.J.A.C. 5:10-1.3(b)1, 2, 3, 4 (with respect only to transfer of ownership), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17i-iii and vi, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28; provided, however, that all references in incorporated provisions of N.J.A.C. 5:10-1.3(b) to "buildings" shall be deemed to refer to "proprietary campground facilities."

(c) In order to effectively discharge its responsibility to enforce the health and safety standards set forth in this chapter, the Bureau, in accordance with N.J.S.A. 45:22A-54, shall have authority to issue cease and desist orders pursuant to N.J.S.A. 45:22A-33, to seek injunctive relief and/or appointment of a receiver pursuant to N.J.S.A. 45:22A-35, and to issue civil penalties pursuant to N.J.S.A. 45:22A-38.

(d) All proprietary campgrounds and all owners of units within proprietary campgrounds shall comply with this chapter and with all other applicable laws, rules and ordinances of any agency or political subdivision having jurisdiction.

5:10A-1.2 Definitions

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

"Association" means a condominium association or cooperative corporation or association that exercises control over a proprietary campground facility.

"Authorized local agency" means a county or municipal housing or health agency authorized to perform inspections for the Bureau pursuant to N.J.A.C. 5:10A-1.1(b).

"Bureau" means the Bureau of Housing Inspection in the Division of Codes and Standards in the Department of Community Affairs.

"Proprietary campground facility" means any real property designed and used for the purpose of camping and associated recreational uses under a condominium or cooperative form of ownership.

"Units" means a campsite in a proprietary campground facility that a person or group of persons has the right to use by virtue of ownership of either a share in the association or of rights in real property subject to the control of the association.

"Wilderness campground" means a portion of a proprietary campground facility that is intended only for occasional use as an overnight tent camping site and has no permanent structures or facilities.

5:10A-1.3 Certificate of registration

(a) Within 60 days of the effective date of this chapter, each association shall file, upon a form provided by the Bureau, a certificate of registration.

(b) Each such certificate shall be accompanied by a fee of $10.00.

(c) Each certificate shall state:

1. The name, principal office address and telephone number of the association;

2. Such description of the proprietary campground facility as will enable the Bureau to locate the same;

3. The name, address and telephone number of the president of the association or other officer having authority to make decisions concerning the management and operation of the proprietary campground facility;

4. The name, address and telephone number of the agent appointed by the association, pursuant to (f) below, for the purpose of receiving service of process and other orders or notices;

5. The name, address and telephone number of the manager who is at the facility and responsible for maintenance on a daily basis;

6. The total number of units in the proprietary campground facility and the number of units, if any, the rights to which have not yet been sold by the developer; and

7. Whether or not units in the proprietary campground facility were offered for sale in accordance with the Planned Real Estate Development Full Disclosure Act, P.L. 1977, c.419, and, if so, the date of registration by the Division of Codes and Standards (formerly Housing and Development).

(d) Upon receipt of said certificate and fee, the Bureau shall issue to the association a validated copy of the certificate of registration, which copy shall be kept posted in a conspicuous location in the office of the association.

(e) The certificate shall be in such form as may be prescribed by the Bureau.

(f) The association shall appoint an agent for the purpose of receiving service of process and such orders or notices as may be issued by the Bureau. The agent shall have an office in the State at which service may be made during normal business hours. If the agent is a corporation, it shall be licensed to do business in this State.

(g) The association shall file an amended certificate whenever any of the information contained in the certificate changes. No fee shall be charged for the filing of an amended certificate.

(h) The certificate shall be signed by an authorized representative of the association, whose name shall be typed beneath his or her signature and whose relationship to the association shall be stated.

5:10A-1.4 Inspections

(a) The Bureau, either directly or through an authorized local agency, shall inspect each proprietary campground facility annually in order to ensure compliance with this chapter.

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(b) In the event that any violation of this chapter is found to exist, the Bureau or the authorized local agency shall conduct such re-inspections as may be necessary in order to ensure compliance.

5:10A-1.5 Inspection fees

(a) After each inspection or reinspection conducted either by Bureau personnel or by an authorized local agency, the association shall pay an inspection fee to the Bureau.

(b) Inspection fees shall be as follows:

1. For an initial annual inspection, the association shall pay a base fee of $100.00, plus $1.00 per unit for each of the first 350 units and $.50 per unit for each unit thereafter;

2. For each reinspection, the association shall pay a base fee of $100.00, plus $1.00 for each unit or structure requiring reinspection.

(c) When an inspection or reinspection is conducted by an authorized local agency, the Bureau shall pay 65 percent of the fee collected for the inspection or reinspection to the county or municipality to defray the costs of the authorized local agency.

5:10A-1.6 Hearings

(a) An association aggrieved by any notice or order issued by the Bureau under this chapter shall be entitled to an administrative hearing pursuant to the "Administrative Procedure Act," N.J.S.A. 52:14B-1 et seq.

(b) Hearings shall be conducted by the Office of Administrative Law and the final decision shall be issued by the Commissioner of Community Affairs.

(c) An application for a hearing shall be filed within 10 business days of receipt by the association of the notice or order complained of.

(d) Hearing applications shall be sent to the Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, New Jersey 08625.

5:10A-1.7 Construction

All construction involving buildings or structures in a proprietary campground facility, whether such buildings or structures are permanent or temporary, shall be in compliance with the State Uniform Construction Code (N.J.A.C. 5:23) and local land use ordinances and regulations.

SUBCHAPTER 2. MAINTENANCE STANDARDS

5:10A-2.1 Duties of association

(a) It shall be the responsibility of the association to comply with all requirements set forth in this chapter.

(b) The association shall exercise its power under N.J.S.A. 45:22A-51 to require unit owners to comply with the requirements of this chapter by, if necessary, issuing notices to cease and desist from violations and instituting proceedings for eviction and termination of contractual rights.

(c) During any period in which the proprietary campground facility, or any portion thereof, is occupied, the association shall not shut down or discontinue any service, facility, equipment or utility necessary for the continued habitability of the proprietary campground facility without the consent of the Bureau or the authorized local agency.

(d) The association shall appoint a manager who shall be responsible for the maintenance of the proprietary campground facility and who shall be at the facility at least once daily during all periods in which it is occupied. The manager shall maintain the facility in accordance with this chapter and shall be responsible for the maintenance of peace and good order within the facility. The name of the manager and the location and/or telephone number at which he or she may be contacted at any time shall be posted in a prominent location at the facility, together with the locations and telephone numbers of the nearest hospital and of the emergency medical services and police and fire departments serving the facility.

(e) The association shall take such legal measures as are available to it to prevent the use of any unit within a proprietary campground facility for purposes of domicile or permanent residency, unless such use is permitted by municipal ordinance.

5:10A-2.2 Access; roads and parking areas; location

(a) Each proprietary campground facility shall be provided with convenient access for the ingress and egress of traffic from a public road.

(b) Service roads within the proprietary campground facility shall be so located and constructed as to permit convenient and safe movement of traffic. Service roads intended to accommodate all recreational vehicles shall have a width of at least 10 feet per traffic lane and eight feet per parallel parking lane. Curves on such service roads shall have a minimum internal radius of 25 feet. Turnabouts shall be provided for all dead-end driveways over 100 feet in length; turnabouts designed for recreational vehicles shall have a minimum internal radius of 25 feet.

(c) Service roads and parking areas shall be maintained free of potholes, dust nuisance and safety hazards.

(d) No unit shall be less than 50 feet from a public road right-of-way, nor less than 10 feet from a property line between the proprietary campground facility and other property.

5:10A-2.3 Unit density, area and layout

(a) The density of units in a proprietary campground facility shall not exceed an average of 25 units per acre.

(b) Each unit may accommodate one or more structures or vehicles occupied by persons within the same party, but in no case shall the total number of overnight occupants exceed a density of 200 persons per acre.

(c) Each unit shall include a minimum of 900 square feet of space, including a parking area.

(d) Each unit shall be well-drained and laid out in such a manner as to provide sufficient open and graded space for the accommodation of a structure or vehicle used for camping purposes and shall provide parking space for an automobile that will not interfere with the convenient and safe movement of traffic.

(e) Each unit shall be marked for identification. Such markers shall be easily readable from the driveways.

(f) Natural vegetative cover and other natural features shall be retained, protected and maintained so as to facilitate drainage, prevent erosion or gullying and preserve the scenic attributes of the area.

5:10A-2.4 Fireplaces

(a) All fireplaces shall be located in safe and convenient locations where they will not constitute fire hazards to vegetation, undergrowth, trees, structures or vehicles.

(b) The Bureau or the authorized local agency may require the association to obtain documentation from the local fire official indicating compliance with (a) above.

5:10A-2.5 Water supply

(a) The water supply within the proprietary campground facility shall be adequate as to quantity and of a safe and sanitary quality and shall be from a public or private water supply system that is constructed, protected, operated and maintained in accordance with the New Jersey Safe Drinking Water Act (N.J.S.A. 58:12A-1 et seq.), the rules adopted pursuant thereto by the Department of Environmental Protection (N.J.A.C. 7:10), and all other applicable laws, ordinances and regulations.

1. Records of compliance shall be available upon request to the Bureau or to a local agency enforcing this chapter.

(b) Where hand-pumps are provided, they shall be installed so that no unprotected opening connecting with the interior of the pump exists. The pump spout shall be of the closed downward-directed type. The hand-pump shall be bolted to a mounting flange securely fastened to the well casing. The top of the casing shall extend at least one inch above the face of the flange.

(c) A well equipped with a hand-pump shall be protected by a concrete apron, measuring at least four feet by four feet, surrounding the pump suction pipe to discharge wastewater away from the well.

(d) The connections for potable water piped to individual units shall be so installed that they will not be damaged by the parking of vehicles.

(e) No facility for filling potable water tanks shall be located less than 50 feet from a waste disposal location.

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(f) Each potable water outlet shall be identified with a sign of durable material, not less than two feet by two feet, inscribed in clearly legible letters: "POTABLE WATER—NOT TO BE USED FOR FLUSHING WASTE TANKS" or words to similar effect.

(g) The potable water system shall be protected from backflow by means of a listed vacuum breaker located downstream from the last shutoff valve.

(h) The water supply system shall provide a minimum of 25 gallons per day per unit for units without individual water connections and a minimum of 50 gallons per day per unit for units with individual water connections or if water flush closets are provided in rest rooms. Where water is distributed under pressure, the water supply system shall provide a flow pressure of not less than 20, nor more than 80, pounds per square inch and a minimum flow of two gallons per minute at any outlet.

(i) There shall be no accumulations of water or muddy conditions at any water outlet.

(j) Water storage tanks shall be constructed of impervious materials, protected against contamination, and provided with locked, watertight covers. Any overflow or ventilation openings shall be downfacing and provided with corrosion resistant screening of not less than No. 24 mesh to prevent the entrance of insects and vermin. Water storage tanks shall not have direct connections to sewers.

5:10A-2.6 Sanitary facilities

(a) Toilets shall be provided at one or more locations in every campground. They shall be convenient of access and shall not be located farther than 600 feet from any unit. A minimum of one toilet shall be provided for each sex up to the first 25 dependent units. For each additional 25 or fewer units thereafter, an additional toilet for each sex shall be provided. Public toilets shall not be required if all units are required to be used only by recreational vehicles with self-contained sanitary facilities.

(b) Privies and pit-toilets shall not be permitted except for wilderness campgrounds or widely dispersed units where it would be impracticable to provide water closets.

(c) Separate toilet facilities shall be provided for males and females and shall be clearly marked.

(d) Each toilet shall be in a separate compartment and shall be provided with a door with a latch to ensure privacy. Dividing walls or partitions shall be at least five feet high and shall not be separated from the floor by a space greater than 12 inches.

(e) An adequate supply of toilet paper shall be provided in each toilet at all times.

(f) Toilets and urinals shall be maintained in a clean condition. Toilet seats shall be washed at least once daily with a disinfectant solution during the period in which the proprietary campground facility is occupied. Unless provided with an effective flushing device, urinals shall be washed daily with a disinfectant solution.

(g) Where water closets are provided, the female toilet room shall be provided with a container for the reception of sanitary napkins. The container shall be of durable, nonpervious and readily cleanable material and shall be provided with a lid.

(h) Privies and pit toilets, where allowed, shall conform to the following requirements:

1. They shall be constructed of material permitting satisfactory cleaning and shall be provided with adequate natural lighting and ventilation;

2. Doors shall be self-closing;

3. Windows, doors and vents to the outside shall be provided with fly-proof screens;

4. Each shall be provided with a watertight vault, so constructed so that flies cannot gain access to the contents thereof. The matter contained in the vault shall at all times be prevented from falling on, or spilling over upon, the surface of the ground. The vault shall not extend below the water table;

5. Each shall be provided with a seat and lid, both of which can be raised and are of smooth, durable, nonpervious material;

6. The location shall not be less than 150 feet from any well or point well, stream or lake and not less than 50 feet from any unit;

7. Lime or other deodorant substance shall be sprinkled at least once daily upon the contents of the vault;

8. The vault shall be emptied as often as may be necessary and the contents shall be disposed of by a person licensed to dispose of septage by the New Jersey Department of Environmental Protection. Proof of disposal by a person having the necessary licensure shall be maintained by the association in its principal office and shall be made available to the inspector for the Bureau or the authorized local agency upon request.

(i) New sewer lines and appurtenances in a proprietary campground facility shall be installed in accordance with the provisions of the New Jersey Water Pollution Control Act rules (N.J.A.C. 7:14) as specified by the Department of Environmental Protection. Existing sewer lines and appurtenances shall be functional.

(j) New septic systems shall be installed in accordance with the provisions of N.J.A.C. 7:9A, as specified by the Department of Environmental Protection. Existing septic systems shall be functional.

(k) No liquid wastes from sinks shall be discharged onto, or allowed to accumulate on, the ground surface.

5:10A-2.7 Water closet and shower building

(a) If either water closet or shower facilities for both males and females are housed within the same structure, they shall be separated by a sound-resistant wall.

(b) All water closet and shower building doors to the exterior shall be self-closing and shall be screened by means of a vestibule or wall to prevent direct view of the interior when the exterior doors are open.

(c) All water closet and shower building windows, doors and vents to the outside shall be provided with fly-proof screens.

(d) Window area of water closet and shower buildings shall be equal to at least eight percent of the floor area. Windows shall be located as high as practicable and along more than one wall whenever possible.

(e) The interior finish of such buildings shall be of moisture-resistant material that will withstand frequent washing and cleaning.

(f) The floors shall be constructed of material impervious to water and shall be skid-resistant and easily cleanable.

(g) The floors of shower rooms shall be sloped to properly trapped floor drains connected to the sewerage system.

(h) Showers shall be of the individual type and shall be visually screened from view. Each individual shower area shall be at least 30 inches long and at least 30 inches wide. For each individual shower area, there shall be an individual dressing area, visually screened from view, with a minimum floor area of 36 inches by 36 inches, which shall be equipped with at least one clothing hook and one stool or equivalent bench area.

(i) The interior finish of such buildings shall be washed and repainted as often as may be necessary to maintain them in a clean and wholesome condition. The floors shall be washed at least once daily with a disinfectant solution.

(j) Portable water closets and showers shall be prohibited in proprietary campground facilities.

5:10A-2.8 Holding tank emptying stations for camping vehicles

(a) If provided, a holding tank emptying station for camping vehicles shall be constructed and operated in conformance with the New Jersey Water Pollution Control Act Regulations (N.J.A.C. 7:14) and any other applicable laws, rules and ordinances and shall comply with the following additional requirements:

1. Each station shall be conveniently located and be accessible from the service road and shall provide easy ingress and egress for camping vehicles;

2. Each station shall be at least 100 feet from any campsite or property line and shall have an appropriate wind break against prevailing winds to reduce the migration of odors;

3. Each station shall contain an emptying trough and a means for flushing the camping vehicle holding tank and emptying through with water under pressure;

4. The emptying trough shall consist of a concrete slab at least four feet by six feet and at least five inches thick, the surface of

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which is trowelled to a smooth finish and sloped from each side inward to a sewer inlet;

5. The sewer inlet shall consist of a four inch self-closing foot-operated hatch of durable material with cover milled to fit tight. The hatch body shall be set in the concrete of the emptying trough with the lip of the opening flush with the surface of the trough to facilitate the cleansing of the trough with water under pressure. The hatch shall be properly connected to a sewer inlet that shall discharge to an approved sanitary sewage disposal facility;

6. The means for flushing the camping vehicle holding tank and the emptying trough shall consist of a piped supply of water under pressure terminating in a valved connection so located and installed that it will not be damaged by vehicles. The connection shall consist of a properly supported riser terminating at least two feet above the ground surface, with a 3/4-inch valved outlet to which is screwed a flexible hose terminating at a nozzle;

7. The water supply to the flushing device shall be protected from backflow by means of an approved vacuum breaker located downstream from the last shutoff valve; and

8. Adjacent to the flushing arrangement there shall be posted a sign of durable material, not less than two feet by two feet in size, containing the following inscription, or equivalent wording acceptable to the Bureau, in clearly legible letters:

"DANGER. THIS OUTLET IS NOT TO BE USED FOR DRINKING OR DOMESTIC PURPOSES."

5:10A-2.9 Storm drainage

Storm water sewers shall be separate and apart from any sewage disposal system.

5:10A-2.10 Solid waste disposal

(a) The storage, collection and disposal of solid waste shall be so managed as to prevent health hazards, rodent harborage, insect breeding, accident hazards or air pollution.

(b) All solid waste shall be stored in durable, watertight containers.

(c) When separation of solid waste is required pursuant to municipal or county regulations, separately marked containers shall be provided and appropriately identified.

(d) Unless the solid waste is collected daily, the containers shall be fly-tight and be provided with suitable fly-tight lids.

(e) Solid waste containers shall be located either at each unit or at one or more centralized locations within the proprietary campground facility.

(f) Each solid waste containers shall be of sufficient storage capacity to hold all solid waste that accumulates between periods of removal from the premises.

(g) Solid waste containers shall be washed as often as may be necessary, but not less than twice weekly while the proprietary campground facility is occupied.

(h) Solid waste disposal shall be done by a public entity or by a person licensed for that purpose by the Department of Environmental Protection. Documentary proof of compliance with this requirement shall be kept at the principal office of the association and shall be made available upon request to the inspector for the Bureau or the authorized local agency.

(i) Proprietary campground facilities shall be maintained free of broken glass, bottles, cans and other litter.

5:10A-2.11 Insect, rodent and weed control

(a) Proprietary campground facilities shall be kept free from cans, jars, buckets, old tires and other articles that can hold water and provide breeding places for mosquitoes. Mosquito control measures and supplemental larvicidal measures shall be taken, as necessary, in accordance with the New Jersey Pesticide Control Regulations (N.J.A.C. 7:30).

(b) Fly breeding shall be controlled by eliminating unsanitary practices that provide breeding places including, without limitation, repair or replacement of damaged solid waste containers that leak and removal of food wastes and other solid wastes from areas around solid waste containers.

(c) All enclosed buildings within a proprietary campground facility shall be rodent-proofed. All storage buildings shall be maintained in such a manner as to eliminate the possibility of rodent harborage.

(d) The growth of weeds shall be controlled so as to minimize hazards from ticks and injurious insects and from harmful plants such as poison ivy, poison oak, poison sumac and ragweed.

(e) The application of pesticides shall be in accordance with the New Jersey Pesticide Control Regulations (N.J.A.C. 7:30).

5:10A-2.12 Electrical installations

All electrical installations shall be maintained in good operating condition and in accordance with the electrical code requirements in effect at the time of installation.

5:10A-2.13 Flammable liquids and gases

(a) The storage and handling of flammable liquids and liquified petroleum gases shall be in compliance with the Uniform Fire Code (N.J.A.C. 5:18).

(b) Proof of compliance shall be in the form of documentation issued by the local fire official that shall be kept in the principal office of the association and shall be made available upon request to the inspector for the Bureau or the authorized local agency.

5:10A-2.14 Swimming and bathing

(a) Outdoor swimming pools that contain 24 or more inches of water shall be protected by a fence, wall, building or other enclosure material so constructed as to afford no external handholds or footholds, of materials that are impenetrable by toddlers, that shall be at least four feet in height and equipped with a self-closing and self-latching closure mechanism not more than six inches below the top of the gate and provided with hardware for permanent locking.

(b) Swimming pools, hot tubs and bathing beaches shall conform to Chapter IX of the State Sanitary Code (N.J.A.C. 8:26), entitled "Public Recreational Bathing," and to all other applicable laws, rules and ordinances.

(c) Toilet facilities shall be provided in reasonable proximity to the bathing area.

5:10A-2.15 Other hazardous conditions

(a) All lands, buildings and facilities controlled by the association shall be maintained so as to be free of nuisances, unsanitary conditions and hazards to the health and safety of persons in or near the proprietary campground facility. Such nuisances, insanitary conditions and hazards shall include, but not be limited to, the nuisances, insanitary conditions and hazards referred to in N.J.A.C. 5:10-6.1, 6.2 and 6.4, in N.J.A.C. 5:18-3.3 and N.J.A.C. 5:23-2.32.

(b) All food services and milk supply shall comply with Chapter XII of the State Sanitary Code (N.J.A.C. 8:24).

(c) The association shall take such action as may be necessary to prevent any person from creating or maintaining any nuisance, insanitary condition or hazard to public health or safety, whether or not specifically referred to in this subchapter, in any proprietary campground facility.

(a)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Relocation Assistance and Eviction

Proposed Amendments: N.J.A.C. 5:11-2.1, 3.7, 9.1 and 9.2

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 20:4-10 and 52:31B-10.

Proposal Number: PRN 1995-296.

Submit written comments by June 14, 1995 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX No. (609) 633-6729

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The agency proposal follows:

Summary

The proposal includes amendments to the relocation assistance rules at N.J.A.C. 5:11 that are intended to correct seeming contradictions in the rules concerning eligibility of owner-occupants for benefits in cases involving displacement due to code enforcement. The proposed amendment at N.J.A.C. 5:11-2.1(c) will now make it clear that owner-occupants shall not be eligible if they are responsible for the violations and that the rule at N.J.A.C. 5:11-3.7 concerning replacement housing payments to owner-occupants in amounts not to exceed $15,000 does not apply in code enforcement cases. The proposed amendments also change the name of the administering division at N.J.A.C. 5:11-9.1 and 9.2(b), in accordance with Reorganization Plan #002-1994, and reference the procedure established by the Office of Administrative Law for accelerated disposition of cases at N.J.A.C. 5:11-9.2(c). This last change is being made in response to a comment received when the chapter was last proposed for readoption to the effect that relocation hearings should be conducted on an expedited basis.

Social Impact

The clarification of existing rules concerning the eligibility of owner-occupants for benefits should eliminate a source of confusion for claimants and governmental units alike. The proposed amendment at N.J.A.C. 5:11-9.2(c) concerning hearings should provide guidance to those who seek an expedited response from the Office of Administrative Law.

Economic Impact

The proposed amendments clarify existing eligibility requirements and do not establish new ones. Elimination of the seeming contradictions in the existing rules, however, will reduce the likelihood of payments being made that should not have been made.

Executive Order No. 27 Statement

No Executive Order No. 27 analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Regulatory Flexibility Analysis

Applicants for relocation assistance may, in cases involving commercial, industrial or rental residential properties, be "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The fact that an entity may be a "small business" does not make that entity either more or less eligible for relocation assistance than a similarly situated person or entity that is not a "small business." The intent of the statutes and of the rules is to ensure uniform treatment of similarly situated displacees. The clarifications and guidance provided by the proposed amendments should assist all affected parties, including "small businesses," in complying with the rules and receiving any applicable benefits. No compliance requirements necessitating professional services are imposed on any party by the proposed amendments.

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

5:11-2.1 Building, housing and health code enforcement

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

(c) An owner-occupant who is displaced by health, building or housing code enforcement shall **not be entitled to relocation benefits if the code violation which resulted in displacement was caused by factors for which the owner is liable. Any such owner-occupant who is entitled to benefits shall** be entitled to the benefits applicable to tenants only.

(d) No [person] **tenant** displaced by code enforcement shall be eligible for benefits if the code violation which resulted in displacement was primarily caused by that [person's] **tenant's** own conduct and not by factors for which the owner is liable under N.J.S.A. 20:4-4.1.

1. (No change.)

5:11-3.7 Replacement housing payment for owners

(a) [An] **Except as otherwise provided in N.J.A.C. 5:11-2.1(c), an** individual who owns and occupies a dwelling unit for a period of not less than 180 days prior to the eligibility date as specified and who vacates the dwelling unit after notice to vacate and as a direct result of the cause of displacement and who purchases and occupies within one year a comparable replacement dwelling unit shall be eligible for a replacement housing payment in an amount not to exceed $15,000.

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

5:11-9.1 Administrative agency

These rules shall be administered by the Housing Production and Community Development Element of the Division of Housing and [Development] **Community Resources**, Department of Community Affairs, CN-806, Trenton, New Jersey 08625-0806.

5:11-9.2 Right of hearing and time of filing

(a) (No change.)

(b) The Division of Housing and [Development] **Community Resources** shall provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to any person aggrieved either by a final determination of a displacing agency which is a State agency or by findings issued by the Housing Production and Community Development Element pursuant to (a) above.

1.-2. (No change.)

(c) The parties to any hearing before the Office of Administrative Law shall be the displacing agency and the person aggrieved by the final determination of such agency.

1.-2. (No change.)

3. Any party to a hearing before the Office of Administrative Law may request accelerated disposition of a case. Any such request shall be made in accordance with the procedure set forth in the rules of the Office of Administrative Law at N.J.A.C. 1:1-9.4.

(a)

DIVISION OF FIRE SAFETY

Fire Service Training and Certification Hazardous Materials/ Incident Command Certifications

Proposed New Rules: N.J.A.C. 5:18C-6

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-25d, 52:27D-198 and 52:27D-219.

Proposal Number: PRN 1995-297.

Submit written comments by June 14, 1995 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

Training requirements are established as proposed new rules at N.J.A.C. 5:18C-6 for the following certifications: Hazardous Materials-Awareness (N.J.A.C. 5:18C-6.2); Hazardous Materials-Operational (N.J.A.C. 5:18C-6.3); and Hazardous Materials-On-Scene Commander (N.J.A.C. 5:18C-6.4). The requirements for these courses already exist, having been established either by the Division of Fire Safety, by Federal OSHA standards or by the National Fire Academy. Documentation concerning training of all individuals who have received certification must be maintained so that it may be inspected by the Division of Fire Safety and the State Department of Health upon request. The Division of Fire Safety is only certifying that the individual has met the training requirements for the various certifications. If there are additional requirements, such as Hazardous Materials-On-Scene-Commander, it will be the responsibility of the individual or the fire department to maintain the necessary documentation. N.J.A.C. 5:18C-6.5 refers to and applies the continuing education requirements of 29 CFR 1910.120 to all holding these certifications.

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Social Impact

The proposed new rules will establish a procedure whereby individuals who receive training in dealing with hazardous materials and commanding emergency incidents will be able to obtain the appropriate certifications. It is important for public safety that a recognized group of persons with expertise in these areas be available in the fire service in order to deal with hazardous materials and other emergencies.

Economic Impact

The proposed new rules may encourage more fire service members to seek hazardous materials and incident command training. As most of this training is currently provided by the State at no cost to participants, these rules should not require additional expenditure at the State, county or local levels.

Executive Order No. 27 Statement

No Executive Order No. 27 analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. Training programs that meet Federal OSHA standards are, however, accepted as a basis for issuing certifications.

Regulatory Flexibility Statement

The proposed new rules affect firefighters applying for hazardous materials/incident command certifications.To the extent that volunteer fire companies are deemed to be "small businesses," as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the rules will have a beneficial impact because it establishes a program under which their members will be able to obtain such certifications.

Full text of the proposed new rules follows:

SUBCHAPTER 6. HAZARDOUS MATERIALS/INCIDENT COMMANDER CERTIFICATIONS

5:18C-6.1 Incident Commander (Reserved)

5:18C-6.2 Hazardous Materials—Awareness

(a) To obtain a Hazardous Materials—Awareness certification, an individual must have previously received Firefighter I certification issued by the Division of Fire Safety and must satisfactorily complete either:

1. A course that meets the requirements for Hazardous Materials—Awareness certification set forth in 29 CFR 1910.120; or

2. A course of instruction for Firefighter I certification approved in accordance with N.J.A.C. 5:18C-2.3(g).

5:18C-6.3 Hazardous Materials—Operational

(a) To obtain a Hazardous Materials-Operational certification, an individual must:

1. Have previously received Hazardous Materials—Awareness certification; and

2. Have satisfactorily completed a course that meets the requirements for Hazardous Materials-Operational certification set forth in 29 CFR 1910.120.

5:18C-6.4 Hazardous Materials—On-Scene Commander

(a) To obtain a Hazardous Materials—On-Scene Commander certification, an individual must:

1. Have previously received Hazardous Materials—Operational certification; and

2. Have satisfactorily completed the National Fire Academy ICS course.

(b) It shall be the responsibility of the individual or Department to maintain the necessary documentation for any additional requirements of the Department of Health.

5:18C-6.5 Continuing education

Continuing education requirements set forth in 29 CFR 1910.120 shall apply to all individuals holding Hazardous Materials-Awareness, Hazardous Materials-Operational and/or Hazardous Materials On-Scene Commander certification(s).

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Inspections; Certificates; Fees

Proposed Amendments: N.J.A.C. 5:23-2.17A, 2.23, 2.24, 4.18, 4.20, 12.3 and 12.4

Proposed New Rule: N.J.A.C. 5:23-12.9

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

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

Proposal Number: PRN 1995-286.

Submit written comments by June 14, 1995 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
Fax No. (609) 633-6729

The agency proposal follows:

Summary

The purpose of the proposed amendments is to clarify rules concerning certificates of approval and compliance and Departmental fees. The rules now provide that every active permit must be closed by a certificate. For those permits that do not require a certificate of occupancy, a certificate of approval must be issued. The proposed amendments would remove the requirement for an application for a certificate of approval and provide that no fee shall be charged for a certificate of approval. A certificate of approval should be part of the permit process and no additional paperwork or fees would be required.

The proposed amendments at N.J.A.C. 5:23-2.23 would remove all reference to a certificate of compliance for elevators from subchapter 2. All information concerning the use of a certificate of compliance would be moved to subchapter 12. It is also made clear, consistent with the understanding that the Department has had all along, that there is to be no fee for a certificate of compliance. The fees established for routine and periodic inspections are sufficient to cover the cost of processing the certificate of compliance.

Reference to certificates of occupancy and compliance is being removed from N.J.A.C. 5:23-2.17A, which concerns "minor work," since such satisfactory completion of such work is evidenced by a certificate of approval.

N.J.A.C. 5:23-2.24 is amended to refer to registration of elevators in accordance with subchapter 12, instead of referring to N.J.A.C. 5:23-12.3. This is consistent with other cross-references to provisions of other subchapters of the code and is desirable because sections within subchapters are renumbered from time to time and cross-referencing to subchapters lessens the chance that a cross-reference elsewhere in the Code will be overlooked when there is a renumbering.

The proposed amendments, in N.J.A.C. 5:23-12.4, require that construction permits not be issued for work on unregistered existing elevator devices and that construction officials notify the Department of any changes that may be needed in the list of devices registered with the Department that are necessary in order to enforce the registration requirement upon which the elevator safety program is based. The Department cannot ensure that elevator devices are inspected in a timely fashion and properly maintained if it does not know of their existence.

The proposed amendments to subchapter 12 define the cyclical inspection process required by the implementation of the elevator safety subcode. This clarification will establish the requirement at N.J.A.C. 5:23-12.3 that all elevator devices in a building be placed on an inspection cycle that is appropriate to the types of devices present and will assist elevator companies, building owners and subcode officials to balance the workload within a local jurisdiction. The proposed new rule at N.J.A.C. 5:23-12.9 sets forth the use of a certificate of compliance requirements so as to properly relate the construction permit/certificate process and the routine and periodic inspection/certificate process.

The Department has established at N.J.A.C. 5:23-4.20(c)3iii a certificate of occupancy fee of $28.00 which replaces a fee in the amount of 10 percent of the new construction permit fees. The existing rule also provides for minimum fees of $65.00 for most one- and two-family houses

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and for farm structures and of $120.00 for other buildings. Municipalities at N.J.A.C. 5:23-4.18(f) are given the option of charging either a percentage fee sufficient to cover the cost of processing the certificate or a fixed fee. Also, a provision is proposed at N.J.A.C. 5:23-4.18(g) that would establish a method to collect fees for the required reinspection of cross-connections and back flow preventers.

Specifically, the proposed amendments will reduce Departmental fees in the following areas:

At N.J.A.C. 5:23-4.20(c)2i(6), roofing and siding permits for use groups R-3 and R-4 are proposed as a flat fee of $46.00. The current rules establish the fee at $24.00 per $1,000. At the cost of roofing and siding, this often makes the permit fee excessive.

Gas piping has been deleted from N.J.A.C. 5:23-4.20(c)2ii(3) special devices. The Department is treating gas piping in the same manner as a plumbing system. A $10.00 fee at N.J.A.C. 5:23-4.20(c)2ii(2) is proposed to be charged times the number of appliances being connected to the gas piping.

At N.J.A.C. 5:23-4.20(c)2iv(2), concerning smoke detectors, the fee for 12 or fewer detectors is being reduced from $65.00 to $36.00. There will be an additional fee of $12.00 for each additional 25 detectors. This should be a significant savings for residential structures for the installation of hardwired smoke detectors.

Minimum fees have been deleted from the Department's fee schedule at N.J.A.C. 5:23-4.20(b) and (c). Municipalities may continue to charge minimum fees. These fees are usually charged by subcode. The Department's fees now provide for a minimum fee by permit, which includes all subcodes. This provision has caused a great deal of confusion for private on-site agencies with regard to the fees that they should collect. A review of the Department's minimum fee permits for one year showed 1,065 were issued but only 11 involved more than one subcode. Therefore, the Department has decided to eliminate all reference to minimum fees from its fee schedule and collect only the actual fee charged. Unlike past changes in Department fees, the proposed amendment will not affect the revenues of private on-site agencies and municipalities that have contracted with them. The revised Department fee schedule will serve only as the basis for bids submitted by these agencies in the future.

Certificate fees have been substantially reduced or eliminated from the Department's schedule.

Finally, the Department has proposed a fee of $92.00 at N.J.A.C. 5:23-4.20(c)2i(5) for the erection of tents in excess of 900 square feet or more than 30 feet in any direction. Current rules require a construction permit to be issued but do not establish a method to charge a fee. In addition, two corrections at N.J.A.C. 5:23-4.20(c)2iii(1) to the Department's electrical fee schedule has been made to include a one horsepower or one kilowatt motor or device and make it clear that smoke detectors are charged as receptacles or fixtures. The current rule sets forth the fees for motors or devices of more than one horsepower and of less than one horsepower, but not for those that are one horsepower, and sets the same fee for detectors as for sprinkler heads, rather than as for electrical receptacles and fixtures to which, in the Department's judgment, they are more comparable in terms of inspection time and effort required.

Social Impact

The proposed amendments may be expected to reduce permit and certificate fees charged, thereby reducing the overall permit cost. This should encourage homeowners to take out permits and to obtain the necessary inspections, rather than evading the permit process due to high permit fees. This, in turn, will better protect public health, safety and welfare.

Economic Impact

The proposed amendments will reduce permit and certificate fees in all municipalities in which the Department performs inspections. In those municipalities in which inspections are performed by private on-site inspection agencies, these amendments will not affect revenues received under current contracts. In the future, bids submitted for inspection contracts will have to be based upon the revised Departmental fee schedule and the agencies may be expected to take the changes made by these amendments into account in preparing their bids.

The clarification of the construction inspection and periodic inspection processes for elevator devices will reduce costs for building owners since tests performed at the close of the permit must be recognized and adjusted into the normal cycle, thus avoiding unnecessary performance and witnessing of tests by inspectors.

Gaps in the current fee schedule are corrected by the establishment of fees for the erection of tents in excess of 900 square feet in area or more than 30 feet in any direction and for the inspection of motors or devices that are neither more nor less than one kilowatt or one horsepower.

Executive Order No. 27(1994) Statement

No Executive Order No. 27(1994) analysis is required because these rules are not being amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that, except as otherwise indicated below, proposed amendments would not impose reporting or recordkeeping requirements on "small businesses." Changes in fees will affect "small businesses" to the same extent that they will affect property owners who do not qualify as "small businesses." The clarification concerning the use of the different types of certificates and the establishment of inspection cycles for elevator devices should not impose any requirements upon "small businesses" or other owners. Requirements concerning inspections, testing and elevators that are out of service or used for construction purposes only are necessary for safety reasons and must apply regardless of the size or form of organization of the owning entity.

Private on-site agencies, whether or not they qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, will have to prepare future bids with reference to the amended fee schedule. Bids submitted to municipalities by on-site agencies are required to be expressed in terms of a percentage of fees charged by the Department in its current fee schedule. If Department fees are reduced, on-site agencies will have to bid higher percentages in order to earn the same amount of revenue that would have been earned had there been no reduction. The same rules must apply both to those agencies that are "small businesses" and to those that are not and no special dispensation in favor of the former would be either necessary or appropriate since bidding for contracts must be done with reference to uniform specifications.

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

5:23-2.17A Minor work

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

(d) Inspection of minor work:

1. Inspections shall be required for minor work and the enforcing agency shall inspect any such work within 30 days of [notice] **the request for inspection**;

2. [Upon written request from the owner and within 10 days of the completion of said minor work, the] **The** construction official shall issue a [certificate of occupancy,] certificate of approval [or certificate of compliance, as the case may be,] stating that the work performed under a Minor Work Permit substantially complies with the UCC. The inspection shall be based upon what is visible at the time of said inspection and the [certificate of occupancy,] certificate of approval [or certificate of compliance] shall so indicate.

5:23-2.23 Certificate [of Occupancy] requirements

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

(j) [Elevator devices, as defined in N.J.A.C. 5:23-12, have been found by the Department to pose a significant potential hazard to public health and safety and shall therefore be tested or reinspected periodically in accordance with N.J.A.C. 5:23-12. A device shall be granted a certificate of compliance by the construction official for the time period specified. No device shall be operated unless a valid certificate of compliance has been issed. Any violation shall be corrected before a new certificate may be issued. A temporary certificate of compliance may be granted to keep in service a device on which repairs are being diligently performed, if the elevator subcode official finds that no hazard to the public is thereby created. A temporary certificate of compliance may be issued for no longer than 180 days. The elevator subcode official shall provide written notice to the construction official whenever temporary approval is granted.

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1. No certificate of compliance shall be issued for any elevator device in use on or before July 1, 1991 that is subject to these rules and is not registered with the Department in accordance with N.J.A.C. 5:23-12, except that elevator devices in structures classified as Use Group R-3 and R-4 shall be exempt from registration. Elevator devices wholly within R-2 residences, not accessible to the general public, shall also be exempt.

2. No certificate of occupancy shall be issued for any new structure that contains an elevator device until each such device is registered in accordance with N.J.A.C. 5:23-12, except that structures classified as R-3 or R-4, and R-2 structures in which all elevator devices are wholly within dwelling units and not accessible to the general public, shall be exempt.

3. Elevator devices that have been temporarily taken out of operation, so that modernization or repair work can be performed, shall be exempt from periodic inspection requirements during the period of approved non-operation.

4. Elevator devices in structures classified as Use Group R-3 and R-4, excepting those elevator devices accessible to the public, shall be exempt from periodic inspection requirements. Elevator devices wholly within dwelling units in R-2 structures and not accessible to the general public shall also be exempt. In addition, signed statements and supporting inspection and acceptance test reports, filed by an approved qualified agent or agency, for elevator devices in such structures, other than elevator devices accessible to the public, may be accepted by the construction official, in accordance with N.J.A.C. 5:23-2.19 and 2.20, in lieu of inspections performed by, and acceptance test witnessed by, the enforcing agency.] **Certificate of Approval: A certificate of approval shall be issued for all work that requires a construction permit but does not require a certificate of occupancy. No application shall be required for a certificate of approval.**

(k)-(l) (No change.)

5:23-2.24 Conditions of certificate of occupancy

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

(f) No certificate of occupancy shall be issued for any building containing one or more elevators unless:

1. (No change.)

2. All of the elevators in the building have been registered with the Department in accordance with N.J.A.C. 5:23-12[.3].

(g) (No change.)

5:23-4.18 Standards for municipal fees

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

(f) Certificate [of occupancy] fees:

1. The fee for a certificate of occupancy for new construction shall be computed as a percentage of the fee to be charged for the construction permit. This percentage shall be an amount sufficient to [approximately] cover the actual costs [incurred in field inspection and processing] for **processing the** certificate of occupancy[, but in any case shall not be more than the amount which would be charged for a construction permit for the project]. The municipality may, in the alternative, establish a flat fee for the certificate of occupancy.

2. (No change.)

3. There shall be no fee charged for a certificate of approval issued pursuant to N.J.A.C. 5:23-2.23(j).

4. There shall be no fee for a certificate of compliance.

(g) Elevator, **backflow preventer and cross connection** fees are as follows:

1. (No change.)

2. The fees for [a certificate of compliance and for] inspections and **witnessing of** tests for an elevator, escalator, moving walk, dumbwaiter or other elevator device shall be flat fees. These fees may vary for different required inspections and tests, but any variation shall be set forth in the ordinance and the schedule.

3. (No change.)

4. For cross-connections and backflow preventers that are subject to testing and require reinspection, the fee shall be a flat fee.

(h)-(k) (No change.)

5:23-4.20 Departmental fees

(a) (No change.)

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a Departmental plan review surcharge in the amount of 40 percent of each listed fee. Where the Department performs plan review only, the plan review fee shall be in the amount of 25 percent of the new construction permit fee which would be charged by the Department pursuant to these rules. [The minimum fee shall be $46.00.]

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

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees. [The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be $46.00].

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1)-(4) (No change.)

(5) The fee for tents, in excess of 900 square feet or more than 30 feet in any dimension, shall be $92.00.

(6) The fee for roofing and siding work completed on structure in use group R-3 and R-4 shall be $46.00.

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

(1) The fee shall be in the amount of $10.00 per fixture connected to the plumbing system for all fixtures and appliances except as listed in [(c)2ii(2)] **(c)2ii** below.

(2) **The fee shall be in the amount of $10.00 per appliance connected to the gas piping except as listed in (c)2ii(3) below.**

(3) The fee shall be $65.00 per special device for the following: grease traps, oil separators, water-cooled air conditioning units, refrigeration units, utility service connections, backflow preventers equipped with test ports (double check valve assembly, reduced pressure zone and pressure vacuum breaker backflow preventers), steam boilers, hot water boilers (excluding those for domestic water heating), [gas piping,] active solar systems, sewer pumps, interceptors and fuel oil piping. There shall be no inspection fee charged for gas service entrances.

iii. Electrical fixtures and devices: The fees shall be as follows:

(1) For from one to 50 receptacles or fixtures, the fee shall be in the amount of $36.00; for each 25 receptacles or fixtures in addition to this, the fee shall be in the amount of $6.00; for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacle**, smoke and heat detectors,** or similar fixture, and motors or devices of less than **or equal to** one horsepower or one kilowatt [or less].

(2)-(6) (No change.)

iv. Fire protection and other hazardous equipment: sprinklers, standpipes, detectors (smoke and heat)**,** pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums:

(1) The fee for 20 or fewer heads [or detectors] shall be $65.00; for 21 to and including 100 heads [or detectors], the fee shall be $120.00; for 101 to and including 200 heads [or detectors], the fee shall be $229.00; for 201 to and including 400 heads [or detectors], the fee shall be $594.00; for 401 to and including 1,000 heads [or detectors], the fee shall be $822.00; for over 1,000 heads [or detectors], the fee shall be $1,050. [In computing fees for heads and detectors, the number of each shall be counted separately and two fees, one for heads and one for detectors, shall be charged.]

(2) The fee for one to 12 detectors shall be $36.00; for each 25 detectors in addition to this, the fee shall be in the amount of $12.00.

Recodify existing (2)-(7) as **(3)-(8)** (No change in text.)

3. Fees for certificates and other permits are as follows:

i.-ii. (No change.)

iii. The fee for a certificate of occupancy shall be [in the amount of 10 percent of the new construction permit fee that would be

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charged by the Department pursuant to these regulations. The minimum fee shall be $120.00, except for one or two family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on farms, including commercial farm buildings subject to N.J.A.C. 5:23-3.2(d), for which the minimum fee shall be $65.00] **$28.00.**

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be [$174.00] **$120.00.**

v. The fee for a certificate of continued occupancy **issued under N.J.A.C. 5:23-2.23(c)** shall be $120.00.

[vi. There shall be no fee for a temporary certificate of occupancy.

vii. The fee for a certificate of approval or certificate of compliance certifying that the work done under a construction permit has been satisfactorily completed shall be $28.00, except that there shall be no separate fee charged for a certificate of compliance issued after a successful periodic inspection]

Recodify existing viii.-ix. as **vi-vii.** (No change in text.)

4.-9. (No change.)

(d) (No change.)

5:23-12.3 Inspection and test schedule

(a) Routine, periodic and acceptance inspections and test of elevators shall be conducted as follows:

1.-3. (No change.)

4. Each building containing devices covered by this subchapter shall have an inspection cycle established by the enforcing agency. This cycle shall be consistent with the routine and periodic inspection and test intervals required in this section. Once this cycle is established, all such devices in the building shall be subject to inspections and tests, except as exempted by this section or by N.J.A.C. 5:23-12.9.

i. Elevator devices that have been temporarily taken out of operation for alteration work to be performed shall be exempt from routine and periodic inspection and test requirements as long as the elevator device is not accessible to the public or placed back in operation. Those devices that are still in operation, even though they are included in the alteration permit, shall be subject to routine and periodic inspections within the cycle of inspections in the building.

ii. Elevator devices that have been removed from service as per ASME 17.1 are exempt from routine and periodic inspections and tests until the device is placed back in service as per ASME A17.1, which is referenced in the building subcode. Taking a device in or out of service by Code shall be considered minor work within the meaning of N.J.A.C. 5:23-2.17A.

iii. Elevator devices that are used for construction purposes as per ASME A17.1 referenced in the building subcode are subject to inspections and tests required by ASME A17.1 for elevators used for construction. Such devices shall not be accessible to the public. During the operation of the device for construction purposes the owner shall assure that the device is used only for construction purposes by providing a designated operator, authorizing of key operation or by other methods acceptable to the elevator subcode official.

5. Elevator devices in structures classified as Use Group R-3 and R-4, except those elevator devices accessible to the public, shall be exempt from periodic inspection and test requirements. Elevator devices wholly within dwelling units in R-2 structures and not accessible to the general public shall also be exempt. In addition, signed statements and supporting inspection and acceptance test reports, filed by an approved qualified agent or agency for elevator devices in such structures, other than elevator devices accessible to the public, may be accepted by the construction official, in accordance with N.J.A.C. 5:23-2.19 and 2.20, in lieu of inspections performed by and acceptance tests witnessed by the enforcing agency for work requiring a permit. If the construction official designates the elevator subcode official to perform the inspection and to witness acceptance test for work under a permit in such structures, those inspections and tests shall assure compliance with the requirements of the code(s) under which the permit was issued.

5:23-12.4 Registration of elevator devices

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

(f) No permit shall be issued for work to be performed on an existing device if that device is not registered as required by this section.

(g) Each construction official shall review the list of the registered buildings/devices provided by the Department, and shall notify the Department of any changes that need to be made.

5:23-12.9 Certificate of compliance requirements

(a) A device shall be granted a certificate of compliance by the construction official for the time period specified based upon N.J.A.C. 5:23-12.3. No device shall be operated unless a valid certificate of compliance has been issued except for the initial period after work under a permit has been completed as per (f) below. Any violation shall be corrected before a new certificate of compliance may be issued.

(b) A temporary certificate of compliance may be issued by the construction official for a device in order to keep the device in operation on which work, as a result of violations, is being deligently performed, if the elevator subcode official finds that no hazard to the public is thereby created. A temporary certificate of compliance may be issued for no longer than 180 days, even if the device is inspected on an annual basis.

(c) The elevator subcode official shall provide written notice to the construction official whenever a temporary certificate of compliance or certificate of compliance is granted by the construction official.

(d) No certificate of compliance shall be issued for any elevator device in use on or before July 1, 1992 that is subject to these rules and is not registered with the Department in accordance with N.J.A.C. 5:23-12.4, except elevator devices in structures classified as Use Group R-3 and R-4 shall be exempt from registration. Elevator devices wholly within R-2 residences, not accessible to the general public shall also be exempt.

(e) No certificate of compliance or temporary certificate of compliance shall be issued for any elevator device as required by this section which has been approved to operate during the initial period, after a permit, as determined by (f) below and has not been registered pursuant to this subchapter by its first routine inspection, even if a certificate of occupancy, temporary certificate of occupancy, a certificate of approval or temporary certificate of approval has been issued.

(f) A new device or an existing device which has had work done under a permit shall be issued a certificate of compliance upon the first cyclical inspection based on the following:

1. A device has been approved following the inspection and witnessing of an acceptance test as required by N.J.A.C. 5:23-12.2, by the application of an Inspection Sticker Approval for Elevator (F-225) and a recommendation by the elevator subcode official on (F-150) Elevator Subcode Technical Section for a certificate of occupancy or approval as the case may be. The date of the approval shall begin the cycle of inspections and tests for new devices in a new building and for new devices in an existing building which did not have elevator devices previously. The date of the approval of an existing device in an existing building shall not change the device's existing cycle of inspections and tests. The cycle shall remain consistent with the inspection cycle in the building, except the device shall not be subject to the five year test before it is due as long as the acceptance test performed under the permit was a full five year test.

2. A device has been approved following the inspection process and test as required under minor work by N.J.A.C. 5:23-2.17A(d)2, by the application of an Inspection Sticker Approval for Elevator (F-225) and a recommendation by the elevator subcode official on (F-150) Elevator Subcode Technical Section for a certificate of approval. The device may operate under the approval given under the permit until the next cyclical inspection, as determined by the inspection cycle of the building, and then shall be subject to a routine or a periodic inspection the same as all other elevator devices in the building. If, due to the nature of the work, under the minor work permit the device was subjected to a full annual

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test for approval, then the device shall be exempt from the cyclical annual test if the next inspection under the building cycle is an annual inspection; however, the elevator subcode official shall assure that the annual test be performed on all devices at least once in a 12 month period.

(a)

DIVISION OF CODES AND STANDARDS

New Jersey State Housing Code

Proposed Readoption with Amendments: N.J.A.C. 5:28

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 2A:42-76.

Proposal Number: PRN 1995-299.

Submit written comments by June 14, 1995 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the New Jersey State Housing Code, N.J.A.C. 5:28, is scheduled to expire on December 13, 1995. The Department has examined this Code and finds that it continues to be necessary and appropriate as a model code for municipalities seeking to implement N.J.S.A. 2A:42-74 et seq. and 2A:42-85 et seq. and otherwise to enforce habitability standards in all dwellings. When adopted by municipalities as part of the local ordinances, the provisions of this Code are enforced by local health officers or other housing code enforcement personnel.

Standards of habitability established by the model Code include those for water supply, plumbing facilities, garbage and rubbish storage, lighting, ventilation, heating equipment, exitways, general maintenance, use and occupancy of space, and responsibilities of owners and occupants.

If adopted by a municipality, these standards would be imposed upon owners and occupants of dwellings within that municipality.

Amendments are being proposed at N.J.A.C. 5:28-1.5(c) that would require separate storage of rubbish that is recyclable and allowing non-recyclable rubbish to be stored for disposal together with garbage. This conforms to the current practice of separate collection of recyclables. Also, personal pronouns, where used, are being made gender-inclusive.

Social Impact

When adopted as an ordinance by a municipality, this Code provides for the maintenance of the health and safety of residents of that municipality. Municipalities benefit from having a model code based upon validated standards that is ready for use. Failure to readopt these rules would leave municipalities without the ability to adopt this basic model housing code by reference and to use it to enforce N.J.S.A. 2A:42-74 et seq. and 2A:42-85 et seq. against property owners, resident and non-resident, whose properties contain serious code violations.

By eliminating the requirement that garbage, which includes organic waste, and rubbish, which does not, be separated, and requiring instead that recyclables be separated from garbage and other rubbish, the proposed amendment would eliminate a source of confusion and conflict with current waste disposal practice.

Economic Impact

The owners of the properties involved would bear the economic burden of maintaining their properties in compliance with the standards set forth in these rules. Municipalities may benefit economically by being able to incorporate the Code into their ordinances by reference and not having to expend funds to develop their own codes. Without housing maintenance standards in effect, municipalities would find it difficult to require owners to correct unsafe or unsanitary housing conditions.

Executive Order No. 27 (1994) Statement

No Executive Order No. 27 analysis is required because these rules are not being readopted under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Regulatory Flexibility Analysis

The standards contained in N.J.A.C. 5:28, when adopted by municipalities by ordinance, impose requirements on property owners and residents regarding the maintenance and services provided in housing within those municipalities. The standards must, in most cases, be met by the owners, who may elect to hire others to assist them in the fulfillment of their responsibilities. Some of those who are regulated may be considered "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, the number of such "small businesses" cannot be determined, due to the size and nature of the housing market. Similarly, due to the many factors involved, the costs involved in compliance, which necessarily vary on a case-by-case basis, cannot be determined. Such costs would concern maintaining Code compliance for water supply, plumbing facilities, garbage and rubbish storage, lighting, ventilation, heating equipment, exitways, general maintenance, and use and occupancy of space. Professional services (plumbers, heating contractors, etc.) may be needed. Given the statutory requirements imposed by N.J.S.A. 2A:42-74 et seq. and 2A:42-85 et seq., which were enacted for the purpose of protecting public health, safety and welfare, differentiation based upon business size and form of ownership would not be appropriate.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:28.

Full text of the proposed amendments follows (additions indicated in boldface **thus**).

5:28-1.5 Garbage and rubbish storage

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

(c) Rubbish that does not include materials determined by local ordinance to be recyclable may be stored together with garbage in an approved type garbage receptacle, unless otherwise provided by ordinance. Recyclable materials shall be stored separately from non-recyclable materials.

5:28-1.12 Responsibilities of owners and occupants

(a) No owner or occupant shall cause any services, facilities, equipment, or utilities which are required under this chapter to be removed from, shut off, or discontinued in any occupied dwelling let or occupied by him **or her**, except for such temporary interruption as may be necessary while actual repairs or alterations are in process or during temporary emergencies when discontinuance of service is authorized by the Public Officer. In the event that any service or utility which the owner has agreed to supply is discontinued, the owner shall take immediate steps to cause the restoration of such service or utility.

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

(f) Every occupant of a dwelling shall keep in a clean and sanitary condition [that pat] **every part** of the dwelling which he **or she** occupies and controls.

(g) Every occupant of a dwelling unit shall dispose of all **of** his **or her** garbage, and any other organic waste which might provide food for rodents, by placing it in the garbage disposal facilities or garbage storage receptacles required by N.J.A.C. 5:28-1.5(a).

(h) Every occupant of a dwelling unit shall dispose of all **of** his **or her** rubbish in a clean **and** sanitary manner, by placing it in the rubbish containers required by N.J.A.C. 5:28-1.5(b) **and (c)**.

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

(k) Every occupant of a dwelling comprising a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his **or her** dwelling unit is the only one infested. Notwithstanding the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a ratproof or reasonable insect-proof condition, extermination shall be the

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responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling or in the common parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.

(l)-(p) (No change.)

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL REGULATION—LAND USE REGULATION PROGRAM

Freshwater Wetlands Protection Act Rules General Permit and Special Activity Waiver Proposed Amendments: N.J.A.C. 7:7A-7.4 and 9.2

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:9B-1 et seq. (P.L. 1987, c.156).

DEP Docket Number: 22-95-04/533 .

Proposal Number: PRN 1995-315.

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

Monday, June 5, 1995 at 8:30 A.M.
Department of Environmental Protection
Public Hearing Room
401 East State Street
Trenton, New Jersey 08625

Submit written comments, identified by the Docket Number given above, by June 14, 1995 to:

Janis Hoagland, Esq.
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

To accommodate, under limited conditions, the construction of one single-family dwelling on a lot which is substantially comprised of freshwater wetlands and/or State open waters, the Department of Environmental Protection is proposing a new Statewide general permit at N.J.A.C. 7:7A-9.2(a)22, herein after referred to as proposed GP 22. Since 1992, the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) have contained hardship provisions allowing a transition area waiver to be obtained for the construction of a single-family dwelling on a property which is substantially comprised of transition areas. See N.J.A.C. 7:7A-7.2(f)2 and 7.3(e)2. A transition area is the area of land adjacent to a freshwater wetland which minimizes adverse impacts on the wetland and serves as an integral component of the wetlands ecosystem.

The existing transition area hardship waiver enables an owner to recoup some of the costs associated with purchasing and owning the property prior to the implementation of the freshwater wetlands rules, when the owner cannot comply with the criteria for a reduction, averaging or special activity waiver. When the applicant successfully complies with the standards for a transition area hardship waiver, the Department grants a reduction in the width of the transition area to 25 feet, in the case of intermediate resource value wetlands, or to 75 feet in the case of exceptional resource value wetlands. Since there are no analogous hardship provisions for construction on a property which is substantially freshwater wetlands and/or State open waters, the Department has determined that a Statewide general permit for the construction of a single-family dwelling is appropriate.

The standards for authorization pursuant to proposed GP 22 include demonstrating to the Department that the property was owned by the applicant prior to passage of the FWPA on July 1, 1987. Further, the applicant must demonstrate that adjacent lots were not owned or developed since July 1, 1987. The applicant must also demonstrate that the lot cannot be developed by purchasing adjacent upland property, or that the lot cannot be sold for preservation to adjacent property owners or to a land conservancy or environmental organization. The proposed general permit limits the fill or disturbance of freshwater wetlands and/or State open waters to impacts of 0.125 acres, and requires that the lot be serviced by existing sewers. The activity shall not jeopardize a threatened or endangered species or destroy, jeopardize, or adversely modify the documented habitat of such a species. Any wetlands and/or State open waters remaining on the lot shall be placed in a conservation easement and deed restricted. Finally, the proposed Statewide general permit includes a mitigation requirement.

In addition, the Department is proposing to amend N.J.A.C. 7:7A-7.4(e) in order to allow the general permit activity proposed for inclusion at N.J.A.C. 7:7A-9.2(a)22 to occur in the transition area, under a Special Activity Waiver. The addition of the proposed Statewide general permit to the list of Special Activity Waivers will enable transition area reductions to less than the 25 or 75 foot reductions now possible through the existing hardship waiver process for transition areas.

Social Impact

The proposed Statewide general permit and Special Activity Waiver is expected to have a positive social impact. By requiring an owner to offer a lot that is substantially comprised of freshwater wetlands and/or State open waters and/or transition areas for sale to neighbors, land conservancies and environmental organizations before authorizing the permit, the Department ensures notice of the opportunity for purchase and preservation of freshwater wetlands and/or State open waters and/or transition area properties. Conservancies, environmental organizations and neighboring property owners may value the subject property as open space. If the subject property is purchased and preserved, neighboring property values may increase since properties adjacent to open space are often considered more desirable and salable, thus resulting in a positive social impact.

If the Department authorizes the construction of one single-family dwelling on the lot, there will be minimal social impact. While a new dwelling adds traffic to roads, children to schools, and the need for services such as police and fire protection, since the lot was in existence prior to July 1, 1987, the community would have anticipated and considered the impacts of its eventual development. All infrastructure needs would have already been part of the community's development plans. In addition, the owner of the lot would recognize a positive social impact because the permit would enable construction of one single-family dwelling.

Economic Impact

The proposed Statewide general permit and Special Activity Waiver for the construction of one single-family dwelling on a lot which is substantially comprised of freshwater wetlands and/or State open waters and/or transition areas will have a positive economic impact. Individuals who have owned property prior to the implementation of the State law governing construction in freshwater wetlands and/or State open waters and/or transition areas will be able to realize a financial return on their property either from selling the property to an individual or group who will use the property in its current state, or from building one single-family dwelling on the property.

The Department expects these proposed amendments to have a positive economic impact on both the Department and the permit applicant. Currently, the construction of a home on a lot substantially comprised of freshwater wetlands and/or State open waters and/or transition areas requires an Individual permit. The fee for an Individual permit is greater than the fee for a Statewide general permit, and the Individual permit could be denied. The applicant would then have the opportunity to appeal the permit both through the Administrative appeals process, and if unsatisfied with the result of the appeal, through the court system. The applicant must pay for such appeals. In addition, the Department pays for appeals both by providing employee time and by reimbursing the state Attorney General's Office for legal assistance throughout the appeals process. If the Department loses its appeal, it may ultimately be forced to issue a permit. Therefore, it is economically beneficial to both the Department and the applicant to establish criteria by which such applications can be approved without the necessity of a court appeal.

Environmental Impact

The construction of one single-family dwelling in freshwater wetlands and/or State open waters under the proposed Statewide general permit will have several environmental impacts. These impacts include loss of vegetation, alteration to hydrology, loss of flood storage capacity, loss of wildlife habitat, and loss of the water purification function performed by wetlands. However, these impacts are minimized by limiting the wetland/water disturbance to 0.125 acres.

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For example, the construction of one single-family dwelling may modify the hydrology of the wetland ecosystem by acting as a barrier to the free movement of surface waters. By limiting the area of wetlands to be filled to no more than 0.125 acres, the extent of the barrier to water movement in the wetland ecosystem will be minimized.

Further, the filling of freshwater wetlands and/or State open waters results in a loss of flood storage capacity which may result in increased flooding to neighboring properties. Establishing a limit of 0.125 acres of fill on the subject lot, reviewing the proposed filling of the lot to assure that it will not cause flooding to other properties, and by requiring an applicant to obtain a Stream Encroachment permit for dwellings proposed within the jurisdiction of the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50) and implementing regulations (see N.J.A.C. 7:13-1 et seq.), while not entirely eliminating the loss of flood storage capacity, will minimize to the maximum extent possible the loss of flood storage capacity both on-site and cumulatively throughout the State resulting from the activities.

Freshwater wetlands and/or State open waters also provide habitat for many threatened and endangered species in New Jersey, and, in fact, many species have become threatened or endangered due to the loss of wetland habitats. By limiting the freshwater wetlands and/or State open waters disturbance to one single-family dwelling, the loss of habitat will be minimized. Further, the construction of the dwelling will not be permitted to jeopardize a threatened or endangered species or to destroy, jeopardize, or adversely modify the documented habitat of such species.

Wetlands also serve to filter pollutants from surface and ground waters. When wetlands are lost, surface and ground waters do not receive the benefit of this protective function. However, by requiring the one single-family dwelling to be constructed in the wetlands to be serviced by a sanitary sewer system, potential pollution to the surface and ground water resulting from the use of a subsurface sewage disposal system will be avoided.

The proposed transition area Special Activity Waiver will also have similar environmental impacts. The transition area is an integral portion of the freshwater wetlands ecosystem, providing a temporary refuge for wildlife during high water episodes, and critical habitat for animals dependent upon, but not resident in, freshwater wetlands. Transition areas provide a sediment and stormwater control zone to reduce the impacts of development upon freshwater wetlands. In addition, establishing and protecting a transition area results in protection of the adjacent wetland because slight variations of freshwater wetland boundaries occur over time due to hydrologic or climatologic effects. The proposed Special Activity waiver will result in the partial elimination of the protection afforded to the wetland by the transition area. While the stormwater and sediment control aspects of the transition area may be maintained if a dwelling is constructed on pilings, it is unlikely that the transition area will continue to provide a refuge or habitat for wildlife. However, the impact is minimized by limiting the area of impact to 0.125 acres.

Both the proposed Statewide general permit and Special Activity waiver contain several other mechanisms to ensure that the activities will result in minimal adverse environmental impacts. These include requiring that an applicant offer the property for sale to land conservancies and environmental organizations, which may purchase and preserve the property, and requiring mitigation as a condition of permit authorization. The environmental analysis, required pursuant to N.J.S.A. 13:9B-23c, is available for review from the Department. It contains a more detailed discussion of environmental impacts and how the various permit conditions serve to minimize these impacts. A copy may be obtained by telephoning the Land Use Regulation Program between 8:00 A.M. and 4:30 P.M. at (609) 633-6755.

Executive Order No. 27 Analysis

Executive Order No. 27(1994) requires State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. In 1994, New Jersey assumed the freshwater wetlands permitting authority from the U.S. Army Corps of Engineers (ACOE) pursuant to the Federal Clean Water Act (Section 404(g)). New Jersey's program operates in place of the Federal 404 program throughout the State, with the exception of the Hackensack Meadowlands, and interstate and navigable waters as defined in the Department's Memorandum of Agreement with the ACOE. The EPA has oversight of the State's assumed program. In order to maintain assumption of the wetlands program, the Department must demonstrate to EPA that any regulations it adopts are at least as stringent as existing Federal wetlands regulations.

There is no Federal standard that currently authorizes the specific activity covered by proposed GP 22. Moreover, the Statute authorizing proposed GP22, the FWPA, is more stringent than Section 404 (g) of the Federal Clean Water Act. Thus, in order to implement the FWPA, the Department must of necessity adopt some rules that are more stringent than Federal standards. Nevertheless, the Department is providing the following comparison between proposed GP 22 and existing Federal standards.

Outside of New Jersey, the U.S. Army Corps of Engineers (ACOE) is the agency responsible for implementation of the Federal 404 program for the discharge of dredged or fill material into waters of the United States, including wetlands. In 1991, the ACOE adopted Nationwide permit (NP) program regulations and issued, reissued, and modified nationwide permits. Nationwide permits are permits by rule. All of the terms and conditions for approval are promulgated by regulation. In some cases, an applicant must submit a notice describing the activity to be undertaken and receive written authorization from the ACOE to conduct the regulated activity. In other cases, the program is self-regulating, allowing an applicant to proceed with an activity without any review or approval by the ACOE.

The Statewide general permit program contained at N.J.A.C. 7:7A-9 is the State equivalent of the NP program. Unlike the NP program, the FWPA requires an applicant to always provide written notice to the Department for any activity to be carried out pursuant to a Statewide general permit (see N.J.S.A. 13:9B-23g).

Two NPs are in some ways similar to the proposed Statewide general permit, but neither NP authorizes the same activity, that is the filling of up to 0.125 acres of wetland impacts for the construction of one single-family dwelling in any freshwater wetland. NP 18 allows the discharge of up to 25 cubic yards of fill on not more than 0.10 acres of wetlands in all waters of the United States, while NP 26 allows the discharge of dredged or fill materials into one acre (in New Jersey) of headwater wetlands only. However, it appears that proposed GP 22 is most similar to NP 18, since the use of NP 26 is limited to headwaters.

NP 18 requires advance notice to the District Engineer. Proposed GP 22 also requires advance notice. The costs associated with the State's notice procedure include: the cost of preparing an application; the current cost of postage for a certified letter to notify all landowners within 200 feet of the subject property, the clerk of the municipality, the environmental commission, the municipal and county planning boards, and the municipal construction official; the cost of obtaining from the township the list of property owners within 200 feet of the subject property; and the Statewide general permit application fee.

The cost of preparing an application for a Statewide general permit will depend upon whether or not the applicant chooses to employ a consultant and which consultant is chosen by the applicant. Consultants who agreed to provide prices to the Department estimated a charge of $1,000 to prepare a Statewide general permit application. This includes the cost of providing the certified letters. However, if the applicant chooses to prepare the application him or herself, the cost will be the time required for application preparation. In addition, the applicant will have to obtain an appraisal of the property at a cost of approximately $500.00. The cost of a certified letter is currently $2.52. However, the total postage cost cannot be determined because it depends upon the number of landowners located within 200 feet of the subject property. The cost of obtaining the list of the owners within 200 feet is less than $10.00. The Statewide general permit application fee is $250.00.

The benefit of the Department's notification procedure is the protection of wetlands not meeting the Statewide general permit criteria. That is, without providing the Department with notice of intent to fill a freshwater wetland and/or State open water, there is no mechanism to assess compliance with the State regulations other than through an enforcement action. Freshwater wetlands protect both surface and ground water quality, provide flood protection, habitat for fish and wildlife, and recreational opportunities. Thus, estimates of the public benefit derived from wetlands ranged, in one study, from $153,535 to $190,000 per acre (based upon a 1978 Tufts University study reported in an article entitled, "Wetlands Save You Money" by Abigail Fair of the Association of New Jersey Environmental Commissions, Autumn 1990 Report). The lack of required notice under the Federal wetlands program resulted in losses of State freshwater wetlands and/or State open waters and was one of the reasons for passage of the FWPA. When it adopted the FWPA, the Legislature sought to close this loophole.

Another benefit of the Department's notification procedure is to provide neighbors, as well as township and county officials involved with

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land use planning, with information regarding activities that are occurring within their jurisdiction or neighborhood.

While the 0.125 acre fill limit of proposed GP 22 is greater than the 0.10-acre fill limit of NP 18, the Department believes that on an overall basis the proposed GP 22 is at least as stringent as NP 18 because proposed GP 22 contains several conditions that are not contained in the NP. Specifically, proposed GP 22 can be used only by those individuals who owned a substantially wetland lot prior to the enactment of the FWPA, while the NP can be used by any property owner at any time, regardless of whether or not there is an existing upland area in which construction can take place.

The Federal 404 Regulatory Program applies only to waters of the United States, including wetlands. However, while there is no regulation of transition areas under the Federal program, the FWPA expressly requires the regulation of transition areas as part of New Jersey's program (see N.J.S.A. 13:9B-16). The FWPA also establishes the framework for the Department of Environmental Protection to implement the transition area waiver process (see N.J.S.A. 13:9B-17, and 18).

The costs associated with adding proposed GP 22 to the list of those available for use as a Special Activity waiver pursuant to N.J.A.C. 7:7A-7.4 include: the cost of preparing an application for submittal to the Department, the cost of an appraisal, the cost associated with the same notification process described previously for Statewide general permits, and the cost of applying to the Department for a special activity waiver.

The applicant should possess all of the necessary information to apply for the Special activity waiver. Therefore, the only cost involved is the applicant's time to prepare the application as well as the cost of an appraisal as previously enumerated. If the applicant chooses to hire a consultant to prepare the application it is unclear what this service would cost since this waiver has not yet been made available. However, currently one consulting firm informed the Department that charges are based upon the rate of $600.00 per day, per person. At this rate, the Department estimates that the costs should not exceed $1,200. The cost of a Special activity waiver based upon an adopted Statewide general permit is also $250.00.

If proposed GP 22 is available as a Special Activity Waiver pursuant to N.J.A.C. 7:7A-7.4, applicants will receive benefits through an increased ability to beneficial use of their property through the construction of a single-family dwelling. Without proposed GP 22 applicants would be required to apply for Individual permits and to thereby incur greater costs.

Regulatory Flexibility Analysis

Proposed GP 22 applies to any person who has owned or possessed real property since before the passage of the FWPA and who seeks to build a single family dwelling on the property. A small business may meet the definition of "person" pursuant to the FWPA regulations. Therefore, the proposed permit may benefit some small businesses if they owned property prior to the implementation of the State law because they will be able to realize a financial return on the property either from selling the property to an individual or group who will use the property in its current state, or from building one single-family dwelling on the property. The specific requirements imposed on such property owners and attendant costs are discussed in the preceding statements, particularly the Executive Order No. 27 Analysis. As the purpose of the proposed General Permit is to benefit such property owners, and the eligibility requirements and permit criteria are necessary to maintain appropriate freshwater wetlands protection, no lesser requirements for small businesses are provided.

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

7:7A-7.4 Special activities: Standards for granting transition area waiver

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

(e) No substantial impact will be deemed to exist on a freshwater wetland, and a transition area waiver will be granted for the reduction or partial elimination of transition area in order to conduct activities in the transition area which are covered by the statewide general permits at N.J.A.C. 7:7A-9.2(a), 2, 3, 4, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, **22,** and 25.

1.-3. (No change.)

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

7:7A-9.2 Statewide General Permit Authorization

(a) The following activities in freshwater wetlands and State open waters may be authorized under the following Statewide General Permits provided the activity is in compliance with specific conditions contained in the Statewide General Permit and with the provisions in N.J.A.C. 7:7A-9.2(b) and the standards and conditions for all Statewide General Permits in N.J.A.C. 7:7A-9.3 and provided the activities are in compliance with the Act, this chapter, and the Federal Act:

1.-21. (No change.)

22. [(Reserved)] **The construction of one single-family dwelling on a lot which is substantially comprised of freshwater wetlands and/or State open waters and/or transition areas. If the subject lot is adjacent to another lot or lots substantially comprised of freshwater wetlands and/or State open waters and/or transition areas which are owned or controlled by the same person proposing to construct a single-family dwelling on the subject lot, this general permit shall only authorize the construction of one dwelling on the property in its entirety. This Statewide general permit shall not authorize the construction of any access road through wetlands to reach an upland site because this activity is already authorized pursuant to Statewide general permit number 10 for minor road crossings under (a)10 above, or pursuant to an Individual permit under N.J.A.C. 7:7A-3.1 through 3.5. The following conditions shall apply to Statewide general permit number 22:**

i. No other Statewide general freshwater wetlands permit or transition area waiver pursuant to N.J.A.C. 7:7A which would authorize the construction of one single-family dwelling to be constructed on the lot is applicable;

ii. The subject lot was created prior to July 1, 1987;

iii. The applicant-owner purchased the subject lot at fair market value prior to July 1, 1987;

iv. The applicant-owner of the lot does not own any adjacent property which is not substantially freshwater wetlands and/or State open waters and/or transition areas;

v. The applicant-owner of the lot does not own any adjacent property which has been developed since July 1, 1987;

vi. The wetland area to be filled or disturbed is 0.125 acres or less. This permit can be used together with the Special Activity Waiver provided at N.J.A.C. 7:7A-7.4(e) for an additional 0.125 acres of impacts to transition areas adjacent to the wetland to be filled or disturbed;

vii. The activity shall not jeopardize a threatened or endangered species and the activity shall not destroy, jeopardize, or adversely modify the documented habitat of such species;

viii. The subject lot will be served by existing sewers consistent with an existing or amended areawide water quality management plan;

ix. The applicant-owner shall demonstrate that the subject lot was offered for sale in writing at fair market value to all adjacent property owners and no reasonable offer to purchase the subject lot was received. The written offer of sale shall include a copy of a fair market value appraisal performed by a State-licensed appraiser, and full disclosure that the subject lot is substantially regulated as freshwater wetlands and/or State open waters and/or transition areas;

x. The applicant-owner shall demonstrate that he or she has offered to purchase an adjacent upland lot in order to acquire a lot for the construction of one single-family dwelling with less impact to freshwater wetlands and/or State open waters and/or transition areas but no adjacent lot is available for purchase at a reasonable price;

xi. The applicant-owner shall demonstrate that the subject lot has been offered for sale in writing at fair market value to various interested land conservancies and/or environmental organizations and no reasonable offer to purchase the subject lot has been received. The written offer of sale shall include a copy of a fair market value appraisal performed by a State-licensed appraiser, and full disclosure that the property is substantially regulated as freshwater wetlands and/or State open waters and/or transition areas;

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xii. All approved dwellings shall be constructed and maintained in such a way so as not to cause flooding to other properties. Proposed regulated activities within the jurisdiction of the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50) and implementing regulations (see N.J.A.C. 7:13-1 et seq.) will also require a Stream Encroachment permit;

xiii. The freshwater wetlands and/or State open waters and/or transition areas remaining on the subject lot shall be placed in a conservation easement to be dedicated to DEP, and the easement shall be recorded by metes and bounds on the deed to prevent future regulated activities; and

xiv. Mitigation shall be performed according to the procedures for mitigation pursuant to N.J.S.A. 13:9B-13 and N.J.A.C. 7:7A-14 for any disturbance or destruction of freshwater wetlands and/or State open waters and/or transition areas authorized by this general permit. However, for purposes of this Statewide general permit only, the Department acknowledges that onsite mitigation is not practicable, and other types of mitigation are not feasible. Therefore, the Department will accept a contribution to the Mitigation Bank or to other public or private non-profit conservation organizations as approved by the Mitigation Council and the Department in consultation with EPA.

23.-25. (No change.)

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

(a)

ENGINEERING AND CONSTRUCTION

Flood Plain Redelineation of Sparkill Brook

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

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

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

DEP Docket Number: 18-95-04/530.

Proposal Number: PRN 1995-300.

A **public hearing** concerning this proposal will be held on Friday, June 2, 1995 at 11:00 A.M. at:

Department of Environmental Protection
Division of Engineering and Construction
Casagrande Conference Room, Second Floor
5 Station Plaza
501 East State Street
Trenton, New Jersey 08625

Submit written comments, identified by the DEP docket number above, by June 14, 1995 to:

Kimberly A. Hunter, Esq.
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated floodways, by revising the current floodway limits, flood boundaries and flood profiles along Sparkill Brook, within Rockleigh Borough, Bergen County from Piermont Road bridge to a point located approximately 2,000 feet downstream of Piermont Road bridge adjacent to the Rockleigh Golf Course and Brooklawn Court also known as Haring Farm Lane within Rockleigh Borough, Bergen County.

The map amendment was requested by Boswell Engineering on behalf of Mr. Nickolas Mangione and Mr. and Mrs. Bruce Lieblich for the construction of two single family homes. Mr. Mangione had fill placed on the parcels under Stream Encroachment Permit No. 8331 in 1979. During the late 1970's, the State of New Jersey performed the current flood plain delineation of Sparkill Brook. However, the data used in the study did not reflect the fill or the current topography. The delineation was adopted in February 1981. No comments or information was received by the Flood Plain Management Section regarding any changes to the site at the time of the study or adoption of the original flood plain delineation.

The map amendment would reduce the areas of the designated floodway and flood fringe along the site. The proposed redelineation of Sparkill Brook is based on a reanalysis of the original HEC2 hydraulic modelling with additional field surveyed cross sections, reflecting the current and proposed grades. The HEC2 hydraulic modelling determines flood levels for various flooding events, as well as floodway limits.

Review of the proposed hydraulic analyses of Sparkill Brook indicates that the proposed floodway limits, 100 year flood and the New Jersey Flood Hazard Area Design Flood profiles match the corresponding information off the site. The proposed floodway limits are generally located closer to the stream and reflect the fill placed on the site in 1979 and the proposed grades. The floodway limits across, upstream and downstream remain unchanged. Review of the proposed 100 year and New Jersey Flood Hazard Area Design Flood profiles indicate an approximately 0.85 foot maximum increase in the current flood levels about mid-way through the site. The hydraulic analysis and engineering calculations assume unobstructed flow. The flood elevations are therefore considered valid only if hydraulic structures and the stream remain unobstructed, operate properly and do not fail.

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

Social Impact

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

Economic Impact

The proposed redelineation is the result of a reanalysis of the existing hydraulics with additional current field-surveyed cross sections to reflect the fill that was placed in 1979 and the proposed grades. There will be a favorable economic impact for the property owners, since the floodway limits are redefined to better reflect the actual field conditions and the proposed grades at the site, which in this case reduces the total area designated within the floodway limits and flood fringe. In the area where the proposed floodway limit is shown to be located closer to the stream, additional construction or development may be allowed where it was previously prohibited, provided all the necessary permits are obtained.

Environmental Impact

The purpose of this proposed redelineation is to accurately define the floodway limits and flood hazard areas, based on a reanalysis of the hydraulic modelling for a portion of Sparkill Brook with Rockleigh Borough, Bergen County. The scope of permissible development is restricted within the delineated area, to prevent and minimize potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided the necessary permits and applications are obtained. This proposal is not expected to have any adverse environmental impact, since the area on which development may be permitted is not considered environmentally sensitive or significant. The existing wetlands will be preserved and a wetland mitigation area is proposed at the end of Brooklawn Court along the stream.

Executive Order No. 27 Statement

Executive Order No. 27(1994), which became effective on January 2, 1995, was issued by Governor Whitman in order to prevent unnecessary State regulation in areas that are already regulated by the Federal government. In order to comply with Executive Order No. 27, administrative agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements are required to include a comparison with Federal law.

This amendment is not proposed under the authority of or in order to implement, comply with or participate in any program established

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under Federal Law. Although the amendment is also not proposed under the authority of a State Statute that incorporates or refers to Federal law, Federal standards or Federal requirements, the following is a discussion of the similarities and differences between the Federal and State programs and flood plain maps.

Under New Jersey statute N.J.S.A. 58:16A-52, the Flood Plain Management Section of the New Jersey Department of Environmental Protection, has delineated floodways and flood hazard areas along approximately 2,800 miles of streams. The Federal Emergency Management Agency (FEMA) through the National Flood Insurance Program (NFIP) publishes flood insurance studies which delineate floodway limits, 100 and 500 year flood boundaries, flood zones and report texts. The State has performed approximately one half of the New Jersey flood insurance studies under direct contracts with FEMA. The original intent of the NFIP was to provide flood insurance at reasonable rates by identifying and studying flood plain areas. The State and Federal programs provide maps as a tool for flood plain management purposes. Both programs identify flood plain areas to regulate development, minimize, reduce, and prevent future flood damages. However, New Jersey uses criteria which is more stringent due to extensive urbanization and anticipated future development along New Jersey streams. Although the National Flood Insurance Program utilizes minimum standards that are used nationwide, the Federal guidelines recommend establishing floodways which would increase the 100 year regulatory base flood water surface level up to one foot, which is considered to be excessive in New Jersey. The Federal guidelines also indicate that State governments may specify less than the one foot rise criteria to determine their floodway limits. The State of New Jersey has chosen to design floodway limits to carry the 100 year flood without increasing the 100 year flood water surface level more than two tenths of one foot (0.2 foot) at any point. Moreover, the State of New Jersey identifies and delineates the New Jersey Flood Hazard Area Design Flood (NJFHADF) limits, based on a design flood discharge 25 percent greater than the 100 year flood discharge.

The State of New Jersey and the Federal government use the same 100 year design discharge and identify the same floodway limits and 100 year flood plain. The Federal government identifies areas which may become inundated by the 500 year flood. The State mapping generally does not show the 500 year flood plain. The State and Federal programs generally end their detailed study at a point along the stream where the contributing drainage area is one square mile. FEMA may show an approximate 100 year flood boundary along streams having drainage areas less than one square mile. FEMA mapping shows floodway limits and shaded areas depicting 100 and 500 year flood boundaries on a simplified base map which shows a roadway infrastructure and stream alignments. The State mapping also shows floodway limits and the 100 year flood plain. In addition, the State mapping usually shows the limits of the NJFHADF with topography and physical features.

The State and Federal programs produce stream profiles which shows flood levels along the stream. The State indicates the 100 year and the NJFHADF flood profiles on the same plate as the delineation or on separate plates; FEMA publishes their profiles in the Flood Insurance Study (FIS) texts. Both programs show the 100 year flood levels; however, FEMA's FIS also shows the 10, 50 and 500 year flood stream profiles. Occasionally, the State profiles will show the 10, 50 and 500 year flood profiles in addition to the 100 year and the NJFHADF.

Therefore, the State of New Jersey and the Federal government use the same 100 year discharge and identify the same floodway limits and 100 year flood plain. The State of New Jersey uses a two tenths of one foot (0.2 foot) floodway water surface rise criteria, due to extensive urbanization and anticipated future development along New Jersey streams, rather than the Federal minimum floodway rise of one foot. The State mapping generally does not show the 500 year flood boundaries, but shows the limits of the NJFHADF with topography and physical features. The State and the Federal programs generally end their detailed study at a common point along the stream.

Regulatory Flexibility Statement

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

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton Township, New Jersey; and at the Department of Environmental Protection, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, a map of the proposed redelineation has been sent to clerk and the engineer of Rockleigh Borough, and the Bergen County Engineer.

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

State of New Jersey
Department of Environmental Protection
Division of Water Resources
Delineation of Floodway & Flood Hazard Area
Sparkill Brook
Plate No. 2 of 2
Dated Aug. 1980

(a)

ENGINEERING AND CONSTRUCTION ELEMENT

Flood Plain Redelineation of the East Branch Rahway River

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

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

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

DEP Docket Number: 17-95-04/493.

Proposal Number: PRN 1995-301.

A **public hearing** regarding the proposal will be held on Friday, June 2, 1995 at 10:00 A.M. at:

Department of Environmental Protection
Division of Engineering and Construction
Casagrande Conference Room, Second Floor
5 Station Plaza
501 East State Street
Trenton, New Jersey 08625

Submit written comments, identified by the DEP docket number above, by June 14, 1995 to:

Kimberly A. Hunter, Esq.
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated floodways, by revising the current floodway limits of the East Branch Rahway River from approximately 750 feet upstream of Route 78 to a location approximately 815 feet upstream in the vicinity of Route 78 and Springfield Road in Union Township, Union County.

The proposed redelineation of the East Branch Rahway River is based on a reanalysis of the original HEC2 hydraulic modelling with additional field surveyed cross sections inserted into the existing computer model to reflect a building that has been removed and a reduction of a non-effective flow area. The map amendment was requested by Mrs. Sandra Kekrley of Thonet Associates on behalf of Messrs. Steven and Thomas Giordano, owners of the Maplecrest Lincoln-Mercury and Springburn

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Manor in Union Township, Union County. The map amendment would reduce the floodway area designated within the car dealership and downstream adjacent parcel. The HEC2 hydraulic modelling determines flood levels for various flooding events, as well as floodway limits.

Review of the proposed hydraulic analyses of the East Branch Rahway River indicates that the 100 year flood and the New Jersey Flood Hazard Area Design Flood profiles match the current flood levels. The proposed floodway limits are located closer to the stream and reflects the reduction of the non-effective flow between the Maplecrest Lincoln-Mercury and the Springburn Manor buildings. No floodway changes are proposed off-site. The floodway limits across, upstream and downstream remain unchanged. The hydraulic analysis and engineering calculations assume unobstructed flow. The flood elevations are therefore considered valid only if hydraulic structures remain unobstructed, operate properly and do not fail.

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

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood-carrying capacity of the waterway and the surroundings, thereby minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the areas subject to flooding and regulates development in accordance to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is also enforced through N.J.A.C. 7:13. The proposed redelineation will not reduce the total area regulated by those rules, in Union Township, Union County.

Economic Impact

The proposed redelineation is the result of a reanalysis of the existing hydraulics with additional current field-surveyed cross sections to reflect the building that was removed on the site and a reduction of non-effective flow area between the remaining two buildings.

There will be a favorable economic impact for Messrs. Steven and Thomas Giordano, owners of the Maplecrest Lincoln-Mercury and Springburn Manor in Union Township, Union County, since the floodway limits are redefined to better reflect the actual conditions at the site, which in this case reduces the total area designated within the floodway limits. In the area where the proposed floodway limit is shown to be located closer to the stream, additional construction or development may be allowed where it was previously prohibited, provided all the necessary permits are obtained.

Environmental Impact

The purpose of this proposed redelineation is to accurately define the floodway limits and flood hazard areas, based on a reanalysis of the hydraulic modelling for a portion of the East Branch Rahway River within Union Township, Union County. The scope of permissible development is restricted within the delineated area, to prevent and minimize potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided the necessary permits and applications are obtained. This proposal is not expected to have any adverse environmental impact, since the area on which development may be permitted is not considered environmentally sensitive or significant.

Executive Order No. 27 Statement

Executive Order No. 27(1994), which became effective on January 2, 1995, was issued by Governor Whitman in order to prevent unnecessary State regulation in areas that are already regulated by the Federal government. In order to comply with Executive Order No. 27, administrative agencies which adopt, readopt or amend State regulations that exceed any Federal Standards or requirements are required to include a comparison with Federal law.

This amendment is not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal Law. Although the amendment is also not proposed under the authority of a State Statute that incorporates or refers to Federal law, Federal standards or Federal requirements, the following is a discussion of the similarities and the differences between the Federal and State programs and flood plain maps.

Under New Jersey statute N.J.S.A. 58:16A-52, the Flood Plain Management Section of the New Jersey Department of Environmental Protection has delineated floodways and flood hazard areas along approximately 2,800 miles of streams. The Federal Emergency Management Agency (FEMA) through the National Flood Insurance Program (NFIP) publishes flood insurance studies which delineate floodway limits, 100 and 500 year flood boundaries, flood zones and report texts. The State has performed approximately one half of the New Jersey flood insurance studies under direct contracts with FEMA. The original intent of the NFIP was to provide flood insurance at reasonable rates by identifying and studying flood plain areas. The State and Federal programs also provide maps as a tool for flood plain management purposes. Both programs identify flood plain areas to regulate development, minimize and prevent future flood damages. However, New Jersey uses criteria which is more stringent due to extensive urbanization and anticipated future development along New Jersey streams. Although the National Flood Insurance Program utilizes minimum standards that are used nationwide, the Federal guidelines recommend establishing floodways which would increase the 100 year regulatory base flood water surface level up to one foot, which is considered to be excessive in New Jersey. The Federal guidelines also indicate that State governments may specify less than the one foot rise criteria to determine their floodway limits. The State of New Jersey has chosen to design floodway limits to carry the 100 year flood without increasing the 100 year flood water surface level more than two-tenths of one foot (0.2 foot) at any point. Moreover, the State of New Jersey identifies and delineates the New Jersey Flood Hazard Area Design Flood (NJFHADF) limits, based on a design flood discharge 25 percent greater than the 100 year flood discharge.

The State of New Jersey and the Federal government use the same 100 year design discharge and identify the same floodway limits and 100 year flood plain. The Federal government identifies areas which may become inundated by the 500 year flood. The State mapping generally does not show the 500 year flood plain. The State and Federal programs generally end their detailed study at a point along the stream where the contributing drainage area is one square mile. FEMA may show an approximate 100 year flood boundary along streams having drainage areas less than one square mile. FEMA mapping shows floodway limits and shaded areas depicting 100 and 500 year flood boundaries on a simplified base map which shows a roadway infrastructure and stream alignments. The State mapping also shows floodway limits and the 100 year flood plain. In addition, the State mapping usually shows the limits of the NJFHADF with topography and physical features.

The State and Federal programs produce stream profiles which shows flood levels along the stream. The State indicates the 100 year and the NJFHADF flood profiles on the same plate as the delineation or on separate plates; FEMA publishes their profiles in the Flood Insurance Study (FIS) texts. Both programs show the 100 year flood levels; however, FEMA's FIS also shows the 10, 50 and 500 year flood stream profiles. Occasionally, the State profiles will show the 10, 50 and 500 flood profiles in addition to the 100 year and the NJFHADF.

Therefore, the State of New Jersey and the Federal government use the same 100 year discharge and identify the same floodway limits and 100 year flood plain. The State of New Jersey uses a two-tenths of one foot (0.2 foot) floodway water surface rise criteria, due to extensive urbanization and anticipated future development along New Jersey streams, rather than the Federal minimum floodway rise of one foot. The State mapping generally does not show the 500 year flood boundaries, but shows the limits of the NJFHADF with topography and physical features. The State and the Federal programs end their detailed study at a common location along the stream.

Regulatory Flexibility Statement

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

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Adminstrative Law, Quakerbridge Plaza, Building 9, Hamilton Township, New Jersey; and at the Department of Environmental Protection and Energy, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, a map of the proposed redelineation has been sent to the clerk and engineer of Union Township and the Union County Engineer.

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

Township of Millburn
Flood Plain Delineation Program
Sheet No. 4

(a)

ENVIRONMENTAL REGULATION

New Jersey Pollutant Discharge Elimination System Statewide Stormwater Permitting Program

Proposed Amendments: N.J.A.C. 7:14A-1.9, 2.1, 2.5, 2.14, 3.1, 3.8, 3.9, 3.12, 7:14A-3 Appendices A and B, 10.3, 14.8 and 7:14A Appendix H

Authorized by: Robert C. Shinn, Jr., Commissioner Department of Environmental Protection.

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq., 58:11-64 et seq., 58:4A-4.1 et seq., 58:4A-5 et seq., 58:12A-1 et seq., 4:24-39 et seq., 13:1D-1 et seq., and 13:1E-1 et seq.

DEP Docket Number: 19-95-04/539.

Proposal Number: PRN 1995-311.

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

Friday, June 9, 1995 from 3:00 P.M. to 6:00 P.M.
New Jersey Department of Environmental Protection
Public Hearing Room, First Floor
401 East State Street
Trenton, New Jersey

Submit written comments by June 14, 1995 to:

Kimberly A. Hunter, Esq.
Attention: DEP Docket No. 19-95-04/539
Office of Legal Affairs
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

These amendments to the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, are proposed mainly as part of the Department's Statewide Stormwater Permitting Program (Program), which was developed in response to requirements mandated under the Federal Clean Water Act (CWA), 33 U.S.C. §1251 et seq. In 1992, the Department proposed and adopted an initial set of NJPDES rule amendments in response to those Federal requirements (24 N.J.R. 2352(a), 24 N.J.R. 4088(a)). The Statewide Stormwater Permit Program includes a streamlined, logical general permit program that provides substantial environmental benefit with minimum regulatory burden. The general permit program represents a significant departure from traditional NJPDES permitting programs in that it is designed to offer incentives and an innovative permit structure to encourage compliance, and by relying on stormwater pollution prevention plans (SPPPs) rather than numerical effluent limitations.

In 1992, the Department noted that the initial NJPDES rule amendments were only a first step in the Department's Statewide Stormwater Permitting Strategy, and that the Department would continue to evaluate stormwater permitting issues. The Department is now proposing a second set of NJPDES rule amendments to develop further and refine certain aspects of the Statewide Stormwater Permitting Program, to establish a more detailed definition of "non-point source," and to eliminate the requirement that certain facility owners obtain a NJPDES permit for stormwater or other discharges. The Department announced its intent to propose or consider some of these amendments when it adopted the initial set of amendments in 1992. The Department is proposing the rest of these amendments mainly as a result of its experience in implementing the 1992 amendments. Most of the proposed amendments will benefit the regulated community, generally without harmful environmental impacts.

The proposed amendments do not alter the fundamental approach of the 1992 amendments, which is to emphasize pollution prevention through the development and implementation of stormwater pollution prevention plans under NJPDES general permits. As part of this rule proposal, the Department is issuing some draft modifications to the two general permits for stormwater that were part of the 1992 amendments: NJPDES Permit No. NJ0088315 (the "basic industrial" general permit) and NJPDES Permit No. NJ0088323 (the "construction" general permit).

As noted in the 1992 proposal, the Department is developing the Statewide Stormwater Permitting Program within the framework of Section 402(p) of the CWA, Section 1068 of the Intermodal Surface Transportation Efficiency Act of 1991 (P.L.102-240), and related provisions of the National Pollutant Discharge Elimination System (NPDES) rules, 40 CFR 122, 123 and 124 (amended most recently in the Federal Register on December 18, 1992 at 57 FR 60444). The Department is also developing this Program within the framework of State statutes including the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (State Act), and the Department's general enabling statute, N.J.S.A. 13:1D-1 et seq.

Following is a brief outline of the principal elements of the proposed amendments, which are discussed in more detail below:

1. Owner/Operator and Multiple Permittee Issues

The Department is proposing to eliminate the requirement that persons who own but do not operate a facility obtain a NJPDES permit (including, but not limited to, a stormwater discharge permit) even though another person operates that facility. Under this proposed amendment, if a facility is owned by one person but operated by another person, it is the duty of the "operating entity" to obtain the NJPDES permit (as is the case under the Federal NPDES rules). A definition of "operating entity" is also proposed, and corresponding modifications are made to the two general permits for stormwater issued in 1992. Also, the "basic industrial" general permit (NJPDES Permit No. NJ0088315) is being modified to address issues of facility identification, allocation of responsibility between two or more permittees, and relationships between owners and operating entities.

These amendments are proposed partly in response to concerns expressed by the National Association of Industrial and Office Parks that the current NJPDES rules impose liability on industrial property owners for tenant activities that such owners cannot reasonably monitor or certify. The modifications to the "basic industrial" general permit are also intended to resolve several issues that arise under that permit when an industrial property requires two or more permittees. For example, the modifications allow the SPPP to allocate responsibility for implementing specific parts of the SPPP to specific permittees, so that one permittee at a facility is not liable for permit violations caused by other permittees at that facility.

2. Stormwater Specialists

The Department is proposing to establish a voluntary program for registration of private "Stormwater Specialists" who may assist permittees in the preparation and implementation of stormwater pollution prevention plans (SPPPs) for stormwater discharges associated with industrial activity. The use of a Stormwater Specialist is at the discretion of the permittee. An experienced facility employee who completes a brief Stormwater Permitting Training Course approved by the Department could be registered as a Stormwater Specialist for that specific facility. Professionals with appropriate qualifications may be registered as Stormwater Specialists for one or more facilities.

The Stormwater Specialist program would ensure that for facilities which choose to participate, SPPPs are reviewed and inspected by persons meeting certain minimum technical qualifications to assess stormwater discharges and appropriate best management practices. Use of Stormwater Specialists would also decrease the number of Department staff that would otherwise be needed to enforce stormwater discharge permits, and is an important part of the Department's effort to promote privatization of appropriate portions of the regulatory process. Moreover, by serving as a link between facilities and the Department, Stormwater Specialists should also help to prevent misunderstandings about permit requirements.

3. Group Applications for Industrial Stormwater

Another proposed amendment allows a member of an industrial stormwater group application to use (subject to Department approval) sampling data accepted by the United States Environmental Protection Agency (EPA) from other members of that group as sampling data for that member's application for an individual DSW permit. This amendment is permissible under EPA regulations, and reduces the burden on facilities that, with the Department's encouragement, participated in

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good faith in EPA's group application process. The Department believes that the group sampling data and the sampling data required under the current NJPDES rules generally have similar technical value for purposes of the permit application process.

4. Stormwater Run-on

The Department is proposing to exempt permittees from the duty to comply with permit limits for industrial stormwater discharges if such permittees can prove by clear and convincing evidence that the discharge of pollutants in excess of permit limits was not a result of any conditions present at the permittee's facility. This exemption recognizes the serious legal and other difficulties that industrial facilities face in controlling stormwater that runs onto their facilities from off-site properties, and also recognizes that segregating such stormwater to comply with permit limits would often result in considerable expense and no additional water pollution control.

5. Oil and Grease in Stormwater Discharges

Another proposed amendment would exempt all stormwater discharges from NJPDES rule provisions that set forth effluent limitations and monitoring requirements for oil and grease. Although the 1992 amendments exempted many stormwater discharges from those oil and grease regulations, the Department now believes that no stormwater discharge should be subject to those regulations (although the Department could still issue some stormwater discharge permits with oil and grease requirements).

6. "Splitting" of Facilities Between General and Individual Stormwater Permits

The "basic industrial" general permit (NJPDES Permit No. NJ0088315) is being modified to make it possible to "split" a facility, that is, authorize some of a facility's stormwater discharge under the "basic industrial" general permit while authorizing the rest of that facility's stormwater discharge under an individual DSW permit or another general DSW permit. This modification establishes that a stormwater discharge authorized under another DSW permit cannot concurrently be authorized under the "basic industrial" general permit. (Currently, in contrast, all stormwater discharges at a facility are ineligible for the "basic industrial" general permit so long as at least one such discharge is authorized under another DSW permit.) For facilities that desire and obtain such "splitting," this modification will eliminate the need to collect and analyze samples of stormwater discharges that are suitable for the "basic industrial" general permit.

7. Limited Expansion of Definition of "Stormwater Discharge Associated With Industrial Activity"

The Department is proposing to expand this definition to include stormwater discharges that are classified by the Department as "stormwater discharges associated with industrial activity" (but outside the EPA definition of that term), **but only if the permittee, applicant, or prospective applicant requests such classification.** The primary purpose of this expansion is to make eligible for the "basic industrial" general permit (NJPDES Permit No. NJ0088315) certain stormwater discharges that have or require a DSW permit anyway and that the Department considers to be "industrial" in the broad sense of that term, but that fall outside the EPA definition and are therefore currently ineligible for the "basic industrial" general permit. (A different amendment to this Department definition, which pertains to nonpoint sources and whose application is not at the discretion of the permittee or applicant, is one of the proposed amendments mentioned under item 9 below.)

8. Definition of "Non-point Source"

The definition of "non-point source" is being amended to establish a more detailed definition that expressly includes any source (other than a "point source") that may discharge "pollutants," as well as certain activities, factors, and conditions not limited to the discharge of "pollutants."

9. Nonpoint Source Discharges of Industrial Stormwater

The Department is also proposing to require NJPDES/DSW permits for "stormwater discharges associated with industrial activity" from nonpoint sources into surface waters. Section 402 of the CWA is limited to discharges from a "point source" (defined by statute basically as "any discernible, confined and discrete conveyance"). The current NJPDES rules likewise limit the DSW permit program to discharges from a "point source." EPA stated that it "intends to embrace the broadest possible definition of point source consistent with the legislative intent of the CWA and court interpretations," but even with this EPA statement, it may sometimes be unclear in practice whether at a particular location there is a discharge of industrial stormwater from a "point source." This has led to uncertainty about whether some industrial facilities require NJPDES permits for discharges of stormwater to surface waters.

The proposed amendments eliminate this uncertainty by expressly requiring NJPDES/DSW permits for nonpoint source discharges of industrial stormwater. (Under the Water Pollution Control Act, nonpoint source discharges are exempt from NJPDES permit requirements only if exempted by Department regulation.) Industrial stormwater needs to be regulated regardless of whether it is discharged from point or nonpoint sources. With a NJPDES/DSW permit program already in place for industrial stormwater, it makes sense to regulate point and nonpoint sources of industrial stormwater in a unified and consistent manner under that permit program.

10. Industrial Stormwater Information Requests and "Nonapplicability Form"

Another proposed amendment expressly allows the Department to request persons whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity" to either declare their intent to obtain a DSW permit for such a discharge, or provide written information to the Department explaining why, in that person's judgment, they do not need to obtain such a permit. The Department may require such information to be provided on a Department form, which could be similar to the Department's current simple, one-page "Nonapplicability Form" for industrial stormwater.

A main purpose of this amendment is to increase and expedite compliance with Federal and State stormwater permit requirements. These requirements (including the definition of "stormwater discharge associated with industrial activity") are complex and unfamiliar to thousands of businesses that potentially require a NJPDES/DSW permit for industrial stormwater discharges. Experience with the current "Nonapplicability Form" has proven that by having such businesses explain to the Department why they do not think they need such a permit, the Department can directly contact businesses that submit obviously invalid explanations, and correct misconceptions about these permit requirements. Explanations given by businesses are also useful in planning Department activities to enforce these permit requirements, because such explanations identify one or more key issues for the Department to examine when the Department later evaluates the specific business.

The Department is also proposing this amendment to obtain basic information about the fate of industrial stormwater in New Jersey (for example, approximately how many industrial properties are discharging stormwater into surface water, ground water, or municipal treatment works). This information is useful as the Department formulates additional or revised policies for management of industrial stormwater.

The amendments that the Department is now proposing to N.J.A.C. 7:14A are only a second step in the Department's Statewide Stormwater Permitting Strategy. The Department will continue to evaluate stormwater permitting issues, based upon further experience it will gain with the two general permits issued in 1992, upon further steps taken by EPA to implement Section 402(p) of the CWA, and upon any other additional sources of new information regarding the impact of stormwater discharges, and these general permits, on water quality. If, as a result of this continued evaluation, the Department determines that other control measures are necessary to address certain stormwater discharges, the Department may propose to modify further these two general permits, to issue additional general permits (not necessarily as amendments to N.J.A.C. 7:14A), to establish industry-specific or watershed-specific permitting requirements, or to otherwise amend N.J.A.C. 7:14A. (For example, the Department has issued a final general permit for the scrap metal recycling industry, and soon expects to issue a final general permit for the concrete products manufacturing industry.) Moreover, the Department is continuing to coordinate the Statewide Stormwater Permitting Strategy with the rest of the evolving Nonpoint Source Pollution Control and Stormwater Management Strategy mentioned in the 1992 proposal.

Public Participation

The Department has been actively encouraging public participation in the development of the Statewide Stormwater Permitting Program. Department officials have made presentations about the Department's

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Statewide Stormwater Permitting Program at over 50 public seminars and conferences. At four Stormwater Permits Seminars held by Rutgers University in June and October 1993 and 1994, the Department distributed a brief outline of potential NJPDES rule amendments including those the Department is now proposing. At the last three of those seminars, the Department also distributed a more detailed discussion of its draft requirements for registration of Stormwater Specialists.

Early in 1992, the Department established the Industrial Stormwater Permitting Advisory Group (ISPAG). In November 1993, the ISPAG consisted of representatives from the Department and the following representatives of municipalities, the regulated community, and environmental groups:

Industrial Stormwater Permitting Advisory Group (ISPAG) Membership List (November 1993)

Chris Carew, League of Municipalities
Jack Charlton, Monmouth County Friends of Clearwater
Diane Dona, Merck/NJ Business and Industry Association
Alan Davidson, Marine Trades Association
Abigail Fair, Association of NJ Environmental Commissions
Ben Forest, Monmouth County Friends of Clearwater
Carl Hess, Bayway Refining Company
Richard Maser, Maser Sosinski & Associates
Mary Ellen Noble, Delaware River Watershed Association
Dolores Philips, NJ Environmental Federation
Harold G. Reed, League of Municipalities
Douglas Ruhlin, NJ Concrete and Aggregate Association/Resource Management Associates, Inc.
Mark Strickland, PSE&G/NJ Industrial Advisory Group
Alan Veverka, National Association of Industrial and Office Parks
Cindy Zipf, Clean Ocean Action

(Due to some membership changes at the end of 1993 and in 1994, the current ISPAG membership list differs in some respects from the above list.)

In November 1993, the Department distributed a preliminary draft of the proposed rule to ISPAG members for review and comment at subsequent ISPAG meetings. Comments from ISPAG members focused on the Stormwater Specialist provisions and not on the other proposed amendments. The Department made several revisions to the Stormwater Specialist provisions in response to those comments, which are noted below in this Summary.

Earlier, the ISPAG received the outlines distributed at the Rutgers University seminars, and had an important role in the initial formulation of two of the proposed amendments. In October 1992, ISPAG members received for review the initial draft of the Stormwater Specialist provisions, which was prepared by an ISPAG member. The Department presented revised drafts of those provisions to the ISPAG in May and July, 1993, and also discussed those provisions with the ISPAG in December 1994. In February 1993, the National Association of Industrial and Office Parks (NAIOP) and its ISPAG representative asked the Department to repeal the rule that requires persons who own but do not operate a facility obtain a NJPDES permit for stormwater discharges. In March 1993, Department staff met with NAIOP and then requested ISPAG to comment on an outline of draft amendments tentatively agreed to by NAIOP and Department staff. Other subjects discussed at 1993 ISPAG meetings and related to proposed amendments included the "Nonapplicability Form" and the "point/nonpoint source" issue.

Finally, on February 16, 1993 the Department sent a letter to business, environmental and other organizations and several hundred existing stormwater permittees, soliciting comments on the effect of Federal "antibacksliding" provisions on the potential transfer of stormwater discharges from permits with traditional numerical effluent limitations to permits requiring best management practices. An enclosure to that letter included a "Preliminary Draft Modification to Part I.B.1.b of NJPDES Permit No. NJ0088315," which is discussed further below in this Summary.

The proposed amendments are more extensively outlined below:

Summary of Specific Rule Changes

Subchapter 1

The definition of "non-point source" at N.J.A.C. 7:14A-1.9 is being amended to establish a more detailed definition that expressly includes any source (other than a "point source" as defined in N.J.A.C. 7:14A-1.9) that may discharge "pollutants," as well as certain activities, factors, and conditions not limited to the discharge of "pollutants." The amended definition is simply a more detailed version of the current definition, and does not include anything that the Department would not consider to be a "non-point source" under the current definition. However, the amended definition answers some questions that might arise about how the Department would interpret the current definition.

N.J.A.C. 7:14A-1.9 currently defines "non-point source" as "a contributing factor to water pollution" that cannot be traced to a specific "discernible confined and discrete conveyance" (that is, to a specific "point source"). As noted in the discussion below of the definition of "stormwater discharge associated with industrial activity," the Department agrees with EPA's intent to embrace the broadest possible interpretation of "point source." In all respects other than the issue as to whether something is a "point source" rather than a "non-point source," the Department also embraces the broadest possible interpretation of the current definition of "non-point source," in order to promote the purpose of the NJPDES rules (N.J.A.C. 7:14A-1.1) and the policy declared in the State Act (N.J.S.A. 58:10A-2), which include the prevention of water pollution and the protection of public health and various water uses.

As one example, under the Department's interpretation of the current definition, an activity, factor, or condition at a particular location can be a "non-point source" simply by being a member of a category that, speaking generally, is a "contributing factor to water pollution" (and by not being a "point source"). For example, one can observe in a broad, general sense that agricultural stormwater runoff contributes to "water pollution," and then conclude, without a site-specific demonstration that stormwater runoff from each particular farm contributes to "pollution" of particular receiving waters, that any farm (other than a "point source" such as a "concentrated animal feeding operation") that adds such runoff to "waters of the State" is a "non-point source." This interpretation promotes the purpose of the NJPDES rules and the policy of the State Act by avoiding the inaction or prolonged delays in water pollution control that could occur if no particular location could be called a "non-point source" without a site-specific demonstration that the location in question contributes to water pollution.

As another example, the Department interprets the phrase "contributing factor to water pollution" in a preventive as well as a remedial sense. One of the main objectives of water pollution control is to prevent water pollution, rather than to allow water pollution to occur and then try to eliminate or control such water pollution afterwards. (See, for example, the language in N.J.S.A. 58:10A-2 and section 101(a) of the CWA about maintaining the integrity of water, the Department's authority under N.J.S.A. 58:10A-4 to adopt rules to prevent water pollution, and the language about preventing pollution in Sections 101(b) and 102(a) of the CWA.) The objectives of preventing and controlling pollution are best served if any activity, factor, or condition (other than a "point source") that could contribute to water pollution can be identified (and, where appropriate, controlled) as a "non-point source" before pollution actually occurs and is documented in affected waters. (Moreover, it is often less expensive and more practical to incorporate pollution control measures in the initial design of activities than to retrofit such measures later, after pollution has actually occurred in affected waters.)

Although the current definition of "non-point source" does not expressly use the term "pollutant," the Department interprets this current definition to include, among other things, any source, other than a "point source," from which pollutants are or may be discharged. The following considerations support this interpretation, which is codified in paragraph 1 of the amended definition of "non-point source." First, this interpretation (and paragraph 1) promotes the objectives of preventing and controlling water pollution, as discussed above. Sources from which pollutants are or may be discharged might, by themselves or in combination with other sources or conditions, contribute to water pollution now or in the future.

Second, this interpretation (and paragraph 1) makes the definition of "non-point source" expressly parallel with the definitions of "point source," insofar as the definition of "non-point source" pertains to the discharge of pollutants. The definitions of "point source" in N.J.A.C. 7:14A-1.9, 40 CFR 122.2, and Section 502(14) of the CWA, and in the State Act at N.J.S.A. 58:10A-3.m, include no express references to "pollution," but refer instead to certain conveyances "from which pollutants are **or may be** discharged" (emphasis added). Since the actual or potential discharge of pollutants is sufficient to classify those conveyances as "point sources," the actual or potential discharge of pollutants is likewise sufficient to classify other actual or potential pollutant sources as "non-point sources." There is no logical reason to distinguish between

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"point sources" and "non-point sources" in this regard. The terms "non-point source" and "point source" are easier to understand and use if those terms have expressly parallel definitions in regard to the discharge of pollutants.

Third, this interpretation (and paragraph 1) clearly includes any "non-point sources of pollutants" that could be identified under section 304(f)(1) of the CWA or described under section 305(b)(1)(E) of the CWA. (The Department believes that in the CWA, the phrase "nonpoint source of pollutants" includes, at a minimum, any source, other than a "point source" as defined in section 502(14), from which "pollutants" (as defined in section 502(6)) are or may be added to the "waters of the United States.") Because of the close relationship between the CWA and much of the State Act, it would be inappropriate to interpret the current N.J.A.C. 7:14A-1.9 definition of "non-point source" in a way that excludes any "nonpoint sources of pollutants" that could be identified or described under those CWA sections. (Other sections of the CWA—Sections 101(a)(7) and 201(c), for example—use the term "nonpoint sources of pollution," a term that includes sources besides the actual or potential addition of "pollutants.")

Fourth, this interpretation (and paragraph 1) brings all sources of pollutants other than "point sources" within the scope of N.J.S.A. 58:10A-6d(5), which allows Department rules to exempt some or all "nonpoint source discharges" from the requirement in N.J.S.A. 58:10A-6a to obtain a NJPDES permit for the discharge of pollutants. If some of the pollutant sources described in paragraph 1 are **not** "nonpoint source discharges" under the State Act, then those pollutant sources would fall outside the scope of N.J.S.A. 58:10A-6d(5). Under the State Act and the NJPDES rules, dischargers of pollutants that are not from "point sources" often benefit if their discharges are classified as "non-point sources." The very word "nonpoint" implies "all that is not 'point'." For purposes of the State Act, it would be confusing and illogical to divide discharges or sources of pollutants into three categories: "point," "nonpoint," and "other."

(The definitions of "discharge" and "discharge of a pollutant" at Section 502(12) and 502(16) of the CWA usually restrict the term "discharge" (when used in the CWA) to additions of pollutants from a "point source." However, Section 502(14) of the CWA expressly provides that the term "point source" does not include "agricultural stormwater discharges," and the definitions of "discharge" at N.J.A.C. 7:14A-1.9 and in the Water Pollution Control Act (N.J.S.A. 58:10A-3.e) do not restrict the term "discharge" to additions of pollutants from a "point source." Therefore, paragraph 1 can use the term "discharged" rather than another term such as "added," Also, because the definitions of "discharge" at N.J.A.C. 7:14A-1.9 and N.J.S.A. 58:10A-3e apply, in the Department's view, only to man-made or man-induced conditions, paragraph 1 does not include natural sources that release or emit matter and energy at times and in types and quantities that would occur under natural, pristine conditions.)

Whereas paragraph 1 of the amended definition of "non-point source" is expressly parallel to the definitions of "point source" and is limited to sources that discharge or may discharge pollutants, paragraphs 2 and 3 of that amended definition recognize that there are nonpoint sources besides those that discharge or may discharge pollutants. Paragraph 2 includes any man-made or man-induced activity, factor or condition (including but not limited to the discharge of pollutants), other than a "point source," that may change any chemical, physical, biological, and radiological characteristic of waters of the State from the natural, pristine condition of such waters, or that may increase the degree of such change. (Examples of such activities, factors, or conditions include hydrologic modifications that change flow regimes, waterbody geometry, substrates, shorelines, or riparian areas.)

Although the current definition of "non-point source" does not expressly use the language in paragraph 2, the Department interprets this current definition to include, among other things, all of the activities, factors, and conditions listed in paragraph 2. The current definition uses the term "pollution," Section 502(19) of the CWA defines "pollution" as "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water," Legislative history of the CWA indicates that the word "integrity" was "intended to convey a concept that refers to a condition in which the natural structure and function of ecosystems is maintained," The legislative history also explained that:

"Maintenance of such integrity requires that any changes in the environment resulting in a physical, chemical or biological change in a pristine water body be of a temporary nature, such that by natural processes, within a few hours, days, or weeks, the aquatic ecosystem will return to a state functionally identical to the original. In those water bodies which are not pristine, it should be the national policy to take those steps which will result in change towards that pristine state in which the physical, chemical and biological integrity of the water body can be said to exist."

See Library of Congress, *A Legislative History of the Water Pollution Control Act Amendments of 1972,* pp. 763-764 and 1494-1495 (1973), for the above quoted statements and other statements on this subject. This CWA definition of "pollution" and CWA legislative history, together with the policy of this State, expressed in the State Act, "to restore and maintain the chemical, physical, and biological integrity of its waters" (N.J.S.A. 58:10A-2), largely accounts for the language in paragraph 2 of the amended definition. Because of the close relationship between the CWA and much of the State Act, the term "water pollution" in the current definition of "non-point source" includes, at a minimum, anything that is "pollution" under the CWA. As noted above, the objectives of preventing and controlling pollution are best served if any activity, factor, or condition (other than a "point source") that could contribute to water pollution can be identified (and, where appropriate, controlled) as a "non-point source" before pollution actually occurs and is documented in affected waters.

The "change" identified in paragraph 2 includes temporary, man-made or man-induced changes in water characteristics that may not be considered "pollution" as defined in Section 502(19) of the CWA. In this regard, paragraph 2 is analogous to the definitions of "point source," with man-made or man-induced changes in natural water characteristics (including but not limited to changes due to the discharge of pollutants) taking the place of the discharge of pollutants. As noted above, the definitions of "point source" in N.J.A.C. 7:14A-1.9 and elsewhere include certain conveyances "from which pollutants are or may be discharged," regardless of whether such discharge (or any resulting change in water characteristics) is temporary or permanent. Since the actual or potential discharge of pollutants (even a temporary discharge) is sufficient to classify those conveyances as "point sources," actual or potential changes in natural water characteristics (even temporary changes) are likewise sufficient to classify other man-made or man-induced activities, factors, or conditions as "non-point sources." There is no logical reason to distinguish between "point sources" and "non-point sources" in this regard. The terms "non-point source" and "point source" are easier to understand and use if those terms have analogous definitions.

Including such temporary changes promotes water pollution control objectives by avoiding inaction or delays in water pollution control that could occur if no particular location could be called a "non-point source" under paragraph 2 without site-specific estimation of the degree and duration of change in water characteristics, and evaluation of whether change of that degree and duration qualifies as "water pollution." As noted above, under the Department's interpretation of its current definition of "non-point source," an activity, factor, or condition at a particular location can be called a "non-point source," without site-specific evaluation of whether that particular location contributes to "pollution" of particular waters, simply by being a member of a category that, speaking generally, is a "contributing factor to water pollution" (and by not being a "point source").

The degree and duration of change in water characteristics that may be caused by various kinds of activities, factors, and conditions can be important information in making decisions about water pollution control. However, the Department believes that such information is best considered not in deciding whether these activities, factors, and conditions are "non-point sources," but in deciding whether and how to control those "non-point sources."

Paragraph 3 of the amended definition of "non-point source" includes any activity, factor, or condition, other than a "point source," that contributes or may contribute to water pollution. The Department interprets the current definition of non-point source to include, among other things, all of the activities, factors, and conditions listed in paragraph 3. (In that current definition, as discussed above, the Department interprets the phrase "contributing factor to water pollution" in a preventive as well as a remedial sense. The objectives of preventing and controlling pollution are best served if any activity, factor, or condition, other than a "point source," that could contribute to water pollution can be identified (and, where appropriate, controlled) as a "non-point source" before pollution actually occurs and is documented in affected waters.)

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(The terms "pollution" and water pollution" are used in the Water Pollution Control Act at N.J.S.A. 58:10A-2 and N.J.S.A. 58:10A-4, but are not defined in that Act. The Department believes that for purposes of that Act, the term "water pollution" includes "pollution" as defined in Section 502(19) of the CWA, and any condition of waters of the State that is, or tends to be, injurious to human health or welfare, fish and aquatic life, other animal or plant life, property, or scenic or ecological values; or that tends to limit the use or reduce the value of water for domestic, municipal, recreational, industrial, agricultural, or other purposes. The Department further believes that all such conditions of water would be "pollution" as defined in Section 502(19) of the CWA.)

Paragraph 3 was drafted mainly to address all activities, factors, or conditions (other than point sources) that may contribute to water pollution, but that are not included in paragraphs 1 or 2. (However, many of the activities, factors, or conditions that fall under paragraph 3 also fall under paragraphs 1 or 2.) Examples include the following:

—Hydrologic modifications (other than discharges of pollutants included under paragraph 1) that may limit the use or reduce the value of man-made water bodies (which have no "natural, pristine condition" under paragraph 2), or that may limit the use or reduce the value of water bodies whose "natural, pristine condition" cannot be adequately estimated to apply paragraph 2.

—Factors or conditions that occur under natural, pristine conditions, but that may be injurious to public health or detrimental to desired water uses.

As discussed above, the amended definition of "non-point source" is simply a more detailed version of the current definition, and does not include anything that the Department would not consider to be a "non-point source" under the current definition. Therefore, the change from the current definition to the amended definition should not have any substantial effects.

Moreover, the immediate use of the amended definition of "non-point source" will be limited. Even under this proposal, the only nonpoint source discharges to surface water that require a NJPDES/DSW permit are "stormwater discharges associated with industrial activity" (see the discussion below of the definition of "stormwater discharge associated with industrial activity"). However, it is possible that future amendments to the NJPDES rules may authorize or require NJPDES/DSW permits for other specified categories of nonpoint source discharges to surface waters. In addition, the Department expects to propose to amend other rules (for example, the Statewide Water Quality Management Planning rules at N.J.A.C. 7:15) to include this amended definition of "non-point source." The long-term use of this amended definition will depend on what future actions are taken under the Water Pollution Control Act, the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.) or other statutes to control nonpoint sources.

(The Department expects, however, that even in the future, most categories of hydrologic modifications included in paragraph 2 of the amended definition would not be controlled by requirements in N.J.A.C. 7:14A. Rather, most such categories would, regardless of the N.J.A.C. 7:14A definition of "non-point source," continue to be controlled by other Department rules such as the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), the Rules on Coastal Zone Management (N.J.A.C. 7:7E), the Flood Hazard Area Control Rules (N.J.A.C. 7:13), the Water Supply Allocation Permits rules (N.J.A.C. 7:19), and the Dam Safety Standards (N.J.A.C. 7:20).)

Some persons might argue that the current N.J.A.C. 7:14A-1.9 definition of "non-point source" means that in all instances (even where there is no question that pollutants are being discharged into receiving waters), no "non-point source" exists unless it is demonstrated that the specific source in question (for example, a specific piece of property) contributes to "water pollution" actually present in a specific receiving water. The amended definition will remove any basis for that argument. (The Department would oppose that interpretation of the current definition, which the Department interprets more broadly as applying in a preventive as well as a remedial sense, and as applying to general categories of activities, factors, and conditions that, as a general phenomenon, contribute to water pollution. In the example of a "non-point source" provided in the current definition, "certain cases of agricultural fertilizer runoff," the words "certain cases" recognize that at some locations, runoff exposed to agricultural fertilizer might be traced to a specific, discernible, confined and discrete conveyance that would be a "point source" rather than a "non-point source" under the State Act.)

A definition at N.J.A.C. 7:14A-1.9 is being proposed for "operating entity" or "operator." Specifically, the Department is proposing to define "operating entity" or "operator" as "any person who alone or along with other persons has primary management and operational decision-making authority over any part of a facility." (In the NJPDES rules, "person" is a legal term, defined at N.J.A.C. 7:14A-1.9, that often refers to a corporation, political subdivision, or other organization, rather than to an individual.) A primary purpose of this proposed definition is to identify who is an "operating entity" that must obtain a NJPDES permit under the proposed amendment to N.J.A.C. 7:14A-2.1(b) (see discussion of that proposed amendment below). The Department believes that this definition is basically consistent with EPA discussions about who is an "operator" that requires a NPDES permit under 40 CFR 122.21(b). (See 57 FR 41190-41191 (September 9, 1992); EPA Form1 (revised August 1990); an October 28, 1988 EPA memorandum from James R. Elder, Director, Office of Water Enforcement and Permits; and 45 FR 33295, 33299 (May 19, 1980).)

EPA regulations in 40 CFR 122, 40 CFR 144, and 40 CFR 264 use the term "operator" in identifying persons who are subject to NPDES, Underground Injection Control (UIC), or hazardous waste management programs. The Department is introducing the alternative term "operating entity" because the term "operator" is used in a much different sense in the Water Supply and Wastewater Operators' Licensing Act (N.J.S.A. 58:11-64 et seq.). Often, the "licensed operator" under that Act is a corporate or public employee who is not an "operator" under 40 CFR 122.21(b) and similar EPA regulations (the corporation or public agency itself being the "operator" under those regulations). However, because the Department is not proposing at this time to replace dozens of references to "operator" in subchapters 4, 5, and 6 (and some other rule sections), the Department is also retaining the term "operator" in the proposed definition (which stipulates that this definition does not apply to a few provisions of the NJPDES rules where the term "operator" is used in a sense different than that given in this definition).

The definition of "privately owned treatment works" at N.J.A.C. 7:14A-1.9 is being amended to replace the term "operator" with "operating entity," as discussed above.

The definition of "stormwater discharge associated with industrial activity" at N.J.A.C. 7:14A-1.9 is being amended to include certain stormwater discharges that fall outside the EPA definition of "storm water discharge associated with industrial activity" at 40 CFR 122.26(b)(14). (The current definition of "stormwater discharge associated with industrial activity" incorporates that EPA definition by reference, without any qualifications or exceptions.)

The first group of stormwater discharges that would be included in the amended definition are stormwater discharges that fall under that EPA definition in all respects but one, which is that the discharge to surface waters is from a "nonpoint source" rather than from a "point source." Together with proposed amendments to N.J.A.C. 7:14A-3.1(a), 3.8, and 10.3(a)22, the amended definition would require NJPDES/DSW permits for these stormwater discharges.

In the EPA definition of "storm water discharge associated with industrial activity," the terms "discharge" and "facilities" have the meanings specified in the definitions of "discharge" and "facility" at 40 CFR 12.2. Under 40 CFR 122.2, the term "discharge," when used without qualification, means the "discharge of a pollutant," a term which, as defined at 40 CFR 122.2, is restricted to additions of pollutants to "waters of the United States" from a "point source." The term "facility" means "any NPDES 'point source' or any other facility . . . that is subject to regulation under the NPDES program." These EPA definitions are closely related to the definitions of "discharge" and "discharge of a pollutant" at Section 502(12) and 502(16) of the CWA, which generally restrict the term "discharge" (when used in the CWA) to additions of pollutants from a "point source." The term "point source" is defined by EPA at 40 CFR 122.2 as follows (similar definitions are given at Section 502(14) of the CWA, N.J.A.C. 7:14A-1.9, and in the Water Pollution Control Act at N.J.S.A. 58:10A-3.m):

"*Point source* means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft rom which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See §122.3)"

In contrast, the broader definitions of "discharge" at N.J.A.C. 7:14A-1.9 and in the Water Pollution Control Act (N.J.S.A. 58:10A-3e) do not restrict the term "discharge" to additions of pollutants from a "point source." Moreover, N.J.S.A. 58:10A-6d authorizes the Depart-

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ment to determine by rule whether or not NJPDES permits must be obtained for "nonpoint source discharges." Under that Act and State authority preserved under Section 510 of the CWA, the Department may amend the definition of "stormwater discharge associated with industrial activity" to include nonpoint source discharges, and may amend the NJPDES rules to require NJPDES/DSW permits for those nonpoint source discharges.

As indicated above and in 40 CFR 122.1(b)(1), the NPDES program under Section 402 of the CWA is limited to discharges from a "point source." (To date, the NJPDES rules have likewise limited the DSW permit program to discharges from a "point source"; see current N.J.A.C. 7:14A-3.1(a).) The issue of what physical types of stormwater flow (for example, "sheet flow") fall under the definition of "point source" has been a source of controversy; see the EPA discussion of this issue at 55 FR 47995-47997 (November 16, 1990). In that discussion, EPA stated (among other things) that "EPA intends to embrace the broadest possible definition of point source consistent with the legislative intent of the CWA and court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the United States." EPA stated further that "in most court cases interpreting the term 'point source', the term has been interpreted broadly," and reviewed one court case in more detail. The Department also discussed this issue (and cited the EPA discussion) when it adopted its own initial NJPDES rule amendments (Comment-Response 7; 24 N.J.R. 4090; November 2, 1992). Since May 1993, Department mass mailings for the Statewide Stormwater Permitting Program have stated that the Department agrees with EPA's intent to embrace the "broadest possible" interpretation of "point source."

In the Department's experience, the term "point source" has been one of the most difficult aspects of the stormwater permitting program to explain to the public, including businesses trying to evaluate if they need a stormwater discharge permit. No matter how the EPA and the Department say they interpret the term "point source," it is likely that for years to come, there will be considerable uncertainty in practice about whether, at this or that particular location, there truly is a discharge of industrial stormwater from a "point source." The amended definition of "stormwater discharge associated with industrial activity" renders this uncertainty largely moot, by expressly including nonpoint source discharges of industrial stormwater in the definition.

Moreover, nonpoint source discharges of industrial stormwater need to be controlled. In the receiving water, it often makes little difference whether industrial stormwater pollutants are delivered to that receiving water from an obvious point source such as a pipe, or from some kind of overland flow that some might consider a "nonpoint source." For protection of water quality, the primary concern is not whether industrial stormwater is discharged from a "point source," but the pollutants in that stormwater. Under the CWA, nonpoint source discharges, which are outside the scope of the Section 402 permit program, should still be controlled under Sections 319 and 208. If the Department does not require NJPDES/DSW permits for nonpoint source discharges of industrial stormwater, the Department should still arrange for their control under the Section 319 nonpoint source management program. (The Department has heard that in an attempt to escape stormwater permit requirements, some facilities are converting obvious point sources to overland flow by means such as sealing stormwater drain inlets and filling swales.) With a NJPDES/DSW permit program already in place for much industrial stormwater, it makes sense to regulate point and nonpoint sources of industrial stormwater in a unified and consistent manner under that permit program, rather than to require NJPDES permits for "point sources" and establish some other, separate control program for "nonpoint sources."

The amended definition of "stormwater discharge associated with industrial activity" also includes other stormwater discharges that are classified by the Department as "stormwater discharges associated with industrial activity" (but outside the EPA definition of that term), **but only if the permittee, applicant, or prospective applicant requests such classification.** The primary purpose of this expansion (and a main purpose of a related modification to Part I.B.1 of the "basic industrial" general permit, NJPDES Permit No. NJ0088315) is to make eligible for that general permit certain stormwater discharges that require a DSW permit anyway and that the Department considers to be "industrial" in the broad sense of that term, but that fall outside the EPA definition and are therefore currently ineligible for NJPDES Permit No. NJ0088315.

The EPA definition of "storm water discharge associated with industrial activity" is limited to 11 specific categories of facilities. In contrast, the NJPDES program has long applied the term "industrial" more broadly to other facilities that are not "domestic treatment works" (see, for example, the broad definitions of "industrial pollutants" and "industrial treatment works" at N.J.A.C. 7:14A-1.9). (Some industrial facilities outside the EPA definition already have a NJPDES permit for stormwater discharge.) The Department believes that from the standpoint of stormwater pollution control, some of these industrial facilities are similar to facilities that fall under the EPA definition. Where such industrial facilities outside the EPA definition already have or want a stormwater discharge permit, or require such a permit under Section 402(p)(2)(E) of the CWA and 40 CFR 122.26(a)(1)(v), the Department believes that such industrial facilities should have the same stormwater permitting options as facilities that fall under the EPA definition, including potential eligibility for the "basic industrial" general permit, and for exemption under N.J.A.C. 7:14A-10.3(a)17 from certain permit application requirements.

At this time, the Department's priority industrial facilities are those that fall under the EPA definition (other than the point source restriction discussed above), and those that already have stormwater discharge permits or are designated under Section 402(p)(2)(E) of the CWA. In order to concentrate its efforts on these priority facilities (and other program priorities), the Department is not proposing, at this time, to expand the definition of "stormwater discharge associated with industrial activity" to include additional specific categories of facilities or activities. However, the Department may propose such expansion in the future, in order to correct some deficiencies in the EPA definition.

A definition at N.J.A.C. 7:14A-1.9 is proposed for "Stormwater Specialist." Specifically, the Department is proposing to define this term as "an individual registered as a Stormwater Specialist under N.J.A.C. 7:14A-3.8(b)" (see discussion of proposed N.J.A.C. 7:14A-3.8(b) below).

Subchapter 2

The Department is proposing to amend N.J.A.C. 7:14A-2.1(b) to eliminate the general requirement that a person who owns but does not operate a facility must obtain a NJPDES permit even though another person operates that facility. Under the proposed amendment, if a facility or activity is owned by one person but is operated by another person, it is the operating entity's duty to obtain a NJPDES permit, except that for an industrial waste management facility (IWMF) permit only, the owner shall also sign the permit application. This amendment makes N.J.A.C. 7:14A-2.1(b) more consistent with EPA rules for NPDES and UIC permits, which state that "when a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit" (40 CFR 122.21(b); 40 CFR 144.31(b)). (Proposed N.J.A.C. 7:14A-2.1(b) uses the term "operating entity" rather than "operator" for reasons discussed above in connection with the proposed definition of "operating entity" or "operator" at N.J.A.C. 7:14A-1.9.)

IWMF facilities are subject to EPA hazardous waste rules. The requirement in proposed N.J.A.C. 7:14A-2.1(b) that the owner shall also sign the application for an IWMF permit is consistent with permit application requirements in those EPA rules (40 CFR 270.10(b)).

Proposed N.J.A.C. 7:14A-2.1(b) resembles N.J.A.C. 7:14A-2.1(b) as it existed before November 16, 1987. When the Department amended N.J.A.C. 7:14A-2.1(b) in 1987 to establish requirements similar to current N.J.A.C. 7:14A-2.1(b), the Department stated that under N.J.S.A. 58:10A-6.a. and the definition of "person" at N.J.S.A. 58:10A-3.1, "the Department has a statutory mandate to issue NJPDES permits to both the owner and operator" (19 N.J.R. 2153). In consultation with the Department of Law and Public Safety, the Department has further considered these statutory provisions (and the current definition of "discharge" at N.J.S.A. 58:10A-3.e). The Department believes that under the Water Pollution Control Act, the Department may, at its discretion, amend the NJPDES rules to provide that if a facility or activity is owned by one person but is operated by another person, it is the operating entity rather than the owner who is the "person" who discharges pollutants and must obtain a permit under N.J.S.A. 58:10A-6a.

(The exercise of such discretion is consistent with how EPA regulations at 40 CFR 122.21(b) apply Section 301(a) of the CWA, which resembles N.J.S.A. 58:10A-6.a in key respects. EPA amended what became 40 CFR 122.21(b) to address concerns that "requirements of the permit program ... might be imposed on landowners who have no involvement in operation of a permitted facility," and to require "the person with operational control over the facility" to submit the permit application;

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see 45 FR 33295, 33299. Although the terms "discharge" and "person" are defined somewhat differently at N.J.S.A. 58:10A-3 than they are at Section 502 of the CWA, the Department does not believe that these differences preclude the proposed amendment to N.J.A.C. 7:14A-2.1(b).)

The amendments to N.J.A.C. 7:14A-2.1(b) are proposed partly in response to objections to certain elements of the Statewide Stormwater Permitting Program expressed in 1993 by the National Association of Industrial and Office Parks (NAIOP). Parts of a NAIOP letter to the Department are excerpted below:

"... New Jersey's stormwater regulations impose a co-permitting obligation on the owner of the real property on which a subject facility is located, irrespective of whether the owner is a discharger under applicablelaw. Further, property owners are required to certify as to each individual tenant's compliance with the Stormwater Pollution Prevention Plan prepared and implemented by each tenant....

"It is our belief that the regulatory framework now in place is untenable and will have a deleterious effect on the industrial real estate community. Stormwater Pollution Prevention Plans submitted for NJDEPE approval may propose structural modifications such as loading area enclosures, but are more likely to propose shipping, storage, production process, inspection and record keeping procedures as best management practices. The flexibility that allows best management practices to focus on operational procedures rather than building structural issues, will make it virtually impossible for multiple building and multi-tenant building owners to insure or certify compliance with individually tailored Stormwater Pollution Prevention Plans. It is self-evident that property owners are not in a position and are not equipped to perform the daily ongoing monitoring functions required. Under the current regulations, property owners will be saddled with unfair and unrealistic administrative costs. More important, property owners are subject to potential criminal and civil liability for any tenant's malfeasance. This is the crux of NAIOP's objections to the NJPDES stormwater regulations.

"In our view, the liabilities imposed on property owners by the co-permittee and certification requirements are unnecessary, unreasonable and unfair. The economic burden of increased administrative responsibilities and the potential vicarious liability for criminal and civil sanctions far outweigh any corresponding benefit gained for the environment."

The regulatory provisions to which NAIOP objects (especially the duties of facility owners set forth in the "basic industrial" general permit, NJPDES Permit No. NJ0088315) did not establish a fundamentally new policy, but simply carried over into the Statewide Stormwater Permitting Program the policy in N.J.A.C. 7:14A-2.1(b) that since 1987 has applied to owners of all facilities that require NJPDES permits. Therefore, when the Department considered NAIOP's objections, the Department extended the scope of the Department's review to the underlying general policy in N.J.A.C. 7:14A-2.1(b). Moreover, issues raised by NAIOP in connection with NJPDES stormwater permits can also arise with other NJPDES permits and with owners of non-industrial facilities.

Although the Department is proposing NJPDES rule amendments that should satisfy NAIOP's objections, the Department does not fully agree with all of NAIOP's arguments. For example, the Department adopted N.J.A.C. 7:14A-2.1(b) in the belief that facility owners were dischargers under applicable law. Also, the Department does not agree that it would always be "virtually impossible" or as difficult or expensive as NAIOP indicates for property owners to ensure compliance with stormwater pollution prevention plans (SPPPs) and perform daily monitoring. (At some facilities, for example, the property owner may already be at the facility daily, and already have clear and sufficient authority to direct the tenant's workers and various operational procedures.) However, the Department does believe that at many industrial facilities, it would be very expensive or very difficult for property owners to maintain a daily presence, or direct effectively the tenant's workers and various operational procedures. The requirement that each facility owner obtain and comply with a NJPDES permit may also create serious practical problems in other circumstances (for example, where an industrial park tenant operates a wastewater treatment plant that requires daily attention). (The Department also notes that under the "basic industrial" general permit, SPPPs are not submitted for Department approval.)

Under proposed N.J.A.C. 7:14A-2.1(b), a facility owner is exempt from the requirement of obtaining a NJPDES permit only if two conditions are satisfied. First, the owner must not be an "operating entity" (as defined at N.J.A.C. 7:14A-1.9) for any part of the facility. This means that the owner must not have primary management and operational decision-making authority over any part of the facility (including, for example, wastewater treatment plants, sewage collection systems, separate storm sewer systems, dumpsters, or loading docks). Second, the facility must be currently operated by another person. If, for example, the facility is operated by a tenant who later vacates the leased property (and that tenant is not replaced by some other "operating entity"), then the facility is no longer "currently operated by another person," and the owner must obtain a permit. The EPA rules at 40 CFR 122.21(b) and 40 CFR 144.31(b) establish similar conditions.

In 1992, the Department said that requiring only operators to obtain the "basic industrial" general permit could present problems from an enforcement perspective as operators may not be as reliable a party with respect to long term responsibility. In addition, the Department believes that this approach is consistent with standard landlord-tenant arrangements and is especially consistent for stormwater where the water can pick up contaminants as it runs across the land" (Comment-Response 33; 24 N.J.R. 4093). Upon further consideration, the Department now believes that (1) the owner's long term responsibility is adequately addressed by the requirement that the owner obtain a permit if the facility is no longer operated by another person; (2) under standard landlord-tenant arrangements, it would still be very expensive or very difficult for many property owners to maintain a daily presence or direct the tenant's operational procedures; and (3) stormwater permit responsibility for contaminants picked up from the land should be assigned, in the first instance, to those persons who have primary management and operational decision-making authority over that land, who may not always include the landlord.

The Department is proposing to amend N.J.A.C. 7:14A-2.1(c) to make it clear that when a single NJPDES permit is issued to more than one person, that permit may identify permit conditions that apply to only one or more of those permittees. Although this amendment is not limited to the Statewide Stormwater Permitting Program, the desirability of this amendment became evident in that Program. Sometimes, various permittees at a facility perform their activities in different parts of the facility (for example, where two or more industrial tenants lease different parts of a building), or perform different kinds of activities (for example, maintaining a dumpster that receives industrial solid waste, as distinguished from materials handling at an industrial loading dock). Often, these permittees have no direct, practical authority over each other's activities, and the permit may include some conditions that apply only to certain specified activities or parts of the facility. These are examples of circumstances in which the Department should have the flexibility to issue a permit that assigns specific permit conditions to specific permittees, and that does not impose liability on each permittee for activities of all the other permittees. The proposed amendment allows the Department to assign specific conditions to specific permittees, while retaining the advantages of issuing a single discharge permit for the facility (which include reduced administrative costs and maintenance of a facility-wide perspective).

There is some precedent for the concept of a permit assigning specific conditions to specific permittees in 40 CFR 122.26(a)(6)(iii), which pertains to industrial stormwater discharges through non-municipal separate storm sewers, and which states that "any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that pertain to each operator." See also 40 CFR 122.44(m) and N.J.A.C. 7:14A-3.13(a)13, which require permits for "privately owned treatment works" to include "any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements."

N.J.A.C. 7:14A-2.1(g)1ii and (k)1ii are being amended to exempt "stormwater discharges associated with industrial activity" from the requirements to apply for a Discharge Allocation Certificate and request "written statements of consent" from local agencies. Currently, N.J.A.C. 7:14A-2.1(g)1ii and (k)ii exempt "discharges from separate storm sewers" from those requirements. As discussed above, the Department is proposing to amend the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" to include certain nonpoint source discharges that may be outside the N.J.A.C. 7:14A-1.9 definition of "separate storm sewers," and to amend N.J.A.C. 7:14A-3.1(a), 3.8, and 10.3(a)22 to require NJPDES/ DSW permits for these nonpoint source discharges of industrial stormwater.

The Department is proposing to amend N.J.A.C. 7:14A-2.1(h)4 to replace the term "operator" with "operating entity" (see discussion of the proposed definition of "operating entity" or "operator" in N.J.A.C. 7:14A-1.9 above).

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N.J.A.C. 7:14A-2.5(a)1 is being amended to establish that for a stormwater discharge associated with industrial activity, it will not be a violation of the permit to discharge pollutants at a level exceeding that authorized by the permit, if permittees can prove by clear and convincing evidence that discharge at such a level was not a result of any activities or conditions present at the permittee's facility. This exemption recognizes the serious legal and other difficulties that industrial facilities face in controlling stormwater that runs onto their facilities from off-site properties. This exemption also recognizes that segregating such stormwater to comply with permit limits could often be done only at considerable cost, and would often result in no additional water pollution control (because the segregated stormwater would still be discharged to receiving waters).

The Department is also proposing to amend N.J.A.C. 7:14A-2.5(a)1 to treat a general NJPDES permit for "stormwater discharges associated with industrial activity" in the same manner as a general NJPDES permit for "stormwater point sources." As discussed above, the Department is proposing to amend the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" to include certain nonpoint source discharges, and to amend N.J.A.C. 7:14A-3.1(a), 3.8, and 10.3(a)22 to require NJPDES/ DSW permits for these nonpoint source discharges of industrial stormwater. For the same reason, the Department is proposing to amend N.J.A.C. 7:14A-2.5(a)12x and 2.14(a)8 to refer to a "stormwater discharge associated with industrial activity" as well as a "point source discharge" or "point source outfall."

Subchapter 3

N.J.A.C. 7:14A-3.1(a) is being amended to expand the scope of the DSW permit program to include "stormwater discharge associated with industrial activity" from any point or nonpoint source into surface waters of the State. Currently, N.J.A.C. 7:14A-3.1(a) limits the scope of the DSW permit program to discharges from point sources. (N.J.A.C. 7:14A-3.1(a) is similar to 40 CFR 122.1(b)(1), which limits the scope of the NPDES permit program to discharges from point sources.) As discussed above, the Department is proposing to amend the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" to include certain nonpoint source discharges, and to amend N.J.A.C. 7:14A-3.1(a), 3.8, and 10.3(a)22 to require NJPDES/ DSW permits for these nonpoint source discharges of industrial stormwater.

The Department is proposing three amendments to N.J.A.C. 7:14A-3.8, Stormwater discharges. Currently, this section incorporates by reference (with certain specific exceptions in N.J.A.C. 7:14A-10.3(a)) the EPA requirements in 40 CFR 122.26. The first proposed amendment would add references to the proposed amended N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity." As discussed above, the Department is proposing to amend that definition to include certain stormwater discharges that fall outside the 40 CFR 122.26(b)(14) definition of "storm water discharge associated with industrial activity." Under proposed N.J.A.C. 7:14A-3.8(a)1, the requirements that 40 CFR 122.26 and 40 CFR 122.21 establish for a "storm water discharge associated with industrial activity" as defined in 40 CFR 122.26 instead apply (except as provided in N.J.A.C. 7:14A-10.3(a)20 and (a)22)) to a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.9.

The second proposed amendment adds N.J.A.C. 7:14A-3.8(a)2 through 5, which expressly allow the Department to request persons whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity" (as defined in N.J.A.C. 7:14A-1.9) to either declare their intent to obtain a DSW permit for such a discharge, or provide written information to the Department explaining why, in that person's judgment, they do not need to obtain such a permit. The Department may require such information to be provided on a Department form, which could be similar to the Department's current, simple, one-page "Nonapplicability Form" for industrial stormwater. (The Department created the "Nonapplicability Form" in 1993, with advice from the Industrial Stormwater Permitting Advisory Group, to obtain such information.) An example of a reason sufficient to justify such a Department request is information indicating that the person may own or operate an establishment classified under a Standard Industrial Classification (SIC) code expressly listed in 40 CFR 122.26(b)(14), or a landfill, steam electric power generating plant, treatment works treating domestic sewage, or construction operation that results in the disturbance of land.

A main purpose of N.J.A.C. 7:14A-3.8(a)2 through 5 is to increase and expedite compliance with Federal and State stormwater permit requirements, and thereby prevent, control or abate water pollution from industrial stormwater. These requirements (including the definition of "stormwater discharge associated with industrial activity") are complex and unfamiliar to thousands of businesses (including some government establishments) that potentially require a NJPDES/DSW permit for industrial stormwater discharges. Experience with the current "Nonapplicability Form" has proven that by having such businesses explain to the Department why they do not think they need such a permit, the Department can directly contact businesses that submit obviously invalid explanations, and correct misconceptions about these permit requirements. (For example, over 140 businesses submitted obviously invalid explanations that they were exempt from NJPDES permit requirements because they leased their properties or participated in group applications to EPA.)

Explanations given by businesses are also useful in planning Department activities to enforce these permit requirements, because such explanations identify one or more key issues for the Department to examine when the Department later evaluates the specific business. (For example, when a business explains in a Nonapplicability Form that all of its stormwater discharges into a combined sewer, the Department can check the list of municipalities known to have combined sewers, contact the business to make sure that the business correctly understands the meaning of "combined sewer," and, if it seems appropriate, plan a field inspection to check the accuracy of the explanation.)

The Department is also proposing this amendment to obtain basic information about the fate of industrial stormwater in New Jersey (for example, approximately how many industrial businesses are discharging stormwater into surface water, ground water, or municipal treatment works). This information is useful as the Department formulates additional or revised policies to prevent, control or abate water pollution from industrial stormwater. (For example, approximately 1,700 businesses have explained in Nonapplicability Forms that their stormwater is discharged to groundwater. This information is useful to the Department as the Department considers the development of a general NJPDES permit for discharge of industrial stormwater to groundwater.)

The number of New Jersey businesses that may need a DSW permit for a "stormwater discharge associated with industrial activity" is very large. (For example, the New Jersey Department of Labor has identified approximately 20,000 establishments under Standard Industrial Classification (SIC) codes listed in the 40 CFR 122.26(b)(14) definition of "storm water discharge associated with industrial activity.") It would take many years for the Department to inspect all of these businesses. If Federal and State stormwater permit requirements are going to be effectively enforced in New Jersey, then the Department needs some basic information from these businesses.

Since November 1992, the Department has mailed information about the Statewide Stormwater Permitting Program to approximately 11,000 businesses (excluding envelopes returned due to bad addresses). The Department sincerely thanks the several thousand businesses that responded to these mailings by seeking a DSW permit or by submitting a Nonapplicability Form. However, the refusal of thousands of other businesses to respond is a serious problem. The Department believes that by adding N.J.A.C. 7:14A-3.8(a)2 through 5 to the NJPDES rules, the Department will obtain a greater and more rapid response rate to future Department mailings. The submission of several thousand Nonapplicability Forms indicates that the submission of these forms is, in general, not particularly difficult.

N.J.A.C. 7:14A-3.8(a)2 through 5 are being proposed under N.J.S.A. 58:10A-10.3 as well as N.J.S.A. 58:10A-4, which provides the Department's general rulemaking authority under the State Act, and the Department's general enabling statute, N.J.S.A. 13:1D-1 et seq. N.J.S.A. 58:10A-10.3 expressly authorizes the Department to "request that any person whom the department has reason to believe has, or may have, information related to a discharge or potential discharge of a pollutant ... shall provide, upon receipt of written notice therefor," certain information to the Department, including, among other things, "the nature, extent, source, and location of the discharge, or potential discharge" and "the identity of ... any other person subject to liability for the discharge or potential discharge." (N.J.S.A. 58:10A-10.3 further provides that such information "shall be provided in the form and manner prescribed by the department.")

Stormwater is present at all locations that are exposed to rainfall or surface runoff, and very frequently contains some "pollutants" (as defined at N.J.S.A. 58:10A-3n) that are discharged into "waters of the State" (including ground or surface waters; see N.J.S.A. 58:10A-3t) either

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directly, or through a municipal treatment works (see the definition of "discharge" at N.J.S.A. 58:10A-3e). If the Department has reason to believe that a person may own or operate a facility with a "stormwater discharge associated with industrial activity," then the Department has reason to believe that such a person "has, or may have, information relevant to a discharge or potential discharge of a pollutant." The Department may then request information from that person, including information explaining why, in that person's judgment, that person is not required to obtain a DSW permit for a "stormwater discharge associated with industrial activity" (if that person has decided not to obtain such a permit).

(Although the Department is proposing to add N.J.A.C. 7:14A-3.8(a)2 through 5 to the NJPDES rules, the Department may also request information under the express statutory authority of N.J.S.A. 58:10A-10.3 without amending the NJPDES rules. See *In the Matter of the Request for Solid Waste Utility Customer Lists,* 106 *N.J.* 508 (1987).)

The third proposed amendment adds N.J.A.C. 7:14A-3.8(b), which establishes a voluntary program for registration of individuals as "Stormwater Specialists" who may assist permittees in the preparation and implementation of stormwater pollution prevention plans (SPPPs) required by DSW permits for stormwater discharges associated with industrial activity. The use of a Stormwater Specialist is at the discretion of the permittee. This voluntary Stormwater Specialist program is designed to provide substantial environmental benefit with minimum regulatory burden, and to reduce permit violations and Department enforcement activities.

As indicated at the beginning of this Summary and in the 1992 proposal, the Department is relying to a large extent on SPPPs and related self-inspections rather than numerical effluent limitations to control industrial stormwater discharges. The voluntary Stormwater Specialist program would ensure that for facilities which choose to participate, SPPPs are reviewed and inspected by individuals meeting certain minimum technical qualifications to assess stormwater discharges and appropriate best management practices (BMPs). Because it is infeasible for the Department to review thousands of SPPPs prior to granting authorization to discharge, and to conduct frequent inspections of thousands of industrial facilities, the Department is relying heavily on the quality of these SPPPs and related self-inspections to protect the public from the dangers associated with industrial stormwater discharges. SPPPs that are not properly reviewed by qualified persons may not be fully adequate.

In the 1992 draft of the "basic industrial" general permit (NJPDES Permit No. NJ0088315), the Department proposed to assure the quality of SPPPs and self-inspections by requiring that SPPPs and annual inspection certifications be signed by a New Jersey Licensed Professional Engineer. The Department received a significant number of comments regarding this requirement, including comments that this requirement would result in excessive financial costs and liability concerns, and that other persons have the knowledge and expertise to provide the kind of assurances the Department seeks regarding permit compliance. In response to those comments, the Department eliminated the requirement for a New Jersey Licensed Professional Engineer, and announced the Department's intent to propose NJPDES rule amendments to establish a program to identify those individuals the Department considers to be qualified to certify the preparation and implementation of SPPPs, and to require the use of such individuals after that program is established (Comment-Response 51; 24 N.J.R. 4095-4097).

The Department is now proposing more limited amendments in proposed N.J.A.C. 7:14A-3.8(b). The Department believes that these proposed amendments alleviate concerns related to exclusive reliance on New Jersey Licensed Professional Engineers, excessive financial costs, and liability, while also providing (for facilities which choose to participate) an effective system of assurances that individuals (Stormwater Specialists) specifically qualified to assess stormwater discharges and appropriate BMPs for them will be involved in the SPPP process. Use of Stormwater Specialists would also decrease the number of Department staff that would otherwise be needed to enforce stormwater discharge permits, and is an important part of the Department's effort to promote privatization of appropriate portions of the regulatory process. Moreover, by serving as a link between permittees and the Department, Stormwater Specialists should also assist facilities in achieving compliance (and thereby in avoiding potential penalties assessed under the Water Pollution Control Act). Eventually, after experience is gained with the voluntary Stormwater Specialist program, the Department may propose additional NJPDES rule amendments to require use of Stormwater Specialists in at least some stormwater discharge permits.

The basic duty of a Stormwater Specialist is to assist permittees in the preparation and implementation of the SPPP (including periodic facility inspections). Responsibility for SPPP preparation and implementation remains with the permittee. (Persons other than Stormwater Specialists may also provide such assistance, but may not identify themselves as Stormwater Specialists.)

When a Stormwater Specialist finds that an SPPP is not being properly implemented or does not meet a requirement of the DSW permit, the Stormwater Specialist shall notify the permittee in writing of the noncompliance or deficiency within five working days. Also, all Stormwater Specialists shall participate in field inspections of their facilities with Department staff if requested by the Department. The Stormwater Specialist need not operate and maintain any industrial wastewater treatment systems, and registration as a Stormwater Specialist is not a license under the Water Supply and Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq.

Proposed N.J.A.C. 7:14A-3.8(b) establishes two classes of Stormwater Specialists. Class I Stormwater Specialists may assist permittees in the preparation and implementation of SPPPs for any industrial facility whose DSW permit requires an SPPP. Class I Stormwater Specialists must have (1) a Bachelor's or advanced degree with a major in either environmental science; biology; chemistry; civil, chemical, sanitary or environmental engineering; environmental planning; or other environmentally related degree whose course content is consistent with the above degrees; and (2) three years or more experience in environmental science or environmental engineering, with specific experience in either stormwater management or related water resource management field. (A Professional Engineer or Professional Planner license may be substituted for the education requirement and two years of experience, but individuals without these licenses can still become Class I Stormwater Specialists.)

A Class II Stormwater Specialist may, in their capacity as a Stormwater Specialist, assist in the preparation and implementation of the SPPP only for the single industrial facility named in their registration document, and must be an employee or executive of that facility. A Class II Stormwater Specialist must either satisfy the same education and experience qualifications that a Class I Stormwater Specialist must satisfy, **or** have five years of experience at either the specific industrial facility or a substantially similar industrial facility, consisting of either facility design, operation or management experience, or other environmental/engineering experience related to stormwater management. Use of Class II Stormwater Specialists can minimize the direct financial cost of the Stormwater Specialist program to industrial facilities that choose to use a Stormwater Specialist, and also make use of individuals who have thorough knowledge of a specific facility.

Proposed N.J.A.C. 7:14A-3.8(b) also provides that to be registered as a Class I or Class II Stormwater Specialist, an individual must successfully complete a Stormwater Permitting Training Course (or, for a renewal registration, a Stormwater Permitting Continuing Education Course) approved by the Department. The Department shall publish in the New Jersey Register a public notice which identifies the institution(s) offering these approved courses.

The Department expects that these approved courses will be short courses offered by an educational institution in cooperation with the Department (if this cannot be arranged, then the Department may itself offer the course). Individuals who seek to be registered as Stormwater Specialist shall apply directly to the institution offering the course, and that institution shall issue or deny registration, which is valid for 24 months. In order to maintain registration, a Stormwater Specialist shall successfully complete the Stormwater Permitting Continuing Education Course every other calendar year (unless the Department waives that requirement for a given year).

The Department shall suspend the registration of a Stormwater Specialist for two years for any cause that would constitute grounds for revoking a license under N.J.S.A. 45:1-21. Any individual whose registration has been suspended where the Department determines that the actions would have caused substantial harm to the public, or whose registration has been suspended more than once, shall have their registration permanently revoked. Any individual whose registration is denied, suspended, or revoked may request an adjudicatory hearing.

Because proposed N.J.A.C. 7:14A-3.8(b) specifies that the use of a Stormwater Specialist is at the discretion of the permittee, proposed

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N.J.A.C. 7:14A-3.8(b) does **not** authorize the Department to use the "Reopener Clause Regarding Stormwater Pollution Prevention Plan Certification" in Part IV.Z of the "basic industrial" general permit (N.J.A.C. 7:14A-3 Appendix A) and Part V.Y of the "construction" general permit (N.J.A.C. 7:14A-3 Appendix B), or in similar reopener clauses in other stormwater DSW permits.

The Industrial Stormwater Permitting Advisory Group (ISPAG) had an important role in formulating the proposed Stormwater Specialist provisions. The initial, October 1992 draft of those provisions, including the concepts of Class I and Class II Stormwater Specialists and a Department-approved training course, was prepared by an ISPAG member. At the November 30, 1993 ISPAG meeting, ISPAG members made several comments on the Department's November 1993 draft of N.J.A.C. 7:14A-3.8(b). In response to those comments, the Department made several revisions which are summarized as follows:

1. N.J.A.C. 7:14A-3.8(b)1ii and iii were revised to require the Stormwater Specialist to notify the permittee rather than the Department within five days when the Stormwater Specialist finds that an SPPP is not being properly implemented or does not meet a requirement of the DSW permit.

2. In N.J.A.C. 7:14A-3.8(b)2i(2), the word "environmental" was inserted before "engineering" in setting forth the experience requirements of a Class I Stormwater Specialist.

3. In N.J.A.C. 7:14A-3.8(b)5iii, the phrase "pertaining to the registration or duties of a Stormwater Specialist" was inserted after "Stormwater Specialist," in describing what records of correspondence the Stormwater Specialist must maintain.

4. N.J.A.C. 7:14A-3.8(b)6i was revised to provide that registration of a Stormwater Specialist is valid for 24 months, with no distinction made between Class I and Class II Stormwater Specialists. N.J.A.C. 7:14A-3.8(b)6ii was revised to provide that the Stormwater Permitting Continuing Education Course must be taken every other year, with no distinction made between Class I and Class II Stormwater Specialists. (Under the November 1993 draft, registration of Class I Stormwater Specialists was valid for only 12 months, and Class I Stormwater Specialists were required to take the Stormwater Permitting Continuing Education Course every year.)

Moreover, the discussion at the December 14, 1994 ISPAG meeting was an important factor in the Department's decision to propose a voluntary Stormwater Specialist program rather than the mandatory program contained in the Department's November 1993 draft.

The Department is proposing to amend N.J.A.C. 7:14A-3.9(a)2i to authorize general permits for "stormwater discharges associated with industrial activity" as well as "stormwater point sources." As discussed above, the Department is proposing to amend the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" to include certain nonpoint source discharges, and to amend N.J.A.C. 7:14A-3.1(a), 3.8, and 10.3(a)22 to require NJPDES/ DSW permits for these nonpoint source discharges of industrial stormwater. For the same reason, the Department is proposing to amend N.J.A.C. 7:14A-3.9(a)3i(3) and (5) to refer to a "discharge" rather than a "point source discharge." Also N.J.A.C. 7:14A-3.9(b)2ii and iii are being amended to replace the term "operator" with "operating entity" (see discussion of the proposed definition of "operating entity" or "operator" in N.J.A.C. 7:14A-1.9 above).

N.J.A.C. 7:14A-3.9(b)3iii is being amended to delete the requirement that a permittee authorized by a general permit may apply for an individual permit "no later than 90 days after the publication by the Department of the general permit in the DEPE Bulletin." This 90 day deadline is inconsistent with N.J.A.C. 7:14A-3.9(b)3i, which imposes no deadline on the submission by "any interested person" (including the permittee) of a petition to require a permittee authorized by a general permit to apply for an individual permit. This 90 day deadline is also inconsistent with N.J.A.C. 7:14A-7.5(a), which imposes no deadline on the submission by "any interested person (including the permittee)" of a request to modify, revoke and reissue, or terminate a permit. The Department is aware of no logical reason why N.J.A.C. 7:14A-3.9(b)3iii should establish a 90 day deadline that is not established for other petitions and requests concerning permits (including requests to modify or revoke and reissue a permit). A typographical error in N.J.A.C. 7:14A-3.9(b)3iii is also being corrected.

N.J.A.C. 7:14A-3.12(i) is being amended to exempt persons who request or obtain authorization under any DSW permit for stormwater point sources, stormwater discharges associated with industrial activity, or separate storm sewers from the requirement to develop and submit an emergency plan, unless that DSW permit requires such an emergency plan, or unless an emergency plan is required for another DSW permit. (The current exemption in N.J.A.C. 7:14A-3.12(i) is limited to general permits for stormwater point sources or separate storm sewers.) This is a component of the Department's program to streamline the stormwater permit process. In addition, emergency plans should not always be required because for some individual permits, other permit requirements, such as stormwater pollution prevention plans, will serve some of the same functions as an emergency plan.

The proposed amendment to N.J.A.C. 7:14A-3.12(i) treats "stormwater discharges associated with industrial activity" in the same manner as "stormwater point sources" and "separate storm sewers." Under the proposed amendment to the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" (see discussion of that definition above), that definition, which until now has been limited to point sources, would be expanded to include nonpoint sources that may be outside the N.J.A.C. 7:14A-1.9 definition of "separate storm sewers."

Subchapter 3 Appendices A and B

The Department is proposing various amendments to N.J.A.C. 7:14A-3 Appendices A and B, in order to modify the two general DSW permits for stormwater discharges associated with industrial activity that the Department issued as rules in 1992. The present discussion summarizes the contents of the modifications to the two permits and the rationale supporting the issuance of those modifications. Further discussion is set forth in the fact sheets for these permit modifications, which fact sheets are available from Barry Chalofsky, Manager of the Bureau of Stormwater Permitting, Department of Environmental Protection, CN 029, Trenton, New Jersey 08625. Many of these permit modifications are closely related to other amendments discussed above, including the expanded definition of "stormwater discharge associated with industrial activity" at N.J.A.C. 7:14A-1.9, and the amendments to N.J.A.C. 7:14A-2.1(b), 3.1(a), and 3.8(a)1 concerning what persons and stormwater discharges require a NJPDES permit.

Eligibility and Regulated Discharges

In NJPDES Permit No. NJ0088315 (N.J.A.C. 7:14A-3 Appendix A) and NJPDES Permit No. NJ0088323 (N.J.A.C. 7:14A-3 Appendix B), the opening clause of Part I.B.1 is being modified to delete the reference to "Federal stormwater permitting requirements at 40 CFR 122.26" and refer instead to "stormwater discharges associated with industrial activity as defined at N.J.A.C. 7:14A-1.9." As discussed above, the Department is proposing to amend that definition to include certain stormwater discharges that fall outside the 40 CFR 122.26(b)(14) definition of "storm water discharge associated with industrial activity," and to amend N.J.A.C. 7:14A-3.1(a) and 3.8(a)1 to require DSW permits for these discharges. The Department believes that the affected industrial facilities should have the same stormwater permitting options as facilities that fall under that EPA definition, including potential eligibility for NJPDES Permit No. NJ0088315 (the "basic industrial" general permit) or NJPDES Permit No. NJ0088323 (the "construction" general permit).

In related modifications to the "basic industrial" general permit, Part III.B.1.b, Attachment B (Section D.1), and Attachments C and D are being modified to delete references to stormwater discharged "through separate storm sewers" and refer instead to stormwater discharges regulated under that permit. Under the proposed amendment to the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" (see discussion of that definition above), that definition would include nonpoint source discharges that may be outside the N.J.A.C. 7:14A-1.9 definition of "separate storm sewers." To give permittees time to address any regulated discharges that are not from "separate storm sewers," Part IV.S.2 and Attachments C and D are being modified to provide that these related modifications shall become effective six months after publication of final rulemaking action in the New Jersey Register. (As discussed below, other modifications to Attachments C and D concerning owner/operator and multiple permittee issues have an earlier effective date.)

Part I.B.1.b of the "basic industrial" general permit is being modified to make it possible to "split" a facility, that is, authorize some of a facility's stormwater discharge under the "basic industrial" general permit while authorizing the rest of that facility's stormwater discharge under an individual DSW permit or another general DSW permit. As modified, Part I.B.1.b establishes that a stormwater discharge authorized under

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another DSW permit cannot concurrently be authorized under the "basic industrial" general permit. (Under current Part I.B.1.b, in contrast, all stormwater discharges at a facility are ineligible for the "basic industrial" general permit so long as at least one such discharge is authorized under another DSW permit.) For facilities that desire and obtain such "splitting," this modification will eliminate the need to submit individual permit applications (which require collection and chemical analysis of stormwater samples) for stormwater discharges that are suitable for the "basic industrial" general permit.

Modified Part I.B.1.b also provides that stormwater discharges that are combined with domestic or process wastewater prior to treatment are also ineligible for the "basic industrial" general permit. Such stormwater should be regulated jointly with that wastewater under another DSW permit.

The Department received a number of comments on the 1992 draft of the "basic industrial" general permit to the effect that Part I.B.1.b should be rescinded, thereby (it was then assumed) making discharges eligible for that permit without regard to whether or not they are currently regulated under another DSW permit. In response, the Department stated that it saw considerable merit in those comments, but was concerned that making every such discharge eligible for the "basic industrial" general permit might constitute "backsliding" in violation of the Federal Clean Water Act. (The Department also determined that rescinding Part I.B.1.b would require a new rule proposal.) The Department said that it would develop a preproposal to seek public comment on the appropriateness of rescinding Part I.B.1.b (Comment-Response 24, 24 N.J.R. 4092).

After further consideration, however, the Department concluded that even if Part I.B.1.b were rescinded, stormwater discharges regulated by individual DSW permits still could not be authorized under the "basic industrial" general permit unless those individual DSW permits were revoked (or modified to achieve the same result in regard to those discharges) in accordance with EPA regulations (40 CFR 122.28(a)(1) and (b)(3)(v)). The "antibacksliding" issue could arise in such revocation/modification actions even without Part I.B.1.b. Therefore, on February 16, 1993 the Department sent a letter to business, environmental and other organizations and several hundred existing stormwater permittees, soliciting comments on the effect of Federal "antibacksliding" provisions on the potential transfer of stormwater discharges from permits with traditional numerical effluent limitations to permits requiring best management practices. That letter also requested comment on an enclosed "Preliminary Draft Modification" to Part I.B.1.b.

This "Preliminary Draft Modification" to Part I.B.1.b was limited in scope and would have made it clear that Part I.B.1.b was never intended to apply to two special classes of DSW permits: the "construction" general permit and DSW permits that do not authorize any stormwater discharge other than the discharge of stormwater that is combined with domestic or process wastewater prior to treatment. This "Preliminary Draft Modification" also would have made it clear (in Part I.B.1.b.ii) that stormwater discharges that are combined with such wastewater prior to treatment are ineligible for the "basic industrial" general permit.

Most responses to the February 16, 1993 letter consisted of comments on "antibacksliding" issues rather than comments on the "Preliminary Draft Modification" to Part I.B.1.b. One of the few comments on Part I.B.1.b requested that the Department require publicly owned treatment works (POTWs) "to accept stormwater flows that cannot, by practical means, be discharged to any place other than the POTW." The commenter expressed concern that excluding some stormwater discharges from the general permit under Part I.B.1.b.ii, "without mandating POTW's to accept such within reason, may leave facilities without a means to permit stormwater discharges in certain circumstances." The Department disagrees with this comment for several reasons. One is that facilities that are ineligible for the "basic industrial" general permit can still apply for an individual DSW permit for stormwater flows that are not accepted by the POTW. Another is that stormwater that is combined with wastewater prior to treatment should not be controlled by the "basic industrial" general permit (which regulates stormwater only), but by a DSW permit that regulates the entire combined, treated effluent, not just the stormwater component of that effluent.

A second commenter strongly supported the "Preliminary Draft Modification" to Part I.B.1.b. because, according to that commenter, "the modification would allow existing individual permits to be converted to a general permit, if a facility can demonstrate Best Management Practices (BMP's) through the Stormwater Pollution Prevention Plan and that a facility does not fall under the industrial categories whereby the industrial activity may constitute a major concern for stormwater discharge quality." This commenter may have confused the "Preliminary Draft Modification" to Part I.B.1.b. with the separate "mass revocation/modification" of individual DSW permits discussed in the February 16, 1993 letter. The "Preliminary Draft Modification" to Part I.B.1.b. would have clarified that Part I.B.1.b did not apply to two special classes of DSW permits, but otherwise would not have affected the transfer of facilities from individual permits to the "basic industrial" general permit.

A third commenter supported the "Preliminary Draft Modification" to Part I.B.1.b., but said "the Department should go one step farther and allow general permit coverage for existing non-permitted storm water discharges associated with industrial activity at facilities with existing individual permits for other separate storm water discharges." The Department agreed with that comment, and has drafted a more extensive modification to Part I.B.1.b. As noted above, Part I.B.1.b is being modified to make it possible to authorize some of a facility's stormwater discharge under the "basic industrial" general permit while authorizing the rest of that facility's stormwater discharge under an individual DSW permit or another general DSW permit. Although the Department has expressed concern that it would be difficult to administer two or more stormwater DSW permits at a single facility, the Department believes that if the permittee prefers separate DSW permits and if the drainage areas for the separate DSW permits are sufficiently distinct, the advantages of authorizing some of the stormwater discharges under the "basic industrial" general permit may outweigh the administrative difficulty. (Facilities that prefer to have all of their stormwater discharges authorized under an individual DSW permit may obtain or retain an individual permit.)

The policy in modified Part I.B.1.b that a stormwater discharge authorized under another DSW permit cannot concurrently be authorized under the "basic industrial" general permit follows directly from EPA and Department regulations concerning what discharges can be authorized under general permits (40 CFR 122.28(a)(1) and (b)(3)(v); N.J.A.C. 7:14A-3.9(a)1 and (b)3v). A stormwater discharge cannot be concurrently authorized under two separate DSW permits. (As indicated by Part I.B.1.c, however, a stormwater discharge that is partly from construction or mining activity and partly from other industrial activity can be jointly authorized under the "basic industrial" general permit and the "construction" general permit. This is because the only stormwater discharge authorized under the "construction" general permit is stormwater from construction or mining activity.) The NJPDES rules do provide a procedure (N.J.A.C. 7:14A-3.9(b)3) whereby a permittee can apply to have its existing DSW permit revoked or modified and at the same time obtain authorization under a general permit such as the "basic industrial" general permit . (Revocation or modification of an individual DSW permit for this purpose must follow the decision-making and public comment and notice procedures in N.J.A.C. 7:14A-7 and 8.)

Because Part I.B.1.b is being modified to make it possible to authorize some of a facility's stormwater discharge under the "basic industrial" general permit while authorizing the rest of that facility's stormwater discharge under an individual DSW permit or another general DSW permit, Part I.B.1.a is being modified to exclude only those stormwater discharges that are subject to EPA effluent guideline limitations. (Under current Part I.B.1.a, in contrast, all stormwater discharges at a facility are ineligible for the "basic industrial" general permit so long as at least one such discharge is subject to EPA effluent guideline limitations).

Owner/Operator and Multiple Permittee Issues

Part II.B of the "basic industrial" general permit (NJPDES Permit No. NJ0088315) and the "construction" general permit (NJPDES Permit No. NJ0088323) are being modified to eliminate the requirement that a Request for Authorization (RFA) for those permits must be jointly submitted by all persons who own or operate the facility. Under this modification, if a facility is owned by one person but is operated by another person, it is the operating entity who shall submit the RFA. This modification is consistent with the amendment to N.J.A.C. 7:14A-2.1(b) discussed above, which exempts some but not all facility owners from the requirement of obtaining a NJPDES permit. Some other provisions in these permits are being modified to eliminate unnecessary references to "owner" (for example, Part IV.T.2 of the "basic industrial" general permit and Part V.T.2 of the "construction" general permit). Also, various modifications to these permits (in Attachment A, for example) use the term "operating entity" rather than "operator" for reasons discussed above in connection with the proposed definition of "operating entity" or "operator" at N.J.A.C. 7:14A-1.9.

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By eliminating the requirement for "joint" submission of the RFA, the modification to Part II.B of these permits also prevents the inequities that would occur if some persons were excluded from these permits solely because other persons at the facility refused to submit a joint RFA. However, only those persons who submit an RFA (jointly or separately), or obtain a transfer of authorization (see, for example, Part IV.T of the "basic industrial" general permit), can become permittees under these permits. Persons who require a NJPDES permit under N.J.A.C. 7:14A-2.1(b) but do not obtain a NJPDES permit are violating the Water Pollution Control Act, even if other persons at the same facility obtain a NJPDES permit. Part II.C of these permits is being modified to require the RFA to identify which facility owners or operating entities are submitting the RFA. (Modified Part II.B of the "basic industrial" general permit encourages, but does not require, all of the operating entities for a facility to jointly submit a single RFA for that facility. Joint submission is desirable because it promotes cooperation between permittees at the facility and preparation of a single SPPP, and prevents duplication of permit fees and administrative costs.)

Part II.E.3 of the "basic industrial" general permit and Part II.F.3 of the "construction" general permit are being added to require persons requesting authorization to provide a copy of the RFA to each facility owner who does not submit that RFA. In addition, Part III.B.3.d. is being added to the "basic industrial" general permit to require the permittee to provide a copy of the SPPP and the related certifications in Attachments C and D to the facility owner. The Department's discussions with NAIOP indicated that many facility owners would like to receive a copy of these documents. The Department believes that providing these copies will make some facility owners more aware of facility conditions and the Statewide Stormwater Permitting Program, and that such awareness may promote facility compliance with that Program.

Several additional modifications are being made to the "basic industrial" general permit to address issues of facility identification and RFA submission, allocation of responsibility between two or more permittees, consolidation of two or more SPPPs prepared for a single facility, and relationships between owners and operating entities. Part II.B is being modified to require separate RFAs for separate facilities, and to establish that no two buildings shall be considered to be within a single facility unless those buildings are to have the same permittee(s) for their stormwater discharges, and are on the same or adjacent properties. This modification is intended mainly to simplify the permit program for permittees and the Department.

Various problems would arise if a single "facility" were to contain two or more buildings with different permittees in different buildings. The permittees would either have to be liable for each other's activities or establish formal allocations of responsibility in the SPPP. (This problem is of special concern for this permit, which relies on pollution prevention by each permittee rather than an "end-of-the-pipe" stormwater treatment system that serves multiple users.) Such joint liability or formal allocation of responsibility is sometimes necessary, but can often be avoided where different "facilities" are distinguished. The Department would have to administer this permit for more facilities that have multiple permittees and buildings, and correspondingly complex SPPPs. (It is less difficult for the Department to administer this permit for a larger number of "facilities" that have fewer permittees and buildings per facility than for a smaller number of "facilities" with more permittees and buildings per facility.)

Modified Part II.B also encourages, but does not require, a single building to be treated as a single facility even though two or more persons request authorization for stormwater discharges from that building. When different persons conduct activities within the same building, it is often more difficult to distinguish separate "facilities" (one example is where those persons share loading docks, dumpsters, or other physical areas at that building), and more likely that those persons should cooperate in preparing and implementing the SPPP.

Part III.B.1.c and Attachment B, section J are being added to make it clear that the SPPP may allocate specific responsibilities between specific permittees. (In addition, Attachment D is being modified to provide that if the SPPP has allocated responsibility between two or more permittees, the SPPP Implementation and Inspection Certification shall apply only to those parts of the SPPP for which the permittee is responsible.) These modifications are consistent with the amendment to N.J.A.C. 7:14A-2.1(c) discussed above, which makes it clear that when a NJPDES permit is issued to more than one person for discharges at a specific site, that permit may identify permit conditions that apply to only one or more of those permittees.

Sometimes, various permittees at a facility perform their activities in different parts of the facility (for example, where two or more industrial tenants lease different parts of a building), or perform different kinds of activities (for example, maintaining a dumpster that receives industrial solid waste, as distinguished from materials handling at an industrial loading dock). Often, these permittees have no direct, practical authority over each other's activities, and the SPPP may include some best management practices that apply only to certain specified activities or parts of the facility. These considerations illustrate why permittees should have the flexibility to prepare SPPPs that allocate specific responsibilities between specific permittees. Part III.B.1.c and Attachment B, Section J allow SPPPs to allocate specific responsibilities between specific permittees, while retaining the advantages of having a single SPPP for the facility (which maintains a facility-wide perspective and helps to prevent conflict between each permittee's pollution prevention measures). By clearly and expressly allocating responsibility in the SPPP, permittees can avoid joint and several liability for permit violations arising from failure to implement the SPPP.

Part III.B.1.d is being added to make it clear that if a facility owner is a permittee, allocations of responsibility made in the SPPP shall not exempt that owner from liability for permit violations that occur after a tenant permittee vacates the leased property, ceases to exist, or is otherwise unable to implement the applicable part of the SPPP. This provision will help to ensure that the SPPP is implemented in these circumstances (for example, if a tenant permittee abandons the property but leaves behind piles of "source material" exposed to the discharged stormwater).

Attachment C is being modified to provide that if two or more permittees for a facility received authorization on different dates, then those permittees are not required to "jointly submit" the Stormwater Pollution Prevention Plan Certification, which is initially due from them at different dates. As discussed above, the modification to Part II.B eliminates the requirement for "joint" submission of the RFA.

However, the Department is modifying Part III.B.3.a.ii to allow the Department to require, on a case-by-case basis, the consolidation of two or more SPPPs prepared for a single facility by different permittees who submitted separate RFAs. When different permittees for the same facility submit separate RFAs rather than a joint RFA, it is quite possible that those permittees will prepare separate SPPPs (especially if considerable time elapses between the separate RFA submissions). For some but not necessarily all of these facilities, the Department would want those SPPPs to be consolidated eventually into a single SPPP for the facility, which could allocate specific responsibilities between specific permittees under Part III.B.1.c and Attachment B, Section J.

Attachment C is also being modified to require the permittee to certify further that if any part of the SPPP requires the consent of the owner or another operating entity, that consent has been obtained. (At some facilities, for example, the owner's consent may be required for structural modifications in SPPPs, such as the loading area enclosures mentioned in the NAIOP letter excerpted above.) The Department's discussions with NAIOP indicated that many facility owners would like Attachment C to require this further certification. The Department believes that this modification to Attachment C will help to ensure that any necessary discussions with facility owners occurs early in the SPPP process, and thereby prevent unexpected obstacles to SPPP implementation.

Part IV.S.2 and Attachments C and D are being modified to provide that the modifications concerning owner/operator and multiple permittee issues shall become effective 30 days after publication of final rulemaking action in the New Jersey Register. (As discussed above and below, other modifications to Attachments C and D concerning discharges that are not from "separate storm sewers" have a later effective date.)

Stormwater Pollution Prevention Plan (SPPP) Deadlines

Part III.B.2.a of the "basic industrial" general permit (NJPDES Permit No. NJ0088315) is being modified to measure the six month and 18 month deadlines for preparing and implementing the SPPP from the date of the Department's authorization letter, rather than from the date the Department received the complete Request for Authorization. In order to provide expeditious authorization to discharge, Part I.D.1.a provides that if the Department issues authorization under that permit, such authorization is deemed effective as of the date the complete Request for Authorization is received by the Department (rather than the date of the Department's subsequent letter of authorization). For existing discharges, Part III.B.2 currently establishes six month and 18

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month deadlines for preparing and implementing the SPPP, with both time periods commencing on the effective date of general permit authorization.

Because of initial Department delays in issuing letters of authorization, much of these time periods elapsed for some permittees before they received such letters. Because it is more fair to the permittees to measure these time periods from the date of these letters, the Department currently states in these letters that it is exercising its enforcement discretion to measure these time periods from the date of these letters. However, the Department seeks to eliminate all concerns about this issue by modifying the permit itself.

Submission of Fees with Annual Recertifications

Part II.C and Part III.D.2 of the "basic industrial" general permit (NJPDES Permit No. NJ0088315) are being modified to delete the requirement that the annual fee of $500.00 be submitted with the annual recertification (Attachment D). The Department has determined that it is more efficient and less costly to assess fees under that permit to all affected permittees at the same time (one billing per billing year), instead of having fees for that permit due in different months of the year (depending on the calendar month when annual recertifications are due). Deletion of the fee language in Part III.D.2 does not eliminate the requirement to pay the annual fee of $500.00 under Part IV.W of that permit and N.J.A.C. 7:14A-1.8(i), which are not affected by this proposal.

Effective Date, Expiration Date, and Authority

Part IV.S.1 of the "basic industrial" general permit (NJPDES Permit No. NJ0088315) and Part V.S.1 of the "construction" general permit (NJPDES Permit No. NJ0088323) are being modified to state expressly that except as provided in Part IV.S.2 and Part V.S.2, respectively, those permits became effective on November 2, 1992 (the "Effective Date" indicated on the first page of those permits). Any opportunity to request an adjudicatory hearing on the Department's 1992 decision to issue those permits has lapsed.

Part IV.S.2 and Part V.S.2 are being added to the "basic industrial" general permit and the "construction" general permit, respectively, to establish the effective date for any modifications to these permits issued in this rulemaking action (unless an adjudicatory hearing and stay are granted for those modifications). For the modifications to the "construction" general permit and some of the modifications to the "basic industrial" general permit, the modifications would become effective 30 days after the effective date of that rulemaking action (the date that the adopted rule is published in the New Jersey Register). As discussed above, however, some of the modifications to the "basic industrial" general permit would have a later effective date.

Because various modifications to Attachments C and D would become effective on two different dates, the "basic industrial" general permit as modified includes two versions of Attachments C and D. The first version contains only those modifications that become effective 30 days after the effective date of this rulemaking action. The second version contains those modifications, plus the modifications that become effective six months after that effective date.

The first page of the "basic industrial" and "construction" general permits are being modified to change the "Expiration Date" from November 1, 1997 to October 31, 1997. This modification is being made to conform with current preferred practice in the Permit Compliance System (a nationwide database management system that supports the NPDES regulations), which is to have permits expire on the last day of the month. This modification should have no adverse effects on dischargers, as the modification reduces the term of these permits by only one day, and as the Department intends to renew these permits before they expire. Also, the "By Authority of" entries on these first pages are being modified to replace the reference to former Commissioner Weiner with a general reference to "Commissioner, Department of Environmental Protection."

Subchapter 10

The Department is proposing to amend several provisions in N.J.A.C. 7:14A-10.3 that pertain to DSW permit applications for stormwater discharges. N.J.A.C. 7:14A-10.3(a)2, 17 and 18 are being amended to apply to nonpoint source as well as point source stormwater discharges associated with industrial activity. These paragraphs cite EPA regulations that on their own terms apply only to point source discharges of industrial stormwater. As discussed above, the Department is proposing to amend the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" to include certain nonpoint source discharges, and to amend N.J.A.C. 7:14A-3.1(a), 3.8 and 10.3(a)22 to require NJPDES/ DSW permits for these nonpoint source discharges of industrial stormwater.

The Department is proposing to amend N.J.A.C. 7:14A-10.3(a)20ii to delete language that imposes duties on owners of facilities with stormwater discharges subject to 40 CFR 122.26. This deletion is consistent with the amendment to N.J.A.C. 7:14A-2.1(b) discussed above, which exempts some but not all facility owners from the requirement of obtaining a NJPDES permit. (As noted in that discussion, a facility owner is exempt from the requirement of obtaining a NJPDES permit only if certain conditions are satisfied. This deletion in N.J.A.C 7:14A-10.3(a)20ii does not create any further exemptions for facility owners in this regard.) For the same reason, N.J.A.C. 7:14A-10.3(a)23 is being amended to eliminate the requirement that the owner of a facility in a group application must seek a DSW permit for the industrial stormwater discharge.

The amendment to N.J.A.C. 7:14A-10.3(a)20ii replaces language about facility owners with language that extends the requirements of N.J.A.C. 7:14A-10.3(a)20 to all permit applications for a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.9. As discussed above, the Department is proposing to amend that definition to include certain stormwater discharges (including nonpoint source discharges) that fall outside the 40 CFR 122.26(b)(14) definition of "storm water discharge associated with industrial activity," and to amend N.J.A.C. 7:14A-3.8 to extend (with certain exceptions) the requirements of 40 CFR 122.26 and 122.21 to those discharges.

Under N.J.A.C. 7:14A-10.3(a)20, permit applications for stormwater discharges "shall include the information required" under applicable provisions of 40 CFR 122.26, 40 CFR 122.21(g), and other applicable provisions of N.J.A.C. 7:14A (with specified qualifications and exceptions). The only stormwater discharges that are subject to 40 CFR 122.26 and 122.21(g) under their own terms are point source discharges that require a permit under 40 CFR 122.26. In order for N.J.A.C. 7:14A-10.3(a)20 to extend the information requirements in 40 CFR 122.26 and 122.21(g) to all permit applications for a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.9 (including a nonpoint source discharge), proposed N.J.A.C. 7:14A-10.3(a)20ii provides that references to a "storm water discharge associated with industrial activity" and equivalent phrases in 40 CFR 122.26 shall be understood to mean a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.9.

(40 CFR 122.26(c) requires that permit applications include quantitative data based on samples collected during storm events. The logistical problems in sampling nonpoint source stormwater discharges are similar to the logistical problems in sampling some point source stormwater discharges that are already subject to 40 CFR 122.26(c). See Section 2.8.3 and Exhibit 2-12 of the EPA NPDES Storm Water Sampling Guidance Document (EPA 833-B-92-001; July 1992), whose discussion of suggested solutions, such as taking samples at artificial collection points such as weirs or ditches, is not necessarily exhaustive.)

In a related action, the Department is proposing to amend N.J.A.C. 7:14A-10.3(a)22 to establish permit application deadlines for industrial stormwater discharges that are not subject to the deadlines in 40 CFR 122.26(e). N.J.A.C. 7:14A-10.3(a)21 provides that with specified exceptions (including N.J.A.C. 7:14A-10.3(a)22), permit applications for discharges of stormwater "shall be submitted by the deadlines specified in 40 CFR 122.26(e)." Both N.J.A.C. 7:14A-10.3(a)21 and (a)22 cite EPA regulations that on their own terms apply only to point source stormwater discharges that require a permit under 40 CFR 122.26.

As discussed above, the Department is proposing to amend the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" to include certain nonpoint source discharges, and to amend N.J.A.C. 7:14A-3.1(a) and 3.8 to require NJPDES/ DSW permits for these nonpoint source discharges of industrial stormwater. These amendments require NJPDES/DSW permits for the first time for nonpoint discharges. A permit application deadline is needed for these nonpoint discharges, and it would not be reasonable to impose retroactively for these nonpoint discharges the April 1, 1993 permit application deadline currently specified in N.J.A.C. 7:14A-10.3(a)22. Therefore, the proposed amendment to N.J.A.C. 7:14A-10.3(a)22 requires the permit application for these nonpoint discharges to be submitted within six months of the effective date of proposed N.J.A.C. 7:14A-3.8(a)1.

Paragraph 2 in the amended N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" allows the Department to classify discharges under that definition at the request

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of the applicant or prospective applicant. None of these discharges have been subject to the deadline in 40 CFR 122.26(e)(1)(i). Again, it would not be reasonable to impose retroactively the April 1, 1993 permit application deadline on such discharges. Therefore, the proposed amendment to N.J.A.C. 7:14A-10.3(a)22 requires the permit application to be submitted within 60 days of written notice of such classification, unless the Department grants permission for a later date. (This deadline, which applies only to stormwater discharges that do not already have a NJPDES permit, establishes the same time limit that 40 CFR 122.26(e)(5) establishes for discharges designated by EPA or the Department under 40 CFR 122.26(a)(1)(v).)

The Department is proposing to add N.J.A.C. 7:14A-10.3(a)20ix to allow a member of an industrial stormwater "group application" to use (subject to Department approval) sampling data accepted by EPA (under 40 CFR 122.26(c)(2)) from other members of that group as sampling data for that member's application for an individual DSW permit. N.J.A.C. 7:14A-10.3(a)23 requires participants in group applications to seek NJPDES/DSW permits for their stormwater discharges. The Department received some comments on the 1992 proposal about the group application process and use of data in group applications. When it adopted N.J.A.C. 7:14A-10.3(a)23, the Department announced that it intended to develop rule changes to ease some of the work and confusion over the group application process, and was considering changes in sampling requirements for group applicants (Comment-Response 79-80, 24 N.J.R. 4100-4101).

After considering the matter, the Department believes that if Part 2 of a group application has been completed to EPA's satisfaction, and if a member of that group applies for an individual DSW permit, N.J.A.C. 7:14A-10.3(a)20ix should authorize the Department (at the Department's discretion) to accept Part 2 sampling data from other members of that group in lieu of sampling data collected at that member's facility. The Department believes that Part 2 group sampling data and the sampling data required under the current NJPDES rules generally have similar technical value for purposes of the permit application process. Moreover, Department acceptance of Part 2 group sampling data would reduce the burden on facilities that, with the Department's encouragement, participated in good faith in EPA's group application process. In letters dated August 25, 1993 and September 10, 1993, the Department informed potential applicants, group applicants, and group organizers that sampling data in group applications would satisfy the requirements for sampling data in individual permit applications of group members.

N.J.A.C. 7:14A-10.3(c)8 is being amended to exempt "stormwater discharges associated with industrial activity" from the permit application requirements in N.J.A.C. 7:14A-10.3(c), including requirements for submission to the Department of an engineer's report and Operations and Maintenance Manual. Currently, N.J.A.C. 7:14A-10.3(c)8 exempts "discharges from separate storm sewers" from those requirements. As discussed above, however, the Department is proposing to amend the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity" to include certain nonpoint source discharges, and to amend N.J.A.C. 7:14A-3.1(a), 3.8 and 10.3(a)22 to require NJPDES/DSW permits for these nonpoint source discharges of industrial stormwater. These nonpoint source discharges may be outside the N.J.A.C. 7:14A-1.9 definition of "separate storm sewers." Also, the second sentence in N.J.A.C. 7:14A-10.3(c)8 is being deleted because N.J.A.C. 7:14A-22.4(b)3v exempts stormwater management facilities from the requirement to obtain a treatment works approval.

Subchapter 14

The Department is proposing to expand the exemption provision for stormwater discharges in N.J.A.C. 7:14A-14.8(c), and to delete N.J.A.C. 7:14A-14.8(d), which excludes certain facilities from that provision. The Department believes that stormwater discharges should generally (but not always) be controlled through requirements for best management practices rather than through numerical effluent limitations. As amended, N.J.A.C. 7:14A-10.3(c) would exempt all DSW permits for stormwater point sources, separate storm sewers, and stormwater discharges associated with industrial activity from subchapter 14 effluent limitations and monitoring requirements. Instead, such DSW permits would stipulate the effluent limitations and monitoring requirements, if any, for oil and grease.

Currently, in the Department's judgment, N.J.A.C. 7:14A-14.8(c) and (d) sometimes require numeric effluent limitations for oil and grease where they are not appropriate. (In particular, the Department no longer believes that such effluent limitations should be required in all individual DSW permits for stormwater discharges from "industrial treatment works," or that all of the petroleum industry and petroleum storage facilities excluded by N.J.A.C. 7:14A-14.8(d) should receive such effluent limitations.) When the Department proposed N.J.A.C. 7:14A-14.8(c) and (d) in 1992, the Department had only begun to reconsider the application of numeric effluent limitations to industrial stormwater discharges that did not obtain the "basic industrial" general permit.

(This amendment does not affect the continued application of subchapter 14 to discharges into storm sewers of domestic wastewater, non contact cooling water, treated effluent associated with remediation projects, or industrial wastewater other than stormwater. These discharges are not exempted from subchapter 14 merely because the discharge occurs through a storm sewer rather than through some other kind of outfall.)

Appendix H

The Department is also proposing to simplify the exemption provision for stormwater in Appendix H, and to provide that Appendix H may be used as a guide in establishing a schedule for monitoring stormwater only if cause is specified in the fact sheet or statement of basis for the draft permit.

Public Notice for Draft Modifications to General Permit No. NJ0088315 and NJ0088323

The Department has determined that there may be a significant degree of public interest in the draft modifications to these NJPDES general permits (No. NJ0088315 and No. NJ0088323) described earlier in the S of this proposal. The Department will hold a public hearing on this rule proposal, including the draft modifications to these two general permits, which are part of this rule proposal. The date, time, and place of this public hearing are stated at the beginning of the notice for this rule proposal. The Department is holding this public hearing to afford the public an opportunity to present to the Department oral and written comments, arguments, data and views on this rule proposal, including the draft modifications to these two general permits. This public hearing is a legislative type hearing which does not include cross-examination.

The public hearing shall be held before a hearing officer designated by the Department. At the beginning of the public hearing, the Department shall present a summary of the factual information on which this rule proposal (including the draft modifications to these two general permits) is based, and shall respond to questions posed by any interested person. At this public hearing, any person may submit oral or written comments, arguments, data, and views concerning this rule proposal (including the draft modifications to these two general permits). The hearing officer may set reasonable limits upon the time allowed for oral comments at the public hearing. The hearing officer shall make recommendations to the Department regarding this rule proposal (including the draft modifications to these two general permits). These recommendations shall be made public, and the Department's response either accepting or rejecting these recommendations shall be summarized and published in the New Jersey Register. A written transcript of the hearing shall be made available to the public.

The draft modifications to these two NJPDES general permits are based on the administrative record which is on file at the offices of the Department of Environmental Protection, Bureau of Stormwater Permitting, located at 401 East State Street, in the City of Trenton, Mercer County, New Jersey. The administrative record is available for inspection, by appointment, between 8:30 A.M. and 4:00 P.M., Monday through Friday. Appointments for inspection may be scheduled by calling (609) 633-7026.

Interested persons may submit written comments, arguments, data and views on this rule proposal, including the draft modifications to these two general permits, to Kimberly A. Hunter, Attention: DEP Docket No. 19-95-04/539, Office of Legal Affairs, Department of Environmental Protection, 401 East State Street, CN 402, Trenton, NJ 08625-0402. The public comment period for the draft modifications to these general permits began on April 12, 1995. All such comments, arguments, data and views shall be submitted by June 14, 1995, which is when the public comment period ends. All persons, including persons who discharge or propose to discharge stormwater, who believe that any condition of these draft modifications is inappropriate or that the Department's tentative decision to issue these draft modifications is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period.

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The Department shall consider fully all written and oral submissions respecting this rule proposal, including the draft modifications to these two general permits, made before the close of the public comment period. After the close of that period, the Department shall issue final decisions. The Department shall respond to all comments respecting this rule proposal and these draft modifications when a final permit decision is issued. The Department shall notify each person who has submitted written comments or requested notice of the final permit decision.

Pursuant to N.J.A.C. 7:14A-7.5(b)2, the only conditions of these two general permits that are reopened in these draft modifications are the conditions to be modified. These conditions are reopened solely for the purpose of considering the specific changes contained in these draft permit modifications. Written or oral statements recommending other, unrelated changes to those conditions will not be considered comments on these draft permit modifications for purposes of N.J.A.C. 7:14A-8 and N.J.S.A. 52:14B-4. (For example, in regard to the draft modifications of Attachment A in these two general permits, only statements directly related to the issue of whether the term "operator" should be changed to "operating entity" will be considered comments on those draft modifications.)

Interested persons may obtain further information about this rule proposal and these draft modifications, including copies of the draft modifications, fact sheets, and other information in the administrative record (including names and addresses of affected permittees and their facilities), from Barry Chalofsky, Manager of the Bureau of Stormwater Permitting, at (609) 633-7026. Written requests for such information may be sent to Barry Chalofsky, Department of Environmental Protection, Bureau of Stormwater Permitting, CN 029, Trenton, NJ 08625. Interested persons should provide their telephone number in their written request or telephone message.

Social Impact

The Department expects a generally positive social impact from the proposed amendments. Most of these amendments will benefit the regulated community, and the amendments also include measures that should result in more effective control of stormwater discharges. Amendments that will benefit the regulated community include:

—Eliminating the general requirement that a person who owns but does not operate a facility must obtain a NJPDES permit even though another person operates that facility.

—Allowing a member of an industrial stormwater group application to use (subject to Department approval) sampling data accepted by EPA from other members of that group as sampling data for that member's application for an individual DSW permit.

—Exempting permittees from the duty to comply with permit limits for industrial stormwater discharges if such permittees can prove that the discharge of pollutants in excess of permit limits was not a result of any conditions present at the permittee's facility.

—Exempting all stormwater discharges from NJPDES rule provisions that set forth effluent limitations and monitoring requirements for oil and grease.

—Making additional stormwater discharges eligible for the "basic industrial" general permit (NJPDES Permit No. NJ0088315).

—Allowing stormwater pollution prevention plans (SPPP) prepared under the "basic industrial" general permit to allocate responsibility for implementing specific parts of the SPPP to specific permittees, so that one permittee at a facility is not liable for permit violations caused by other permittees at that facility.

In addition, the amendment to establish a voluntary Stormwater Specialist program would decrease the number of Department staff that would otherwise be needed to enforce stormwater discharge permits, and is an important part of the Department's effort to promote privatization of appropriate portions of the regulatory process. Moreover, by serving as a link between facilities and the Department, Stormwater Specialists should also assist facilities in achieving compliance (and thereby in avoiding potential penalties assessed under the Water Pollution Control Act).

The water quality objectives of the CWA and the State Act cannot be achieved without control of stormwater discharges, which are a major source of water pollutants. Another significant impact of the amendments will be that residents of New Jersey will enjoy the benefits of cleaner surface water, as a result of reduced pollutant loadings in stormwater from industrial facilities. Amendments that should reduce such pollutant loadings include:

—Requiring NJPDES/DSW permits for "stormwater discharges associated with industrial activity" from nonpoint sources into surface waters, which will improve the control of such discharges.

—Expressly allowing the Department to request persons whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity" to either declare their intent to obtain a DSW permit for such a discharge, or to explain to the Department why they believe that they do not need to obtain such a permit.

—Establishing a voluntary Stormwater Specialist program, which would ensure (for facilities which choose to participate) that SPPPs are reviewed and inspected by persons meeting certain minimum technical qualifications to assess stormwater discharges and appropriate best management practices.

In addition, the water quality objectives of the CWA and the State Act cannot be achieved without control of a wide range of nonpoint sources, including but not limited to industrial stormwater. The amended definition of "non-point source" will establish an improved foundation for such control by making it more clear what constitutes a "non-point source." The amended definition is simply a more detailed version of the current definition, and does not include anything that the Department would not consider to be a "non-point source" under the current definition. Therefore, the change from the current definition to the amended definition should not have any substantial impacts.

Any immediate impacts, including social, economic, and environmental impacts, and impacts on small businesses, of the amended definition of "non-point source" would be limited to industrial stormwater. Under this proposal, the only nonpoint source discharges to surface water that require a NJPDES/DSW permit are "stormwater discharges associated with industrial activity." See the discussion, in the Economic Impact Statement and elsewhere below, of nonpoint source discharges of industrial stormwater. However, it is possible that future amendments to the NJPDES rules may authorize or require NJPDES/DSW permits for other specified categories of nonpoint source discharges to surface waters. In addition, the Department expects to propose to amend other rules to include this amended definition of "non-point source." Any corresponding long-term effects, including social, economic, and environmental impacts, and impacts on small businesses, of this amended definition would depend on what future actions are taken under the Water Pollution Control Act, the Water Quality Planning Act, or other statutes to control nonpoint sources.

One segment of the public directly affected by the amendments will be persons who own (but do not operate) facilities that are operated by other persons. These facility owners will benefit from the amendments because they will no longer have to incur the expense of obtaining and retaining a NJPDES permit or be subject to the liability of being a NJPDES permittee.

Besides those facility owners, the segment of the public most directly affected financially by the amendments will be many (but not all) of those responsible for a "stormwater discharge associated with industrial activity" as defined in the proposed amendments to N.J.A.C. 7:14A-1.9. This segment includes, for example:

—Some of the persons who have or obtain authorization under the "basic industrial" general permit, NJPDES Permit No. NJ0088315. (Over 1,400 facilities have already obtained such authorization, and thousands of additional facilities may obtain such authorization in the future.)

—Some other persons who would like to obtain the "basic industrial" general permit for stormwater discharges that are currently ineligible for that permit.

—Some of the persons who have or obtain an individual NJPDES/DSW permit for a stormwater discharge associated with industrial activity. (Several hundred facilities already have such a permit.)

—All those responsible for a "stormwater discharge associated with industrial activity" that is from a nonpoint source.

The nature of this regulated segment and the financial impacts on that segment are discussed in more detail in the Economic Impact and Regulatory Flexibility Analysis, below. As indicated, the impact of the amendments will vary with the situation of each discharger.

Another segment of the public directly affected financially by the amendments will be those whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity," and who receive a written request from the Department to either declare their intent to obtain a DSW permit for such a discharge, or explain to the Department why they believe that they do not need to obtain such a permit. As discussed in more detail

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in the Economic Impact and Regulatory Flexibility Analysis, below, these persons will incur the cost of complying with the Department's request.

After the persons identified above, the next most affected segment of the public will be those who use surface waters for water supply, recreation, fishing and shellfishing, and other purposes. The amendments will benefit those persons by improving water quality in New Jersey.

Economic Impact

The Department expects positive and negative economic impacts from the proposed amendments, most of which will benefit the regulated community. Set forth below is a discussion of economic impacts expected to be felt by the specific classes of persons that will feel the greatest financial impact from the amendments.

Amendments of General Applicability

Although most of the proposed amendments are limited to the Statewide Stormwater Permitting Program, a few of them apply throughout the NJPDES program. One segment of the public directly affected financially by such amendments will be persons who own (but do not operate) facilities that are operated by other persons. These facility owners will benefit financially from the amendments because under proposed N.J.A.C. 7:14A-2.1(b), they will no longer have to incur the expense of obtaining and retaining a NJPDES permit or be subject to the liability of being a NJPDES permittee.

Another segment of the public directly affected financially by such amendments will be some permittees for facilities that have more than one permittee. Proposed N.J.A.C. 7:14A-2.1(c) makes it clear that when a single NJPDES permit is issued to more than one person, that permit may identify permit conditions that apply to only one or more of those permittees. When the Department issues a permit in this manner, the permittees benefit economically insofar as the permit does not impose liability on each permittee for activities of all the other permittees.

Industrial Stormwater Dischargers

Besides the facility owners and permittees mentioned above, the segment of the public most directly affected financially by the amendments will be many (but not all) of those responsible for a "stormwater discharge associated with industrial activity" as defined in the proposed amendments to N.J.A.C. 7:14A-1.9. The number of New Jersey businesses (including some government establishments) that may need a DSW permit for a "stormwater discharge associated with industrial activity" is very large. For example, the New Jersey Department of Labor has identified approximately 20,000 establishments under Standard Industrial Classification (SIC) codes listed in the 40 CFR 122.26(b)(14) definition of "storm water discharge associated with industrial activity."

Many of these businesses do not need such a permit. (Examples include businesses where all of the stormwater is discharged into a combined sewer or soaks into the ground, or where there are administrative offices but no industrial activities.) However, the Department estimates that several thousand facilities in New Jersey require such a permit (excluding facilities that require such a permit solely for stormwater from construction activity). Over 1,500 facilities have already obtained authorization under the "basic industrial" general permit (NJPDES Permit No. NJ0088315), and several hundred facilities already have an individual DSW permit for a stormwater discharge associated with industrial activity.

As discussed below, the economic impact of the amendments on those responsible for a "stormwater discharge associated with industrial activity" will vary with the situation of each discharger. Following is a discussion of these economic impacts, as related to the principal elements of the proposed amendments.

Group Applications for Industrial Stormwater

Proposed N.J.A.C. 7:14A-10.3(a)20(ix) allows a member of an industrial stormwater group application to use (subject to Department approval) sampling data accepted by EPA from other members of that group as sampling data for that member's application for an individual DSW permit. This amendment will have a positive economic impact on any member who uses such sampling data, because that member will save the expense of collecting and analyzing samples of stormwater from that member's facility. This amendment should benefit many of the over 600 New Jersey facilities that were members of an industrial stormwater group application, and that did not (as of May 1994) obtain authorization under the "basic industrial" general permit.

Stormwater Run-on

The proposed amendment to N.J.A.C. 7:14A-2.5(a)1 exempts permittees from the duty to comply with permit limits for industrial stormwater discharges, if such permittees can prove that the discharge of pollutants in excess of permit limits was not a result of any conditions present at the permittee's facility. This amendment will have a positive economic impact on permittees that provide such proof, because such facilities will not have to pay substantial fines under the Water Pollution Control Act for such discharges. This amendment should benefit mainly facilities whose permits have numerical effluent limitations that may be exceeded due to stormwater that runs onto their facilities from off-site properties.

Oil and Grease in Stormwater Discharges

Proposed amendments to N.J.A.C. 7:14A-14.8 would exempt all stormwater discharges from NJPDES rule provisions that set forth effluent limitations and monitoring requirements for oil and grease. These amendments will have a positive economic impact on some permittees that receive such exemption under these amendments, but that are ineligible under the existing exemption provisions in N.J.A.C. 7:14A-14.8(c) and (d). This amendment should benefit some facilities that have or obtain individual DSW permits for stormwater discharges from "industrial treatment works," and some of the petroleum industry and petroleum storage facilities that are ineligible for exemption under current N.J.A.C. 7:14A-14.8(d). (The positive economic impact will result because some facilities that receive the exemption will save the expense of complying with (or violating) the effluent limitations or performing the monitoring.)

Expanded Eligibility for the "Basic Industrial" and "Construction" General Permits (NJPDES Permit No. NJ0088315 and NJ0088323)

Part I.B.1.b of the "basic industrial" stormwater general permit is being modified to make it possible to "split" a facility, that is, authorize some of a facility's stormwater discharge under the "basic industrial" general permit while authorizing the rest of that facility's stormwater discharge under an individual DSW permit (or another general DSW permit). This modification will have a positive economic impact on facilities that desire and obtain such "splitting," because such facilities will save the expense of submitting individual permit applications (which require collection and chemical analysis of stormwater samples) for stormwater discharges that are suitable for the "basic industrial" general permit. The cost of preparing a request for authorization under that general permit is substantially less than the cost of preparing an individual permit application.

In addition, the Department is modifying Part I.B.1 of the "basic industrial" and "construction" general permits (and amending the N.J.A.C. 7:14A-1.9 definition of "storm water discharge associated with industrial activity") to make eligible for those general permits certain stormwater discharges that require a DSW permit anyway and that the Department considers to be "industrial" in the broad sense of that term, but that fall outside the EPA definition of "storm water discharge associated with industrial activity," and are therefore currently ineligible for those general permits. These rule changes will have a positive economic impact on facilities outside that EPA definition that desire and obtain authorization under those general permits, because such facilities will save the expense of submitting individual permit applications for stormwater discharges that are suitable for those general permits. These rule changes should benefit some facilities with a stormwater discharge that already has a DSW permit or requires a permit under Section 402(p)(2)(E) of the CWA, or where the operating entity requests the "industrial" classification.

Multiple Permittee Issues Under the "Basic Industrial" and "Construction" General Permits

Part II.B of the "basic industrial" and "construction" general permits are being modified to eliminate the requirement that a Request for Authorization (RFA) for those permits must be jointly submitted by all persons who own or operate the facility. These modifications will have a positive economic impact, because they prevent the adverse economic consequences that would occur if some persons who wanted these permits were excluded from these permits (and thus forced to submit more expensive individual permit applications) solely because other persons at the facility refused to submit a joint RFA. (In addition, persons who own (but do not operate) facilities that are operated by other persons will benefit financially from these modifications because they will no longer have to incur the expense of obtaining and retaining these general permits or be subject to the liability of being a NJPDES permittee.)

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Part II.B of the "basic industrial" general permit is being modified to require separate RFAs for separate facilities, and to establish that no two buildings shall be considered to be within a single facility unless those buildings are to have the same permittee(s) for their stormwater discharges, and are on the same or adjacent properties. This modification will have both positive and negative economic impacts on affected permittees. The principal negative economic impact is that because each separate "facility" is charged an annual $500.00 permit fee, a larger number of "facilities" that have fewer permittees and buildings per facility results in more total permit fees than would be paid by a smaller number of "facilities" with more permittees and buildings per facility. In addition, for some permittees there may be some higher paperwork costs in preparing the RFA and SPPP for each facility when such permittees have a larger number of "facilities."

However, this modification also has a positive economic impact because it prevents economic problems that would arise if a single "facility" were to contain two or more buildings with different permittees in different buildings. The permittees would either have to be liable for each other's activities or establish formal allocations of responsibility in the SPPP. Such joint liability or formal allocation of responsibility is sometimes necessary, but it incurs economic risks or costs (for example, the cost of preparing a more complex SPPP that allocates responsibility), and can often be avoided where different "facilities" are distinguished.

As discussed in the Summary above, various modifications to the "basic industrial" general permit (including the addition of Parts III.B.1.c and Attachment B, section J) are being made to make it clear that the SPPP may allocate specific responsibilities between specific permittees. These modifications should have a positive economic impact on permittees that prepare such SPPPs, because by clearly and expressly allocating responsibility in the SPPP, permittees can avoid joint and several liability for permit violations arising from failure to implement the SPPP.

Nonpoint Source Discharges of Industrial Stormwater

Various proposed amendments require NJPDES/DSW permits for "stormwater discharges associated with industrial activity" from nonpoint sources into surface waters. These amendments include proposed N.J.A.C. 7:14A-3.1(a), 3.8(a), 10.3(a)22, the amended N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity," the modified "basic industrial" general permit (for example, modifications to Parts I.B.1, III.B.1.b, and Attachments B, C, and D), and modification of Part I.B.1 of the "construction" general permit.

This requirement will, in varying degrees, have a negative economic impact on some persons responsible for a "stormwater discharge associated with industrial activity" that is from a nonpoint source, and will result in negative economic impacts on some other members of the public that have economic relations with those persons. (Such impacts may generally include lower profits to stockholders or other facility owners; lower wages, salaries, and capital investment in those facilities; higher prices for facility products or services; and, at some facilities, unemployment, lost tax revenue, or other economic problems caused by decisions to fire or not hire employees, relocate business out of New Jersey, or go out of business.). These negative economic impacts arise because such persons must, for the first time, incur costs to obtain a NJPDES/DSW permit for such nonpoint source discharges. These costs include the costs of preparing individual permit applications or RFAs for general permits, the costs of preparing and implementing the SPPP and complying with other permit conditions (which for some facilities, may include monitoring requirements or numeric effluent limitations), the costs of NJPDES permit fees, and the risk of penalties or fines if the permit is violated. (As discussed in the Summary above, EPA and the Department have embraced the broadest possible interpretation of the term "point source." This broad interpretation tends to reduce the number of industrial stormwater discharges that would be considered nonpoint source rather than point source discharges.)

The Department believes that at many facilities, some or all of these costs (including costs discussed in the following paragraphs) will be minimized or eliminated for one or more of the following reasons:

—The facility can, at minimal or moderate expense, obtain the "basic industrial" or "construction" general permit for some or all of its nonpoint source discharges. (The expense of obtaining the "construction" general permit is generally minimal unless the permittee is penalized or fined for permit violations. The expense of obtaining the "basic industrial" general permit is minimal or moderate at some facilities and more substantial at others, and depends mainly on whether major physical modifications to the particular facility would be required to comply with that permit.)

—The facility is already required to control some or all of its nonpoint source stormwater discharges anyway, in order to comply with the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.), the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), or other legal requirements, or is already controlling such discharges on its own initiative.

—The facility also has point source discharges of industrial stormwater that require a DSW permit. Due to economies of scale (for example, in preparing a single permit application (or RFA) and a single SPPP that addresses both point and nonpoint source discharges), the cost of obtaining a DSW permit for nonpoint source discharges would be less if the facility requires a DSW permit anyway for point source discharges of industrial stormwater. (As another example, if the facility is already paying the $500.00 annual fee for the "basic industrial" general permit or the $200.00 fee for the "construction" general permit, the modification of those permits to control nonpoint sources does not increase the fee paid by that facility.)

—The facility obtains a DSW permit under the current NJPDES rules for industrial stormwater, and acts as if that permit already regulates nonpoint source discharges. This may occur because that facility is unaware of the point source/ nonpoint source distinction or unsure how that distinction applies to that facility, or finds it simpler not to make that distinction.

Costs of obtaining the "basic industrial" and "construction" general permits (including costs of preparing RFAs, preparing and implementing SPPPs, and permit fees) were discussed under Economic Impact in the 1992 proposal at 24 N.J.R. 2361-2362. (As discussed below, however, whereas the "basic industrial" general permit proposed in 1992 required use of a New Jersey Licensed Professional Engineer, the Department is now proposing a voluntary Stormwater Specialist program.)

If the facility submits an individual permit application rather than an RFA for those general permits, the cost of preparing the individual permit application (including sampling data) will be substantially greater than the cost of preparing the RFA. Fees for individual stormwater DSW permits are currently $500.00 per year (the N.J.A.C. 7:14A-1.8(h) minimum fee for DSW permits); however, the Department is reexamining the appropriateness of this fee and may revise it in the future.

The cost of preparing and implementing SPPPs required by individual permits (or additional general permits to be issued in the future) is variable and will depend on a number of factors, including: the size of the facility; the existing industrial materials and machinery, if any, that are exposed to stormwater discharged from nonpoint sources to surface waters; the nature of the plant operations and plant designs and the housekeeping measures employed; and the amount of information the facility already has about its stormwater drainage system. The Department believes that at one end of the spectrum, some industrial facilities will require only simple, inexpensive best management practices for nonpoint source control to comply with the individual permit (or future additional general permit). Some of these same facilities will have a well-understood stormwater drainage system that requires no extensive investigation for unpermitted discharges of domestic wastewater, noncontact cooling water, or process waste water. For these facilities, the SPPP will be a short, simple document to prepare and implement.

The Department also believes that at the other end of the spectrum, some industrial facilities will require major physical modifications for nonpoint source control, requiring substantial financial expenditures to prepare and implement the SPPP required by the individual permit (or future additional general permit). At some facilities, measures that would contribute towards complying with that permit would be taken anyway in order to comply with requirements under the Spill Compensation and Control Act or other legal requirements.

In Table 9 of the fact sheet for its own 1993 draft general permits, EPA provided a "Summary of Estimated Ranges of Costs for Compliance With Storm Water Pollution Prevention Plans With Baseline Requirements" (58 FR 61174). Because the Department's individual permits (and future additional general permits) will probably differ in some respects from the EPA draft general permits, Table 9 is not directly applicable to those Department permits. The Department and EPA permits will probably share some common features, however, and Table 9 may provide a rough indication of the cost of preparing and implementing an SPPP under those Department permits. For "first year costs" (1992 dollars), these costs ranged from about $1,600 for "low costs" facilities (expected by EPA to be applicable to the majority of smaller

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facilities) to about $120,000 for "high costs" facilities. For "annual costs," these costs ranged from about $600.00 for "low costs" facilities to about $18,000 for "high costs" facilities.

EPA's "low costs" estimate of about $1,600 in "first year costs" and $600.00 "annual costs" to prepare and implement an SPPP may be appropriate for most New Jersey facilities that would require only simple, inexpensive best management practices for nonpoint source control to comply with the Department's individual permit (or future additional general permit). At a small number of industrial facilities where very large physical modifications for nonpoint source control would be needed to comply with the Department's permit, EPA's "high costs" estimate of about $120,000 in "first year costs" and about $18,000 for "high costs" facilities is more appropriate. The SPPP requirements (and monitoring requirements or numeric effluent limitations, if any) in these Department permits are established through the NJPDES permit process.

Under the CWA, nonpoint source discharges, which are outside the scope of the Section 402 permit program, should still be controlled under Sections 319 and 208. If the Department does not require NJPDES/DSW permits for nonpoint source discharges of industrial stormwater, the Department should still arrange for their control under the Section 319 nonpoint source management program, and such control would have its own negative economic impacts on persons responsible for such discharges.

Industrial Stormwater Information Requests

Proposed N.J.A.C. 7:14A-3.8(a)2 through 5 expressly allow the Department to request persons whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity" to either declare their intent to obtain a DSW permit for such a discharge, or provide written information to the Department explaining why, in that person's judgment, they do not need to obtain such a permit. To the extent that the Department may already make such requests under the authority of N.J.S.A. 58:10A-10.3 without amending the NJPDES rules, proposed N.J.A.C. 7:14A-3.8(a)2 through 5 imposes no new costs on such persons, because such persons would have to respond to such requests even without the proposed amendment.

The number of New Jersey businesses (including some government establishments) whom the Department has reason to believe may own or operate such a facility is very large. For example, the New Jersey Department of Labor (NJDOL) has identified approximately 20,000 establishments under Standard Industrial Classification (SIC) codes listed in the 40 CFR 122.26(b)(14) definition of "storm water discharge associated with industrial activity.") Since November 1992, however, the Department has mailed information about the Statewide Stormwater Permitting Program to approximately 11,000 of these businesses. Most of these businesses responded by seeking a DSW permit or submitting a simple, one page Nonapplicability Form similar to a form that the Department expects to mail under N.J.A.C. 7:14A-3.8(a)2 through 5. The Department does not expect to mail requests under N.J.A.C. 7:14A-3.8(a)2 through 5 to many facilities that already responded to these Department mailings.

The Department expects that most businesses that would receive requests under N.J.A.C. 7:14A-3.8(a)2 through 5 are the approximately 10,000 establishments identified by NJDOL under so-called "light industry" SIC codes listed at 40 CFR 122.26(b)(14)(xi). Nearly 70 percent of these establishments have the following SIC codes: SIC 27 (printing and publishing), SIC 35 (industrial machinery and equipment), SIC 23 (apparel and similar finished products made from fabrics and similar materials), SIC 34 other than SIC 3441 (fabricated metal products other than fabricated structural metal), SIC 30 (rubber and miscellaneous plastic products), and SIC 36 (electronic and other electric equipment). The Department has sent one mailing to establishments with SIC codes 35, 34 (other than 3441), 283 (drugs), and 285 (paints and allied products).

In order to respond to requests made under N.J.A.C. 7:14A-3.8(a)2 through 5, the primary activity that businesses must perform is to decide to obtain a DSW permit, or to develop some reasonable explanation as to why they do not need to obtain such a permit. To avoid violating Federal and State requirements for stormwater permits, many thousands of New Jersey businesses should have already performed this activity, regardless of whether such businesses receive any requests from the Department. To a large extent, therefore, much of the cost that N.J.A.C. 7:14A-3.8(a)2 through 5 may appear to impose on business is not a new cost. (Once the business has decided to obtain a DSW permit or has developed a reasonable explanation as to why it does not need to obtain such a permit, the remaining work required to respond to the Department, such as filling out a Nonapplicability Form where appropriate, is minimal.)

The direct costs of responding to requests made under N.J.A.C. 7:14A-3.8(a)2 through 5 will consist mainly of the value of the labor that persons responding to such requests would have performed if such persons were not responding to such requests. (Some businesses might hire outside consultants to assist them in responding to such requests, and the fees charged by such outside consultants would also be a direct cost.) The hours of work required to respond to such requests will vary depending on the physical and other circumstances at each business, and at most businesses should not exceed one or two hours. (The submission to date of several thousand Nonapplicability Forms indicates that the submission of these forms is, in general, not particularly difficult.) For some businesses where a position that no DSW permit is required could not be supported without expensive engineering, legal, or other analysis, the business might find it less costly to obtain the DSW permit.

The value per hour of the unperformed labor will vary depending on the economic circumstances at each business, but may average around $35.00 per hour (see the EPA cost estimates for industrial facilities at 55 FR 48061 including, for example, the EPA estimate that "the average preparation cost of an individual industrial permit application would be $1,007 (28.6 hours)"). If most businesses require one or two hours to respond to requests made under N.J.A.C. 7:14A-3.8(a)2 through 5, the value of the unperformed labor for most businesses may range from $35.00 to $70.00.

In addition to these direct costs, another negative economic impact of N.J.A.C. 7:14A-3.8(a)2 through 5 on affected businesses which do not comply with the rules is the risk of assessment of penalties under the Water Pollution Control Act. Any person who fails to respond to a request made under N.J.A.C. 7:14A-3.8(a)2 through 5, or who purposely, knowingly, recklessly, or negligently makes a false statement, representation, or certification in response to such a request, would be in violation of that Act. Also, a main purpose of N.J.A.C. 7:14A-3.8(a)2 through 5 is to increase and expedite compliance with Federal and State stormwater permit requirements. The Department expects that as a result of N.J.A.C. 7:14A-3.8(a)2 through 5, some affected businesses will obtain DSW permits for stormwater discharges sooner than otherwise would be the case. Because a facility incurs costs each year that facility has such a permit (examples include costs for permit fees and annual inspections by permittees), this would result in increased permit-related costs to some of these businesses. Conversely, however, obtaining the DSW permit earlier may also reduce the penalties that such businesses could be charged under the Water Pollution Control Act for discharging industrial stormwater without a DSW permit.

Stormwater Specialists

The establishment in proposed N.J.A.C. 7:14A-3.8(b) of a voluntary Stormwater Specialist program will directly affect persons who have or obtain a DSW permit for a "stormwater discharge associated with industrial activity," and who choose to use a Stormwater Specialist. This program should have both positive and negative economic impact on such persons. However, because the use of a Stormwater Specialist is at the discretion of the permittee, it is unlikely that this program will have a net negative impact on such persons.

Except as noted below, the cost to a facility of obtaining a Stormwater Specialist is a direct, negative economic impact on that facility. The Department has minimized the costs of obtaining a Stormwater Specialist by allowing experienced facility personnel to be registered as Class II Stormwater Specialists (so that many facilities will not have to hire outside consultants as Class I Stormwater Specialists), and by allowing appropriately qualified individuals besides New Jersey Licensed Professional Engineers to be registered as Class I Stormwater Specialists (which promotes a more competitive market). In addition, the absence of separate "Stormwater Specialist's Certifications" in the "basic industrial" general permit lessens the burden on Stormwater Specialists (and, therefore, the compensation they may demand for work under that permit).

For facilities that choose to have an experienced facility employee registered as a Class II Stormwater Specialist, the costs of obtaining a Stormwater Specialist will consist mainly of the tuition charged by the educational institution for the Stormwater Permitting Training Course and the Stormwater Permitting Continuing Education Course, and the value of the labor that employee would have performed if that employee

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was not taking those courses. The Department estimates that educational institutions will charge approximately $350.00 tuition for each course.

The value of the unperformed labor will vary depending on the economic circumstances at each facility, but may average around $35.00 per hour (see the discussion above of the Industrial Stormwater Information Requests requirement). If each course is a two-day course that requires around 14 hours of employee time (including travel time), the value of the unperformed labor may average around $490.00. The total cost of each course may thus average around $840 ($350.00 tuition plus $490.00 value of unperformed labor). Because only one course is taken in each two year period, the estimated annualized average cost is half that amount, or $420.00 per year. (This cost would be reduced if some of these courses are one-day courses rather than two-day courses.)

For facilities that hire an outside consultant as a Class I Stormwater Specialist, the costs to the facility will consist mainly of the fees charged by the Class I Stormwater Specialist (and other costs incurred by the facility to hire and work with that Stormwater Specialist), but only to the extent that those fees and costs exceed whatever fees and costs (if any) the facility would have paid to hire and work with an outside consultant even in the absence of the voluntary Stormwater Specialist program. (The Department believes that many of the facilities that would hire an outside consultant as a Class I Stormwater Specialist would hire an outside consultant to assist them with SPPP preparation and implementation, even in the absence of the Stormwater Specialist program.)

The Department received a comment on the 1992 draft of the "basic industrial" general permit that the cost of employing a New Jersey Licensed Professional Engineer to prepare documents and to certify, sign, and seal a SPPP has been roughly but conservatively estimated as $5,000 to $7,000 (most probably more), and that it would also be costly to employ such a Professional Engineer to conduct an annual inspection and prepare and certify the inspection report (Comment 51; 24 N.J.R. 4095). Because appropriately qualified individuals besides New Jersey Licensed Professional Engineers can be registered as Class I Stormwater Specialists, and because the absence of separate "Stormwater Specialist's Certifications" in the "basic industrial" general permit lessens the burden (including liability insurance costs) on the Stormwater Specialist, the fees charged by Class I Stormwater Specialists should be less than the fees that would have been charged by New Jersey Licensed Professional Engineers under the 1992 proposal. However, the sum of the fees charged by Class I Stormwater Specialists to assist in SPPP preparation and implementation over a five-year period may in some cases still exceed $5,000, particularly where the facility is complex. (As indicated above, the Department believes that many of the affected facilities would pay substantial fees to outside consultants even in the absence of the voluntary Stormwater Specialist program.)

The Stormwater Specialist program should also have positive economic impacts on facilities with stormwater discharge permits. First, the use of Stormwater Specialists would decrease the number of Department staff that would otherwise be needed to enforce stormwater discharge permits, which would help to hold down the fees charged by the Department for those permits. If, in the absence of the Stormwater Specialist program, Department staff were to inspect each facility once per year, the estimated average annual cost to the Department per facility would be $595.00 per year, and much or all of this cost could be passed along to the facility in the form of higher permit fees. (This $595.00 value is based on an estimated 17 hours of work by Department inspection staff and associated data management, clerical, and supervisory staff, and a personnel cost of approximately $35.00 per hour, which includes salary, fringe benefits, and indirect costs.)

Also, by serving as a link between facilities and the Department, Stormwater Specialists should assist facilities in achieving compliance (and thereby in avoiding potential penalties assessed under the Water Pollution Control Act), and in meeting environmental goals. Stormwater Specialists should also help to prevent unnecessary expenditures arising from misunderstandings about permit requirements. In addition, the Department believes that the Stormwater Permitting Training Course and the Stormwater Permitting Continuing Education Course will disseminate information about innovative stormwater management techniques that could reduce the cost of complying with stormwater discharge permits at some facilities.

Environmental Impact

The Department expects a generally positive environmental impact from the proposed amendments, several of which should result in reduced pollutant loadings in stormwater discharged from industrial facilities to surface waters.

By requiring NJPDES/DSW permits for "stormwater discharges associated with industrial activity" from nonpoint sources into surface waters, the amendments will improve the control of such discharges, and provide for their control under Section 319 of the CWA. With a NJPDES/DSW permit program already in place for much industrial stormwater, it makes sense to regulate point and nonpoint sources of industrial stormwater in a unified and consistent manner under that permit program, rather than to require NJPDES permits for "point sources" and establish some other, separate control program for "nonpoint sources."

The amendments also expressly allow the Department to request persons whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity" to either declare their intent to obtain a NJPDES/DSW permit for such a discharge, or to explain to the Department why they believe that they do not need to obtain such a permit. This amendment should increase and expedite compliance with Federal and State stormwater permit requirements for several reasons. First, by requiring businesses to provide this declaration or explanation, the amendments will encourage some businesses to take these stormwater permit requirements more seriously. It would take many years for the Department to inspect all of businesses that may need such a DSW permit. If stormwater permit requirements are going to be effectively enforced, then the Department needs basic information from these businesses. In addition, the Department can directly contact businesses that submit obviously invalid explanations, and correct misconceptions about these permit requirements. Also, an explanation from a business identifies one or more key issues to examine when the Department later evaluates that business.

By establishing a voluntary Stormwater Specialist program, the amendments ensure that for facilities which choose to participate, stormwater pollution prevention plans (SPPPs) are reviewed and inspected by persons meeting certain minimum technical qualifications to assess stormwater discharges and appropriate best management practices. The Stormwater Specialist program should improve the quality of some SPPPs and related self-inspections, which are central elements of the Department's Statewide Stormwater Permitting Program. As noted in the Summary above, the Department is relying to a large extent on SPPPs and related self-inspections rather than numerical effluent limitations to control industrial stormwater discharges.

The amendments include several provisions that will benefit the regulated community. The Department believes that these provisions will generally have no significant negative environmental impact. One of these provisions, for example, eliminates the general requirement that a person who owns but does not operate a facility must obtain a NJPDES permit even though another person operates that facility. The Department believes that the owner's long term responsibility for the facility is adequately addressed by the requirement that the owner obtain a permit if the facility is no longer operated by another person. Another amendment allows a member of an industrial stormwater group application to use (subject to Department approval) sampling data accepted by EPA from other members of that group as sampling data for that member's application for an individual DSW permit. The Department believes that the group sampling data and the sampling data required under the current NJPDES rules generally have similar technical value for purposes of the permit application process.

Another of these provisions exempts permittees from the duty to comply with permit limits for industrial stormwater discharges if such permittees can prove that the discharge of pollutants in excess of permit limits was not a result of any conditions present at the permittee's facility. Although permittees could comply with permit limits by segregating stormwater that runs onto their facilities from off-site properties, such segregation would usually result in no additional water pollution control (because the segregated stormwater would still be discharged). Other amendments exempt all stormwater discharge permits from NJPDES rule provisions that set forth effluent limitations and monitoring requirements for oil and grease. Where appropriate, however, effluent limitations or monitoring requirements for oil and grease can be included in the stormwater discharge permit.

Some of these provisions make additional stormwater discharges eligible for the "basic industrial" general permit (NJPDES Permit No. NJ0088315). Because that general permit provides effective control of stormwater discharges (as explained in the 1992 proposal), making additional discharges eligible for that permit should generally have no significant negative environmental impact. Other provisions allow the SPPP prepared under that permit to allocate responsibility for im-

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plementing specific parts of the SPPP to specific permittees, so that one permittee at a facility is not liable for permit violations caused by other permittees at that facility. It would generally be difficult in practice for a permittee to prevent or correct permit violations that are caused, not by that permittee, but by other permittees at the facility.

Executive Order No. 27 Statement

Executive Order No. 27(1994) requires administrative agencies which adopt, readopt, or amend any rule or regulation to which that Order applies to provide a comparison with Federal law, and to provide further discussion and analysis (including a cost-benefit analysis) if the standards or requirements imposed by the agency exceed standards or requirements imposed by Federal law.

These amendments to the NJPDES rules are proposed under the authority of, among other statutes, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., which refers to the Federal Clean Water Act (CWA), 33 U.S.C. '1251 et seq. Among other things, the CWA established the National Pollutant Discharge Elimination System (NPDES). In 1981, the United States Environmental Protection Agency (EPA) delegated the responsibility for implementing the NPDES in New Jersey to the State. The Water Pollution Control Act authorized the Department to accept this delegation. See, particularly, N.J.S.A. 58:10A-2 through 6. In addition, section 319 of the CWA authorized a Federal grant-in-aid program to encourage states to control nonpoint sources. Section 319 does not authorize EPA to control nonpoint sources.

Some of these proposed amendments to the NJPDES rules contain requirements for which there are analogous requirements imposed by Federal law. Most of these analogous Federal requirements are imposed by EPA regulations for the NPDES at 40 CFR 122. Wherever analogous Federal requirements exist, the Department has compared the proposed amendments with those requirements (as outlined below for principal elements of the proposed amendments).

Owner/Operator and Multiple Permittee Issues

For the proposed amendment to N.J.A.C. 7:14A-2.1(b) concerning who has a duty to obtain a NJPDES permit, there are, for many NJPDES permits, analogous Federal requirements imposed by EPA at 40 CFR 122.21(b), 144.31(b), and 270.10(b). This proposed amendment does not exceed those EPA requirements. Nor does the proposed definition of "operating entity" or "operator" in N.J.A.C. 7:14A-1.9 exceed EPA's interpretations of the often applicable EPA definitions of "operator." In addition, for the draft modifications to the "basic industrial" and "construction" general permits (NJPDES Permit No. NJ0088315 and NJPDES Permit No. NJ0088323) that pertain to owner/operator and multiple permittee issues, there are (for many of the affected facilities) relevant Federal requirements imposed by EPA in various provisions of 40 CFR 122 (including 40 CFR 122.21(b), 122.26(a)(6), 122.28(b)(2), 122.41(a), 122.43(a), and 122.44(i)(4) and (k)). These draft modifications do not exceed the permit conditions that can be established under those EPA requirements.

"Splitting" of Facilities Between General and Individual Stormwater Permits

Part I.B.1.b and Part I.B.1.a of the "basic industrial" general permit are being modified to make it possible to "split" a facility, that is, authorize some of a facility's stormwater discharge under the "basic industrial" general permit while authorizing the rest of that facility's stormwater discharge under an individual DSW permit or another general DSW permit. This modification establishes that a stormwater discharge authorized under another DSW permit cannot concurrently be authorized under the "basic industrial" general permit. (Currently, in contrast, **all** stormwater discharges at a facility are ineligible for the "basic industrial" general permit so long as at least **one** such discharge is authorized under another DSW permit.) For most of the affected facilities, there are relevant Federal requirements imposed at 40 CFR 122.28(a)(1) and (b)(3)(v). This draft modification does not exceed the permit conditions that can be established under those EPA requirements.

Group Applications for Industrial Stormwater

Proposed N.J.A.C. 7:14A-10.3(a)20ix allows a member of an industrial stormwater group application to use (subject to Department approval) sampling data accepted by EPA from other members of that group as sampling data for that member's application for an individual DSW permit. For proposed N.J.A.C. 7:14A-10.3(a)20ix, there are relevant Federal requirements imposed by EPA at 40 CFR 122.26(c), which allows certain facilities to submit group applications to EPA. Proposed N.J.A.C. 7:14A-10.3(a)20ix does not exceed 40 CFR 122.26(c). As EPA discussion of 40 CFR 122.26(c) makes clear (55 FR 48021-48029), EPA and states with authorized NPDES programs can require members of group applications to submit individual permit applications.

As discussed below, other of these proposed amendments to the NJPDES rules contain requirements for which there are no analogous standards or requirements imposed by Federal law. Since the CWA and other Federal law do not impose any standards or requirements regarding the subject matter of these other proposed amendments, these other amendments do not exceed any standards or requirements imposed by Federal law.

Definition of "Non-point Source";
Nonpoint Source Discharges of Industrial Stormwater

The definition of "non-point source" in N.J.A.C. 7:14A-1.9 is being amended to establish a more detailed definition that expressly includes any source (other than a "point source") that may discharge "pollutants," as well as certain activities, factors, and conditions not limited to the discharge of "pollutants." In addition, the Department is proposing various amendments to require NJPDES/DSW permits for "stormwater discharges associated with industrial activity" from nonpoint sources into surface waters. These amendments include proposed N.J.A.C. 7:14A-3.8(a)1, proposed paragraph 1 in the N.J.A.C. 7:14A-1.9 definition of "stormwater discharge associated with industrial activity," proposed amendments to N.J.A.C. 7:14A-3.1(a) and 10.3(a)22, and some of the draft modifications to the "basic industrial" and "construction" general permits.

In regard to Federal statutes and guidance concerning nonpoint source control, Sections 319 and 208 of the CWA nominally require the states to take certain actions to control nonpoint sources. In addition, under section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), P.L. 101-508, EPA has published "Guidance Specifying Management Measures For Sources of Nonpoint Pollution In Coastal Waters" (CZARA 6217(g) Guidance). CZARA 6217(g) Guidance includes a definition of "nonpoint source" and specifies management measures for certain major categories of nonpoint sources.

Even though sections 319 and 208 of the CWA are part of Federal law, and even though EPA has published CZARA 6217(g) Guidance under Federal law, sections 319 and 208 of the CWA and CZARA 6217(g) Guidance do not impose Federal standards or requirements for nonpoint source control. This is because under Federal law, sections 319 and 208 of the CWA and section 6217(g) of CZARA are voluntary programs in which states may participate if they so desire. Any state may lawfully refuse to control nonpoint sources under sections 319 and 208 of the CWA. Any coastal state may lawfully refuse to implement CZARA 6217(g) Guidance, by lawfully refusing to have a management program under the Coastal Zone Management Act of 1972 (16 U.S.C. '1451 et seq.). Also, regardless of state action or inaction, EPA has no statutory authority to enforce sections 319 and 208 of the CWA or CZARA 6217(g) Guidance against private or public parties who own or operate nonpoint sources. In short, sections 319 and 208 of the CWA and CZARA 6217(g) Guidance do not constitute Federal regulation of nonpoint sources, and do not impose standards or requirements for nonpoint source control.

The NJPDES rules define the term "non-point source" for three reasons. First, the definition helps to identify certain discharges that do not require a NJPDES permit (see N.J.A.C. 7:14A-3.1(b) and 6.14, which expressly exempt certain "nonpoint source discharges"). Second, the definition of "non-point source" helps, for general information purposes, to explain a term that has been important in water pollution control since 1972. Third, the definition helps to identify certain industrial stormwater discharges that would require a NJPDES permit under the proposed amendments. As discussed in the Summary above, the amended definition of "non-point source" is simply a more detailed version of the current definition, and does not include anything that the Department would not consider to be a "non-point source" under the current definition. However, the amended definition answers some questions that might arise about how the Department would interpret the current definition.

As also discussed in the Summary, the permit program created by Section 402 of the CWA regulates discharges from "point sources," but does not regulate discharges from nonpoint sources. Although EPA stated that it "intends to embrace the broadest possible definition of point source consistent with the legislative intent of the CWA and court interpretations," it may still sometimes be unclear in practice whether at a particular industrial location there is a discharge of industrial

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stormwater from a "point source." This has led to uncertainty about whether some industrial facilities require NJPDES permits for discharges of stormwater to surface waters. The proposed amendments eliminate this uncertainty by expressly requiring NJPDES/DSW permits for nonpoint source discharges of industrial stormwater. Industrial stormwater needs to be regulated regardless of whether it is discharged from point or nonpoint sources. With a NJPDES/ DSW permit program already in place for industrial stormwater, it makes sense to regulate point and nonpoint sources of industrial stormwater in a unified and consistent manner under that permit program.

Industrial Stormwater Information Requests

Proposed N.J.A.C. 7:14A-3.8(a)2 through 5 expressly allow the Department to request persons whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity" (as defined in N.J.A.C. 7:14A-1.9) to either declare their intent to obtain a DSW permit for such a discharge, or provide written information to the Department explaining why, in that person's judgment, they do not need to obtain such a permit. The Department may require such information to be provided on a Department form, which could be similar to the Department's current simple, one-page "Nonapplicability Form" for industrial stormwater. Federal law, including the EPA regulation for stormwater discharges at 40 CFR 122.26, imposes no standards or requirements that are analogous to the requirements in proposed N.J.A.C. 7:14A-3.8(a)2 through 5.

The Federal law closest in subject matter to proposed N.J.A.C. 7:14A-3.8(a)2 through 5 is section 308(a)(4)(A) of the CWA, which, in certain circumstances, directs EPA to "require the owner or operator of any point source" to, among other things, provide information required by EPA. In key respects, however, the subject matter of proposed N.J.A.C. 7:14A-3.8(a)2 through 5 and section 308(a)(4)(A) of the CWA are different. Section 308(a)(4)(A) is limited to provision of information (and other actions) by "the owner or operator of any point source" that may discharge pollutants to "waters of the United States." (See the definitions of "point source," "discharge of a pollutant" and "navigable waters" in section 502 of the CWA.) In contrast, a person need not own or operate a "point source" that may discharge pollutants to "waters of the United States" in order to be subject to proposed N.J.A.C. 7:14A-3.8(a)2 through 5.

In N.J.S.A. 58:10A-10.3, which provides some of the authority for proposed N.J.A.C. 7:14A-3.8(a)2 through 5, the term "discharge" includes nonpoint source discharges as well as point source discharges, and includes discharges to bodies of ground water that are "waters of the State" but not "waters of the United States" (see the definitions of "discharge" and "waters of the State" in N.J.S.A. 58:10A-3). In addition, N.J.S.A. 58:10A-10.3 is not limited to the "owner or operator" of a pollutant source. These major differences between N.J.S.A. 58:10A-10.3 and section 308(a)(4)(A) of the CWA further demonstrate that the subject matter of proposed N.J.A.C. 7:14A-3.8(a)2 through 5 and section 308(a)(4)(A) of the CWA are substantially different.

Moreover, section 308(a)(4)(A) of the CWA does not, by itself, impose any standard or requirement that can be compared with proposed N.J.A.C. 7:14A-3.8(a)2 through 5, or with any other Department rule. Rather, section 308(a)(4)(A) of the CWA directs EPA to develop and impose specific requirements applicable to specific circumstances. It is not until EPA develops and imposes such specific requirements (for example, in regulations specifying the contents of NPDES permit applications) that a comparison can be made with Department rules pertaining to those specific circumstances. EPA has not, under section 308(a)(4)(A), developed and imposed any specific requirements analogous to proposed N.J.A.C. 7:14A-3.8(a)2 through 5.

As discussed in the Summary above, a main purpose of this proposed amendment is to increase and expedite compliance with Federal and State stormwater permit requirements. These requirements (including the definition of "stormwater discharge associated with industrial activity") are complex and unfamiliar to thousands of businesses that potentially require a NJPDES/DSW permit for industrial stormwater discharges. Experience with the current "Nonapplicability Form" has proven that by having such businesses explain to the Department why they do not think they need such a permit, the Department can directly contact businesses that submit obviously invalid explanations, and correct misconceptions about these permit requirements. Explanations given by businesses are also useful in planning Department activities to enforce these permit requirements, because such explanations identify one or more key issues for the Department to examine when the Department later evaluates the specific business.

The Department is also proposing this amendment to obtain basic information about the fate of industrial stormwater in New Jersey (for example, approximately how many industrial properties are discharging stormwater into surface water, ground water, or municipal treatment works). This information is useful as the Department formulates additional or revised policies for management of industrial stormwater.

Stormwater Specialists

Proposed N.J.A.C. 7:14A-3.8(b) establishes a voluntary program for registration of individuals as "Stormwater Specialists" who may assist permittees in the preparation and implementation of stormwater pollution prevention plans required by DSW permits for stormwater discharges associated with industrial activity. Because the use of a Stormwater Specialist is at the discretion of the permittee, proposed N.J.A.C. 7:14A-3.8(b) imposes no standards or requirements on permittees. In regard to the requirements that proposed N.J.A.C. 7:14A-3.8(b) imposes on Stormwater Specialists themselves, Federal law, including the EPA regulation for stormwater discharges at 40 CFR 122.26, imposes no standards or requirements that are analogous to the requirements in proposed N.J.A.C. 7:14A-3.8(b). The Federal government does not regulate the use of the "Stormwater Specialist" title (or any substantially equivalent title), and does not regulate state registration of individuals using such a title.

As discussed in the Summary above, the Stormwater Specialist program would ensure that for facilities which choose to participate, SPPPs are reviewed and inspected by persons meeting certain minimum technical qualifications to assess stormwater discharges and appropriate best management practices. Use of Stormwater Specialists would also decrease the number of Department staff that would otherwise be needed to enforce stormwater discharge permits, and is an important part of the Department's effort to promote privatization of appropriate portions of the regulatory process. Moreover, by serving as a link between facilities and the Department, Stormwater Specialists should also help to prevent misunderstandings about permit requirements.

Limited Expansion of Definition of "Stormwater Discharge Associated With Industrial Activity"

In paragraph 2 of this N.J.A.C. 7:14A-1.9 definition, the Department is proposing to include stormwater discharges that are classified by the Department as "stormwater discharges associated with industrial activity" (but outside the 40 CFR 122.26(b)(14) definition of that term) **but only if the permittee, applicant, or prospective applicant requests such classification.** Because such classification is at the discretion of these persons, paragraph 2 imposes no standards or requirements. (For the same reason, no standards or requirements are imposed by other amendments insofar as they are affected by paragraph 2. These other amendments include amendments to N.J.A.C. 7:14A-3.8(a), the amendment to N.J.A.C. 7:14A-10.3(a)22 that cites paragraph 2, and draft modifications to Part I.B.1 of the "basic industrial" and "construction" general permits.) The primary purpose of paragraph 2 is to make eligible for the "basic industrial" general permit (NJPDES Permit No. NJ0088315) certain stormwater discharges that have or require a DSW permit anyway and that the Department considers to be "industrial" in the broad sense of that term, but that fall outside the EPA definition and are therefore currently ineligible for the "basic industrial" general permit.

Amendments That Expand or Establish Exemptions

The existing NJPDES rules exempt some stormwater discharges from certain existing standards or requirements in those rules. Some of these proposed amendments to the NJPDES rules exempt additional stormwater discharges from such standards or requirements. Proposed amendments to N.J.A.C. 7:14A-2.1(g) and (k) exempt additional stormwater discharges from the requirements to apply for a Discharge Allocation Certificate (DAC) and request "written statements of consent" from local agencies. The proposed amendment to N.J.A.C. 7:14A-3.12(i) exempts additional stormwater discharges from the requirement to prepare an emergency plan. The proposed amendments to N.J.A.C. 7:14A-14.8 exempt additional stormwater discharges from effluent limitations and monitoring requirements for oil and grease.

Also, the proposed amendment to the monitoring requirement in Appendix H simplifies its exemption for stormwater discharges, and provides that Appendix H may be used as a guide only if cause is specified in the draft permit documents. In addition, the proposed

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amendment to N.J.A.C. 7:14A-2.5(a)1 exempts industrial stormwater permittees from the existing requirement to comply with permit limits, if such permittees can prove by clear and convincing evidence that the discharge of pollutants in excess of permit limits was not a result of any conditions present at the permittee's facility.

The Department will evaluate, in preparing its proposal to extensively revise the NJPDES rules (see 26 N.J.R. 3927(a); Notice of Availability of Rule Proposal Summary and Request for Public Comment), whether these existing standards or requirements exceed Federal standards or requirements. (The Department already announced in October 1994 its intent to propose to eliminate or replace some of these requirements, for example, the requirement that dischargers receive a DAC.) In preparing that future rule proposal, the Department will also perform this evaluation for other existing standards and requirements in the NJPDES rules that are not created, expanded, or readopted by the amendments proposed therein.

In conclusion, the Department has evaluated these proposed amendments and relevant Federal law, and concluded that the proposed amendments contain no standards or requirements that exceed the standards or requirements imposed by Federal law. Accordingly, no further analysis is required under Executive Order No. 27(1994).

Regulatory Flexibility Analysis

As stated in the Economic Impact above, one of the segments of the public most directly affected financially by the amendments will be many (but not all) of those responsible for a "stormwater discharge associated with industrial activity" as defined in the proposed amendments to N.J.A.C. 7:14A-1.9. The Department estimates that several thousand facilities in New Jersey require a NJPDES/DSW permit for such a discharge (excluding facilities that require such a permit solely for stormwater from construction activity), and that thousands of these facilities are "small businesses" as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Some of the proposed amendments impose new reporting, recordkeeping, or other compliance requirements on some of the small businesses that require such a permit. These are the amendments that require DSW permits for nonpoint source discharges of industrial stormwater into surface waters. The proposed amendments also impose reporting, recordkeeping, and other compliance requirements on individuals who choose to be registered as Stormwater Specialists, each of whom may also be considered a "small business."

As discussed below and in the Economic Impact, these reporting, recordkeeping, or other compliance requirements, and their effects and economic impacts, will vary with the situation of each discharger and Stormwater Specialist. Also discussed or noted below are provisions in these and other amendments that are designed to minimize adverse economic impacts on the regulated community, including small businesses. Because the Department also wanted to minimize economic impacts on other businesses, these provisions are not limited to the small business community. However, small businesses will be among the prime beneficiaries. Although most of the proposed amendments are limited to the Statewide Stormwater Permitting Program, some of them apply throughout the NJPDES program.

Nonpoint Source Discharges of Industrial Stormwater

The proposed amendments require NJPDES/DSW permits for "stormwater discharges associated with industrial activity" from nonpoint sources into surface waters. This requirement will, in varying degrees, impose new recordkeeping, reporting, and other compliance requirements on some small businesses responsible for a "stormwater discharge associated with industrial activity" that is from a nonpoint source. These requirements arise because such small businesses must, for the first time, obtain a NJPDES/DSW permit for such nonpoint source discharges.

These requirements include preparing individual permit applications or RFAs for general permits, and paying NJPDES permit fees. These requirements also include preparing and implementing the SPPP, performing inspections and maintaining reports of such inspections, reporting incidents of noncompliance to the Department, and complying with other permit conditions (which for some small businesses, may include submitting SPPPs or Discharge Monitoring Reports to the Department, or complying with numeric effluent limitations). Affected small businesses are also subject to the risk of penalties or fines if the permit is violated. (As discussed in the Summary above, EPA and the Department have embraced the broadest possible interpretation of the term "point source." This broad interpretation tends to reduce the number of industrial stormwater discharges that would be considered nonpoint source rather than point source discharges.)

Costs of obtaining an individual permit or the "basic industrial" and "construction" general permits (including costs of preparing RFAs or individual permit applications, preparing and implementing SPPPs, and permit fees) are discussed in the Economic Impact above, and that discussion is applicable to small businesses as well as other businesses. If major physical modifications to the particular small business would be required to comply with the permit, such physical modifications may in some cases require the services of a professional engineer, architect, or land surveyor.

If the small business submits an individual permit application rather than an RFA for those general permits, the small business will probably need the services of a professional engineer or other professional to prepare the application. Also, for individual permit applications or for those permits that require monitoring, small businesses would require the services of laboratories certified to perform specific chemical analyses.

Under the CWA, nonpoint source discharges, which are outside the scope of the Section 402 permit program, should still be controlled under Sections 319 and 208. If the Department does not require NJPDES/DSW permits for nonpoint source discharges of industrial stormwater, the Department should still arrange for their control under the Section 319 nonpoint source management program, and such control would have its own compliance requirements and adverse economic impacts on small businesses responsible for such discharges.

Stormwater Specialists

Because the use of a Stormwater Specialist is at the discretion of the permittee, the voluntary Stormwater Specialist program in the proposed amendments imposes no new compliance requirements on small businesses who have or are expected to obtain a DSW permit for a "stormwater discharge associated with industrial activity". All of the Stormwater Specialists themselves, as distinct from the permittees that obtain their services, may as individuals be "small businesses" as defined in the New Jersey Regulatory Flexibility Act, and would be subject to various reporting, recordkeeping, and other compliance requirements imposed on Stormwater Specialists by the proposed amendments. (The Stormwater Specialist program is newly created by the proposed amendments, and the Department is unable at this time to estimate the number of individuals who would seek registration as Class I or Class II Stormwater Specialists.) These include requirements to:

—Report SPPP-related deficiencies to the permittee and participate in field inspections at the Department's request.

—Maintain, for five years, copies of all SPPPs and registration applications prepared or reviewed by the Stormwater Specialist, and records of all facility inspections performed by the Stormwater Specialist.

—Submit a renewal application and complete a Stormwater Permitting Continuing Education Course every other year (in order to maintain registration as a Stormwater Specialist).

The costs of being a Stormwater Specialist include the tuition for the Stormwater Permitting Training Course and the Stormwater Permitting Continuing Education Course (approximately $350.00 per course), the value of the time spent taking those courses, and costs to meet other reporting, recordkeeping, and compliance requirements noted above. Depending on the facilities they evaluate, some Stormwater Specialists may also purchase equipment and supplies (or professional services) to sample or analyze stormwater discharges, or to check for the presence of unpermitted wastewater discharges in storm drainage systems.

In general, the recordkeeping, reporting, and other costs (apart from tuition) of being a Class II Stormwater Specialist should be fairly low, as a Class II Stormwater Specialist is registered at only one facility (which minimizes, for example, the quantity of records to be maintained). The Department also believes that for most Class II Stormwater Specialists, tuition and other costs of being a Stormwater Specialist will be paid by the facilities at which they are registered (although some facilities might require employees to pay their own tuition).

The recordkeeping and other costs (apart from tuition) of being a Class I Stormwater Specialist would vary considerably, depending on the number and complexity of the facilities which obtain the services of that Class I Stormwater Specialist. Course material charges and other costs would be paid directly by the Stormwater Specialists themselves, or by consulting firms or other employers. In general, Class I Stormwater Specialists will not provide services to facilities unless the fees paid by

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those facilities sufficiently exceed the costs of being a Class I Stormwater Specialist, so that providing the service is economically profitable. In response to comments from the Industrial Stormwater Permitting Advisory Group, the Department minimized the cost of being a Class I Stormwater Specialist by requiring Class I Stormwater Specialists to take the Stormwater Permitting Continuing Education Course every other year (rather than every year, as the Department had originally suggested).

Other Amendments Benefiting the Regulated Community

Most of the other proposed amendments will financially benefit the regulated community, including small businesses, by removing or relaxing existing reporting, recordkeeping, or other compliance requirements. Following is a listing of these amendments, whose benefits to various elements of the regulated community are discussed in the Economic Impact above:

—Eliminating the general requirement that a person who owns but does not operate a facility must obtain a NJPDES permit even though another person operates that facility, and making it clear that when a single NJPDES permit is issued to more than one person, that permit may identify permit conditions that apply to only one or more of those permittees. (These amendments apply throughout the NJPDES program, and are not limited to the Statewide Stormwater Permitting Program.)

—Allowing a member of an industrial stormwater group application to use (subject to Department approval) sampling data accepted by EPA from other members of that group as sampling data for that member's application for an individual DSW permit.

—Exempting permittees from the duty to comply with permit limits for industrial stormwater discharges if such permittees can prove that the discharge of pollutants in excess of permit limits was not a result of any conditions present at the permittee's facility.

—Exempting all stormwater discharges from NJPDES rule provisions that set forth effluent limitations and monitoring requirements for oil and grease.

—Making additional stormwater discharges eligible for the "basic industrial" general permit.

—Allowing the stormwater pollution prevention plan (SPPP) prepared under the "basic industrial" general permit to allocate responsibility for implementing specific parts of the SPPP to specific permittees, so that one permittee at a facility is not liable for permit violations caused by other permittees at that facility.

Industrial Stormwater Information Requests

The proposed amendments also expressly allow the Department to request persons (including small businesses) whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity" to either declare their intent to obtain a DSW permit for such a discharge, or provide written information to the Department explaining why, in that person's judgment, they do not need to obtain such a permit. To the extent that the Department may already make such requests under the authority of N.J.S.A. 58:10A-10.3 without amending the NJPDES rules, this proposed amendment imposes no new reporting requirement or costs on small businesses, because such small businesses would have to respond to such requests even without this proposed amendment.

The number of New Jersey businesses whom the Department has reason to believe may own or operate such a facility is very large. (For example, the New Jersey Department of Labor (NJDOL) has identified approximately 27,500 establishments under Standard Industrial Classification (SIC) codes listed in the 40 CFR 122.26(b)(14) definition of "storm water discharge associated with industrial activity," and the Department estimates that most of these establishments are "small businesses" as defined under the New Jersey Regulatory Flexibility Act.) As discussed in the Economic Impact Analysis, above, the Department expects that most businesses (including small businesses) that would receive requests under this proposed amendment are the approximately 18,600 establishments identified by NJDOL under so-called "light industry" SIC codes listed at 40 CFR 122.26(b)(14)(xi).

In order to respond to such requests, small businesses must first decide to obtain a DSW permit, or develop some reasonable explanation as to why they do not need such a permit. To avoid violating Federal and State requirements for stormwater permits, many thousands of New Jersey small businesses should have already performed this activity, regardless of whether such small businesses receive any requests from the Department. Therefore, much of the cost that this proposed amendment may appear to impose on small businesses is not a new cost. (Once the small business has decided to obtain a DSW permit or has developed such an explanation, the remaining work required to respond to the Department is minimal.)

The direct costs of responding to requests made under this proposed amendment will consist mainly of the value of the labor that small business employees or executives responding to such requests would have performed if such employees or executives were not responding to such requests. As discussed in the Economic Impact Analysis, if most small businesses require one or two hours to respond to requests made under the proposed amendments, the value of this unperformed labor for most small businesses may range from $35.00 to $70.00. (Some small businesses might obtain the services of professional engineers or other professionals to assist them in responding to such requests, and the fees charged by such outside professionals would also be a direct cost. Where a position that no DSW permit is required could not be supported without expensive engineering, legal, or other analysis, the small business might find it less costly to obtain the DSW permit.)

As discussed in the Economic Impact Analysis, another adverse economic impact of this proposed amendment on affected small businesses is the risk of substantial penalties or fines under the Water Pollution Control Act. Also, the Department expects that as a result of this proposed amendment, some affected small businesses will obtain DSW permits for stormwater discharges sooner than otherwise would be the case. Because a small business incurs costs each year that small business has such a permit, this would result in increased permit-related costs to these small businesses. Conversely, however, obtaining the DSW permit earlier may also reduce the penalties or fines that such small businesses could be charged under the Water Pollution Control Act for discharging industrial stormwater without a DSW permit.

As was noted above in this analysis, these amendments include numerous provisions designed to minimize the adverse economic impacts of stormwater permitting requirements on the regulated community including small businesses. In developing these amendments, the Department also considered additional ways to minimize any adverse economic impacts on small businesses. However, the Department has determined that any attempt to exempt small businesses from the requirements contained in the amendments, or to establish different compliance or reporting requirements or timetables, would endanger the public health, safety, and general welfare.

The Department considered proposing to exempt small businesses from the requirement that they obtain a DSW permit for nonpoint source discharges of industrial stormwater into surface waters. However, the Department determined that such an exemption would be inappropriate for two reasons. First, these discharges may collectively (and, in some cases, individually) be an important source of industrial stormwater pollutants that should be controlled in order to promote the objectives, goals, and policies of the CWA and the Water Pollution Control Act and protect the public from the dangers associated with industrial stormwater discharges. Second, such an exemption would be difficult to apply because it would often be difficult in practice for a small business to evaluate with confidence whether a particular stormwater discharge is from a "point source" or a "nonpoint source."

In addition, the Department considered proposing to exempt small businesses from the requirement that if requested by the Department, they must either declare their intent to obtain a DSW permit for industrial stormwater, or provide written information to the Department explaining why, in their judgment, they do not need to obtain such a permit. The Department determined that such an exemption would be inappropriate because this reporting requirement should be an effective means of expediting compliance with Federal and State stormwater permit requirements (most facilities that need such a permit under EPA as well as Department regulations are small businesses), and because the burden of compliance with this reporting requirement should generally be minimal.

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

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

. . .

"Non-point source" means [a contributing factor to water pollution that cannot be traced to a specific discernible confined and

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discrete conveyance, e.g., certain cases of agricultural fertilizer runoff]:

1. Any source, other than a "point source," from which pollutants are or may be discharged;

2. Any man-made or man-induced activity, factor, or condition, other than a "point source," that may temporarily or permanently change any chemical, physical, biological, or radiological characteristic of waters of the State from what was or is the natural, pristine condition of such waters, or that may increase the degree of such change; or

3. Any activity, factor, or condition, other than a "point source," that contributes or may contribute to water pollution.

. . .

"Operating entity" or "operator" means any person who alone or along with other persons has primary management and operational decision-making authority over any part of a facility. This definition is not applicable to "operator" as that term is used in N.J.A.C. 7:14A-2.4(b)2, 3.8(b)9iii(1), 22.6(a)4, 22.6(c)3, 23.25(a)3, or 23.25(a)4i, or in the phrase "operator error" in N.J.A.C. 7:14A-4.6(d).

. . .

"Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose [operator] **operating entity** is not the [operator of] **operating entity** for the treatment works and not a "POTW."

. . .

"Stormwater discharge associated with industrial activity" means [a]**:**

1. A "storm water discharge associated with industrial activity" as defined at 40 CFR 122.26(b)(14) **with the following qualifications and exceptions:**

i. The first two sentences shall be replaced by the following: "Stormwater discharges associated with industrial activity means a stormwater discharge which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NJPDES program under N.J.A.C. 7:14A-3.1(b).";

ii. References to "discharge," "discharges" and "facilities" include a "discharge" (as defined in this section) to surface waters from a "non-point source," as well as a discharge to surface waters from a "point source"; and

iii. Subparagraphs 1i and ii above also apply where 40 CFR 122.26(b)(14)(x) is cited in N.J.A.C. 7:14A-10.3(a)2 and (a)18.

2. Any discharge to surface waters of stormwater that does not meet paragraph 1 above, but that the Department classifies as a "stormwater discharge associated with industrial activity" at the request of the permittee, applicant, or prospective applicant for that discharge. Such requests may be withdrawn at any time before or after such classification.

"Stormwater Specialist" means an individual registered as a Stormwater Specialist under N.J.A.C. 7:14A-3.8(b).

. . .

7:14A-2.1 Application for NJPDES permit

(a) (No change.)

(b) [The following persons shall obtain a NJPDES permit:

1. A person who currently owns any part of a facility which includes a discharge or activity regulated pursuant to this chapter;

2. A] **It is the duty of any** person who [currently operates] **is or will be an operating entity for** any part of a facility which includes a discharge or activity regulated pursuant to this chapter **to obtain a NJPDES permit. When a facility or activity is owned by one person but is currently operated by another person, it is the operating entity's duty to obtain a permit, except that for an IWMF permit only, the owner shall also sign the permit application.**

(c) Whenever, pursuant to (b)[1 and/or (b)2] above, more than one person is required to obtain a NJPDES permit for one or more discharges or activities at a specific site, the Department may issue a single permit and may list all of these persons as permittees. **Such a permit may identify permit conditions that apply to only one or more of those permittees.**

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

(g) The schedule for submission of applications is as follows:

1. Any person planning to undertake any activity which shall result in a discharge to surface water (DSW) shall apply for a discharge allocation certificate (DAC) in accordance with N.J.A.C. 7:14A-3.3 unless the discharge is listed in (g)1i, ii, or iii below. This provision does not exempt any person from obtaining a NJPDES permit in accordance with this chapter.

i. (No change.)

ii. Discharges from separate storm sewers **or stormwater discharges associated with industrial activity**; however, a DAC is required for discharges into storm sewers of domestic wastewater, non contact cooling water, or process waste water other than stormwater;

iii. (No change.)

2.-6. (No change.)

(h) All applicants for NJPDES permits shall provide the following information to the Department using the application form provided by the Department:

1.-3. (No change.)

4. The name, address, and telephone number of all current owners and [operators] **operating entities**, as well as ownership status, and status as Federal, State, private, public, or other entity;

5.-10. (No change.)

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

(k) Applications for NJPDES permits (other than those applying for renewal of SIU permits where there is to be no change in the discharge identified in the existing permit), DACs, treatment works approvals, or sewer connection approvals shall provide written statements of consent and comments as follows:

1. Prior to the submission of an application, the applicant shall submit (return receipt requested) a copy of the application and the applicable information required pursuant to this chapter to the affected sewage authority(ies) and to the municipality in which the discharge(s) will be located, with a request that they provide a written statement of consent to the application.

i. (No change.)

ii. This subsection does not apply to NJPDES permits that are solely for discharges from separate storm sewers **or for stormwater discharges associated with industrial activity**; however, this subsection does apply to NJPDES permits for discharges into storm sewers of domestic wastewater, non contact cooling water, or process wastewater other than stormwater.

2.-4. (No change.)

7:14A-2.5 Requirements applicable to all permittees

(a) Permittees shall comply with the following:

1. The permittee shall comply with all the conditions of its permit including, but not limited to, effluent limitations based upon guidelines or standards established pursuant to the Federal Act or the State Act together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements. All discharges shall be consistent at all times with the terms and conditions of the permit and no pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit**, unless the permittee can prove by clear and convincing evidence in the case of a stormwater discharge associated with industrial activity that the discharge of a pollutant in excess of a level authorized by the permit was not a result of any activities or conditions present at the permittee's facility**. The discharge of any pollutant not specifically regulated in the NJPDES permit or listed and quantified in the NJPDES application shall constitute a violation of the permit, unless the permittee can prove by clear and convincing evidence that the discharge of an authorized pollutant did not result from any of the permittee's industrial activities which contribute to the generation of its wastewaters, or unless the NJPDES permit is a general NJPDES permit for stormwater point sources**, stormwater discharges associated with industrial activity,** or separate storm sewers that expressly exempts permittees from this provision, in which case the exemption shall apply only to the discharge authorized by the permit. Any permit noncompliance constitutes a

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violation of the State Act or other authority of this chapter and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Department shall not issue a NJPDES permit when the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations.

2.-11. (No change.)

12. The permittee shall install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the Department reports of monitoring results as may be stipulated in the permit, or required by the Department pursuant (a)14 below. The permittee shall provide for monitoring, reporting and records as follows:

i.-ix. (No change.)

x. All permittees with a point source discharge **or stormwater discharge associated with industrial activity** required to submit discharge monitoring reports to the Department shall submit the required reporting forms to the Department on a monthly basis for all those [paramerers] **parameters** that are required to be monitored during that particular month.

xi. (No change.)

13.-16. (No change.)

7:14A-2.14 Minor modification of permits

(a) The Department, with the consent of the permittee, may modify a permit to make corrections or allowances for changes in the permitted activity listed in this section. Such changes shall be made without following the procedures set forth in N.J.A.C. 7:14A-7 and 8. A permit modification not processed as a minor modification under this section shall be made for cause and shall conform with the draft permit and public notice requirements of N.J.A.C. 7:14A-7 and 8 as required in N.J.A.C. 7:14A-2.12. Minor modification may only:

1.-7. (No change.)

8. Delete a point source outfall **or stormwater discharge associated with industrial activity** when the discharge from that outfall **or that stormwater discharge** is terminated and does not result in a discharge of pollutants from other outfalls except in accordance with permit limits.

9.-10. (No change.)

7:14A-3.1 Scope

(a) This subchapter contains specific requirements for the DSW permit program. The DSW program requires permits for the discharge of "pollutants" from any "point source" into surface waters of the State. **The DSW program also requires permits for a "stormwater discharge associated with industrial activity" from any "point source" or "non-point source" into surface waters of the State.** The terms "discharge," "pollutants," "point source" [and], "waters of the State," **"stormwater discharge associated with industrial activity" and "non-point source"** are defined in N.J.A.C. 7:14A-1.9.

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

7:14A-3.8 Stormwater discharges

(a) Except as provided in N.J.A.C. 7:14A-10.3(a)20 and [(a)]22, **and in the definition of "stormwater discharge associated with industrial activity" in N.J.A.C. 7:14A-1.9, the provision at** 40 CFR 122.26, entitled "Storm water discharges," is incorporated into this chapter by reference as part of the DSW permit program (see N.J.A.C. 7:14A-1.10). Persons who discharge or propose to discharge stormwater shall comply with applicable requirements of this chapter, and shall comply with applicable provisions of 40 CFR 122.26 except as provided in [N.J.A.C. 7:14A-10.3(a)20 and (a)22] **this subsection.**

1. The definition of "stormwater discharge associated with industrial activity" in N.J.A.C. 7:14A-1.9 includes discharges from nonpoint sources as well as discharges from point sources, and otherwise differs in some respects from the definition of "storm water discharge associated with industrial activity" in 40 CFR 122.26(b)(14). Except as provided in N.J.A.C. 7:14A-10.3(a)20 and 22, the requirements that 40 CFR 122.26 and 122.21 establish for a "storm water discharge associated with industrial activity" as defined in 40 CFR 122.26(b)(14) apply instead to a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.9.

2. The Department may, by written notice, request any person whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.9 to either:

i. Declare to the Department that person's intent to obtain a DSW permit for a "stormwater discharge associated with associated with industrial activity"; or

ii. Provide information to the Department that explains why, in that person's judgment, that person is not required to obtain, for property or operations owned or operated by that person, a DSW permit for a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.9. Such information may include:

(1) Information about the nature, source, and location of the stormwater discharge from such property or operations (for example, that all of the stormwater soaks into the ground or is discharged to a combined sewer system, or falls for some specified reason outside the definition of "stormwater discharge associated with industrial activity"); or

(2) Relevant information concerning that person (for example, information explaining why that person does not have a duty under N.J.A.C. 7:14A-2.1(b) to obtain a NJPDES permit).

3. A written notice under (a)2 above shall include a statement that such notice was sent pursuant to this subsection and the State Act, and that failure to respond to such notice in the manner required by this subsection is a violation of the State Act. Such notice shall also briefly explain why the Department has reason to believe that person may own or operate a facility with a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.9. (For example, one sufficient reason is information indicating that the person may own or operate an establishment classified under a Standard Industrial Classification (SIC) code expressly listed in 40 CFR 122.26(b)(14), or a landfill, steam electric power generating plant, treatment works treating domestic sewage, or construction operation that results in the disturbance of land.) Such notice may also require the person's response to be on a form provided by the Department, and to include a certification substantially equivalent to that required in a permit application under N.J.A.C. 7:14A-2.4(a)2.

4. Upon receipt of a written notice under (a)2 above, the person shall provide a written response in accordance with this subsection within 60 days, unless the notice specifies a longer time period. The Department, in its discretion, may also extend the time allowed for submitting a response for good cause shown.

5. Nothing in (a)2 through 4 above shall exempt any person from any permit application deadline under this section and N.J.A.C. 7:14A-10.3(a), or prevent the Department from making other requests for information under the State Act.

(b) The following concerns the registration of Stormwater Specialists:

1. This subsection establishes requirements and procedures concerning registration of individuals as Stormwater Specialists who may assist permittees in the preparation and implementation of stormwater pollution prevention plans (SPPPs) required by DSW permits for stormwater discharges associated with industrial activity. The use of a Stormwater Specialist is at the discretion of the permittee. Responsibility for SPPP preparation and implementation remains with the permittee; Stormwater Specialists are responsible only for assisting permittees in SPPP preparation and implementation, and for other duties set forth in this paragraph.

i. Individuals registered as a Class I Stormwater Specialist may assist permittees in the preparation and implementation of SPPPs for any industrial facility whose DSW permit requires a SPPP. Individuals registered as a Class II Stormwater Specialist may, in their capacity as a Class II Stormwater Specialist, assist permittees in the preparation and implementation of the SPPP only for the industrial facility named in their registration document.

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ii. When a Stormwater Specialist reviews an SPPP whose preparation was previously certified by the permittee, and finds that the SPPP does not meet one or more of the requirements of the DSW permit, the Stormwater Secialist shall notify the permittee in writing of the deficiencies within five working days.

iii. When a Stormwater Specialist finds that an SPPP is not being properly implemented, the Stormwater Specialist shall notify the permittee in writing of the noncompliance within five working days.

iv. All Stormwater Specialists shall participate in field inspections of their facilities with authorized representatives of the Department, if requested by the Department.

v. No institution shall register any corporation, firm, partnership, or association as a Stormwater Specialist under this subsection. No person shall use the title "New Jersey Registered Stormwater Specialist" or "NJDEP Registered Stormwater Specialist" or any other title, sign, card or device in such manner as to tend to convey the impression that such person is registered or certified in the State of New Jersey as a Stormwater Specialist, unless that person is an individual who is registered as a Stormwater Specialist under this subsection, and whose registration is not suspended or revoked.

2. Registration requirements for Stormwater Specialists shall be as follows:

i. The following shall be considered as minimum requirements that an individual is qualified for registration as a Class I Stormwater Specialist. A Professional Engineer or Professional Planner license may be substituted for the education requirement and two years of experience under (b)2i(1) and (2) below.

(1) A Bachelor's or advanced degree from an accredited college or university with a major in either environmental science; biology; chemistry; civil, chemical, sanitary or environmental engineering; environmental planning; or other environmentally related degree whose course content is consistent with the above degrees;

(2) Three years or more experience in the field of environmental science or environmental engineering, with specific experience in either stormwater management or related water resource management field;

(3) Successful completion of a Stormwater Permitting Training Course approved by the Department; and

(4) Successful completion, in the case of a renewal registration, of a Stormwater Permitting Continuing Education Course in accordance with (b)7ii below.

ii. A Class II Stormwater Specialist shall be registered for a specific industrial facility and must be an employee or executive of that facility. A Class II Stormwater Specialist may only be registered at one facility. The following shall be considered as minimum evidence that an individual is qualified for registration as a Class II Stormwater Specialist.

(1) The same qualifications as for a Class I Stormwater Specialist under (b)2i above; or five years of experience at either the specific industrial facility or a substantially similar industrial facility, consisting of either facility design, operation or management experience, or other environmental/engineering experience related to stormwater management;

(2) Successful completion of a Stormwater Permitting Training Course approved by the Department; and

(3) Successful completion, in the case of a renewal registration, of a Stormwater Permitting Continuing Education Course in accordance with (b)7ii below.

3. The Department shall publish in the New Jersey Register a public notice which states that a Stormwater Permitting Training Course and a Stormwater Permitting Continuing Education Course have been approved by the Department, identifies the institution(s) offering these courses, and states that application forms for registration are available from the institution(s). The Department may identify itself as an "institution" for purposes of this paragraph.

4. An individual applying for registration as a Stormwater Specialist shall submit the following information listed below to an institution identified under (b)3 above. The application forms will be approved by the Department and provided by that institution:

i. The name, address, and telephone number of the applicant;

ii. Whether the individual is applying for registration as a Class I or Class II Stormwater Specialist;

iii. Documentary evidence supporting education and experience required under (b)2i(1) and (2) or (b)2ii(1) above, as appropriate; and

iv. All applicants shall, upon submission of initial or renewal application, sign the following certification on the application forms: "I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

5. No institution shall register an individual as a Stormwater Specialist unless that individual meets the requirements in (b)2 above. Each institution identified under (b)3 above shall, within five working days of registering an individual as a Stormwater Specialist, transmit to the Department a copy of the registration document (or registration renewal document).

6. The Stormwater Specialist shall maintain the following records for five years:

i. Copies of all stormwater pollution prevention plans (SPPP) prepared or reviewed by the Stormwater Specialist;

ii. Records of all facility inspections performed by the Stormwater Specialist; and

iii. Copies of all applications submitted under (b)4 above and all correspondence between the Department and the Stormwater Specialist pertaining to the registration or duties of a Stormwater Specialist.

7. The following concern renewal of registration:

i. Registration of a Stormwater Specialist is valid for 24 months following the date of issuance. The Stormwater Specialist shall not, in their capacity as a Stormwater Specialists, prepare or review any SPPP or perform inspections or any other duties of a Stormwater Specialist after the expiration of the term of a registration unless an application for renewal registration has been received by an institution identified under (b)3 above 30 days prior to the expiration date of the registration and is pending approval. If the renewal application is rejected, the applicant shall not, in its capacity as a Stormwater Specialist, perform any of the duties of a Stormwater Specialist after receipt by the applicant of notice of rejection. A renewal application shall contain all the information required in an initial application, except for documentary evidence supporting education and experience which may be omitted.

ii. In order to maintain registration, a Stormwater Specialist shall successfully complete a Stormwater Permitting Continuing Education Course every other calendar year following the year of that individual's initial registration. For any calendar year, the Department may waive this requirement for Class I or Class II Stormwater Specialists.

8. The following concern denial, suspension and revocation of registration:

i. An institution identified under (b)3 above may refuse to issue a registration or renewal registration to any individual who is not in compliance with all of the provisions of this subsection.

ii. The Department shall suspend the registration of a Stormwater Specialist for two years for any of the causes that would constitute grounds for revoking a license under N.J.S.A. 45:1-21. Any individual whose registration has been suspended where the Department determines that the actions would have caused substantial harm to the public, or whose registration has been suspended more than once, shall have their registration permanently revoked.

iii. Suspensions and revocations shall be effective immediately upon receipt of the suspension or revocation order by the individual.

(1) Denial, suspension, and revocation orders shall be served via certified mail return receipt requested or by personal service.

(2) A recipient may request an adjudicatory hearing on his or her registration denial, suspension or revocation within thirty days of receipt of the notice.

(3) A denial, suspension or revocation order shall concisely state the reasons for the denial, suspension or revocation and advise the

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individual of the right to request an adjudicatory hearing pursuant to (b)8 below.

iv. Upon voluntary or involuntary suspension or revocation, a registered individual shall immediately surrender his or her registration documents to the Department.

9. The following concern request for adjudicatory hearing:

i. Within 30 calendar days from receipt of a registration denial, refusal to renew, suspension, or revocation issued pursuant to (b)8 above, the individual may request an adjudicatory hearing to contest such action by submitting a written request to the Department at the following address:

Office of Legal Affairs
Attn: Adjudicatory Hearing Requests
Department of Environmental Protection
CN 402
Trenton, NJ 08625-0402

ii. The individual shall include the following information in a request for an adjudicatory hearing:

(1) The name, address, and telephone number of the individual and his or her authorized representative, if any;

(2) Identification of the relevant registration classification, that is, Class I or Class II Stormwater Specialist;

(3) The date that the individual received notice of the contested action;

(4) The individual's factual position on each question alleged to be at issue and its relevance to the contested decision;

(5) Information supporting the individual's factual position and a copy of other written documents relied upon to support the request for a hearing;

(6) An estimate of the time required for the hearing (in days and/or hours); and

(7) A request, if necessary, for a barrier-free hearing location for disabled persons.

iii. A hearing request not received within 30 days after receipt by the individual of a registration denial, suspension or revocation issued pursuant to (b)8 above shall be denied by the Department.

iv. If applicant fails to include all of the information required by (b)9ii above, the Department may deny the hearing.

v. If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:14A-3.9 General permits

(a) Coverage: The Department may issue a general permit in accordance with the following:

1. (No change.)

2. Sources: The general permit shall be written to regulate, within the area described in (a)1 above, either:

i. Stormwater point sources **and stormwater discharges associated with industrial activity**; or

ii. (No change.)

(b) Administration:

1. (No change.)

2. Authorization to discharge:

i. (No change.)

ii. The contents of the request for authorization shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including, at a minimum, the legal name and address of the owner and [operator] **operating entity**, the facility name and address, type of facility or discharges, and the certification required under (b)2iii below. Unless the general permit specifies otherwise, the request for authorization shall include all of the forms, information, signatures, and certification that this chapter (including but not limited to N.J.A.C. 7:14A-2.1 and 10.3) requires to be included in an application for a DSW permit. The request for authorization shall also include any other certification specified in the general permit. The general permit shall not specify signature requirements less stringent than those applicable to permit applications under 40 CFR 122.22(a).

iii. In addition to other information required under (b)2ii above, the request for authorization shall include a certification that arrangements have been made for publication, in a daily or weekly newspaper within the area affected by the facility, of a notice which states that a request for authorization under a general permit to discharge pollutants to surface water has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice shall also identify the general permit under which authorization is sought, the legal name and address of the owner and [operator] **operating entity**, the facility name and address, and type of facility or discharges. Each general permit shall set forth the form of notice appropriate to that general permit.

iv.-vii. (No change.)

3. Requiring an individual permit or another general permit:

i. The Department may require any permittee authorized by a general permit to apply for and obtain an individual DSW permit or seek and obtain authorization under another general permit. Any interested person may, in accordance with the procedures set forth at (b)5 below, petition the Department to take action under this subparagraph. Cases where an individual DSW permit or another general permit may be required include the following:

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

(3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the [point source] **discharge**.

(4) (No change.)

(5) A Water Quality Management Plan containing requirements applicable to such [point source] **discharge** is approved.

(6)-(7) (No change.)

ii. (No change.)

iii. Any permittee authorized by a general permit may request to be excluded from authorization under the general permit by applying for an individual DSW permit. The permittee shall submit an application under N.J.A.C. 7:14A-3.2, with reasons supporting the request[, to the Department no later than 90 days after the publication by the Department of the general permit in the DEPE Bulletin]. The request shall be processed under [subchapters 2, 7 and 8 of this chapter] **N.J.A.C. 7:14A-2.7 and 8**. The request shall be granted by the issuing of [any] **an** individual permit if the reasons cited by the permittee are adequate to support the request.

iv.-v. (No change.)

4.-6. (No change.)

(c) (No change.)

7:14A-3.12 Emergency plans

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

(i) Persons who request or obtain authorization under a [general] DSW permit for stormwater point sources**, stormwater discharges associated with industrial activity,** or separate storm sewers are exempt from developing an emergency plan under this section, unless such persons are applicants for or holders of another DSW permit for which an emergency plan is required under this section. However, a [general] DSW permit **for stormwater discharges or separate storm sewers** may stipulate its own requirements for development of emergency plans.

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APPENDIX A

PERMIT NUMBER NJ0088315

NJPDES/DSW GENERAL INDUSTRIAL STORMWATER PERMIT (ROUND 2)

Permittee	Co-Permittee
GENERAL PERMIT—CATEGORY 5G2 PER INDIVIDUAL NOTICE OF AUTHORIZATION	

Property Owner	Location of Activity
GENERAL PERMIT—CATEGORY 5G2 PER INDIVIDUAL NOTICE OF AUTHORIZATION	GENERAL PERMIT—CATEGORY 5G2 PER INDIVIDUAL NOTICE OF AUTHORIZATION

Current Authorization Covered by this Approval and Previous Authorization	Issuance Date	Effective Date	Expiration Date
5G2:GEN INDUST STRMWTR ROUND 2	10/01/1992	11/02/1992	[11/01] **10/31**/1997

By Authority of: [SCOTT A. WEINER,] COMMISSIONER, **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

PART I. *AUTHORIZATION UNDER THIS PERMIT*

A. (No change.)

B. *Eligibility*

1. This permit may authorize all new and existing stormwater discharges associated with industrial activity [that are subject to the Federal stormwater permitting requirements at 40 CFR 122.26] **as defined in N.J.A.C. 7:14A-1.9**, except for the following:

a. Stormwater discharges [from facilities with any stormwater discharges] subject to any of the following effluent guideline limitations for stormwater: cement manufacturing, materials storage piles (40 CFR 411, Subpart C); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric, coal pile runoff (40 CFR 423); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt emulsion (40 CFR 443 Subpart A).

b. Stormwater discharges [from facilities with any stormwater discharges] authorized under another NJPDES Discharge to Surface Water (DSW) permit (including an expired permit), **or combined with domestic wastewater or process waste water prior to treatment**.

c.-e. (No change.)

2. (No change.)

C.-D. (No change.)

PART II. *REQUEST FOR AUTHORIZATION REQUIREMENTS*

A. (No change.)

B. *Persons Requesting Authorization*

[The RFA must be jointly submitted by all persons who currently own or operate] **An RFA shall be submitted by each person who is an operating entity for** any part of the facility requiring a NJPDES permit for the stormwater discharge associated with industrial activity at that facility. [For example, if the facility is owned by one person but operated by another, both the owner and the operator must jointly submit a single RFA for the facility.] **When a facility is owned by one person but is currently operated by another person, the operating entity shall submit the RFA. Separate RFAs shall be submitted for separate facilities. No two buildings shall be considered to be within a single facility unless those buildings have the same operating entity(ies) for their stormwater discharges, and are on the same or adjacent properties.**

1. If two or more persons request authorization under this permit for activities within a single building, then those activities should be considered to be within a single facility.

2. If a facility has more than one operating entity for its stormwater discharges, all such entities should jointly submit a single RFA for the facility. Any RFA not submitted by all known operating entities shall include an explanation under C.3. below.

C. *Contents of the Request for Authorization*

A completed RFA shall include all of the following information regarding the regulated facility, using the Department's RFA form:

1.-2. (No change.)

3. The legal name, address, and business telephone number of all **known** current owners and [operators] **operating entities**, and, if applicable, their agents and engineers. The RFA shall also identify whether each person named is an owner [or operator] **an operating entity, or both; which of these persons is submitting the RFA**; and whether the owner or [operator] operating entity is a Federal, State, or other public agency, or is a private entity. **Any RFA not submitted by all known operating entities shall also state that the facility has other operating entities who refused to join in submitting that RFA.**

4.-11. (No change.)

The RFA shall be submitted along with payment of $500.00, in accordance with N.J.A.C. 7:14A-1.8(i), unless this amount has already been submitted, [within] **for** the same billing year, for [an annual recertification under part III.D] **the same facility under this permit.**

D. (No change.)

E. *Additional Notification*

1. Facilities that discharge stormwater associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must also submit a copy of the RFA to the owner **of** and [operator of] **operating entity for** that system.

2. The permittee is responsible for publishing a notice in a daily or weekly newspaper within the area affected by the permitted facility stating that a request for authorization under general permit no. NJ0088315 to discharge stormwater to surface water has been submitted in accordance with N.J.A.C. 7:14A-3.9(b)2. This notice shall also identify the legal name and address of the owner and [operator] **operating entity**, the facility name and address, and type of facility and discharges. A certification stating that arrangements for such notification have been made is contained in Attachment A and shall be signed and submitted as part of the RFA.

3. Persons requesting authorization shall also submit a copy of the RFA to each owner (if any) of the facility who did not submit the RFA.

F. (No change.)

PART III. *EFFLUENT LIMITATIONS*

A. (No change.)

B. *Preparation and Implementation of the Stormwater Pollution Prevention Plan*

1. General Requirements

a. (No change.)

b. The SPPP shall demonstrate that once it has been implemented, there will be no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged [through separate storm sewers] to surface waters **and regulated under this permit**. (The term "source materials" is defined in Attachment B.)

c. If a facility has or will have two or more permittees under this permit, then the SPPP may allocate responsibility for implementing specific parts of the SPPP to specific permittees, so long as those permittees are able to implement those parts of the SPPP. All permittees for the facility shall be jointly and severally liable for all violations of this permit arising from faiure to implement fully the SPPP, except that subject to d. below, a permittee shall not be liable for such a violation if that permittee can prove by clear and convincing evidence that:

i. Prior to the violation, the SPPP clearly and expressly stated that the permittee was not responsible for implementing the applicable part of the SPPP; and

ii. The permittee was not directly responsible for the violation.

d. A permittee who is an owner of all or part of the facility shall not be exempted under c. above for violations which occur on facility property which is or was leased from that owner by a tenant permittee, if:

i. The tenant permittee vacated the leased property, no longer exists, or is otherwise unable to implement the applicable part of the SPPP; and

ii. No other tenant permittee (other than a tenant described under i. above) has been allocated responsibility in the SPPP for implementing the applicable part of the SPPP.

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Liability of owners under this part I.B.1.d exists only to the extent that permit violations began or continued after the conditions described under i. and ii. above occurred.

2. Deadlines and Certifications

a. Existing discharges:

i. Within six months after the [effective] date of [the] **notification of** general permit authorization, the permittee shall prepare an SPPP for the authorized facility; and shall submit to the Department the "Stormwater Pollution Prevention Plan Preparation Certification" contained in Attachment C (except if this certification was already included in the RFA submitted to the Department under Part II).

ii. Except as provided in iii. below, within 18 months after the [effective] date of [the] **notification of** general permit authorization, the permittee shall implement the SPPP prepared for the facility; and shall submit to the Department the "Stormwater Pollution Prevention Implementation and Inspection Certification" contained in Attachment D (except if this certification was already included in the RFA submitted to the Department under Part II).

iii. (No change.)

b. New discharges for which RFA's are submitted within 24 months of the effective date of this permit:

i. Within six months after the [effective] date of [the] **notification** of general permit authorization for the new discharge, but no later than 24 months after the effective date of this permit, the permittee shall prepare an SPPP for the authorized facility; and shall submit to the Department the "Stormwater Pollution Prevention Plan Preparation Certification" contained in Attachment C (except if this certification was already included in the RFA submitted to the Department under Part II).

ii. (No change.)

c. (No change.)

3. Additional Requirements

a. Agency Review

i. The permittee shall make the SPPP available upon request to an authorized representative of the Department and to the owner **of** and [operator of] **operating entity for** any municipal separate storm sewer system through which the stormwater discharge associated with industrial activity is discharged.

ii. Upon review by an authorized representative, the Department may notify the permittee at any time that the SPPP does not meet one or more of the minimum requirements of this part, **or that two or more SPPPs prepared for a single facility by different permittees who submitted separate RFAs must be consolidated into a single SPPP for that facility**. Within 30 days after receiving such notification (unless otherwise specified by the Department), the SPPP shall be amended to adequately address all deficiencies, **or the SPPPs shall be consolidated,** and written certification of such amendments or consolidation shall be submitted to the Department.

b.-c. (No change.)

d. Copies to Owner

The permittee shall provide a copy of the SPPP and the certifications contained in Attachments C and D to the owner(s) of the facility.

C. (No change.)

D. *Annual Reports and Recertification*

1. (No change.)

2. After the certification contained in Attachment D has been received by the Department, the permittee must annually resubmit this certification (with new signatures each year). These annual recertifications shall be submitted in the same calendar month as the initial submission of these certifications. These recertifications shall be submitted to the Department at the address specified on the certification form provided by the Department[, and shall be submitted with the $500.00 fee required under N.J.A.C. 7:14A-1.8(i)].

E.-G. (No change.)

PART IV. *CONDITIONS APPLICABLE TO GENERAL PERMITS AUTHORIZING STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY*

A.-R. (No change.)

S. *Effective Date of Permit*

1. [This] **Except as provided in 2 below, this permit** [shall become] **became** effective in its entirety on [the date indicated (Effective Date) on the first page of this permit unless a request for an adjudicatory hearing is granted and a stay is granted pursuant to the provisions of N.J.A.C. 7:14A-8 et seq. ("Public Comment and Notice Procedures")] **November 2, 1992**.

2. Unless a request for an adjudicatory hearing is granted and a stay is granted pursuant to the provisions of N.J.A.C. 7:14A-8 ("Public Comment and Notice Procedures"), the modifications to this permit adopted under DEP Docket Number 19-95-04/539 shall become effective 30 days after the effective date of that rulemaking action, with the following exceptions:

a. The modifications to Part III.B.1.b and Attachment B, section D.1 shall become effective six months after that effective date:

b. Certain modifications to Attachment C and Attachment D shall become effective six months after that effective date, as specified in those modifications.

[2.]**3.** (No change in text.)

T. *Transfer of Permit Authorizations*

1. (No change.)

2. Transfer by Modification. Except as provided in paragraph (3) of this section, an authorization issued under this permit may be transferred by the entity authorized to a new [owner or operator] **entity** only if the authorization has been modified or revoked and reissued (N.J.A.C. 7:14A-2.12) or a minor modification is made (pursuant to N.J.A.C. 7:14A-2.14(a)4) to identify the new entity authorized and incorporate such other requirements as may be necessary under the State and Federal Acts.

3. (No change.)

U.-Z. (No change.)

ATTACHMENT A: *RFA Certification*

Every Request for Authorization (RFA) shall include the following RFA certification. All signatures on this RFA certification shall be notarized by an authorized Notary Public.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Request for Authorization and all attached documents, and that this Request for Authorization and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete, and that as far as I know, none of the stormwater discharges for which this Request for Authorization is submitted are excluded from authorization by part I.B of NJPDES Permit No. NJ0088315.

"I also certify that I have made arrangements for publication, in a daily or weekly newspaper within the area affected by the facility identified in this RFA, of a notice which states that a request for authorization under general permit no. NJ0088315 to discharge stormwater to surface water(s) has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice identifies the general permit number, the legal name and address of the owner and [operator] **operating entity**, the facility name and address, and type of facility or discharges.

"I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

The RFA certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

A separate RFA certification shall be signed and submitted for each person submitting the RFA.

ATTACHMENT B: *Contents of the Stormwater Pollution Prevention Plan*

A.-C. (No change.)

D. Description of Required Best Management Practices

The SPPP shall identify and discuss the best management practices (BMPs) that will be implemented at the facility to:

1. Ensure that [the facility does not discharge, through separate storm sewers to surface waters, any stormwater that is exposed to] **there will**

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be no exposure of source material located at the facility **to stormwater that is discharged to surface waters and regulated under this permit**; and

2. (No change.)

E.-I. (No change.)

J. Allocation of Responsibility

If the facility has or will have two or more permittees under this permit, then the SPPP may allocate responsibility for implementing specific parts of the SPPP to specific permittees, in accordance with parts III.B.1.c and III.B.1.d.

ATTACHMENT C: *Stormwater Pollution Prevention Plan Preparation Certification*

The following certification shall be signed and submitted [by the owner/operator] to the Department using the appropriate Department forms.

"I certify under penalty of law that I have personally examined and am familiar with the information in this Stormwater Pollution Prevention Plan Preparation Certification and all attached documents, and in the stormwater pollution prevention plan referred to in this certification. I further certify that I have signed this stormwater pollution prevention plan (SPPP), the implementation of which will ensure that there will be no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters. **I further certify that if any part of this stormwater pollution prevention plan requires the consent of the owner(s) of or another operating entity for the facility, that consent has been obtained.**

"I further certify that this Stormwater Pollution Prevention Plan Preparation Certification, all attached documents, and stormwater pollution prevention plan were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information in this Stormwater Pollution Prevention Plan Preparation Certification, all attached documents, and stormwater pollution prevention plan is true, accurate and complete.

"I certify that the stormwater pollution prevention plan referred to in this Stormwater Pollution Prevention Plan Preparation Certification has been signed and is being retained at the facility in accordance with part III.B of NJPDES Permit No. NJ0088315, and that this stormwater pollution prevention plan will be fully implemented at the facility in accordance with the terms and conditions of that permit. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

This signature shall be notarized by an authorized Notary Public. Whenever there are two or more permittees for the facility, all of those permittees shall jointly submit this Stormwater Pollution Prevention Plan Preparation Certification, **unless permittees received authorization on different dates and this certification is therefore due from them at different dates.**

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with this certification (with updated names, addresses and telephone numbers attached), unless the certification is submitted concurrently with the RFA.

ATTACHMENT C: ***Stormwater Pollution Prevention Plan Preparation Certification***

Text of Attachment C effective six months after the effective date of N.J.A.C. 7:14A-3.8(a)1.

The following certification shall be signed and submitted to the Department using the appropriate Department forms.

"I certify under penalty of law that I have personally examined and am familiar with the information in this Stormwater Pollution Prevention Plan Preparation Certification and all attached documents, and in the stormwater pollution prevention plan referred to in this certification. I further certify that I have signed this stormwater pollution prevention plan (SPPP), the implementation of which will ensure that there will be no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged to surface waters and regulated under NJPDES Permit No. NJ0088315. I further certify that if any part of this stormwater pollution prevention plan requires the consent of the owner(s) of or another operating entity for the facility, that consent has been obtained.

"I further certify that this Stormwater Pollution Prevention Plan Preparation Certification, all attached documents, and stormwater pollution prevention plan were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information in this Stormwater Pollution Prevention Plan Preparation Certification, all attached documents, and stormwater pollution prevention plan is true, accurate and complete.

"I certify that the stormwater pollution prevention plan referred to in this Stormwater Pollution Prevention Plan Preparation Certification has been signed and is being retained at the facility in accordance with part III.B of NJPDES Permit No. NJ0088315, and that this stormwater pollution prevention plan will be fully implemented at the facility in accordance with the terms and conditions of that permit. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

This signature shall be notarized by an authorized Notary Public. Whenever there are two or more permittees for the facility, all of those permittees shall jointly submit this Stormwater Pollution Prevention Plan Preparation Certification, unless permittees received authorization on different dates and this certification is therefore due from them at different dates.

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with this certification (with updated names, addresses and telephone numbers attached), unless the certification is submitted concurrently with the RFA.

ATTACHMENT D: *Stormwater Pollution Prevention Plan Implementation and Inspection Certification*

The following certification shall be signed and submitted [by the owner/operator] to the Department using the appropriate Department forms.

"I certify under penalty of law that I have personally examined and am familiar with the information in this Stormwater Pollution Prevention Plan Implementation and Inspection Certification and all attached documents, and in the stormwater pollution prevention plan referred to in this certification.

"I certify that this Stormwater Pollution Prevention Plan Implementation and Inspection Certification and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information in this Stormwater Pollution Prevention Plan Implementation and Inspection Certification and all attached documents is true, accurate and complete.

"I certify that the facility has been inspected to identify areas contributing to the stormwater discharge authorized under NJPDES permit No. NJ0088315 and to evaluate whether the stormwater pollution prevention plan (SPPP) prepared under that permit complies with part III.B. of that permit and is being properly implemented.

"I certify that the stormwater pollution prevention plan referred to in this Stormwater Pollution Prevention Plan Implementation and In-

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spection Certification has been and will continue to be fully implemented at this facility in accordance with the terms and conditions of part III of NJPDES Permit No. NJ0088315. I specifically certify that there is no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters (except for any incidents of non-compliance identified in the attached report). I also specifically certify that this facility does not generate and discharge, through storm sewers to surface waters, any domestic wastewater, non-contact cooling water, or process waste water (including leachate and contact cooling water) other than stormwater, unless that discharge is authorized by another NJPDES permit or identified in an application (or request for authorization) submitted for another NJPDES permit.

"I also certify that this facility is not in violation of any conditions of NJPDES Permit No. NJ0088315, including requirements in part III of that permit for preparation and implementation of a stormwater pollution prevention plan, except for any incidents of noncompliance (which are noted in the attached report). For any incidents of noncompliance identified in the annual inspection (or made known to me during the course of the past year), I have attached a report identifying these incidents, and identifying steps taken or being taken to remedy the noncompliance and to prevent such incidents from recurring. If the attached report identifies any incidents of noncompliance, I certify that any remedial or preventative steps identified therein were or will be taken in compliance with the schedule set forth in the attachment to this certification. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

This signature shall be notarized by an authorized Notary Public.

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with this certification (with updated names, addresses, and telephone numbers attached), unless the certification is submitted concurrently with the RFA.

The permittee shall also identify the number of the NJPDES permit of any discharges through storm sewers to surface waters of domestic wastewater, non-contact cooling water, or process waste water other than stormwater generated by the facility. If no NJPDES permit number has been assigned yet, the permittee shall provide a copy of the cover page of the application or request for authorization in an attachment to this certification.

If the facility has or will have two or more permittees under this permit, and if the person submitting this certification is responsible for implementing only some portions of the SPPP in accordance with parts III.B.1.c and III.B.1.d, then this certification shall apply only to those portions of the SPPP.

ATTACHMENT D: *Stormwater Pollution Prevention Plan Implementation and Inspection Certification*

Text of Attachment D effective six months after the effective date of N.J.A.C. 7:14A-3.8(a)1).

The following certification shall be signed and submitted to the Department using the appropriate Department forms.

"I certify under penalty of law that I have personally examined and am familiar with the information in this Stormwater Pollution Prevention Plan Implementation and Inspection Certification and all attached documents, and in the stormwater pollution prevention plan referred to in this certification.

"I certify that this Stormwater Pollution Prevention Plan Implementation and Inspection Certification and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information in this Stormwater Pollution Prevention Plan Implementation and Inspection Certification and all attached documents is true, accurate and complete.

"I certify that the facility has been inspected to identify areas contributing to the stormwater discharge authorized under NJPDES Permit No. NJ0088315 and to evaluate whether the stormwater pollution prevention plan (SPPP) prepared under that permit complies with part III.B. of that permit and is being properly implemented.

"I certify that the stormwater pollution prevention plan referred to in this Stormwater Pollution Prevention Plan Implementation and Inspection Certification has been and will continue to be fully implemented at this facility in accordance with the terms and conditions of part III of NJPDES Permit No. NJ0088315. I specifically certify that there is no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged to surface waters and regulated under that NJPDES permit (except for any incidents of non-compliance identified in the attached report). I also specifically certify that this facility does not generate and discharge, through storm sewers to surface waters, any domestic wastewater, non-contact cooling water, or process waste water (including leachate and contact cooling water) other than stormwater, unless that discharge is authorized by another NJPDES permit or identified in an application (or request for authorization) submitted for another NJPDES permit.

"I also certify that this facility is not in violation of any conditions of NJPDES Permit No. NJ0088315, including requirements in part III of that permit for preparation and implementation of a stormwater pollution prevention plan, except for any incidents of noncompliance (which are noted in the attached report). For any incidents of noncompliance identified in the annual inspection (or made known to me during the course of the past year), I have attached a report identifying these incidents, and identifying steps taken or being taken to remedy the noncompliance and to prevent such incidents from recurring. If the attached report identifies any incidents of noncompliance, I certify that any remedial or preventative steps identified therein were or will be taken in compliance with the schedule set forth in the attachment to this certification. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

This signature shall be notarized by an authorized Notary Public.

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with this certification (with updated names, addresses, and telephone numbers attached), unless the certification is submitted concurrently with the RFA.

The permittee shall also identify the number of the NJPDES permit of any discharges through storm sewers to surface waters of domestic wastewater, non-contact cooling water, or process waste water other than stormwater generated by the facility. If no NJPDES permit number has been assigned yet, the permittee shall provide a copy of the cover page of the application or request for authorization in an attachment to this certification.

If the facility has or will have two or more permittees under this permit, and if the person submitting this certification is responsible for implementing only some portions of the SPPP in accordance with parts III.B.1.c and III.B.1.d, then this certification shall apply only to those portions of the SPPP.

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APPENDIX B

PERMIT NUMBER NJ0088323

NJPDES/DSW GENERAL PERMIT
CONSTRUCTION ACTIVITY STORMWATER

Permittee	Co-Permittee
GENERAL PERMIT—CATEGORY 5G3 PER INDIVIDUAL NOTICE OF AUTHORIZATION	

Property Owner	Location of Activity
GENERAL PERMIT—CATEGORY 5G3 PER INDIVIDUAL NOTICE OF AUTHORIZATION	GENERAL PERMIT—CATEGORY 5G3 PER INDIVIDUAL NOTICE OF AUTHORIZATION

Current Authorization Covered by this Approval and Previous Authorization	Issuance Date	Effective Date	Expiration Date
5G3:GEN PERMIT CONSTRUCT ACTIVITY	10/01/1992	11/02/1992	[11/01] **10/31**/1997

By Authority of: [SCOTT A. WEINER,] COMMISSIONER, **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

PART I. *AUTHORIZATION UNDER THIS PERMIT*

A. (No change.)

B. *Eligibility*

1. Except as provided in B.2 below, this permit may authorize all new and existing stormwater discharges associated with industrial activity [that are subject to Federal stormwater permitting requirements at 40 CFR 122.26] **as defined in N.J.A.C. 7:14A-1.9,** and that are from the following facilities:

a.-b. (No change.)

2.-3. No change.)

C.-D. (No change.)

PART II. *REQUEST FOR AUTHORIZATION REQUIREMENTS*

A. (No change.)

B. *Persons Requesting Authorization*

[The RFA must be jointly submitted by all persons who currently own or operate] **An RFA shall be submitted by each person who is an operating entity for** any part of the facility requiring a NJPDES permit for the stormwater discharge at the facility. [For example, if the facility is owned by one person but operated by another, both the owner and the operator must jointly submit a single RFA for the facility.] **When a facility is owned by one person but is currently operated by another person, the operating entity shall submit the RFA.**

C. *Contents of the Request for Authorization*

A completed RFA shall include all of the following information regarding the regulated facility, using the Department's RFA form. A fee of $200, paid by check or money order payable to "Treasurer, State of New Jersey," shall be submitted along with the completed RFA.

1. The legal name and address of all **known** current owners and [operators] **operating entities. The RFA shall also identify which of these persons is submitting the RFA.**

2.-5. (No change.)

D.-E. (No change.)

F. *Additional Notification*

1. Facilities that discharge stormwater associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must also submit a copy of the RFA to the owner **of** and [operator of] **operating entity for** that system.

2. The permittee is responsible for publishing a notice in a daily or weekly newspaper within the area affected by the permitted facility stating that a request for authorization under general permit no. NJ0088323 to discharge stormwater to surface water has been submitted in accordance with N.J.A.C. 7:14A-3.9(b)2. This notice shall also identify the legal name and address of the owner and [operator] **operating entity**, the facility name and address, and type of facility and discharges. A certification stating that arrangements for such notification have been made is contained in Attachment A and shall be signed and submitted as part of the RFA.

3. Persons requesting authorization shall also submit a copy of the RFA to each owner (if any) of the facility who did not submit the RFA.

G. (No change.)

PARTS III.-IV. (No change.)

PART V. *CONDITIONS APPLICABLE TO GENERAL PERMITS AUTHORIZING STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY*

A.-R. (No change.)

S. *Effective Date of Permit*

1. [This] **Except as provided in 2 below, this permit** [shall become] **became** effective in its entirety on [the date indicated (Effective Date) on the first page of this permit unless a request for an adjudicatory hearing is granted and a stay is granted pursuant to the provisions of N.J.A.C. 7:14A-8 et seq. ("Public Comment and Notice Procedures")] **November 2, 1992.**

2. The modifications to this permit adopted under DEP Docket Number 19-95-04/539 shall become effective 30 days after the effective date of that rulemaking action unless a request for an adjudicatory hearing is granted and a stay is granted pursuant to the provisions of N.J.A.C. 7:14A-8 ("Public Comment and Notice Procedures").

[2.]**3.** (No change in text.)

T. *Transfer of Permit Authorizations*

1. (No change.)

2. Transfer by Modification. Except as provided in paragraph (3) of this section, an authorization issued under this permit may be transferred by the entity authorized to a new [owner or operator] **entity** only if the authorization has been modified or revoked and reissued (N.J.A.C. 7:14A-2.12) or a minor modification is made (pursuant to N.J.A.C. 7:14A-2.14(a)4) to identify the new entity authorized and incorporate such other requirements as may be necessary under the State and Federal Acts.

3. (No change.)

U.-Y. (No change.)

ATTACHMENT A: *RFA Certification*

Every Request for Authorization (RFA) shall include the following RFA certification. All signatures on this RFA certification shall be notarized by an authorized Notary Public.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Request for Authorization and all attached documents, and that this Request for Authorization and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete, and that as far as I know, none of the stormwater discharges for which this Request for Authorization is submitted are excluded from authorization by part I.B of NJPDES Permit No. NJ0088323.

"I also certify that I have made arrangements for publication, in a daily or weekly newspaper within the area affected by the facility identified in this RFA, of a notice which states that a request for authorization under general permit no. NJ0088323 to discharge stormwater to surface water(s) has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice identifies the general permit number, the legal name and address of the owner and [operator] **operating entity**, the facility name and address, and type of facility or discharges.

"I am aware that pursuant to the Water Pollution Control Act (see N.J.S.A. 58:10A-10f(2) and (3)), there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

The RFA certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

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(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

A separate RFA certification shall be signed and submitted for each person submitting the RFA.

7:14A-10.3 Discharges to surface waters (DSW)

(a) Except as exempted pursuant to N.J.A.C. 7:14A-2.1(g)1, any person planning to discharge pollutants from a point source to surface waters of the State must apply for a Discharge Allocation Certificate (DAC) prior to applying for a NJPDES permit. Any person with a valid NJPDES or NPDES permit shall apply for a NJPDES permit in accordance with the schedules in N.J.A.C. 7:14A-2 and 10. Pre-application conferences with the Department are strongly recommended. The following information, in addition to the requirements of N.J.A.C. 7:14A-2, shall be required for a DAC or NJPDES permit (unless different information is required by a general permit to be included in the request for authorization for that permit, pursuant to N.J.A.C. 7:14A-3.9(b)2ii):

1. (No change.)

2. Expiration date of existing permit or proposed start up date for new source. Applications must be received at least 180 days prior to expiration of existing permits or 180 days before proposed start up for new sources. Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application at least 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Construction activity facilities described under 40 CFR 122.26(b)(14)(x) **(as modified in paragraph 1 in the definition of "stormwater discharge associated with industrial activity" in N.J.A.C. 7:14A-1.9)** shall submit applications **for point source or nonpoint source discharges** at least 90 days before the date on which construction activity is to commence. See also 40 CFR 122.21(k), 122.26(c)(1)(i)(G) and 122.26(c)(1)(ii).

3.-16. (No change.)

17. Applicants for a **point source or nonpoint source** discharge which is composed entirely of stormwater associated with industrial activity are exempt from the requirements of (a)4, 5, 6, 7, 9i, 9iii, 9vi, and 15 above if such applicants provide the information required under 40 CFR 122.26(c)(1)(i).

18. Applicants for an existing or new **point source or nonpoint source** stormwater discharge that is associated with construction activity solely under 40 CFR 122.26(b)(14)(x) (as modified in paragraph 1 in the definition of "stormwater discharge associated with industrial activity" in N.J.A.C. 7:14A-1.9) are exempt from the requirements of (a)3 through 15 above, and 40 CFR 122.26(c)(1)(i). Such applicants shall not submit Form 2F, but shall provide the information required under 40 CFR 122.26(c)(1)(ii) and such information as the Department may require under 40 CFR 122.26(c)(1)(v).

19. (No change.)

20. Permit applications for discharges of stormwater shall include the information required under applicable provisions of 40 CFR 122.26, 40 CFR 122.21(g), and other applicable provisions of this chapter, with the following qualifications and exceptions:

i. (No change.)

ii. [The duties that 40 CFR 122.26 imposes on the operator of a stormwater discharge are also imposed on persons who own any part of the facility.] **References to a "storm water discharge associated with industrial activity" and equivalent phrases in 40 CFR 122.26 shall be understood to mean a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.9.**

iii.-viii. (No change.)

ix. If a facility is approved by the EPA as a member of a group application pursuant to 40 CFR 122.26(e)(2) and applies to the Department for an individual DSW permit, the Department may accept the quantitative data in Part 2 of that group application in lieu of quantitative data collected at the applicant's facility, provided that:

(1) The quantitative data in Part 2 of the group application is submitted to the Department by the entity that prepared the group application or by the applicant; and

(2) The EPA has not informed that entity that the quantitative data in Part 2 that was submitted to the Department is inaccurate or incomplete.

21. (No change.)

22. The references in 40 CFR 122.26(e)(1)(i) and (e)(2)(iv)(B) to "October 1, 1992" shall be replaced by "April 1, 1993." **The following shall be added at the end of 40 CFR 122.26(e)(1)(i):**

"However, this April 1, 1993 deadline does not apply in the following cases:

(A) If the discharge is from a nonpoint source and is not from a point source or identified under (B) below, this permit application shall be submitted within six months of the effective date of N.J.A.C. 7:14A-3.8(a)1.

(B) If the Department classifies the discharge as a "stormwater discharge associated with industrial activity" under paragraph 2 in the definition of that term in N.J.A.C. 7:14A-1.9, the permit application shall be submitted within 60 days of receipt of written notice of such classification, unless permission for a later date is granted by the Department."

40 CFR 122.26(e)(2)(iv)(A) shall be replaced by the following: "Except as provided in paragraph (e)(2)(iv)(B) of this section, facilities that are rejected as members of the group shall submit an individual permit application (or obtain authorization under an applicable general permit) no later than April 1, 1993."

23. If a facility is approved by the EPA as a member of a group application pursuant to 40 CFR 122.26(e)(2), or if a facility which is a participant of a group application has not been approved or rejected by the EPA pursuant to 40 CFR 122.26(e)(2) by April 1, 1993, the [owner and operator] **facility** shall, by October 1, 1993, either apply for an individual DSW permit, or submit a written request for authorization under an applicable general DSW permit issued under N.J.A.C. 7:14A-3.9. This paragraph shall not apply to a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill.

24.-27. (No change.)

(b) (No change.)

(c) NJPDES Permit: Upon receipt of a Discharge Allocation Certificate, the applicant may design and construct a treatment works to meet the limits stated unless the Department determines that a treatment works approval is also required in accordance with N.J.A.C. 7:14A-12. At least 60 days prior to planned discharge, the applicant shall apply for a NJPDES permit to discharge in accordance with N.J.A.C. 7:14A-2.1 and 7.2. The following items and the information required for a DAC must be submitted for the NJPDES permit:

1.-7. (No change.)

8. This subsection does not apply to discharges from separate storm sewers **and stormwater discharges associated with industrial activity**; however, this subsection does apply to NJPDES permits for discharges into storm sewers of domestic wastewater, non contact cooling water, or process wastewater other than stormwater. [This paragraph does not exempt any person from any requirement to obtain a treatment works approval under N.J.A.C. 7:14A-12.]

(d) (No change.)

7:14A-14.8 Exemptions

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

(c) [Except as provided in (d) below, the] DSW permits **for stormwater point sources, separate storm sewers, and stormwater discharges associated with industrial activity** [and discharges listed in (c)1 and 2 below] are excluded from the requirements of N.J.A.C. 7:14A-14.4(a), 14.4(c), 14.5(a), and 14.5(c). [For such permits and discharges, the] Such DSW permits shall stipulate the effluent limitations and monitoring frequency, if any, for oil and grease.

[1. General DSW permits for stormwater point sources or separate storm sewers; and

2. DSW from separate storm sewers that are not industrial treatment works.

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(d) Despite (c) above, owners and operators of facilities listed in (d)1 or 2 below must comply with the requirements of N.J.A.C. 7:14A-14.4(a), 14.4(c), 14.5(a). 14.5(c), and 14.5(e) regarding any stormwater that has come into contact with petroleum-based oil or grease in raw material, intermediate products, finished products, byproducts, or waste products located on the site of such facilities.

1. Facilities classified as Standard Industrial Classification (SIC) Code 29 (Petroleum Refining and Related Industries); and

2. Facilities that are defined as "major facilities" at N.J.S.A. 58:10-23.11b1 and N.J.A.C. 7:1E-1.6 and that also have a total combined storage capacity of 200,000 gallons or more for petroleum or petroleum products.]

Appendix H
Schedule of Monitoring

Wastewater Treatment Plant (or discharge) Size	Raw + Final, COD, BOD, and Suspended Solids	ph, Residual Chlorine, Settleable Solids, Temperature	Fecal Coliform Grab
<.05 MGD	1/Month, Grab	Daily, Grab	1/Month
.05-.1 MGD	2/Month, 4 hr.	Daily, Grab	1/Month
.1-.5 MGD	2/Month, 6 hr.	Daily, Grab	2/Month
.5-1 MGD	3/Month, 6 hr.	Daily, Grab	2/Month
1-5 MGD	1/Week, 24 hr.	2/Day, Grab	4/Month
5-10 MGD	2/Week, 24 hr.	3/Day, Grab	8/Month
10-15 MGD	3/Week, 24 hr.	3/Day, Grab	8/Month
>15 MGD	Daily, 24 hr.	6/Day, Grab	Daily

Notes: COD Testing may be deleted for POTW.

COD, BOD, TSS, pH, and/or settleable solids monitoring may be relaxed (or deleted) for non-contact cooling water discharges if the applicant's activities will not affect these constituents.

Residual chlorine monitoring will not be required at facilities which do not add chlorine to their discharge.

Fecal Coliform monitoring may be relaxed (or deleted) for facilities which do not receive domestic wastewater and which do not receive wastewaters containing pathogenic and/or coliform organisms.

[Appendix H does not apply to general DSW permits for stormwater point sources or discharges from separate storm sewers. For such discharges, the schedule of monitoring, if any, shall be stipulated in the NJPDES permit. However, Appendix H may be used as a guide in establishing the schedule of monitoring, if any, in individual DSW permits for stormwater point sources or separate storm sewers. Also, Appendix H does apply to discharges into storm sewers of domestic wastewater, non contact cooling water, or process waste water other than stormwater.] **For individual or general DSW permits for discharges of stormwater, Appendix H does not apply but may be used as a guide in establishing a schedule of monitoring, if any, provided cause is specified in the fact sheet or statement of basis of the draft permit.**

(a)

DIVISION OF FISH, GAME AND WILDLIFE DEVELOPMENT AND MAINTENANCE

Use of All Land and Water Areas Under the Control of the Division of Fish, Game and Wildlife

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

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 23:7-9.
DEP Docket Number: 16-95-02/284.
Proposal Number: PRN 1995-302.

Submit written comments, identified by the DEP Docket Number above, by June 14, 1995 to:

Kimberly A. Hunter
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, NJ 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection, Division of Fish, Game and Wildlife, is proposing to amend N.J.A.C. 7:25-2, which governs the use of all land and water areas under the control of the Division and specifies what activities are allowed in all wildlife management areas ("WMA") Statewide. The proposed amendments include the following revisions and additions:

The Department is proposing to amend N.J.A.C. 7:25-2.1 Cutting or damaging vegetation, to clarify that utility companies are authorized to maintain existing right-of-ways and to specify that no person may damage vegetation within a WMA without prior written authorization from the Division. The current rule provides that persons may not gather, carry away, take, remove or destroy vegetation without written authorization, but that utility companies may engage in official utility company duties. The revisions will clarify the scope of prohibited activities.

The Department proposes to amend N.J.A.C. 7:25-2.2, All motor vehicles and other forms of conveyance, to provide that all motor boats used in a WMA must be properly registered and operated in accordance with N.J.S.A. 12:7-1 et seq. and N.J.A.C. 13:82, and to provide that dog sleds and dog carts may not be used in a WMA without prior authorization. The current rule requires the proper registration and operation of motor vehicles; it does not include motor boats. In addition, while the current rule requires authorization prior to the use of off road vehicles, all terrain vehicles, snowmobiles, motor vehicles, and trail bikes, it does not include dog sleds and dog carts. These changes are being proposed to assure that all motor boat users in a WMA comply with all applicable State laws pertaining to their registration and operation, and to control the manner in which dog sleds and dog carts are used in a WMA. Because dog sleds and dog carts are not now regulated, they are currently unrestricted as to numbers, areas of use, or manner of use, and at times create conflicts with other WMA users or cause environmental damage.

The Department proposes to amend N.J.A.C. 7:25-2.3, Vehicle traffic controls, to restrict the use of the parking area at Prospertown Lake Wildlife Management Area to vehicles under 30,000 Gross Vehicle Weight Rating (GVWR). The current parking lot is not designed to accommodate large vehicles, and the restriction is being implemented to protect public health and safety.

In addition, the Department is also proposing to amend N.J.A.C. 7:25-2.6, Division Fish Hatcheries, to prohibit the unauthorized taking of fish within or adjacent to the outflow of the Pequest Fish Hatchery and to prohibit unauthorized fishing in the Fishing Education Pond located at the Pequest Trout Hatchery. This amendment is being proposed to allow released trout safe passage to the Pequest River. Currently, some members of the public at times take fish from the outflow or pond, and thereby prevent the distribution of fish throughout the Pequest River.

At N.J.A.C. 7:25-2.8, Horseback riding, the Department is proposing to allow the Division to issue group horseback riding permits to established equestrian clubs and organizations at a set daily fee of $75.00 and to clarify that all users of horse drawn carriages requesting to use a WMA must have a valid individual or group permit from the Division. The current rule only allows the issuance of group permits to the Handicapped High Riders, and therefore creates an administrative burden for both the Division and the public when large groups of riders seek to use a WMA. The Division has been approached by several trail ride associations and clubs to establish a group permit for large equine events. Such events may involve more than 100 horseback riders and may only run for a two day period. The rule is being amended in order to establish a group permit for these horseback riding events. It sets forth the procedure for obtaining and using a group permit. Organized clubs sponsoring large equestrian events will be permitted to obtain a group permit for the event, rather than being required to seek an individual permit for each participant. The rule, however, will still permit organizations sponsoring equestrian events to purchase individual permits, rather than group permits, if they so chose. The individual horseback riding permit fee will be increased from $15.00 per person to $25.00 per person for a calendar year. Department records indicate that while the fee has remained unchanged since the regulation was established in 1975, costs for personnel, trash removal and maintenance of trails, roads and parking lots have all increased over a period of 19 years. Finally, although the current rule requires horse riders to secure a permit, it does not require users of horse drawn carriages to obtain

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such a permit. The proposed amendments authorize the continued issuance of group permits to the Equine Advisory Board of the Department of Agriculture without charge.

At N.J.A.C. 7:25-2.12, Target practice, the Department proposes to establish rules for existing archery, shotgun, muzzleloading rifle and rifle ranges on designated WMAs. These rules are being proposed to promote safety and proper weapons handling on WMAs.

At N.J.A.C. 7:25-2.14, Field trial activities, the Department is proposing to increase the fees for field trial events from $20.00 to $100.00, delete provisions pertaining to the supplying of game birds to field trial clubs by the Division, and to provide that all bird carcasses must be properly disposed of at a location outside the WMA. These changes are being proposed because the last fee increase occurred over a decade ago, and the proposed increases are necessary to enable the Division to meet its costs and to continue to maintain existing levels of service. In addition, the provision regarding the supply of game birds by the Division has become obsolete because the Division has not supplied game birds to field trial clubs for over a decade. Finally, the current practice by some of leaving bird carcasses in a WMA creates a nuisance situation for other WMA users.

At N.J.A.C. 7:25-2.15, Rental of clubhouses, the Department is proposing to increase the fees for the use of Division facilities and grounds from $10.00 and $20.00 a day to $50.00 and $100.00 a day. The fees for the use of Division facilities and grounds has remained unchanged since the regulation was established in 1975. Over this 19 year period, the Division has constructed a new conference center for meetings that requires daily maintenance. Increased costs for salaries, utilities, trash removal, parking lot construction, road maintenance and grounds maintenance all require additional funding by existing user groups. Furthermore, existing user groups and constituents represented by the New Jersey Fish and Game Council have advised the Division to increase these fees.

At N.J.A.C. 7:25-2.18, Wildlife Management Areas, the Department is proposing to include 10 new WMAs which have been acquired since the rule was last amended in 1988. This change is necessary to update the rule.

N.J.A.C. 7:25-2.19 relating to Lake Musconetcong is proposed for repeal as no longer necessary because the Division does not own the lake.

The Department is also proposing a new rule, N.J.A.C. 7:25-2.20, Dog training, concerning the training of dogs on WMAs. The proposed rule will regulate the time periods, designated areas, types of training weapons, game birds allowed for release and the use of call back pens, when training dogs on designated State WMAs. This amendment is being proposed because members of the public wishing to train dogs on WMAs have requested guidance from the Division regarding permissible training activities, and have at times been deterred from using WMAs for training due to the lack of such guidance.

Proposed new rule N.J.A.C. 7:25-2.21, Waterfowl blinds, prohibits the use of permanent waterfowl blinds and pit blinds on designated WMAs. Under the rule, all blinds must be completely portable and must be removed at the end of the day's hunt. This provision is being proposed because the use of permanent blinds are resulting in the monopolization of the limited areas available for waterfowl hunting.

Proposed new rule N.J.A.C. 7:25-2.22, Special Events Permits, concerns public assemblies within a WMA. The proposed rule is intended to provide for freedom of expression within WMAs, while also protecting public safety, allowing other recreational uses to proceed, and protecting designated environmentally sensitive areas.

The Department proposes new rule N.J.A.C. 7:25-2.23, Boat Ramp Maintenance Permit, which concerns vessel launching permits on designated WMA's. Various recreational boaters are not paying their fair share of the maintenance and improvement costs associated with launching facilities. These launching facilities are maintained by the Division with dedicated hunting, fishing and trapping license fees. The proposed rule is intended to distribute costs associated with the maintenance of these launching facilities to all recreational boaters utilizing these facilities; including canoers, water skiers and jet skiers. Recreational boaters who do not purchase a hunting, fishing, and trapping license will be required to purchase a Boat Ramp Maintenance Permit in order to use all launching facilities located within the WMAs. Such permit shall be purchased for a fee of $15.00.

N.J.A.C. 7:25-2.24, Fishing tournaments, is another proposed new rule which concerns fishing tournaments on WMAs. The proposed rule is intended to reduce conflicts between various recreational user groups on WMA lakes and impoundments. The Division will be responsible for scheduling the events and issuing the necessary permits. The proposed fee of $50.00 per group is consistent with the fee currently charged for the use of WMA grounds and facilities. The fee will be applied towards the cost of maintaining the parking areas and boat ramp, as well as as trash removal costs.

Social Impact

The proposed new rules and amendments will have a positive social impact on fishermen, hunters, and the general public.

The amendment to N.J.A.C. 7:25-2.2 specifying that boaters must comply with State registration and safety requirements will increase boating safety in WMAs and therefore have a positive social impact. This amendment will also have a positive social impact by subjecting dog sleds and dog carts to regulation, and thereby reducing the conflicts between those users and other users.

The amendment to N.J.A.C. 7:25-2.3 restricting the use of the parking area at the Prospertown Lake WMA to vehicles under 30,000 Gross Vehicle Weight Rating. The current parking lot is not designed to accommodate large vehicles, and the restriction is being implemented to protect public health and safety.

The designation of the Pequest Trout Hatchery outflow as a restricted area (amendment to N.J.A.C. 7:25-2.6) will have a positive social impact on fishermen. The amendment will permit the safe passage of trout from the Pequest Trout Hatchery to the Pequest River and will allow all fishermen equal opportunity to catch these fish.

The amendment of N.J.A.C. 7:25-2.8 to expand the use of group horseback riding permits will have a positive social impact by providing increased horseback riding opportunities with a lesser degree of administrative burden on the public and the Division.

The amendment of N.J.A.C. 7:25-2.12 will also have a positive impact by establishing rules for archery, shotgun, muzzleloader rifle and rifle ranges. These rules will increase the safety of shooters and of visitors to a WMA.

The proposed rule prohibiting the use of permanent waterfowl blinds will have a general positive impact. The prohibition will give all waterfowl hunters equal opportunity and access to all huntable areas.

The amendments establishing increased fees for field trial activities and for the use of Division grounds and facilities will also have a general positive impact. Although the increase in fees may reduce participation in those activities, the increases will allow the Division to cover its costs, and to thereby continue existing services to the public. Without these increases, the Division would be forced to cut back on services.

The proposed rule establishing rules for dog training will specify what activities are permissible. The proposal should have the positive effect of increasing use of the WMAs by the public, because members of the public have advised the Division that the current lack of regulations regarding dog training in the WMAs deters them from using the WMAs.

The proposed rule governing public assemblies will have a positive social impact by allowing freedom of expression to occur while also protecting public safety and the rights of all recreational users of WMAs.

The proposed rule establishing an annual fee for boaters, who do not purchase a hunting, fishing or trapping license to use designated launching facilities on WMAs will also have a general positive impact. These boaters will begin to contribute toward the improvement and maintenance of existing lauching facilities that they now use for free.

The proposed rule establishing a permit for fishing tournaments will have a general positive social impact, by reducing conflicts between various user groups. The required fee is consistent with Division policy for the use of a WMA and is necessary to administer the program.

The proposed amendments to N.J.A.C. 7:25-2.1, Cutting or damaging vegetation and 2.18, Wildlife Management Areas, and the repeal of N.J.A.C. 7:25-2.19, Restricted access to Lake Musconetcong, will have no social impacts. N.J.A.C. 7:25-2.1 has been changed to clarify the existing regulation. N.J.A.C. 7:25-2.18 has been changed to add 10 new wildlife management areas and N.J.A.C. 7:25-2.19 is being repealed because the Division is not the owner of Lake Musconetcong.

Economic Impact

The amendment expanding the use of group horseback riding permits should have a positive economic impact on established equestrian clubs and organizations who wish to hold an equestrian event within a WMA. Presently, such organizations must purchase individual permits for each participant. The group permit will allow the club to purchase one permit for all participants in the event and will lessen the costs and administrative burden associated with securing permits for such events. The fee

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increases for field trial permits and the use of WMA facilities and grounds will also have a positive economic impact by ensuring that the Division has adequate funding in order to continue to provide its existing level of services to the public. Base fees for these activities have not been increased over a decade while the costs of salaries, equipment, materials and services have increased.

The new rule concerning a vessel launching permit will result in a minor economic impact to recreational boaters who do not purchase a hunting, fishing or trapping license. These boaters participate in various recreational activities such as canoeing, water skiing, jet skiing and sailing. They pay no fee to use existing launching facilities which are improved and maintained by the Division with dedicated license fees. The income generated from their launching permit fees will help the Division improve and maintain these facilities.

The proposed rule concerning the establishment of a group permit for fishing tournaments will have a minor economic impact to tournament organizers. A group permit fee is being required to reduce conflicts between existing tournaments and individual fisherman. The fee will allow the Division to control use, monitor scheduled events and provide better service to the fishing public. The Division will use the permit fee to maintain parking areas, boat ramps and to remove trash generated by tournament participants.

The following proposed amendments, new rules and repeal will not have economic impacts because there are no fees associated with these sections: N.J.A.C. 7:25-2.1, Cutting or damaging vegetation; 2.2, All motor vehicles and other forms of conveyance; 2.3, Vehicle traffic controls in Wildlife Management Areas; 2.6, Division Fish Hatcheries; 2.12, Target practice; 2.18, Wildlife Management Areas; 2.19, Restricted access to Lake Musconetcong; 2.20, Dog training; 2.21, Waterfowl blinds; and 2.22, Special Events Permits.

Environmental Impact

The proposed amendments prohibiting the damaging of vegetation, regulating dog sleds and dog carts, and clarifying that users of horsedrawn carriages must have permits will have a positive environmental impact, by reducing damage to vegetation and the adverse environmental impacts now associated with the unregulated use of dog sleds, dog carts, and horsedrawn carriages in areas that are inappropriate for those uses or where overuse is occurring. The amendment requiring disposal of bird carcasses outside of WMAs will also have a positive environmental impact, by reducing the nuisance now created by uncontrolled disposal of those carcasses within a WMA. The proposal to regulate dog training should also have a positive environmental impact, by assuring that training activities occur at times, locations, and in a manner that is protective of wildlife reproduction.

Similarly, the proposed rule concerning public assemblies will protect environmentally sensitive areas and thus also have a positive impact on the environment.

The proposed new rule concerning a vessel launching permit on WMAs will have no adverse environmental impacts.

The proposed rule concerning fishing tournament permits on WMAs will have no adverse environmental impacts.

The following proposed amendments, new rule and repeal will have no environmental impacts because they are regulatory changes in language which are not subject to an environmental damage evaluation: N.J.A.C. 7:25-2.3, Vehicle traffic controls in Wildlife Management Areas; 2.6, Division Fish Hatcheries; 2.12, Target practice; 2.15, Rental of club houses; 2.18, Wildlife Management Areas; 2.19, Restricted access to Lake Musconetcong; and 2.21, Waterfowl blinds.

Executive Order No. 27 Statement

These proposed amendments, new rules and repeal are not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law. The proposed amendments, new rules and repeal also are not under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) does not require a comparison with Federal law.

Regulatory Flexibility Statement

The proposed amendments to N.J.A.C. 7:25-2 will impose reporting and compliance requirements on sportsmen and special user groups, but are not being imposed on small businesses. Therefore, pursuant to N.J.S.A. 52:14B-19, no regulatory flexibility analysis is required.

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

7:25-2.1 Cutting or damaging vegetation

No person or persons shall at any time cut, fell, dig up, pull up, **damage,** gather, carry away, take, remove or destroy any tree, shrub, vine or other vegetation or part thereof without written permission or other authorization of the Division of Fish, Game and Wildlife. Nothing in this section shall apply to public utility companies or their agents engaged in [official utility company duties] **the maintenance of existing utility company rights-of-way, provided that prior notice is given to the Division.**

7:25-2.2 All motor vehicles **and other forms of conveyances**

(a) No person shall operate any motor vehicle, **motorboat,** or other conveyance on or over any State Wildlife Management Area unless the motor vehicle [is properly registered and is displaying the proper and valid registration plates for the vehicle] **or motorboat is properly registered and displays the proper and valid registration numbers. All boats used on the waters under the control of the Division of Fish, Game and Wildlife are subject to N.J.S.A. 12:7-1 et seq. and N.J.A.C. 13:82 and shall be operated in accordance with those provisions.**

(b) (No change.)

(c) No person shall operate motor vehicles, including conveyances, commonly known as off-road vehicles, all terrain vehicles, snowmobiles, **dog sleds, dog carts** or trail bikes, on State Wildlife Management Areas at any time without first obtaining a written permit or other authorization from the Division.

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

7:25-2.3 Vehicle traffic controls in Wildlife Management Areas

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

(d) In the Prospertown Lake Wildlife Management Area, all vehicles over 30,000 Gross Vehicle Weight Rating are prohibited from using the parking area.

7:25-2.6 Division Fish Hatcheries

(a) No unauthorized person shall take or attempt to take fish by any means, or feed, molest, disturb, kill, net or attempt to net any fish in or from the waters of State Fish Hatcheries, except **the public may take or attempt to take fish in or from** those waters specifically posted **for public fishing** by the Division of Fish, Game and Wildlife.

(b) In the Pequest Wildlife Management Area, no unauthorized person shall take or attempt to take fish by any means, or feed, molest, disturb, kill, net or attempt to net any fish within the restricted area posted as being a portion of, or adjacent to, the outflow of the Pequest Trout Hatchery.

(c) In the Pequest Trout Hatchery, the taking or attempting to take fish by any means, or feeding, molesting, disturbing, killing, netting or attempting to net any fish in the "Fishing Education Pond" is prohibited unless specifically authorized by the Division.

7:25-2.8 Horseback riding

(a) (No change.)

(b) The fee for any individual permit for horseback riding on State Wildlife Management Areas shall be [$15.00] **$25.00** per calendar year. All horseback riding permits will expire on December 31, of each year.

1.-2. (No change.)

(c) [The Division may issue group horseback riding permits, covering a specified time period, to the Equine Advisory Board of the State Department of Agriculture for rides it may sponsor to aid handicapped persons. No fee will be charged for these permits. Said valid permit must be in the possession of at least one of the participating riders.] **The Division may issue group horseback riding permits, covering a specified time period, to the Equine Advisory Board of the State Department of Agriculture. No fee will be charged for these permits.**

1. The Department of Agriculture when applying for such a permit will provide the Division with a complete application for a permit, on a form to be provided by the Division. A copy of the valid permit must be posted at the New Jersey Horse Park facility or in possession of the event coordinator. Each participant must possess a copy of a completed registration form, which will be provided by the Division.

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i. The Department of Agriculture will be required to provide proof of insurance in the amounts specified at (b)1 above for the group permits they sponsor.

(d) The Division may also issue group horseback riding permits to clubs or organizations on a daily basis. The fee for such a permit will be $75.00 per day.

1. The prospective group permittee shall maintain public liability and property damage insurance according to the insurance requirements delineated at (b)1 above.

2. At least five days before the event, the club or organization applying for such a permit will provide the Division with an application for a permit which includes a roster of riders who will be participating in the event.

3. Each group permit application must be accompanied by a statement from the applicant's insurance company specifying the insurance coverage as it applies to the riding of horses on State WMA's.

4. A copy of the valid permit and roster must be in possession of at least one of the participating riders. For the purpose of this section, a group will be defined as two or more riders.

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

(g) The use of horse drawn carriages on all designated wildlife management areas will require an individual or group permit from the Division. The insurance coverage requirements set forth in (b)1 above for horseback riders shall apply to horse drawn carriage riders.

7:25-2.12 Target practice

(a) No target practice of any kind is permitted on State Wildlife Management Areas except [by written permission of the Division] **within designated areas provided by the Division**. This shall not preclude the use of [firearms,] **shotguns, muzzleloaders, .22 rifles, or** bow and arrows [or weapons of any kind] for the purpose of authorized hunter education or other authorized purposes in designated areas.

(b) The following regulations apply to all activities on the archery range, shotgun range, muzzleloading rifle and shotgun slugs range, and rifle range:

1. Hours of operation are from 8:00 A.M. to sunset daily.

2. No person shall stand beyond the shooting line while shooters are firing.

3. At least one member of each shooting group shall have a valid New Jersey hunting license in his or her possession.

4. No littering shall be permitted.

5. All spectators shall stand behind all firing positions at the range.

6. All hunter education classes shall have priority use of the range facility.

7. Violation of any of the foregoing restrictions, or of any requirement listed in (c), (d), (e) or (f) below, may result in expulsion from the range, the imposition of fines, or license revocation pursuant to N.J.S.A. 23:3-22.

(c) In addition to the requirements listed in (b) above, the following requirements shall apply to all training activities on the archery range:

1. No arrows other than field tips or target points shall be used.

2. No broadheads shall be used.

3. All targets used shall be paper, foam or straw. Targets constructed of other materials are prohibited.

4. No damaged or unsafe equipment shall be used prior to shooting. All shooters shall be sure of their target and beyond.

5. Archers shall shoot only from marked shooting positions and shall shoot only at backstops.

6. No archer shall nock an arrow or draw a bow when any other person is in front of him or her or is down range.

7. When drawing his or her bow, no archer shall raise his or her arrow point higher than the top of the backstop.

8. All shooting shall cease when a cease fire is called.

(d) In addition to the restrictions listed in (b) above of the following requirements shall apply to all training activities on the shotgun range:

1. No weapons other than shotguns and muzzleloading shotguns shall be used at the range.

2. Only fine shot smaller than No. 4 Lead or No. T Steel ammunition shall be used.

3. No slugs or buckshot shall be used.

4. Only clay birds and paper pattern boards shall be used. All other forms of targets are prohibited.

5. The pointing of a firearm loaded or unloaded at anything except a target is prohibited.

6. Muzzles shall always be kept pointed in a safe direction and prior to shooting all shooters shall be sure of their target and beyond.

7. Shooting shall only occur from marked firing positions into marked shotfall areas.

8. All shotgun actions shall be kept open at all times except when on the firing line.

9. All uncased shotguns being carried to or from the firing line shall be unloaded and shall have their actions open.

10. Eye and ear protection equipment shall be used.

11. When any person is down range of the firing line, the handling of shotguns is prohibited. In addition, all shotguns shall be unloaded and shall have their actions opened.

12. No person shall smoke on the firing line when a black powder shotgun is being used.

13. When a cease fire is called, all shooting shall stop and all firearms shall be unloaded and shall have their actions open.

14. A target change may be made by calling a cease fire on the hour and the half hour.

(e) In addition to the requirements listed in (b) above the following requirements shall apply to all activities on the muzzleloading rifle and shotgun slugs range:

1. No weapons other than muzzleloading rifles and shotguns shall be permitted at the range.

2. Only paper type targets are permitted to be used. All other forms of targets are prohibited.

3. All persons using the range shall observe the primary safety rule of treating every gun as if it were loaded.

4. All muzzles shall be kept pointed in a safe direction and prior to shooting all shooters shall be sure of their target and beyond.

5. Eye and ear protection equipment shall be used.

6. All shooting shall occur only from marked firing line positions into the designated backstop area.

7. No muzzle of a loaded firearm shall be raised higher than the top of the backstop.

8. All firearms actions shall be kept open at all times except when the shooter is on the firing line.

9. All uncased firearms being carried to or from the firing line shall be unloaded and shall have their actions opened.

10. When any person is down range of the firing line, all firearms shall be unloaded and shall have their actions opened.

11. When any person is down range, no handling of firearms shall occur, including the adjustment of sights.

12. When a cease fire is called, all shooting shall stop and all firearms shall be unloaded and shall have their actions open.

13. A target change may be made by calling a cease fire on the hour and the half hour.

14. No smoking shall occur on the firing line when a black powder firearm is being used.

(f) In addition to the requirements listed in (b) above, the following requirements shall apply to all activities on the rifle range:

1. No firearms shall be used except modern action rim-fire or center fire rifles and muzzleloading rifles.

2. Shooters may load and fire only one round at a time.

3. Only paper type targets are permitted to be used. All other types of targets are prohibited.

4. The primary safety rule of treating every gun as if it were loaded shall be observed.

5. All shooters shall keep all muzzles pointed in a safe direction and prior to shooting shall be sure of their target and beyond.

6. Eye and ear protection equipment shall be used.

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7. No shooting shall occur except from marked firing line positions into the designated backstop area.

8. No muzzle of a loaded firearm shall be raised higher than the top of the backstop.

9. All firearms actions shall be kept open at all times except when the shooter is on the firing line.

10. When any person is down range of the firing line, all firearms shall be unloaded and all firearms actions shall be opened.

11. All uncased firearms being carried to or from the firing line shall be unloaded and shall have their actions opened.

12. When any person is down range, no handling of a firearm, including the adjusting of sights, shall occur.

13. When a cease fire is called, all shooting shall stop and all firearms shall be unloaded and all firearm actions shall be opened.

14. Target changes may be made by calling a cease fire on the hour and on the half hour.

15. No smoking shall occur on the firing line when a black powder firearm is being used.

7:25-2.14 Field trial activities

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

(c) Definitions include the following.

1.-2. (No change.)

3. "Division" means the Division of Fish, Game and [Shellfisheries] **Wildlife** or its successor in the Department of Environmental Protection.

(d) Application procedures are:

1.-2. (No change.)

3. Fees: A fee of [$20.00] **$100.00** per day shall be charged for all field trials or retrieving field trials [on wildlife management areas. For field trials only, permittees may purchase game birds from the Division at the following prices:] **using the designated course or areas and building facilities provided by the Division on Wildlife Management Areas. A fee of $50.00 per day shall be charged for all field trials or retrieving field trials using only the designated course or area on the Wildlife Management Areas.**

[i. Spring trials:

(1) Quail—$3.00;

(2) Pheasant—$7.00.

ii. Fall trials:

(1) Quail—$2.50;

(2) Pheasant—$6.00.]

(e) (No change.)

(f) General provisions include:

[1. The maximum number of birds allotted for a field trial by the Division shall be 25 birds per day.

2. No bird liberations are to be made for stakes or events in which puppies participate.]

[3.]**1.** (No change in text.)

[4.]**2.** At retrieving field trials, [where the organization supplies the birds,] only pen reared game birds and domestic mallards may be used. Only birds specified in the permit may be liberated. Any bird carcass must be tagged before it is removed from the event location. Tags shall be secured from the Division at a fee of $[0.20] **0.25** each. **All bird carcasses shall be properly disposed of by the permittee at another location outside the designated Wildlife Management Area in use.**

Recodify existing 5. and 6. as **3. and 4.** (No change in text.)

(g) These regulations are not intended to prohibit the running of coonhound trials utilizing a laid trial and live raccoon placed in a tree at the end of the chase[, if the raccoon owner is properly licensed by the Division of Fish, Game and Shellfisheries, for the possession of a live raccoon.] **The owner of a raccoon utilized for the laid trail must be licensed by the Division of Fish, Game and Wildlife for the possession of a live raccoon.**

(h)-(i) (No change.)

7:25-2.15 Rental of clubhouses

(a) Use of clubhouses or designated facilities for outings, trap shoots, or other events will be authorized at a fee of [$20.00] **$100.00** a day: use for meeting purposes will be permitted at a [$10.00] **$50.00** daily fee. Permittee shall be responsible and liable for any damage which may occur.

(b) (No change.)

7:25-2.17 Securing Permits

Information on securing any of the permits described in this subchapter may be obtained by writing or telephoning the Division of Fish, Game and Wildlife, CN 400, Trenton, New Jersey 08625. Telephone (609) [292-2965] **984-1401**.

7:25-2.18 Wildlife Management Areas

(a) This subchapter applies to the following designated Wildlife Management Areas:

1.-8. (No change.)

9. [Edward G. Beven (Millville)] **Millville**

10.-38. (No change.)

39. [L.G. MacNamara (Tuckahoe)] **Tuckahoe**

40.-47. (No change.)

[48. Musconetcong]

Recodify existing 49.-74. as **48.-73.** (No change in text.)

74. Bear Swamp

75. Cape May Wetlands

76. Columbia Lake

77. Hummers Beach

78. Knowlton

79. Lebanon Laboratory

80. Makepeace Lake

81. Mannington

82. New Sweden

83. Oyster Creek

84. Elmer Lake

85. Pemberton Lake

86. Maple Lake

87. Point Pleasant Canal Access

88. Budd Lake

89. Feather Bed Lane

90. Musconetcong River Access

91. Pork Island

(b) (No change.)

[7:25-2.19 Restricted access to Lake Musconetcong

(a) Access to Lake Musconetcong by all persons, other than personnel of the Department of Environmental Protection, is hereby restricted and no person shall enter upon the waters or shoreline areas of Lake Musconetcong for any purpose whatsoever.

(b) Any person violating the provisions of the aforesaid regulation shall be subject to prosecution as provided in N.J.S.A. 13:1B-26(3).

(c) This regulation is essential to protect the fisheries resources in Lake Musconetcong during the period that the water level of said lake is being reduced by the department.]

7:25-[2.20]**2.19** (No change in text.)

7:25-2.20 Dog training

(a) A person may exercise or train dogs on State Fish and Wildlife Management Areas from May 1 to August 31, inclusive, on the following designated Wildlife Management Areas:

1. Assunpink;

2. Millville;

3. Black River;

4. Clinton;

5. Colliers Mills;

6. Glassboro;

7. Hainesville;

8. Tuckahoe;

9. Manasquan;

10. Stafford Forge; and

11. Whittingham.

(b) A person may exercise or train dogs on any State Wildlife Management Area from September 1 to April 30.

(c) There shall be no exercising or training of dogs on any Wildlife Management Area on the Friday before the opening day of the regular small game season.

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(d) All dogs involved with training activities must be properly licensed according to State law.

(e) Pheasants, quail and partridge may be released for dog training on wildlife management areas. The game birds must be obtained from a licensed game breeder. Any person releasing pheasants, quail or partridge in a Wildlife Management Area must have in their possession a "Game Animal—Game Bird Sales Receipt" for the birds to be released. These receipts are provided to licensed game breeders by the Division and are issued by the breeder to the purchaser of game birds.

(f) Pigeons may be used for dog training. However, the shooting of pigeons for dog training is prohibited.

(g) Game birds used for dog training on Wildlife Management Areas may not be brailed or tethered to restrain the bird in any way after release. Mechanical bird holding devices may be used to restrain game birds prior to release. Upon release the game birds used for dog training are subject to all rules and regulations pertaining to seasons, bag limits and methods and means of take specified in the New Jersey Game Code.

(h) No firearms may be used outside of the prescribed hunting seasons for the training of dogs. Starter pistols, dummy launchers and other noise making devices which are not capable of firing a projectile that could cause harm may be used.

(i) Frozen or otherwise preserved game birds obtained during the legal hunting season may be used for dog training purposes.

(j) The release of rabbits, hares, raccoons, and foxes for dog training is prohibited.

(k) The use of call back pens for game birds on any Wildlife Management Area is prohibited.

7:25-2.21 Waterfowl blinds

(a) No permanent waterfowl blinds, including pit blinds, shall be constructed, hunted from or used in any manner in any of the following wildlife management areas:

1. Assunpink;
2. Black River;
3. Colliers Mills;
4. Hainesville;
5. Tuckahoe;
6. Manahawkin;
7. Stafford Forge;
8. Whittingham;
9. Beaver Swamp;
10. Sedge Island WMA;
11. Mannington; or
12. Prospertown Lake.

(b) Any blind used in the areas in (a) above must be portable and shall be completely removed at the end of the day. Blinds remaining in the Wildlife Management Areas in (a) above will be classified as abandoned property and will be subject to confiscation and disposal by the Division.

7:25-2.22 Special Events Permits

(a) Any person or group wishing to conduct an activity within a Wildlife Management Area ("WMA"), other than those specifically permitted pursuant to this chapter, shall apply for and receive a Special Events Permit from the Superintendent of the Wildlife Management Areas and the Regional Captain of the Bureau of Law Enforcement prior to commencement of such activities. For assemblies of 10 or fewer persons, an application shall be filed with the Division at least 30 days prior to the date of the assembly. For assemblies of more than 10 persons, an application for a special events permit shall be filed at least 90 days before the date of the event.

(b) A map listing the designated locations within the State's Wildlife Management Areas available for public assemblies shall be available in the office of the Superintendent. Locations suitable for public assemblies will be chosen based upon the environmental sensitivity of such areas, the safety of all users of the Wildlife Management Areas, the likelihood of interference with the facilities, services and other activities in the Wildlife Management Area and the ability of the participants to make their presence known and to communicate their message to the group they wish to target.

(c) Such permit application shall be submitted on the form provided by the Division and shall set forth the name of the applicant; the date, time, duration, and requested locaton for the proposed event; the type of event to be conducted; an estimate of the number of persons expected to attend the event; and a list of the type(s) of equipment and/or facilities to be used for such event. No Special Event permit shall be valid until the permittee submits a security deposit in the form of a certified or bank check or bond in an amount sufficient to ensure full compliance with the terms and conditions of the permit and to protect the Department for the cost of any damage to the WMA or its facilities which may occur as a result of the event. If the security deposit is not received by the Superintendent of the WMAs within five business days of the scheduled event, the permit shall be void and the event may not occur on the WMA. If upon expiration or termination of the permit, the agency determines that a permittee has not complied with the terms and conditions of the permit, has violated any law, ordinance, statute or rule, or the event has resulted in damage to the Wildlife Management Area or its facilities, the following applies:

1. Any security submitted by the permittee to the Department shall be forfeited and retained by the Department to the extent necessary to remedy or compensate the Department for the damage(s);

2. The permittee shall be liable for any additional sum necessary to correct or compensate the Department for such damage; and

3. Neither forfeiture of any security nor payment for such damage shall in any way relieve the permittee of civil or criminal liability arising from the permittee's actions.

(d) The Superintendent and the Regional Captain of the Bureau of Law Enforcement shall, jointly, issue a permit within 10 days of receipt of a complete permit application.

(e) Such permit shall be issued unless:

1. A prior permit application for a permit for the same time and location has been made to the Division and will be granted and such permitted activities do not allow multiple occupancy or use of the designated area;

2. The Division has scheduled an event for the same time and location which does not allow multiple occupancy or use of the designated areas;

3. The event is expected to include activities which will present a clear and present danger to the public health or safety or which are prohibited pursuant to Federal or State law;

4. The event is of such a scale or duration that it may result in damage or disruption to the Wildlife Management Area's environment, resources or facilities; or

5. Within the preceding four years, the applicant has been granted a permit and did, on that prior occasion, knowingly violate a material term or condition of the permit, or any law, ordinance, statute or regulation or cause damage to a WMA or its facilities.

(f) If a permit application is denied, the applicant shall be informed, in writing, within five days of the reason(s) for such denial.

(g) A permit may contain conditions consistent with the protection and continued use of the Wildlife Management Area in conformance with the purpose for which such WMAs were established; to provide wildlife oriented recreation through the proper protection and management of fish and wildlife habitat for the benefit of all New Jersey's citizens. It may also contain limitations on the type(s) of equipment to be used. Any permittee aggrieved by the conditions contained within a permit may request an administrative hearing pursuant to the procedures delineated at (n) below.

(h) A permit shall be issued for a period not to exceed seven days. A permit, however, may be extended for another seven day period upon the submission of a new application and provided that another applicant has not previously requested use of the same location for an activity for which multiple occupancy of said location is impossible.

(i) Activities authorized pursuant to a permit will be allowed within the WMA only if such activities are performed in strict accordance with the terms and conditions set forth in the permit.

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Permittees and their agents, employees and invitees shall comply with all applicable local, State and Federal laws, rules and regulations.

(j) All persons participating in an event permitted by a Special Events Permit including, but not limited to, the permittee and its agents, employees and/or invitees, shall comply with the lawful direction or command of any Police Officer, Conservation Officer, WMA or Department Employee and any, written or printed, WMA sign, except upon order of a Police Officer, Conservation Officer or WMA or Department Employee.

(k) Permittees and their agents, employees and invitees shall not obstruct or impede pedestrians or vehicle and may not prevent any person from engaging in activities authorized to be conducted within the WMA.

(l) Violation of any of the provisions of this section may result in revocation or suspension of a permit and imposition of penalties as provided in N.J.S.A. 23:7-9. Notice of such revocation or suspension shall be made in writing and shall clearly set forth the reason(s) for the revocation or suspension.

(m) Violation of the terms and conditions of a permit issued in accordance with this section may result in suspension or revocation of the permit in addition to the penalties provided in N.J.S.A. 23:7-9.

(n) Any applicant or permittee who is aggrieved by the conditions placed upon a Special Events Permit issued to them, by the denial of their application for the same, or the suspension or revocation of their Special Events permit may request an administrative hearing. Requests for administrative hearings shall be submitted in writing within 10 days from the date of the issuance of the permit or other Department decision and shall set forth the reasons why the Department's action is improper, specifying all legal and factual issues to be raised in support of the applicant's position. A request for a hearing shall be sent to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
CN 402
Trenton, NJ 08625-0402

Upon receipt of such a request, the Commissioner may conduct the hearing or refer the matter to the Office of Administrative Law which shall conduct a hearing on the matter pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Within 45 days of receipt of the Administrative Law Judge's decision, the Commissioner shall affirm, reject, or modify the decision. The Commissioner's final decision affirming, rejecting or modifying the recommended findings by the Office of Administrative Law shall constitute final agency action pursuant to R.2:2-3(a)2 and shall be subject only to judicial review as provided in the Rules of Court.

7:25-2.23 Boat Ramp Maintenance Permit

(a) Any vehicle used to transport or launch a vessel or water conveyance on the following wildlife management areas must have affixed to the lower corner of the driver's side rear window a boat ramp maintenance permit or receipt from a valid hunting, fishing or trapping license. The boat ramp maintenance permit shall be purchased for a fee of $15.00 from the Division.

1. Round Valley Angler Access;
2. Kingwood;
3. Assunpink;
4. Dennis Creek;
5. Tuckahoe;
6. Mad Horse Creek;
7. Union Lake;
8. Menantico Ponds; or
9. Prospertown Lake.

(b) Any vehicle found in violation of N.J.A.C. 7:25-2.23 shall subject the driver or registered owner to prosecution under N.J.S.A. 23:7-9, possible license revocation pursuant to N.J.S.A. 23:3-22 and penalties in the amount of $50.00 to $200.00.

7:25-2.24 Fishing tournaments

(a) No person or persons shall conduct a fishing tournament on or from any fish and wildlife management area without a permit from the Division.

(b) "Fishing tournament" means any organized competitive fishing event, from shoreline or from boat, with or without remuneration of any form, that is engaged in by more than 10 anglers or five boats, whichever is less.

(c) Permits for the use of any fish and wildlife management area for conducting fishing tournaments may be granted by the Division in accordance with the provisions of this section.

(d) Application procedures are as follows:

1. A permit for a fishing tournament may be issued to any organization, including, but not limited to, sportsmen's organizations, civic organizations and governmental councils or agencies.

2. An application for the holding of a fishing tournament shall be made to the N.J. Division of Fish, Game and Wildlife at CN 400, Trenton, NJ 08625, no later than 60 days in advance of the proposed date for the event.

3. Such application will contain the following information:

i. The name of the tournament organizer and/or sponsor;

ii. The address and telephone number of the tournament organizer and/or sponsor;

iii. The proposed date of the tournament;

iv. The number of participants and boats;

v. The starting time and ending time; and

vi. The rules and restrictions placed on the event by the organizer and/or sponsor.

4. A $50.00 per day fee shall be included with the application for all fishing tournaments conducted on or from a Wildlife Management Area. The fee may be waived for charitable-oriented events.

(e) The organizer or sponsor of the tournament will be responsible for, and required to report, the number of tournament participants, hours fished and the species, number and sizes of fish caught and released, and the species, number and sizes of fish harvested. Failure to report this information will result in future denial of fishing tournament permits.

(f) Issuance of a permit for a fishing tournament does not convey any special privileges in regards to the taking of fish or in the use of boat motors. All tournament participants must comply with all of the provisions of the Fish Code and Wildlife Management Area regulations in effect at the time of the tournament. All tournament participants, that fish, must possess and display a fishing license valid for the calendar year in which the tournament occurs.

(g) Issuance of a permit does not grant an exclusive right to use the designated area. Tournament organizers, sponsors and/or participants shall not impede the rights of others to use the area.

(h) By issuing a permit, the Division does not assume any responsibility or liability for such fishing tournament. Judging and awarding of prizes is the sole responsibility of the permittee, organizer and/or sponsor.

(i) The permittee organizer and/or sponsor of the tournament shall be responsible for the proper disposal of all litter and trash generated by the event.

(j) All persons shall use every precaution to prevent damage, destruction, or fire to the Wildlife Management Area. The permittee shall be completely responsible for any damage as a result of the fishing tournament. No permit shall be issued to any organization or persons who have damaged or destroyed State lands or property and who have failed to reimburse the State for such damage and/or destruction.

Recodify existing N.J.A.C. 7:25-2.21 and 2.22 as **2.25 and 2.26** (No change in text.)

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(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council
1995-96 Game Code
Proposed Amendments: N.J.A.C. 7:25-5

Authorized By: Fish and Game Council, Cole Gibbs, Chairman.
Authority: N.J.S.A. 13:1B-29 et seq.
DEP Docket Number: 20-95-04/520.
Proposal Number: PRN 1995-313.

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

Tuesday, June 6, 1995 at 8:00 P.M.
Mercer County Community College
West Windsor Campus
1200 Old Trenton Road
Administration Building, Conference Room A
West Windsor, New Jersey

Submit written comments by June 14, 1995 to:

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

The agency proposal follows:

Summary

The proposed 1995-96 Game Code, N.J.A.C. 7:25-5, states when, under what circumstances, in what location, by what means, and in what amounts and numbers, birds, game animals and fur-bearing animals may be pursued, taken, killed or possessed.

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

The proposed amendments include the following revisions:

1. Most hunting season dates are adjusted to correspond with the 1995-96 calendar which takes into account both anticipated differences in hunting activities according to the day of the week, and the effects of the regulatory activities of neighboring states. Small game seasons have been adjusted to correspond to changes in the deer hunting seasons. Small game hunting is permitted during the January portion of the shotgun permit deer season. This change to allow the two seasons to run concurrently will restore small game hunting season days lost in 31 zones in recent years due to the expansion of the shotgun permit deer season into January (N.J.A.C. 7:25-5.2, 5.3, 5.4, 5.5, 5.7, 5.15, 5.17 and 5.18).

2. The pursuing or running of black bear with dogs is prohibited. New Jersey's developing black bear population is relatively concentrated and living in close proximity to people. Therefore, the pursuing or running of black bear with dogs will have unacceptable impacts (N.J.S.A. 7:25-5.6).

3. The weekly turkey permit quotas for turkey hunting areas 5, 8, 9, 10, 11 and 20 are increased by 40, 40, 25, 10, 25 and 45 permits respectively. The total increase for the 1996 season is 950 permits. Special farmer turkey permits are valid for all five segments of the turkey hunting season. The bag limit remains at one turkey per permit. These changes will increase recreational opportunity without adverse impact on the wild turkey population, which has become well established in these areas (N.J.A.C. 7:25-5.7).

4. The regular season beaver trapping permit quota is increased from 82 to 85. The number of site specific beaver trapping permits is decreased from 18 to 15 to maintain the total number of beaver trapping permits at one hundred. The regular season permit bag limit is increased from three to five beaver. The site specific permit season bag limit is increased from five to 10 beaver. If the anticipated harvest of beaver has not been accomplished during the regular prescribed season, the Director may authorize up to 14 additional days of beaver trapping. The changes are necessary to achieve harvest objectives and address nuisance and damage complaints (N.J.A.C. 7:25-5.9).

5. If the anticipated harvest of river otter has not been accomplished during the regular prescribed season, the Director may authorize up to 14 additional days of river otter trapping. The changes are necessary to achieve harvest objectives (N.J.A.C. 7:25-5.10).

6. The special September Canada goose hunting area is no longer specifically defined in the rule. The special September Canada goose hunting area is defined as that portion of the State designated by Federal regulations. The change will ensure that the area designated for the special September Canada goose hunting season is consistent with Federal regulations (N.J.A.C. 7:25-5.13).

7. For the purpose of clarification, the muzzleloading rifle is specifically included as a firearm (rifle) which may be used for the hunting of woodchucks (N.J.A.C. 7:25-5.18).

8. A portion of northern Morris County is added to the existing area in which squirrel may be hunted with a small caliber muzzleloading rifle during a portion of the squirrel hunting season. This change will increase the hunting opportunity for those persons interested in hunting squirrel with a muzzleloading rifle in an area of Morris County (N.J.A.C. 7:25-5.23).

9. Persons possessing a special Muzzleloading Rifle Scope Permit may use a rifle scope as provided in N.J.A.C. 7:25-5.23(p) to hunt squirrels with a muzzleloading rifle during the prescribed muzzleloader rifle squirrel season. This change intended to clarify this rule will specifically allow those visually impaired and properly permitted persons to hunt deer or squirrel with a muzzleloading rifle equipped with a scope (N.J.A.C. 7:25-5.23).

10. Deer management zones 18 and 21 are deleted from the zones where only antlered deer may be taken during the first half of the fall bow season (September 30-October 20, 1995) due to the availability of an adequate number of antlerless deer to support a full fall bow season with a bag limit of two deer of either sex and any age, and the other either sex deer seasons. The change will also increase recreational opportunity (N.J.A.C. 7:25-5.25).

11. Deer Management Zones 16, 23, 26, 31, 45 and 46 are added to the zones where a "New Jersey Bonus Deer Permit and Transportation Tag" will be issued to properly licensed hunters who harvest an antlerless deer first during the fall bow season (September 30-November 10, 1995). Said tags may be used to take one additional deer of either sex and any age in any bonus tag zone (2, 5-17, 19, 20, 22, 23, 25-29, 31, 33, 35-37, 39-42, 45-51, 63 and 66). This change will provide for the increased harvest of antlerless deer in zones where the management strategy calls for deer population reduction (16, 23 and 26) or deer population stabilization (31, 45 and 46). The change will also increase recreational opportunity (N.J.A.C. 7:25-5.25).

12. Fall bow season (September 30-November 10, 1995), bonus tags may only be used in bonus tag zones. This change was implemented to clarify the provision which was introduced in 1993 and expanded to additional zones in 1994, and will have little impact on the total deer harvest or recreational opportunity (N.J.A.C. 7:25-5.25).

13. Permit muzzleloader, permit shotgun and permit bow seasons quotas, bag limits and season lengths are adjusted upwards according to harvest objectives to yield a Statewide net increase in the anticipated antlerless deer harvest for the purpose of maintaining the deer population at a level compatible with the available habitat, land use and human population (N.J.A.C. 7:25-5.28, 5.29 and 5.30).

14. The Federal Aviation Administration Technical Center (FAATC), located in eastern Atlantic County, has been designated as Deer Management Zone 66 and approximately 2,000 wooded acres will be open for controlled, deer hunting during the six 1995-96 deer seasons. The FAATC was formerly special area, Deer Management Zone 55 and was open for limited deer hunting from 1978 through 1984. Organized and closely supervised, shotgun permit deer hunts successfully reduced deer numbers to a level compatible with FAATC operations. In recent years, deer numbers have increased despite use of special depredation permits on the airport portion of the site and hunting on the perimeter of the property. In February 1995, the FAATC approved the "White-tailed Deer Management Plan" prepared by the US Fish and Wildlife Service which recommended hunting as the primary means of reducing and controlling deer numbers. Designation of the FAATC as Zone 66 and implementation of the controlled deer hunting program will provide for proper deer management, reduce the potential for deer-aircraft and deer-auto collisions and increase recreational hunting opportunity. Location and description of Zone 66 will be added and the Zone 42 description will be modified to note that Zone 66 is excluded for clarification purposes (N.J.A.C. 7:25-5.28, 5.29 and 5.30).

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15. Deer Management Zone 37 (western portion of Fort Dix Military Reservation) has been deleted as an exception to the bag limit during the permit muzzleloader season. The change will allow hunters to take two deer of either sex and any age per permit for the season (November 11-18; and December 11-22, and 26-30, 1995 in Zone 37). In previous years, the season was split with a bag limit of one antlered buck during the first segment and one deer of either sex and any age during the second segment. The change will provide for the increased harvest of antlerless deer and is consistent with the management objective of population reduction for Zone 37. The change will also increase recreational opportunity (N.J.A.C. 7:25-5.28).

16. A one day permit shotgun season is authorized for Zone 45 for the purpose of achieving the antlerless deer harvest objective. This change will also provide increased recreation hunting opportunity for the shotgun deer hunter (N.J.A.C. 7:25-5.29).

17. The permit shotgun season bag limit is increased as follows for the purpose of achieving the antlerless deer harvest objective: 0 to one deer in Zone 45; 0 to six deer in Zone 66; one to two deer in Zones 31, 37 and 53; two to three deer in Zones 6, 17, 25, 28 and 29; three to four deer in Zones 8, 9, 12, 13, 14, 36, 41, 47, 49, 50, 51 and 63; and three to eight deer in Zone 39. The permit shotgun season length was increased as follows for the purpose of achieving the antlerless deer harvest objective: 0 to one day in Zone 45; 0 to six days in Zone 66; one to two days in Zones 37 and 53; one to three days in Zone 31; three to four days in Zone 39; three to seven days in Zones 16, 19 and 46; three to 15 days in Zone 51; seven to 11 days in Zones 5, 7, 10, 11, 25, 35 and 42; seven to 15 days in Zones 8 and 12; and 11 to 15 days in Zones 9, 13, 14, 36, 41, 47, 49, 50 and 63. These changes will also provide increased recreational opportunity for the shotgun deer hunter (N.J.A.C. 7:25-5.29).

18. The shotgun permit deer season for persons possessing a farmer shotgun season permit is increased to include the six-day firearm season on the farm occupied by the permittee and designated in the permit application. This experimental change will increase the opportunity for farmers to hunt for and take deer of either-sex, particularly antlerless deer, on the farms on which they reside (N.J.A.C. 7:25-5.29).

19. The permit shotgun season bag limit is decreased as follows for the purpose of reducing the antlerless deer harvest: three to two deer in Zone 27. The permit shotgun season length is decreased as follows for the purpose of reducing the antlerless deer harvest: seven to three days in Zone 2; and 11 to seven days in Zone 27. The deer management strategies for Zones 2 and 27 were changed from population reduction in 1994 to population stabilization in 1995 as a result of successful population reduction in these zones. These changes will allow for an adequate number of season permits to be available to satisfy demand. The small decrease in recreational opportunity will be offset by increases in permit shotgun season bag limits and season length in other management zones (N.J.A.C. 7:25-5.29).

20. The season format for Zone 64 (Monmouth Battlefield State Park) has been changed to exclude the two Saturdays previously scheduled, and to include two additional weekdays. The four, one day season segments are as follows: Wednesday, January 17, 1996 (first segment); Friday, January 19, 1996 (second segment); Wednesday, January 24, 1996 (third segment); and, Friday, January 26, 1996 (fourth segment). This change will allow the Park to be open to the general public on Saturdays which are higher public use days than weekdays, and has been recommended by local residents. The total permit quota will be increased from 135 to 180 in order to return the daily segment quotas to 45 permits per day (1990-1994) and to achieve the antlerless harvest objective and deer population reduction goal (N.J.A.C. 7:25-5.29).

21. Deer Management Zone 4 will not be open for the permit bow season (November 11-December 2, 1995) due to a shortfall in the number of antlerless deer available and the need to equitably distribute the available antlerless quota among the bow, shotgun and muzzleloader user groups. This small decrease in recreational opportunity will be offset by increases in the number of permits available in other zones (N.J.A.C. 7:25-5.30).

22. Pursuant to amendment of N.J.A.C. 7:25-5.32, separate Special Deer Management Permits may now be authorized for alternative deer control measures as provided in a Memorandum of Understanding between the Division of Fish, Game and Wildlife and municipal or county government authorities. These Special Deer Management Permits are intended to address deer control problems in suburban and suburbanizing areas of the State where traditional means of deer control have been inadequate. This community based approach will foster cooperative efforts between the Division of Fish, Game and Wildlife and municipal and county governments in the application of alternative deer control methods (N.J.A.C. 7:25-5.32).

Support references from the professional wildlife management literature follows:

Anon. 1994. Community-Based Plan for the Management of Suburban Deer Populations—Policy and Program, N.J. Div. Fish, Game & Wildl.-Bur. Wildlife Mgmt., Trenton. 13p.

Anon. 1990. Minnesota River Valley Deer Management Task Force. Final Report and Recommendations. Minn. Dept. of Nat. Res. 73p.

Curtis, P.D. and M.E. Richamond. 1992. Future challenges of suburban white-tailed deer management. Trans. 57th N.A. Wildlife and Nat. Res. Conf. p. 104-114.

_____, R.J. Stout, B.A. Knuth, L.A. Myers and T.M. Rockwell. 1993. Selecting deer management options in a suburban environment: A case study from Rochester, New York. Trans. 58th N.A. Wildl. & Nat. Resour. Conf. p. 102-116.

Ellingwood, M.R., and J.V. Spignesi. 1986. Management of an urban deer herd and the concept of cultural carrying capacity. Trans. Annu. Meet. Northeast Deer Tech. Comm. 22:42-45.

_____, and S.L. Caturano. 1988. An evaluation of deer management options. Connecticut Dep. Environ. Prot. Wildl. Bur. Hartford. 12p.

Girard, G.I., B.D. Anderson and T.A. DeLaney. 1993. Managing conflicts with animal activists: white-tailed deer and Illinois nature preserves. Natural Areas Jour. 13(1):10-17.

Haas, G., J. Sillings, B. Holloway and P. Castelli. 1993. Community-based management plan for Canada geese in New Jersey. 49th Northeast Fish and Wildlife Conf., Atlantic City, NJ abstract.

Johnson, R. 1993. A plan for the management of white-tailed deer in the Twin Cities Metropolitan Area. Minn. Dept. of Nat. Res. p. 24.

Kuser, J.E. and J.E. Applegate. 1985. Princeton Township: The history of a no-discharge ordinance's effect on deer and people. Trans. N.E. Fish and Wildlife. p. 150-153.

_____ 1993. Princeton voters opinion shift on deer management. Bull. NJ Acad. Sci. 38(1) pp. 5-6.

Lowery, M.D., J.W. Glidden and D.E. Riehlman. 1993. Options for the management of locally overabundant and nuisance deer populations: a technical review. NY Dept. of Envir. Cons., Div. of Fish and Wildl. 26p.

McAninch, J.B. and J.M. Parker. 1991. Urban deer management programs: a facilitated approach. Trans. 56th N.A. Wildl. & Nat. Res. Conf. p. 428-436

Warren, R.J. and L.M. White. 1993. The applicability and biolpolitics of contraceptive techniques for deer management. Proc. East. Wildl. Damage Mgmt. Conf. 19p. (in press).

Wick, K. 1993. Management of local overabundant and nuisance deer populations. Memorandum. NY Dept. of Envir. Cons., Div. of Wildl. 5p.

Witham, J.H. and J.M. Jones. 1986. Deer-human interactions and research in the Chicago Metropolitan Area. Proc. Natl. Symp. on Urban Wildl. p.155-159.

_____ 1987. Cooperative urban deer management in Cooke County, Illinois. Job Progress Report. PR Project W-87-R-8. Biology, Ecology, and Management of Deer in Chicago Metro. Area. Ill. Dept. of Cons., Div. of Wildlife Res. 43p.

Witham, J.H. 1991. Reduction of local deer herd at Rock Cut State Park, Winnebago County, Ill. Depart. of Cons., Div. of Wildl. Res. 91p.

Wolgast, L.J. and J.E. Kuser. 1993. Bowhunting stabilizes a New Jersey white-tailed deer population. Bull. N.J. Acad. Sci. 38(1) pp. 7-8.

Other amendments to the Code have been made for clarification and correction of typographical errors.

Social Impact

The increase in the number of days available for deer and small game hunting in some areas, the additional permits available for turkey hunting, the expansion of the muzzleloading rifle squirrel hunting area and allowing visually impaired persons possessing a Special Muzzleloading Rifle Scope Permit to use a scope to hunt squirrels with a muzzleloading rifle, should have significant positive impacts on increasing hunting opportunity. The adjustments that have been made to deer hunting quotas, season lengths, and bag limits should benefit all segments of the public in providing for healthier deer populations, long-term enhanced recreational hunting opportunities, and deer population levels compatible with other land uses. An increase in the beaver harvest resulting from the increase in the season bag limits will assist those persons experiencing and seeking relief from property damage caused by beaver activity.

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Alternative deer control methods authorized under Special Deer Management Permits will lessen deer/people conflicts in suburban and other problem areas where deer populations have exceeded the cultural carrying capacity. Social impacts associated with running bears with dogs in an around residential areas, such as disturbance of residents and crossing private property lines, will be avoided by the prohibition of such activity.

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

Economic Impact

There may be a small, short-term positive economic impact on local retailers serving the hunting population as a result of increases in hunting seasons, permit quotas, and special permit seasons including the increase in turkey permit quotas. An increase in the beaver harvest as a result of the increase in beaver season bag limits will lessen economic losses associated with beaver damage to property. The deer hunting program at the Federal Aviation Technical Center in Atlantic County will reduce the potential for deer-aircraft and deer-auto collisions and resulting economic losses. Reductions in deer populations as a result of alternative deer control methods authorized under Special Deer Management Permits will lessen economic losses associated with deer damage to landscape plantings or gardens, agricultural crops and deer/vehicle collisions. Also, these amendments to the Game Code should further the conservation and enhancement of the wildlife resource upon which a significant recreation and commercial industry is dependent and, therefore, occasion a long-term economic boon.

Environmental Impact

The proposed amendments, including the prohibition of pursuing bears with dogs, should have a positive environmental impact in continuing the conservation, management and enhancement of the State's wildlife resources based on their current population, distribution and habitat status. Alternative deer control methods authorized under Special Deer Management Permits will help control deer damage to natural habitats including: reduction in biodiversity, disruption of forest regeneration, excessive grazing/browsing, damage to specific vegetation and elimination of preferred deer foods.

Executive Order No. 27 Statement

In compliance with Executive Order No. 27(1994), Requirement for Statement Concerning Federal Standards in State Agency Rulemaking, notice is hereby given with regard to these amended State Fish and Game Code rules proposed pursuant to N.J.S.A. 13:1B-1 et seq.; 23:2A-1 et seq.; 23:2-2; 23:3-1 et seq.; 23:4-1 et seq.; 23:7-9; and 23:8-10, that these proposed rule amendments, as measured against Federal rules and regulations promulgated by the United States Fish and Wildlife Service, do not contain any standards or requirements which exceed the standards or requirements imposed by the applicable Federal statutes and regulations.

Regulatory Flexibility Analysis

The proposed 1995-96 Game Code imposes reporting and compliance requirements on sportsmen engaged in recreational hunting. These requirements are not, therefore, imposed upon small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the Game Code also regulates the activity of trappers, who may engage in such activity for their economic benefit. Such trappers may be considered small businesses. The proposed amendments to trapping rules N.J.A.C. 7:25-5.9 and 5.10 impose no additional reporting, recordkeeping or compliance requirements. The 1994-95 season dates are revised for the 1995-96 season, the beaver permit quotas are adjusted and beaver season bag limits have been increased, both for regular and site specific permits.

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

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

SUBCHAPTER 5. [1994-95] **1995-96** GAME CODE

7:25-5.1 General provisions

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

(c) This Code, when adopted and when effective, shall supersede the provisions of [1993-94] **1994-95** Game Code.

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

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

(a) The duration for the male pheasant season is November [12] **11** to December [3, 1994] **2, 1995** inclusive, and December [12, 1994] **11, 1995** through January [7, 1995] **6, 1996** except closed during the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) **in December** if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December [3, 1994] **2, 1995** and December [12, 1994] **11, 1995** through March 31, [1995] **1996** except closed on November [11, 1994] **10, 1995** and during the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) **in December** if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May and the Lakehurst Naval Air Warfare Center and on all wildlife management areas is November [12] **11** to December [3, 1994] **2, 1995** inclusive, and December [12, 1994] **11, 1995** through February [20, 1995] **19, 1996** except closed during the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) **in December** if declared open.

(e) The hours for hunting pheasants on November [12, 1994] **11, 1995** are 8:00 A.M. to ½ hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to ½ hour after sunset.

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

(h) The season for properly licensed semi-wild preserves is November [12, 1994] **11, 1995** to March 15, [1995] **1996** inclusive. The Director with approval of the Council may extend the pheasant season on licensed semi-wild preserves for a period not to exceed 20 days.

(i) (No change.)

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

(a) The duration of the season for the hunting of cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge, and quail is November [12] **11** through December [3, 1994] **2, 1995**, inclusive, and December [12, 1994] **11, 1995** to February [20, 1995] **19, 1996** except closed during the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) **in December** if declared open.

(b) The duration of the season for the hunting of the animals enumerated by (a) above for properly licensed persons engaged in falconry is September 1 to December [3, 1994] **2, 1995**, inclusive, and December [12, 1994] **11, 1995** through March 31, [1995] **1996** except closed on November [11, 1994] **10, 1995** and during the **December portion of the** permit shotgun deer season in those

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management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) **in December** if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section are as follows: November [12, 1994] **11, 1995**, 8:00 A.M. to ½ hour after sunset. On all other days for which hunting for these animals is legal, the hours are sunrise to ½ hour after sunset.

(e) The quail and chukar partridge season for properly licensed semi-wild preserves is November [12, 1994] **11, 1995** to March 15, [1995] **1996** inclusive. The Director with approval of the Council may extend the quail and chukar patridge season on licensed semi-wild preserves for a period not to exceed 20 days.

(f) (No change.)

7:25-5.4 Ruffed grouse (Bonasa umbellus)

(a) The duration of the season for the hunting of grouse is October [8] **7** through December [3, 1994] **2, 1995** inclusive, and December [12, 1994] **11, 1995** to February [20, 1995] **19, 1996** except closed during the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open and excluding any extra deer permit season day(s) **in December** that is declared open.

(b) (No change.)

(c) The hunting hours for ruffed grouse are sunrise to ½ hour after sunset, with the exception of November [12, 1994] **11, 1995** when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

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

(a) The duration of the season for the hunting of squirrels is October [8] **7** through December [3, 1994] **2, 1995**, inclusive, and December [12, 1994] **11, 1995** to February [20, 1995] **19, 1996** except closed during the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit season day(s) **in December** if declared open.

(b) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry is September 1 to December [3, 1994] **2, 1995**, inclusive, and December [12, 1994] **11, 1995** through March 31, [1995] **1996**, except closed during the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) **in December** if declared open.

(c) (No change.)

(d) Hunting hours for squirrels are sunrise to ½ hour after sunset, with the exception of November [12, 1994] **11, 1995** when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(e) (No change.)

7:25-5.6 Black bear (Ursus americanus), bobcat (Felis rufus)

(a) It shall be illegal to possess, take, kill or attempt to take or kill a black bear, or a bobcat at any time. **It shall be illegal to use dogs to pursue or run black bear.**

(b) (No change.)

7:25-5.7 Wild turkey (Meleagris gallapavo)

(a) The duration of the Spring Wild Turkey Gobbler hunting season includes five separate hunting periods of four, five or 10 days each. The hunting periods for all hunting areas shall be:

1. Monday, April [24, 1995] **22, 1996**—Friday, April [28, 1995] **26, 1996**

2. Monday, [May 1, 1995] **April 29, 1996**—Friday, May [5, 1995] **3, 1996**

3. Monday, May [8, 1995] **6, 1996**—Friday, May [12, 1995] **10, 1996**

4. Monday, May [15, 1995] **13, 1996**—Friday, May [19, 1995] **17, 1996**; Monday, May [22, 1995] **20, 1996**—Friday, May [26, 1995] **24, 1996**

5. Saturday, April [29, 1995] **27, 1996**; Saturday, May [6, 1995] **4, 1996**; Saturday, May [13, 1995] **11, 1996** and Saturday, May [20, 1995] **18, 1996**.

(b) Bag limit: One male wild turkey may be taken with each special wild turkey hunting permit **and with each special farmer turkey permit**. Only one turkey may be taken in a given day.

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

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

1.-2. (No change.)

3. The application form shall be filled in to include: Name, address, [1995] **1996** firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-22, [1995] **1996**, inclusive. Applications received after February 22 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for [1995] **1996**, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4.-6. (No change.)

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

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any other information requested thereon. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-22, [1995] **1996**. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

4. (No change.)

(j) Spring Turkey Hunting Permits and Special Farmer Spring Turkey Permits shall be used as follows:

1. The spring turkey hunting permit is valid only in the turkey hunting area (THA) designated and during the time period designated and is not transferable. The spring turkey hunting permit hunter is responsible for hunting in the correct THA and time period as indicated and in ascertaining the boundaries. The Special Farmer Spring Turkey Permit is valid **for all five turkey hunting periods and** only on the farm designated on the application and is not transferable.

2. (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1995] **1996** Spring Turkey Hunting Season Permit Quotas are as follows:

[1995] **1996** SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	120	600	Sussex
2	140	700	Sussex, Warren
3	80	400	Sussex, Warren
4	120	600	Sussex, Warren, Morris
5	[120] **160**	[600] **800**	Sussex
6	200	1,000	Sussex, Passaic, Bergen
7	200	1,000	Sussex, Morris, Passaic
8	[120] **160**	[600] **800**	Warren, Hunterdon
9	[80] **105**	[400] **525**	Warren, Hunterdon, Morris
10	[70] **80**	[350] **400**	Essex, Middlesex, Morris, Somerset, Union
11	[80] **105**	[400] **525**	Middlesex, Mercer, Hunterdon, Somerset
12	90	450	Mercer, Middlesex, Monmouth
14	70	350	Burlington, Ocean, Monmouth
15	55	275	Burlington, Camden, Atlantic
16	70	350	Burlington, Atlantic, Ocean, Cape May, Cumberland

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20	[130] **175**	[650] **875**	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
Total	[1,795] **1,985**	[8,975] **9,925**	

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

A. Monday, April [24, 1995] **22, 1996**—Friday, April [28, 1995] **26, 1996**

B. Monday, [May 1, 1995] **April 29, 1996**—Friday, May [5, 1995] **3, 1996**

C. Monday, May [8, 1995] **6, 1996**—Friday, May [12, 1995] **10, 1996**

D. Monday, May [15, 1995] **13, 1996**—Friday, May [19, 1995] **17, 1996**
Monday, May [22, 1995] **20, 1996**—Friday, May [26, 1995] **24, 1996**

E. Saturday, April [29, 1995] **27, 1996**; Saturday, May [6, 1995] **4, 1996**; Saturday, May [13, 1995] **11, 1996** and Saturday, May [20, 1995] **18, 1996**

(l) (No change.)

(m) Turkey Hunting Areas are as follows:

1.-6. (No change.)

7. Turkey Hunting Area No. 7: That portion of Sussex, Passaic and [Bergen] **Morris** Counties lying within a continuous line beginning at the intersection of Route 23 and Route 517 at Hardystonville; then east along Rt. 23 to its intersection with Rt. 202 at Wayne; then south and west along Rt. 202 to its intersection with Rt. 287; then south along Rt. 287 to its intersection with Rt. 80; then west along Rt. 80 to its intersection with Rt. 183 at Netcong; then east along Rt. 183 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with Rt. 517; then northeast along Rt. 517 to the point of beginning at Hardystonville.

8.-18. (No change.)

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

(a) (No change.)

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

1. Northern Zone: 6:00 A.M. on November 15, [1994] **1995** through March 15, [1995] **1996**, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, [1994] **1995** through March 15, [1995] **1996**, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, [1995] **1996**, inclusive.

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

7:25-5.9 Beaver (Castor canadensis) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be January [15] **14** through February [11, 1995] **10, 1996**, inclusive. **If the anticipated harvest of beaver has not been accomplished during this season, up to 14 additional days may be authorized by the Director.**

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications shall be received in the Trenton office during the period November 15—December 15, [1994] **1995**. Applicants may apply for only one beaver trapping permit and shall provide their [1994] **1995** trapping license number. Permits will be alloted on a zone basis as follows: Zone 1—9, Zone 2—7, Zone 3—3, Zone 4—6, Zone 5—4, Zone 6—18, Zone 7—4, Zone 8—2, Zone 9—4, Zone 10—6, Zone 11—4, Zone 12—4, Zone 13—0, Zone 14—[1]**2**, Zone 15—0, Zone 16—4, Zone 17—[4]**5**, Zone 18—[2]**3**. Total [82] **85**. Successful applicants must trap with a valid, current trapping license.

(d) Special Site Specific Permit: During the initial application period, applicants may also apply for one special site specific beaver permit. The total number of permits available shall not exceed [18] **15**. Site specific permits will be issued for specific locations or properties where the Division has determined that beaver damage or nuisance problems exist. A random drawing will be held to determine permit holders; however, applicants unsuccessful in obtaining the special permit as set forth at (c) above will be given first opportunity. Permits will be valid only during the beaver trapping season.

(e) The season limit for beaver trapping is [three] **five** beaver per special permit and [five] **10** beaver per special site specific permit.

(f) A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than [February 18, 1995] **seven days after the close of the season**.

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

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

(a) (No change.)

(b) The duration of the trapping season for otter shall be January [15] **14** through February [11, 1995] **10, 1996**, inclusive. **If the anticipated harvest of otter has not been accomplished, up to 14 additional days may be authorized by the Director.**

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications shall be received in the Trenton office during the period November 15—December 15, [1994] **1995**. Only one application per person may be submitted for trapping otter and applicants shall provide their [1994] **1995** trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—7, Zone 2—7, Zone 3—2, Zone 4—3, Zone 5—2, Zone 6—9, Zone 7—3, Zone 8—6, Zone 9—3, Zone 10—4, Zone 11—5, Zone 12—2, Zone 13—14, Zone 14—7, Zone 15—12, Zone 16—4, Zone 17—2, Zone 18—5. Total 97. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses shall be taken to a beaver-otter check station at dates specified on the otter permit and, in any case, no later than [February 18, 1995] **seven days after the close of the season**, where a pelt tag will be affixed and the carcass surrendered.

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

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

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season is 6:00 A.M. on November 15, [1994] **1995** to March 15, [1995] **1996**, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, [1995] **1996** to March 15, [1995] **1996**, inclusive.

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

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds including waterfowl, be set by Federal regulation which would include the date

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of November [12, 1994] **11, 1995** the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) A person shall not take, attempt to take, hunt for or have in possession, any migratory game birds including waterfowl, except at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the [1994-95] **1995-96** hunting season. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the [1994-95] **1995-96** hunting season.

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

(h) Hunting hours for waterfowl shall be those hours that are prescribed by the Department of the Interior, United States Fish and Wildlife Service for the [1994-95] **1995-96** hunting season.

(i) A special canvasback permit shall be required to hunt canvasback ducks, and a special swan permit shall be required to hunt swans, if the appropriate prescribed special season is established by Federal regulations. If a special season for canvasback ducks is established by Federal regulations, the special canvasback hunting area shall be that portion of the State south of Routes 287 and 440 (Perth Amboy), east of the Garden State Parkway and north of Route 36 (Long Branch) and that portion of the State south of Route 88 (Bay Head), east of the Garden State Parkway and north of Route 72 (Ship Bottom). If a special season for swan is established by Federal regulations, the special swan hunting area shall be the counties of Burlington, Cumberland and Salem. A special September Canada goose hunting season permit shall be required to hunt Canada geese, if the appropriate prescribed special season is established by Federal regulations. [If a special September Canada goose hunting season is established by Federal regulations, the special September Canada goose hunting area shall be that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Parkway to its intersection with Route 70; then west on Route 70 to its intersection with Route 206; then south on Route 206 to its intersection with Route 54; then south on Route 54 to its intersection with Route 40; then west on Route 40 to its intersection with the New Jersey Turnpike; then south on the Turnpike to the Delaware State boundary line; then north on the Delaware State boundary line to its intersection with the Pennsylvania State boundary; then north on the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.] **The Special September Canada Goose hunting area shall be that portion of the State designated by Federal regulations.** A special late season Canada goose hunting season permit shall be required to hunt Canada geese if the appropriate prescribed special season is established by Federal regulations. The special late season Canada goose hunting areas shall be that portion of the State established by Federal regulations.

(j)-(l) (No change.)

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

1.-10. (No change.)

11. Before 8:00 A.M. on November [12, 1994] **11, 1995**. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the [1994-95] **1995-96** Game Code.

15.-19 (No change.)

(n) Seasons and bag limits are as follows:

1. Mourning dove (Zenaida macroura) are protected. There will be no open season on these birds during [1994-95] **1995-96**.

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

i. The duration of the season for hunting clapper rail (Rallus longirostris), Virginia rail (Rallus limicola), sora rail (Porzana carolina) and common gallinule or moorhen (Gallinula chloropus) is September 1 through November 9, [1994] **1995** inclusive.

ii. (No change.)

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

1.-2. (No change.)

3. Hunting hours for Woodcock are sunrise to sunset except on November [12] **11**, when the hunting hours are 8:00 A.M. to sunset.

(p)-(s) (No change.)

7:25-5.15 Crow (Corvus spp.)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August [8, 1994] **7, 1995** through March [18, 1995] **16, 1996** inclusive, except closed during the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to ½ hour after sunset, except on November [12, 1994] **11, 1995** when the hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

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

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October [1, 1994] **2, 1995** to one hour before sunrise on March 1, [1995] **1996**. The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind during the six day firearm deer season and the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open and including any extra permit deer season day(s) **in December**.

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, [1994] **1995** and from March 1 to May 1, [1995] **1996**. The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (Marmota monax) hunting

(a) Duration for the hunting of woodchucks with a rifle **including a muzzleloading rifle** in this State is March [11] **9** through September [30, 1995] **27, 1996**. Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

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

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

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

1. Bow and Arrow Only—[October 1] **September 30** through November [11, 1994] **10, 1995**.

2. Firearm or Bow and Arrow—November [12, 1994] **11, 1995** through February [20, 1995] **19, 1996** except closed during the six day firearm deer season and the **December portion of the** permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) **in December** if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of [October 1] **September 30**—November [11, 1994] **10, 1995**. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he **or she** must cease all hunting immediately.

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(c) The hours for hunting fox are 8:00 A.M. to ½ hour after sunset on November [12, 1994] **11, 1995** and on other days from sunrise to ½ hour after sunset.

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

7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May **1** to August 31, inclusive, except on portions or various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November [11, 1994] **10, 1995**.

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

7:25-5.23 Firearms and missiles, etc.

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

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren, **Morris** and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with [the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line] **Rt. 511; then south along Rt. 511 to its intersection with Rt. 46; then west along Rt. 46 to its intersection with Rt. 80; then west along Rt. 80 to its intersection with Rt. 15; then north along Rt. 15 to its intersection with the Morris-Sussex County line**; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon-Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State line; then east along the New York State line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their current firearm hunting license may hunt for squirrels between October [8] **7**—November [11, 1994] **10, 1995** and January [23] **22**—February [20, 1995] **19, 1996** using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December [5-10, 1994] **4-9, 1995** inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead, lead alloy or copper slug only or a shotgun not smaller than 20 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession **while hunting deer,** any firearm missile except the 20, 16, 12 or 10 gauge lead, lead alloy or copper slug or the 12, 10, 16 or 20 gauge buckshot shell. Shotgun shells containing a single spherical projectile may not be possessed or used in deer hunting. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license or a person legally engaged in hunting woodcock from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than T (.200 inch) steel shot or other forms and sizes of non-toxic shot authorized by Federal regulations during the shotgun deer seasons). A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his or her trap line.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the [1994] **1995** six day firearm deer season and the permit muzzleloader rifle deer season.

2. Muzzleloader rifles used for hunting deer are restricted to single-shot single barreled weapons with flintlock or percussion actions, shall not be less than .44 caliber and shall fire a single missile or projectile. Except as provided in (p) below, only open iron sights and peep sights shall be attached or affixed to the muzzleloader rifle while engaged in hunting for deer **or squirrel**. Only one muzzleloader rifle may be possessed while hunting. Double barrel and other types of muzzleloader rifles capable of firing more than one shot without reloading or holding more than one charge are prohibited. Persons who are properly licensed may hunt for deer with a single-shot, single barreled, flintlock or percussion action, smoothbore muzzleloader during the permit muzzleloader rifle season. Single shot, smoothbore muzzleloaders used during the permit muzzleloader season shall fire a single missile or projectile and shall not be smaller than 20 gauge or larger than 10 gauge. Double barrel and other types of smoothbore muzzleloaders capable of firing more than one shot without reloading or holding more than one charge are prohibited during the permit muzzleloader season. Persons who are properly licensed may hunt deer with single or double barrel, smoothbore muzzleloader during the six day firearm and permit shotgun deer seasons. Smoothbore muzzleloaders used for deer hunting during the six day firearm and permit shotgun deer seasons shall not be smaller than 20 gauge or larger than 10 gauge, and shall fire a single missile or projectile, or buckshot no smaller than No. 4 (.24 inch) or larger than 000 (.36 inch). Except as provided in (p) below, no telescopic sights shall be attached or affixed to the smoothbore muzzleloader while engaged in hunting for deer **or squirrel**. Only one muzzleloader rifle or smoothbore muzzleloader may be possessed while deer hunting.

3.-5. (No change.)

(g)-(s) (No change.)

7:25-5.24 Bow and arrow, general provisions

(a) (No change.)

(b) No person shall use a bow and arrow for hunting, during the firearm deer permit seasons in those deer management games on the prescribed dates the season is open, on any additional Permit Deer Season Day(s) if declared open, or during the Six-Day Firearm Deer Season, except when the **permit** bow deer season runs concurrent with the firearm deer seasons. Bow and arrow hunting is not permitted between ½ hour after sunset and ½ hour before sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

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

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

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from [October 1—November 11, 1994] **September 30—November 10, 1995**, inclusive; except in Zones 1, 4[, 18, 21] and 24 only deer with antlers at least three inches long may be taken from [October 1-21, 1994] **September 30—October 20, 1995**. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

(b) Bag Limit: Two deer of either sex, except as noted in (a) above and (b)1 below. Only one deer may be taken in a given day. Deer shall be tagged immediately with completely filled in "transportation

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tag" and shall be transported to a deer checking station before 8:00 P.M. E.S.T. on the day killed. Upon completion of registration of first deer, one valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued which will allow this person to continue hunting and take one additional deer of either sex during the current fall bow deer season. The second tag shall not be valid on the day of issuance and all registration requirements apply.

1. In deer management Zones 2, 5-[15,] 17, 19, 20, 22, **23,** 25[, 27]-29, **31,** 33, 35[, 36]-**37**, 39-42, [47]**45**-51, [and] 63[,] **and 66,** one additional deer may be taken by any properly licensed hunter who harvests an antlerless deer first in these zones, exclusively. A "New Jersey Bonus Deer Permit and Transportation Tag" will only be issued for the purpose of this provision at deer check stations located in or within fifteen miles of these zones. The New Jersey Bonus Deer Permit and Transportation Tag will be issued in addition to the New Jersey Second Deer Permit and Transportation Tag. The transportation portion of this tag is completed and affixed to the deer immediately upon killing by the hunter. All other deer registration requirements apply. A deer of either sex and any age may be taken with a bonus deer permit [in any zone where the fall bow season is open, except as noted in (a) above where only antlered deer may be taken] **Bonus tags may only be used in bonus tag zones**. This bonus deer tag shall not be valid on the day of issuance and is not transferable. Persons possessing both a bonus tag and second tag may not take more than one deer per day.

2. (No change.)

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

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

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from January [2-31, 1995] **1-31, 1996,** inclusive, except closed in zones open for shotgun permit season when authorized. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

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

(a) Duration for this season will be December [5-10, 1994] **4-9, 1995,** inclusive, with shotgun or muzzleloader rifle, exclusively.

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

(e) Hunting Hours: December [5-10, 1994] **4-9, 1995**, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T. with shotgun or muzzleloader rifle.

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

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

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

(d) Duration of the muzzleloader rifle permit season is December [12, 13, 17, 19-31, 1994 in Zones: 1-36, 41-51, 55, 57, 58, 61, 63 and 65; November 12-19, 1994 (first segment) and December 12-16, 19-31, 1994 (second segment) in Zones 37 and 52; December 12-16, 19-31, 1994 in Zone 54; December 12-31, 1994 in Zone 39; November 26-December 3, 1994 (first segment) and December 12-31, 1994 (second segment) in Zone 53] **11, 12, 16, 18-23, 26-30, 1995 in Zones 1-36, 41-51, 55, 57, 58, 61, 63 and 65; November 11-18 (first segment); December 11-22 and 26-30 (second segment), 1995 in Zones 37 and 52; December 11-29, 1995 in Zone 39; November 25 and 27 and December 2, 11-23, 26-30, 1995 in Zone 53; December 11-15, 18-23, 26-30, 1995 in Zone 54; December 11-22, 1995 in Zone 66**; or any other time as determined by the Director. There is no season in the following Zones 38, 40, 56, 59, 60, 62, and 64. Legal hunting hours shall be sunrise to ½ hour after sunset E.S.T.

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

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

1. Only holders of valid and current firearm hunting licenses may apply by detaching from their hunting license the stub marked "Special Deer Season [1994] **1995**" signing as provided on the back, and sending the stub, together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-7 (No change.)

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

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1994] **1995** Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

[1994] **1995** MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

Deer Mgmt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1994]	**1995**	Permit Quota [1994]	**1995**	Portions of Counties Involved
1	1	[208]	**103**	[510]	**530**	Sussex
2	1	[163]	**180**	[630]	**875**	Sussex
3	1	[138]	**111**	[870]	**845**	Sussex, Passaic, Bergen
4	1	[244]	**176**	[630]	**590**	Sussex, Warren
5	1	[394]	**387**	[1,650]	**1,810**	Sussex, Warren
6	1	[159]	**118**	[800]	**700**	Sussex, Morris, Passaic, Essex
7	1	[212]	**194**	[775]	**900**	Warren, Hunterdon
8	1	[303]	**345**	[1,620]	**1,650**	Warren, Hunterdon, Morris, Somerset
9	1	[48]	**70**	[280]	**360**	Morris, Somerset
10	1	[302]	**258**	1,050		Warren, Hunterdon
11	1	[118]	**180**	[500]	**690**	Hunterdon
12	1	[236]	**256**	[1,125]	**1,150**	Mercer, Hunterdon, Somerset
13	1	[47]	**49**	[275]	**340**	Morris, Somerset
14	1	[107]	**124**	[500]	**600**	Mercer, Somerset, Middlesex, Burlington
15	1	[173]	**151**	[500]	**550**	Mercer, Monmouth, Middlesex
16	1	[150]	**204**	[568]	**670**	Ocean, Monmouth
17	1	[81]	**95**	[290]	**320**	Ocean, Monmouth
18	1	[59]	**48**	[280]	**260**	Ocean
19	1	[86]	**109**	[440]	**500**	Camden, Burlington
20	1	[75]	**105**	[400]	**425**	Burlington
21	1	[115]	**183**	[600]	**645**	Burlington, Ocean
22	1	[45]	**55**	[215]	**185**	Burlington, Ocean
23	1	[218]	**303**	[1,000]	**1,050**	Burlington, Camden, Atlantic
24	1	[118]	**144**	[465]	**475**	Burlington, Ocean

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25	1	[186]	**143**	[700]	**620**	Gloucester, Camden, Atlantic, Salem
26	1	[258]	**281**	950		Atlantic
27	1	[134]	**133**	[625]	**570**	Salem, Cumberland
28	1	[133]	**135**	500		Salem, Cumberland, Gloucester
29	1	[139]	**132**	490		Salem, Cumberland
30	1	[58]	**46**	[155]	**190**	Cumberland
31	1	[14]	**27**	[65]	**100**	Cumberland
32	1	[15]	**13**	[46]	**68**	Cumberland
33	1	44		130		Atlantic
34	1	[163]	**187**	[620]	**710**	Cape May, Cumberland
35	1	[190]	**220**	[765]	**850**	Gloucester, Salem
36	1	[6]	**11**	60		Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	[1]**2**	[96]	**84**	335		Burlington (Fort Dix Military Reservation)
38	[1]	0		0		Morris (Great Swamp National Wildlife Refuge)
39	[1]**3**	[13]	**22**	[25]	**30**	Monmouth (Earle Naval Weapons Station)
40	[1]	0		0		Monmouth (Earle Naval Weapons Station—Waterfront)
41	1	[84]	**76**	[400]	**350**	Mercer, Hunterdon
42	1	[18]	**26**	80		Atlantic
43	1	[60]	**70**	[200]	**190**	Cumberland
44	1	[30]	**20**	[65]	**95**	Cumberland
45	1	[79]	**80**	[255]	**340**	Cumberland, Atlantic, Cape May
46	1	[91]	**118**	[325]	**350**	Atlantic
47	1	[33]	**38**	[174]	**200**	Atlantic, Cumberland, Gloucester
48	1	[47]	**58**	250		Burlington
49	1	[4]	**12**	[20]	**25**	Burlington, Camden, Gloucester
50	1	[33]	**30**	[220]	**205**	Middlesex, Monmouth
51	1	[47]	**50**	[225]	**270**	Monmouth, Ocean
52	2	[25]	**43**	[110]	**120**	Ocean (Fort Dix Military Reservation)
53	4	[11]	**25**	[45]	**50**	Ocean (Lakehurst Naval Engineering Center)
54	5	[1]	**2**	[6]	**9**	Morris (Picatinny Arsenal-ARRAD Com)
55	1	[16]	**2**	[75]	**80**	Gloucester
56	1	0		0		Atlantic (Forsythe National Wildlife Refuge)
57	1	[4]	**3**	40		Atlantic (Forsythe National Wildlife Refuge)
58	1	[5]	**6**	50		Burlington, Ocean (Forsythe National Wildlife Refuge)
59	[1]	0		0		Salem (Supawna National Wildlife Refuge)
60	[1]	0		0		Hunterdon (Round Valley Recreation Area)
61	1	[18]	**19**	75		Atlantic (Atlantic County Parks)
62	[1]	0		0		Monmouth (Fort Monmouth)
63	1	41		200		Salem
64		0		0		Monmouth (Monmouth Battleground State Park)
65	1	[32]	**41**	[125]	**160**	Gloucester
66	**6**		**12**		**50**	**Atlantic (Federal Aviation Administration Technical Center)**
TOTAL		[5,927]	**6,218**	[24,380]	**25,962**	

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

1. Indicates the season dates will be December [12, 13, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 1994] **11, 12, 16, 18-23, 26-30, 1995**.

2. Indicates the season dates will be November [12-19, 1994] **11-18, 1995** (first segment); and, December [12-16, 19-31, 1994] **11-22, and 26-30, 1995** (second segment).

3. Indicates the season dates will be December [12-31, 1994] **11-29, 1995**.

4. Indicates the season dates will be November [26—December 3, 1994 (first segment) and December 12-31, 1994 (second segment)] **25—December 2, 11-23, 26-30, 1995**.

5. Indicates the season dates will be December [12-16, 19-31, 1994] **11-15, 18-23, 26-30, 1995**.

6. December 11-22, 1995.

(m) Permit quotas in zones 37, 39, 52-54, 57, 58, 61, [and] 62 **and 66** are contingent upon approval by appropriate land management agencies for those zones.

(n) (No change.)

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

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

(c) The season bag limit per permit shall be one deer of either sex and any age with a shotgun permit season permit in Zones 1, 3, 4, 18, 21, 23, 30, [31, 37,] 43, **45,** 52, [53,] 55, and 65; two deer of either sex and any age [with a shotgun permit season permit] in Zones 2, 6, 15[-17], **16,** 19, 20, 22, [25,] 26, **27,** [28, 29] **31,** 33, 34, **37,** 44, 46, 48, [51] **53,** 54, and 64; three deer of either-sex and any age [with a shotgun permit season permit] in Zones 5, **6,** 7[-14], **10, 11, 17, 25,** [27,] **28, 29,** 35, [36,] 39, [41,] 42, [47, 49, 50,] 59, 60[,] **and** 61[, and 63]; **four deer of either sex and any age in Zones 8, 9, 12, 13, 14, 36, 41, 47, 49, 50, 51 and 63;** six deer of either sex and any age in Zones 56, 57, [and] 58 **and 66** ; and eight deer of either sex and any age in Zones 38 **and 39**. Only one deer may be taken in a given day per permit except in Zones 38, **39,** 56 [and], **59,** 64 **and 66** where the limit is two deer in a given day per permit.

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

1. December [14, 1994] **13, 1995**, in Zones 1, 3, 4, 18, 21, 23, 30, [31,] 43, **45,** 55 and 65.

2. December [14, 15 and 16, 1994 and, January 20, 21, 27 and 28, 1995 in Zones 2, 5, 6, 7, 8, 10, 11, 12, 15, 17, 22, 25, 28, 29, 35, 42, 48, and 61] **13, 14, and 15, 1995 in Zones 2, 20, 26, 31, 33, 34, 44, 56 and 60**.

3. December [14, 15 and 16, 1994 in Zones 16, 19, 20, 26, 33, 34, 44, 46, 51, 56, and 60] **13, 14 and 15, 1995, and January 19, 20, 26 and 27, 1996 in Zones 6, 15, 16, 17, 19, 22, 27, 28, 29, 46, 48 and 61**.

4. December [14, 15 and 16, 1994 and January 20-28, 1995 in zones: 9, 13, 14, 27, 36, 41, 47, 49, 50 and 63] **13, 14 and 15, 1995 and January 19-27, 1996 in Zones 5, 7, 10, 11, 25, 35 and 42**.

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5. December [17, 1994 in Zones 37 and 52] **13, 14 and 15, 1995 and January 15-27, 1996 in Zones 8, 9, 12, 13, 14, 36, 41, 47, 49, 50, 51 and 63.**

6. [November 29, 30 and December 1, 2, 1994 in Zone 38] **January 6 and 20, 1996 in Zone 37.**

7. [December 17, 1994 and January 14 and 28, 1995 in Zone 39] **November 28, 29, 30 and December 1, 1995 in Zone 38.**

8. [January 7, 1995 in Zone 53] **December 23 and 30, 1995 and January 6 and 13, 1996 in Zone 39.**

9. [December 17, 1994 and January 21, 1995 in Zone 54] **December 23, 1995 in Zone 52.**

10. [December 5, 6, 7, 14, 15, and 16, 1994 in Zones 57 and 58] **January 6 and 20, 1996 in Zone 53.**

11. [December 5, 6 and 7, 1994 (first segment), December 14, 15, and 16, 1994 (second segment), January 19, 20, 21, 1995 (third segment) and January 26, 27, 28, 1995 (fourth segment) in Zone 59] **December 16, 1995 and January 20, 1996 in Zone 54.**

12. [January 20, 1995 (first segment), January 21, 1995 (second segment), January 27, 1995 (third segment) and January 28, 1995 (fourth segment) in Zone 64] **December 4, 5, 6, 13, 14 and 15, 1995 in Zone 57 and 58.**

13. [At other times as determined by the Director] **December 4-6, 1995 (first segment); December 13-15, 1995 (second segment); January 18-20, 1996 (third segment); and, January 25-27, 1996 (fourth segment) in Zone 59.**

14. January 17, 1996 (first segment); January 19, 1996 (second segment); January 24, 1996 (third segment); and January 26, 1996 (fourth segment) in Zone 64.

15. December 23, 26-30, 1995 in Zone 66.

16. At other times as determined by the Director.

17. The permit shotgun season for persons possessing farmer shotgun permit season permits includes the six-day firearm season (December 4-9, 1995) in addition to the day or days the season is open for applicable zones by qualified farmers on the farm occupied and designated in the application. All other regulations applicable to the zone and farmer shotgun permits shall apply.

(e)-(f) (No change.)

(g) Permits for shotgun permit season consist of back display which includes a "deer transportation tag" or proper and valid second tag. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license in the case of a shotgun permit season permit, and without the license in the case of the farmer shotgun permit season permit. The "deer transportation tag" portion of the permit must be completely filled out, and affixed to the deer immediately upon killing. This completely filled in "deer transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either sex during this season must transport this deer to an authorized checking station by 7:00 P.M. E.S.T. on date killed to secure the legal "possession tag." The possession of a deer of either sex after 7:00 P.M. E.S.T. on the date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possesson tag." If the season has been concluded said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag." For deer management zones where the shotgun permit season is more than one day and the bag limit is two deer, a second valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued upon registration of the first deer. This permit will allow this person to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open the following day(s) or on any additional days that shotgun permit season hunting is authorized. For deer management zones where the shotgun permit season is three days or more and the bag limit is three deer **or more**, [a third] **additional** "New Jersey Permit and Transportation Tags" will be issued upon registration of the second, **third or applicable** deer **until the bag limit is reached**. This permit will allow this hunter to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open or on any additional days that shotgun permit season hunting is authorized. [For Deer Management Zone 38 (Great Swamp National Wildlife Refuge) where the shotgun permit season is five days and the bag limit is 10 deer, an additional valid and proper "New Jersey Permit and Transportation Tag" will be issued which will allow the permittee to take two deer per day per permit.] Permittees will be able to continue hunting on the following designated season dates after registration of deer and issuance of appropriate tags. [For deer management Zones 57 and 58 (Forsythe National Wildlife Refuge) where the season is six days and the bag limit is one deer per day per permit, additional valid and proper "New Jersey Permit and Transportation Tags" will be issued at designated check stations upon registration of deer, which will allow the permittee to take up to a maximum of six deer. Permittees will be able to continue hunting on the following designated season dates after registration of deer and issuance of appropriate tags.] For deer management [Zone 64 (Monmouth Battlefield State Park) where the season is one day per segment and the bag limit is two deer per permit (and day)] **Zones 38, 56, 59, 64 and 66 where two deer may be taken per permit per day**, an additional valid and proper "New Jersey Permit and Transportation Tag" will be issued to the permittee, directly from the Division.

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

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked Special Deer Season [1994] **for the current year**, signing as provided on the back, and sending the stub, together with the permit applied for and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-6. (No change.)

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

(k) The Deer Management Zone Map on file at the Office of Administrative Law and is available from that agency or the Division. The [1994] **1995** Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

[1994] **1995** SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1994]	**1995**	Permit Quota [1994]	**1995**	Portions of Counties Involved
1	1	[103]	**86**	[616]	**545**	Sussex
2	2	[615]	**492**	[1,829]	**1,930**	Sussex
3	1	[67]	**38**	[604]	**467**	Sussex, Passaic, Bergen
4	1	[100]	**103**	[627]	**590**	Sussex, Warren
5	[2]**4**	[2,522]	**2,314**	[4,319]	**4,246**	Sussex, Warren
6	[2]**3**	[397]	**478**	[934]	**1,110**	Sussex, Morris, Passaic, Essex
7	[2]**4**	[1,085]	**1,025**	[1,842]	**1,880**	Warren, Hunterdon
8	[2]**5**	[2,569]	**2,558**	[4,164]	**4,054**	Warren, Hunterdon, Morris, Somerset

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9	[4]**5**	[327]	**423**	[960]	**966**	Morris, Somerset
10	[2]**4**	[1,203]	**1,315**	[2,363]	**2,413**	Warren, Hunterdon
11	[2]**4**	[705]	**769**	[1,212]	**1,411**	Hunterdon
12	[2]**5**	[1,277]	**1,792**	[2,580]	**2,682**	Mercer, Hunterdon, Somerset
13	[4]**5**	[385]	**254**	[960]	**977**	Morris, Somerset
14	[4]**5**	[984]	**849**	[1,392]	**1,563**	Mercer, Somerset, Middlesex, Burlington
15	[2]**3**	[513]	**452**	[1,090]	**1,304**	Mercer, Monmouth, Middlesex
16	3	[95]	**254**	[500]	**675**	Ocean, Monmouth
17	[2]**3**	[371]	**476**	[712]	**788**	Ocean, Monmouth, Burlington
18	1	[5]	**13**	[120]	**81**	Ocean
19	3	[200]	**271**	[649]	**600**	Camden, Burlington
20	[3]**2**	[69]	**61**	[225]	**280**	Burlington
21	1	[24]	**46**	[238]	**208**	Burlington, Ocean
22	[2]**3**	[74]	**89**	[225]	**302**	Burlington, Ocean
23	1	[35]	**42**	[349]	**336**	Burlington, Camden, Atlantic
24		0		0		Burlington, Ocean
25	[2]**4**	[344]	**578**	[974]	**1,210**	Gloucester, Camden, Atlantic, Salem
26	[3]**2**	[73]	**115**	[345]	**447**	Atlantic
27	[4]**3**	[663]	**355**	[840]	**841**	Salem, Cumberland
28	[2]**3**	[176]	**231**	[442]	**546**	Salem, Cumberland, Gloucester
29	[2]**3**	[414]	**472**	[784]	**916**	Salem, Cumberland
30	1	[30]	**31**	[147]	**173**	Cumberland
31	[1]**2**	[7]	**31**	[74]	**93**	Cumberland
32		0		0		Cumberland
33	[3]**2**	[42]	**47**	[135]	**147**	Atlantic
34	[3]**2**	[89]	**125**	[371]	**417**	Cape May, Cumberland
35	[2]**4**	[431]	**539**	[1,105]	**1,128**	Gloucester, Salem
36	[4]**5**	[32]	**54**	[129]	**155**	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	[5]**6**	[17]	**40**	[79]	**117**	Burlington (Fort Dix Military Reservation)
38	[6]**7**	[241]	**284**	500		Morris (Great Swamp National Wildlife Refuge)
39	[7]**8**	[81]	**148**	[97]	**94**	Monmouth (Earle Naval Weapons Station)
40		0		0		Monmouth (Earle Naval Weapons Stations—Waterfront)
41	[4]**5**	[483]	**441**	[741]	**795**	Mercer, Hunterdon
42	[2]**4**	[60]	**53**	[115]	**133**	Atlantic
43	1	[9]	**18**	[86]	**74**	Cumberland
44	[3]**2**	[15]	**20**	[39]	**70**	Cumberland
45	**1**	[0]	**15**	[0]	**61**	Cumberland, Atlantic, Cape May
46	3	[41]	**93**	[177]	**279**	Atlantic
47	[4]**5**	[82]	**153**	[239]	**289**	Atlantic, Cumberland, Gloucester
48	[2]**3**	[276]	**313**	[682]	**692**	Burlington
49	[4]**5**	[31]	**111**	[53]	**85**	Burlington, Camden, Gloucester
50	[4]**5**	[281]	**373**	[540]	**733**	Middlesex, Monmouth
51	[3]**5**	[83]	**189**	[314]	**328**	Monmouth, Ocean
52	[5]**9**	[9]	**8**	[52]	**41**	Ocean (Fort Dix Military Reservation)
53	[9]**10**	[14]	**17**	[47]	**51**	Ocean (Lakehurst Naval Engineering Center)
54	[8]**11**	[47]	**43**	[34]	**48**	Morris (Picatinny Arsenal—ARRAD Com)
55	1	2		25		Gloucester, Atlantic
56	[3]**2**	[14]	**13**	20		(Forsythe National Wildlife Refuge)
57	[10]**12**	[20]	**13**	40		Atlantic (Forsythe National Wildlife Refuge)
58	[10]**12**	[16]	**18**	50		Burlington, Ocean (Forsythe National Wildlife Refuge)
59	[11]**13**	[99]	**40**	100		Salem (Supawna National Wildlife Refuge)
60	[3]**2**	[7]	**26**	120		Hunterdon (Round Valley Recreation Area)
61	[2]**3**	[21]	**25**	85		Atlantic (Atlantic County Parks)
62		0		0		Monmouth (Fort Monmouth)
63	[4]**5**	[346]	**359**	[458]	**387**	Salem
64	[12]**14**	[88]	**128**	[135]	**180**	Monmouth (Monmouth Battleground State Park)
65	1	[11]	**9**	[50]	**63**	Gloucester, Camden
66	**15**		**19**		**75**	**Atlantic (Federal Aviation Administration Technical Center)**
TOTAL		[18,438]	**19,749**	[38,734]	**41,016**	

(l) Shotgun permit season permits not applied for by September 10, [1994] **1995** may be reallocated to muzzleloader rifle, permit season applicants.

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

1. Indicates one day shotgun permit season—December [14, 1994] **13, 1995**.

2. Indicates [seven]**three**-day shotgun permit season—December [14, 15 and 16, 1994 and January 20, 21, 27 and 28, 1995] **13, 14 and 15, 1995**.

3. Indicates [three]**seven**-day shotgun permit season December [14, 15 and 16, 1994] **13, 14 and 15, 1995 and January 19, 20, 26 and 27, 1996**.

4. Indicates an 11-day shotgun permit season December [14, 15 and 16, 1994 and January 20-28, 1995] **13, 14 and 15, 1995 and January 19-27, 1996**.

5. Indicates a [one] **15**-day shotgun permit season December [17, 1994] **13, 14 and 15, 1995 and January 15-27, 1996**.

6. Indicates a [four] **two**-day shotgun permit season [November 29, 30 and December 1, 2, 1994] **January 6 and 20, 1996**.

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7. Indicates a [three] **four**-day shotgun permit season [December 17, 1994 and January 14 and 28, 1995] **November 28, 29, 30 and December 1, 1995**.

8. Indicates a [two] **four**-day shotgun permit season December [17, 1994 and January 21, 1995] **23 and 30, 1995 and January 6 and 13, 1996**.

9. Indicates a one-day shotgun permit season [January 7, 1995] **December 23, 1995**.

10. Indicates a [six] **two**-day shotgun permit season [December 5, 6, 7, 14, 15 and 16, 1994] **January 6 and 20, 1996**.

11. Indicates [four, three-day shotgun permit season segments—December 5, 6 and 7, 1994 (first segment); December 14, 15 and 16, 1994 (second segment); January 19, 20 and 21, 1995 (third segment) and, January 26, 27 and 28, 1995 (fourth segment)] **a two-day shotgun permit season—December 16, 1995 and January 20, 1996**.

12. Indicates [four one-day shotgun permit season segments—January 20, 1995 (first segment); January 21, 1995 (second segment); January 27, 1995 (third segment) and, January 28, 1995 (fourth segment)] **a six-day shotgun permit season—December 4, 5, 6, 13, 14, 15, 1995**.

13. Indicates four, three-day shotgun permit season segments—December 4-6, 1995 (first segment); December 13-15, 1995 (second segment); January 18-20, 1996 (third segment); and January 25-27, 1996 (fourth segment).

14. Indicates four, one-day shotgun permit season segments—January 17, 1996 (first segment); January 19, 1996 (second segment); January 24, 1996 (third segment); and January 26, 1996 (fourth segment).

15. Indicates a six-day shotgun permit season—December 23, 26-30, 1995.

(n) (No change.)

(o) Permit quotas for Zones 37, 38, 39, 52-54, 56-62, [and] 64 **and 66** are contingent upon approval by appropriate land management agencies for those zones.

(p) Deer Management zones are located as follows:

1.-41. (No change.)

42. Zone No. 42: That portion of Atlantic County lying with a continuous line beginning at the intersection of Moss Mill Road (Alt. Rt. 561) and Rt. 575 in Galloway Township; then southwest along Rt. 575 to its intersection with Rt. 40; then southeast along Rt. 40 to its intersection with Rt. 575 (English Creek Avenue); then south along Rt. 575 to its intersection with Schoolhouse Road; then southeast along Schoolhouse Road to its intersection with Rt. 559 (Mays Landing—Somers Point Road); then continuing southeast along Rt. 559 to its intersection with Rt. 651 (Jeffers Landing Road); then south along Rt. 651 to its intersection with the Great Egg Harbor River and the Egg Harbor Township line; then south along the Egg Harbor Township line to the Atlantic-Cape May County line in Great Egg Harbor Bay; then eastward along the Atlantic-Cape May County line to its intersection with the Atlantic Ocean at the Great Egg Harbor Inlet; then northeast along the Atlantic Ocean to Great Bay; then west along the south shore of Great Bay to the confluence of Oyster Creek; then west along the south bank of Oyster Creek to Oyster Creek Road (Alt. Rt. 561); then west along Alt. Rt. 561 to its intersection with Rt. 575 in Galloway Township, the point of beginning. The Edwin B. Forsythe National Wildlife Refuge (Zones 56 and 57) is excluded from Zone 42. **The Federal Aviation Administration Technical Center (Zone 66) is excluded from Zone 42.**

43.-65. (No change.)

66. Zone No. 66: Those portions of the Federal Aviation Administration Technical Center designated at open for hunting, lying within Atlantic County.

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

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

(d) Duration of the bow season is from November [12]**11**—December [3, 1994] **2, 1995** in Zones 1-[23]**3, 5-12, 14-23,** 25-[37]**35, 37**, 41-55, 58, 59, 61, 63, 65 **and 66**; and November [12, 1994—December 31, 1994] **11—December 30, 1995** in Zones 13, 36, 39, 40 or any time as determined by the Director. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

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

1. Only holders of valid bow and arrow licenses including juvenile bow license holders may apply by detaching from their bow hunting license the stub marked special deer season [1994] **for the current year license**, signing as provided on the back, and sending the stub together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-8. (No change.)

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

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1994] **1995** Bow Permit Season Quotas (Either Sex) are as follows:

[1994] **1995** BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgmt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1994]	**1995**	Permit Quota [1994]	**1995**	Portions of Counties Involved
1	1	[101]	**57**	[725]	**520**	Sussex
2	1	[128]	**111**	1,350		Sussex
3	1	[64]	**45**	[1,200]	**1,025**	Sussex, Passaic, Bergen
4		[51]	**0**	[625]	**0**	Sussex, Warren
5	1	[207]	**303**	[2,550]	**2,680**	Sussex, Warren
6	1	[70]	**77**	1,200		Sussex, Morris, Passaic, Essex
7	1	[112]	**144**	[1,365]	**1,570**	Warren, Hunterdon
8	1	[272]	**409**	[2,860]	**2,900**	Warren, Hunterdon, Morris, Somerset
9	1	[66]	**106**	[800]	**850**	Morris, Somerset
10	1	[136]	**185**	1,700		Warren, Hunterdon
11	1	[102]	**134**	1,035		Hunterdon
12	1	[190]	**233**	2,260		Mercer, Hunterdon, Somerset
13	2	[78]	**118**	[950]	**1,110**	Morris, Somerset
14	1	[100]	**144**	[1,200]	**1,400**	Mercer, Somerset, Middlesex, Burlington
15	1	[105]	**113**	1,100		Mercer, Monmouth, Middlesex
16	1	[51]	**52**	[780]	**975**	Ocean, Monmouth
17	1	[39]	**52**	[460]	**475**	Ocean, Monmouth, Burlington
18	1	[26]	**37**	[400]	**310**	Ocean
19	1	[60]	**86**	[580]	**640**	Camden, Burlington

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20	1	[34]	**50**	[400]	**450**	Burlington
21	1	[38]	**70**	500		Burlington, Ocean
22	1	[27]	**32**	[255]	**280**	Burlington, Ocean
23	1	[78]	**124**	850		Burlington, Camden, Atlantic
24	[1]	0		0		Burlington, Ocean
25	1	[60]	**85**	[575]	**660**	Gloucester, Camden, Atlantic, Salem
26	1	[71]	**106**	[600]	**700**	Atlantic
27	1	[60]	**63**	735		Salem, Cumberland
28	1	[38]	**99**	[500]	**750**	Salem, Cumberland, Gloucester
29	1	[61]	**81**	[630]	**700**	Salem, Cumberland
30	1	[21]	**25**	[150]	**190**	Cumberland
31	1	[3]	**23**	[70]	**100**	Cumberland
32	1	[4]	**12**	[30]	**50**	Cumberland
33	1	[11]	**30**	[125]	**150**	Atlantic
34	1	[65]	**83**	[500]	**600**	Cape May, Cumberland
35	1	[108]	**136**	[1,000]	**1,200**	Gloucester, Salem
36	2	[25]	**11**	[230]	**250**	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	1	[4]	**8**	[120]	**140**	Burlington (Fort Dix Military Reservation)
38		0		0		Morris (Great Swamp National Wildlife Refuge)
39	2	[8]	**21**	[60]	**50**	Monmouth (Earle Naval Weapons Station)
40	2	[28]	**18**	[60]	**30**	Monmouth (Earle Naval Weapons Station—Waterfront)
41	1	[54]	**45**	[580]	**475**	Mercer, Hunterdon
42	1	[6]	**11**	[80]	**90**	Atlantic
43	1	[17]	**30**	[150]	**140**	Cumberland
44	1	[7]	**13**	[45]	**60**	Cumberland
45	1	[20]	**36**	[230]	**240**	Cumberland, Atlantic, Cape May
46	1	[32]	**44**	[250]	**300**	Atlantic
47	1	[14]	**21**	[160]	**200**	Atlantic, Cumberland, Gloucester
48	1	[39]	**46**	475		Burlington
49	1	[4]	**5**	[50]	**80**	Burlington, Camden, Gloucester
50	1	[45]	**63**	[675]	**765**	Middlesex, Monmouth
51	1	[29]	**38**	[475]	**450**	Monmouth, Ocean
52	1	[3]	**4**	35		Ocean (Fort Dix Military Reservation)
53	1	[3]	**8**	35		Ocean (Lakehurst Naval Engineering Center)
54	1	[6]	**12**	[32]	**48**	Morris (Picatinny Arsenal—ARRAD Com)
55	1	[3]	**13**	90		Gloucester
56		0		0		Atlantic (Forsythe National Wildlife Refuge)
57		0		0		Atlantic (Forsythe National Wildlife Refuge)
58	1	[4]	**6**	50		Burlington, Ocean (Forsythe National Wildlife Refuge)
59	1	[15]	**27**	35		Salem (Supawna National Wildlife Refuge)
60		0		0		Hunterdon (Round Valley Recreation Area)
61	1	[7]	**8**	75		Atlantic (Atlantic County Parks)
62		0		0		Monmouth (Fort Monmouth)
63	1	[37]	**23**	315		Salem
64		0		0		Monmouth (Monmouth Battleground State Park)
65	1	[12]	**20**	[160]	**185**	Gloucester, Camden
66	**1**		**8**		**75**	**Atlantic (Federal Aviation Administration Technical Center)**
Total		[3,069]	**3,964**	[34,527]	**35,703**	

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

1. Indicates the season dates will be November [12]**11**—December [3, 1994] **2, 1995.**

2. Indicates the season dates will be November [12, 1994] **11** to December [31, 1994] **30, 1995.**

(m) Permit quotas for zones: 37, 39, 40, 52-54, [57,] 58, **59,** [and] 61 **and 66** are contingent upon approval by the appropriate land management agencies for these zones.

(n) (No change.)

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

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

(c) Duration of the Great Swamp Permit Shotgun Season permit shall be from sunrise to ½ hour after sunset on the following dates: November **28,** 29, 30 and December 1, [2, 1994] **1995** or as may otherwise be designated by the U.S. Fish and Wildlife Service.

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

7:25-5.32 Special Wildlife Management Permits

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

(c) Subject to the requirements of this subsection, the Director may, in his or her discretion and on behalf of the Division, issue Special Deer Management Permits. Special Deer Management Permits may be issued to administer alternative deer control methods.

1. Prior to the issuance of such Special Deer Management Permits, a written Memorandum of Understanding shall be entered into for the lands of concern by a local cooperator, the Division and the Council. All Special Deer Management Permits issued for this purpose shall comply with all applicable regulations and all conditions and restrictions outlined in the Memorandum of Understanding.

2. As used in this section, except as otherwise noted:

"Alternative Deer Control Methods" means those techniques other than traditional and controlled hunting employed to reduce deer populations, which techniques may include, but not be limited to, shooting by agents, capture and euthanize, capture and remove.

"Biological Carrying Capacity" means the maximum number of deer that a given land area can support in good health over an extended period of time.

"Controlled Hunting" means the pursuit of deer during a modified season which is usually more restrictive than traditional

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hunting in terms of hunter density, methods of take, size of huntable area, etc. than deer hunting elsewhere in New Jersey as approved by the Council.

"Cooperator" means the local authority(ies), including municipal or county governing bodies or a combination thereof cooperating in the administration of a community based deer management plan.

"Coordinator" means the Division of Fish, Game and Wildlife employee designated by the Director as the official representative with the local authority(ies) to develop, adopt and monitor the administration of the Memorandum of Understanding.

"Council" means the Fish and Game Council which is an 11-member body which has legislative authority to determine seasons, bag limits, and manners and means of take for game species, and establishes policy regarding these matters.

"Cultural Carrying Capacity" means the number of deer that can co-exist compatibly with the local human population in a given land area.

"Deer" means white-tailed deer (Odocoileus virginianus).

"Director" means the Director of the Division of Fish, Game and Wildlife.

"Division" means the New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife.

"Huntable" means those sites on which, due to their size, location and available habitat, traditional or controlled deer hunting seasons can be conducted.

"Memorandum of Understanding" or "MOU" means the written cooperative deer management agreement approved by the local authority(ies) which may be a municipal or county governing body, the Council and the Division to employ alternative deer control methods.

"Traditional Hunting" means the pursuit of deer by licensed hunters during annual prescribed open seasons as approved by the Council and provided by the game code (firearm and bow) without additional restrictions.

3. Issuance of Special Deer Management Permits allowing for the use of both traditional hunting and alternative deer population control techniques shall be based on all applicable regulations and the criteria as set forth in the Memorandum of Understanding.

i. All requests shall be made in writing to the Director and no Special Deer Management Permits may be issued, except as set forth herein.

ii. Following inspection and verification of the need for deer control by the Division, management options shall be reviewed with the Cooperator and a MOU may be entered into and signed by the Division and the Cooperator.

iii. Among other preconditions to the issuance of Special Deer Management Permits, the MOU shall, at a minimum, require that the Cooperator implement the following measures: discouragement of deer feeding, support of traditional and controlled hunting where they can be conducted, reasonable efforts, to utilize deer killed by non-traditional means, and a plan by the Cooperator to use its best efforts to ensure donation of venison to the needy.

iv. The MOU may authorize such non-traditional control options as shooting by agents of the Cooperator, live capture and euthanize and live capture and remove to a deer farm or facility.

v. All costs associated with the application of alternative deer control options, including, but not limited to, those associated with the processing of venison, shall be borne by the Cooperator.

vi. The Division may issue Special Deer Management Permits for the experimental use of fertility control methodologies, including immunocontraception. Approval for such efforts shall be restricted to bona fide researchers, following review and approval of a study plan by the Division and the Department of Animal Science, Cook College-Rutgers University. Any experimental use of fertility control chemicals and vaccines on free-ranging deer populations shall be restricted to those substances/locations which have been granted and Investigational Exemption for a New Animal Drug (INAD) by the U.S. Food and Drug Administration.

vii. Failure to comply with any of the provisions or requirements as contained in the Special Deer Management Permit and the MOU may be cause for revocation of the permit or denial of subsequent permits.

[(c)]**(d)** Authority: The authority for the adoption of the foregoing section is found in N.J.S.A. 13:1B-27 et seq., **13:1B-30, 23:4-1 et seq., 23:4-42, 23:4-43, 23:4-44, 23:4-45, 23:4-47, 23:4-52, 23:4-63.3** and other applicable statutes.

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

(a) No wildlife management areas have been selected for limited hunter density for the [1994-95] **1995-96** season. However, hunting with firearms shall be prohibited on November [11, 1994] **10, 1995** on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

(a)

OFFICE OF AIR QUALITY MANAGEMENT

Ozone Transport Commission—Low Emission Vehicles Program

Proposed New Rules: N.J.A.C. 7:27-26

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, 26:2C-8, and 26:2C-8.1 to 8.14.

DEP Docket Number: 21-95-04/526.

Proposal Number: PRN 1995-312.

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

Monday, June 19, 1995 at 10:00 A.M.
New Jersey Department of Environmental Protection
Hearing Room, 1st Floor
401 East State Street
Trenton, New Jersey 08625

Submit written comments, identified by the Docket Number given above, by June 26, 1995 to:

Janis E. Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

Several documents are cited in this notice as references or as documents being incorporated by reference. Copies of these documents may be requested from:

David West, Chief
Bureau of Transportation Control
Office of Air Quality Management
Department of Environmental Protection
CN 411
Trenton, New Jersey 08625

Pursuant to N.J.S.A. 26:2C-8, these rules shall not become operative until 60 days after adoption.

Summary

The purpose of this rulemaking is to reduce emissions of air pollutants from new motor vehicles as part of New Jersey's overall effort to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide (CO). This action is one part of a comprehensive program to control motor vehicle emissions. Other components include use of cleaner fuels, enhanced vehicle inspection and maintenance, and actions to reduce motor vehicle use.

The Ozone Transport Commission (OTC) recommended that the Environmental Protection Agency (EPA) require all member states and the District of Columbia to adopt the OTC Low Emission Vehicle (OTC-LEV) program to reduce the interstate transport of ozone throughout the Ozone Transport Region (OTR). New Jersey is a member of the OTC.

The "Notice of Final Rule on Ozone Transport Commission; Low Emission Vehicle Program for the Northeast Ozone Transport Region," 60 Fed. Reg. 4712 (January 24, 1995), constitutes EPA approval of the OTC recommendation.

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In the EPA final rule, EPA determined that adoption of OTC-LEV throughout the OTR is necessary to bring certain areas in the OTR into attainment by the dates provided at CAA Section 181(a) of the Clean Air Act (CAA), 42 U.S.C.A. section 7401 et seq., and that adoption of OTC-LEV is otherwise consistent with the CAA. 60 Fed. Reg. 4729. Consistent therewith, EPA issued each OTR state a "SIP call" based upon its finding that the existing SIPs in the OTR were substantially inadequate to meet the necessary ozone emission reductions. To cure this deficiency, each OTR state was required to adopt the OTC-LEV program for implementation commencing with the 1999 model year (which may begin as early as January 2, 1998) and include the program as a SIP revision to be submitted to EPA by February 15, 1996. 60 Fed. Reg. 4736, 40 C.F.R. Section 51.120(a).

EPA qualified its finding of necessity, however, and therefore its approval of the OTC recommendation, leaving the door open for implementation within, and perhaps beyond, the OTR states of an "acceptable LEV-equivalent program that would remove the need for the OTC-LEV program." This qualification is based upon EPA anticipation that it will make a finding that such an equivalent program is in effect throughout the OTR. 60 Fed. Reg. 4729-30.

EPA has described an LEV-equivalent program as "an alternative voluntary nationwide program that would achieve emission reductions from new motor vehicles in the OTR equivalent to or greater than would be achieved by the OTC-LEV program and that would advance motor vehicle emission control technology." 60 Fed. Reg. 4713, n.3. Furthermore, EPA has stated the basic criteria that an LEV-equivalent program would need to meet for EPA to find that the program is an acceptable alternative to the OTC-LEV program. Those basic criteria are:

1. VOC and NO_x emission reductions in the OTR equivalent to those that would be achieved by the OTC-LEV program;
2. A finding of enforceability, including a showing that the program, once in effect, would remain in effect; and
3. A program that advances motor vehicle emission control technology.

The proposed LEV-equivalent program, referred to hereafter as the proposed 49-State Low Emission Vehicles (49SLEV) program agreement, would provide for the earlier introduction of motor vehicle, meeting the California standard for the Transitional Low Emission Vehicle (TLEV) in the OTR than would OTC-LEV. During model years 1997-2000, for example, the proposed 49SLEV program agreement would mandate that 40 percent of the motor vehicles, including light-duty trucks, sold in the OTR be TLEVs, whereas the OTC-LEV program would not bring cleaner motor vehicles into the OTR until model year 1999. Motor vehicles meeting the California standard for the lower-emitting Low Emission Vehicle (LEV) would be phased in the OTR over three years, beginning with the 1999 model year. Beginning with the 2001 model year, under the proposed 49SLEV program agreement, the LEV standard would apply to all new light-duty vehicles sold outside California—both within and outside of the OTR. 60 Fed. Reg. 4714.

Under the CAA, the proposed 49SLEV program agreement can only be implemented by an agreement between the relevant parties—it cannot be imposed unilaterally by EPA or the states. In an effort to develop a proposed 49SLEV program agreement, EPA and the parties have been involved in intensive and extensive, open discussions, particularly under the Clean Air Act Advisory Committee's Subcommittee on Mobile Source Emissions and Air Quality in the Northeast States that EPA established in August 1994.

In addition, EPA has also stated that a proposed 49SLEV program agreement must include a component that provides for the advancement of motor vehicle emission control technology. As such, as part of a Memorandum of Understanding, the parties involved in the development of the proposed 49SLEV program agreement will include the principles of the Advanced Technology Vehicle (ATV) component to the proposed 49SLEV program agreement. The basic principle of the ATV component is for the interested parties to work in cooperation with each other to establish and maintain a sustainable, viable market for ATV's at the retail level. For example, New Jersey could provide incentives for the use of advanced technologies by promoting locally manufactured or distributed emission control components as part of the ATV program. The use of such technologies could be encouraged through the generation of market based credits, tax incentives or other methods. Further details of the ATV component are set forth at 60 Fed. Reg. 4734-36.

In its January 24, 1995 final rule, EPA expressed a high degree of confidence that it will be able to later determine through rulemaking that the proposed 49SLEV program agreement is acceptable. Still, EPA noted that, if circumstances occur that disrupt or void the proposed 49SLEV program agreement, the OTR states would be required to adopt OTC-LEV in order to satisfy the SIP call for emission reductions from new motor vehicles. If this were to occur, however, the states would be prohibited from OTC-LEV implementation for no less than two years. This period would be necessary for state adoption of necessary program rules first and subsequent satisfaction of the two-year lead time for motor vehicle manufacturers' compliance imposed at CAA Section 177.

EPA appears confident that it will make the requisite findings to approve the proposed 49SLEV program agreement as a rule in time for states to satisfy the SIP call. EPA has not adequately addressed, however, how it would treat an OTR state that had relied on the requisite EPA determination and finding with respect to the proposed 49SLEV program agreement prior to February 15, 1996, and therefore failed to adopt OTC-LEV as a contingency, should EPA ultimately fail to make such determination and finding. Should EPA fail to so act, the state would be left insufficient time thereafter for adoption of OTC-LEV with sufficient lead time to commence implementation with the 1999 model year as required in the SIP call.

The Department of Environmental Protection (Department) supports continued negotiations with the relevant parties to develop an acceptable proposed 49SLEV program agreement. The Department has determined that the proposed 49SLEV program agreement could be a more cost-effective means than OTC-LEV to cure EPA's finding of inadequacy with the State's SIP. However, EPA has not yet made the requisite determination through rulemaking that a national LEV-equivalent new motor vehicle emission control program is an acceptable alternative for OTC-LEV, nor found that such program is in effect as required at 40 C.F.R. 51.120(a).

Because EPA has not yet made the required determination and finding, and in order to also serve as a contingent control strategy upon a determination that the agreement expire or fail to remain in effect, the Department is herein proposing adoption of the OTC-LEV program for new 1999 model year and subsequent model year vehicles sold or leased within the State. OTC-LEV, however, will not be implemented if EPA makes the requisite determination and finding with respect to the proposed 49SLEV program agreement and if and during the period that, the proposed 49SLEV program agreement remains in effect for the duration of the program.

In this manner, the proposed 49SLEV program agreement could commence implementation with the 1997 model year. The fully adopted OTC-LEV rules would serve as a fall-back program, contingent on continued manufacturer compliance with the proposed 49SLEV program agreement or until the end of the agreement. This contingency measure would be effective as early as the 1999 model year because requisite CAA Section 177 LEV program lead time would have been provided through the Department's timely adoption of these OTC-LEV rules.

Background and Procedural History

The CAA generally preempts states from establishing new motor vehicle emission standards. CAA Section 209. The State of California may however, adopt such standards upon EPA's issuance of a preemption waiver. In order to issue the waiver, EPA must first find that California's standards will be, "in aggregate, at least as protective of public health and welfare as applicable federal standards." CAA Section 209(b). Other states may adopt standards identical to those for which California has received a Section 209(b) waiver so long as the standards are adopted at least two years prior to the commencement of the model year to which they first apply. CAA Section 177.

California adopted its Low Emission Vehicle (LEV) program during September 1990, effective commencing with the 1994 model year. This program prohibits the sale of any vehicle other than those that are certified to one of five categories of increasingly more stringent emission standards: California Standard Vehicle (SV), which is certified to the same standards as the Federal Tier I vehicle; Transitional Low Emission Vehicle (TLEV); Low Emission Vehicle (LEV); Ultra-Low Emission Vehicle (ULEV); and Zero Emission Vehicle (ZEV). In order to steadily reduce emissions from new vehicles, the California LEV program also sets a progressively (through model year 2003) declining non-methane organic gas (NMOG) fleet average that each manufacturer is required to meet through the sale of an appropriate mix of the certified vehicles listed above. Finally, in order to force technology towards ZEVs (which, in addition to being the cleanest of the five classes of California-certified vehicles, also differ because ZEVs are inherently unlikely to increase

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in emissions from emissions control component deterioration), the California program mandates that, commencing with the 1998 model year, ZEVs comprise at least two percent of the motor vehicles produced for sale in California. This production mandate rises to five percent in model year 2001 and 10 percent in model year 2003.

Subsequent to California's adoption of its LEV program, the OTC adopted a Memorandum of Understanding (MOU) wherein each OTR member agreed that it would take steps to adopt the California LEV program as soon as possible. Consistent therewith, Massachusetts and New York adopted regulations to implement state LEV programs commencing with the 1995 model year, as did Maine for the 1996 model year. Litigation instituted by automobile manufacturers against Maine was settled by that state's deferring implementation pending wider adoption of LEV programs in neighboring and other OTR states. Similar litigation in New York delayed commencement of that state's LEV program until the 1996 model year which could begin no earlier than January 2, 1995. (Connecticut adopted its LEV program without a ZEV mandate during December, 1994.)

On April 6, 1992, the Department proposed to adopt the California LEV program, after determining that the LEV program was necessary to bring New Jersey into attainment for ozone by the CAA-mandated dates of 2005 and 2007. See: 24 N.J.R. 1315(a). Before the Department was prepared to adopt the proposal, the Legislature amended the Air Pollution Control Act (APCA), N.J.S.A. 26:2C-1 et seq., effective March 10, 1993, to impose certain conditions precedent to the Department's adoption of an LEV program. The Department was first required (1) to evaluate the results of a yet-to-be prepared study on the efficacy of the LEV program for New Jersey and (2) to wait until OTR member states representing 40 percent of new motor vehicle registrations had taken legislative and/or regulatory action to establish LEV programs. In order to keep the proposal viable, while deferring adoption as required by this APCA amendment, the Department reproposed its LEV program on April 5, 1993. See: 25 N.J.R. 1381(a). (Rule proposals lapse unless adopted and filed with the Office of Administrative Law within one year of the publication date of the proposal. N.J.A.C. 1:30-4.2(c).)

During early 1994, New Jersey's new administration sought to review the entire LEV issue. Accordingly, in order to again keep the proposal viable and thereby preserve its options with respect to timely adoption of the LEV program, the Department again reproposed the LEV program on April 4, 1994. See: 26 N.J.R. 1467(a). Thus the Department thereby provided for the receipt of additional public comment while deferring adoption until as late as April 4, 1995.

The OTC may, upon petition of any member state, recommend that EPA require additional control measures to be applied within all or a part of the OTR. CAA Section 184(c)(1). EPA is then required to provide opportunity for a public hearing within 90 days of receipt of the OTC recommendation. Finally, EPA has nine months after receipt of the recommendation to approve, disapprove, or partially disapprove it. Prior to disapproval or partial disapproval, EPA must find that such additional control measures are not necessary to bring any area of the region into timely attainment for ozone or that such measures are not consistent with the CAA. For any disapproved portion, EPA must recommend to the OTC equal or more effective measures that the OTC could take. CAA Section 184(c)(4). Should EPA approve an OTC recommendation, the agency must then require each OTR member to revise its State Implementation Plan (SIP), that is, issue a "SIP call," to include the approved additional control measures within one year. CAA Section 184(c)(5). In addition, CAA Section 110(a)(2)(D) requires each SIP to adequately guard against allowing the state to frustrate the attempts of other states to attain and maintain the NAAQS, and CAA Section 110(k)(5) requires EPA to issue a SIP call to correct such inadequacies.

During August 1993, Maine, Maryland, and Massachusetts petitioned the OTC to adopt a recommendation to EPA to call for the application of the California LEV program throughout the OTR. During February 1994, the OTC voted, nine to four, to adopt the petition and transmitted to EPA its recommendation that the agency mandate what it now called OTC-LEV. (Consistent with its decision in early 1994 to comprehensively review the LEV issue, New Jersey moved for a 12 month OTC deferral on the recommendation. The OTC disapproved New Jersey's motion. New Jersey then voted against adoption of the petition.) The recommendation called for OTR-wide adoption of the California LEV program, commencing with the 1999 model year. The OTC recommended that the ZEV production mandate remain an option with each OTR state unless EPA determined that the ZEV mandate would be required to satisfy CAA Section 177.

In its final rule, EPA determined that adoption of OTC-LEV throughout the OTR is necessary to bring certain areas in the OTR into attainment by the dates provided at CAA Section 181(a) and that adoption of OTC-LEV is otherwise consistent with the CAA. 60 Fed. Reg. 4729. Consistent therewith, EPA issued each OTR state a "SIP call" based upon its finding that the existing SIPs in the OTR were substantially inadequate to meet the necessary ozone emission reductions. To cure this deficiency, each OTR state was required to adopt the OTC-LEV program and include the program as a SIP revision to be submitted to EPA by February 15, 1996. 60 Fed. Reg. 4736, 40 C.F.R. Section 51.120(a).

EPA qualified its finding of necessity, however, and therefore its approval of the OTC recommendation, leaving the door open for the OTR states to adopt an "acceptable LEV-equivalent program that would remove the need for the OTC-LEV program." This qualification is based upon EPA anticipation that it will make a finding that such an equivalent program is in effect throughout the OTR. 60 Fed. Reg. 4729-30.

Program enforceability is a major hurdle to be overcome in instituting an LEV-equivalent program is enforceability. Under CAA Section 202(b)(1)(C), EPA is without statutory authority to impose such a program prior to model year 2004, while under CAA Sections 177 and 209, the states are explicitly prohibited from mandating a program other than California's LEV program. EPA believes, however, that an enforceable LEV-equivalent program could be created through (1) EPA's authority to establish emission standards, with which the manufacturers may voluntarily comply, under CAA Section 202(a), (2) yet-to-be developed consent decrees obligating the manufacturers' program compliance in consideration of the OTR states' not requiring OTC-LEV programs, and (3) a memorandum of understanding embodying an advanced technology vehicle (ATV) component. 60 Fed. Reg. 4714.

In its January 24, 1995 final rule, EPA expressed a high degree of confidence that it will be able to later determine through rulemaking that the proposed 49SLEV program agreement is acceptable. Still, EPA noted that, upon termination or if circumstances occur that disrupt or void the agreement, the OTR states would be required to adopt OTC-LEV in order to satisfy the SIP call for emission reductions from new motor vehicles or sufficient other non-LEV measures adequate for state demonstration that OTC-LEV is not necessary for that state. Should the proposed 49SLEV program agreement fail at its inception or thereafter, or otherwise be discontinued, the states would need sufficient time to adopt the necessary program rules and to satisfy the additional two-year lead time after state adoption imposed at CAA Section 177.

Summary of Key LEV Comments and Department Responses

The Department received numerous comments in response to its three previous regulatory proposals for the Low Emission Vehicles (LEV) program. The Department has provides here a summary of the most significant comments received on these prior proposals and the Department's responses.

Many commenters indicated that New Jersey should not move forward with adoption of the LEV program until after the vehicle manufacturers have demonstrated that they can meet the standards that have been established for California, regardless of whether New Jersey's moving forward would accelerate the development of such vehicles.

The Department disagrees with the commenters. The California Air Resources Board (CARB) concluded in their April, 1994 report entitled, "The Low-Emission Vehicle and Zero-Emission Vehicle Program Review," that LEV technology will be available to meet the requirements of their LEV program on schedule, and that the program remains cost-effective. As a result, the CARB staff recommended that no changes be made to the fleet average emission requirements for LEVs.

At the March 1994 Society of Automotive Engineers Congress and Exposition in Detroit, Michigan, both automobile manufacturers and vehicle component suppliers presented numerous technical papers describing progress in meeting the LEV standards. Many presenters were optimistic that even the most difficult standards are achieveable using cost-effective technology, and that long-term durability is the last hurdle before production is assured. Automotive suppliers at the exposition displayed numerous new emission control hardware designs, many of which are designed solely to meet the challenges of the California LEV program. Industry has clearly responded by developing the technology needed to meet the requirements of the LEV regulations.

Although this regulatory proposal does not set forth a ZEV sales mandate, significant technological progress has been made since the ZEV mandate was adopted by CARB in 1990. New battery technologies that

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will be able to provide vehicle ranges between 100 and 200 miles are being aggressively developed, and CARB indicates in their April, 1994 report, that technology is on track to be commercially ready for introduction in 1998. Battery lifetimes are expected to be at least five years by then, bringing overall battery costs to a level commensurate with the United States Advanced Battery Consortium's mid-term goals. Vehicle and component technology have also improved substantially over the past few years, resulting in highly energy-efficient vehicles with longer ranges. Based on the significant progress that has already been achieved, the CARB staff believes that technology is developing at a rate that will produce a commercially viable electric vehicle by 1998.

Based on the available information and the conclusions listed above, the CARB staff recommended that no changes to the declining fleet NMOG averages or ZEV implementation schedules be made. Therefore, from a technical perspective, the Department sees no reason to delay adoption of the OTC-LEV standards.

A few commenters believed that California LEVs would require California fuels; and since New Jersey is prohibited from doing so, the auto manufacturers would be forced to develop a third vehicle (LEVs that can operate on non-California fuels). Such commenters believed that prolonged operation of LEVs on Federal reformulated gasoline (RFG) with a higher sulfur content would exacerbate catalyst degradation, and that the required on-board diagnostic system would improperly signal the malfunction of the catalyst when operated on such high sulfur fuels.

The Department disagrees with the commenters. The Department agrees with EPA's findings that the OTC's choice to not include California's clean fuel requirements in its recommendation does not violate section 177 of the Clean Air Act because it neither contravenes the "identical standards" requirement nor the "third car" prohibition of section 177.

Both Federal courts that have reviewed the issue have found that failure of a state to promulgate California's fuel regulations does not violate section 177's requirement that an adopting state's standards be identical to California's standards. *Motor Vehicle Manufacturers Association v. NYDEC,* 17 *F.3d* 521 (2nd Cir. 1994) and *American Automobile Manufacturers Association v. Greenbaum,* 1993 *WL* 443946 (D. Mass. 1993), *aff'd,* 31 *F.3d* 18 (1st Cir. 1994) (the "New York case" and the "Massachusetts case," respectively).

Manufacturers' claims regarding sulfur's effects on California OBD II systems center around the contention that manufacturers will use flange-mounted catalyst assemblies instead of welded ones in their vehicles sold in the northeast. This is not a significant change in the design of the vehicles, and it would be done to save consumer time and cost if the catalysts need to be replaced. This would be a marketing choice by manufacturers and does not provide the basis for a third vehicle claim.

This issue was addressed by the District Court in the New York case recently. In dismissing a virtually identical claim by manufacturers in the New York case, the District Court found that "the changes of which [manufacturers] complain are simply not required by New York's adoption of California's LEV program. Certainly New York has not expressly required that manufacturers change their emissions systems mounting. Likewise, [manufacturers] have failed to show that New York's adoption will de facto inevitably cause the switch from flanged to bolted assemblies." *MVMA,* Docket No. 92-CV-869, slip op. at 16 (N.D.N.Y. Oct. 24, 1994). In the Massachusetts case, the trial judge in AAMA has also denied manufacturers' request for a preliminary injunction on this issue, determining that manufacturers were unlikely to succeed on the merits of their claim.

Several commenters believed that the LEV program will cause an economic hardship for New Jersey citizens (assuming that bordering states will not adopt an LEV program and assuming that California reformulated fuels will be required). Such commenters believed that there are other more cost-effective programs available that will achieve the same air quality benefits that the LEV program would achieve.

The Department disagrees with the commenters. The CARB has recently revised their estimates for the incremental cost increase to certify vehicles to LEV standards. The new estimates are $61 for TLEV, $114 for LEV and $221 for ULEV.

The Department does not believe that these cost increases will influence the purchase of a new vehicle. In addition, a region-wide approach such as the OTC-LEV as a backstop, if the 49-state vehicle program is not available, will greatly mitigate disruptions to the regional distribution and trading of vehicles and further reduce costs.

The commenters are incorrect in assuming that New Jersey will require the California reformulated gasoline. The Department has stated that it will not require California reformulated fuel and N.J.S.A. 26:2C-8.10 clearly forbids such a requirement. The reader is also directed to N.J.S.A. 26:2C-8.6 wherein the Legislature found that:

"California reformulated fuel" in this State would have serious consequences to the State's economy and must not be adopted as part of a low emission vehicle program....

The Legislature therefore declares that the adoption of a low emission vehicle program, so long as it is part of a regional action and does not include the adoption of the California reformulated fuel," should be authorized as an ozone control measure in this State....

In regard to cost-effectiveness, the CARB's most recent calculations show the overall cost-effectiveness of the LEV program, without a ZEV mandate, at $3,065 per ton of VOC and NOx reduced. This calculation was made based on a "per vehicle" methodology and assumes a 2005 sales mix of 63 percent LEVs and 37 percent ULEVs.

The cost-effectiveness calculations also assume the most recent CARB estimates for the incremental cost of LEVs compared to Federal Tier I vehicles (at 0.25 grams/mile NMHC): $61.00 for TLEVs, $114.00 for LEVs, and $221.00 for ULEVs.

Relative to the proposed LEV program, emission control strategies for reducing emissions from stationary sources are, generally speaking, more expensive to implement on a mass basis. For example, CARB has estimated the cost-effectiveness of rules regulating NO_x emissions from electric power generation between $6,600 and $24,800 per ton of NO_x. The proposed LEV program, with an estimated cost effectiveness of $3,065 per ton of VOC and NO_x reduced is, therefore, significantly more cost effective.

Summary of Hearing Officer's Recommendation and Agency Response:

After the September 21, 1994 hearing, the hearing officer's recommendation to the Department was to postpone adoption of the proposal because of new information presented at the hearing. Specifically, the automobile manufacturers presented testimony offering an alternative to the California LEV program which according to their testimony could provide equivalent air quality benefits. The hearing officer therefore believed it prudent to delay adoption to further assess these new developments.

The Department agreed with the hearing officer's recommendations and did not adopt the April 4, 1994 proposal. However, because of the impending SIP revision deadline, the Department must now propose regulations in order to allow sufficient lead-time prior to implementation of the OTC-LEV program if it is needed as a contingency program if the 49SLEV program agreement is not available.

The hearing record may be reviewed by contacting Janis E. Hoagland, Esq., Department of Environmental Protection, Office of Legal Affairs, CN 402, Trenton, NJ 08625-0402.

Significant Provisions of the Proposed New Rules

Definitions: N.J.A.C. 7:27-26.1 sets forth definitions for these proposed new rules. This new proposal includes three defined terms not included in the April 6, 1992 proposal, the April 5, 1993 reproposal, and the April 4, 1994 reproposal. These new terms are also consistent with USEPA's definitions and descriptions contained in their January 24, 1995 final rule approving the Ozone Transport Commission's petition to implement an OTR-wide LEV program. The definition of "49-State Low Emission Vehicle (49SLEV) Program" has been added to reflect EPA's final January 24, 1995 rule and its anticipated rulemaking determining it to be an acceptable alternative for OTC-LEV. In accepting comment on this proposal the Department is hereby giving notice that modification upon adoption may be necessary to conform to future EPA rulemaking. The definition of "Ozone Transport Commission—Low Emission Vehicles (OTC-LEV) Program" and "Model Year" have also been added to be consistent with EPA's final rule.

EPA's definition of model year retained the definition of model year found in the CAA and in existing EPA regulations as essentially "the manufacturer's annual production period." In addition, EPA codified the definition of "annual production period."

Under this definition, model year would be determined on an engine family basis for specific models within engine families, depending upon the date the first model in the engine family commences production. As such, the date upon which the model year begins may be different for each engine family that a manufacturer produces. EPA concluded that this approach was more appropriate than beginning model years manufacturer-wide or industry-wide on a certain date because its approach is more suited to the central purpose of section 177 of the CAA,

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which is to allow states to receive emission benefits from the California motor vehicle program as early as practicable while giving manufacturers two years of lead-time to prepare to meet the adopted state standard.

Applicability: N.J.A.C. 7:27-26.2 delineates the conditions under which the proposed new rules shall and shall not apply. N.J.A.C. 7:27-26.2(b)1 and 2 specifies that these proposed new rules shall not apply in the event that a 49 State Low Emission Vehicle (49SLEV) Program is approved by USEPA through rulemaking and subsequent findings. N.J.A.C. 7:27-26.2(c) specifies that in the event that the USEPA or the Department in conjunction with the USEPA makes the determination that the 49SLEV Program is no longer an acceptable alternative to the OTC-LEV Program or finds that the 49SLEV program is no longer in effect throughout the OTR, the provisions of the subchapter shall apply. N.J.A.C. 7:27-26.2(a) specifies the model year and types of motor vehicles that would be subject to the proposed LEV Program. In this section, LEV standards are not being proposed for all types of motor vehicle classifications. Rather, at the present time, the Department is limiting the applicability of the LEV Program to all new 1999 and subsequent model year passenger cars and light-duty trucks, as defined at proposed N.J.A.C. 7:27-26.1, up to 5750 pounds loaded vehicle weight. Passenger cars are defined as motor vehicles designed primarily for transportation of persons and having a design capacity of up to 12 persons. Light-duty trucks are defined as motor vehicles rated at up to 5750 pounds gross vehicle weight, which are designed primarily for transporting property or which are available with special features for off-highway operation.

The California LEV program standards also apply to vehicles over 5750 pounds loaded vehicle weight. However, the proposed OTC-LEV program would not apply to medium-duty vehicles, heavy-duty trucks, motorcycles or off-highway equipment of any type. Heavy-duty vehicles are defined to include motor vehicles other than passenger cars, with a gross vehicle weight rating of more than 8500 pounds. Medium-duty vehicles are defined as heavy-duty vehicles with a gross vehicle rating of between 5750 and 8500 pounds. This part of the California LEV program is scheduled for implementation in California beginning in model year 1998.

Prohibitions: N.J.A.C. 7:27-26.3 generally prohibits the sale, registration, importation, purchase, leasing, gift, acquisition or receipt of any 1999 or subsequent model year automobile which is not in compliance with the proposed new rules. However, the Department has proposed several exceptions to this prohibition in order to recognize the nature of dealer to dealer transfers and other transactions which make application of the prohibition inappropriate:

- Transfers to dealers;
- Transfers for the purpose of wrecking or dismantling;
- Transfers for registration outside New Jersey;
- Transfers for use exclusively off-highway;
- Rental of vehicles in possession of a rental agency in New Jersey; however, if more than 30 days has passed since the vehicle was delivered to a New Jersey rental car agency from a non-New Jersey origination point, the exception shall apply only if the vehicle is next rented with a final destination outside New Jersey;
- Passenger cars or light-duty trucks acquired outside New Jersey by a New Jersey resident for the purpose of replacing a vehicle which, outside New Jersey, was damaged beyond reasonable repair, became inoperative beyond reasonable repair, or was stolen;
- Vehicles transferred by inheritance or court decree;
- Vehicles transferred after the operative date of the proposed new rules, if the vehicles were registered before the effective date; and
- Vehicles certified by EPA and originally registered in another state by a resident of that state, who subsequently establishes residence in New Jersey.

Emission Standards: All vehicles to which the provisions of this subchapter are applicable shall be required to have a certificate from the CARB affirming compliance with CARB's emission standards.

N.J.A.C. 7:27-26.4 sets forth five different categories of emission standards to which vehicle manufacturers may choose to certify particular model year engine classes. Certification of new vehicles includes the testing of the manufacturer's prototype motor vehicles by engine family according to certain test procedures which have been formulated by the California Air Resources Board. These categories include: standard vehicles (SVs); transitional low emission vehicles (TLEVs); low emission vehicles (LEVs); ultra-low emission vehicles (ULEVs); and zero emission vehicles (ZEVs). The exhaust emission standards for each of these categories apply to carbon monoxide (CO), nitrogen oxides (NO_x) and formaldehyde (HCHO), and non-methane hydrocarbons (NMHC) or non-methane organic gases (NMOG). The specific vehicle category standards have been established by the CARB. The Clean Air Act requires that states which choose to adopt a motor vehicle emissions program other than the Federal Tier I program must adopt emission standards that are identical to the California program.

In-Use Compliance Standards: N.J.A.C. 7:27-26.4 sets forth emission standards which must be met by vehicles after accumulation of mileage in-use. Generally, the manufacturer, upon submitting an application for certification, must demonstrate that the candidate vehicle will comply with the certification standard over a 50,000 mile or 100,000 mile period depending on the vehicle type and model year. In the case of the Low Emission Vehicle standards set forth in N.J.A.C. 7:27-26.4, in-use compliance standards, in effect until model year 1998, are proposed which are somewhat less stringent than the certification standards. These "intermediate in-use compliance standards" are intended to ease the burden of compliance on manufacturers marketing California-certified vehicles prior to the 1999 model year.

Reactivity Adjustment Factors: N.J.A.C. 7:27-26.4 sets forth the emission standards for TLEVs, LEVs, and ULEVs. Although the proposed new rules do not require the use of alternate fuels, if a manufacturer elects to meet the certification standards by using a fuel other than gasoline, the test procedures for demonstrating compliance with these standards will allow for NMOG emissions to be "adjusted" to reflect the different ozone forming potential of emissions from vehicles using the alternate fuel. In this way, manufacturers have an incentive to produce alternatively fueled vehicles which are "inherently low emitting," that is, vehicles whose in-use control of emissions is less vulnerable to the deterioration of emission control hardware. The reactivity adjustment factor is an inherent part of a LEV program.

Fleet Emission Average Requirement: At N.J.A.C. 7:27-26.6, these proposed rules allow each vehicle manufacturer to market any combination of new vehicles with engines certified to any of the five categories of emission standards, provided that the average NMOG emissions of the mix of vehicles produced and delivered for sale in New Jersey annually by that manufacturer does not exceed a specified fleet average requirement that grows more stringent each year. Small volume manufacturers (those with sales in California of less than or equal to 3,000 new vehicles per model year) are given flexibility for how they meet the fleet average and the time frame in which they must meet this average.

Enforcement: The Department intends to propose a penalty schedule and any other enforcement provisions necessary for the LEV program prior to its implementation. These provisions will be promulgated through a future rulemaking process, and a public hearing and the opportunity for public comment will be provided. To accommodate these future provisions, this proposal reserves N.J.A.C. 7:27-26.9 for enforcement.

The Department is proposing to allow for consumer choice to determine the combination of vehicles sold or leased in New Jersey, and not to bring an enforcement action if the NMOG fleet average is exceeded. This approach is being taken in order to maximize program effectiveness while minimizing administrative burden.

Quality Control Testing: No quality control provisions for assembly line testing are included in the proposed rules. The Department will consider proposing such provisions in the future and, in doing so, the Department will consider the need for consistency within the OTR. At the present time, the Massachusetts and New York rules include assembly line testing procedures identical to California's. However, the CARB intends to revise these procedures. The Department, therefore, has decided not to propose a quality control testing provision at this time.

Onboard Diagnostic System: At N.J.A.C. 7:27-26.7, these proposed new rules require all vehicles sold or leased pursuant to the LEV Program to be equipped with advanced onboard diagnostic (OBD) systems. These standards are identical to those adopted by California. These systems would alert the vehicle operator if the emission system is malfunctioning and monitor additional parameters than those covered by recently proposed Federal OBD standards.

Fill Pipes and Openings of Motor Vehicle Fuel Tanks: At N.J.A.C. 7:27-26.7, these proposed new rules set forth the specifications for fill pipes and the openings of motor vehicle fuel tanks. This section prescribes the specifications for the fuel tank opening and the pipe leading from the fuel tank to the fueling inlet. The specifications are designed to prevent the introduction of a leaded fuel nozzle into the fuel tank opening to prevent misfueling of the vehicle and to assure

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compatibility of Stage-II refueling vapor control apparatus on gasoline fuel pumps with the fuel opening. Stage-II apparatus is designed to minimize refueling vapor loss during vehicle refueling.

Recall, Warranty and Aftermarket Parts Programs: Although no recall, warranty or aftermarket parts provisions are included in these proposed new rules, the Department will consider proposing such provisions in the future. The recall and warranty programs would have important regional implications. For this reason, the Department would consult and coordinate with other states in the OTR prior to developing and proposing the recall and warranty provisions of the OTC-LEV program.

Penalties: The proposed rules provide that persons subject to this subchapter who fail to conform with its requirements, including the sales, reporting and registration requirements for LEVs in New Jersey, may be subject to civil penalties in accordance with N.J.A.C. 7:27A-3. These new rules do not propose amendments to N.J.A.C. 7:27A-3 that would establish penalties specific to the requirements of these rules. However, the Department is considering whether to propose amendments in the future to establish penalties and will solicit public input on this issue in the future.

Incorporation by Reference: The proposed new rules incorporate provisions of the California Code of Regulations together with several specification documents and test procedures. The Department and other State agencies commonly incorporate other laws and regulations, including test procedures, by reference. See, for example, the Department's Safe Drinking Water regulations, specifically, N.J.A.C. 7:10-1.3, and the New Jersey Pollutant Discharge Elimination System regulations, specifically, N.J.A.C. 7:14A-1.9. The rules of the Office of Administrative Law specifically allow incorporation by reference, N.J.A.C. 1:30-2.2. This incorporation includes all amendments and supplements to those regulations, specification documents, and test procedures. The Department will publish notices of all such amendments and supplements in the New Jersey Register, which will become operative no earlier than 30 days following publication. The operative date will be stated in the publication. In addition, the Department will provide public notice of California's proposed amendments and supplements, including how copies of such proposals may be obtained and where comments may be submitted. If the Department determines that a particular amendment or supplement may not be appropriate to New Jersey's LEV program, the Department will propose an amendment to these rules.

In any event, under the Clean Air Act, New Jersey is required to provide two years notice of its adoption of the LEV standards or substantial revisions to such standards.

Social Impact

These proposed new rules will have a positive social impact. They are designed to help New Jersey achieve and maintain the NAAQS for ozone and carbon monoxide by reducing the emission of air contaminants from new motor vehicles. These air contaminants include volatile organic compounds, carbon monoxide, oxides of nitrogen and various toxic air pollutants. Volatile organic compounds and oxides of nitrogen contribute to the formation of photochemical smog, of which ground level ozone is a primary constituent. By reducing these emissions, these new rules, or an acceptable alternative approved by EPA, would have the effect of helping to deter or prevent the exposure of persons who reside or work in New Jersey to elevated unhealthy concentrations of these substances. Reducing these emissions will also help to deter or prevent the degradation of plant life and various human-made materials which is caused by increased ozone concentratins. The effects would be protective of public health and the environment, and would be of significant societal benefit.

The frequent and widespread violations of the health-based NAAQS for ozone in New Jersey constitutes a serious public health problem in the State. In 1978, based on ozone's then known health effects, the NAAQS for ozone was established at 0.12 parts per million by EPA. However, adverse health effects have been observed at lower levels of ozone, and pursuant to agency remand in connection with a lawsuit filed by the American Lung Association and several states against EPA, EPA is reviewing the ozone standard in light of recent scientific findings in order to ensure that the national ozone standard is protective of public health. (9) EPA will propose changes, if appropriate, during mid-1996, with a final rule scheduled for mid-1997.

The Department maintains a comprehensive air pollution monitoring system throughout the State and provides a daily forecast and an annual report for each calendar year (10). The total number of days the ozone health standard was exceeded in New Jersey each year from 1990 to 1994 are listed below in Table 1:

Table 1
New Jersey Air Quality Data
Exceedances of the Ozone Standard

Year	No. Days Above Ozone Health Standard
1990	23
1991	26
1992	9
1993	18
1994	7

Short-term effects on healthy exercising adults and children from exposure to elevated ozone concentrations include coughing, painful breathing and loss of certain lung functions. The connection between respiratory disease and high levels of ozone has been reported by the University of Medicine and Dentistry of New Jersey (UMDNJ). After studying data from nine central New Jersey hospitals, UMDNJ researchers found that the incidence of asthma attacks rose from seven to 10 percent when elevated levels of ozone were reported by the Department (12). These effects are exacerbated in sensitive populations, particularly the elderly, those with preexisting respiratory diseases and children who play outdoors. Long-term effects are also of concern, because much of New Jersey's population has been exposed to unhealthful levels of ozone throughout their lifetime. Although chronic effects have not been conclusively determined, repeated exposure to ozone over a lifetime causes biochemical and structural changes in the lung and may be a causal factor in development of chronic respiratory diseases.

Increased ozone levels also cause damage to foliage. One of the earliest and most obvious manifestations of ozone impact on the environment is this impact on sensitive plants. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in ambient ozone concentrations will mitigate damage to foliage, fruits, vegetables, and grains.

The oxidizing properties of ozone lead to accelerated degradation of various man-made materials such as rubber, plastics, dyes, and paints. Attainment of the NAAQS for ozone will reduce the rate of degradation of both natural and synthetic materials.

Carbon monoxide reduces the oxygen carried in the blood and also may be fatal at high concentrations. Reducing the emissions of CO from motor vehicles is expected to help avoid exceedances of the CO NAAQS.

In addition to the contribution to ozone and CO levels, the EPA estimates that motor vehicle emissions account for 60 percent of the total cancer incidence from outdoor exposure to air toxics nationwide (13). Therefore, reducing the motor vehicle emissions is also expected to significantly reduce the total cancer incidence attributable to motor vehicle emissions.

Most New Jersey residents who wish to purchase new vehicles would be impacted by the LEV program. Unless an alternative new motor vehicle program that is acceptable to EPA is in effect [with the 1997 model year], only vehicles that are certified to LEV Program standards would be allowed for sale in New Jersey beginning with model year 1999. Therefore, new car buyers would be restricted to purchasing only vehicles that conform with these proposed standards. New Jersey residents would not be able to register in New Jersey new vehicles purchased from an out-of-state automotive dealership, except for vehicles certified to the LEV Program standards.

The adoption of these new rules will not materially limit either the availability of motor vehicles for New Jersey car buyers, or the availability of various makes or models of such motor vehicles. First, the LEV standards and any sales prohibitions would not apply to used vehicles. Second, past experience in California has shown that manufacturers certify the great majority of their product line to the more stringent California emission standards, resulting in little effect on the availability of particular makes or models. Third, the proposed LEV Program allows the manufacturers to certify cars to any one of five different categories of emission standards, and allows them to sell any mix of such vehicles the manufacturer decides, provided that the average emissions of NMOG do not exceed the specified level for that model year. Fourth, the OTC-LEV program will result in regional implementation of the LEV program beginning with model year 1999. According to national vehicle registra-

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tion statistics, the Northeast States, together with California, constitutes approximately 35 percent of the market for new cars in the United States. Therefore, the demand from California and the Northeast for cars that meet the LEV Program standards will provide a substantial incentive for vehicle manufacturers to maximize the classes of such vehicles available. Therefore, the Department anticipates that under the OTC-LEV Program, a full range of vehicle models would be available to New Jersey residents.

Economic Impact

The Department expects that the proposed new rules will result in both positive and negative economic impacts. While compliance with the proposed new rules will bring associated costs, such compliance will also result in improved air quality, avoiding some of the substantial costs associated with air pollution.

The actual costs and other economic impacts associated with reducing air pollutants by implementing the LEV program are speculative and difficult to accurately quantify, as they are a function of several different parameters. These parameters include vehicle cost and consumer demand, relative cost effectiveness of the emission reductions, impacts on vehicle dealerships, impacts on Department resources, costs inflicted by air pollution (including health costs), and impacts on affected industries. Each of these are discussed below.

Added Vehicle Cost: The proposed new rules will increase the cost of producing complying vehicles. Manufacturers may add to the base price of each new vehicle produced in order to reflect any increase in costs necessary to certify vehicles to the more stringent LEV Program standards; however, for the reasons discussed below (see "Impacts Upon Affected Industries"), the increased cost will not necessarily be passed along to New Jersey purchasers in full.

The CARB has projected the following incremental cost increases for the LEV Program over Federal Tier I vehicles (at 0.25 grams/mile NMHC) (20):

Table 2
Added Cost of Light-Duty
Low Emission Vehicles (est. 1994 $)

TLEV	$ 61
LEV	$114
ULEV	$221

Recent information from the CARB indicates that vehicle manufacturers are meeting the LEV standards ahead of schedule and at a lower cost that previously predicted. In CARB's report of April, 1994 entitled "1994 Low-Emission Vehicle and Zero-Emission Vehicle Program Review," CARB states that "... it becomes clearer that the Low-Emission Vehicle Program relies on logical extensions of current emission approaches to further reduce vehicle emissions. Substantial increases in vehicle hardware costs are unlikely, and since the basic control approaches are the same, much of the transition work is being done by established suppliers in conjunction with current engineering staff when designing new model platforms. Therefore, it appears to CARB staff that some of the "other" costs not previously addressed in detail amount to less significant increases in the cost of low-emission vehicles."

Furthermore, CARB, in their April, 1994 report estimates the projected incremental cost of a TLEV compared to a Tier I Federal vehicle has been reduced from $70.00 per vehicle to $61.00 per vehicle. Similarly, projections for the incremental cost of LEVs has dropped from $170.00 to $114.00. Whether the manufacturers actually increase the price to consumers to reflect these possible increased costs is dependent in large part upon consumer demand for the vehicles.

American Honda Motor Company, Inc. recently announced development of a production-based gasoline engine that has been tested and verified by the CARB as meeting ULEV exhaust emission standards. In January 1995, Honda projected the additional incremental cost for their ULEV to be $100.00 to $300.00. They anticipate a lower price by the date that the vehicle will be available; projected to be model year 1998.

While CNG and electric vehicles are predicted to be more expensive to purchase, CARB predicts that once marketed, the higher purchase costs of alternative fuel vehicles will be largely offset by their lower fuel prices and maintenance costs.

Cost Effectiveness: By allowing manufacturers to market a mix of vehicles, the LEV Program combines the economic efficiency of market-based averaging schemes with the enforceability of traditional vehicle emission standards. Instead of having to certify all vehicles to one strict standard, as would be required by the Federal Tier I standards, each manufacturer may choose to certify vehicle types to the different standards and to produce the various vehicle types in whatever combination is most cost-effective, given that manufacturer's production capabilities, as long as the required fleet emissions average is met.

Historically, pollution control measures have focused on stationary sources. Therefore, the cost of such controls has become the basis of comparison for other proposed control measures. The proposed LEV Program would be more cost effective, in terms of dollars required to reduce a ton of pollutant, than most stationary source VOC and NOx emission reduction programs.

The CARB's most recent calculations show the overall cost-effectiveness of the LEV program, without a ZEV mandate, at $3,065 per ton of VOC and NO_x reduced. This calculation was made based on a "per vehicle" methodology and assumes a 2005 sales mix of 63 percent LEVs and 37 percent ULEVs.

The cost-effectiveness calculations also assume the most recent CARB estimates for the incremental cost of LEVs compared to Federal Tier I vehicles (at 0.25 grams/mile NMHC): $61.00 for TLEVs, $114.00 for LEVs, and $221.00 for ULEVs.

Relative to the proposed LEV program, emission control strategies for reducing emissions from stationary sources are, generally speaking, more expensive to implement on a cost per ton basis. For example, the CARB has estimated the cost-effectiveness of rules regulating NO_x emissions from electric power generation between $6,600 and $24,800 per ton of NO_x. The proposed LEV program, with an estimated cost effectiveness of $3,065 per ton of VOC and NO_x reduced is, therefore, significantly more cost effective.

Impact on Vehicle Dealerships: The proposed new rules are expected to have little impact on vehicle dealerships. Provisions have been made to permit dealers to handle non-LEV Program vehicles for sale to another dealer, for the purpose of wrecking or dismantling, for off-highway use and for out-of-State registration. In addition, as more states enter the program, as anticipated, any dislocations in interstate trading of dealership stock will be mitigated. Finally, the proposed rules do not restrict the sale of used vehicles.

Impact on State Government Resources: The LEV Program by its nature will rely heavily on the staff and facilities of the CARB, as CARB already regularly performs the background work necessary to implement its LEV Program. Since New Jersey's program would be based on California's, and since the emission standards are required by the Clean Air Act to be identical to California's, a minimum of additional resources will be required by the Department. The Department estimates that some additional staff members will be needed by the Department and the Division of Motor Vehicle Services (MVS) to audit registration, dealer compliance, certification and reporting, and to perform field enforcement.

Although the State intends to rely heavily on California's resources initially, it may become necessary for a regional recall investigation facility to be created in the OTR. State costs for such facility(ies) would be minimized through OTR-wide operation and potential EPA funding.

Cost of Air Pollution: The impact on the general public of not improving the air quality is very significant. The American Lung Association (ALA) has recently estimated the cost of health problems attributed to air pollution including the loss of worker productivity, to be in the range of $4.43 to $93.49 billion dollars per year, nationally (9). New Jersey has an extremely high density of motor vehicles as compared to other states. Motor vehicles contribute almost half of the pollutants that result in air quality problems in New Jersey. For this reason, taking all prudent measures to limit the emission of air pollutants from motor vehicles is an essential step in reducing these pollutants.

Impacts Upon Affected Industries: The Department has made every effort to minimize the burdens borne by the motor vehicle manufacturing industry and vehicle dealers. By proposing to adopt emission standards identical to those in California, the Department ensures that the vehicle industry will have to comply with only two sets of pollution control standards (the federal standards and the LEV Program standards). The Department does not anticipate that the estimated increased costs associated with the LEV Program will result in an appreciable reduction in the number of new vehicles sold in the State. While the additional costs of the cleaner cars mandated by the LEV Program would eventually be passed along to consumers, the full additional cost may not be added to purchase prices, because factors other than production costs influence prices. Therefore, it remains unclear whether, or to what degree, the cleaner cars would be priced to reflect the higher cost of their emission

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controls. The Department does not anticipate that the relatively small additional cost of LEV vehicles (about a one percent increase in the total cost) would materially reduce the number of new vehicles sold in New Jersey.

In addition, because of EPA's approval of the OTC petition, state LEV programs throughout the OTR will be identical in their significant provisions, which will mitigate the potentially adverse impact on the distribution or sale of vehicles in the region.

Further, the Department has proposed exempting small and intermediate volume manufacturers from compliance with the LEV emission standards and requirements until model year 2000. These provisions are intended to minimize the economic impact of the proposed new rules on those manufacturers which are generally least able to absorb increased costs.

Environmental Impact

The implementation of the proposed new rules will have a positive impact on the environment. The additional exhaust emission benefits from New Jersey's adoption of the proposed OTC-LEV Program as opposed to the Tier I standards were estimated in the Pechan report and were tabulated in Table 4a of the April 5, 1993 proposal at 25 N.J.R. 1416.

The emission benefit analysis has been updated by the Department using MOBILE 5a and revised emission inventory calculations.

Tables 3 and 4 show the results of the Department's revised emission benefit analysis for VOC and NO_x. The benefits of the LEV program relative to the Federal Tier I program (in tons per summer day) are listed for calendar years 1999 through 2020.

Table 3
New Jersey VOC Emissions Inventory
From Mobile Sources
(tons per summer weekday)
PROPOSED OTC-LEV PROGRAM VS. FEDERAL TIER I
PROGRAM FOR IMPLEMENTATION in 1999

Year	Tier I	OTC-LEV	Benefit
1999	214.89	206.01	8.88
2000	184.27	171.59	12.68
2003	162.99	136.56	26.43
2005	154.16	119.81	34.35
2006	151.89	114.40	37.49
2007	150.40	109.90	40.50
2010	147.26	100.11	47.15
2020	158.41	101.01	57.40

Volatile organic compounds emissions are precursors to ozone formation. For this reason, efforts to attain and maintain the NAAQS for ozone have focused on reducing VOC emissions. In 1990, VOC emissions in New Jersey totaled 2,028 tons per summer weekday with 673 tons attributed to emissions from all mobile sources, not just exhaust emissions.

The emission reduction calculations in Table 3 show that if implemented in model year 1999, relative to the Tier I program, the OTC-LEV program provides a benefit of 8.9 tons of VOC per day in 1999, increasing to 34 tons/day in 2005, 41 tons/day in 2007 and 57 tons/day in 2020.

Oxides of nitrogen (NO_x) are also precursors to ozone formation. In 1990, NO_x emissions in New Jersey totalled 1950 tons per summer weekday with 761 tons per summer weekday attributed to emissions from all mobile sources.

Table 4
New Jersey NO_x Emissions Inventory
From Mobile Sources
(tons per summer weekday)
PROPOSED OTC-LEV PROGRAM VS. FEDERAL TIER I
PROGRAM FOR IMPLEMENTATION IN 1999

Year	Tier I	OTC-LEV	Benefit
1999	430.04	414.36	15.68
2000	418.36	392.54	25.82
2003	395.82	335.33	60.49
2005	392.88	309.68	83.20
2006	392.67	299.76	92.91
2007	393.64	292.02	101.62
2010	397.49	277.30	120.19
2020	443.15	296.42	146.73

The emission reduction calculations in Table 4 show that if implemented in model year 1999, relative to the Tier I program, the OTC-LEV program provides a benefit of 15.7 tons of NO_x per day in 1999, increasing to 83 tons/day in 2005, 102 tons/day in 2007 and 147 tons/day in 2020.

In summary, the OTC-LEV program can provide substantial reductions in VOCs and NO_x relative to the Federal Tier I program. These benefits are most pronounced in the years during which the Department must demonstrate attainment of the ozone NAAQS, that is, 2005 and 2007, and in the years beyond, during which the Department must demonstrate maintenance of the ozone NAAQS. The proposed OTC-LEV program, therefore, is a key component in the Department's ozone State Implementation Plan (SIP) revision for the post-1996 Rate of Progress Plan (RFP) for attainment of the ozone health standard.

EPA, in their approval of the OTC-LEV petition, conducted an analysis of whether the OTC-LEV (or LEV-equivalent) program is needed to achieve the emissions reductions necessary to bring all areas in the OTR into attainment of the ozone health standard. Based on EPA's region-wide modeling analyses, it is clear that very large reductions in emissions of both NO_x and VOC are needed for the serious and severe areas of the OTR to come into attainment. Based on the best analysis available to EPA to date, EPA concluded that NO_x emission reductions on the order of 50 percent to 75 percent are needed throughout the OTR to reach attainment with the ozone NAAQS. VOC emissions reductions on the order of 50 percent to 75 percent are needed for attainment, particularly in the East Coast urban corridor. EPA based these estimates on modeling analyses that used a 1985 emissions baseline. Updated inventory information indicates the 1985 inventory underestimated base case NO_x and VOC emissions. Therefore, EPA concludes that no less than a 50 percent to 75 percent reduction in emissions is necessary from the 1990 baseline.

EPA reached their conclusions regarding need for the OTC-LEV program based on modeling analyses of the impact of emissions reduction strategies for the OTR region. For purposes of its modeling studies, EPA considered the impact of various strategies in the year 2005. EPA focused on the impact in 2005 because by then all control measures explicitly mandated in subpart 2 of part D of the CAA should be in place. EPA thereby analyzed more precisely what reductions beyond those already explicitly required will be needed. Since two of the three core severe nonattainment areas in the urban corridor along the East Coast from Washington D.C. to Boston have an attainment deadline of 2005, the Clean Air Act mandates severe area controls to be in place by that date. These areas are the Baltimore and Philadelphia areas. The New York-New Jersey-Connecticut severe area has the slightly later attainment deadline of 2007 due to its higher ozone design value.

EPA's analysis included an assessment of the degree to which transport contributes to the ozone problem in the OTR. EPA concluded that the "need" for additional measures in the OTR in order to comply with section 110(a)(2)(D) focuses primarily on the states' need to adopt the program in question for the benefit of areas downwind. EPA stated that an analysis of what reductions are needed for any specific area to avoid causing ozone exceedances downwind is an enormously complicated task that depends on regional, urban and wind trajectory modeling information and monitoring data. Further, EPA concluded that the analysis of the controls necessary in an upwind area depends on the controls assumed in the web of downwind areas and other upwind areas. In dealing with these complications and uncertainties, EPA emphasized that considerations of lead-time together with the lengthy time needed for

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fleet turnover in order to obtain the benefits from the OTC-LEV program supported reaching a decision now based on the best data currently available. Based on this data, EPA's conclusion is that very large reductions in NO_x emissions on the order of 50 percent to 75 percent throughout the OTR are necessary for the serious and severe nonattainment areas in the OTR to attain the ozone standard by the statutorily-imposed attainment dates. EPA also believes that a similar magnitude of reductions in VOC emissions is necessary primarily in and near the urban areas of the OTR.

Therefore, additional reductions in NO_x and VOC emissions from new motor vehicles are necessary. EPA believes that the OTC-LEV program would achieve reductions beyond the mandated Clean Air Act measures 2005 of 195 tons/day for NO_x and 95 tons/day for VOC from the 2005 baseline. Specifically, EPA calculated the emission reductions which will be obtained in the OTC states if the OTC-LEV program is implemented regionally in 1999 and compared these reductions with the "base case," that is, with Federal Tier I in all OTC states except the California LEV program in New York and Massachusetts beginning in 1996. These results appear in Table 5.

Table 5
Highway Vehicle Emissions Inventory
For the OTR States: Base Case vs. OTC-LEV

	2005		2007		2015	
	Base	OTC-LEV	Base	OTC-LEV	Base	OTC-LEV
NMOG	1,588	1,493	1,523	1,362	1,494	1,152
NO_x	2,583	2,388	2,521	2,222	2,584	1,944
CO	13,050	11,766	12,933	11,035	13,595	9,893

Table Notes:
1. Emission estimates are in tons per ozone season weekday
2. Base case assumes CAL LEV program in N.Y. and Mass.

EPA, therefore, concluded that no options other than the OTC-LEV program are currently available to achieve the necessary additional reductions from new motor vehicles and engines. As explained in the summary section of this document, EPA is proposing to allow for the possibility that an alternative program, that is, the proposed 49SLEV program agreement, achieving comparable emissions reductions to the OTC-LEV program, may be developed. EPA further stated that the possibility of such an alternative program developed in the future does not contradict the conclusion that the only option currently available to the states to achieve the required reductions in new motor vehicle emissions—the OTC-LEV program—is necessary.

Furthermore, the OTC-LEV Program standards set forth in the proposed rules set explicit emission limits for formaldehyde, whereas the Federal Tier I standards do not address formaldehyde emissions. The OTC-LEV standards also achieve substantial reductions in emissions of other toxic species that are included in generic hydrocarbon and NMOG classifications. When a vehicle is operated, toxic pollutants such as benzene, acetaldehyde, formaldehyde, and 1,3-butadiene are present in the exhaust. Vehicle technology designed to meet LEV standards and reduce the NMOG emissions will thus reduce toxic emissions as well. For instance, emissions of benzene from gasoline-fueled vehicles that meet the LEV standards are expected to decline in roughly the same proportion as hydrocarbon emissions, that is, an 84 percent reduction in the NMOG standard for standard vehicles versus ULEV. Benzene is the toxic pollutant with the highest potential carcinogenic risk among the exhaust pollutants. If fuels other than gasoline are used, the reductions in benzene will be even greater. The correlation between emissions of 1,3-butadiene and hydrocarbons is not as well understood. However, the vast majority of 1,3-butadiene emissions occurs start-up emissions, which the LEV standards are expected to reduce substantially.

Executive Order No. 27(1994) Statement

In compliance with Executive Order No. 27(1994), Requirement for Statement Concerning Federal Standards in State Agency Rulemaking, notice is hereby given with regard to these new rules proposed pursuant to the Air Pollution Control Act, that these proposed new rules do not contain any standards or requirements exceeding those required by Federal law under the Clean Air Act and regulations adopted thereunder by EPA at 40 C.F.R. Part 51.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed rules will not impose additional reporting or recordkeeping requirements on small business (as defined in the Regulatory Flexibility Act). The proposed rules would apply to vehicle manufacturers, dealers, and rental car agencies. Since no known vehicle manufacturers meet the definition of a small business, as they are not New Jersey based and employ more than 100 people, the proposed rules' impact upon small businesses will be upon vehicle dealerships and the smaller rental car agencies.

The additional reporting and recordkeeping requirements imposed by the new rules apply to vehicle manufacturers, which are not small businesses and rental car agencies, some of which are small businesses. The compliance requirements imposed upon small businesses are the prohibition against the sale or leasing of new vehicles which have not been certified by the manufacturer as meeting the California LEV Program standards, and a pre-delivery check for performance requirements related to emissions control systems. Since it is expected that the estimated additional costs associated with the LEV Program ($61.00, $114.00, and $221.00 per vehicle, respectively, for TLEVs, LEVs, and ULEVs) may be passed on to the ultimate consumer, and that such increased cost will not result in an appreciable reduction in new vehicle sales, the costs to small business in this regard should be minimal. Further, the proposed rules impose the fleet average requirement only on vehicle manufacturers, which are not small businesses.

In developing these rules, the Department has balanced the need to protect human health and the environment against the economic impact of the rules as proposed. As a result, allowances have been made for small and intermediate volume manufacturers. These rules allow these manufacturers extended time for compliance. Additionally, allowances have been made for car rental agencies, some of which are small businesses. The proposal would allow the rental of non-certified vehicles within the State, but if more than 30 days have passed since delivery of the vehicle to a New Jersey rental car agency from a non-New Jersey origination point, the non-certified vehicle shall next be rented with a final destination outside of New Jersey.

Public Participation

The Department has worked with business and industry, environmental groups, and interested citizens in the development of an Ozone Transport Commission—Low Emission Vehicles (OTC-LEV) Program since November 7, 1991, when the Department held a public workshop to provide interested parties the opportunity to discuss a conceptual version of this rule proposal (4). On December 10, 1991, the Department held a follow-up work group meeting to focus on the concerns of the regulated community identified at the public workshop. Persons representing vehicle manufacturers, automotive dealers, the petroleum industry, and public interest groups participated. Written comments were also forwarded to the Department following the work group session. The Department held formal public hearings concerning the April 6, 1992 proposal on May 19, 1992 and June 3, 1992 and held a formal public hearing concerning the April 5, 1993 reproposal on May 5, 1993; and held a formal public hearing concerning the April 4, 1994 reproposal on September 21, 1994. The Department extended the comment period until February 2, 1995 in order to accept comments on USEPA's final decision concerning the Ozone Transport Commission's February 10, 1994 petition for the OTC-LEV Program. The Department has considered all of the comments received during these informal public consultation processes and the formal public hearings in developing an OTC-LEV program rule.

Commenters are advised that since this is a complete and entirely new proposal and that any comments previously submitted on the Department's prior LEV proposals will not be considered applicable to this proposal. As such, commenters wishing to comment on the Department's OTC-LEV proposal must submit any and all comments to this proposal's docket for consideration by the Department. Comments on this proposal must be submitted no later than June 26, 1995.

References

(1) United States Environmental Protection Agency, "National Air Quality Trends Report, 1990," November 1991.

(2) "Regional Ozone Modelling for Northeast Transport (ROMNET) Final Report," USEPA, 1991.

(3) Regional Plan Association/New Jersey, "Final Report of Project: Clean Air," Newark, New Jersey, September 6, 1991.

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(4) "Summary of Comments made at the November 7, 1991 Public Workshop on Mobile Source Rules Under Development Pursuant to the 1990 Clean Air Act Amendments (CAAA)," NJDEPE, 1992.

(5) Memorandum of Understanding, Ozone Transport Commission, signed by the District of Columbia and 11 members, 1991.

(6) Proposal to amend 6 NYCRR, Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines," July 30, 1991.

(7) Proposal to amend 310 CMR 7.00, et seq., September, 1991.

(8) New Jersey Institute of Technology (NJIT), "Adoption of the California Low Emission Vehicle: An analysis of the Environmental Impact and Cost, A Study for the New Jersey Legislature", December 1993.

(9) American Lung Association et al. v. EPA, Case No. 91 Civ. No. 4114, Second Circuit Federal U.S. District Court, October 22, 1991.

(10) "1990 Air Quality Report," New Jersey Department of Environmental Protection, July 1991.

(11) Environmental Protection Agency, Region II, "Ozone Air Quality 1990 New Jersey and New York," New York, Regional Air Quality Report.

(12) Cody, R. P., Weisel, C. P., Birnbaum, G., and Lioy, P. J., "The Effect of Ozone Associated with Summertime Photochemical Smog on the Frequency of Asthma Visits to Hospital Emergency Departments," Environmental Research, 1992.

(13) "Cancer Risk from Outdoor Exposure to Air Toxics: Final Report," USEPA, Office of Air Quality Planning and Standards, September, 1990.

(14) "Proposed Regulations for Low Emission Vehicles and Clean Fuels, Technical Support Document," State of California Air Resources Board, August 13, 1990.

(15) DRI/McGraw-Hill, "Assessing the Economic Effects of Eastern States Adopting California's Low Emission Vehicle Program," American Petroleum Institute, Washington, D.C., October 1991.

(16) Letter dated January 3, 1992, from Michael J. Bradley, Executive Director, Northeast States for Coordinated Air Use Management, to Terry F. Yosie, Vice President, American Petroleum Institute.

(17) Electric Power Research Institute Journal, April/May 1991, pp. 5-19.

(18) "Rethinking the Ozone Problem in Urban and Regional Air Pollution," National Academy of Sciences (NAS), 1991.

(19) E.H. Pechan & Associates, Inc., "Adopting the California Low Emission Vehicle Program in Mid-Atlantic States," Pechan Report No. 92.10.006/271 prepared for Mid-Atlantic Regional Air Management Association, Harrisburg, PA, 1992.

(20) Thomas Cackette, CARB, "Progress in Implementing California's Low Emission Vehicle Program," 1993.

(21) 40 C.F.R. Part 51, 52 and 85.

Full text of the proposed new rules follows:

SUBCHAPTER 26. OZONE TRANSPORT COMMISSION—LOW EMISSION VEHICLES PROGRAM

7:27-26.1 Definitions

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

"Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems and crankcase ventilating systems.

"Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; a profit-seeking enterprise or concern.

"California Air Resources Board" or "CARB" means the agency established and empowered to regulate sources of air pollution in the state of California, including motor vehicles, pursuant to California Health & Safety Code Sections 39500 et seq.

"California standards" means those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States Environmental Protection Agency pursuant to the authority of 42 U.S.C.A. Section 7543 and which other states are permitted to adopt pursuant to 42 U.S.C.A. Section 7507.

"CCR" shall the mean the California Code of Regulations (Barclays, 1991).

"Certificate of conformity" means that document issued by the Executive Officer of the California Air Resources Board, or the United States Environmental Protection Agency.

"Certification application" means the application and associated information that a motor vehicle manufacturer, a motor vehicle engine manufacturer or an air contaminant emission control system manufacturer submits to the California Air Resources Board in the process of applying for certification of a motor vehicle, motor vehicle engine, engine family or air contaminant emission control system.

"Certified" means the finding by the California Air Resources Board that a motor vehicle, motor vehicle engine or engine family, or air contaminant emission control system has satisfied the criteria adopted by the California Air Resources Board for the control of specified air contaminants from motor vehicles.

"Dealer" includes every person actively engaged in the business of buying, transferring, leasing, selling or exchanging motor vehicles and who has an established place of business.

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

"Diesel" means powered by an engine where the primary means of controlling power output is by limiting the amount of fuel that is injected into the combustion chambers of the engine.

"Dual fueled" means a motor vehicle that is engineered and designed to be capable of operating on a petroleum fuel and on another fuel which is stored separately on-board the vehicle.

"Durability vehicle basis" means the number of miles during which the test vehicle used by a motor vehicle manufacturer to certify to the prescribed exhaust emission standards must maintain those specified standards.

"Emission standards" means specified limitations on the discharge of air contaminants into the atmosphere.

"Engine family" means the basic classification unit comprised of the engine and drive-train configuration selected by a manufacturer and used for the purpose of certification testing.

"Established place of business" means a place actually occupied either continuously or at regular periods for business use.

"Evaporative emissions" means vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.

"Field fixes" mean modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer's authorized service representative, and that are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Fleet average" means a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this subchapter which are produced and delivered for sale in the State of New Jersey in any model year, beginning with model year 1996, based on the calculation in N.J.A.C. 7.27-26.5(a).

"49-State Low Emission Vehicle (49SLVE) Program" means an alterantive voluntary nationwide program that would achieve emission reductions from new motor vehicles in the Ozone Transport Region (OTR) equivalent to or greater than would be achieved by the OTC-LEV Program and that would advance motor vehicle control technology.

"Fuel flexible" means a methanol-fueled motor vehicle that is engineered and designed to be operated using any gasoline-methanol fuel mixture or blend.

"Fuel system" means the combination of fuel tank(s), fuel lines and carburetor, or fuel injector, and includes all vents and fuel evaporative emission control systems or devices.

"G/mi" means grams per mile.

"Gross vehicle weight rating" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

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"Heavy-duty vehicle" means any motor vehicle having a manufacturer's gross vehicle weight rating greater than 6,000 pounds, except passenger cars.

"HEV contribution factor" means the NMOG emission contribution of HEVs to the fleet average NMOG value.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel, and also includes any limited-access highway designated as a "freeway" or "parkway" by authority of law, and any semi-public or private way to which the provisions of Subtitle 1 of Title 39 of the Revised Statutes, N.J.S.A. 39:1-1 et seq., have been made applicable pursuant to the provisions of N.J.S.A. 39:5A-1.

"Hybrid electric vehicle" or "HEV" means a motor vehicle which allows power to be delivered to the driver wheels solely by a battery powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery, or any vehicle which allows power to be delivered to the driver wheels by either a combustion engine and/or by a powered electric motor.

"Intermediate compliance standards" means in-use compliance standards that are effective prior to the effective date of the final in-use compliance standards.

"Intermediate volume manufacturer" means any vehicle manufacturer with sales between 3,001 and 35,000 new light-duty and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1993; provided that, for manufacturers certifying for the first time in California, model year sales shall be based on projected California sales.

"In-use compliance" means the adherence of a mo or vehicle to specified exhaust emission standards while the motor vehicle is used and properly maintained within the guidelines of the motor vehicle manufacturer.

"Light-duty truck" means any motor vehicle, rated at 6,000 pounds gross vehicle weight or less and a loaded vehicle weight of 5,750 pounds or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

"Light-duty vehicle" means light-duty trucks and passenger cars.

"Loaded vehicle weight" or "LVW" means vehicle curb weight plus 300 pounds.

"Low emission vehicle" or "LEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Manufacturer's sales fleet" means all passenger cars and light-duty trucks a manufacturer sells or offers for sale in New Jersey.

"Medium-duty vehicle" means any pre-1995 model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 and subsequent model year heavy-duty low emission vehicle or ultra-low emission vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less, or any 1995 and subsequent model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less.

"Mg/mi" means milligrams per mile.

"Model-year" or "MY" means the manufacturers' annual production period as set forth in 40 C.F.R. Part 85, Subpart X.

"Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, excepting such devices as run only upon rails or tracks and motorized bicycles.

"Motor vehicle engine" means an engine that is used to propel a motor vehicle.

"New motor vehicle" or "new vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to the ultimate purchaser.

"New motor vehicle dealer" means the agent, distributor or authorized dealer of the manufacturer of a new motor vehicle who has an established place of business.

"New motor vehicle engine" means a new engine in a motor vehicle.

"Non-methane organic gas" or "NMOG" shall mean the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

"Off-highway" means any place other than a highway.

"Offset vehicle" means a Federally-certified light-duty vehicle that has been certified by the California Air Resources Board as meeting the standards and procedures set forth in the "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991.

"Organic material hydrocarbon equivalent" or "OMHCE" means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, methanol and formaldehyde as contained in an exhaust gas sample, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrocarbon-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot-soak emissions, the hydrocarbon-to-carbon ratios of the equivalent hydrocarbons are 2.33:1, respectively.

"OTC-LEV Program" means a LEV program as set forth in 40 CFR 51.120(c).

"Ozone Transport Region or OTR" means the ozone transport region established pursuant to 42 U.S.C. 7511c(a), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Pennsylvania, Vermont, the Consolidated Metropolitan Statistical Area that includes northern portions of Virginia and the District of Columbia.

"Passenger car" or "PC" means any motor vehicle designed primarily for transportation of persons and having a design capacity of 12 persons or less.

"Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any Board, commission, employee, agent, officer or political subdivision of a state, an interstate body or the United States.

"Reactivity adjustment factor" means a fraction applied to the NMOG emissions from a vehicle powered by a fuel other than conventional gasoline for the purpose of determining a gasoline-equivalent NMOG level. The reactivity adjustment factor means the ozone-forming potential of clean fuel vehicle exhaust divided by the ozone-forming potential of gasoline vehicle exhaust.

"Rental agency" means a business engaged in renting motor vehicles for temporary use.

"Running changes" mean modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer during vehicle production, and which are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate or subsequent purchaser.

"Small volume manufacturer" means any vehicle manufacturer with sales less than or equal to 3,000 new light-duty vehicles and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1991; provided that, for manufacturers certifying for the first time in California, model-year sales shall be based on projected California sales.

"Standard vehicle" or "SV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"State" means the State of New Jersey, unless otherwise specified.

"Transitional low emission vehicle" or "TLEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Type A HEV" shall mean an HEV which achieves a minimum range of 60 miles over the All-Electric Range Test as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title-13, California Code of Regulations.

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"Type B HEV" shall mean an HEV which achieves a range of 40 to 59 miles over the All-Electric Range Test as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title-13, California Code of Regulations.

"Type C HEV" shall mean an HEV which achieves a range of 0 to 39 miles over the All-Electric Range Test and all other HEVs excluding "Type A" and "Type B" HEVs as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title-13, California Code of Regulations.

"Ultra low emission vehicle" or "ULEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

"Useful life" means a period of use denoted by the emission standards to which a given vehicle is certifying. For those light-duty vehicles certified to optional 100,000 mile standards and those 1996 and subsequent model year vehicles certified to 100,000 emission standards, and for those transitional low-emission, low-emission, and ultra-low emission vehicles and hybrid electric vehicles (HEVs) certified to 100,000 emission standards, the useful life shall mean 10 years or 100,000 miles, whichever first occurs. For light-duty vehicles certified only to 50,000 mile standards useful life shall mean five years or 50,000 miles, whichever first occurs.

"Vehicle curb weight" means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the weight of optional equipment computed in accordance with 40 C.F.R. 86.082-24. Incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

"Zero emission vehicle" or "ZEV" means any vehicle which is certified by the Executive Officer of the California Air Resources Board to produce zero emissions of any criteria pollutants under any and all possible operational modes and conditions. Incorporation of a fuel-fired heater shall not preclude a vehicle from being certified as a ZEV provided the fuel-fired heater cannot be operated at ambient temperatures above 40 degrees Fahrenheit and the heater is demonstrated to have zero evaporative emissions under any and all possible operational modes and conditions.

7:27-26.2 Applicability

(a) This subchapter shall apply to all 1999 model year and subsequent model year motor vehicles which are passenger cars and light-duty trucks, motor vehicle engines in such motor vehicles, and air contaminant emission control systems for such motor vehicles and motor vehicle engines.

(b) Notwithstanding (a) above, the provisions of this subchapter shall not apply in the event that:

1. The USEPA determines through rulemaking that the 49SLEV is an acceptable alternative for the OTC-LEV Program; and

2. The USEPA finds that the 49SLEV program is in effect.

(c) In the event that the USEPA makes the determination and finding at (b)1 and 2 above, but then USEPA or the Department in conjunction with the USEPA subsequently determines that the 49SLEV Program is not timely implemented or no longer an acceptable alternative to the OTC-LEV Program or finds that the 49SLEV Program is no longer in effect throughout the OTR, the provisions of this subchapter shall apply.

7:27-26.3 Prohibitions

(a) No person who is a resident of or who operates an established place of business within this State shall sell, register, import, deliver, purchase, lease, give, acquire, receive or otherwise transfer a 1999 model year or subsequent model-year new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine, for use, registration or resale within this State, unless such new motor vehicle or new motor vehicle engine has been certified in accordance with this subchapter. No person shall attempt or assist in any such action.

(b) No person who is a resident of or who operates an established place of business within this State shall rent a 1999 model year or subsequent model year motor vehicle for use within this State unless such motor vehicle has been certified in accordance with this subchapter.

1. If a vehicle which is delivered to a New Jersey rental car agency from a non-New Jersey origination point is not rented to a final destination outside of New Jersey within 30 days from such delivery to the New Jersey rental car agency, it shall remain idle until it is next rented with a final destination outside of New Jersey.

(c) The prohibitions contained in (a) above shall not apply to the following passenger cars or light-duty trucks:

1. A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged, or became inoperative, beyond reasonable repair or was stolen while out of this State; provided that such replacement vehicle is acquired out of State at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

2. A vehicle transferred by inheritance;

3. A vehicle transferred by court decree;

4. A vehicle transferred after the effective date of this subchapter if the vehicle was registered in this State before such effective date;

5. A vehicle having a certificate of conformity issued pursuant to the Federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this State;

6. A vehicle which is an offset vehicle;

7. A vehicle transferred by a dealer to another dealer;

8. A vehicle transferred for the purpose of being wrecked or dismantled;

9. A vehicle transferred for use exclusively off-highway; or

10. A vehicle transferred for registration out of State.

(d) To register any vehicle exempted under (b) above, the person seeking registration must provide satisfactory evidence, as determined by the New Jersey Division of Motor Vehicles, demonstrating that the exemption is applicable.

(e) For the purposes of this subchapter, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser, and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

7:27-26.4 Emission certification standards

(a) Except as otherwise provided in N.J.A.C. 7:27-26.3(b), all 1999 model year and subsequent model year motor vehicles subject to this subchapter must be certified as not exceeding the following emission standards for standard vehicles, low emission vehicles, transitional low emission vehicles, ultra-low emission vehicles, zero emission vehicles or hybrid electric vehicles. Vehicles must be certified as meeting the applicable emission certification standards for one of such categories of vehicles.

(b) The exhaust emission certification standards for 1999 model year and subsequent model year passenger cars and light duty trucks which are certified as standard vehicles are as follows:

1. The exhaust emission certification standards for non-methane hydrocarbons, carbon monoxide and oxides of nitrogen are set forth in Table 1.

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Table 1
1999 MODEL YEAR AND SUBSEQUENT MODEL YEAR PASSENGER CAR AND LIGHT-DUTY TRUCK STANDARD VEHICLE EXHAUST EMISSION CERTIFICATION STANDARDS

Vehicle Type(1)	Loaded Vehicle Weight (lbs)	Durability Vehicle Basis (mi)	Non-Methane Hydrocarbons (g/mi)(2)	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC	All	50,000	0.25	3.4	0.4
PC	All	100,000	0.31	4.2	0.6
Diesel PC (Option 2)	All	100,000	0.31	4.2	1.0
LDT	0-3750	50,000	0.25	3.4	0.4
LDT	0-3750	100,000	0.31	4.2	0.6
Diesel LDT (Option 2)	0-3750	100,000	0.31	4.2	1.0
LDT	3751-5750	50,000	0.32	4.4	0.7
LDT	3751-5750	100,000	0.40	5.5	0.97
Diesel LDT (Option 1)	3751-5750	100,000	0.40	5.5	1.5

(1) "PC" means passenger cars, "LDT" means light-duty trucks.
(2) For methanol—or ethanol—fueled vehicles certifying to these standards, including fuel-flexible vehicles when certifying on methanol or ethanol, "Non-Methane Hydrocarbons" shall mean "Organic Material Non-Methane Hydrocarbon Equivalent" (or "OMNMHCE").

2. Methanol fueled passenger cars, and methanol-fueled light-duty trucks up to 3,750 pounds loaded vehicle weight, certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 15 mg/mi., determined on a 50,000 mile durability vehicle basis. Methanol fueled light-duty trucks from 3,751 to 5,750 pounds loaded vehicle weight certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 18 mg/mi., determined on a 50,000 mile durability vehicle basis.

3. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 50 CFR Part 600 Subpart B) shall be not greater than 1.33 times the applicable passenger car standards and 2.00 times the applicable light-duty truck standards shown in Table 1. Both the projected emissions and the HWFET standard shall be rounded in accordance with American Society for Testing Materials (ASTM) E29-67 to the nearest 0.1 g/mi before being compared.

4. Diesel passenger cars and light-duty trucks certifying to these standards are subject to a particulate exhaust emission standard of 0.08 g/mi, determined on a 50,000 mile durability vehicle basis.

5. For all vehicles, except those certifying to optional diesel standards, in-use compliance with the exhaust emission standards shall be limited to vehicles with less than 75,000 miles.

6. For the 1995 and 1996 model years, all manufacturers, except those certifying to optional diesel standards, are permitted alternative in-use compliance. Alternative in-use compliance is permitted for 60 percent of a manufacturer's vehicles in the 1995 model year and 20 percent of a manufacturer's vehicles in the 1996 model year. For the 1995 and 1996 model years, small volume manufacturers only are permitted alternative in-use compliance for 100 percent of the fleet. The percentages shall be applied to the manufacturers' total projected sales of California-certified passenger cars and light-duty trucks for the model-year. "Alternative in-use compliance" shall consist of the following:

i. For all passenger cars and those light-duty trucks from zero to 3,750 pounds, loaded vehicle weight, except those diesel vehicles certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.32 g/mi non-methane hydrocarbon and 5.2 g/mi carbon monoxide for 50,000 miles.

ii. For light-duty trucks from 3,751 to 5,750 pounds, loaded vehicle weight, except those diesel light-duty trucks certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.41 g/mi non-methane hydrocarbon and 6.7 g/mi carbon monoxide for 50,000 miles.

iii. In-use compliance standards shall be waived beyond 50,000 miles.

7. All passenger cars and light-duty trucks, except those diesel vehicles certifying to optional standards, are subject to non-methane hydrocarbon, carbon monoxide and oxides of nitrogen standards determined on a 50,000 mile durability basis and non-methane hydrocarbon and carbon monoxide standards determined on an 100,000 mile durability basis.

8. 100,000 mile NO_x standards are applicable for 1996 and subsequent model-year vehicles.

9. Each manufacturer shall also comply with the requirements specified in California Code of Regulations, Title-13, Section 1960.1(g)(2).

(c) The exhaust emission certification standards and test procedures for non-methane organic gases (NMOG), oxides of nitrogen (NO_x), carbon monoxide (CO) and particulates for 1999 model year and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles are as follows:

1. The exhaust emission certification standards for NMOG, CO and NO_x are set forth in Table 2.

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Table 2

EXHAUST EMISSION CERTIFICATION STANDARDS FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES AND ULTRA-LOW EMISSION VEHICLES IN PASSENGER CAR AND LIGHT-DUTY TRUCK VEHICLE CLASSES(3)

Vehicle Type(1)	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category (2)	Non-Methane Organic Gases (g/mi)	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC and LDT	All 0-3750	50,000	TLEV	0.125 (0.188)	3.4 (3.4)	0.4 (0.4)
			LEV	0.075 (0.100)	3.4 (3.4)	0.2 (0.3)
			ULEV	0.040 (0.058)	1.7 (2.6)	0.2 (0.3)
		100,000	TLEV	0.156	4.2	0.6
			LEV	0.090	4.2	0.3
			ULEV	0.055	2.1	0.3
LTD	3751-5750	50,000	TLEV	0.160 (0.238)	4.4 (4.4)	0.7 (0.7)
			LEV	0.100 (0.128)	4.4 (4.4)	0.4 (0.5)
			ULEV	0.050 (0.075)	2.2 (3.3)	0.4 (0.5)
		100,000	TLEV	0.200	5.5	0.9
			LEV	0.130	5.5	0.5
			ULEV	0.070	2.8	0.5

(1) "PC" means passenger cars, "LDT" means light-duty trucks.
(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.
(3) The standards in parentheses are intermediate in-use compliance standards for 50,000 miles, applicable under (c)5 below.

2. To demonstrate compliance with an NMOG standard, NMOG emissions shall be measured in accordance with the "California Non-Methane Organic Gas Test Procedures" as adopted July 12, 1991 and last amended September 22, 1993. For TLEVs, LEVs and ULEVs certified to operate exclusively on any fuel other than conventional gasoline, and for fuel-flexible and dual-fuel TLEVs, LEVs and ULEVs when certifying on fuel other than gasoline, manufacturers shall multiply NMOG exhaust certification levels by the applicable reactivity adjustment factor set forth in section 13 of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles:" as incorporated by reference in section 1960.1(k), Title 13, California Code of Regulations or established by the Executive Officer of the CARB pursuant to Appendix VIII of the foregoing test procedures. In addition, natural gas vehicles certifying to TLEV, LEV or ULEV standards shall calculate a reactivity-adjusted methane exhaust emission value by multiplying the methane exhaust certification level by the applicable methane reactivity adjustment factor set forth in section 13 of the above-referenced test procedures. The product of the NMOG exhaust certification levels and the reactivity adjustment factor shall be compared to the exhaust NMOG mass emission standards established for the particular vehicles emission category to determine compliance. For natural gas vehicles, the reactivity-adjusted NMOG value shall be added to the reactivity-adjusted methane value and then compared to the exhaust NMOG mass emission standards established for the particular vehicle emission category to determine compliance.

3. Fuel-flexible and dual-fuel PCs and LDTs from zero to 5,750 pounds LVW shall be certified to exhaust mass emission standards for NMOG established for the operation of the vehicle on any available fuel other than gasoline, and gasoline.

i. For TLEVs, LEVs, and ULEVs, when certifying for operation on a fuel other than gasoline, manufacturers shall multiply exhaust NMOG certification levels by the applicable reactivity adjustment factor. In addition to multiplying the exhaust NMOG certification levels the applicable reactivity adjustment factor, natural gas vehicles shall multiply the exhaust methane certification level by the applicable methane reactivity adjustment factor and add that value to the reactivity-adjusted NMOG value. The exhaust NMOG certification levels for fuel-flexible or dual-fuel vehicles when certifying on gasoline shall not be multiplied by a reactivity adjustment factor.

ii. For PCs and LDTs from zero to 3,750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on conventional gasoline shall be:

(1) For TLEVs, 0.25 g/mi and 0.31 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs, 0.125 g/mi and 0.156 g/mi for 50,000 and 100,000 miles, respectively.

(3) For ULEVs, 0.075 g/mi and 0.090 g/mi for 50,000 and 100,000 miles, respectively.

iii. For LDTs from 3,751 to 5,750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on gasoline shall be:

(1) For TLEVs, 0.32 g/mi and 0.40 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs 0.160 g/mi and 0.200 g/mi for 50,000 and 100,000 miles, respectively; and

(3) For ULEVs, 0.100 g/mi and 0.130 g/mi for 50,000 and 100,000 miles, respectively.

4. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR 600 Subpart B) shall be not greater than 1.33 times the applicable light-duty vehicle standards shown in Table 2. Both the projected emissions and the HWFET standard shall be rounded in accordance with ASTM E29-67 to the nearest 0.1 g/mi before being compared.

5. For PCs and LDTs from zero to 5,750 pounds LVW, including fuel-flexible and dual-fuel vehicles when operating on any available fuel other than gasoline, intermediate in-use compliance standards shall apply to TLEVs through the 1995 model year, and LEVs and ULEVs through the 1998 model-year. In-use compliance with standards beyond 50,000 miles shall be waived through the 1995 model year for TLEVs, and through the 1998 model year for LEVs and ULEVs.

i. For TLEVs, LEVs, and ULEVs designed to operate on any fuel other than conventional gasoline, including fuel-flexible and dual-fuel vehicles when operating on any fuel other than gasoline, exhaust NMOG mass emissions results shall be multiplied by the applicable reactivity adjustment factor to determine compliance with intermediate in-use compliance standards for NMOG. In addition to multiplying the exhaust NMOG emission results by the applicable reactivity adjustment factor, natural gas vehicles shall multiply the exhaust methane emission results by the applicable methane reactivity adjustment factor and add that value to the reactivity-adjusted NMOG value. Exhaust NMOG mass emissions from fuel-flexible or dual-fuel vehicles when operating on gasoline shall not be multiplied by a reactivity adjustment factor.

ii. For fuel-flexible and dual-fuel PCs and LDTs from zero to 3,750 pounds LVW, intermediate in-use compliance standards for

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NMOG emissions at 50,000 miles, when the vehicle is operated on gasoline, shall be 0.32 g/mi, 0.188 g/mi, and 0.100 g/mi for TLEVs, LEVs, and ULEVs, respectively.

iii. For fuel-flexible and dual-fuel LDTs from 3,751 to 5,750 pounds LVW, intermediate in-use compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on gasoline, shall be 0.41 g/mi, 0.238 g/mi, and 0.128 g/mi for TLEVs, LEVs and ULEVs, respectively.

6. Manufacturers of diesel vehicles must also certify to particulate standards for 100,000 miles. For all PCs and LDTs from zero to 5,750 pounds loaded vehicle weight, the particulate standard is 0.08 g/mi, 0.08 g/mi and 0.04 g/mi for TLEVs, LEVs and ULEVs, respectively.

7. Manufacturers shall demonstrate compliance with the above standards for NMOG, CO, and NO_x at 50 degrees Fahrenheit according to the procedure specified in Section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium Duty Vehicles" as adopted May 20, 1987 and last amended September 22, 1993. Hybrid electric, natural gas, and diesel-fueled vehicles shall be exempt from 50 degrees fahrenheit test requirements.

8. In-use compliance testing shall be limited to vehicles with fewer than 75,000 miles.

9. Deterioration factors for hybrid electric vehicles shall be based on the emissions and mileage accumulation of the auxiliary power unit. For certification purposes only, Type A hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors), and demonstrating compliance with 100,000 mile emission standards shall not be required. For certification purposes only, Type B hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 75,000 mile deterioration factors). For certification purposes only, Type C hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 100,000 mile deterioration factors).

(d) Formaldehyde exhaust emission standards apply to vehicles designed to operate on any available fuel, including fuel-flexible and dual-fuel vehicles. The exhaust emission certification standards for formaldehyde, for 1999 model year and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles, are as follows:

1. The exhaust emission certification standards for formaldehyde are set forth in Table 3.

Table 3

FORMALDEHYDE EXHAUST EMISSION CERTIFICATION STANDARDS FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES, AND ULTRA-LOW EMISSION VEHICLES IN THE LIGHT-DUTY VEHICLES WEIGHT CLASS

Vehicle Type(1)	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category(2)	Formaldehyde (mg/mi)(3)
PC and LDT	All 0-3750	50,000	TLEV	15 (23)
			LEV	15 (15)
			ULEV	8 (12)
		100,000	TLEV	18
			LEV	18
			ULEV	11
LTD	3751-5750	50,000	TLEV	18 (27)
			LEV	18 (18)
			ULEV	9 (14)
		100,000	TLEV	23
			LEV	23
			ULEV	13

(1) "PC" means passenger cars, "LDT" means light-duty trucks.
(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.
(3) The standards in parenthesis are intermediate compliance standards for 50,000 miles applicable under (d)2 below.

(4) Formaldehyde exhaust emission standards apply to vehicles certified to operate on any available fuel, including fuel-flexible and dual-fuel vehicles.

2. For PCs and LDTs from zero to 5,750 pounds LVW, including fuel-flexible and dual-fuel vehicles, intermediate in-use compliance standards shall apply to LEVs and ULEVs through the 1998 model-year. In-use compliance with standards beyond 50,000 miles shall be waived through 1998 for LEVs and ULEVs.

3. Manufacturers shall demonstrate compliance with the above standards for formaldehyde at 50 degrees Fahrenheit according to the procedures specified in section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light Duty Trucks and Medium Duty Vehicles" as incorporated by reference in section 1960.1(k), Title-13, California Code of Regulations. Hybrid electric, natural gas, and diesel-fueled vehicles shall be exempt from 50 degrees Fahrenheit test requirements.

4. In-use compliance testing shall be limited to passenger cars and light-duty trucks with fewer than 75,000 miles.

(e) The evaporative emissions certification standards for all 1999 model year and subsequent model-year gasoline-fueled, liquified petroleum gas-fueled and methanol fueled motor vehicles, except petroleum-fueled diesel vehicles, are as follows:

1. Evaporative emissions for 1979 and subsequent model gasoline-fueled, 1983 and subsequent model liquefied petroleum gas-fueled, and 1993 and subsequent model alcohol-fueled motor vehicles and hybrid electric vehicles subject to exhaust emission standards under this article, except petroleum-fueled diesel vehicles, compressed natural gas-fueled vehicles, hybrid electric vehicles that have sealed fuel systems which can be demonstrated to have no evaporative emissions, and motorcycles, shall not exceed the following standards.

i. For the vehicles identified below, tested in accordance with the test procedure which includes the running loss test, the hot soak test, and the 72 hour diurnal test, the evaporative emission standards are:

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Table 4

Vehicle Type	Model Year	Hydrocarbons or OMHCE[1] Three-Day Diurnal + Hot Soak (grams/test) Useful Life[2]	Running Loss (grams/mile) Useful Life[2]
PC	1995 and	2.0	0.05
LDT	subsequent	2.0	0.05
HEPC	1993 and	2.0	0.05
HELDT	subsequent	2.0	0.05

PC = Passenger Cars
LDT = Light-Duty Trucks
HEPC = Hybrid Electric Passenger Cars
HELDT = Hybrid Electric Light-Duty Trucks

(1) The applicable evaporative emission standards for alcohol-fueled vehicles are expressed as organic material hydrocarbon equivalent (OMHCE).

(2) For purposes of this paragraph, "useful life" shall have the same meaning as provided in section 2112, Title-13, California Code of Regulations.

Approval of vehicles which are not exhaust emission tested using a chassis dynomometer pursuant to section 1960.1, Title-13, California Code of Regulations shall be based on an engineering evaluation of the system and data submitted by the applicant.

2. Evaporative emission standards shall be tested in accordance with the "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles", adopted April 16, 1975, as last amended December 15, 1994.

3. Beginning with the 1999 model year, all motor vehicles subject to the running loss and useful life standards, including those produced by small volume manufacturers, shall be certified to the specified standards.

7:27-26.5 Fleet average

(a) The fleet average non-methane organic gas exhaust emissions from passenger cars and light-duty trucks produced and delivered for sale in New Jersey by a manufacturer each model year shall not exceed the values set forth in Table 5.

Table 5

FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS FOR LIGHT-DUTY VEHICLE WEIGHT CLASSES[5]

Vehicle Type	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Model Year	Fleet Average Non-Methane Organic Gases (g/mi) [1, 2, 3, 4]
PC and LDT	All 0-3750	50,000	1996	0.225
			1997	0.202
			1998	0.157
			1999	0.113
			2000	0.073
			2001	0.070
			2002	0.068
			2003 and subsequent	0.062
LDT	3751-5750	50,000	1996	0.287
			1997	0.260
			1998	0.205
			1999	0.150
			2000	0.099
			2001	0.098
			2002	0.095
			2003 and subsequent	0.093

1. For the purpose of calculating fleet average NMOG values, a manufacturer may adjust the certification levels of hybrid electric vehicles (or "HEVs") based on the range of the HEV without the use of the engine.

i. For the purpose of calculating fleet average NMOG values, vehicles which have no tailpipe emissions but use fuel-fired heaters and which are not certified as ZEVs shall be treated as "Type A HEV ULEVs."

2. Each manufacturer's fleet average NMOG value for the total number of PCs and LDTs from zero to 3,750 pounds loaded vehicle weight produced and delivered for sale in New Jersey shall be calculated in units of grams per mile NMOG according to the following equation, where the term "produced" means produced and delivered for sale in New Jersey: {[(No. of Vehicles Certified to the Exhaust Emission Standards in section 1960.1(e)(1) of Title-13, California Code of Regulations, and produced) × (0.39)] + [No. of standard vehicles produced × (0.25)] + [(No. of Transitional Low-Emission Vehicles excluding HEVs produced) × (0.125)] + [(No. of Low-Emission Vehicles excluding HEVs produced) × (0.075)] + [(No. of Ultra-Low Emission Vehicles excluding HEVs produced) × (0.040)] + (HEV contribution factor)}/(Total No. of vehicles produced, including ZEVs and HEVs):

i. The HEV contribution factor shall be calculated in units of g/mi as follows:

(1) HEV contribution factor = {[No. of "Type A HEV" TLEVs produced] × (0.100) + [No. of "Type B HEV" TLEVs produced] × (0.113) + [No. of "Type C HEV" TLEVs produced] × (0.125)]} + {[No. of "Type A HEV" LEVs produced] × (0.057) + [No. of "Type B HEV" LEVs produced] × (0.066) + [No. of "Type C HEV" LEVs produced] × (0.075)} + ([No. of "Type A HEV" ULEVs produced] × (0.020) + [No. of "Type B HEV" ULEVs produced] × (0.030) + [No. of "Type C HEV" ULEVs produced] × (0.040)}

ii. Zero-emission vehicles classified as light-duty trucks, 3,751 to 5,750 pounds LVW, may be designated by the manufacturer as passenger cars and light-duty trucks zero to 3,750 pounds LVW, for the purposes of calculating fleet average NMOG values.

3. Manufacturers that certify LDTs from 3,751 to 5,750 pounds LVW, shall calculate a fleet average NMOG value in units of g/mi NMOG according to the following equation, where the term "produced" means produced and delivered for sale in New Jersey: {[No. of standard vehicles produced × (0.32)] + [(No. of TLEVs produced excluding HEVs) × (0.160)] + [(No. of LEVs produced ex-

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cluding HEVs) × (0.100)] + [(No. of ULEVs produced excluding HEVs) × (0.050)] + (HEV contribution factor)}/(Total No. of vehicles produced, including ZEVs and HEVs).

i. The HEV contribution factor shall be calculated in units of g/mi as follows, where the term "produced" means produced and delivered for sale in New Jersey:

(1) HEV contribution factor = {[No. of "Type A HEV" TLEVs produced] × (0.130) + [No. of "Type B HEV" TLEVs produced] × (0.145) + [No. of "Type C HEV" TLEVs produced] × (0.160)} + {[No. of "Type A HEV" LEVs produced] × (0.075) + [No. of "Type B HEV" LEVs produced] × (0.087) + [No. of "Type C HEV" LEVs produced] × (0.100)} + {[No. of "Type A HEV" ULEVs produced] × (0.025) + [No. of "Type B HEV" ULEVs produced] × (0.037) + [No. of "Type C HEV's" ULEVs produced] × (0.050)}

4. In 2000 and subsequent model-years, small volume manufacturers shall comply with fleet average NMOG requirements.

i. Prior to the year 2000, compliance with the specified fleet average NMOG requirements shall be waived for small volume manufacturers.

ii. In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.075 g/mi for PCs and LDTs from zero to 3,750 pounds LVW.

iii. In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.100 g/mi for LDTs from 3751 to 5750 pounds LVW.

iv. If a manufacturer's average California sales exceeds 3,000 units of new PCs, LDTs, and medium duty vehicles based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall no longer be treated as a small volume manufacturer and shall comply with the fleet average requirements applicable for larger manufacturers as specified in section 1960.1(g)(2), Title-13, California Code of Regulations, beginning with the fourth model year after the last of the three consecutive model years.

v. If a manufacturer's average California sales falls below 3,000 units of new PCs, LDTs, and medium-duty vehicles based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall be treated as a small volume manufacturer and shall be subject to requirements for small volume manufacturers as specified in section 1960.1(g)(2), Title-13, California Code of Regulations, beginning with the next model year.

(b) In 1992 and subsequent model years, manufacturers that achieve fleet average NMOG values lower than the fleet average NMOG requirements for the corresponding model year shall receive credits in units of grams per mile NMOG determined as: {[(Fleet Average NMOG Requirement) − (Manufacturer's Fleet Average NMOG Value)] × (Total No. of Vehicles Produced and Delivered for Sale in New Jersey, Including ZEVs and HEVs)}.

1. Manufacturers with fleet average NMOG values greater than the fleet average requirement for the corresponding model year shall receive debits in units of gram per mile NMOG equal to the amount of negative credits determined by the aforementioned equation. For any given model year, the total grams per mile NMOG credits or debits earned for PCs and LDTs zero to 3,750 pounds LVW and for LDTs 3,751 to 5750 pounds LVW shall be summed together. The resulting amount shall constitute the grams per mile NMOG credits or debits accrued by the manufacturer for the model year.

2. For the 1994 through 1997 model years, manufacturers shall equalize emission debits within three model years and prior to the end of the 1998 model year by earning gram per mile NMOG emission credits in an amount equal to their grams per mile NMOG debits, or by submitting a commensurate amount of grams per mile NMOG credits that were earned previously or acquired from another manufacturer. For 1998 and subsequent model years, manufacturers shall equalize emission debits by the end of the following model year.

3. The grams per mile NMOG emission credits earned in any given model year shall retain full value through the subsequent model year.

4. The grams per mile NMOG value of any credits not used to equalize the previous model year's debit, shall be discounted by 50 percent at the beginning of the second model year after being earned, discounted to 25 percent of its original value if not used by the beginning of the third model year after being earned, and will have no value if not used by the beginning of the fourth model year after being earned.

7:27-26.6 Enforcement

(a) Commencing with the 1999 model year, each manufacturer shall report to the Department the fleet average NMOG emissions of its total deliveries for sale of vehicles in each engine family for New Jersey for that particular model year. Such reports shall be submitted within 60 days after the end of each model year, and shall be submitted in a form and manner to be determined by the Department. Fleet average reports shall, at a minimum, identify the total number of vehicles including offset vehicles sold in each engine family delivered for sale in New Jersey and California, respectively, the specific vehicle models comprising the sales in each state and the corresponding certification standards, and the percentage of each model sold in New Jersey and California in relation to total fleet sales in the respective states.

(b) In addition to all other requirements contained in this subchapter, new motor vehicle dealers shall comply with the following requirements.

1. No dealer shall sell or offer or deliver for sale a new passenger car or light-duty truck subject to this subchapter unless such vehicle conforms to the following standards and requirements:

i. Ignition timing is set to manufacturer's specification with an allowable tolerance of ± three degrees;

ii. Idle speed is set to manufacturer's specification with an allowable tolerance of ± 100 revolutions per minute;

iii. Required exhaust and evaporative emission controls, such as exhaust gas recirculation (EGR) valves, are operating properly;

iv. Vacuum hoses and electrical wiring for emission controls are correctly routed and connected, and operating properly; and

v. Idle mixture is set to manufacturer's specification or according to manufacturer's recommended service procedure.

2. The requirements set forth in this subsection shall also apply to a dealer when servicing emission related components. However, only that requirement(s) appropriate to the service performed shall apply.

(c) The Department and its representatives shall have the right to enter and inspect any site, building, equipment, or vehicle, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., this subchapter, any exemption, or any order, consent order, agreement, or remedial action plan issued, approved or entered into pursuant thereto. Such right shall include, but not be limited to the right to test or sample any materials, motor vehicles or motor vehicle engines or any emissions therefrom, at the facility, to sketch or photograph any portion of the site, building, vehicles or motor vehicle engines, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(d) Except with respect to the fleet average requirements set forth in N.J.A.C. 7:27-26.5(a), failure to comply with any of the obligations or requirements of this subchapter shall subject the violator to an enforcement action pursuant to the provisions of N.J.S.A. 26:2C-19.

7:27-26.7 Additional requirements

(a) In addition to all other requirements set forth in this subchapter, new motor vehicles and new motor vehicle engines which are certified to the emission certification standards contained in N.J.A.C. 7:27-26.4 shall comply with the following requirements:

1. Passenger cars, and light-duty trucks up to 5,750 pounds loaded vehicle weight, shall be equipped with emission control labels which

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conform to the requirements contained in the "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978 as last amended July 12, 1991.

2. Passenger cars, and light-duty trucks up to 5,750 pounds loaded vehicle weight, shall be equipped with emission control malfunction and diagnostic systems which conform to the requirements contained in the California Code of Regulations, Title-13, Section 1968.1.

3. Passenger cars, and light-duty trucks up to 5,750 pounds loaded vehicle weight, which are gasoline-fueled or methanol-fueled shall comply with the requirements set forth in California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," dated March 26, 1976 and last amended February 21, 1990.

7:27-26.8 through 26.14 (Reserved)

7:27-26.15 Incorporation by reference

(a) Any reference in this subchapter to any of the documents or sources listed in (e) below shall be deemed to incorporate such document or source by reference, together with any future supplements or amendments thereto.

(b) If the entity which promulgated a document or source incorporated by reference into this subchapter proposes to amend or supplement the document or source, the Department will publish a notice of the proposed amendment or supplement in the New Jersey Register. The notice shall state how to obtain a copy of the proposal, and to whom comments on the proposal can be submitted. The Department will publish the notice within 60 days after publication of the proposed amendment or supplement.

(c) The adoption of any proposed amendment or supplement described in (b) above shall become operative in New Jersey no earlier than 30 days after publication by the Department of a notice of such adoption in the New Jersey Register.

(d) If the Department proposes to not incorporate any future supplements or amendments to any of the documents or sources incorporated by reference into this subchapter, the Department will propose an amendment to this subchapter, and will provide opportunity for public comment on such proposed amendment, in accordance with the Administrative Procedures Act, N.J.S.A 52:14B-1 et seq.

(e) The following documents and sources are incorporated by reference within this subchapter:

1. California Code of Regulations, Title-13, Section 1968.1;

2. "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991, CARB;

3. "California Non-Methane Organic Gas Test Procedures" adopted September 22, 1993, CARB;

4. "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted May 20, 1987, as last amended September 22, 1993, CARB;

5. "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," adopted April 16, 1975, as last amended December 15, 1994, CARB;

6. "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978, as last amended July 12, 1991, CARB;

7. California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," adopted March 26, 1976, as last amended February 21, 1990, CARB;

8. American Society for Testing Materials Standard Practice E29-88;

9. "Federal Highway Fuel Economy Test Procedure" 40 C.F.R. Part 600 Subpart B; and

10. 40 C.F.R. 86.082-24

11. "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86, Subparts A and B.

12. 40 Code of Federal Regulations (CFR) Parts 51, 52 and 85.

(f) Any of the documents in (e) above may be obtained by contacting the Office of Administrative Law or by contacting:

Department of Environmental Protection
Office of Air Quality Management
Bureau of Transportation Control
CN 411
Trenton, New Jersey 08625

7:27-26.16 Severability

Each section of this subchapter is severable. In the event that any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

(a)

PINELANDS COMMISSION

Notice of Rescheduling and Relocation of Public Hearing and Comment Period Extension
Pinelands Comprehensive Management Plan
Proposed Amendments: N.J.A.C. 7:50-2.11, 3.11 through 3.19, 3.21, 3.38, 3.39, 3.61, 3.65, 3.71, 4.1, 4.2, 4.3, 4.18, 4.19, 4.21, 4.22, 4.23, 4.31 through 4.35, 4.37, 4.39, 4.40, 4.61 through 4.64, 4.66, 4.70, 4.73, 4.83, 5.2, 5.3, 5.4, 5.22 through 5.26, 5.30, 5.43, 5.44, 5.46, 6.23, 6.84, 6.156 and 7.3
Proposed New Rules: N.J.A.C. 7:50-3.81 through 3.85

Take notice of public hearing on the above-referenced proposed amendments and new rules, published in the April 17, 1995 New Jersey Register at 27 N.J.R. 1557(a). The rescheduled and relocated public hearing on the proposal will be held on the following date, at the following time and location:

Thursday, June 1, 1995 at 4:00 P.M.
Medford Lakes Borough Municipal Building
Cabin Circle Drive
Medford Lakes, New Jersey

In accordance with N.J.A.C. 1:30-3.3(c), the public comment period has been extended to the date of the hearing.

Submit written comments by June 1, 1995 to:

John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064

(b)

PINELANDS COMMISSION

Notice of Rescheduling and Relocation of Public Hearing and Comment Period Extension
Pinelands Comprehensive Management Plan
Acquisition of Properties with Limited Practical Use
Proposed New Rules: N.J.A.C. 7:50-9

Take notice public hearing on the above-referenced proposed new rules, published in the April 17, 1995 New Jersey Register at 27 N.J.R. 1572(a), has been rescheduled. The rescheduled and relocated public hearing on the proposal will be held on the following date, at the following time and location:

Thursday, June 1, 1995 at 7:00 P.M.
Medford Lakes Borough Municipal Building
Cabin Circle Drive
Medford Lakes, New Jersey

In accordance with N.J.A.C. 1:30-3.3(c), the public comment period has been extended to the date of the hearing.

Submit written comments by June 1, 1995 to:

John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064

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HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Child Care Services Manual
Submitting Vouchers for Payment
Proposed Amendments: N.J.A.C. 10:15-2.4 and 10:15A-1.4

Authorized By: William Waldman, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:1-12.
Proposal Number: PRN 1995-282.

Submit comments by June 14, 1995 to:
Karen Highsmith, Acting Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10:15-2.4(c) and 10:15A-1.4(b) establish a comprehensive policy to ensure that child care providers submit all bills for services rendered in a timely fashion. The proposed new procedure requires all child care providers to submit the completed bills for service delivered (voucher forms) to the appropriate county designated agency within 60 days from the end of the service period or 60 days from the date of voucher issuance, whichever is later. The proposed amendments also indicate that the failure of the child care provider to submit the completed voucher forms for receipt by the county designated agency within the established timeframe shall result in a child care provider's loss of payment for the identified service period.

Social Impact

The proposed amendments shall help to ensure that program eligible parents maintain uninterrupted receipt of services from this program and that payments for services rendered are delivered timely, since there shall be a reduction in the number of outstanding vouchers being submitted for payment beyond the established 60 day period. Additionally, since 60 days following services rendered is a generous period for submitting a bill for service, it is anticipated that the negative impact of implementing the proposed amendment will be minimal. In fact, it is anticipated that once the proposed amendments are implemented, the child care providers who, through a long standing history of submitting late vouchers have jeopardized the receipt of Federal funds, will come into compliance.

Implementation of the proposed amendments will also have a highly significant positive impact on the administration of the New Jersey Cares for Kids (NJCK) Child Care Certificate Program. Establishing more stringent controls on payment procedures for child care services rendered will both enhance the fiscal integrity of Federal funds allocated to New Jersey and reduce the likelihood of endangering the receipt of continued Federal funding. The proposed amendments shall also lead to the maximum expenditure of funds for the greatest number of allowable families due to the efficient delivery of child care benefits to eligible families.

Economic Impact

The proposed amendments are anticipated to assist the county designated agencies in the management of program funds. The proposed amendment will assist the county designated agencies to accurately maintain and reconcile fiscal accounts in the NJCK Child Care Certificate Program to ensure that funds are expended in compliance with Federal rules and regulations regarding Federal fiscal year closeout.

Also, the occurrence of problems often associated with a fiscal encumbrance system which does not have payment limitations or established timeframes for submitting bills for rendered services will be avoided. Another economic impact which can be associated with the implementation of the proposed amendments is the assurance that all child care service payments will be reconciled efficiently and on a timely basis thus reducing the confusion and miscommunication of information between the county designated child care agency, parents, and/or child care providers, which may occur regarding the receipt and/or issuance of payments.

Because the program is a new one, it is difficult to determine an explicit dollar amount in the savings associated with the implementation of the proposed amendments. However, implementation is expected to greatly increase the efficiency with which the program operates, thereby increasing the quality, quantity and accuracy of services provided by the county designated child care agencies.

Some individual child care providers may oppose the implementation of the proposed amendments because non-compliance on their part will create the potential for a loss of revenue. However, the child care advocacy agencies and families enrolled in the benefit program should be in favor of the proposed amendments, since they are expected to greatly increase the efficiency with which the program operates. In addition, the county designated agencies and the State will also benefit through increased fiscal accountability of program funds.

Executive Order No. 27 Statement

These proposed amendments are not subject to any Federal requirements or standards; therefore, a Federal exceedance analysis is not applicable to the rulemaking.

Regulatory Flexibility Analysis

The proposed amendments place billing requirements on child care providers and on county designated agencies to assure that all completed voucher forms are submitted to the county designated agency by the child care provider within 60 days of the end of the service period, or of the date of issuance of the voucher, whichever is later. Three counties, Bergen, Camden and Monmouth, administer their own child care provider programs, and these do not fall within the definition of a small business, as described in the Administrative Procedure Act, N.J.A.C. 52:14B-16 et seq., since they are government agencies. The provider agencies in 16 additional counties are small businesses, designated by the county in which they provide services. All of the child care providers are considered small businesses. The requirements to submit vouchers timely not only benefit the taxpayers of the State of New Jersey, since the program can thereby be administered more efficiently, but benefit those who provide the child care services, who will receive their payments more quickly. The voucher forms are provided by the county agencies to the providers, and any training or assistance needed to complete the forms is also provided. The county agencies are paid to administer the program and will incur no additional costs as a result of these amendments. No professional services are required. Since most of the regulated public can be considered small businesses, and the requirements benefit them, no differentiation has been provided in the amendments.

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

10:15-2.4 Provider responsibilities

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

(c) The provider shall complete vouchers with child(ren)'s attendance data, obtain the parent's/applicant's signature and send the voucher to the county designated agency within three business days of closing of reporting payment periods. **To guard against the untimely submittal of vouchers and to ensure the issuance of payment for child care services rendered, child care providers shall submit completed voucher forms to the county designated agency no later than 60 days from the end of the designated service period or 60 days from the date of issuance, whichever is later. Failure to submit completed voucher forms for receipt by the county designated agency within the established timeframe shall result in loss of payment to the child care provider for services claimed on the voucher.**

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

10:15A-1.4 Payment methods

(a) (No change.)

(b) Vendor payments to providers are the primary method for issuing child care payments in the child care service programs. Under this method, a voucher is issued to the child care provider after the completion and signing of a Parent/Applicant/Provider Agreement. The completion of this agreement permits the provider to receive an initial prospective monthly payment. To receive subsequent payments, the provider completes the voucher form, lists the dates of care, signs the voucher, secures the parent's signature and returns it to the agency responsible for [issuing] **processing** payment. Upon review and authorization of the voucher information, the agency

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[issues] **shall issue** a child care payment to the provider **for all vouchers which have been received no later than 60 days from the end of the designated service period or 60 days from the date of voucher issuance, whichever is later. Should the provider fail to submit a completed voucher form for receipt by the designated county agency within the established period, the identified payment for services claimed on the voucher shall be subject to forfeiture.**

(c) (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospital Relief Subsidy Fund
Manual of Hospital Services
Pre-Proposal in Response to Petition to Amend N.J.A.C. 10:52-1.1 and 8.2(d)

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-7.7a, b and c; 30:4D-12, P.L. 1992, c.160; 1902(a)(13) of the Social Security Act 42 U.S.C. 1396a.

Agency Control Number: 95-P-17.

Pre-Proposal Number: PPR 1995-2.

Submit written comments by June 14, 1995 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712, Mail Code #26
Trenton, New Jersey 08625-0712

The Division will also hold an **informal conference** pursuant to N.J.A.C. 1:30-3.2(c)4ii on the subject matter of the pre-proposal. The date, time, and location of the informal conference are as follows:

DATE: Tuesday, June 6, 1995
TIME: 10:00 A.M. to 2:00 P.M.
PLACE: Division of Medical Assistance and Health Services
Quakerbridge Plaza
Quakerbridge Road
Building 7, Rooms 200 ABC
Mercerville, New Jersey 08625

Persons wishing to attend the informal conference are requested to contact the Division prior to the meeting date at 609-588-2668 so that sufficient space is reserved for the meeting.

The agency pre-proposal follows:

Summary

On March 23, 1995, a petition for rulemaking was filed by Giordano, Halleran & Ciesla, a law firm representing Monmouth Medical Center. The petition for rulemaking requested amendments to N.J.A.C. 10:52-8.2 which would be needed if the Department chooses to change the year (from 1991 to 1992) of the base reporting document used in calculating Hospital Relief Subsidy Fund (HRSF) disproportionate share payments and update the uniform billing data used in the MIDS (Medical Incident Data System) file on which the payment amounts are based. The Department is responding to the petition by issuing a pre-proposal as permitted by N.J.A.C. 1:30-3.6(c). The purpose of the pre-proposal is to solicit comments on the petitioner's request and the overall HRSF methodology.

Under the current regulations, the hospitals' eligibility for HRSF payments is determined by N.J.A.C. 10:52-8.2(d)1, which uses the facility's 1991 Uncompensated Care as Reported to the Department of Health (1991 UCC%) in order to calculate a Hospital Relief Subsidy Eligibility Factor (HRSEF). Hospitals with a HRSEF above 30 percent are eligible for a subsidy. In the current State Fiscal Year 1995, 30 hospitals receive payments from the Hospital Relief Subsidy Fund (HRSF), which now uses 1991 Uncompensated Care information.

If 1992 Uncompensated Care information were used as requested in the Petition for Rulemaking, then in State Fiscal Year 1995-96 23 of those 30 hospitals would receive reduced amounts, six of the 30 hospitals would receive increased amounts, and one of the 30 hospitals would no longer be eligible for any reimbursement from the HRSF. However, an additional 11 hospitals would receive HRSF funds. Therefore, in SFY 95-96, a new group of 40 hospitals would receive HRSF funds.

The total amount of the HRSF is allocated by the Commissioner during the fiscal year for this purpose and is distributed among eligible hospitals. Under the current regulations, the individual hospital amounts are derived from the 1991 MIDS file maintained by the New Jersey Department of Health. The categories upon which the fund payments are currently based include: HIV (MDC 24), Mental Health (MDC 19), Substance Abuse (MDC 20), Complex Neonates (DRG 600 through 618, 622, 623, 626 and 627), and Tuberculosis as a major or minor diagnosis (ICD-9: 010.0 through 018.9). The petition did not request any changes to MIDS categories listed above. However, the Division would entertain comments on any MIDS categories which should be added or deleted based on current health care priority needs.

The Petition for Rulemaking, if proposed and adopted, would change eligibility and payment amounts because it would provide that eligibility for payments from the Hospital Relief Subsidy Fund would be calculated based on the facility's 1992 Uncompensated Care as Reported to the Department of Health (1992 UCC%). The amount of the subsidy would be an amount allocated using the 1992 MIDS file rather than the 1991 MIDS file.

However, it should be noted that any changes considered by the Division would have to conform to the Federal requirements regarding Disproportionate Share Hospital Payments (DSH).

Economic Impact

As a result of changing the base year and the MIDS file, the impact on individual hospitals ranges from an HRSF increase of $5,071,584 to an HRSF decrease of $3,929,160 in SFY 95-96.

The amendments described in the petition, if proposed and adopted, would apply to 84 acute care general (DRG) hospitals in New Jersey which provide inpatient care for Medicaid recipients. In State Fiscal Year 1994, approximately 132,000 Medicaid recipients utilized inpatient hospital services. The total HRSF funds would remain at approximately $125,500,000 (Federal and State combined). The amendments described in the petition would have an economic impact on over 40 hospitals. Some hospitals will receive more HRSF funds and some will receive less. The aggregate amount in the HRSF, however, will not be affected by this amendment.

Please observe the provisions and timeframes for both written comments and the informal conference as indicated above.

(b)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual
Submitting Vouchers for Payment
Proposed Amendment: N.J.A.C. 10:81-14.18

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-3.

Proposal Number: PRN 1995-283.

Submit comments by June 14, 1995 to:
Karen Highsmith, Acting Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10:81-14.18(g) establishes a comprehensive policy to ensure that child care providers submit all bills for services rendered in a timely fashion. The proposed new procedure requires all child care providers to submit the completed bills for service delivered to the appropriate county agency within 60 days from the end of the designated service period or 60 days from the date of voucher issuance, whichever is later. The proposed amendment also indicates that the failure of the child care provider to submit the completed voucher forms for receipt by the county agency within the established time frame shall result in a child care provider's loss of payment for the identified service period.

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Social Impact

The proposed amendment shall help to ensure that program-eligible parents maintain uninterrupted receipt of services from these programs and that payments for services rendered are delivered timely, since there shall be a reduction in the number of outstanding vouchers being submitted for payment beyond the established 60 day period. Additionally, since 60 days following services rendered is a generous period for submitting a bill for service, it is anticipated that the negative impact of implementing the proposed amendment will be minimal. In fact, it is anticipated that once the proposed amendment is implemented, the child care providers who have historically been remiss in submitting timely vouchers for payment will come into compliance.

Implementation of the proposed amendment will also have a highly significant positive impact on the administration of the JOBS Program. Establishing more stringent controls on payment procedures for child care services rendered will both enhance the fiscal integrity of Federal funds allocated to New Jersey and reduce the likelihood of endangering the receipt of continued Federal funding. The proposed amendment shall also lead to the maximum expenditure of funds for the greatest number of allowable families due to the efficient delivery of child care benefits to eligible families.

Economic Impact

It is anticipated that the proposed amendment will assist the county designated agencies and the Division of Family Development in the management of program funds. The proposed amendment will assist the county agencies and this Division to accurately maintain and reconcile fiscal account in the JOBS Program to ensure programs funds are expended in compliance with Federal rules and regulations regarding Federal fiscal year closeout.

Also, the occurrence of problems often associated with a fiscal system which does not have payment limitations or established timeframes for submitting bills for rendered services will be avoided. Another economic impact which can be associated with the implementation of the proposed amendment is the assurance that all child care service payments will be reconciled efficiently and on a timely basis thus reducing the confusion and miscommunication of information between the county agency, the lead child care agency, parents, and/or child care providers, which may occur regarding the receipt and/or issuance of payments.

While it is difficult to determine an explicit dollar amount in the savings associated with the implementation of the proposed amendment, implementation is expected to greatly increase the efficiency with which the program operates, thereby increasing the quality, quantity and accuracy of services provided by the county designated child care agencies.

Some individual child care providers may oppose the implementation of the proposed amendment because non-compliance on their part will create the potential for a loss of revenue. However, the child care advocacy agencies and families enrolled in the benefit program should be in favor of the proposed amendment since it is expected to greatly increase the efficiency with which the program operates. In addition, the county agencies and the State will also benefit through increased fiscal accountability of program funds.

Executive Order No. 27 Statement

This rule is not subject to any Federal requirements or standards; therefore, a Federal exceedance analysis is not applicable to the rulemaking.

Regulatory Flexibility Analysis

The proposed amendments place billing requirements on child care providers and on county designated agencies to assure that all completed voucher forms are submitted to the county designated agency by the child care provider within 60 days of the end of the service period, or of the date of issuance of the voucher, whichever is later. Three counties, Bergen, Camden and Monmouth, administer their own child care provider programs, and these do not fall within the definition of a small business, as described in the Administrative Procedure Act, N.J.A.C. 52:14B-16 et seq., since they are government agenices. The provider agencies in 16 additional counties are small businesses, designated by the county in which they provide services. All of the child care providers are considered small businesses. The requirements to submit vouchers timely not only benefit the taxpayers of the State of New Jersey, since the program can thereby be administered more efficiently, but benefit those who provide the child care services, who will receive their payments more quickly. The voucher forms are provided by the county agencies to the providers, and any training or assistance needed to complete the forms is also provided. The county agencies are paid to administer the program and will incur no additional costs as a result of these amendments. No professional services are required. Since most of the regulated public can be considered small businesses, and the requirements benefit them, no differentiation has been provided in the amendments.

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

10:81-14.18 REACH/JOBS support services: child care

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

(g) Payment procedures: REACH/JOBS funds are expended for child care as direct vendor payments to providers or as direct payments to participants.

1. Vendor payments: Vendor payments to providers are the primary method for issuing child care payments in REACH/JOBS. Under this method, a voucher is issued to the child care provider. The provider completes the voucher, indicates appropriate attendance code for the child and payment required, and returns it to the agency responsible for issuing payment. Upon verification of the voucher information, the agency issues a REACH/JOBS child care payment to the provider. **The agency shall only issue payment to a child care provider for vouchers which have been received no later than 60 days from the end of the designated service period or from the date of issuance, whichever is later. Failure to submit completed voucher forms for receipt by the county agency within the established timeframe shall result in loss of payment to the child care provider for services claimed on the voucher.**

2.-5. (No change.)

(h)-(j) (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Family Development Program Manual
Submitting Vouchers for Payment
Proposed Amendment: N.J.A.C. 10:86-10.3

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-3.

Proposal Number: PRN 1995-284.

Submit comments by June 14, 1995 to:
Karen Highsmith, Acting Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10:86-10.3(a) establishes a comprehensive policy to ensure that child care providers submit all bills for services rendered in a timely fashion. The proposed new procedure requires all child care providers to submit the completed bills for service delivered to the appropriate county agency within 60 days from the end of the designated service period or 60 days from the date of voucher issuance, whichever is later. The proposed amendment also indicates that the failure of the child care provider to submit the completed voucher forms for receipt by the county agency within the established time frame shall result in a child care provider's loss of payment for the identified service period.

Social Impact

The proposed amendment will help to ensure that program-eligible parents maintain uninterrupted receipt of services from these programs and that payments for services rendered are delivered on a timely basis, since there should be a reduction in the number of outstanding vouchers being submitted for payment beyond the established 60 day period. Additionally, since 60 days following services rendered is a generous period for submitting a bill for service, it is anticipated that the negative impact of implementing the proposed amendment will be minimal. In fact, it is anticipated that once the proposed amendment is implemented, the child care providers who have historically been remiss in submitting timely vouchers for payment will come into compliance.

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Implementation of the proposed amendment will also have a highly significant positive impact on the administration of the Job Opportunity Basic Skills/Family Development Program (JOBS/FDP). Establishing more stringent controls on payment procedures for child care services rendered will both enhance the fiscal integrity of Federal funds allocated to New Jersey and reduce the likelihood of endangering the receipt of continued Federal funding. The proposed amendment shall also lead to the maximum expenditure of funds for the greatest number of allowable families due to the efficient delivery of child care benefits to eligible families.

Economic Impact

It is anticipated that the proposed amendment will assist the county designated agencies and the Division of Family Development in the management of program funds. The proposed amendment will assist the county agencies and this Division to accurately maintain and reconcile fiscal account in the FDP Program to ensure program funds are expended in compliance with Federal rules and regulations regarding Federal fiscal year closeout.

Also, the occurrence of problems often associated with a fiscal system which does not have payment limitations or established timeframes for submitting bills for rendered services will be avoided. Another economic impact which can be associated with the implementation of the proposed amendment is the assurance that all child care service payments will be reconciled efficiently and on a timely basis thus reducing the confusion and miscommunication of information between the county agency, the lead child care agency, parents, and/or child care providers, which may occur regarding the receipt and/or issuance of payments.

While it is difficult to determine an explicit dollar amount in the savings associated with the implementation of the proposed amendment, implementation is expected to greatly increase the efficiency with which the program operates, thereby increasing the quality, quantity and accuracy of services provided by the county designated child care agencies.

Some individual child care providers may oppose the implementation of the proposed amendment because non-compliance on their part will create the potential for a loss of revenue. However, the child care advocacy agencies and families enrolled in the benefit program should be in favor of the proposed amendment since it is expected to greatly increase the efficiency with which the program operates. In addition, the county agencies and the State will also benefit through increased fiscal accountability of program funds.

Executive Order No. 27 Statement

This rule is not subject to any Federal requirements or standards; therefore, a Federal exceedance analysis is not applicable to the rulemaking.

Regulatory Flexibility Analysis

The proposed amendments place billing requirements on child care providers and on county designated agencies to assure that all completed voucher forms are submitted to the county designated agency by the child care provider within 60 days of the end of the service period, or of the date of issuance of the voucher, whichever is later. Three counties, Bergen, Camden and Monmouth, administer their own child care provider programs, and these do not fall within the definition of a small business, as described in the Administrative Procedure Act, N.J.A.C. 52:14B-16 et seq., since they are government agencies. The provider agencies in 16 additional counties are small businesses, designated by the county in which they provide services. All of the child care providers are considered small businesses. The requirements to submit vouchers timely not only benefit the taxpayers of the State of New Jersey, since the program can thereby be administered more efficiently, but benefit those who provide the child care services, who will receive their payments more quickly. The voucher forms are provided by the county agencies to the providers, and any training or assistance needed to complete the forms is also provided. The county agencies are paid to administer the program and will incur no additional costs as a result of these amendments. No professional services are required. Since most of the regulated public can be considered small businesses, and the requirements benefit them, no differentiation has been provided in the amendments.

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

10:86-10.3 Payment/reimbursement procedures

(a) FDP funds are expended for child care as direct vendor payments to providers or as direct payments to participants.

1. Vendor payments to providers are the primary method for issuing child care payments in FDP. Under this method, a voucher is issued to the child care provider. The provider completes the voucher, lists the hours of care and payment required, and returns it to the agency responsible for issuing payment. Upon verification of the voucher information, the agency issues a FDP child care payment to the provider. **The agency shall only issue payment to a child care provider for vouchers which have been received no later than 60 days from the end of the designated service period or from the date of issuance, whichever is later. Failure to submit completed voucher forms for receipt by the county agency within the established timeframe shall result in loss of payment to the child care provider for services claimed on the voucher.**

2.-4. (No change.)

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

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Organization and General Policy Provisions of the Commission for the Blind and Visually Impaired

Proposed Repeal and New Rules: N.J.A.C. 10:91

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: 29 U.S.C. 701 et seq., 34 CFR Parts 74, 76, 77, 78, 79, 80, 361, and 395, N.J.S.A. 30:1-12; 30:6-1 et seq., 52:14B-3(l) et seq.

Proposal Number: PRN 1995-309.

Submit comments by June 14, 1995 to:
Merilyn C. Rosenthal, Esq.
Administrative Practice Officer
Department of Human Services
Office of Legal and Regulatory Liaison
222 South Warren Street
CN 700
Trenton, N.J. 08625

The agency proposal follows:

Summary

The New Jersey Administrative Code at N.J.A.C. 10:91 sets forth the rules describing the organization of the Commission for the Blind and Visually Impaired, hereinafter referred to as the Commission. The Commission was designated by N.J.S.A. 30:6-1 to provide "all means which it deems feasible for ameliorating the condition of the blind and visually impaired within the State."

Pursuant to Executive Order No. 66(1978), these rules will expire on September 4, 1995. The Commission has reviewed the rules set out in N.J.A.C. 10:91 and has decided to propose a repeal of this chapter and to propose new rules concerning the operations and procedures of the Commission, the full text of which appears below, to provide a clear and more concise description of the services rendered by the Commission. The proposed new rules follow more closely the language and intent of recent changes in Federal and State law, regulations and policies governing the Commission's service delivery system. In addition, the proposed new rules are designed, where possible, to simplify the Commission's complex and comprehensive service delivery system. The proposed new rules are also intended to more clearly inform the public of the specific services offered by the Commission and the standards and procedures which govern the delivery of these services. Additionally, the proposed new rules are designed to inform the public of the rights and responsibilities of the Commission and its clients in the provision and receipt of services.

The outline of the current chapter is similar in substantive content to the proposed new rules except that redundant or unnecessary language has been removed from the proposed new rules, along with material determined not to be regulatory in nature. The Commission's revised financial need standard as set forth in the proposed new rules at N.J.A.C. 10:91-3 has been liberalized to permit more eligible clients to receive financial assistance toward part or all of the cost of certain services from the Commission. The proposed new rule at N.J.A.C. 10:91-7.1 also raises

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several of the medical fees paid by the Commission to reflect the increased costs of health care services. Finally, the proposed new rule at N.J.A.C. 10:91-1.10 discusses the composition and functions of the Commission's State Rehabilitation Advisory Council which was recently established pursuant to the Federal law.

A summary of the proposed new rules follows with emphasis on the significant changes that are being made with this proposal.

Full text of the existing rules may be found at N.J.A.C. 10:91.

Proposed N.J.A.C. 10:91-1 describes the organizational structure of the Commission and briefly details the purpose and scope of its four client service programs, as well as the authority which empowers it to carry out these services and to maintain a register of all known blind individuals within the State. The proposed subchapter also includes definitions of key terms peculiar to the Commission, a discussion of the functions of the Commission's consumer advisory boards and its internal client advocate. The proposed new rules change the codification of certain sections of this subchapter in an effort to make the rules more coherent and easier to follow. For example, the definition section, which is currently located at N.J.A.C. 10:91-1.12 is codified in the proposed subchapter at N.J.A.C. 10:91-1.2 and the discussion of the general purpose and scope of services which is now contained in N.J.A.C. 10:91-1.2 is codified in the proposed subchapter at N.J.A.C. 10:91-1.3. Additionally, the proposed subchapter at N.J.A.C. 10:91-1.4 includes a brief description of a recent legislative requirement that local school districts reimburse the Commission for the cost of educational services provided by the agency. A discussion in the existing subchapter at N.J.A.C. 10:91-1.11 concerning requests for legal guardianship of a client has been removed from the proposed subchapter since the appointment of guardians is not within the scope of the Commission's statutory authority. Finally, the proposed subchapter at N.J.A.C. 10:91-1.10 contains a description of the composition and functions of the Commission's new State Rehabilitation Advisory Council which was established pursuant to the 1992 amendments to the Rehabilitation Act of 1973.

Proposed N.J.A.C. 10:91-2 sets forth the standards used by the Commission in determining an individual's eligibility to receive services. The criteria used by the Commission in determining an individual's eligibility for services are substantially the same as those contained in the current rules. However, sections and paragraphs of the proposed subchapter have been consolidated to provide a more coherent description of the eligibility standards that are applicable to each Commission service. Additionally, a new section has been inserted into the proposed subchapter at N.J.A.C. 10:91-2.8 which delineates the notification of ineligibility for educational services which is sent to parents or guardians when a school district does not enter into a Service Provider Agreement with the Commission or fails to comply with the agreement.

Proposed N.J.A.C. 10:91-3 details the financial standard used by the Commission to determine a client's responsibility to pay for certain services, including the exhaustion of any other comparable services before Commission funds will be expended. For those clients who qualify, the Commission will provide the cost of these services. For clients who do not qualify, the standard establishes the level of their responsibility toward the cost of those services. The Financial Survey Form and Financial Participation Worksheet, the documents used to gather and analyze information needed to determine financial eligibility, have been simplified in the proposed subchapter to make it easier to understand and calculate the client's level of financial responsibility. The proposed subchapter replaces the complex formula currently used to calculate client financial participation with a sliding fee scale.

Proposed N.J.A.C. 10:91-4 provides a detailed description of the services offered by the Commission. The proposed subchapter reviews the services which may be provided to New Jersey residents, applicants for Commission services and those individuals determined to be eligible for services. The provision in the current subchapter at N.J.A.C. 10:91-4.2(b) which makes non-vision related medical diagnostic services available to all applicants is not retained in the proposed subchapter since the initial and primary eligibility criteria for the receipt of any Commission service is evidence that an individual has a severe vision problem. Additionally, the proposed subchapter adds a general medical examination and an otological examination to the list of non-vision related diagnostic services at N.J.A.C. 10:91-4.3(c) which may be available to eligible clients for certain financial emergencies, currently set forth at N.J.A.C. 10:91-4.4(i) recodified in the proposed subchapter at N.J.A.C. 10:91-4.3(p).

Proposed N.J.A.C. 10:91-5 outlines the Commission's case management procedures. The proposed subchapter reviews the procedures used by the Commission in responding to requests for services from the referral and intake process through the development of client service plans. In addition to delineating the Commission's policies concerning the purchase of services to meet a client's immediate needs, the referral of clients to community based provider agencies and the release of client records, the proposed subchapter describes Commission procedures for handling specific client problems including communicable diseases, institutional abuse of elderly persons, child abuse or neglect and critical incidents involving clients. The proposed subchapter eliminates the discussion of case assignment and transfer practices which is currently set forth at N.J.A.C. 10:91-5.3 because this section describes internal agency case management procedures which are not regulatory in nature. Additionally, the proposed subchapter reflects the Commission's policy of including a statement on every individualized written rehabilitation program which indicates that choices were provided to the consumer in accordance with the Rehabilitation Act of 1973, as amended in 1992.

Proposed N.J.A.C. 10:91-6 sets forth the appeal rights of clients who have concerns or problems regarding the timeliness of service delivery or the adequacy of services provided by the Commission. The proposed subchapter streamlines and simplifies the appeal process while preserving the appeal rights of aggrieved clients by maintaining essentially the same appeal mechanism currently set forth at N.J.A.C. 10:91-6. The proposed subchapter more clearly defines the levels of administrative appeal available to clients and eliminates unnecessary procedural steps in the appeal process. Additionally, the proposed subchapter provides more appropriate time frames for reviewing an appeal record by extending the deadline for submission of additional documents to the reviewer from two to five days prior to the date of an administrative review and establishing a 20 day period within which the Commission's Executive Director must inform the claimant of the disposition of the matter by registered letter.

Proposed N.J.A.C. 10:91-7 sets forth the Commission's medical fee schedule and discusses factors to be considered by the Commission's medical consultant in reviewing exceptions to the fee schedule and establishing nonlisted fees on a case-by-case basis. The proposed subchapter also reviews the circumstances under which the Commission will or will not pay for the missed medical appointments of clients. Several fees have been raised in the proposed subchapter to reflect increased medical costs.

Social Impact

In fiscal year 1994, the Commission served a total of 10,166 clients. During this period, the Commission provided eye screenings for the early detection of eye conditions to 27,518 individuals and eye health care to 2,170 clients. In addition, the Commission provided educational services to 2,457 blind or visually impaired children, served 2,649 vocational rehabilitation clients and provided independent living services to 4,001 individuals.

The proposed repeal and new rules will benefit the blind and visually impaired by providing them with clear and more concise notice of the services available through the Commission. The proposed new rules will further benefit these individuals by setting forth the application procedures for services and the criteria and standards used by the Commission in determining eligibility for services, client rights and responsibilities and, where applicable, client responsibility in participating in paying for the cost of services. Additionally, the proposed new rules will benefit the blind and visually impaired population by setting forth the standards for protecting their rights and the procedures for appealing any Commission action or inaction. The proposed new rules will benefit the Commission in that the procedures and standards used for the provision of services will be more clearly set forth as rules.

The Commission's four service programs, as reflected in the proposed new rules, benefit blind and visually impaired persons by providing eligible clients with a comprehensive array of services to meet the rehabilitation needs of this population. In fiscal year 1993, 2,663 clients received vocational rehabilitation services from the Commission. During this period, 392 clients were placed in employment. Society benefits from the Commission's services through the agency's promotion of eye health, and by assisting blind and visually impaired individuals to reach their potential for leading independent and productive lives.

Economic Impact

The proposed new rules will have a positive economic impact on eligible Commission clients and medical service providers. Specifically, the financial survey form and the financial participation worksheet have been designed in the proposed new rules to further minimize any burden

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on clients and will permit more clients to qualify for Commission participation toward the cost of certain services while recognizing the agency's severe fiscal constraints. In addition, several fees paid by the Commission to medical service providers have been raised in an effort to meet increased health care costs. There is no additional economic impact associated with the proposed new rules as these rules merely reflect procedures, standards and services which provide rehabilitation benefits for clients of the Commission that were already available under Federal and State laws, rules and policies.

Executive Order No. 27 Statement

The proposed new rules do not exceed any Federal standards or guidelines. The proposed new rules reflect the requirements of the Rehabilitation Act of 1973, as amended in 1992.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because the proposed new rules at N.J.A.C. 10:91-2.4(a) and 7.1(b) impose reporting requirements of medical service providers who may be considered small businesses as the term is defined by N.J.S.A. 52:14B-16 et seq. Specifically, the proposed new rules require eye practitioners to complete eye reports and medical service vendors to provide the client's caseworker with a written report which details the services rendered by the vendor before payment is made. The proposed new rules reflect procedures, standards and services as they apply to and benefit the rehabilitation of blind and visually impaired clients of the Commission. These reporting requirements are necessary in order to determine an individual's eligibility for Commission services, provide appropriate rehabilitation services to eligible clients and ensure the proper expenditure of public funds. The expense is considered minor, involving a minimal amount of time, postage and materials. Since the requirements are both minimal and a necessary part of the evaluation and rehabilitation process, no differentiation based on business size is provided in the proposed rules.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:91.

Full text of the proposed new rules follows:

CHAPTER 91
ORGANIZATION AND GENERAL POLICY PROVISIONS OF THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

SUBCHAPTER 1. PURPOSE AND SCOPE OF COMMISSION SERVICES

10:91-1.1 Administration of the Commission

(a) The Commission for the Blind and Visually Impaired (the Commission) is an integral part of the Department of Human Services.

(b) The Commission's entire service delivery system is vested in one Statewide, four regional, and one satellite offices. The Statewide office provides Statewide vocational and specialized services. Educational, independent living, prevention and vocational rehabilitation services are provided through the regional, and satellite office. The four regions are: Northern, which includes Bergen, Hudson, Morris, Passaic, Sussex and Warren Counties; Metropolitan, which includes Essex, Union and Somerset; Central, which includes Hunterdon, Mercer, Middlesex, Monmouth and Ocean Counties; and Southern, which includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem Counties.

(c) The Commission is coordinated by an Administrative Office, located in Newark, that includes staff headed by an Executive Director appointed by the Commissioner of Human Services. The Administrative Office provides support functions to the statewide, regional, and satellite offices. Some of these functions are policy and procedure development and publication, management and fiscal services, contract and information systems services, monitoring and staff training. Policy and procedural manuals, and all other documents referred to in this chapter shall be available to the public upon request. Such requests shall be made in writing and directed to the attention of the Executive Director, New Jersey Commission for the Blind, 153 Halsey St., P.O. Box 47017, Newark, New Jersey 07101.

(d) The Commission licenses and supervises vending stands at various locations throughout the State, the majority of which are in governmental buildings (see: N.J.A.C. 10:97).

(e) In addition, the Commission operates:

1. The Joseph Kohn Rehabilitation Center;
2. The George F. Meyer Instructional Resource Center; and
3. Camp Marcella, a summer camp for blind and visually impaired children.

10:91-1.2 Definitions

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

"Accommodation" means a process by which a person with a visual impairment uses alternative techniques.

"Active status" means that a person has been found eligible to receive Commission services.

"Adaptive skills" means those skills which will enable a visually impaired person to perform tasks that normally involve the use of the visual sense.

"Ancillary caseworker" means a Commission staff person who is providing services to a client but is not the client's primary caseworker.

"Applicant" means a person who has completed the agency's application for service form, but has not yet been found either eligible or ineligible for placement into active status.

"Best correction" means the optimal visual acuity which a person can attain after their visual functioning is evaluated and corrected by an eye practitioner.

"Blind" see legally blind.

"Client" refers to a person who has been found eligible to receive Commission services.

"Comparable services" means any service or financial assistance for the same services from any other source(s); also known as similar benefits.

"Competitive employment" means a job wherein the person is gainfully employed in an integrated labor market.

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing (see N.J.S.A. 52:14B-2). The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

"Daily living skills" means those skills which a person learns that enables them to perform personal care activities, for example, dressing, washing and shopping.

"Developmentally disabled" means a severe, chronic disability of a person which is attributable to a mental or physical impairment or combination of mental or physical impairment that is manifest before age 22, is likely to continue indefinitely, results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, mobility, self-direction, and capacity for independent living or economic self-sufficiency, and reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and are individually planned and coordinated. Developmentally disabled includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.

"Duly authorized representative" means an individual who is empowered to speak on behalf of another.

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"Eligible" means that a visually impaired person has met the criteria set forth for the services they wish to receive.

"Family income" means gross wages before deductions, pensions, income from property and trusts, disability payments, interest and dividends, public assistance payments, and any other income, not including loans, available to a client or legally responsible person. Dividends or interest from savings or insurance policies are counted as income. Only the actual contributions made to the family unit by siblings or other individuals living in the home are included as income.

"Eye practitioner" means a licensed ophthalmologist or licensed optometrist.

"Field of vision defect" means that the person cannot detect visual stimuli throughout the entire area being observed which normally can be seen without moving the head or eyes. See definition of "legally blind" in this section.

"Homemaker" means a person who performs the major portion of tasks associated with maintaining a home.

"Independent living" means that a person is able to maximize their level of independent and productive functioning in the most appropriate, inclusive and least restrictive setting.

"Intake" means the process by which the Commission gathers information and shares information regarding agency services pursuant to an application.

"Last dollar resource" means that the Commission will execute payment for a service only after all other potential payors have been eliminated.

"Legally blind" means central visual acuity that does not exceed 20/200 in the better eye with best correction or fields of vision that are so limited that the widest diameter of visual field subtends an angle no greater than 20 degrees.

"Legally responsible person" means spouse, parent or children depending on the ages involved (see: N.J.S.A. 44:4-100 et seq.). Where a client over age 18 is supported by a parent or other responsible persons the full financial resources of the parents or legally responsible relatives is counted in establishing family income.

"Low vision" means reduced visual acuity and/or abnormal visual fields which are the result of a disorder in the visual system.

"Non-contested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case.

"Non-immigrant aliens" are individuals admitted for a particular purpose or time period and are expected to return to their home country upon completion of a specific purpose or time period.

"Orientation and mobility services" are techniques designed to teach methods for safe, independent indoor or outdoor travel.

"Preschool" means the period of time between birth and a child's sixth birthday.

"Primary caseworker" means the Commission staff person who coordinates service delivery on behalf of an individual client.

"Referral" means a person, or someone on their behalf, has contacted the Commission seeking services.

"Resident" means a person who is currently living in New Jersey, or for the purpose of vocational rehabilitation, living in the United States and who is either a United States citizen by birth or naturalization or can provide documentation that they have either applied for and/or been granted permanent residence by the Immigration and Naturalization Service.

"Self-employment" means that a person owns and operates their own business.

"Severe field of vision defect" means a field of vision that is limited to an angle of 40 degrees or less.

"Sheltered employment" means that a person is employed within a controlled environment which uses work experience and related services to assist an individual with a disability to achieve a more productive vocational status.

"Substantial impediment to employment" means a physical or mental disability which impedes an individual's performance by preventing the obtaining, retaining, or preparing for employment, consistent with the individual's capacities and disabilities.

"Visual acuity" means the measurement of the ability of the eye to perceive the shape of objects in the direct line of vision and to distinguish detail.

"Visual impairment" means having a condition in which a person has a corrected visual acuity not exceeding 20/70, but not less than 20/200, in the person's better eye, with correction, or in which the peripheral field of the person's vision has contracted so that the diameter of the visual field subtends an angle no greater than 40 degrees but no less than 20 degrees.

10:91-1.3 General purpose and scope of services

(a) The New Jersey Commission for the Blind and Visually Impaired is mandated by a 1910 State law, N.J.S.A. 30:6-1, which states it, "shall provide all means which it deems feasible for ameliorating the condition of the blind and visually impaired."

(b) The Commission defines its mission as assisting individuals with vision problems to reach their potential and promoting eye health by whatever means possible.

(c) The Commission recognizes two major thrusts in carrying out this mission, which are:

1. Providing client services to persons (that is, children and adults) with vision problems; and

2. Advocating on a local, State and national level.

(d) The Commission seeks to provide or insure access to those services which will enable clients to obtain their fullest measure of self-reliance, to improve their quality of life, and to be treated with dignity and worth as individuals and fully included members of their community.

(e) To achieve its mission, the Commission has established the following goals:

1. Independent Living Goal: The Commission shall provide the opportunity to persons (that is, children and adults) who are blind or visually impaired to achieve their maximum level of independence and productive functioning in the most appropriate and inclusive setting.

2. Prevention Goal: Because 50 percent of all blindness and loss of vision can be prevented or minimized, the Commission shall use its resources to publicize, maximize, and coordinate efforts to conduct programs of education and detection to prevent blindness, to retain or restore vision, and to increase public awareness of the causes and treatment of vision loss.

10:91-1.4 Purpose and scope of educational services

(a) The New Jersey Commission for the Blind and Visually Impaired operates a Statewide itinerant services program for eligible children which facilitates their inclusion in the least restrictive, most appropriate, educational setting. These services shall be provided in educational and/or other appropriate setting Depending on individual needs, these services may include, but are not limited to, instruction in appropriate media, the use of specialized equipment and materials, and the use of accommodative techniques. Three Commission Programs are described below:

1. Itinerant Education Services (Reimbursement) for eligible children facilitates their inclusion in the least restrictive, most appropriate, educational setting. For the school aged students, these services are provided in collaboration with local school districts through provider service agreements. The Appropriations Act for the 1994-95 fiscal year directs the State Department of Education to deduct funds from each district's state aid payments and reimburse the Commission for the Blind and Visually Impaired for educational services provided.

2. Services to Infants and Toddlers are specialized vision services provided to children, aged birth-three, who are blind and visually impaired, as well as to their families and community early intervention programs. By law, school districts are not responsible for children under age three.

3. Services to Multi-Handicapped Visually Impaired are specialized vision services provided to school aged children who are visually impaired and significantly multi-handicapped, including mentally retarded, emotionally disturbed, neurologically impaired, orthopedically handicapped, deaf, etc.

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10:91-1.5 Purpose and scope of independent living services

The major objectives of the Commission's independent living services are the provision of services related to the instruction of visually impaired individuals by rehabilitation instructors in techniques for performing activities of daily living; traveling skills by orientation and mobility instructors; and meeting social service needs by social workers. These tasks are included within that group of activities which are a part of one's daily routine, and which permit people to live independently. (See N.J.A.C. 10:93).

10:91-1.6 Purpose and scope of prevention services

(a) The major objective of the Commission's prevention services is to prevent, delay the onset of, correct and/or stabilize the effects of a visual problem.

(b) The Commission includes programs within its prevention services which make available to New Jersey residents free eye screenings or examinations to members of specific target populations, for example, persons with diabetes, preschool children, and children of migrant laborers. (See N.J.A.C. 10:91-4).

(c) The Commission makes available medical casework services to eligible persons in need of vision related medical treatment as well as visually impaired individuals who are in need of either health education (that is, instruction in techniques for self-administration of insulin) and/or low vision services. (See N.J.A.C. 10:91-3).

10:91-1.7 Purpose and scope of vocational rehabilitation (VR) services

(a) The primary goal of the programs included within vocational rehabilitation (VR) services is to assist eligible visually impaired individuals to obtain and maintain suitable employment. Employment includes both wage earner positions (for example, competitive, sheltered, or self employment), as well as homemaking. (See N.J.A.C. 10:95-1.2)

(b) Vocational rehabilitation services may be any services necessary to assist an eligible individual in obtaining his or her vocational goal. (See N.J.A.C. 10:95-1.1(b))

10:91-1.8 Legal authority to provide services

(a) The Commission for the Blind and Visually Impaired operates under State and Federal laws. These include the State legislation which created the Commission and made it a division of the Department of Human Services, as well as the Federal Rehabilitation Act of 1973 as amended, and the Education for All Handicapped Children Act of 1975, as amended.

(b) Pursuant to N.J.S.A. 30:6-1 et seq., the Commission for the Blind and Visually Impaired is legally authorized to:

1. Maintain a register of all the blind within the State;
2. Fund and provide vocational training;
3. Pay for medical and surgical treatment;
4. Study the causes of blindness and undertake prevention programs;
5. Administer a vending stand program;
6. Provide instruction and facilitate least restrictive educational programs for blind and visually impaired children; and
7. Promote the sale and distribution of products made by people who are blind and visually impaired.

(c) The Rehabilitation Act of 1973 (P.L. 93-112), as amended by the Rehabilitation Act Amendments of 1993 (P.L. 103-73), is the Federal statute governing the state administration of Federally funded vocational rehabilitation services.

(d) In the State Plan submitted by the Department of Human Services, the Commission is designated the "sole state agency for the blind" in New Jersey. This designation means that the Commission is the only State agency which is legally authorized to provide vocational rehabilitation services to persons who are blind and visually impaired.

(e) The New Jersey Department of Labor, Division of Vocational Rehabilitation Services (DVRS), and the Commission share the Federal VR Grant annually allotted to New Jersey. The Commission and DVRS have a written agreement pursuant to 34 CFR 361.5. to clarify what agency will be responsible for client services. A copy of the agreement may be obtained by contacting the Commission's Administrative Office at 153 Halsey Street, P.O. Box 47017, Newark, New Jersey 07101.

(f) The Education of All Handicapped Children Act of 1975 (P.L. 94-142), as amended by The Individuals with Disabilities Education Act of 1990 (IDEA) (PL 1010-476), is the Federal statute guaranteeing children with disabilities, ages three through 21, a "free appropriate public education emphasizing special education and related services." The IDEA and its implementing regulation apply to all agencies having direct or delegated authority for the education of children with disabilities regardless of whether they receive funds under the Act. In New Jersey, these agencies include the New Jersey Department of Education, local school districts, State-operated facilities and the Commission.

10:91-1.9 Purpose and scope of the New Jersey blind register

(a) In accordance with N.J.S.A. 30:6-1, the Commission shall maintain a register of all blind and visually impaired persons in the State.

(b) In accordance with N.J.S.A. 30:6-15, the Commission is empowered to make inquiries concerning the causes of blindness and the proportion of cases within the State which is preventable, and to cooperate with the State, the Department of Health and other interested boards, bodies and officials in enforcing proper preventive measures.

10:91-1.10 Composition and functions of the Commission's State Rehabilitation Advisory Council

(a) Pursuant to Section 105 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act of 1993 (P.L. 103-73), the Commission has established a Rehabilitation Advisory Council (RAC).

(b) The functions of the RAC shall be:

1. To review, analyze, and advise the designated State Unit regarding performance of the responsibilities of the unit under Title I of the Rehabilitation Act;
2. Advise the designated State agency and assist in the preparation of, the State plan, the strategic plan and amendments to the plan, reports, needs assessments, and evaluations required under the Rehabilitation Act of 1993;
3. To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with vocational rehabilitation services;
4. Prepare and submit an annual report to the Governor or appropriate State entity and the Commissioner of the Rehabilitation Services Administration on the status of vocational rehabilitation programs operated within the State;
5. Coordinate with other councils within the State, including the Statewide Independent Living Council established under section 705, the advisory panel established under section 613 (a) (12) of the Individuals with Disabilities Education Act (20 U.S.C. 1413 (a) (12)), the State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 300x-4(e));
6. Perform other functions, consistent with the purpose of this title, as the State RAC determines to be appropriate;
7. Hold such hearings and forums as deemed necessary to carry out their duties; and
8. Prepare, in conjunction with the designated State unit, a plan for the provision of such resources, including such staff and other personnel, as may be necessary to carry out the functions of the RAC in accordance with Public Law 102-569 section 126.

(c) The members of the Rehabilitation Advisory Council (RAC) shall be appointed by the Governor. The Governor shall select members after soliciting recommendations from indivudals or organizations representing a broad range of persons with disabilities and organizations interested in services to persons with disabilities.

(d) The composition and terms of office of the Rehabilitation Advisory Council are outlined in section 105(b) of the Rehabilitation Act of 1973 as amended.

(e) The RAC shall convene at least four meetings a year in such places as it determines to be necessary to conduct Council business.

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The meetings, hearings, and forums shall be publicly announced. The meetings shall be open and accessible to the general public unless there is a valid reason for an executive session.

(f) The RAC may use certain funds appropriated under Title I of the Rehabilitation Act of 1973 as amended.

10:91-1.11 Composition and functions of the Commission's consumer advisory boards

(a) At the discretion of the Executive Director, the Commission may establish consumer advisory boards in order to provide consumers and interested persons the opportunity to evaluate, comment upon and impact on services provided by Commission.

(b) The purpose of the consumer advisory boards is to focus on service areas and service delivery that are not mandated to the State Rehabilitation Advisory Council.

(c) The board(s) shall consist of members appointed by the Commission's Executive Director and/or designee. The following persons shall not be eligible for consumer advisory board membership:

1. Commission employees;
2. Paid Commission consultants;
3. Individuals employed by an agency under contract with the Commission; or
4. Indivduals who are related to Commission employees.

(d) Individuals who are related to current board members may serve as ex officio members of the board.

(e) The consumer advisory boards shall:

1. Comply with Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.;
2. Elect a member as chairperson. The chairperson shall be required to meet as necessary with the Executive Director and the chairperson of the State Rehabilitation Advisory Council and report on the activities of the Board;
3. Develop bylaws governing operation of the board; and
4. Meet as needed to conduct the business of the board.

(f) Board duties and responsibilities shall be:

1. To advocate for individuals who are blind and visually impaired;
2. To advise Commission administration with regard to the development and improvement of services for individuals who are blind and visually impaired;
3. To review Commission policy;
4. To comment on State and Federal legislative proposals; and
5. To establish liaison with existing Commission boards, councils and task forces.

10:91-1.12 Purpose and responsibilities of the Commission's consumer service representative

(a) The Commission's consumer service representative shall assist applicants and clients to assure quality and timely services.

(b) The consumer service representative is an advocate who directs blind or visually impaired persons to appropriate Federal, State or local agencies that are mandated to provide services to persons with disabilities.

(c) The consumer services representative can be reached by contacting the Commission's Administrative offices located at 153 Halsey Street, P.O. Box 47017 Newark, NJ 07101.

SUBCHAPTER 2. ELIGIBILITY STANDARDS FOR COMMISSION SERVICES

10:91-2.1 Independent living and prevention services

(a) Individuals shall be eligible for all independent living services if their best corrected vision is 20/70 or less in their better eye.

(b) Individuals who have severe field of vision defects shall be eligible for all independent living and prevention services (see N.J.A.C. 10:91-1.2).

(c) Individuals whose visual acuity is better than 20/70 shall be eligible for services, if they have a problem in one or both eyes requiring surgery or treatment if such surgery or treatment is to prevent vision loss.

(d) Individuals shall be ineligible for non-surgery or treatment related services if their best corrected vision is 20/50-1 to 20/69 in their better eye except with the approval of the regional manager on a case-by-case basis and based upon observation and/or documentation of need for agency services together with ineligibility for comparable benefits.

(e) Independent living/prevention services clients shall meet additional financial criteria as set forth in N.J.A.C. 10:91-3.

10:91-2.2 Educational services

(a) Visual eligibility standards for educational services are as follows:

1. Individuals whose best corrected visual acuity is 20/70 or less in their better eye shall be eligible for educational services.
2. Individuals with severe field of vision defects shall be eligible for educational services (see N.J.A.C. 10:91-1.2).
3. Individuals whose best correction is between 20/50-1 and 20/69 in their better eye shall be ineligible for educational services; however, referral for vocational rehabilitation, independent living and prevention services shall be considered.

(b) Educational services' clients shall also meet the following additional criteria:

1. Be 21 years of age or younger and have not completed secondary school;
2. Meet the residency requirements as set forth in N.J.A.C. 10:91-2.5; and
3. Meet the financial needs standards as outlined in N.J.A.C. 10:91-3.

10:91-2.3 Vocational rehabilitation services

(a) Visual eligibility standards for vocational rehabilitation services are as follows:

1. Individuals whose best corrected vision is 20/70-1 or less in their better eye shall be eligible for vocational rehabilitation services.
2. Individuals with severe field of vision defects shall be eligible for vocational rehabilitation services (see N.J.A.C. 10:91-1.2).
3. Individuals shall be eligible for vocational rehabilitation services if their best corrected vision is better than 20/69 in their better eye, and vision is deteriorating and there is a substantial impediment to employment because of vision dysfunction.

(b) Vocational rehabilitation services' clients shall meet additional criteria pursuant to N.J.A.C. 10:95.

(c) To be eligible for the Vending Facility Program, a person shall meet the definition of legal blindness. (See N.J.A.C. 10:97)

10:91-2.4 Eye reports

(a) Eye reports shall be completed by eye practitioners. The eye report shall include a visual classification, treatment recommendation, and, where appropriate, a report of any follow-up visits, and a post-operative report.

(b) The Commission shall request an eye report when there is evidence that an eye condition is deteriorating and/or if the applicant/client has not received an eye examination within the past year. Where such reports are not readily available, the Commission shall authorize payment for this examination report.

(c) If applicant does not have an eye doctor, the Commission shall provide the applicant with a list of available practitioners.

10:91-2.5 Residency requirements

(a) New Jersey residents who meet visual and other eligibility standards shall be considered for all Commission services. (See N.J.A.C. 10:91-2.1, 2.2 and 2.3).

(b) Residents of other states who meet the visual eligibility standards shall be considered for Commission services while in New Jersey as follows:

1. Orientation and mobility training;
2. Educational services (see N.J.A.C. 10:91-2.2); and
3. Vocational rehabilitation (see N.J.A.C. 10:95)

(c) Resident aliens who meet the visual and other eligibility standards shall be considered for all Commission services.

(d) Non-resident aliens, including people with temporary and student visas, who meet the visual eligibility and other eligibility standards shall be considered for Commission services as follows:

1. Orientation and mobility;
2. Educational services if attending preschool, elementary school or high school; and

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3. Other training and job placement related services shall be provided to foreign students attending college full time if funds are available pursuant to N.J.A.C. 10:95 and if the individual is available to complete an Individualized Written Rehabilitation Plan and the individual is qualified for employment in the U.S.

(e) The Executive Director or his or her designee shall grant exceptions to the Commission's residency requirements for physical restoration in situations where an applicant/client will suffer irreversible damage to their vision if services are not provided.

10:91-2.6 Notification of ineligibility for independent living services

(a) The Commission for the Blind and Visually Impaired shall notify by mail an individual, other than a vision screening participant, who applied or was referred for Commission independent living services whenever such an individual has been found to be ineligible for services (see N.J.A.C. 10:91-2.1). The Commission shall send this notice within two weeks of the determination that he or she does not meet eligibility criteria and cannot receive services.

(b) The ineligibility notice shall state:

1. The basis for the decision;
2. The effective date of the decision; and
3. The methods for appealing the decision.

(c) Appropriate explanations for any case closure shall be included in the case record.

10:91-2.7 Notification of ineligibility for education services

(a) The Commission shall notify by mail the parent or guardian of any child who applied or was referred for Commission education services whenever such child has been found to be ineligible.

(b) In the event that a school district does not enter into a Service Provider Agreement with the Commission, the school district remains responsible for all necessary vision services, including assistive technology services.

1. The parent or guardian will be notified, in writing, that educational services by the Commission cannot be provided.

2. Children closed from educational services because a school district did not comply with the Provider Agreement may be referred for other services (vocational rehabilitation or independent living) within the Commission.

(c) The ineligibility notice shall state:

1. The basis for the decision;
2. The effective date of the decision; and
3. The methods for appealing the decision.

(d) Appropriate explanations for any case closure shall be included in the case record.

10:91-2.8 Ineligibility for vocational rehabilitation services

(a) An individual may be determined ineligible for VR services for any of the following reasons:

1. An individual does not have a visual disability which renders him or her eligible for Commission services;

2. The visual impairment or legal blindness does not result in a substantial impediment to employment; or

3. There is clear and convincing evidence that such individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in accordance with the Rehab Act of 1973 as amended.

(b) The individual shall be notified within two weeks in writing of an ineligibility decision, including the reasons for the decision, the effective date of the decision and the means for expressing any dissatisfaction and seeking remedy, including the procedures for an administrative review and fair hearing (see N.J.A.C. 10:91-6.2). The client shall receive a copy of the certification of ineligibility letter.

(c) Appropriate explanations for any case closure shall be included in the case record.

10:91-2.9 Presumption of eligibility

(a) A person who meets one of the following criteria will be presumed to be eligible for those services described in N.J.A.C. 10:91-4.1 through 4.3:

1. The person is a former client of the Commission who was previously found eligible pursuant to N.J.A.C. 10:91-2.1 through 2.5 and the date on which the person was most recently referred to the Commission is not more than one year after the date on which the person's most recent case was closed;

2. The person is a former client of the Commission who was previously found eligible pursuant to N.J.A.C. 10:91-2.1 through 2.5, and whose eye condition, as reported on the most recent Commission eye report is one which generally remains stable; or

3. The person is a client of another state agency and is being referred to the Commission by that agency's staff person who has documentation from an eye practitioner on file that the person being referred is visually impaired. Such documentation shall be requested by Commission staff within 14 days of receipt of referral.

(b) A person shall not be presumed eligible for those Commission services for which there is a financial needs standard (see N.J.A.C. 10:91-3.1 through 3.3).

(c) If, at any time, a Commission caseworker receives information which suggests a person who has been presumed eligible may not be eligible, then the caseworker will commence a full eligibility determination.

SUBCHAPTER 3. FINANCIAL STANDARD

10:91-3.1 Financial need standard and survey

(a) The financial need standard is a test which shall be used to determine a client's ability to pay for certain services. For those clients who qualify, the Commission shall provide the cost of these services. For clients who do not qualify, the standard establishes the level of their responsibility toward the cost of those services. The Financial Survey Form and the Financial Participation Worksheet are the documents used to gather and analyze information needed to determine financial eligibility. The exception is college tuition assistance where the Commission utilizes the standard forms required by many college applicants for financial aid.

(b) The following concerns the Financial Survey Form:

1. A financial survey form shall be completed for each new and readmitted client at the time of the first authorization for any services subject to financial need. The client supplies the information and the primary caseworker completes the form.

2. Survey forms shall not be mailed to clients for completion.

3. Income may be verified by pay stubs, or check stubs from pensions or benefits. The caseworker may request the previous year's income tax forms to identify any additional income or to verify the number of individuals reported as dependent on family income. Dependent refers to the total number of individuals dependent on family income, consistent with what is reported on IRS income tax forms.

4. A home occupied by a client as a residence is not counted as a resource. Income from property shall be counted after deducting the cost of operation and maintenance from the gross income received.

5. Existing insurance policies shall not be counted as a resource but clients are advised to check to see whether they are eligible for disability payments. Disability payments received shall be counted as income at the time they are received.

6. Personal effects such as personal apparel, jewelry, and household effects shall not be counted as a resource.

7. The client or parents shall be told that the financial survey form and financial participation worksheet shall become part of the client's confidential case record.

8. Client or parent refusal to provide financial information or to sign the financial survey form shall be noted in the client's case record.

9. A copy of the completed survey shall be offered to the client, and mailed if requested.

10. The Financial Survey Form is as follows:

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FINANCIAL SURVEY FORM

1. Client Name and SS# _____
2. Counselor and date _____

ANNUAL FAMILY INCOME:

3. Amount of Gross Pay of Client (Before Deductions) _____
4. Amount of Husband/Father Gross Pay (If applicable) _____
5. Amount of Wife/Mother Gross Pay (If applicable) _____
6. Amount of Guardian and/or other contributing family member Gross Pay _____

In items 7 through 16, list the amount, how often paid and when benefits will cease:

7. Unemployment/Temporary Disability Insurance _____
8. Worker's Compensation _____
9. VA Pension _____
10. Supplemental Security Income _____
11. Social Security Retirement or Disability _____
12. Welfare _____
13. Income from property _____
14. Alimony or child support _____
15. Other income (specify) _____
16. GROSS TOTAL CASH INCOME FROM ALL SOURCES (TOTAL LINES 3-15) _____
17. Total Number of Persons Depending on Family Income, Including Client _____

MEDICAL INSURANCE: (Check appropriate Space) ____ Blue Cross; ____ Blue Shield; ____ Rider J or Major Medical; ____ Medicare—Part A ____ or Part B ____; ____ Medicaid; ____ Other; Specify ____

The information given above is a true statement of my financial condition.

Signature of Client/Guardian _____

A review of the information on this form on the following date(s) indicates that there had not been a substantial change in the client's financial situation:

Date No. 1: _____

Date No. 2: _____

Date No. 3: _____

Date No. 4: _____

(c) The Financial Participation Scale at N.J.A.C. 10:91-3.4(a) establishes the client's level of financial responsibility toward the cost of the service(s) or equipment.

(d) The Financial Participation Worksheet includes the following instructions and calculation:

1. Enter the cost of the services in the space "A" below;
2. Locate the Sliding Fee scale corresponding to the family size and identify the income range into which the annual gross income fits. (See line #16 on the Financial Survey Form);
3. Locate the applicable percentage to the right of that range. Enter that percentage in the space "B" below;
4. Multiply the cost of the services by that percentage; and
5. The result obtained is to be written at "C" below. This is the amount of the consumer's financial participation in the acquisition of the services.

A. _____ X B. _____ = C. _____.
Cost of Services — Applicable percentage — Amount of Consumer's Participation

ANNUAL FINANCIAL CONTRIBUTION ARRANGEMENT: (See N.J.A.C. 10:91-3.4)

10:91-3.2 Financial need standard applied to independent living/prevention and education services

(a) The following table indicates the application of the financial need standard to prevention/independent living and education clients pursuant to N.J.A.C. 10:91-3.1:

Purchase of:	Independent Living/ Prevention Services	Education Services
Maintenance	yes	not applicable
Training Equipment	yes	yes*
Homemaking: Daily Living Aids	yes	yes*
Optical or Accessory Low Vision Aids	yes	yes*
Projection or Electronic Low Vision Aids	yes	yes
Transportation	yes (except when provided for evaluation purposes)	yes (except when provided for evaluation purposes)
Hospitalization	yes	yes
Surgery and Treatment	yes	yes
Mental Restoration Services	yes	yes
Diagnostic Evaluations	no	no
Prosthetics	yes	yes
Eye Glasses and Lenses	yes	yes
Textbooks and Materials	not applicable	no
Other Training and Job Placement Related Services	not applicable	not applicable

*except when provided by the Meyer Center

10:91-3.3 Financial need standard applied to vocational rehabilitation services

VR services subject to the needs test standards are identified in N.J.A.C. 10:95.

10:91-3.4 Financial participation by clients

(a) Participation by a client in the cost of services subject to financial need shall be required up to the calculated participation amount as follows:

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FINANCIAL PARTICIPATION SCALE

This schedule establishes the client's level of responsibility (%) towards the cost of the service or equipment, etc.

Family Size: ONE

Family Income		%
0	$15,000	0%
$15,001	25,000	2%
25,001	35,000	7%
35,001	40,000	10%
40,001	45,000	20%
45,001	50,000	30%
50,001	55,000	40%
55,001	60,000	50%
60,001	65,000	60%
65,001	70,000	70%
70,001	75,000	80%
75,001	85,000	90%
85,001	Above	100%

Family Size: TWO

Family Income		%
0	$20,000	0%
$20,001	30,000	2%
30,001	40,000	7%
40,001	47,000	10%
47,001	53,000	30%
53,001	60,000	40%
60,001	65,000	50%
65,001	70,000	60%
70,001	80,000	70%
80,001	85,000	80%
85,001	90,000	90%
90,001	Above	100%

Family Size: THREE

Family Income		%
0	$25,000	0%
$25,001	38,000	2%
38,001	45,000	7%
45,001	50,000	10%
50,001	55,000	20%
55,001	60,000	30%
60,001	65,000	40%
65,001	70,000	50%
70,001	75,000	60%
75,001	80,000	70%
80,001	85,000	80%
85,001	90,000	90%
90,001	Above	100%

Family Size: FOUR

Family Income		%
0	$30,000	0%
$30,001	40,000	3%
40,001	50,000	7%
50,001	60,000	15%
60,001	70,000	35%
70,001	80,000	55%
80,001	90,000	75%
90,001	95,000	95%
95,001	Above	100%

Family Size: FIVE

Family Income		%
0	$ 35,000	0%
$ 35,001	45,000	3%
45,001	50,000	7%
50,001	60,000	10%
60,001	70,000	30%
70,001	80,000	45%
80,001	90,000	65%
90,001	100,000	95%
100,001	Above	100%

Family Size: SIX

Family Income		%
0	$ 40,000	0%
$ 40,001	55,000	3%
55,001	65,000	10%
65,001	80,000	30%
80,001	95,000	50%
95,001	115,000	75%
115,001	Above	100%

Family Size: SEVEN OR MORE

Family Income		%
0	$ 60,000 (Or More)	0%

(b) The client's financial participation amount shall be applied to services authorized in the one year period from the date on which the financial participation amount was determined, except for instances in which there is a change in income or resources during that period of time.

(c) The client and the primary caseworker shall mutually agree upon the financial participation arrangement, which shall be documented in the case file. Payments by the client shall be made directly to the vendor. Clients shall be expected to participate up to the calculated participation amounts as first dollar payments.

(d) The Financial Needs Survey shall be reviewed annually.

10:91-3.5 Commission as last dollar resource

(a) Commission funds shall not be used until all other sources (comparable services) have been exhausted.

1. All applicants/clients shall be required to use or apply for comparable services for which they are eligible to cover, in whole or in part, the cost of services unless this will cause a significant delay in the provision of services.

SUBCHAPTER 4. DESCRIPTION OF SERVICES

10:91-4.1 Services available to New Jersey residents

(a) The following services are available to all New Jersey residents:

1. The regional offices shall provide outreach, information/referral services and process applications for anyone contacting the Commission's toll free number (1-800-962-1233), or by any customary means of communication.

2. The diabetic eye disease detection program promotes the early detection and monitoring of retinal and other ocular changes in known diabetics.

3. The pre-school vision screening program provides visual acuity and muscle imbalance screening to preschool and kindergarten children, to detect symptoms of amblyopia and other eye conditions that may cause visual impairment or loss.

4. The glaucoma detection program provides follow-up for glaucoma suspects and others individually referred from screening.

5. The mobile eye examination program provides eye examinations to individuals for whom eye care is unavailable or available on a limited basis at sites such as housing projects, senior citizens centers, nursing homes, institutions, and community based programs.

6. The migrant eye examination program provides eye examinations and follow-up service to children of migrant laborers who are attending school.

10:91-4.2 Services available to applicants

(a) Referral to vision related diagnostic services is available to applicants as follows:

1. An ophthalmological exam, that is, an initial vision evaluation performed by an ophthalmologist including provision of a report which contains the physician's definitive diagnosis, prognosis, recommendations and classification;

2. An optometric exam, that is, an initial vision evaluation performed by an optometrist including provision of a report and classification; or

3. Evaluation by other vision specialists, such as, an examination by a corneal specialist, neurophthalmologist, retinal specialist, or pediatric ophthalmologist.

(b) Additional assessment and/or referral services may be provided to applicants for whom a caseworker determines there is a health and safety issue. These assessment services may include, but are not limited to:

1. A daily living skills evaluation, that is, a written assessment relative to a client's ability to perform personal management tasks (for example, grooming, cooking);

2. An orientation and mobility evaluation, that is, an assessment whose outcome is a written report which delineates strengths, weaknesses and needs relative to a client's ability to establish position in and relationship to objects in the environment and to move from one location to another;

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3. An eye health skills evaluation, that is, a written assessment relative to a client's ability to secure or carry out the appropriate treatment for an eye condition; or

4. An evaluation by a social worker, that is, a written assessment relative to housing, health care, nutrition, adequate income, family and social supports.

(c) Additional services which ensure the provision of diagnostic and evaluation services as specified in (a) and (b) above are available to applicants as follows:

1. Transportation, that is, expenditures for transporting clients, and their escorts or attendants, if necessary, incidental to the provision of diagnostic services, including costs of travel and subsistence (or per diem allowance in lieu of subsistence) while in transit; and

2. Other related costs, that is, payment for food or shelter incidental to the provision of diagnostic services.

(d) All services specified in (a) through (c) above are subject to the provisions for comparable services as indicated in N.J.A.C. 10:91-3.5.

10:91-4.3 Services available to all eligible clients

(a) Once a determination of visual eligibility has been made by the Commission, the client may receive appropriate services as specified in (a)1 through 15 below. These services may require additional eligibility standards as identified in N.J.A.C. 10:95, 10:95 and 10:97.

1. Vision related diagnostics as follows:

i. A low vision exam, that is, an evaluation which has as its objective a prescription of low vision aids and instruction/training programs to enhance the visual performance of clients with low vision.

ii. Vision related diagnostic procedures, such as, ultrasound of the eye (biometry), fluorescein and angiogram, electroretinogram (ERG), endothelial cell count, fundus photography, visually-evoked response.

iii. Evaluation by other vision specialist (see N.J.A.C. 10:91-4.2(a)3);

2. Non-vision related diagnostics as follows:

i. A general medical examination, that is, an examination performed by an internist, pediatrician or family practitioner with the objective of determining general health status.

ii. An otological exam, that is, an evaluation performed by an otologist which includes a hearing evaluation, detection of abnormalities of the ear canal or ear drum, recommendations for medical/surgical treatment and/or a hearing aid evaluation.

iii. Audiological exam, that is, an audiogram (hearing test) performed by an audiologist.

iv. A psychiatric evaluation, that is, an initial examination provided by a psychiatrist in a face-to-face interview which includes a comprehensive history and evaluation of pertinent diagnostic information necessary to arrive at a diagnosis and treatment plan and recommendation for treatment or further diagnostic studies or consultation.

v. A psychological evaluation that is, an assessment provided by a psychologist which may include the following areas as needed: auditory, visual and visual motor, language, gross motor, personality and adjustment.

3. Skills assessment at the Joseph Kohn Rehabilitation Center in a program of assessment and instruction in areas such as, but not limited to, personal communication, orientation and mobility, arts and crafts, and home and personal management and/or vocational assessment as appropriate;

4. Vision related restorative treatment, which services include those listed in N.J.A.C. 10:91-7.1;

5. Non-vision related restorative treatment services (short term) by a psychiatrist, or other psychotherapist (see N.J.A.C. 10:95-4.3(e), (f), (g));

6. Provision of prosthetics and aids including those for near and distance tasks, closed circuit TV's standard and bifocal eye glasses;

7. Provision of training materials or equipment including orientation and mobility aids, activities of daily living aids and health aids designed to help a blind person accommodate to vision loss when performing health maintenance tasks;

8. Skills acquisition instruction including communication skills, use and care of low vision aids, use of adaptive and specialized aids and devices, techniques for accomplishing activities of daily living including home and personal management, orientation and mobility techniques, method of caring for the eyes and use of residual vision;

9. Transportation, services related to transporting a client, and escorts or attendants as necessary, related to the provision of eligible services, including costs of travel and subsistence while in transit;

10. Room and board expenses in conjunction with attendance at the Joseph Kohn Rehabilitation Center or community based programs;

11. Other maintenance costs, that is, food, shelter, rent, clothing and other subsistence expenses not included within room and board payments;

12. Services to families which facilitate the achievement of the client's service goals. These services may include: psychiatric, psychological or counseling services, training/instructional services, medical consultation and/or child care;

13. Commission contracted programs which meet the special needs of Commission clients (see N.J.A.C. 10:91-5.6);

14. Special services requests as follows:

i. Persons who are not legally blind, but whose best corrected visual acuity is less than 20/50-1, shall be eligible for issuance of a State of New Jersey Division of Motor Vehicles identification card.

ii. The Commission for the Blind and Visually Impaired, in coordination with other New Jersey State agencies, provides certain special services to those of its clients who are legally blind. These services may include:

(1) Division of Motor Vehicles identification card;
(2) Fishing license;
(3) Income tax certification letter;
(4) Transit Reduced Fare Program:
(5) Guide transportation pass;
(6) Theater identification card;
(7) Park, forest, or reservation (free) admission pass;
(8) Handicapped parking placard; and/or
(9) Telephone directory assistance 411 charge exemption

15. Client Assistance Fund:

i. The Client Assistance Fund shall be available to assist clients of the Commission in meeting certain financial emergencies. A caseworker shall request money from the Client Assistance Fund only when there are no other financial resources available to the client.

ii. Types of allocations (loans or grants) are as follows:

(1) Monies from the Client Assistance Fund shall be provided to clients on a loan basis. Exact payment terms and any other relevant terms shall be stipulated to the client orally and in writing before the funds are issued. The client shall sign a standard promissory note which specifies the terms of the loan agreement.

(2) Client assistance funds not allocated specifically as loans shall be disbursed as grants. Repayment of grants shall not be required.

10:91-4.4 Additional services available to eligible clients

(a) In addition to services specified in N.J.A.C. 10:91-4.1 through 4.3, services may be made available to eligible clients as described in 1 and 2 below and are subject to comparable service provisions.

1. Children's services as follows:

i. Functional vision evaluation;

ii. Summer camp experience for children with a visual disability;

iii. Educational aids, that is, materials and/or adaptive devices on loan from the Meyer Center shall be provided to children birth to three;

iv. Educational aids on loan from the Meyer Center for children ages three to 21 shall be provided subject to contract with local school district;

v. Tuition payment:

(1) Nursery schools; and
(2) Specialized summer programs;

vi. Physical education/recreation consultation; and

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vii. Reader service, which is payment to a person who reads printed material to and/or writes what is dictated by the client.

2. Prevention services are as follows:

i. Other vision related medical services:

(1) Initial payment for prescribed medications, or supplies which are incident to the restorative services;

(2) Payment for "same day surgery" for clients who are admitted to the hospital as patients; and/or

(3) Out-patient hospitalization, that is, payment for hospital care which is provided to a client who has not been admitted to the hospital facilities at which the treatment occurs.

SUBCHAPTER 5. CASE MANAGEMENT PRACTICES

10:91-5.1 Referral procedures

(a) Referrals shall be accepted from a variety of sources in either written or electronic media, including telephone.

(b) Referrals will be contacted within 10 working days from the date of initial referral to the Commission.

(c) All emergency calls shall be responded to immediately.

(d) Referrals may use the toll-free number (1-800-962-1233) available to callers throughout the State.

10:91-5.2 Intake procedures

(a) The purpose of the intake interview shall be:

1. To gain an initial assessment of the applicant's total needs;

2. To familiarize the applicant with Commission services;

3. To respond to the applicant's most immediate or emergency needs;

4. To determine whether eligibility should be pursued; and

5. To initiate together with the applicant, the development of a comprehensive service plan.

(b) The applicant survey is completed during the intake interview by the casworker. After completion, the caseworker and the applicant, or his or her parent or guardian, shall sign the survey. The completed survey becomes a part of the applicant case record.

10:91-5.3 Individual Client Service Plans

(a) The client and primary caseworker shall discuss and agree to an Individual Client Service Plan (ISP) which addresses the client's needs. Vocational rehabilitation (VR) clients have an alternate plan called the Individualized Written Rehabilitation Program (IWRP) which is developed once eligibility for VR services has been determined (see N.J.A.C. 10:95-1.1(c)). Both the client and caseworker shall sign the ISP or IWRP.

(b) A statement indicating that choices were provided to the consumer will be included on every IWRP. This statement will be developed by the consumer, the parent or guardian, and the rehabilitation counselor, prior to the signature on the IWRP.

(c) The ISP shall be completed as soon as possible after the applicant survey. The ISP should include the type of services to be provided, the timeframes for their completion and the applicant's comments, if any.

(d) The ISP or IWRP shall be reviewed with the client at a meeting on an annual basis. Revision of the ISP or IWRP may be necessary due to change in a client's goals or objectives, change in a client's condition and/or situation, progress, achievement of objectives, newly identified problems or needs, or unobtainable objectives. For VR clients, an amendment to the IWRP shall be written.

(e) At case closure, the current ISP or IWRP shall be annotated to reflect which objectives were or were not achieved.

10:91-5.4 Purchase of services; immediate need situations

(a) Payment for purchase of services for clients may be made by the Commission when requested, approved and allocated from the Commission funds.

(b) Client financial participation toward the expense of Commission purchased services shall be based on the level of responsibility set forth in detail in the financial need standard and survey (see N.J.A.C. 10:91-3).

(c) The Commission has established an alternate method to purchase services to meet immediate needs. Rapid payment allows the payment for a service within 48 hours.

10:91-5.5 Referral to provider agencies

(a) The Commission shall administer community based programs through contracts with provider agencies to meet the needs of Commission clients.

(b) Clients shall be referred to a provider agency for the purpose of achieving specific objectives or goals. Information concerning a client shall be released to the provider agency, as needed, in accordance with 10:91-5.6.

(c) All provider agencies shall submit a monthly report to the Commission, the contents of which shall be specified by contract.

10:91-5.6 Release of information and access to records

(a) Client information shall not be released without the written consent of Commission clients or their parents or guardians, or an order of a court of competent jurisdiction.

(b) A client and/or parent or guardian may authorize the release of confidential information and medical records to or from the Commission by signing a consent to release information form. This form shall specify the sending and receiving party, the purpose for which the release is required, and the date of the release.

(c) Client information shall only be released to an organization, agency, or individual engaged in audit, evaluation, or research when the organization, agency, or individual assures that:

1. The information will be used only for the purposes for which it is being provided;

2. The information will be released only to persons officially connected with the audit, evaluation or research; and

3. The information will be managed to safeguard confidentiality.

(d) A Commission client over the age of 18, or a parent or guardian of a client under the age of 18, shall have access to and/or copy of his or her own records.

(e) Access to a client's records shall be provided upon the Commission receiving a written request from a client or his or her duly authorized representative.

(f) Clients or their representatives shall be charged the fees, pursuant to N.J.S.A. 47:1A-1 et seq., for photocopying materials from the client's case records.

(g) Reader services shall be provided if the client requires them in order to review his or her case record.

10:91-5.7 Communicable diseases of Commission clients

(a) Upon learning of a client's communicable disease, a supervisor shall consult with the Commission's Administrative Medical Consultant as to what necessary precautions should be implemented and shall arrange for alternative services to a client where appropriate.

1. The Commission shall notify the client or his or her guardian in writing of established alternative service arrangements and the reasons for such action. The caseworker shall be responsible for the implementation of the alternative service plan.

(b) The Commission shall, in all respects, comply with statutory and regulatory requirements concerning reporting of communicable diseases (see N.J.A.C. 8:57-1).

10:91-5.8 Reporting institutional abuse of elderly persons

Reporting of institutional abuse of elderly persons shall be undertaken pursuant to N.J.S.A. 52:27G-1 et seq. and N.J.A.C. 5:100.

10:91-5.9 Reporting suspected child abuse or neglect

Reporting of suspected child abuse or neglect shall be undertaken pursuant to N.J.S.A. 9:60-8.8 et seq. and N.J.A.C. 10:129.

10:91-5.10 Critical incidents involving clients

(a) A critical incident means the occurrence of serious accidental injuries to clients or suspected offenses involving injury to clients or their property. Such incidents may include professional medical treatment, loss of consciousness or restriction of activity or motion.

(b) Incidents shall be verbally reported immediately to the Commission's Executive Director or designee. This initial verbal notification, which is to be followed by a written report within 24 hours, shall be the responsibility of the Commission staff person who first learns of the occurrence of a critical incident, or his or her supervisor or manager and shall include:

1. The names and relationships of the persons involved;

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2. The time, date and location of the incident;
3. A description of what occurred; and
4. The steps taken or to be taken to deal with the situation.

(c) All critical incidents shall be reported immediately by the Commission to the Commissioner of the Department of Human Services and the Office of Public Information.

SUBCHAPTER 6. CLIENT APPEAL RIGHTS

10:91-6.1 Recording of concerns by clients

Clients of the Commission for the Blind and Visually Impaired, their parents, guardians, advocates or legal representative may record their concerns or problems regarding the timeliness of delivery of services or the adequacy of service by contacting their caseworker, their caseworker's supervisor or, in their absence, the office manager. The client also has the option of recording their concerns or problems with the Commission's Client Service Representative (see N.J.A.C. 10:91-1.12). Clients requesting an administrative appeal of their case may also do this through the Client Service Representative (see N.J.A.C. 10:91-6.2).

10:91-6.2 Administrative review

(a) A client/applicant (claimant) or his or her parent or guardian shall have the right to request an administrative review after all informal means of dispute resolution have been unsuccessful. The claimant may initiate an Administrative Review Request by notifying the caseworker or the client service representative (see N.J.A.C. 10:91-1.12). The claimant shall indicate which type of administrative investigation is requested:

1. A review of the client's file; or
2. An in-person review in which all relevant parties participate.

(b) Upon receipt of a request for an administrative review, the Executive Director shall assign a supervisory employee to conduct the administrative review. Neither the reviewer assigned this task nor his or her immediate supervisor shall have had any direct part in the dispute under review. The assigned reviewer shall have experience and knowledge of the client's program area.

(c) The appeal reviewer shall complete the administrative review within 30 working days of the client's request. This time limitation applies to both types of administrative review.

(d) When the claimant requests an administrative review of the case record, the reviewer shall conduct an interview with the claimant, and other involved individuals as needed.

(e) When the claimant has requested an in-person administrative review the reviewer shall communicate with him or her to arrange a mutually convenient day, time and place. The reviewer will function as chairperson. If the client is unable to arrange for transportation to be present at the review, the Commission will make arrangements to provide transportation and reasonable accommodations.

(f) The claimant, during an in-person administrative review, will be permitted:

1. To represent himself or herself or to be represented by an attorney or another individual; and
2. To submit additional documents; however, such documents shall be provided to the appeal investigator at least five working days prior to the date of the appeal investigation.

(g) A claimant who wishes to represent himself or herself shall be 18 years of age or older.

(h) A claimant who wishes to be represented by counsel shall assume full responsibility for the selection of an attorney and for all legal costs incurred. A claimant who cannot afford a private attorney will be referred to a local legal services office or to the NJ Protection and Advocacy, Inc. Commission claimants who are also vocational rehabilitation services clients shall be advised of the opportunity to receive assistance from the Client Assistance Program (CAP). The CAP may be reached by telephone at 1-800-922-7233.

(i) All correspondence with a claimant will be in a medium accessible to the claimant.

(j) Within 25 working days of completing an administrative review, the reviewer shall submit a written report of findings and recommendations to the Executive Director.

(k) The Executive Director, upon reviewing the report of the investigation, will inform by registered letter, within 20 days, the claimant, parent or guardian whether the matter will be disposed of pursuant to (m) or (n) below.

(l) The claimant, parent or guardian has the right to request an administrative hearing before an administrative law judge if they disagree with the recommended decision. A request for hearing by an Administrative Law Judge shall be in writing by registered mail from the claimant, parent or guardian to the Executive Director.

(m) If the Executive Director determines that the administrative appeal represents a contested case (see N.J.A.C. 10:91-1.2), the matter is immediately forwarded to the Office of Administrative Law pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Executive Director will advise the claimant, parent or guardian of this action by registered letter.

(n) If the Executive Director determines that the administrative appeal represents a non-contested case (see N.J.A.C. 10:91-1.2), then the Executive Director shall issue a final decision and forward this decision by registered letter to the claimant, parent or guardian. The letter will contain a statement that any further appeal of this decision shall be made to the Appellate Division of the Superior Court of New Jersey.

(o) Following an administrative hearing of a contested case by an administrative law judge (ALJ), the ALJ renders a recommended decision that may be adopted, modified or rejected by the Executive Director, who by law is empowered to make a final decision in such matter. However, if the Executive Director does not so act in 45 days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10. The Executive Director shall advise the claimant, parent or guardian of the final decision and the reason for the decision, by registered letter.

SUBCHAPTER 7. MEDICAL POLICIES AND FEE SCHEDULES

10:91-7.1 Fee schedule

(a) All services shall be provided with prior authorization from the Commission.

(b) The vendor shall provide to the client's caseworker a written report which details the services rendered by the vendor before payment is made.

(c) The Commission's Medical Consultant shall review exceptions to the Commission's medical fee schedule and establish non-listed fees on a case-by-case basis. In determining exceptions to the Commission's fee schedule the Medical Consultant shall consider factors such as, but not limited to:

1. The availability of a specific service within a client's geographic area; and
2. The uniqueness of the required medical procedure.

(d) The Commission's medical fee schedule follows:

1. General examinations:

General vision exam to determine classification including evaluation to determine need for field test	$ 50.00
Follow-up treatment examination up to four each	25.00
Exam under anesthesia	200.00
General medical examination includes	
for medical exam and report	50.00
for urinalysis	5.00
and for hemoglobin test	5.00
In-hospital pre-operative medical examination or consultation	60.00
In-hospital follow-up visits up to five each	30.00
Out of hospital pre-operative medical examination or consultation	60.00
Otological examination, including audiogram	85.00
Audiogram only	25.00
Hearing aid evaluation	60.00

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Tympanogram	5.00
Dental examination with full mouth X-rays	45.00
Neurological evaluation	100.00
Physical therapy per session, as approved by administrative medical consultant	55.00
Psychiatric, psychological or other psychotherapeutic evaluation, three sessions, each up to	100.00
Individual therapy, one hour	100.00
Speech therapy, per session	55.00

2. Vision related consultative specialty examinations:

Corneal examination	60.00
Glaucoma examination and report	60.00
Hereditary evaluation	60.00
Low vision exam for clients whose most recent eye report is one year old or less	100.00
Low vision exam for clients whose most recent eye report is over one year old	125.00
Up to three low vision exam follow-up visits which occur within four months of the date of the initial low vision exam, each	25.00
Low vision exam follow-up visit to fit fresnel prisms	22.00
Motility examination	60.00
Neuro-ophthalmological examination	130.00
Neuro-ophthalmological follow-up exam, up to three allowed	30.00 each
In-hospital consultations, first consultation with detailed report	130.00
Each succeeding day	30.00
Oculo-plastic examination	60.00
Ocular trauma examination	60.00
Orthoptic evaluation	40.00
Orthoptic follow-up exam	25.00 each
Orthoptic therapy, each session	20.00
Out of hospital pre-operative ophthalmic examination or consult	45.00
Pediatric ophthalmological examination	60.00
Pleoptic evaluation	40.00
Pleoptic therapy, each session	20.00
Retinal examination	60.00
Uveitis, tumor evaluation	60.00
Uveitis evaluation follow-up	25.00

3. Specialized eye procedures:

Eyelids:	
Excision of cyst	73.00
Chalazion (multiple $156.00)	80.00
Lesion (tumor)	150.00
Plastic repair of lid laceration:	
Without graft	185.00
With graft	370.00
Surgical correction of entropion or ectropion	345.00
Ptosis surgical repair	I.C.*
Extensive plastic repair of lids and orbits	I.C.*
Incision and drainage of abscess	75.00
Canthotomy	200.00
Canthoplasty	515.00
Excision of xanthoma:	
Unilateral	160.00
Bilateral	320.00
Tarsorrhaphy	200.00
Canthorrhaphy	300.00
Punctal Occlusion	160.00
Punctal occlusion, bilateral	320.00

*Individual evaluation by the Commission.

4. Conjunctiva:

Incision and removal of foreign body:	
Surface	35.00
Imbedded	50.00
Excision—lesion of conjunctiva:	
Biopsy	50.00
Excision of cyst or nevus	80.00
Excision of pterygium	200.00
Repair:	
Conjunctivoplasty with free graft:	
Conjunctival graft	375.00
Buccal mucosa membrane graft	425.00
Suture laceration	50.00

5. Glaucoma procedures:

Goniotomy	280.00
Peripheral iridectomy, laser or surgical	330.00
Filter operation of any kind	400.00
Iridotomy by stab incision for iris bombe	200.00
Laser iridotomy	345.00
Cyclo diathermy	230.00
Cyclo dialysis	370.00
Cyclo cyro therapy	240.00
Argon laser or surgical trabeculectomy	400.00
Shunt to extraocular reservoir	945.00

6. Cornea:

Keratotomy:	
Removal of foreign body from surface	35.00
Embedded in Cornea	60.00
Keratectomy	240.00
Keratoplasty (corneal transplant)	915.00
Radial keratotomy (as approved by Administrative Medical Consultant)	635.00
Epikeratophakia	635.00
Removal of foreign body anterior chamber	370.00
Delimiting keratotomy	95.00
Cauterization or cryotherapy of lesion of cornea	50.00

7. Crystalline lens:

Cataract extraction by phaco	615.00
Cataract extraction with intraocular lens insertion	915.00
Cost of intraocular lens	370.00
Secondary lens implant	615.00
Discission of lens, surgical	300.00
YAG laser posterior capsulotomy	300.00
Removal of intraocular lens	630.00

8. Eyeball:

Excision:	
Enucleation or evisceration	330.00
With non movable implant	330.00
With movable implant	375.00
Suture for wound or injury:	
Non-perforating	630.00
Perforating	630.00

9. Retina and vitreous:

Scleral buckling	1,500.00
Repair retinal detachment without buckle	1,124.00
Sealing of retinal tear by argon laser coagulation	630.00
Focal/Argon or krypton photo-coagulation for Rx of diabetic retinopathy unilateral:	
Unilateral, initial treatment	290.00
Up to three additional treatments (each)	190.00
Pan retinal photo-coagulation for vein occlusion, initial treatment	290.00
One additional treatment	190.00
Pan retinal photo-coagulation for diabetic retinopathy	
initial treatment	290.00
Up to two additional treatments (each)	190.00
Vitrectomy pars plana approach with or without lensectomy	1,035.00
Cryoablation of retina (blind eye)	240.00
Gas fluid exchange	250.00
Endophotocoagulation	250.00

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10. Orbit:
Plastic repair of orbit:

Fracture of floor	655.00
Orbitotomy	375.00
Removal of intra-orbital foreign body	425.00
Orbitotomy (kroenlein) as in exophthalmos	750.00

11. Ocular Muscles:
Strabismus Surgery:

One muscle	425.00
Two muscles, one or both eyes	470.00
Three or more muscles, one or both eyes	525.00

12. Lacrimal procedures:

Dacryocystorhinostomy	1,000.00
Dacryocystectomy	375.00
Incision and drainage of lacrimal sac or lacrimal gland abscess	80.00
Plastic repair of torn canaliculi	415.00
Probing of naso-lacrimal duct	30.00
Subsequent (Max 4)	20.00
Probing of duct with tube insertion	150.00

13. X-ray:

Skull—less than four views with or without stereo	25.00
Skull—complete, four views	45.00
Chest—single view	45.00
Interpretation	15.00
Chest two views or stereo	30.00
Interpretation of chest—two views or stereo	15.00
Chest—three views	40.00
Chest—four views	45.00
GI series—upper gastrointestinal tract	95.00
CAT computerized tomography	200.00
Interpretation of CAT Scan	45.00
Magnetic Resonance Imaging (MRI) of skull, including interpretation	500.00

14. Special clinical tests:

ECG, EKG, Electrocardiogram	25.00
ECG, EKG interpretation	15.00
ERG electro retinogram	55.00
VER electro encephalogram	55.00
Cardiovascular stress test	85.00
Electroencephalogram	55.00
Microscopic pathological evaluation of cataract after extraction	5.00

15. Laboratory tests:

Bun, Urea	7.00
CBC (complete blood count)	7.00
Creatinine	7.00
Blood sugar	7.00
Hemoglobin	6.00
Serology	7.00
Urine	6.00
SMA 12	60.00
Prothrombin (bleeding time)	6.00
PTT (partial thromboplastin time)	7.00
Pre-operative pre-admission testing, including chest x-ray, EKG, SMA 12 and urinalysis	130.00

16. Price list for eyeglasses:
Eyeglasses complete with frames prescribed as a result of a general vision examination, no dispensing fee:

Single vision—distance or reading, spherical, hyperopia (+) or myopia (–)	60.00
Single vision—distance or reading, sphero-cylindrical, astigmatism in addition to hyperopia or myopia	70.00
Spherical bifocals, corrects both distance and reading	80.00
If bifocal "add" greater than + 3.00	95.00
Sphero-cylindrical bifocals (same as spherical bifocals, except also corrects for astigmatism)	85.00
If bifocal "add" greater than + 3.00	100.00
Single vision spherical cataract glass	100.00
Single vision sphero-cylindrical cataract glass	140.00
Bifocal—spherical cataract glass	140.00
Bifocal—sphero-cylindrical cataract glass	150.00
Welsh 4 Drop or OSI cataract glass	180.00
Corning CPF UV lens	205.00

(Commission low vision consultants suggest that the examining doctor consider prescribing less expensive alternatives to these Corning lenses, that is, Younger PLS 530, 540 and 550)

17. Eyeglasses prescribed as a result of a low vision evaluation:
For the first or only pair made, the Commission will pay invoice costs for lenses and frames including a $25.00 dispensing fee. A copy of the actual invoice shall be submitted for lenses and frames.
For each additional pair provided at the same time as the initial pair, the Commission will pay invoice costs and a $12.50 dispensing fee. A copy of the actual invoice shall be submitted for lenses and frames.

18. Eyeglass mounted bioptics or clip-on low vision aids or custom made eyeglasses:
The Commission will pay invoice costs for lenses and frames and a $50.00 dispensing fee. A copy of the actual invoice shall be submitted for lenses and frames.

19. Hard contact lenses:

Single lens	135.00
Two lens	225.00
Replacement lens	45.00
Hard pin hold contact lens (Aniridia)	335.00 up to 390.00

20. Soft contact lenses (shall be initially approved by Administrative Medical Consultant):

Single lens	180.00
Two lens	270.00
Replacement lens (each)	67.00
Perma lens	200.00
Perma lens (pair)	225.00
Replacement perma lens (each)	73.00

21. Gas permeable lenses (shall be initially approved by Administrative Medical Consultant):

Gas permeable lens (each)	200.00
Gas permeable lens (pair)	300.00
Replacement gas permeable lens (each)	85.00

22. Therapeutic lenses (shall be initially approved by Administrative Medical Consultant):

Soft contact bandage lens	200.00
Collagen shield	75.00

23. Ocular prosthesis:

Custom fitted, hand painted, plastic ocular prosthesis	335.00
Custom fitted, hand painted, plastic scleral shell type ocular prosthesis	390.00
Orbital impression	150.00
Custom fitted temporary ocular prosthesis	55.00
Narcissus lens	390.00

24. Non-spectacle low vision aids:
The Commission will pay the price as listed in one of the following catalogs:
1. Coburn Optical Company;
2. Lighthouse;

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3. American Optical Company; or
4. Designs for Vision

If an aid or device appears in a catalog distinct from those listed above, the Commission's payment shall be set by its low vision consultant.

25. Hospital clinic and office specialty procedures:

Beta radiation therapy following excision of pterygium (up to three treatments)	50.00
Bronson ultrasound B scan (intraocular foreign body)	95.00
Color perimetry	90.00
Color fundus photos	45.00
Corneal transplant tissue	235.00
Dark adapt gross rod	130.00
Dark adapt rod and cone platau	160.00
Electrooculography	100.00
Electro retinography	100.00
Endothelial cell count	100.00
Fluorescein angiogram with interpretation and written report	232.00
Fresnell prism monocular	20.00
Fresnell prism binocular	30.00
Fresnell prism adaption	15.00
Gonioscopy	15.00
Goldman lens vitreous exam	15.00
Hess screen exam	60.00
Pachymetry	100.00
Perimetry (visual field)	25.00
Perimetry (threshold)	75.00
Perimetry (octopus)	100.00
Saccadic velocity evaluation	105.00
Services provided by an ambulatory surgical center	700.00
Surgery set up (minor surgery)	60.00
Tonography	35.00
Ultrasonography A (axial length measure monocular)	105.00
Ultrasonography A (axial length measure binocular)	180.00
Ultrasonography B (scan for vitreal and retinal pathology)	100.00
Use of laser and room (only in hospital or center)	200.00
Visual evoked response evaluation	115.00
Water bath ultrasound—monocular	170.00

10:91-7.2 Liability of Commission for missed medical appointments

(a) The Commission shall make no payment to a medical services provider for an education, independent living or prevention services client who has given 24 hours notice of appointment cancellation.

(b) In the event that an education, independent living or prevention services client fails to appear for a scheduled medical appointment or fails to cancel a scheduled appointment, the Commission shall be liable for one half of the health provider's customary fee.

(c) Pursuant to Federal regulations, the Rehabilitation Services Administration has advised that the Commission shall not be liable for any fees associated with a missed medical appointment by a VR client.

CORRECTIONS

(a)

THE COMMISSIONER

Contraband and Disposal of Unauthorized Currency or Money

Proposed Amendment: N.J.A.C. 10A:3-6.7

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

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

Proposal Number: PRN 1995-298.

Submit comments by June 14, 1995 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10A:3-6.7(a)3 is proposed for amendment to require the Disciplinary Hearing Officer/Adjustment Committee to be responsible for determining if unauthorized currency or money found in an inmate's possession was acquired through improper means. The resulting determination and recommendation by the Disciplinary Hearing Officer/Adjustment Committee will provide to the administration the information necessary to determine the proper account into which the unauthorized currency or money will be credited.

Existing language at N.J.A.C. 10A:3-6.7(a)3 which stipulates the crediting of currency or money illegally acquired by the inmate to the Inmate Welfare Account has been deleted. The proposed amendment will require that all money or currency acquired by the inmate improperly will now be credited to a newly established account in the New Jersey General Fund known as the Law Enforcement Dedicated Account. All other money or currency which is determined not to be the subject of disciplinary action shall be deposited in the inmate's account. The requirement that this money or currency be held and made payable to the inmate only upon his or her release from the correctional facility has been deleted. The deletion of this language is necessary because money or currency forfeited by the inmate which is not the subject of disciplinary action should be placed in the inmate's account and available for his or her immediate use. Additionally, correctional facility Business Offices can not accommodate an accounting procedure that requires holding money for inmates for prolonged periods of time.

Two new paragraphs, N.J.A.C. 10A:3-6.7(a)4 and 5, will be added. N.J.A.C. 10A:3-6.7(a)4 will specify that subsequent to the disciplinary hearing the money or currency with a copy of the adjudicated disciplinary report shall be turned over to the correctional facility Business Manager for depositing and recording the funds in the appropriate account. N.J.A.C. 10A:3-6.7(a)5 will specify that money or currency forfeited by the inmate which is not the subject of disciplinary action as determined by the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent shall be deposited in the inmate's account in accordance with N.J.A.C. 10A:2.

In addition, since the Lloyd McCorkle Training School for Boys and Girls no longer exists, reference to the "Cottage Treatment Team" there is proposed for deletion at N.J.A.C. 10A:3-6.7(a)2.

Social Impact

The proposed amendment which require the Disciplinary Hearing Officer/Adjustment Committee to determine whether money or currency confiscated from an inmate was acquired through illegal means or concealed or acquired in violation of correction facility operational rules and regulations will assist the administration in ensuring the crediting of all unauthorized currency or money to the appropriate account. The changes in the crediting of unauthorized currency or money to a newly created account is likely to impact the public at large, the Department of Corrections, and inmates in several ways. Some inmates may disfavor the new accounting structure that will change the crediting of money or currency obtained illegally or in violation of correctional facility operational rules and regulations to an account that will benefit law enforcement rather than the inmate population. The justifiable use of currency and money found in an inmate's possession and determined

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to have been obtained improperly which will be used to help pay for law enforcement training and equipment is a practice that is socially approved and commonly used by many law enforcement authorities in the United States. Therefore, the public at large and the Department of Corrections are anticipated to favor the new accounting structure. The deletion of language that requires the holding of money or currency which is not the subject of disciplinary action until the inmate is released from the correctional facility is expected to have a favorable impact upon inmates. The proposed amendments will allow this money or currency to be placed in the inmate's account for their immediate use.

Economic Impact

The proposed amendment will require the Disciplinary Hearing Officer/Adjustment Committee to make a determination as to how unauthorized currency or money was obtained by the inmate. The resulting determination and recommendation will, in turn, be used by the correctional facility administration to determine the proper account into which the unauthorized currency or money will be credited. Currency or money obtained illegally or in violation of correctional facility operational rules and regulations will go into a newly created Law Enforcement Dedicated Account in the State of New Jersey General Fund. The money in this account will be used to offset costs for training and equipment related to law enforcement and should reduce financial liability in these areas. The depositing of money or currency, not subject to a disciplinary sanction or voluntarily forfeited by inmates, directly to the inmates' account should expedite correctional facility bookkeeping procedures.

The proposed amendment should help ensure that all confiscated currency or money is accounted for and dispersed equitably. Because the proposed amendment deals with currency or money that is considered contraband and is forfeited by inmates the amendment requires no additional financial resources to implement and additional funding is not necessary.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for the proposed amendment because the rulemaking requirements of the Department of Corrections are governed by N.J.S.A. 30:1B-6 and 30:1B-10. The proposed amendment is not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

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

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

10A:3-6.7 Confiscation and disposal of unauthorized currency or money

(a) All unauthorized money or currency found in an inmate's possession shall be immediately seized and turned over to the Central Control, Internal Affairs Unit together with reports required by N.J.A.C. 10A:3-6.2.

1. (No change.)

2. A determination as to the manner in which the money or currency has been acquired shall be made by the Disciplinary Hearing Officer/Adjustment Committee[, or the Cottage Treatment Team at the Lloyd McCorkle Training School for Boys and Girls] at the disciplinary hearing [of] **from** the reports against the inmate.

3. **If the Disciplinary Hearing Officer/Adjustment Committee concludes that the** [Unauthorized] money or currency **is unauthorized or has been** acquired through [illegal or] improper means, [including but not limited to extortion, gambling or bribery, or intended to be used to disrupt the orderly running of the correctional facility,] **the Disciplinary Hearing Officer/Adjustment Committee shall recommend to the administration that the money or currency** shall be forfeited by the inmate**, deposited in the General Treasury Fund** and [credited to the correctional facility's Inmate Welfare Account] **recorded in the Law Enforcement Dedicated Account of the Department of Corrections**. [All other unauthorized money or currency shall be held for the inmate who had it in his or her possession and shall be payable to him or her only upon his or her release from the facility. In such instance, the inmate still shall be liable to disciplinary action for possession of contraband.]

4. Subsequent to the Disciplinary Hearing Officer/Adjustment Committee conclusion, the money or currency shall be turned over to the correctional facility Business Manager with a copy of the adjudicated disciplinary report. The Business Manager will be responsible for depositing and recording the funds to the appropriate account.

5. Money or currency forfeited by the inmate which is not the subject of disciplinary action as determined by the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent shall be deposited in the inmate's account in accordance with N.J.A.C. 10A:2.

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

LABOR

(a)

DIVISION OF UNEMPLOYMENT INSURANCE AND DISABILITY INSURANCE FINANCING

Scope

Proposed Readoption with Amendments: N.J.A.C. 12:15

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 43:21-1 et seq.

Proposal Number: PRN 1995-305.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Monday, June 5, 1995
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

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

Submit written comments by June 14, 1995 to:

Deidre L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:15 will expire on July 30, 1995. The Department has reviewed the rules proposed for readoption and, with the exception of the amendments described below, has determined them to be necessary and proper for the purposes for which they were originally promulgated and is, therefore, proposing them for readoption at this time.

This chapter was originally filed and became effective prior to September 1, 1969. The chapter was readopted effective July 30, 1990. A summary of the sections of N.J.A.C. 12:15 follows. Proposed amendments deemed necessary for the effective operation of the program are also provided. Specifically, the proposed readoption with amendments reflects technical changes necessary to clarify certain sections of this chapter.

N.J.A.C. 12:15-1.1 sets forth the purpose and scope of the rules, which are designed to assist in the implementation of the basic provisions of the laws pertaining to unemployment compensation and temporary disability benefits, N.J.S.A. 43:21-1 et seq. N.J.A.C. 12:15-1.1 is being amended at subsection (a) to clarify that temporary disability benefits are paid for disabilities resulting from non-work related sicknesses or injuries. Subsection (b) is being amended to reflect that unemployment

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benefits are paid from moneys contributed to the State Unemployment Compensation Fund and that the Department, rather than any one specific division, approves private plans. This will avoid confusion which may result from Departmental internal reorganizations.

The definitions section, N.J.A.C. 12:15-1.2, is being repealed since the chapter contains no references to the words defined in this section.

N.J.A.C. 12:15-1.3, which states the 1990 maximum weekly benefit rate for benefits under the Unemployment Compensation Law and for State Plan benefits under the Temporary Disability Benefits Law, is being recodified as N.J.A.C. 12:15-1.2 and amended to add the cite for the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

N.J.A.C. 12:15-1.4 sets forth the 1990 taxable wage base for the purpose of contributions under the Unemployment Compensation Law in accordance with N.J.S.A. 43:21-7(b)(3), and is recodified as N.J.A.C. 12:15-1.3.

N.J.A.C. 12:15-1.5 states the 1990 contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law, and is recodified as N.J.A.C. 12:15-1.4.

N.J.A.C. 12:15-1.6 which outlines the amount of earnings required in 1995 to establish a base week for an individual's claim for unemployment compensation and State Plan temporary disability benefits is being recodified as N.J.A.C. 12:15-1.5 and amended to add language to clarify that a base week amount is dependent on the calendar year and not the date of the commencement of the disability benefit claim.

Finally, N.J.A.C. 12:15-1.7 states the amount of base year earnings required to establish an individual's eligibility for unemployment compensation and State Plan temporary disability benefits, in those instances in which the individual has not established 20 base weeks. This section is recodified as N.J.A.C. 12:15-1.6.

N.J.A.C. 12:15-1.3 through 1.7 (now recodified as N.J.A.C. 12:15-1.2 through 1.6) are amended annually to reflect current statistics.

Social Impact

This proposed readoption with amendments will have a positive social impact in that the rules enable the Department to continue its function of providing needed coverage to all workers. By clarifying certain sections of this chapter, the proposed amendments will make it easier for employers to conform to the appropriate laws and regulations of the Department, thereby avoiding any unnecessary penalties for the failure to provide adequate coverage for workers. Specifically, the proposed amendment to N.J.A.C. 12:15-1.1(a) will clarify that temporary disability benefits are paid for non-work related sicknesses or injuries. The proposed amendments to N.J.A.C. 12:15-1.1(b) will clarify that unemployment benefits are paid from moneys contributed to the State Unemployment Compensation Fund and that the Department, rather than a specific division, approves temporary disability private plans. This will avoid confusion which may result from Departmental internal reorganizations. Language is being added to N.J.A.C. 12:15-1.5 to clarify the base week amount. Clarification will also result from the deletion of the definitions in N.J.A.C. 12:15-1.2 since the chapter contains no references to the words defined in that section.

The proposed readoption of N.J.A.C. 12:15-1.1 as it is statements of applicability and definition, have no social impact in and of themselves.

The proposed readoption of N.J.A.C. 12:15-1.3 (now 1.2) will ensure that payments to unemployment and disability insurance recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchasing power of their benefits.

The proposed readoption of N.J.A.C. 12:15-1.4 (now 1.3) will generate revenues for the Unemployment Insurance and Disability Insurance Trust Funds. These revenues are needed to offset the increased level of benefits for these programs, which are statutorily indexed to the upward trend of wages in the State's economy.

The proposed readoption of N.J.A.C. 12:15-1.5 (now 1.4) merely sets forth the contribution rate for governmental entities, and thus its readoption will have no social impact on the public.

The proposed readoption of N.J.A.C. 12:15-1.6 and 1.7 (now 1.5 and 1.6) provides for the base week amount and the amount of earnings to establish eligibility, respectively, to be indexed to wage increases as benefit payments have been indexed since 1969. Some claimants who work temporarily or intermittently may not qualify for benefits under these tightened eligibility standards.

Economic Impact

The Department does not foresee any significant economic impact on employers or the general public as a result of the proposed readoption with amendments. The proposed readoption with amendments merely sets forth the purpose and scope of the rules required to implement the Unemployment Compensation and the Temporary Disability Benefits Laws. By clarifying the meaning and applicability of certain sections, the proposed amendments will eliminate unnecessary expense to employers which may result from their lack of knowledge and understanding of these rules.

N.J.A.C. 12:15-1.1 has no economic impact in and of themselves.

N.J.A.C. 12:15-1.3 (now 1.2) sets forth the weekly benefit rates received by individuals eligible for the maximum weekly benefit rate under the Unemployment Compensation Law and under the Temporary Disability Benefits Law beginning January 1, 1995, in compliance with statutory provisions which automatically adjust these benefit rates each year in accordance with changes in the Statewide average weekly wage. The maximum weekly benefit for Unemployment Compensation is computed as 56 and 2/3 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1995, the maximum weekly benefit increased from $347.00 to $354.00, which resulted in an increase in benefits for claimants.

The maximum weekly benefit for State Plan Temporary Disability is computed as 53 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1995, the maximum weekly benefit increased from $325.00 to $331.00, again increasing the amount of benefits for claimants.

N.J.A.C. 12:15-1.4 (now 1.3) establishes $17,600 as the wage amount of an individual employee of an employer that is subject to employer and worker contributions under the Unemployment Compensation Law, beginning January 1, 1995. An increase or decrease in this amount is directly proportional to an increase or decrease in the contributions due from employees and employers.

N.J.A.C. 12:15-1.5 (now 1.4) states the contribution rate for governmental entities, now at 0.4 percent for 1995.

N.J.A.C. 12:15-1.6 (now 1.5) states the amount an individual must earn to establish a base week under the Unemployment Compensation and Temporary Disability Benefits Laws. The amount is computed as 20 percent of the Statewide average weekly wage in the second preceding calendar year and is set at $126.00 for benefit years and periods of disability commencing January 1, 1995.

Finally, N.J.A.C. 12:15-1.7 (now 1.6) outlines the alternative earnings eligibility standard under the law in those situations where the individual has not established 20 base weeks in the base year period. The amount increased to $7,600 in 1995. The alternative earnings test is indexed each year at 12 times the Statewide average weekly wage in the second preceding calendar year.

The Department does not expect to experience any economic impact as a result of the proposed readoption.

Executive Order No. 27 Statement

The proposed readoption with amendments does not exceed standards or requirements imposed by Federal law. These rules set forth the scope and purpose of rules necessary to implement the Unemployment Compensation and Temporary Disability Benefits Laws, N.J.S.A. 43:21-1 et seq. As a result, an explanation or analysis of the proposed readoption with amendments pursuant to Executive Order No. 27(1994) is not required.

Regulatory Flexibility Analysis

The proposed readoption with amendments will have minimal, if any, impact in terms of imposing additional burdens upon businesses of any type including small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendments continues to define the scope and purpose of the rules which implement the Unemployment Compensation and Temporary Disability Benefits Laws. The rules only set forth benefit and contribution levels under the Unemployment Compensation and Temporary Disability Benefits Laws, and do not impose compliance requirements. The proposed amendments merely clarify the meaning and applicability of the certain sections of these rules and are necessary to enable employers to better understand these laws and how they are implemented. Since there are no costs associated with the adoption of these rules, no exceptions or differentiation in requirements based on business size is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:15.

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

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12:15-1.1 Purpose and scope of rules and regulations

(a) Under the Unemployment Compensation Law and the [temporary disability benefits law] **Temporary Disability Benefits Law**, benefits financed from tax or contributions are paid **to** workers who become unemployed[, generally] because of lack of work, or [disability] **disabled due to a non-work related sickness or injury**.

(b) The unemployment benefits are paid from moneys contributed to a State [fund] **Unemployment Compensation Fund,** and temporary disability benefits from moneys contributed to [a] **the** State [fund] **Disability Benefits Fund** or from private plans approved by the [division] **Department of Labor** and established by employers for such purposes.

(c) (No change.)

[12:15-1.2 Definitions

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

"Director" means the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

"Department" means the New Jersey Department of Labor.

"Division" means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

"Controller" means the Controller of the Department of Labor.]

12:15-[1.3]**1.2** Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, **N.J.S.A. 43:21-1 et seq.,** the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being $354.00 per week.

(b) (No change.)

(c) These maximum benefits shall be effective for the calendar year 1995 on **unemployment compensation** benefit years and periods of disability commencing on or after January 1, 1995.

Recodify N.J.A.C. 12:15-1.4 and 1.5 as **1.3 and 1.4** (No change in text.)

12:15-[1.6]**1.5** Base week

In accordance with the provisions of N.J.S.A. 43:21-19(c) **(l) and** (t), the base week amount is hereby promulgated as being $126.00 per week for calendar year 1995.

12:15-[1.7]**1.6** Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41, in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being $7,600 for **unemployment compensation** benefit years and periods of disability commencing on or after January 1, 1995.

(a)

EMPLOYMENT SECURITY AND JOB TRAINING

Unemployment Benefit Payments

Benefit Eligibility for Claimants Employed by Temporary Help Service Firms

Proposed New Rules: N.J.A.C. 12:17-13

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 43:21-1 et seq., specifically 43:21-11.

Proposal Number: PRN 1995-306.

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

Wednesday, June 14, 1995
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

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

Submit written comments by June 14, 1995 to:

Deirdre L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, please contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The proposed new rules at N.J.A.C. 12:17-13 provide guidelines for unemployment insurance eligibility for claimants who are employed by temporary help service firms. These rules are being promulgated in response to the temporary help service industry's concern that temporary workers often do not notify the firms that they are available for new assignments and seek unemployment benefits when work is available. The rules will ensure that an unemployed temporary worker's eligibility for unemployment insurance is determined in the same manner as other unemployed workers. Specifically, the rules will make a claimant ineligible for benefits if he or she fails to contact the temporary help service firm at the end of a temporary work assignment or fails to accept offers of suitable work. Such rules are consistent with N.J.S.A. 43:21-5(a) and (c) which disqualify an individual from receiving benefits where he or she has left work voluntarily without good cause attributable to work or fails without good cause to apply for available, suitable work or to accept suitable work when it is offered.

N.J.A.C. 12:17-13.1 defines temporary help service firm and sets forth the requirement that a claimant contact the temporary help service firm at the end of a work assignment or be ineligible from receiving unemployment benefits.

N.J.A.C. 12:17-13.2 provides for the disqualification of a claimant for unemployment benefits where the claimant refuses an offer for new and similar employment prior to the completion of an assignment.

Social Impact

The proposed new rules will have a positive social impact in that they recognize the unique problems faced by temporary help service firms while maintaining the integrity of the State's unemployment insurance program. They will encourage temporary help service firms to provide continuing work to their employees and thereby contribute to the employment stability and financial security of workers. The proposed new rules will also protect the benefit rights of unemployed temporary workers and ensure that only deserving individuals receive benefits.

Economic Impact

The proposed new rules will have a positive economic impact on the State's workforce and employers. They will encourage workers who find employment with temporary help service firms to make themselves available for work assignments to fill employers' needs. It will also encourage temporary help service firms to provide continuous employment. As a result, the proposed new rules will provide stability to the Unemployment Insurance Trust Fund by reducing the number of individuals who require unemployment insurance and ensuring that only eligible individuals receive benefits.

Executive Order No. 27 Statement

The proposed new rules do not contain any standards or requirements which exceed standards or requirements imposed by Federal law. As a result, an explanation or analysis of the proposed rules pursuant to Executive Order No. 27(1994) is not required.

Regulatory Flexibility Analysis

The proposed new rules will have some impact in terms of imposing additional reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, the rules will require temporary help service firms to keep records which indicate that their employees have been notified in writing of the obligation to contact the firm upon completion of the assignment. They will also be required to maintain additional records to verify that their employees have contacted them at the end of a temporary work assignment. The uniqueness of temporary service employment makes it necessary for the Department to require temporary service firms to maintain these records to enable it to properly

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determine eligibility for benefits. It is anticipated that any costs associated with this recordkeeping will be minimal. In any event, lesser reporting requirements would not be sufficient to ensure that only qualified individuals receive unemployment benefits. No professional services will be required to comply with these rules.

Full text of the proposed new rules follows:

SUBCHAPTER 13. BENEFIT ELIGIBILITY FOR CLAIMANTS EMPLOYED BY TEMPORARY HELP SERVICE FIRMS

12:17-13.1 Reporting for temporary help service firm assignments

(a) "Temporary help service firm" means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in the handling of the customers' temporary, excess or special work loads, and who, in addition to the payment of wages or salaries to the employed individuals, pays Federal social security taxes and State and Federal unemployment insurance; carries worker's compensation insurance as required by State law; and sustains responsibility for actions of the employed individuals while they render services to the firm's customers. A temporary help service firm is required to comply with the provisions of P.L. 1960, c. (N.J.S.A. 56:8-1 et seq.).

(b) An individual whose claim is based on employment with a temporary help service firm will be deemed to be unavailable for work and not actively seeking work if the individual fails to contact the temporary help service firm for reassignment upon completion of an assignment provided the temporary help service firm has notified its employees in writing of the obligation to contact the firm upon completion of a work assignment and that unemployment benefits may be denied for failure to fulfill this obligation.

12:17-13.2 Continuous temporary help service firm assignments

(a) If prior to the completion of an assignment an individual whose claim is based on employment with a temporary help service firm fails to accept continuing employment from the firm under similar conditions, such individual shall be subject to disqualification for benefits for voluntarily leaving work pursuant to N.J.S.A. 43:21-5(a).

(b) If the firm offers continuing suitable work for a period less than four weeks, or if the working conditions or terms of employment are substantially changed, this will constitute an offer of new work. An individual who fails to accept an offer of new work shall be subject to disqualification for benefits for refusing suitable work pursuant to N.J.S.A. 43:21-5(c).

(a)

DIVISION OF WORKPLACE STANDARDS

Safe Dispensing of Retail Gasoline

Proposed Readoption: N.J.A.C. 12:196

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:3A-4 et seq., specifically 34:3A-11.

Proposal Number: PRN 1995-307.

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

Friday, June 9, 1995
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

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

Submit written comments by June 14, 1995 to:

Deirdre L. Webster, Regulatory Officer
Office of Regulatory Services
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 Communications at (609) 292-3211 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:196, rules governing the safe dispensing of retail gas, expires on August 6, 1995. The Department of Labor has reviewed these rules and determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. Therefore, the Department is proposing them for readoption without amendment at this time. The readoption of these rules is necessary to protect public health, safety and welfare in the dispensing of retail gas.

A summary of the subchapters of N.J.A.C. 12:196 follows:

N.J.A.C. 12:196-1.1 sets forth the purpose and scope of this chapter.

N.J.A.C. 12:196-1.2 defines the words and terms used throughout the chapter.

N.J.A.C. 12:196-1.3 sets forth attendant duties.

N.J.A.C. 12:196-1.4 addresses the training of attendants.

N.J.A.C. 12:196-1.5 concerns the certification of attendants.

N.J.A.C. 12:196-1.6 discusses the portable containers which are acceptable for holding fuel.

N.J.A.C. 12:196-1.7 requires emergency shut-off switches to be provided at a place distant from dispensing devices.

N.J.A.C. 12:196-1.8 addresses sources of ignition and other prohibited activity in the vicinity of pumps and during fueling operations.

N.J.A.C. 12:196-1.9 mandates that retail gasoline stations have at least one fire extinguisher in certain areas for fire control.

N.J.A.C. 12:196-1.10 provides for the posting of warning signs in the fuel dispensing area.

N.J.A.C. 12:196-1.11 sets forth documents referred to by reference.

N.J.A.C. 12:196-1.12 provides for the inspection of documents referenced in this chapter.

Social Impact

The proposed readoption will have a positive social impact. By providing reasonable standards for the dispensing of retail gasoline, these rules protect the health, safety and welfare of the general public.

Economic Impact

The proposed readoption will have minimal, if any, economic impact on retail gasoline operators governed by these rules, since the majority of them have already established the procedures necessary to comply with the requirements for safe dispensing of retail gasoline. New retail gasoline operators will incur the costs of ensuring that their employees are trained and certified, installing safety signs and equipment and establishing safety procedures as required by these rules. However, the cost of implementing these requirements is minimal and is outweighed by the need to protect the health, safety and welfare of the general public. In addition, the Department will not incur any additional costs as a result of the proposed readoption.

Executive Order No. 27 Statement

The proposed readoption does not exceed standards or requirements imposed by Federal law. The rules set forth at N.J.A.C. 12:196 provide reasonable standards for the safe dispensing of retail gasoline as required by N.J.S.A. 34:3A-4 et seq. As a result, a Federal exceedance analysis is not required.

Regulatory Flexbility Analysis

The proposed readoption will not impose any additional compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption continue established standards for the safe dispensing of retail gasoline. As noted above, existing retail gasoline operators have already incurred the minimal expense of complying with these requirements. However, retail gasoline operators seeking to commence operations in the State will incur costs of ensuring that their employees are trained and certified, installing safety signs and equipment and establishing safety procedure. These costs are outweighed by the need to provide a healthy and safe

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environment for the general public. In addition, the Department is required to apply these rules to all retail gasoline stations, except those exempted under N.J.A.C. 12:196-1.1, regardless of size. Therefore, no exceptions or alternate provisions have been made for small businesses. No professional services will be required to comply with the standards for safe dispensing of retail gasoline.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:196.

(a)

DIVISION OF WORKPLACE STANDARDS

Liquefied Petroleum Gas

Proposed Readoption with Amendments: N.J.A.C. 12:200

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 21:1B-2.

Proposal Number: PRN 1995-308.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Monday, June 12, 1995
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

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

Submit written comments by June 14, 1995 to:

Deirdre L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, please contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The Department of Labor regulates certain apsects of the liquefied petroleum gas (LP-Gas) industry as delineated in the New Jersey Liquefied Petroleum Gas Act, N.J.S.A. 21:1B-1 et seq. N.J.A.C. 12:200 contains the rules which implement the provisions of the Act regulated by the Department. Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:200 expires on August 3, 1995. The Department of Labor has reviewed the rules and, with the exception of the proposed amendments described below, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department is, therefore, proposing them for readoption at this time. It should also be noted that representatives of the LP-Gas Industry have reviewed and approved the proposed amendments.

This chapter was originally filed and became effective prior to September 1, 1969. Amendments became effective May 15, 1980. The chapter expired on May 15, 1985 and new rules were adopted effective August 5, 1985. The chapter was readopted with amendments effective August 3, 1990. Subchapter 5, API 2510 Installations, was adopted as new rules and prior Subchapter 5, Submittal of Plans or Project Data Report, was recodified as Subchapter 6. The chapter is based in part upon Liquefied Petroleum Gases, National Fire Protection Association (NFPA) No. 58-1995, Liquefied Petroleum Gases at Utility Gas Plants, NFPA No. 59-1995, and API 2510-1989, Design and Construction of Liquefied Petroleum gas installations.

The enactment of the State Uniform Construction Code Act, N.J.S.A 52:27D-119 et seq., and the State Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., in 1975 and 1983, respectively, and the promulgation of rules under these acts, necessitated that the Department establish an interface with the Department of Community Affairs. This interface was accomplished by the 1980 amendments to these rules and is also present in this current readoption with amendments. It is important to note that under N.J.S.A. 21:1B-1 et seq., the following State agencies administer certain specific phases of liquefied petroleum gas.

Type of LP-Gas Facility—State Agency

Transportation over the highways in intrastate and interstate commerce—Division of State Police, Department of Law and Public Safety

Storage and utilization at use group R-3 occupancies (one and two family residential)—Department of Community Affairs and local Construction and Fire officials

Piping that is inside of buildings—Department of Community Affairs and local Construction officials

Unfired pressure vessel design and construction, except for safety relief valve settings—Office of Boiler & Pressure Vessel Compliance, Department of Labor

A summary of the subchapters of N.J.A.C. 12:200 follows. Proposed amendments deemed necessary for the effective operation of the program are also provided. Specifically, the amendments clarify certain program requirements. In addition, non-substantive and technical changes have been proposed, such as updating various code citations and changing addresses to conform with locations for Departmental divisions. It is also noted that the foreword is being deleted from the chapter to accommodate changes in the publishing of the New Jersey Administrative Code. The language previously contained in the foreword will be included in the summary of this proposal and the Department's publication of these rules.

N.J.A.C. 12:200-1 contains the general provisions for the chapter. The subchapter sets forth the purpose and scope of the chapter, which is to set health and safety standards for the design, construction, location, installation and operation of liquefied petroleum gas facilities. N.J.A.C. 12:200-1.3 contains general compliance provisions. N.J.A.C. 12:200-1.3(f) is being amended to require owners of LP-Gas containers to remove a container that has been replaced within a reasonable time period so that it will not endanger public health and safety. N.J.A.C. 12:200-1.4 governs reporting emergency situations. N.J.A.C. 12:200-1.5 requires written notice to the Commissioner of a fire, explosion or accident involving the public which results in serious injury or loss of life or, as proposed for amendment, property.

N.J.A.C. 12:200-2 defines the words and terms used in the chapter. This subchapter is not being amended.

N.J.A.C. 12:200-3 sets forth the standards for the NFPA No. 58 Systems, including provisions for container markings, storage and distributing and industrial plants. N.J.A.C. 12:200-3.3(i) through (k) are being amended to clarify the minimum requirements for providing protection against damage to storage containers which may be hazardous to the public. As a result of these amendments, the subsections are being recodified. Language is being added to the former subsection (m), now subsection (o), to prevent hazards associated with the transfer from one LP-Gas mobile container to another LP-Gas mobile container. N.J.A.C. 12:200-3.4(1) is being added to clarify the minimum requirements for piping associated with LP-G installations.

N.J.A.C. 12:200-4 sets forth standards for NFPA No. 59 Systems. There are no amendments to this subchapter, except for updating the NFPA No. 59-1989 references to NFPA No. 59-1995.

N.J.A.C. 12:200-5 concerns API 2510 installations. The subchapter addresses container markings, container storage, and fencing. No amendments are being made to this subchapter, except for updating the NFPA No. 58-1989 reference to NFPA No. 58-1995.

N.J.A.C. 12:200-6 contains standards for the submittal of plans and project data reports. N.J.A.C. 12:200-6.1(h)5i is being amended to ensure that the LP-Gas supplier/user has consulted with and sought approval from the local municipal authority with jurisdiction over fire control. N.J.A.C. 12:200-6.2(f) is being amended to set time limits (18 months from the date of plan approval) for the completion of construction of LP-Gas facilities to ensure that such construction is done in accordance with current industry standards. By deleting N.J.A.C. 12:200-6.3(a)1, the Department will prevent unauthorized LP-Gas container installation, removal, connection, disconnection, filling or refilling without permission of the owner as required by N.J.A.C. 12:200-1.3(f). By deleting this paragraph, the Department will also require the submittal plans prior to a change of supplies and the unsafe storage of LP-Gas containers that are typically left unprotected during the transition period.

In Appendix A, API 2510-1989, Design and Construction of Liquefied Petroleum Gas Installations, is added to the list of referenced publica-

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tions, an erroneous reference to 29 CFR is corrected to 49 CFR, and NFPA Nos. 58-1989 and 59-1989 are updated to 1995.

Social Impact

The proposed readoption with amendments will have a positive impact on the public's health and safety by ensuring that standards for the design, construction, location, installation and operation of liquefied petroleum gas facilities remain in effect. Without these standards, there will be limited assurance that the installation and maintenance of liquefied petroleum gas facilities are accomplished in a safe manner. The continued assurance of the public's health and safety necessitated proposed amendments at N.J.A.C. 12:200-1.3(f)1, 3.3(m), 6.1(h)5i, 6.2(f) and 6.3(a)1. The proposed amendments will also ease the burden on industry by clarifying certain program requirements. Such clarification will make it easier for LP-Gas operators to conform to the Liquefied Petroleum Gas Act, N.J.S.A. 21:1B-1 et seq., and these rules, thereby avoiding any unnecessary penalties for failure to comply. Specifically, the proposed amendments to the current N.J.A.C. 12:200-3.3(i), 3.3(j), 3.3(k) and 3.4(l) are necessary to clarify minimum program requirements.

Economic Impact

The Department does not foresee any significant economic impact on LP-Gas operators or the general public as a result of the proposed readoption with amendments. The proposed readoption with amendments will continue to require owners and operators of liquefied petroleum gas systems to install and maintain the systems in a safe manner. By clarifying existing program requirements with the notation of minimum requirements accepted by the Department, the proposed amendments will eliminate unnecessary expense to the industry which may result from lack of knowledge and understanding of the Liquefied Petroleum Gas Act, N.J.S.A. 21:1B-1 et seq. and these rules. Any costs associated with the redoption of these rules or the amendments will be limited to the costs of installing or maintaining systems, as required by these rules, incurred by LP-Gas owners and operators who seek to establish facilities in New Jersey. Specifically, the amendments to the current subsections at N.J.A.C. 12:200-3.3(i), 3.3(j) and 3.3(k) clarify existing requirements for protection of containers by noting minimum requirements accepted by the Department. Since these requirements are already routinely practiced by the industry, owners and operators will incur no new or additional costs. The amendments at N.J.A.C. 12:200-3.4(l) will limit the LP-Gas industry from using hoses to convey LP-Gas from a container to a building and thereby reduce safety hazards to the general public. Owners and operators will not incur any new or additional costs in complying with this rule since the costs of the installation of rigid piping is approximately equal to the costs which would be incurred if the hoses were used.

Executive Order No. 27 Statement

The proposed readoption with amendments does not contain any standards or requirements which exceed standards or requirements imposed by Federal law. These rules establish standards for the design, construction, location, installation and operation of liquefied petroleum gas facilities necessary to implement the Liquefied Petroleum Gas Act, N.J.S.A. 21:1B-1 et seq. As a result, an explanation or analysis of the proposed readoption with amendments pursuant to Executive Order No. 27(1994) is not required.

Regulatory Flexibility Analysis

The proposed readoption with amendments will have minimal, if any, impact in terms of imposing additional burdens upon businesses of any type, including small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendments continues to establish standards for the design, construction, location, installation and operation of liquefied petroleum gas facilities necessary to implement the Liquefied Petroleum Gas Act, N.J.S.A. 21:1B-1 et seq. To this end, it mandates compliance with several national codes in areas such as installations, maintenance construction, container markings, container storage and fencing. Additionally, certain reporting requirements are contained in the proposed readoption; specifically, the reporting of fires, explosions and accidents and emergency situations to the Commissioner is required. Furthermore, new compliance requirements mandate that LP-Gas owners remove hazardous containers within five working days of written notification from the Department. The proposed amendments are necessary to clarify existing program requirements. By noting the minimum program requirements accepted by the Department, they enable LP-Gas owners and operators to better understand the law and how it is implemented. It is necessary to apply the minimal costs and compliance requirements associated with the proposed readoption with amendments to all businesses engaged in LP-Gas as it would defeat the purpose of the safety and health intent of the rules to exempt any owner or operator from the requirements. The Department does not anticipate that additional outside consultants or other professional services will need to be employed by businesses in order to comply with the requirements of these rules, including the requirements of the proposed amendment at N.J.A.C. 12:200-6.1(h)5(i), since such services are already required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:200.

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

12:200-1.3 Compliance

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

(f) No person shall install, remove, connect, disconnect, fill or refill any liquefied petroleum gas container without permission of the owner of the container.

1. The owner of an LP-Gas container left in a hazardous condition shall remove the container from the site as soon as possible or necessary but in no case later than five working days of written notification by the Office of Safety Compliance.

(g)-(k) (No change.)

12:200-1.5 Reporting of fires, explosions or accidents

Whenever there is a fire or explosion or accident involving [serious injury or loss of life to] the public **which results in serious injury or loss of life or property** from liquefied petroleum gas, the Commissioner shall be notified **in writing** by the user/owner before the end of the first working day following the accident.

12:200-3.1 Standards adopted by reference

(a) The standards prescribed by Liquefied Petroleum Gases, NFPA No. 58-[1987]**1995**, are adopted as health and safety standards and shall apply according to their provisions, except that:

1. (No change.)

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

(d) Where the term "line of adjoining property which may be built upon" is used in Liquefied Petroleum Gases, NFPA No. 58-[1989] **1995**, it shall be understood to mean "the property line" as defined in N.J.A.C. 12:200-2.1.

(e) (No change.)

12:200-3.3 Container storage

(a) (No change.)

(b) Containers installed outside of buildings shall be located with regard to property lines other than public ways, important buildings, or bulk storage of hazardous materials in accordance with Table 3-2.2.2 of Liquefied Petroleum Gases, NFPA No. 58-[1989]**1995**.

1.-2. (No change.)

(c) Containers installed outside of buildings shall be located with regard to the near side of a public way in accordance with the schedule for aboveground containers of Table 3-1 of Liquefied Petroleum Gases, NFPA No. 58-[1979]**1995**, as provided below:

1.-2. (No change.)

(d) (No change.)

(e) Installations of aboveground containers of 90,000 gallons individual or aggregate water capacity or more that present a serious exposure hazard shall be protected by one or more of the following: distances at least 50 percent greater than the schedule for aboveground containers of Table 3-2.2.2 of Liquefied Petroleum Gases, NFPA No. 58-[1989]**1995**, water spray protection, fixed monitors, or insulation.

(f) If more than six containers, each of which is of 2,000 gallons water capacity or more, are used in a single installation, the containers shall be separated into batteries of not more than six containers with batteries separated from each other by the distances required for the schedule for mounded or underground containers of Table 3-2.2.2 of Liquefied Petroleum Gases, NFPA No. 58-[1989] **1995**.

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

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(i) Where there is a possibility of damage to storage containers from motor vehicles or other heavy objects, protection against such damage shall be provided [by substantial bumper guards which are, as a minimum, four-inch diameter schedule 40 concrete filled steel pipe properly imbedded in concrete on a maximum of four-feet six-inch centers, or equivalent]. **This protection shall meet the following minimum requirements:**

1. Crash posts are to be a minimum of four inch schedule 40 pipe and painted yellow.

2. Crash posts are to be buried three feet six inches deep, extend three feet above grade, and filled with concrete.

3. Posts are to be encased in concrete 18 inches in diameter by three feet six inches in depth for minimum standards.

4. Posts are to be set at four feet six inches maximum centers.

5. The crash protection shall be installed a minimum of 24 inches from the LP container(s).

(j) In areas where high speed and heavy duty traffic occurs the following shall be the requirements for motor vehicle protection:

1. Posts are to be minimum of six inches schedule 40 pipe and painted yellow.

2. Posts are to be buried a minimum of 48 inches deep, and extend a minimum of 48 inches above grade, and filled with concrete.

3. Posts are to be set at four feet maximum centers.

4. Posts are to be encased in concrete of 24 inches diameter and 48 inches in depth for minimum standards.

5. The crash protection shall be installed a minimum of 24 inches from the LP container(s).

(k) Highway barrier installed as per New Jersey Department of Transportation specifications may be substituted for crash posts as described in (i) and (j) above.

Recodify existing (j)-(l) as **(l)-(n)** (No change in text.)

[(m)]**(o)** Cargo tank vehicles and tank cars shall not be used as a permanent storage facility.

1. Cargo tank(s) shall not be filled from another cargo tank.

Recodify existing (n)-(p) as **(p)-(r)** (No change in text.)

12:200-3.4 Distributing points, distributing plants and industrial plants

(a)-(k) (No change.)

(l) LP Gas liquid and vapor shall be conveyed from the container to the building by rigid piping, properly installed and protected. Piping may be either metallic or plastic in accordance with N.J.A.C. 12:200-3.1.

12:200-4.1 Standards adopted by reference

(a) The standards prescribed by Liquefied Petroleum Gases at Utility Gas Plants, NFPA No. 59-[1989]**1995**, are adopted as health and safety standards and shall apply according to their provisions.

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

(f) Where the term "line of adjoining property which may be built upon" is used in Liquefied Petroleum Gases at Utility Gas Plants, NFPA No. 59-[1989]**1995**; it shall be understood to mean "the property line" as defined in N.J.A.C. 12:200-2.1.

12:200-4.3 Container storage

(a) Containers of liquefied petroleum gases at utility gas plants shall be located with regard to property lines other than a public way, important buildings, or bulk storage of hazardous materials in accordance with the applicable schedule of Liquefied Petroleum Gases at Utility Gas Plants, NFPA No. 59-[1989]**1995**.

(b) Containers of liquefied petroleum gases at utility gas plants shall be located with regard to the near side of a public way in accordance with the applicable schedule for aboveground containers of Liquefied Petroleum Gases at Utility Gas Plants, NFPA No. 59-[1989]**1995**.

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

12:200-5.5 General

NFPA 58-[1989]**1995** may be used as standard for those areas not specifically addressed in API 2510-1989 and which do not conflict with the intent of API 2510-1989.

12:200-6.1 Submittal of plans

(a)-(g) (No change.)

(h) Plans required by (b) above shall include the following information:

1.-4. (No change.)

5. Appropriate information on fire protection facilities at the site and available public fire services for systems exceeding 4,000 gallons aggregate water capacity.

i. This information shall include a fire analysis which may be provided by the engineer of record, providing that he or she submits with his or her analysis proof of consultation with the local Fire official.

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

12:200-6.2 Approval of plans

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

(f) If a set of plans have been approved and construction has not [begun within one year] **been completed within 18 months** from the date of plan approval, the plan approval for that site shall be considered expired unless extended or renewed by the commissioner.

12:200-6.3 Submittal of project data report

(a) A project data report shall be filed for all new liquefied petroleum gas installations for which plans are not required under N.J.A.C. 12:200-6.1(b), except that a project data report is not required for a system under N.J.A.C. 12:200-6.1(b) that has a capacity of 250 gallons or less individual or aggregate capacity.

[1. A project data report shall be submitted when a propane supplier is changed and a single storage tank dispensing system (not exceeding 1,000 gallons water capacity) is replaced to duplicate a previously State-approved unit.]

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

APPENDIX A
AVAILABILITY OF STANDARDS AND PUBLICATIONS
REFERRED TO IN THIS CHAPTER

A copy of each of the standards and publications referenced in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

State of New Jersey
Department of Labor
Division of Workplace Standards
Station Plaza Bldg. 4, Third Floor
28 Yard Avenue, **CN 386**
Trenton, New Jersey **08625-0386**

Copies of the referenced standards and publications may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning and are the organizations issuing the standards and publications listed.

API	American Petroleum Institute 1220 L Street Northwest Washington, D.C. 20005
BOCA	Building Officials and Code Administration 4051 W. Flossmoor Rd. Country Club Hills, Illinois 60477-5795
CFR	Code of Federal Regulations Copies available from: Superintendent of Documents Government Printing Office Washington, D.C. 20402
NFPA	National Fire Protection Association Batterymarch Park Quincy, Massachusetts 02269
N.J.A.C.	New Jersey Administrative Code Copies available from: Office of Boiler and Pressure Vessel Compliance New Jersey Department of Labor CN 392 Trenton, [N.J.] **New Jersey** 08625-0392

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N.J.S.A.	New Jersey Statutes Annotated Copies available from: Office of Safety Compliance New Jersey Department of Labor [and Industry] [Post Office Box 709] **CN 386** Trenton, [N.J.] **New Jersey** 08625-**0386**
USC	United States Code Copies available from: Occupational Safety and Health Administration U.S. Department of Labor 1515 Broadway New York, New York 10036

No. and Edition	Title
API 2510-1989	**American Petroleum Institute 2510-1989, Design and Construction of Liquefied Petroleum Gas Installations**
BOCA-1990	The BOCA Basic Building Code
[29]**49** CFR Parts 171 through 177	Hazardous Material Regulations
NFPA No. 30-1987	Flammable and Combustible Liquids Code
NFPA No. 58-[1989] **1995**	Liquefied Petroleum Gases
NFPA No. 59-[1989] **1995**	Liquefied Petroleum Gases at Utility Gas Plants
N.J.A.C. 5:18	New Jersey Uniform Fire Code
N.J.A.C. 5:23	New Jersey Uniform Construction Code
N.J.A.C. 12:90	Boilers, Pressure Vessels and Refrigeration
N.J.S.A. 21:1B-1 et seq.	Liquefied Petroleum Gas Act
29 USC 651 et seq.	Occupational Safety and Health Act

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises

Proposed Readoption: N.J.A.C. 12A:31

Authorized By: Development Authority for Small Businesses, Minorities' and Women's Enterprises, Prakash Shah, Chair.

Authority: N.J.S.A. 34:1B-47 et seq., specifically N.J.S.A. 34:1B-50(f).

Proposal Number: PRN 1995-248.

Submit comments by June 14, 1995 to:
Alan Steinberg
Deputy Commissioner, New Jersey Department of Commerce
20 West State Street
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises (NJDA) rules expire on July 16, 1995. The NJDA has reviewed these rules and determines them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. The readoption of the rules is necessary because they have effectively enabled the NJDA to pursue its mission of promoting the establishment and expansion of small businesses, minorities and women owned businesses by providing financing for fixed assets and real estate acquisition for working capital. The NJDA's rules have enabled it to implement its micro loan programs to businesses throughout the State of New Jersey. Its programs have assisted in the expansion and establishment of approximately 60 businesses generating hundreds of jobs and creating tax rateables for the State of New Jersey.

Entrepreneurship is a vital component of the national heritage that fosters the health and dynamism of the overall economy. And, despite their contribution as major generators of employment, small businesses, specifically women and minority-owned, are continuing to struggle and survive in the private sector.

Some key provisions of the rules proposed for readoption include:

Subchapter 1, which pertains to the direct loan program, includes such provisions as applicability and scope, definitions, application procedure, allocation of assistance, time of application, evaluation for applications, reporting and compliance, recision and information confidentiality.

Subchapter 2, which pertains to the loan guarantee program, include such provisions as applicability and scope, definitions, application, allocation of assistance, time of application, evaluation application, reporting and compliance and recision and information confidentiality.

Social Impact

The rules proposed for readoption will enable the NJDA to continue implementing its programs whose social impact are positive in nature. The NJDA has utilized its resources to assist entrepreneurs in the establishment and expansion of viable businesses which otherwise would not have access to capital for these purposes. Through fiscal year 1994, the NJDA has provided approximately $3,500,000 in loans to 60 businesses.

Economic Impact

The rules proposed for readoption have a positive economic impact. The NJDA provides low cost capital to eligible businesses which have demonstrated that insufficient private sector interest exists. Through fiscal year 1994, the NJDA has provided financial assistance which resulted in over 500 jobs being maintained and newly created. Many of these new jobs have been created within targeted distressed municipalities within the State of New Jersey.

Although the State of New Jersey directly benefits from businesses expanded or established with NJDA assistance, the cost to the State is relatively minor, in that the program funds which are made available to the NJDA are derived from Casino Reinvestment funds. The administrative cost associated with the program are covered through application fees and revenues of the NJDA.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements are governed by N.J.S.A. 34:1B-47 et seq. and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

The rules proposed for readoption set forth eligibility standards and application procedures for direct loans and loan guarantees to small businesses, minority-owned and woman-owned businesses. The first business type, and many of the latter two types, are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose compliance requirements on such businesses in applying for loans and guarantees from the NJDA and reporting requirements on loan and guarantee recipients. A $250.00 fee is charged per application and a fee (minimum $500.00) for each guarantee. Commitment fees are also charged. Whether an applicant will require outside professional services, such as an accountant, in providing the information required under N.J.A.C. 12A:31 will depend upon the applicant's internal records and management resources. As the loan and guarantee programs are designed to be of benefit largely in small business-size enterprises, no differentiation in requirements or exemptions is provided. The application, application fee and loan requirements are the minimum necessary for the operation of an efficient lending program.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:31.

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(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
NEW JERSEY URBAN DEVELOPMENT CORPORATION

New Jersey Urban Development Corporation Rules

Proposed Readoption: N.J.A.C. 12A:80

Authorized By: New Jersey Urban Development Corporation, Timothy J. Losch, Chair.

Authority: N.J.S.A. 55:19-1 et seq., specifically 55:19-6(d).

Proposal Number: PRN 1995-318.

Submit comments by June 14, 1995 to:
Alan Steinberg
Deputy Commissioner, New Jersey Department of Commerce and Economic Development
20 West State Street
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Urban Development Corporation (NJUDC) rules expire on July 2, 1995. The NJUDC has reviewed these rules and determines them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were orginally promulgated. The readoption of the rules is necessary because they have effectively enabled the NJUDC to pursue its mission of promoting commercial development in distressed municipalities throughout the State of New Jersey.

Commercial redevelopment in distressed municipalities is a key component to revitalization efforts supported by public and private institutions. The UDC programs have successfully generated tax ratables, created jobs and leveraged private investment within New Jersey's distressed municipalities.

Some key provisions of the rules proposed for readoption include:

Subchapter 1, which pertains to the UDC programs, includes such provisions as application procedures, definitions, time of application, financial assistance, evaluation of application, small business, female business and minority business, self-aside plans and requirements, special NDC requirements, reporting and compliance and other Board actions.

Subchapter 2, which pertains to the UDC maintenance of information, includes handling of public and non-public information procedures.

Social Impact

The rules proposed for readoption will enable the NJUDC to continue implementing its programs whose social impact are positive in nature. The NJUDC has utilized its resources to assist developers access the capital necessary to commence commercial real estate development projects in distressed municipalities which otherwise would not have access to capital for these initiatives. During Fiscal Year 1993, UDC-approved projects leveraged $46 million in private investments, created 213 new jobs, generated 388 construction jobs and maintained 75 permanent jobs.

Economic Impact

The rules proposed for readoption have a positive economic impact (see above figures in Social Impact). The NJUDC provides low cost capital to eligible projects which have demonstrated that insufficient private sector interest exists.

The State of New Jersey directly benefits from commercial development project expanded or established with UDC assistance, the cost to the State is relatively minor in relative to tax ratables generated by UDC sponsored institutions. The administrative cost associated with the program are covered through application fees and revenues of the UDC.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required becuase the rulemaking requirements are governed by N.J.S.A. 34:1B-47 et seq. and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

The rules proposed for readoption set forth eligibility standards and application procedures for direct loans and guarantees to commercial real estate projects in distressed municipalities. The rules impose compliance requirements on such organizations in applying for financial assistance from the UDC and reporting requirements on loan recipients. A fee is charged per application. Whether an applicant will require outside professional services, such as an accountant, in providing the information required under N.J.A.C. 12A:80-1.3 will depend upon the applicant's internal records and management resources. As this program is designed to be of benefit largely in business-sized distressed municipalities, no differentiation in requirements or exemptions is provided. The application, application fee and loan requirements are the minimum necessary for the operation of an efficient financial program.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:80.

LAW AND PUBLIC SAFETY

(b)

DIVISION ON CIVIL RIGHTS

Regulations Pertaining to Discrimination on the Basis of Handicap

Proposed Readoption: N.J.A.C. 13:13

Authorized By: C. Gregory Stewart, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-4.1; 10:5-6; 10:5-8(g), (h); 10:5-12; 10:5-29 through 29.6.

Proposal Number: PRN 1995-304.

Submit comments by June 14, 1995, to:
Jeffrey Burstein, Acting Director
Division on Civil Rights
383 West State Street
CN-089
Trenton, NJ 08625-0089
ATTN: Susan R. Oxford, Assistant Director
Bureau of Policy

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:13 expires on July 16, 1995. The Division on Civil Rights has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules, as amended by the Division through a notice of adoption published elsewhere in this issue of the New Jersey Register, without further change.

In 1972, the New Jersey Legislature amended the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to 42, to prohibit discrimination in employment, housing, and public accommodations on the basis of physical handicap. The statute was further amended in 1978 to prohibit discrimination based on mental handicap. The rules as readopted will continue to establish principles for interpretation of the New Jersey Law Against Discrimination's protections against discrimination based on physical and mental disability. The rules are designed to provide continued guidance to employers, owners and operators of housing and public accommodations, persons with disabilities and others who are impacted by the application of the New Jersey statute.

On the Federal level, the past seven years have brought major advancements in protections from discrimination based on disability. In 1988, Congress amended the Fair Housing Act, 42 U.S.C. 3601 et seq., to protect persons with disabilities from discrimination in housing. In 1990, Congress enacted the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 et seq., which extended protection from discrimination in employment, public accommodations and government services to persons with disabilities.

Although the Division's regulations predate these Federal protections, they are largely consistent because the Division patterned its handicap rules after those promulgated under Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination on the basis of handicap by federally funded programs). In addition, certain provisions of these rules were just amended to reflect recent revisions to the LAD designed to make New Jersey's anti-discrimination law consistent with the federal Fair Housing Act.

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Subsequent to their adoption on June 17, 1985, the rules have provided immeasurable guidance to employers, owners of real property and public accommodations, realtors, and persons with disabilities in interpreting and complying with the Law Against Discrimination. The New Jersey Supreme Court has noted with approval relevant portions of the rules (see *Jansen v. Food Circus Supermarkets, Inc.,* 110 *N.J.* 363 (1988)). Additionally, investigators in the Division on Civil Rights have relied upon the rules for guidance in the investigation and resolution of complaints filed with the agency.

Following are capsulations of pertinent sections of the rules proposed for readoption:

N.J.A.C. 13:13-1 contains rules relating to the purpose and construction of the chapter and providing definitions for terms used therein.

N.J.A.C. 13:13-2.1 Job advertising and solicitation

This section clarifies N.J.S.A. 10:5-12(c), which prohibits discriminatory advertising in general. The section specifies the types of advertising considered discriminatory. This section also encourages employers to apply principles of inclusion to their recruitment policies.

N.J.A.C. 13:13-2.2 Job referrals

This section outlines the conduct which may render employers, employment agencies, labor organizations and other recruitment sources liable under the Act for discriminating against persons with disabilities in the area of job referrals.

N.J.A.C. 13:13-2.3 Employment criteria

This rule provides that any employment test or other selection criterion must be related to the ability of the prospective employee to perform the job for which the particular test or selection criterion is administered or applied.

N.J.A.C. 13:13-2.4 Pre-employment inquiries

This section prohibits the employer, employment agency, or labor organization from eliciting any information which would tend to divulge the existence of a disability, unless such an inquiry seeks to determine whether an applicant for employment has a disability which will impede work performance in the job being sought, and is accompanied by information concerning the duties of the job and the availability of reasonable accommodation. This section also explains an employer's responsibility for maintaining confidentiality of information concerning the disability of an employee or prospective employee, and indicates how an employer may lawfully condition an offer of employment on an applicant's successful completion of a medical examination.

N.J.A.C. 13:13-2.5 Reasonable accommodation

This rule explains the employer's obligation under the law to make reasonable changes in the work environment that will enable an employee or applicant with a disability to perform the particular job sought. However, this section makes clear that an employer need not accommodate such an employee or applicant if the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

N.J.A.C. 13:13-2.6 Wages and fringe benefits

This rule prohibits discrimination by employers against persons with disabilities in the terms, conditions, and privileges of employment.

N.J.A.C. 13:13-2.7 Labor organizations

This section expressly applies the Law Against Discrimination to labor organizations. In general, it is unlawful for a labor organization to discriminate against a person with a disability with respect to membership, hiring, promotion, transfer, compensation, representation, grievances, or any other matter directly or indirectly related to membership in or employment by such an organization.

N.J.A.C. 13:13-2.8 Exception

This section provides examples which should help employers recognize instances whereby an individual's disability reasonably precludes the performance of a particular employment.

N.J.A.C. 13:13-3 Real Property

The sections comprising this subchapter prohibit discrimination against persons with disabilities in a wide range of activities involving the use and disposition of real property. These provisions make it unlawful to advertise or solicit in a discriminatory manner, and prohibit inquiries concerning the disability of a prospective purchaser, tenant, or occupant. Also unlawful is discrimination on the basis of disability in the terms of sale, rental, eviction and financing.

Amendments to this subchapter adopted elsewhere in this issue of the New Jersey Register, effective May 15, 1995 specify that a person with a disability who occupies or intends to occupy a dwelling must be allowed to make reasonable modifications, at their own expense, if such modifications are necessary to afford the disabled person full enjoyment of the premises. The amendments further specify the conditions that a landlord may impose on such modifications. The amendments also provide that it is unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services when necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

The amendments provide that it is unlawful to evict a tenant or discriminate in lending because the tenant or loan applicant is a person with a disability or is associated with a person with a disability. Finally, the amendments specify that it is unlawful to fail to design or construct certain multifamily dwellings in conformance with the standards set forth in the Barrier-Free subcode of the State Uniform Construction Code, N.J.S.A. 52:27D-119 et seq. and N.J.A.C. 5:23-7. The provisions contained in these sections underscore the consistencies between the prohibitions of discrimination based on disability under the Law Against Discrimination and the regulations promulgated under the Fair Housing Amendments Act of 1988, 42 U.S.C. §3601 et seq.

N.J.A.C. 13:13-4 Access to Public Accommodations

This subchapter outlines the areas of potential liability of owners, lessees, proprietors, managers, superintendents, agents, or employees of any place of public accommodation stemming from the protection afforded persons with disabilities by the New Jersey Law Against Discrimination.

Social Impact

The rules proposed for readoption seek to promote and expand employment and housing opportunities in the public and private sectors for persons with disabilities. The rules assist in the full inclusion of persons with disabilities into society through the availability of additional employment, housing, and increased access to public accommodations.

The employment rules attempt to ensure that persons with disabilities have the opportunity to secure positions of employment for which they are qualified and capable of performing, either with or without reasonable accommodation. These rules have had a positive societal impact because they have had the cumulative result of allowing persons with disabilities to be valuable contributors to the workforce. Employers have been minimally impacted because employers are obligated to provide accommodation for such individuals only to the extent that the accommodation in question is "reasonable."

Since the rules were originally adopted, persons with disabilities have continued to face challenges in gaining full participation in society. These rules will continue to guide employers, property owners and owners of public accommodations seeking to comply with the provisions of the Law Against Discrimination. Since their implementation, the Division has not received any unfavorable comments regarding these rules. If these rules are not readopted, it would create uncertainty among New Jersey residents and increase the burden on them to determine their rights and responsibilities under the Law Against Discrimination.

Economic Impact

The rules proposed for readoption relating to employment of persons with disabilities have had no significant economic impact on employers since they represent no change in the legal obligations of those employers covered by Federal and State laws protecting disabled workers. The rules merely codify existing judicial decisions which interpret the Law Against Discrimination, and in large measure are consistent with regulations promulgated under the Federal Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and the Fair Housing Amendments Act of 1988.

The impact on the business operations and concurrent productivity and efficiency of employers has been minimal. There is no reason to believe that any changes in current economic conditions would cause the rules to have a more significant economic impact. It should be noted in this regard that the rules require that employment opportunities be extended only to employees or applicants with disabilities who are qualified for the positions sought. Also, employers need not accommodate an employee's limitations based on disability if such an accommodation would impose an undue hardship on the operation of its business.

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The rules list factors to be considered in the determination of whether the accommodation of a particular individual's disability is required under the law. These factors include the overall size of the employer's business, the type of operation the employer is engaged in, and the nature and cost of the accommodation needed. Hence, the rules are specifically designed to advance the opportunities of persons with disabilities without excessively burdening employers. Finally, the rules clarify and capsulize existing law and, therefore, assist employers in avoiding complaints of discrimination and in protecting themselves from potential liability under the New Jersey Law Against Discrimination.

Lastly, the cost of compliance with the rules relating to real property and public accommodations will be minimal since the performance sought is limited to the sale and rental of real property and the use of public accommodations which would otherwise have been occupied or utilized by the general public. Additionally, with the 1988 passage of amendments to the Fair Housing Act, these rules duplicate many provisions required under Federal law.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules proposed for readoption here are intended to clarify the New Jersey Law Against Discrimination, and are not intended to implement or comply with any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. To the extent that regulatory changes effective May 15, 1995, published elsewhere in this issue of the New Jersey Register are intended to enable the Division on Civil Rights to be certified by the United States Department of Housing and Urban Development (HUD) under the Fair Housing Act (FHA) 42 U.S.C. 3601 et seq., the standards or requirements contained in these rules do not exceed the standards or requirements imposed by the FHA. If the Division achieves such certification by HUD, New Jersey would become eligible for federal reimbursement for investigating claims of housing discrimination under the LAD.

Regulatory Flexibility Analysis

The proposed readoption will not impose any reporting or recordkeeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses are merely prohibited from discriminating against persons with disabilities under the provisions of the rules, just as are larger businesses. Lesser requirements for small businesses cannot be provided under these rules, for to do so would be contrary to both State and federal law and interpretive court decisions. With respect to the requirement that employers "accommodate" employees' disabilities, the requirements imposed on small businesses will be limited to those accommodations that are "reasonable" in light of a number of factors, including the size and financial resources of the business in question and the nature and cost of the accommodation needed.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:13 and in this issue of the New Jersey Register, adopting amendments effective May 15, 1995.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Physician Assistant Scope of Practice
Proposed Amendment: N.J.A.C. 13:35-2B.4

Authorized By: State Board of Medical Examiners, Kevin B. Earle, Executive Director.

Authority: N.J.S.A. 45:9-2 and 45:9-27.28.

Proposal Number: PRN 1995-303.

Submit written comments by June 14, 1995 to:

Kevin B. Earle
Executive Director
New Jersey State Board of Medical Examiners
140 East Front Street, 2nd Floor
Trenton, New Jersey 08609

The agency proposal follows:

Summary

The Board of Medical Examiners is proposing amendments which would expand and clarify the scope of a physician assistant's practice in accordance with N.J.S.A. 45:9-27.16(a)(7) and (b)(5). The Board is also proposing amendments to ensure that proper documentation is kept evidencing the physician assistant's adequate training to perform the procedures which N.J.A.C. 13:35-2B.4(b) permits them to execute and that supervision by a physician or physician designee is mandated for certain procedures.

A version of the amendments under consideration was proposed when the Board originally promulgated the rules for physician assistants in November 1994. At that time, the Board determined that because of concerns related to physician assistant's level of training as well as the training of their supervising physicians, these provisions required greater consideration. The Board has now carefully evaluated these proposed amendments and is confident that their promulgation, as modified, is advisable.

N.J.A.C. 13:35-2B.4(a)12 allows a physician assistant licensee to perform uncomplicated obstetrical deliveries in a licensed hospital. These deliveries could only be performed under the rule if the supervising physician or physician designee was on the premises and available to respond immediately.

N.J.A.C. 13:35-2B.4(b)6 provides that pursuant to complying with the provisions of N.J.A.C. 13:35-2B.3 and 2B.4(b), a physician assistant may perform other procedures for diagnostic, therapeutic or interventional purposes such as, but not limited to, introduction of contrast material for radiologic studies, use of endoscopic instruments and aspiration of fluid from joints and body cavities, collection of cerebrospinal fluid, biopsy of tissues, placement of central venous catheters or chest tubes, and endotracheal intubation.

N.J.A.C. 13:35-2B.4(b)6i mandates that a supervising physician or physician designee be available on the premises for those procedures requiring intravenous or intra-arterial injection of contrast material, endoscopic biopsy of tissue, and elective endotracheal intubation.

N.J.A.C. 13:35-2B.4(b)6ii requires the supervising physician to maintain documentation evidencing the physician assistant's training to perform the procedures delineated in N.J.A.C. 13:35-2B.4(b)6.

Social Impact

The State Board of Medical Examiners is proposing these amendments in order to further implement the provisions of the Physician Assistant Licensing Act, P.L. 1991, c.378, as amended by P.L. 1992, c.102 (N.J.S.A. 45:9-27.10 et seq., the "Act"). The Act established the Physician Assistant Advisory Committee within the State Board of Medical Examiners and provided the Board with authority to promulgate regulations to effectuate the purposes of the Act.

Proposed N.J.A.C. 13:35-2B.4(a)12 would allow physician assistants to perform routine obstetrical deliveries currently performed only by physicians and certified nurse midwives. The Board anticipates improved efficiency in medical care and cost reductions to patients as a result of this provision. Due to the rule's requirement that the supervising physician or designee be on the premises and available to respond immediately, patients' safety concerns should be satisfied. Projected improved efficiency in medical care without sacrificing safety should result in a positive social impact.

N.J.A.C. 13:35-2B.4(b)6 will further expand the physician assistant's scope of practice by enabling licensees to perform diverse procedures for diagnostic, therapeutic or interventional purposes. Similar to the social impact of N.J.A.C. 13:35-2B.4(a)12, the Board anticipates improved efficiency in medical care and cost reductions to patients as a result of this provision.

N.J.A.C. 13:35-2B.4(b)6i, which requires that a supervising physician or designee be available on the premises for procedures requiring intravenous or intra-arterial injections, endoscopic biopsies and elective endotracheal intubation, should also increase the public's confidence in enabling physician assistants to perform these procedures. This proposed provision will also benefit patients by ensuring that trained physicians or designees will be available to treat complications if they develop.

Promulgation of N.J.A.C. 13:35-2B.4(b)6ii, which will mandate that doctors maintain documentation evidencing the adequacy of a physician assistant's training to perform the procedures outlined in N.J.A.C. 13:35-2B.4(b)6, should result in a positive social impact by ensuring that in addition to any credentialing required by a hospital or other health care facility, the physician assistant has documented training to perform

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these functions. This should increase public confidence in the physician assistant's competence to perform these procedures as well as providing a safety check to ensure that the training has been successfully completed.

Economic Impact

One of the original goals of licensing physician assistants was to reduce health care costs by permitting fairly routine medical procedures to be performed by physician assistants at a lower cost. N.J.A.C. 13:35-2B.4(a)12 and (b)6 will enable New Jersey citizens to enjoy the favorable economic impact that allowing physician assistants to perform relatively uncomplicated procedures will provide. Moreover, the economic advantage of reduced costs to consumers will far outweigh any costs associated with the physician or physician designee's presence at the hospital while the services are performed. Similarly, the cost benefits to consumers will outweigh any costs associated with the physician documenting the physician assistant's training to perform these procedures.

Physicians who employ physician assistants in their practice may also realize the economic benefit derived from additional services physicians may be able to offer patients as a result of the time liberated for them by physician assistants who will perform procedures that they formerly provided.

Hospitals are expected to save on staffing costs as a result of physician assistants' expanded scope of practice. Hospitals will also benefit from increased efficiency in providing medical care to their patients.

Finally, an expanded scope of practice will provide a great economic benefit to physician assistants themselves. The Board projects that the amendments will favorably impact physician assistants by increasing their marketability and demand within the medical profession.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for these proposed amendments because the practice requirements set forth in the amendments involve no Federal standards or requirements. Instead, the amendments finds their authority solely in the power to make Board regulations conferred by N.J.S.A. 45:9-27.15, 27.16, 27.24 and 27.26.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Board to give a description of the types and an estimate of the number of small businesses to which the proposed new rule will apply. If for the purposes of this Act, individual practicing physician assistants and the doctors for whom they work are deemed to be "small businesses," the following analysis applies:

The Board approximates that there are at least 114 individuals licensed as physician assistants, 26,664 MDs and 2,569 DOs licensed in the State. N.J.A.C. 13:35-2B.4(a)12, which concerns obstetrical deliveries, should only exact compliance requirements from those practicing in the area of obstetrics. The regulation should not, however, require any additional recordkeeping or reporting for compliance with the regulation. A cost will obtain from the time a physician would have to be available on the premises to respond to any complication. The cost to a doctor to be physically present in the hospital while the obstetrical delivery is being performed by a physician assistant is far outweighed by the cost benefit to the doctor of being freed to provide more diverse services and thus enjoy the fees for those services.

Promulgation of N.J.A.C. 13:35-2B.4(b)6, which further expands the physician assistant's scope of practice to include a variety of diagnostic, therapeutic, or interventional procedures, will not in itself increase physician's or physician assistant's recordkeeping, reporting or compliance requirements. Moreover, compliance requirements which will result from the required protocols of N.J.A.C. 13:35-2B.4(b)6i and ii, which modify N.J.A.C. 13:35-2B.4(b)6, will only impact physicians and physician assistants whose practice includes these procedures.

Promulgation of N.J.A.C. 13:35-2B.4(b)6i will result in only one new compliance requirement. That requirement mandates a physician or designee be available on the premises while certain procedures are performed. There are no additional reporting or recordkeeping requirements as a result of this subparagraph. The Board believes any cost related to a licensed physician or designee on the premises while these procedures are performed is greatly outweighed by the cost benefits of allowing physician assistants to perform these procedures.

Promulgation of N.J.A.C. 13:35-2B.4(b)6ii will also result in only one new compliance requirement. The regulation directs physicians to keep records evidencing each physician assistant's training to perform procedures outlined in N.J.A.C. 13:35-2B.4(b)6. The cost and burden to physicians to perform this additional recordkeeping function is also far outweighed by the benefit they will derive from physician assistants' enhanced scope of practice.

The proposed regulations require no professional services to comply with their provisions. No exemption is provided for small businesses because to do so would defeat the purpose of the rule which is to protect the public and ensure the health, safety and welfare of citizens in the State.

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

13:35-2B.4 Scope of practice

(a) A licensee who has complied with the provisions of N.J.A.C. 13:35-2B.3 may perform the following procedures on a discretionary and routine basis:

1.-11. (No change.)

12. [(Reserved)] **Performing uncomplicated obstetrical deliveries in a licensed hospital with the supervising physician or physician designee on premises and available to respond immediately**; and

13. (No change.)

(b) A licensee who has complied with the provisions of N.J.A.C. 13:35-2B.3 may perform the following procedures, provided the procedures are within the training and experience of both the supervising physician and the physician assistant, only when the supervising physician directs the licensee to perform the procedures or orders or prescribes the procedures, or the procedures are specified in a written protocol approved by the Board.

1.-5. (No change.)

6. [(Reserved)] **Performing other procedures for diagnostic, therapeutic or interventional purposes such as, but not limited to, introduction of contrast material for radiologic studies, use of endoscopic instruments and aspiration of fluid from joints and body cavities, collection of cerebrospinal fluid, biopsy of tissues, placement of central venous catheters or chest tubes, and endotracheal intubation.**

i. The supervising physician or physician designee shall be available on premises for those procedures requiring intravenous or intra-arterial injection of contrast material, endoscopic biopsy of tissue, and elective endotracheal intubation.

ii. The supervising physician shall maintain documentation, or ensure that documentation is maintained, evidencing that the physician assistant has the training, experience and proficiency to perform such procedures; and

7. (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PROFESSIONAL PLANNERS
Rules of Practice
Proposed Readoption with Amendment: N.J.A.C. 13:41

Authorized By: State Board of Professional Planners, James Hsu, Executive Director.

Authority: N.J.S.A. 45:14A-4 et seq.

Proposal Number: PRN 1995-289.

Submit written comments by June 14, 1995 to:
James Hsu, Executive Director
State Board of Professional Planners
Post Office Box 45016
Newark, NJ 07101

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:41 is scheduled to expire on July 17, 1995. The Board of Professional Planners reviewed the current rules and found them to be necessary and effective for the purposes for which they were originally promulgated. The current rules proposed for readoption have had an advantageous impact on the regula-

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tion of the planning profession by enabling the Board to have in place procedures which maintain high standards of practice, thus serving and protecting the public's best interest. The Board anticipates some proposed new rules in the near future; however, because of time constraints, it presently proposes only one amendment to its current rules.

N.J.A.C. 13:41 contains four subchapters.

N.J.A.C. 13:41-1.1 mandates that every duly licensed professional planner obtain a seal and have the design approved by the Board. That seal must contain the planner's name, license number, and the legend "licensed professional planner."

N.J.A.C. 13:41-1.2 mandates that the first page of each report and every drawing, if submitted separately, contain the seal. The planner's signature and the date must appear below the seal. This section also provides direction on where and how to place a title block. Finally, the section mandates that the seal cannot be removed from any print or reproduction.

N.J.A.C. 13:41-1.3 requires that except for maps of existing land use, existing facilities or maps of findings, studies in mapped form and original tracings, all instruments issued by the planner must be signed and sealed. Where duplicate instruments are issued, the seal must appear on the original issued to the client and all other copies must reflect on the title page that the original contained the seal in accordance with law.

N.J.A.C. 13:41-2 enumerates prohibited acts of misconduct. Included in this section is a proposed amendment, N.J.A.C. 13:41-2.1(a)4, which prohibits "charging for work not done or hours not spent." The remaining prohibited acts appearing subsequent to N.J.A.C. 13:41-2.1(a)4 have been recodified without change.

To engage in a conflict of interest constitutes an additional act of misconduct described in N.J.A.C. 13:41-2.1. A conflict of interest is defined in this section as rendering or contracting to render professional services where the licensee's ability to perform faithfully and objectively is limited by personal, professional, or financial conflicts. To act as a member, advisor, employee or consultant to a governmental body or agency while that body or agency reviews, approves, or recommends plans, specifications, reports or other professional work submitted by the licensee or any firm with which the licensee maintains or anticipates a professional or financial relationship also constitutes a conflict of interest.

If a conflict does arise over review of government work, the licensee must follow a specified protocol to avoid the conflict. Those steps comprise submitting to the governmental body a written notice of the licensee's recusal from any participation in the matter under review and then permanently terminating or declining to enter the professional or financial relationship creating the conflict. Following the relationship's termination, the licensee must inform the governmental body of the termination in writing.

To solicit or accept a professional contract from a governmental agency while a member or employee of a governmental body or agency is also prohibited. If a licensee or a firm associated with the licensee acts only as a consultant or advisor to the governmental body, that licensee or firm is not precluded, for conflict of interest reasons, from accepting a governmental contract from the governmental body and providing advice, recommendations and counsel with regard to such work.

N.J.A.C. 13:41-3.1 is reserved.

N.J.A.C. 13:41-3.2 documents the fee schedule charged by the State Board of Professional Planners. The fee schedule includes initial and renewal license fees, examination fees, late renewal fees, duplicate license fees, name change fees, and duplicate wall certificate fees.

N.J.A.C. 13:41-4 details permissible division of responsibility in the submission of site plans and major subdivision plats. These rules were promulgated in a joint proposal by the Boards of Professional Planners, Architects and Engineers.

N.J.A.C. 13:41-4.1 sets forth general provisions for this subsection. It defines all terms used in the subchapter according to the Municipal Land Use Act, N.J.S.A. 40:55D et seq. The section then states that the various elements of a preliminary or final site plan or major subdivision plat must be within the professional scope of the various professions as listed in the subchapter.

N.J.A.C. 13:41-4.2 outlines regulations which divide responsibilities among architects, planners and engineers for the depiction of existing conditions at a site plan. It mandates that a land surveyor must prepare the survey which shall include the metes and bounds of the property, drainage, waterways, specific utility locations and easements. Survey information may only be transferred to the site plan if it contains the date, the name of the surveyor and the party for whom the survey was performed. A signed and sealed copy of the survey must be submitted to the reviewing governmental body. This section also mandates that an architect, planner, engineer, land surveyor, certified landscape architect, or other person acceptable to the reviewing governmental body prepare vegetation, general flood plain determination, general location of utilities, buildings, or structures represented on the site plan.

N.J.A.C. 13:41-4.3 discusses division of responsibilities among architects, professional planners and engineers for site plan preparation. The section articulates that an architect or engineer must prepare the location of proposed buildings and their relationship to their immediate environs on the site plan. It also sets forth that an architect, planner, engineer, or certified landscape architect must prepare the locations of drives, parking layout, pedestrian circulation and means of ingress and egress on the site plan. Drainage facilities for site plans of 10 acres or more, or those drainage plans that involve stormwater detention facilities, or those traversed by a water course, must only be prepared by an engineer. Other drainage facilities may be prepared by an architect or engineer. Utility connections on tract extensions must be prepared by an engineer or architect. Off-tract utility extensions must also be prepared only by an engineer. On site sanitary sewage disposal or flow equalization facilities must also be prepared only by engineers. Preliminary floor plans and elevation views of buildings illustrating the architectural design of a project must be prepared only by an architect except when the building is part of an engineering or industrial project. In that case, floor plans may be prepared by an engineer. An architect, planner, engineer, or certified landscape architect or other person acceptable by the reviewing governmental body may prepare landscaping, signs, lighting, screening or other information not otherwise specified in this section. Finally, the general layout of the conceptual site plan for a multiple building project which shows the development elements, including their relationship to the site and its immediate environs, must be prepared by either an architect, planner, engineer, or certified landscape architect.

N.J.A.C. 13:41-4.4 provides the division of professional responsibilities for preparation of a major subdivision plan. This section mandates that the general location of facilities, site improvements, and lot layouts must be prepared by an architect, land surveyor, planner, or certified landscape architect. The design and construction details of all public improvements including street pavements, curbs, sidewalks, sanitary sewage and storm drainage facilities shall be prepared only by an engineer. This section also sets forth that only a land surveyor shall prepare the final subdivision map with metes and bounds.

N.J.A.C. 13:41-4.5 clarifies that the regulations promulgated in subchapter 4 preempt any municipal or county ordinance which purports to define the scope of practice for architects, engineers, land surveyors, planners or certified landscape architects for the preparation of site plans or major subdivisions.

Social Impact

The readopted rules will enable the Board of Professional Planners to continue, through regulation, to ensure the highest possible level of professionalism for the benefit and protection of the public. Due to the fact that the rules are, with the exception of one amendment, N.J.A.C. 13:41-2.1(a)4, being proposed for readoption, they pose no threat of cost increase to the public.

N.J.A.C. 13:41-1, which requires all professional planners to obtain a seal and mark each original instrument, except those documents exempted in N.J.A.C. 13:41-1.3(a), will continue to protect consumers from relying on fraudulent documents. Use of the seal will also continue to ensure the professional planner's responsibility for the quality of his or her work.

N.J.A.C. 13:41-2, as amended, should also serve through its delineation of acts of misconduct, to continue to protect the public welfare. N.J.A.C. 13:41-2.1(a)4, an amendment which prohibits charging for work not done or hours not spent, will provide a public benefit by ensuring that only work actually performed will be compensated.

N.J.A.C. 13:41-3, which sets forth the State Board of Professional Planners fee schedule, contains no amendments or fee changes. Fees charged by the Board serve only to offset the cost of the Board's operation as required by statutory mandate.

N.J.A.C. 13:41-4 represents a joint proposal of the Professional Planners, Engineering, and Architectural Boards. The regulations in this subchapter are thought by the Boards to provide a positive social impact by delineating the scope of practice for each professional and the division of their responsibilities when preparing site plans and subdivision plans. Similarly, the clarification in this subchapter that State regulations

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supersede local law regarding professional planners, engineers and architects scope of practice eliminates confusion over which laws to follow.

Economic Impact

With the exception of amendment N.J.A.C. 13:41-2.1(a)4, the rules proposed are readoptions of rules previously promulgated. As a result of the rules' readoption status, there is no adverse economic impact created as a result of the rules readoption upon the public, candidates for licensure, or licensees.

Compliance with this chapter does entail certain costs for candidates for licensure as well as licensees, as set forth in the fee schedule. It is not unlikely that these costs as well as other incidental costs of doing business will be reflected in the final price for services charged to consumers for professional planning services; however, these costs are both reasonable and necessary. The amendment at N.J.A.C. 13:41-2.1(a)4 will ensure that only work actually performed will be compensated. Without the fee schedule, the Board would not have sufficient funding to preserve and protect the public and ensure that an acceptable level of planning is performed by those licensees.

Similarly, costs of compliance to obtain and maintain a seal, to seal all required instruments, and, to a very limited extent, costs associated with avoiding acts of misconduct and adhering to the division of professional responsibilities mandated in subchapter 4, have in the past and will continue to exact some small cost on the professional planner's practice which may be passed on to consumers in the cost of services. The Board believes that these costs will be minimal and outweighed by the public benefit of ensuring proper conduct and deterring fraud and negligence within the profession.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required here for the proposed readopted rules and amendment because the practice requirements set forth in these rules involve no Federal standards or requirements. The proposed rules find their authority in the power to make board regulations governing professional planners conferred by N.J.S.A. 45:14A-4 et seq. and are not subject to any Federal requirement or standard.

Regulatory Flexibility Analysis

The Board of Professional Planners currently licenses approximately 5,300 persons. If professional planners are deemed "small businesses" under the criteria set forth in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following statements are applicable:

N.J.A.C. 13:41-1 has in the past and will continue to exact a nominal cost of compliance from professional planners to obtain a seal. It is conceivable, though not likely, that a barely negligible cost will obtain for any administrative oversight function to make sure all instruments requiring the seal indeed are sealed prior to submission to a client. The Board believes that this cost is so barely perceptible in the overall cost of running a business that it is far outweighed by the benefit to the public of protection from fraud. In addition, because regulations under N.J.A.C. 13:41-1 being readopted, there is no additional cost of compliance to licensees.

N.J.A.C. 13:41-2 enumerates acts of misconduct. With the exception of N.J.A.C. 13:41-2.1(a)4, which prohibits charging for work not done or hours not spent, the acts enumerated here are proposed for readoption and pose no additional compliance costs on the profession. Moreover, the cost of compliance with regulations in this subchapter is so subjective, that those costs are inestimable. The Board contends, particularly because of the public interest in protection from fraud, negligence and conflict of interest expressed in these regulations, costs of compliance are outweighed by the public benefits of professionalism that they secure.

N.J.A.C. 13:41-3 has in the past and will continue to exact a cost of compliance to pay the fees required for licenses, wall certificates, examinations, name change and reinstatement charges. Compliance with the fee schedule, may, in addition, require the use of administrative staff to complete and forward materials related to fee recordkeeping and/or payment of the fees set forth in this subchapter. It is not believed that professional services beyond those of regular office staff will be required to comply. The fees set forth are reasonable and necessary to defray the expenses of maintaining a Board of Professional Planners. The public benefit derived from the protections the Board secures for the public outweighs the cost of compliance for licensees.

N.J.A.C. 13:41-4, a joint readoption among the Boards of Professional Planners, Engineers and Architects, distinguishes which professional is responsible for each aspect of a site plan or major subdivision plan. As a readopted subchapter, no new compliance costs or requirements are exacted. To the extent that an aspect of a site plan or major subdivision plan, may, as a result of this subchapter, fall under the professional jurisdiction of an engineer or architect rather than a professional planner, this may exact a cost to the planner in the form of lost business. To the extent that a part of a site plan or major subdivision plan must be referred by the professional planner to another professional, professional services may be necessary to comply with this regulation. This compliance cost is thought to be in the best interest of the public and ensures the most competent service for each aspect of the plan.

Generally, the readopted regulations for the practice of professional planning may affect licensees who operate as small businesses. The purpose of these rules, to promote and protect the public welfare, demands that these rules must be uniformly and consistently applied; no differential treatment can be accorded to small businesses. Other than the professional services needed to comply with N.J.A.C. 13:41-4, no additional professional services are required for compliance with these regulations.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:41.

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

13:41-2.1 Enumeration of prohibited acts

(a) Misconduct in the practice of professional planning shall include, but not be limited to, the following:

1.-3. (No change.)

4. Charging for work not done or hours not spent;

Recodify existing 4.-6. as **5.-7.** (No change in text.)

(a)

STATE ATHLETIC CONTROL BOARD

Notice of Comment Period Extension

Rules Governing Boxing, Wrestling and Sparring Exhibitions and Performances

Proposed Amendments: N.J.A.C. 13:46-1.1, 4.1, 4.16, 4.21, 8.25, 9.12 and 10.1

Taxes and Fees

Proposed Amendments: N.J.A.C. 13:46-4.10, 4.25, 4.26, 9.6, 9.17, 13.1, 15.2, 15.5 and 15.13

Proposed Repeal: N.J.A.C. 13:46-4.6

Hearing Procedures

Proposed Amendments: N.J.A.C. 13:46-5.15, 5.31, 7.7, 8.1, 8.18, 9.1, 11.1, 11.10, 18.2, 18.8, 19.3, 19.6, 22.1 and 22.3

Proposed New Rule: N.J.A.C. 13:46-4.14

Rules of Boxing Competition

Three Knockdown Rule; Tie Rounds

Proposed Amendments: N.J.A.C. 13:46-8.14 and 8.19

Take notice that the State Athletic Control Board is extending until June 19, 1995 the written comment period for the four notices of proposal referenced above, published in the March 20, 1995 New Jersey Register at 27 N.J.R. 1138(a), 1139(a), 1141(a) and 1144(a), respectively.

Submit written comments by June 19, 1995 to:

Charles F. Kimmel, Counsel
State Athletic Control Board
CN 180
140 East Front Street
Trenton, New Jersey 08625

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TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route U.S. 46 including Route U.S. 1, 9 and 46

Denville Township, Mountain Lakes Borough and Parsippany-Troy Hills Township in Morris County

Proposed Amendment: N.J.A.C. 16:28-1.10

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1995-287.

Submit comments by June 14, 1995 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 proposes to amend N.J.A.C. 16:28-1.10 to revise certain "speed limit" zones along Route U.S. 46 including Route U.S. 1, 9 and 46 in Denville Township, Mountain Lakes Borough and Parsippany-Troy Hills Township in Morris County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request of the local government of the Borough of Mountain Lakes in a letter dated May 24, 1994, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that revising certain "speed limit" zones along Route U.S. 46 including Route U.S. 1, 9 and 46 in Denville Township, Mountain Lakes Borough and Parsippany-Troy Hills Township in Morris County, were warranted.

Appropriate signs shall be erected in areas where the "speed limit" zones have been changed.

Social Impact

The proposed amendment will establish a revised "speed limit" zone along Route U.S. 46, including Route U.S. 1, 9 and 46 in Denville Township, Mountain Lakes Borough and Parsippany-Troy Hills Township in Morris County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

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

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

16:28-1.10 Route U.S. 46 including Route U.S. 1, 9 and 46

(a) The rate of speed designated for the certain parts of State highway Route U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Warren, Morris, Essex, Passaic and Bergen Counties:

i. (No change.)

ii. Morris County:

(1)-(9) (No change.)

(10) Denville Township:

(A) (No change.)

(B) Zone 2: [50]**45** miles per hour between 500 feet east of Route 53 and the Denville Township [line]-Mountain Lakes Borough corporate line (approximate mileposts 43.15 to 43.82); thence

(11) Mountain Lakes Borough—**Parsippany-Troy Hills Township**:

[(A) Zone 1: 50 miles per hour between the Denville Township—Mountain Lakes Borough corporate line and the Mountain Lakes Borough—Parsippany-Troy Hills Township corporate line (approximate mileposts 43.82 to 44.70); thence

(12) Parsippany-Troy Hills Township:

(A) Zone 1: 50 miles per hour between the Mountain Lakes Borough—Parsippany-Troy Hills Township—Montville Township corporate line (approximate mileposts 44.70 to 50.35); thence]

(A) Zone 1: 45 miles per hour between the Denville Township—Mountain Lakes Borough corporate line and Lackawanna Avenue (approximate mileposts 43.82 to 44.83); thence

(B) Zone 2: 50 miles per hour between Lackawanna Avenue and the Parsippany-Troy Hills Township—Montville Township corporate line (approximate mileposts 44.83 to 50.34).

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

iii.-v. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Mid-Block Crosswalk

Route N.J. 161

Clifton City, Passaic County

Proposed Repeal: N.J.A.C. 16:30-10.14

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-34, 39:4-198 and 39:4-199.

Proposal Number: PRN 1995-281.

Submit comments by June 14, 1995 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 proposes to repeal N.J.A.C. 16:30-10.14 concerning a "mid-block crosswalk" on Route N.J. 161 in the City of Clifton, Passaic County. The provisions of this repeal will improve the flow of traffic and enhance safety along the highway system.

This repeal is being proposed at the request of the local government of the City of Clifton in a Resolution adopted on June 21, 1994, and a memorandum dated March 20, 1995, from the Project Engineer of District N-1 of the New Jersey Department of Transportation, and as

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part of the Department's review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the repeal of the "mid-block crosswalk" on Route N.J. 161 in the City of Clifton, Passaic County, was warranted, because it was determined that motorists are failing to yield the right of way to pedestrians, especially senior citizens, who are lawfully using the crosswalk.

Social Impact

The proposed repeal will eliminate the "mid-block crosswalk" on Route N.J. 161 in the City of Clifton, Passaic County, to improve traffic flow and enhance safety to protect the senior citizens of the housing complex who have been accessing the roadway (Clifton Avenue) to reach the shopping area.

Economic Impact

The Department will bear the costs for the removal of the striping, signage and the handicap access ramps which currently delineate the crosswalk.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

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

Full text of the proposed repeal follows:

16:30-10.14 [Route 161] **(Reserved)**

[(a) The certain parts of State highway Route 161 described in this subsection shall be designated as a mid-block crosswalk:

1. In Passaic County:

i. City of Clifton (Clifton Avenue):

(1) From a point 368 feet north of the northerly curb line of Allwood Road to a point 10 feet northerly therefrom.]

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax
County Boards
Petitions of Appeal; Cross-petitions of Appeal
Proposed Amendment: N.J.A.C. 18:12A-1.6

Authorized By: Richard D. Gardiner, Director, Division of Taxation.

Authority: N.J.S.A. 54:3-14.

Proposal Number: PRN 1995-295.

Submit comments by June 14, 1995 to:
Nicholas Catalano
Chief, Tax Services Branch
Division of Taxation
50 Barrack St
CN-269
Trenton, NJ 08646

The agency proposal follows:

Summary

P.L. 1991, c.75 amended the date by which a property tax appeal had to be filed from on or before August 15 to on or before April 1. The proposed amendments to N.J.A.C. 18:12A-1.6(b) and (c) amend the rule to correspond with statute in this regard.

The amendment to N.J.A.C. 18:12A-1.6(d) recognizes the deletion of "agent" from N.J.S.A. 54:3-21 as a result of the amending statute P.L. 1978, c.102. Furthermore, the proposed amendment to subsection (d) is consistent with court rule R. 1:21-1(c) concerned with filing actions and appearance in court. The amendment allows for an agent of a taxpayer to sign a petition of appeal only in cases of extreme hardship, and requires the agent to be a family member or resident caregiver.

The amendment to subsection (e) is consistent with the amendment to N.J.S.A. 54:3-27 as provided by the enactment of P.L. 1991, c.75, and requires payment by a taxpayer appealing an assessment of all taxes and municipal charges due. Reference the annual deadline imposed on county boards of taxation for entry of judgments is corrected from November 15 to July 1.

Social Impact

The amendments to N.J.A.C. 18:12A-1.6(b) and (c) incorporate the changes in the appeal deadline and cross petitions of appeal as provided in the enactment of P.L. 1991, c.75. Amending these two subsections as proposed will result in rules reflecting current provisions of applicable law in N.J.S.A. 54:3-21.

The proposed amendment to subsection (d) serves to protect the interest of a taxpayer by providing that other than the individual taxpayer, only an attorney may file and appeal on his or her behalf. An exception is provided in cases of old age, illiteracy, and similar reasons.

The proposed amendment to subsection (e) will result in consistency as provided in revisions to N.J.S.A. 54:3-27 due to the enactment of P.L. 1991, c.75.

Economic Impact

The proposed amendments to N.J.A.C. 18:12A-1.6(a) and (b) are consistent with amendments to P.L. 1991, c.75. There is no economic effect on the public due to changes as proposed.

The proposed amendment to subsection (d) precludes an agent from filing a property tax appeal on behalf of a taxpayer. This amendment will negatively impact on the business and income of those individuals who are not members of the New Jersey Bar.

The proposed amendment to subsection (e) conforms with the revisions in N.J.S.A. 54:3-27 as enacted in P.L. 1991, c.75. This amendment reflecting the statutory changes safeguards property tax revenue sources by requiring the payment of all taxes and municipal charges by permitting the municipality to file an application for dismissal if the requisite taxes and municipal charges are not paid accordingly.

Executive Order No. 27 Statement

An Executive Order No. 27 Federal exceedance standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards. The rules are governed by P.L. 1991, c.75.

Regulatory Flexibility Statement

The proposed amendments to N.J.A.C. 18:12A-1.6 do not impose any reporting, recordkeeping or other compliance requirements on small businesses. The amendments conform the rule to statutory revisions. The proposed amendments, however, concern rules for property tax appeals which apply to all taxpayers, including small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses may wish to retain the services of professionals, charging at reasonable rates, to ascertain if the rule as amended is relevant to their present tax situation.

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

18:12A-1.6 Petitions of appeal; cross-petitions of appeal

(a) (No change.)

(b) A petition of appeal filed by a party respondent in a tax appeal shall be denominated as a "cross-petition of appeal" and shall be filed on the same form and subject to the same standards applicable to petitions of appeal. Where a petition of appeal is filed **on April 1, or** within the period covering 19 days next preceding [August 15] **April 1**, respondent shall have 20 days from the date of service to file a cross-petition with the county board of taxation.

(c) A separate petition of appeal shall be received and filed [by] **with** the board on or before [August 15] **April 1** for each separately assessed property under appeal. Where an appeal involved assessments of more than one property, separate petitions of appeal shall be filed for each property separately assessed unless prior permission has been obtained from the board.

(d) [A petition of appeal shall not be accepted for filing by the board unless the petition is duly signed and sworn to or certified by the taxpayer, his attorney or agent, or unless the petition contains

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an affirmation by the taxpayer, or in the case of an appeal by a taxing district, unless the petition is accompanied by a certified copy of a resolution of a governing body of the taxing district authorizing the appeal.] **A petition of appeal filed with the board shall be duly signed by the taxpayer, by the taxpayer's attorney or, in cases of extreme hardship which shall include old age, illiteracy and the like, by an agent of the taxpayer who is either a family member or resident caregiver. In the case of an appeal by a taxing district, the petition of appeal shall be accompanied by a certified copy of a resolution of a governing body of the taxing district authorizing the appeal.** Where all information on the petition is not supplied or the petition is otherwise incomplete, the board shall nevertheless accept said petition for filing but the petitioner shall be afforded 10 days from the date of filing unless additional time shall be granted by the board of appeal within which to complete the petition. All parties shall be given at least five days notice of any additions or changes with respect to the petition of appeal. Failure to complete a petition within such time may result in its dismissal.

(e) A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the [first three quarters] **total of all taxes and municipal charges due, up to and including the first quarter** of **the taxes and municipal charges** assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66 [even though his petition to the county board of taxation might request a reduction in excess of one quarter of the taxes assessed for the full year]. In the event a taxpayer who has filed a tax appeal has failed to pay the [first three-quarters of the current year's taxes] **total of all taxes and municipal charges due** and in the further event the municipality appropriately makes an application before the county board of taxation for a dismissal of the petition of appeal, the county board of taxation shall allow the taxpayer a 10-day period of time to pay such taxes prior to the entry of a judgment of dismissal. The 10-day period may be extended by the county board in the interest of justice. If such taxes are not paid within the 10-day period, then the county board of taxation shall enter a judgment dismissing the petition for failure to pay taxes. Such a 10-day period for the payment of taxes should be limited where necessary by the [November 15] **July 1** annual deadline imposed upon county boards by law for the entry of judgments.

(f)-(l) (No change.)

(a)

DIVISION OF TAXATION

Property Administration

Unclaimed Personal Property; Safe Deposit Box Policies and Procedures

Proposed New Rules: N.J.A.C. 18:13

Authorized By: Stephen M. Sylvester, Administrator, Unclaimed Property, Division of Taxation.

Authority: N.J.S.A. 46:30B-107.

Proposal Number: PRN 1995-285.

Submit comments by June 14, 1995 to:
Nicholas Catalano
Chief, Tax Services Branch
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646-0269

The agency proposal follows:

Summary

The proposed new rules are intended to establish policies and procedures under which the Division of Taxation will administer provisions of the Uniform Unclaimed Property Act (1981), P.L. 1989, c.58, approved April 14, 1989. The proposed rules are intended to establish the policy and procedure to be followed during the taking in, and the reimbursement to the rightful owner of, unclaimed contents found in safe deposit boxes turned over to the New Jersey State Treasurer pursuant to N.J.S.A. 46:30B-1 et seq., the Uniform Unclaimed Property Act (1981).

Under the statute, the State Treasurer essentially serves as a trustee or conservator for the missing owner. The right or entitlements of the missing owner are never extinguished, and the State has a perpetual obligation to restore to the owner any property received by it.

Specific procedural areas covered in these proposed new rules are reporting; inspection; estimation of value; delivery, including constructive delivery; alternate disposition; indemnification of the holder upon election of the administrator not to receive the property; record retention and continuity; notice requirement; liability in general; sale of tangible property and the rights of the purchaser of property.

Proposed N.J.A.C. 18:13-1.1 presents certain policies regarding reporting requirements of institutions with safe deposit boxes. Proposed N.J.A.C. 18:13-1.2 gives a list of definitions of terms used in the rules. The Division will send reporting forms and instructions, for the reporting of contents of safe deposit boxes, as noted in proposed N.J.A.C. 18:13-1.3. Proposed N.J.A.C. 18:13-1.4 requires holders of safe deposit boxes to estimate and report the value of items contained in the safe deposit boxes. Multiple boxes containing worthless items are to be reported individually under proposed N.J.A.C. 18:13-1.5. Proposed N.J.A.C. 18:13-1.6 provides rules for the disposition of safe deposit box property by the holders of safe deposit boxes when the State declines to receive the property because of insubstantial commercial value. Holders of safe deposit boxes must retain records concerning the unclaimed property of safe deposit boxes under proposed N.J.A.C. 18:13-1.7, and there must be continuity of records if there is a merger or reorganization pursuant to proposed N.J.A.C. 18:13-1.8. The holder of property that is presumed abandoned is required to notify the apparent owner of the property under certain conditions which are specified in proposed N.J.A.C. 18:13-1.9, following the statutory provision N.J.S.A. 46:30B-50. Proposed N.J.A.C. 18:13-1.10 relieves the holder from liability for the unclaimed property upon delivery of the property to the State. Proposed N.J.A.C. 18:13-1.11 establishes procedures for the Property Administration Branch of the Division of Taxation to take inventory of the unclaimed property. Sales of unclaimed tangible property must be conducted under the procedure specified in N.J.S.A. 46:30B-72.1, as referenced in proposed N.J.A.C. 18:13-1.12. Purchasers of unclaimed property sold by the State would take the property free of all claims under proposed N.J.A.C. 18:13-1.13 and N.J.S.A. 46:30B-73.

Social Impact

These proposed new rules, by interpreting areas in the existing Unclaimed Property Act that deal with the contents of safe deposit boxes and repositories, will ensure conformance with the law.

Objectives are to clarify and explain for holders of unclaimed safe deposit box property the methodology to be followed by the holders in their compliance efforts under the statute and to develop a uniform understanding between the Unclaimed Personal Property Administration and the holders of unclaimed safe deposit box property with regard to the various operational steps to be taken by the holders in the reporting and delivery of the property. Additional objectives are to create the most efficient process in receiving, distributing and where applicable, selling unclaimed contents in safe deposit boxes while providing adequate internal controls and property recording for reconciliation purposes.

The proposed rules will regulate the administration of unclaimed safe deposit box property in a uniform, equitable and efficient manner. The goal is to reunite rightful owners with their property. To effect this goal, the subchapter details procedures not specifically addressed by N.J.S.A. 46:30B-1 et seq. but relevant to potential unclaimed property owners and unclaimed property holders in the matter of the contents of safe deposit boxes and repositories.

The proposed rules will enable the rightful owners of contents found in safe deposit boxes to be reunited with their property. It is also the first time in New Jersey that the general public will have an opportunity to buy contents of safe deposit boxes which have escheated to the State. The social effect of the rules is expected to be beneficial to the State, holders, rightful owners of unclaimed property found in safe deposit boxes, and the general public. There should be improvement in the State's relationship with the holders of safe deposit boxes.

The proposed rules attempt to achieve clarity of expression and comprehensiveness in coverage. This may assist a holder by removing uncertainty and encouraging understanding, communication and compliance. The proposed rules afford a comprehensive and consistent treatment of

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property to protect the holder, rightful owner and the State. Potential litigation concerning an interpretation of the Act and its application to unclaimed contents found in safe deposit boxes will be minimized. The proposed rules provide a means to consolidate and adopt a unified approach towards unclaimed property found in safe deposit boxes in the State of New Jersey.

Economic Impact

The money generated by the management of the abandoned property found in safe deposit boxes, by law, is broken down as follows: 75 percent is deposited into the General State Fund, and 25 percent is retained for payment of claims. At this point, there is no estimate on the value of property in the possession on the holders.

This abandoned property has not been turned over in a uniform manner due to the lack of rules. Some banks have reported and delivered the property to the Unclaimed Property Office. Some have only reported. Other holders have yet to report. The rules impose no additional cost, since the banks are already required to maintain the information to be reported, in accordance with the Unclaimed Property Act and the rules and laws regarding banking. The Division of Taxation may incur expenses to administer the reporting, such as preparation of data recording software, but these expenses are normal administrative expenses which would be balanced by the efficiency produced.

The proposed rules should assist in gaining the confidence of the rightful owners of abandoned property, since the proposed rules contain procedures which are designed to reunite them with their property in a quick and efficient manner.

Several specific legal issues were reviewed in the development of the proposed rules. First, on estimation of value, because a holder is required to report the names and addresses of owners of property valued at $25.00 or more, some estimate of value must be made to determine whether that $25.00 threshold has been met. Second, how to report multiple boxes of "worthless" items was addressed. Then, the review turned to indemnification of the holder where the State elects not to receive the property, and record retention requirements.

Finally, liability for the sale of "collectibles" was addressed. An example of this would be where a rare pocket watch was sold at auction at a normal, everyday price. A conscientious attempt has been made to incorporate all the above legal issues into the proposed rules in clear language in order to enhance comprehension and compliance.

These statutes detail all responsibilities of the holder of abandoned property during the course of the five year period leading up to the presumption of abandonment date and the holder's reporting responsibilities after the expiration of the abandonment period. It is important that the holder recognize the need to complete the detail required on the report form, the UP-3, for each safe deposit box or safekeeping repository. It is only with adherence by the holder to this procedure that the Unclaimed Property Office can determine the legitimate reimbursement amount to the holder for lien charges and sale expenses, if any.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements are dictated by N.J.S.A. 46:30B-1 et seq., the Uniform Unclaimed Property Act, specifically N.J.S.A. 46:30B-107, and N.J.S.A. 17:14A-51, the Safe Deposit Box Companies Proceedings for Unpaid Rental provision. The rulemaking requirements are therefore not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

The proposed new rules apply to all taxpayers subject to the Uniform Unclaimed Property Act, N.J.S.A. 46:30B-1 et seq., which may include small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed rules impose specific reporting and recordkeeping requirements on financial institutions. Penalties may be enforced for lack of compliance with these requirements according to N.J.S.A. 46:30B-103 and 104.

As described in the Summary above, from the time when the rental of the safe deposit box is unpaid for one year, the financial institution must take certain steps to ensure for proper accounting of contents found in safe deposit boxes. These holders must notify the owners by registered mail that the box(es) will be broken open, the contents placed in a sealed package and put in a separate vault, if they do not bring rental fees up to date. If there is no response, the holder incurs charges including breaking open the box, and repairing and restoring it for another customer's use. At this point in time the holder must value the property. The holder must retain a notary public not in its employ to seal and mark the contents in a separate package and to certify the proceedings. Next, the holder may place a lien on the contents of the box.

If after one year, the lien is not paid and discharged, the holder may sell the contents at public auction. The expenses of the sale include newspaper advertising. The holder may keep from the proceeds the amount due to it for its lien and expenses.

When five years have transpired from when the rental of the safe deposit box began as unpaid, the remainder of the proceeds are to be paid over to the State. Also, property not sold is turned over to the State at this time. This is accomplished in two steps: report and delivery. Reporting might not occur at the same time as actual delivery because the administrator may first inspect the property based on the report.

For reporting, the holder will be sent a blank State reporting form, UP-3, every year around the beginning of August. The holder must submit the forms containing the original postings and retain a copy for their records. Records are required to be maintained for 10 years. The holder must report each safe deposit box individually with regard to the assets, lien charges, sale expense and sale proceeds; holders do not apply lien charges and sale expenses, in total, to proceeds received from the sale. If the sale was held, the proceeds due to the State must be remitted with the report.

The first years of implementation are expected to have a bigger impact on financial institutions than succeeding years because these are the "catch-up years". This is the first attempt at complete management of this property and a considerable amount has accumulated.

While the numerous small businesses in New Jersey may retain some items on their premises, the Division does not believe this is an area of major import for them. Small businesses may wish to retain the services of professionals, charging at normal rates, to ascertain if the rules pertain to their business.

Full text of the proposed new rules follows:

CHAPTER 13
UNCLAIMED PERSONAL PROPERTY

SUBCHAPTER 1. SAFE DEPOSIT BOX POLICIES AND PROCEDURES

18:13-1.1 Declaration of policy

(a) All abandoned safe deposit boxes and repositories shall be individually reported regardless of content value.

1. Contents of some commercial value or insubstantial commercial value shall be detailed pursuant to N.J.S.A. 17:14A-51 and pursuant to N.J.S.A. 46:30B-46 through 50 and these rules.

2. For the purposes of the report requirements, items of insubstantial commercial value, may be grouped under the heading "Insubstantial Commercial Value" and need not be individually listed for each box.

(b) Each safe deposit box or other safekeeping repository will stand alone with regard to assets therein, lien charges, sale expenses and sale proceeds.

1. If a sale is held, the holder may not total all proceeds from all boxes or repositories and from that total of proceeds retain or be reimbursed for all the lien charges and sale expenses due on all the boxes or repositories.

(c) If the holder chooses to report by magnetic media the State will require that the format be consistent with the State format for reporting safe deposit box records. (See N.J.A.C. 18:13-1.3.)

(d) The State Treasurer will generally not assume custody of property prior to the presumption of abandonment.

(e) Upon presumption of abandonment, the holder shall file the required report pursuant to N.J.S.A. 46:30B-46 through 50 and this chapter, using the State approved magnetic tape format, State form UP-1 or approved substitute form.

1. If a sale has been held, the excess proceeds must accompany the report.

2. The State will notify the holder via letter within 120 days of the report, of acceptance or rejection of constructive delivery (see N.J.A.C. 18:13-1.6) or of its intent to inspect any tangible property.

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18:13-1.2 Definitions

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

"Administrator" means the Treasurer of the State of New Jersey, any individual serving as the Acting Treasurer in the absence of the appointed Treasurer, and any State employee to whom the Treasurer has delegated the authority to administer the provisions of N.J.S.A. 46:30B-1 et seq. and to execute any pertinent documents.

"Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued or owing by the holder.

"Constructive delivery" means unclaimed property which has been set apart and report of such received by the State without real transfer or a true conferring of real possession of the property by the holder.

1. This term includes all those acts which have been held by construction of law to be equivalent to acts of real delivery.

2. The conduct of the holder and State shall be such as to be consistent with the presumption that there has been a change in holder.

3. The date on which constructive delivery becomes effective is the postmarked date on the envelope in which the unclaimed property report was received.

"Good faith" means that payment or delivery was made in a reasonable attempt to comply with this chapter; that the person delivering or performing constructive delivery of the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him or her, that the property was abandoned for the purpose of this chapter; and there is no showing that the records pursuant to which the delivery was made did not meet the reasonable commercial standards of practice in the industry.

"Holder" means a person, wherever organized or domiciled, who is:

1. In possession of property belonging to another;

2. A Trustee; or

3. Indebted to another on an obligation.

"Holder's right to reimbursement" means that a holder has the right to be reimbursed from the proceeds of the sale of the contents of a safe deposit box or other safekeeping repository for lien charges and sale expenses.

1. If the sale is conducted by the State Treasurer, the State's sale expenses will be deducted from the proceeds prior to any reimbursement to the holder.

"Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

"Lien charges" means the amount due to the holder for rental to the time of removal of contents, and costs of opening, repairing, and restoration.

"Owner" means a person who is renting or leasing the safe deposit box, or other safekeeping repository.

"Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Presumption of abandonment" means safe deposit box contents or other safekeeping repository contents are presumed abandoned if unclaimed by owner for more than five years after the expiration of the lease, rental period, or other custodial agreement. (N.J.S.A. 46:30B-45).

"Safe" means a place for the storage and safekeeping of personal property.

"Safe deposit box" means vaults, boxes and receptacles used for the safekeeping of personal property, whether in a safe deposit company, bank, savings and loan association, or other safekeeping repository.

"Safe deposit company" means a corporation organized for the purpose of keeping, maintaining and renting to depositors safe deposit boxes for the safekeeping of personal property.

1. Depositors have exclusive access to the boxes, subject to the oversight and under the rules and regulations of the company.

"Sale expenses" are costs associated with a public auction, due to the holder if held pursuant to N.J.S.A. 17:14A-51 or due to the State if held under N.J.S.A. 46:30-69 and 72.1.

"State" means any state in the United States, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

"Tangible" property includes property having actual form and substance with intrinsic value which is able to be appraised for value. Examples of tangible property are jewelry, works of art, Silver Certificate Notes and rare coins.

"Repository" is a storeroom where things are placed for safekeeping.

18:13-1.3 Reporting

(a) The safe deposit box holder shall be sent blank reporting forms every year around the beginning of August.

1. Instructions as to how to report by magnetic media will be included with the forms.

(b) In the event that the contents of an individual box are valued at less than $25.00 the holder shall report the name and last known address, N.J.S.A. 46:30-47d notwithstanding.

18:13-1.4 Estimation of value

(a) The holder shall report to the administrator the nature and identifying number, if any, or description of the property item and the actual/appraised/estimated value.

1. Only "worthless" items may be reported in the aggregate. A statement that there were various "worthless" items may be included.

i. "Worthless" items are items of insubstantial commercial value including personal letters, food items (of any type), clothing (exclusive of furs), dentures/eyeglasses, personal prosthetic devices, trinkets—inexpensive ashtrays/paperweights, High School/College textbooks, notebooks—with/without personal writing, personal snapshots/pictures, newspapers/magazines, personal documents/certificates/diplomas, receipts—gas/electric/telephone/rent, Training Manuals (any profession) and paperback books.

2. Where the value of the property requires an appraisal and for items whose value is not easily estimated, the estimated value made for the notarized certificate issued at the time that the safe deposit box is opened is the estimated value for reporting purposes.

3. However, at the time of sale by New Jersey, if for any item the estimate or appraisal made when the box was opened may be out of date, the administrator may obtain a current valuation from an independent appraiser.

18:13-1.5 Reporting multiple boxes of worthless items

(a) Multiple boxes of "worthless" items shall be reported individually.

1. In the event one person owns two or more boxes the aggregate value of which is $25.00 or more, even though the contents of each individual box are valued at less than $25.00, the holder shall report the name and last known address of the owner pursuant to N.J.S.A. 46:30B-47(a).

18:13-1.6 Alternate disposition and indemnification of holder upon election of administrator not to receive the property

(a) If the administrator declines to receive any property because of insubstantial commercial value, the holder may dispose of the property as it sees fit, provided that the holder gives notice to the administrator prior to such disposition as to its intentions and the administrator chooses to accept constructive delivery, that is, when the property is not in the immediate possession of the administrator but is assumed to be in his or her possession for legal purposes.

(b) Constructive delivery has been effectuated when the unclaimed property has been set apart by the holder and the holder's report sent to the State, the postmark date on the report envelope being the date of constructive delivery.

(c) No action may be taken against the holder on account of such disposition.

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1. However, if the administrator rejects the property and does not choose constructive delivery, the holder destroys the property at his or her own risk.

18:13-1.7 Retention of records

(a) The holder shall retain records pursuant to N.J.S.A. 17:14A-50.

(b) Every holder required to file a report under Article 17 of N.J.S.A. 46:30B, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for 10 years after the property becomes reportable, except to the extent that a shorter time is provided by rule of the administrator.

18:13-1.8 Continuity of records

(a) Where a holder acquires unclaimed property from another holder, such as in a merger, acquisition, reorganization, consolidation, or transfer, that successor holder shall have a duty to maintain and continue the records of the prior holder concerning the unclaimed property, including, but not limited to, the date of the last rental payment (or beginning date of the lien for that rental box).

18:13-1.9 Notice requirement

(a) The holder shall give written notice to the apparent owner 120 days before the report is filed, pursuant to N.J.S.A. 46:30B-50, informing the apparent owner that the holder is in possession of property presumed abandoned if:

1. The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

2. The claim of the apparent owner is not barred by the statute of limitations; and

3. The property has a value of $50.00 or more.

18:13-1.10 Liability in general and constructive delivery

(a) Upon payment or constructive delivery of property to the administrator, the State shall assume custody and responsibility for the safekeeping of the property and the holder shall be relieved from liability.

(b) A holder who pays or performs constructive delivery of the property to the administrator in good faith, is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

18:13-1.11 Inspection of holder inventory or safe deposit box

(a) The holder shall submit a timely and accurate report for boxes and safekeeping repositories presumed abandoned.

(b) The Property Administration Branch shall notify the holder by letter from the administrator referencing the report detail or listing the owner's name and box number for those boxes or repositories for which the inventory will be inspected.

1. The letter shall request the following two items from the holder:

i. The name of the individual who should be contacted by the Property Administration Branch in order to arrange the inspection; and

ii. A statement from an official of the holder sent to the Property Administration Branch, affirming that all provisions of the Uniform Unclaimed Property Act (N.J.S.A. 46:30B-1 et seq.) and the Safe Deposit Box Companies-Proceedings for Unpaid Rental Statute (N.J.S.A. 17:14A-51) have been met by the holder with respect to those boxes or repositories being reported.

(c) The inventory verification will be performed with a representative(s) of the State's Unclaimed Property Program and a representative(s) of the holder in attendance.

1. Inventory items will be visually inspected and verified against the report.

i. A resolution will be arrived at and documented in the event of any discrepancies in the inventory verification process.

(d) The holder will be provided with an inspection completion letter and if the Treasury representative does not take immediate possession the representative shall secure a safe deposit box or vault in the name of the Treasurer, State of New Jersey until such time as arrangements can be made to remove the contents.

18:13-1.12 Sale of tangible property

The sale of all tangible property shall be conducted pursuant to the requirements of N.J.S.A. 46:30B-72.1.

18:13-1.13 Rights of purchaser of property

Pursuant to N.J.S.A. 46:30B-73, the purchaser of property at any sale conducted by the administrator takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

18:13-1.14 Penalties

Interest and penalties for noncompliance shall be enforced according to N.J.S.A. 46:30B-103 and 104.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

General Provisions

Post-employment Restrictions

Proposed Amendment: N.J.A.C. 19:40-2.6

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

Authority: N.J.S.A. 5:12-59e, 60, 63c and 69a.

Proposal Number: PRN 1995-288.

Submit written comments by June 14, 1995 to:
Mary S. LaMantia, Senior Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposal would amend N.J.A.C. 19:40-2.6, rules implementing the post-employment restrictions imposed by the Casino Control Act, N.J.S.A. 5:12-1 et seq., upon members and employees of the Casino Control Commission (Commission) and employees and agents of the Division of Gaming Enforcement (Division). Subsection 59e of Act prohibits such persons from soliciting or accepting employment with any person licensed by or registered with the Commission, or any applicant therefor, for a period of four years from termination of employment, except as otherwise provided in N.J.S.A. 5:12-60. Prior to its recent amendment, subsection 60b prohibited all members and employees of the Commission and employees and agents of the Division from acquiring any interest in or accepting employment with any licensee, registrant or applicant, other than a non-gaming related casino service industry licensee or applicant, for two years from termination of employment. After the initial two years, the former employee could apply to the Commission for waiver of any remaining period of the four-year restriction, to be granted upon a finding that the employment or interest would not create a real or apparent conflict of interest.

In 1995, subsection 60b was amended to eliminate the post-employment restriction for secretarial and clerical employees of the two agencies. (See P.L. 1995, c.18, eff. January 25, 1995.) Other employees are subject to a two-year restriction, except that persons in "policy-making management positions" must obtain prior Commission approval of the prospective employment or interest for a period of two years thereafter.

The legislation also provides that any Commission or Division employees, other than those in policy-making management positions, who are terminated as the result of a reduction in workforce may accept otherwise restricted employment at any time with Commission approval, to be granted upon a finding that the prospective employment does not create a conflict of interest in appearance or in fact, N.J.S.A. 5:12-60b(2).

The proposed amendment defines "policy-making management positions" for purposes of section 60, and otherwise amends N.J.A.C. 19:40-2.6 to conform to and implement the statutory revisions.

Social Impact

The proposed amendment conforms N.J.A.C. 19:40-2.6 to statutory changes that should benefit current and former employees of the Commission and Division. For example, secretarial and clerical employees

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will no longer be subject to any post-employment restriction. Other employees, except for those in policy-making management positions, will no longer need to seek and obtain a waiver of the post-employment restriction once two years have elapsed since termination of employment with the agency. Agency employees in policy-making management positions are not affected, since they have always been subject to a four-year post-employment restriction, with the option of seeking a waiver of the remaining restriction period after the initial two years have elapsed.

In addition, the statutory and regulatory revisions will benefit employees, other than those in policy-making management positions, who may be terminated as the result of a reduction in workforce at either the Commission or the Division. Any such person will be permitted to seek employment at any time with a licensee, registrant or applicant, with the approval of the Commission.

Economic Impact

The proposed amendments implement statutory revisions that should provide an economic benefit by easing the employment restrictions on certain former employees of the Commission or Division. In particular, any employees terminated due to a reduction in workforce at either agency will now be able to seek otherwise restricted employment with licensees, registrants or applicants, with the approval of the Commission. Likewise, former secretarial and clerical employees will no longer have any restriction on the types of employment they can seek after leaving either agency. Finally, employees other than those in policy-making management positions will no longer incur the time and expense involved in obtaining a post-employment waiver from the Commission once two years have elapsed from termination of employment.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Casino Control Commission are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed amendment affects only employees and former employees of the Commission and Division, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:40-2.6 Post-employment restrictions

(a) For purposes of this section, a "policy-making management position" means:

1. For the Commission, the Executive Secretary; a Director of any Division; the General Counsel; the Director of Community Relations; the Director of Organizational Development; the Public Information Officer; the Equal Employment Opportunity and Affirmative Action Officer; and any other person designated to serve on the Commission's Management Team in accordance with N.J.A.C. 19:40-2.1(c)5; and

2. For the Division, the Director; the Deputy Director; the Executive in Charge of Investigations; the Attorney Administrator, Licensing Prosecution Bureau; the Attorney Administrator, Regulatory Prosecution Bureau; the Agent Administrator, Licensing Investigations; and the Agent Administrator, Regulatory Enforcement.

[(a)]**(b)** No employee of the Commission or employee or agent of the Division shall solicit or accept employment with, or acquire any direct or indirect interest in, any person who is an applicant, licensee or registrant with the Commission for a period of [four] **two** years from the date of termination of his or her employment with the Commission or Division[, except as provided in subsection 60b of the Act and this section]. **Notwithstanding the foregoing:**

1. A secretarial or clerical employee may solicit and accept such employment at any time after termination of employment with the Commission or the Division;

2. Any employee, other than a person subject to (c) below, who is terminated as the result of a reduction in workforce at the Commission or the Division may accept employment otherwise prohibited by this subsection upon application to and the approval of the Commission pursuant to (d) and (e) below;

3. [Notwithstanding the foregoing, nothing] **Nothing** in this section shall prohibit a former employee of the Commission or a former employee or agent of the Division from soliciting or accepting employment with, or acquiring an interest in, any person who is licensed as a casino service industry enterprise pursuant to subsection 92c of the Act or is an applicant for such licensure.

[(b)]**(c)** [Any person subject to the restrictions in (a) above may solicit employment with an applicant, licensee or registrant if] **At the end of two years from termination of employment, and for a period of two years thereafter, any person who held a policy-making management position with the Commission or Division at any time during the five years prior to termination of employment shall not:**

1. [Two years have elapsed since the date of termination of his or her employment with the Commission or Division; and] **Solicit employment with an applicant, licensee or registrant unless he or she** [2. Such person] has provided prior written notice of an intent to solicit such employment to the Commission's General Counsel[.]**; or**

[(c)]**2. Accept** [No person subject to the restrictions in (a) above shall accept] or commence employment with, or acquire an interest in, an applicant, licensee or registrant [unless a waiver of the post-employment restriction] **except upon application to and the approval of the Commission pursuant to (d) below** [has been granted by the Commission] for that particular employment or interest.

(d) A petition for waiver [may be filed with the Commission at any time after two years have elapsed since the date of termination of employment with the Commission or Division. Such petition] **pursuant to (b)2 or (c) above** shall be in writing and shall identify the following:

1.-3. (No change.)

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

[(f)]**(g)** Any waiver granted pursuant to [(d)]**(e)** above shall apply only to the applicant, licensee or registrant and the position or interest identified in the petition for waiver. No person subject to [(a)] **post-employment restriction pursuant to (b)2 or (c)** above shall accept or commence employment in any other position or with any other applicant, licensee or registrant, or acquire any other interest that is otherwise prohibited unless [a request for] a waiver has been granted by the Commission for such employment or interest[, or until four years have elapsed from the date of termination of employment with the Commission or Division].

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RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Lending Limits

Adopted Amendment: N.J.A.C. 3:11-7.8

Proposed: March 6, 1995 at 27 N.J.R. 794(a).
Adopted: April 13, 1995 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: April 13, 1995 as R.1995 d.245, **without change.**
Authority: N.J.S.A. 17:9A-62H.
Effective Date: May 15, 1995.
Expiration Date: July 18, 1999.

Summary of Public Comments and Agency Responses:
The Department received comments from the following persons:
1. Samuel J. Damiano, President, New Jersey Council of Savings Institutions.
2. John C. Terruso, Esq., Office of the General Counsel, UJB Financial Corp.

COMMENT: We support this proposed amendment because it eases the regulatory burden. State limitations will now conform with those imposed under Federal law. In addition, the proposal provides banks with greater flexibility in their investments.

RESPONSE: The Department appreciates receiving the comment, and believes that this greater flexibility will enhance the institution's competitiveness.

COMMENT: While the proposed regulation would apply to State commercial banks, there is the likelihood that State chartered savings bank will also achieve such additional powers through parity. The Department should adopt a similar regulation concerning savings banks to remove any confusion in this area.

RESPONSE: The Department will consider such a proposed change at a later time.

Executive Order No. 27 Statement

The adopted amendments and repeal represent an easing of State requirements to match those under Federal law. Therefore, an Executive Order No. 27 analysis is not required.

Full text of the adoption follows:

3:11-7.8 General lending limitations

(a) The total liabilities, including investment securities, of any person which are not fully secured, as determined in a manner consistent with (b) below, by collateral having a market value at least equal to the amount of the liability shall not exceed 15 percent of the capital funds of a bank. The 10 percent limitiations prescribed in N.J.S.A. 17:9A-62A and 17:9A-62F are increased pursuant to N.J.S.A. 17:9A-62H.

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

PERSONNEL

(b)

MERIT SYSTEM BOARD

Layoffs

Redoption with Amendments: N.J.A.C. 4A:8

Proposed: February 21, 1995 at 27 N.J.R. 612(a).
Adopted: April 18, 1995 by the Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.
Filed: April 21, 1995 as R.1995, d.251, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 11A:2-6(d), 11A:2-11(h), 11A:4-7, 11A:4-9, 11A:4-12, 11A:6-28, 11A:8-1 through 8-4.
Effective Date: April 21, 1995, Readoption;
May 15, 1995, Amendments.
Expiration Date: April 21, 2000.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on the proposed readoption with amendments was held on March 14, 1995. Henry Maurer served as hearing officer. Ten persons presented comments at the hearing. In addition, 83 persons presented written comments. Mr. Maurer recommended that the rules be readopted with the amendments proposed, with one exception and with additional changes as described in the Summary below. The record of the public hearing may be reviewed by contacting Janet Share Zatz, Assistant Commissioner, Division of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

The following persons presented comments at the public hearing:

Bruce Yellin; Barry B. Miller; Gloria Church; Lisa Krongold, International Federation of Professional and Technical Engineers (IFPTE), Local 195; Tom O'Neill, IFPTE, Local 195; Beverly Lynch, Executive Director, Public Sector Managers Association; Jim Tarlau, Treasurer, Communications Workers of America (CWA) Local 1032; John Kashner, CWA Local 1034; John R. Preczewski; and Bill Honachefsky.

The following persons presented written comments:

Robert Pursell, Area Director, CWA; Ralph Davis; Barbara Hirst; Barry Chalofsky; Natalie P. Havran, Director, Division of Human Resources, Department of Transportation; Mary Jo M. Aiello; Kenneth Frank; Jeffrey N. Conford; Rene Weidenfeld; Hugh Crosson; Marcella Ford; Tom Jeng; James Maher; Paul Schorr; Rosalie Tulamello; Marc J. Romanell; Joan Moreno; Daniel V. Will; Nicholas G. Binder; Patricia Cross; Theodore C. Jones, Jr.; Philip Liu; Marcia J. Miller; Faye E. Hollender; Randall M. Blume; William McLaughlin; Sandra Spiessl; Ronald W. Spiessl; Jeffrey Hoffman; Adolfo DeMarco; Robert Lease; Gary Sefchik; Elizabeth Kamerdze; Ralph F. Lollar; Jan G. Gheen; James Gordon; Charles Letts; Anthony Pilawski; Diane Hackett, President, CWA Local 1039; Nicholas P. Zripko; Barry F. Sullivan; Pete Patterson; Susan M. Rakoci; Christian T. Hoffman; Margaret Elsishans; Isadore N. Cooperman; Steven P. Lubow; Elizabeth Hoffman; Michael W. Hoffman; Rita Alles; Leroy T. Cattaneo; Norma Marcus; Roberta Jennings; Mark O'Donnell; Robert L. Gordon; Steven Valli; Jane Murray; Richard R. Delgado, Juanita A. Smith; Ruth Ehinger; Sharon McGreevey; H.S. Hundal; Helen E. Pettit-Chase; Jeffrey Reading; Robert Harbold; Mary A. Hrenda; Peter F. Madigan; Robert Oberthaler; Ching Y. Volpp; Robert Kecskes; Michael Nuskey; John Farnsworth; Joseph F. Aiello; Dale Michael Watson; Evelyn Liebman, Staff Representative, CWA Local 1038; Robert W. Becker, Esq., New Jersey Law Enforcement Supervisors Association; Valerie L. Holman, New Jersey Affirmative Action Officers' Council; Bonnie J. Zimmer; Frederick A. Sickels; Michael J. Sclafani; Thomas R. Kearns, President, Public Sector Managers' Association; Bill Honachefsky; and Patricia I. Blinn.

COMMENT: One commenter stated that this proposed readoption with amendments of the layoff rules is contrary to the public policy of

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the State and of the Civil Service Act of 1986. Specifically, the commenter stated, the proposal is contrary to equal employment opportunity, will cause the loss of many good employees and result in an increase in the number of layoff appeals. The commenter expressed support for the existing layoff rules.

RESPONSE: The Board believes that these rules are fully consistent with the Civil Service Act and with laws and policies concerning equal employment opportunity, and that the amendments will improve the process of conducting a reduction in force.

COMMENT: One commenter stated that N.J.A.C. 4A:8-1.1(a)1 is the only section providing that involuntary demotions constitute layoffs, and that demotions should be mentioned throughout the chapter whenever layoffs are mentioned. A representative of the New Jersey Law Enforcement Supervisors Association (NJLESA) expressed agreement with the proposed new N.J.A.C. 4A:8-1.1(a)1.

RESPONSE: This amendment is all that is necessary to ensure that demotions for economy or efficiency are considered layoff actions and are subject to the requirements of N.J.A.C. 4A:8.

COMMENT: Two commenters stated that N.J.A.C. 4A:8-1.1(a) should say "an appointing authority shall," rather than "may," institute layoffs for economy and efficiency, in order to ensure that layoffs are not instituted for other reasons.

RESPONSE: The use of the word "may" in this rule signifies that it is the appointing authority's option whether or not to institute layoffs. If layoffs are instituted, numerous court and Board decisions hold that layoffs must be based upon economy or efficiency. Therefore, the Board does not believe that this change is necessary.

COMMENT: One commenter indicated that alternatives to layoffs, provided for in N.J.A.C. 4A:8-1.2, should include voluntary furloughs as used in conjunction with flexitime and alternative workweeks.

RESPONSE: N.J.A.C. 4A:8-1.2(c)2 includes voluntary furloughs among the options for alternatives to layoffs. However, flexitime and alternative workweeks are not mentioned in this section because these measures would not lessen the need for layoffs.

COMMENT: One commenter stated that alternatives to layoffs should include an offer by an appointing authority of an early retirement incentive plan.

RESPONSE: Early retirement incentive plans generally require amendments to the pension statutes. This rule lists measures which an appointing authority can take without statutory changes.

COMMENT: One commenter suggested that N.J.A.C. 4A:8-1.2 be amended to provide that the Department of Personnel provide a copy of an appointing authority's plan for alternatives to layoff to affected negotiations representatives, upon approval by the Department of the plan.

RESPONSE: Another provision of these rules, N.J.A.C. 4A:8-1.4(e), states that layoff plans will be provided to union representatives upon approval by the Department of Personnel. Such plans would include alternatives to layoff.

COMMENT: Robert Pursell, CWA Area Director, proposed an amendment to N.J.A.C. 4A:8-1.2 providing that the majority representative may appeal to the Commissioner of Personnel if an appointing authority determines certain alternatives to layoff are inappropriate, and that the Commissioner will convene a hearing to determine the issue.

RESPONSE: Although it would generally not be feasible to conduct a formal hearing on such an issue during the layoff process, new procedures which have been prepared for State service reductions in force provide an opportunity for informal review and consultation prior to the Department of Personnel's approval of the layoff plan. Moreover, a formal challenge to the appointing authority's actions prior to layoff may be raised in a good faith layoff appeal.

COMMENT: Two commenters indicated that N.J.A.C. 4A:8-1.2(c) should be amended to provide guidelines on how furloughs and voluntary reductions in hours will work as layoff alternatives, to ensure fairness.

RESPONSE: Voluntary furloughs are governed by a rule previously adopted by the Board. See N.J.A.C. 4A:6-1.23. Guidelines for voluntary reductions in work hours would be included in an appointing authority's plan for alternatives to layoff, and would be subject to approval by the Department of Personnel.

COMMENT: One commenter proposed that the word "may" be deleted from N.J.A.C. 4A:8-1.2(c).

RESPONSE: The commenter did not explain why the word "may" should be deleted from the phrase, "Alternatives to layoff may include ..." The Board believes the language of this section is appropriate.

COMMENT: A representative of the NJLESA expressed agreement with new provisions N.J.A.C. 4A:8-1.2(c)1 and 2 concerning the following alternatives to layoffs: the granting a leave of absence without pay to permanent employees without loss of seniority, as long as this is approved by the Department of Personnel, and granting a voluntary furlough to employees.

RESPONSE: The Board appreciates the support for these provisions.

COMMENT: A representative of the NJLESA expressed agreement with the provisions of N.J.A.C. 4A:8-1.3. One commenter indicated that the word "may" should be deleted from N.J.A.C. 4A:8-1.3(a). Another commenter recommended that pre-layoff actions be "mandatory," stating that appointing authorities need to be told that they do have to institute pre-layoff actions. The CWA Area Director proposed an amendment to N.J.A.C. 4A:8-1.3 providing that the majority representative may appeal to the Commissioner of Personnel if an appointing authority determines certain pre-layoff actions inappropriate, and that the Commissioner will convene a hearing to determine the issue.

RESPONSE: Although appointing authorities are mandated to take pre-layoff actions to lessen the possibility, extent or impact of layoffs, the rule allows flexibility regarding the particular types of pre-layoff measures instituted by an appointing authority. This rule applies to both State and local appointing authorities providing a wide variety of governmental services. Thus, it would be inappropriate to specify uniform pre-layoff actions to be used by every appointing authority. With regard to the proposal for a hearing, as stated above with regard to a similar proposal to amend N.J.A.C. 4A:8-1.2, it would generally not be feasible to conduct a formal hearing on such an issue during the layoff process. However, new procedures which have been prepared for State service reductions in force provide an opportunity for informal review and consultation prior to the Department of Personnel's approval of the layoff plan. Again, it should be emphasized that a formal challenge to the appointing authority's actions prior to layoff may be raised in a good faith layoff appeal.

COMMENT: One commenter stated that he was pleased that the proposed readoption no longer includes an amendment to N.J.A.C. 4A:8-1.3, Pre-layoff actions, providing for reducing workweeks in State service as a pre-layoff action. The commenter urged that the rule section ensure that a reduction in workweek is not effectuated as a layoff.

RESPONSE: The suggested amendment would be inconsistent with N.J.A.C. 4A:8-1.1(a)1. According to that section, if a reduction in work hours constitutes a demotion, it must be treated as a layoff action.

COMMENT: One commenter suggested that pre-layoff actions include voluntary furloughs as used in conjunction with flexitime and alternative workweeks.

RESPONSE: Pre-layoff actions are those which do not require employee consent. Therefore, the provision for voluntary furloughs properly belongs in N.J.A.C. 4A:8-1.2, the section governing voluntary alternatives to layoff. With regard to flexitime and alternative workweeks, as stated above, such measures generally would not lessen the possibility, extent or impact of layoffs.

COMMENT: One commenter proposed that N.J.A.C. 4A:8-1.3(b) be changed to provide that affected employees receive notice of consultations with affected negotiations representatives.

RESPONSE: The consultations described in this rule would take place with the authorized majority representative of affected employees. Communications between the majority representative and the employees it represents are not subject to regulation by the Department of Personnel.

COMMENT: One commenter stated that N.J.A.C. 4A:8-1.4 should be amended to require that appointing authorities submit to the Department of Personnel a list of all employees with disabilities to be affected by the layoff, reasonable accommodation measures to be taken for them, an accounting of the number of such employees versus able-bodied employees affected by the layoff, and measures taken to ensure that a disproportionate number of employees with disabilities are not affected by the layoff.

RESPONSE: The Board does not believe that it is necessary for the Department of Personnel to collect and review this information with regard to every reduction in force. If an employee has a complaint regarding lack of reasonable accommodation or similar issues, appeal mechanisms are available.

COMMENT: A representative of the NJLESA expressed agreement with the proposed amendment to N.J.A.C. 4A:8-1.4(a)7 requiring submission by an appointing authority to the Department of Personnel of a detailed explanation of all alternative and pre-layoff actions prior to

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the issuance of layoff notices. One commenter stated that N.J.A.C. 4A:8-1.4(a)7 should require the appointing authority to delineate the reasons why pre-layoff actions were determined to be inapplicable.

RESPONSE: The amendment to N.J.A.C. 4A:8-1.4(a)7 does require that the appointing authority provide a detailed explanation of why alternative and pre-layoff actions were determined to be inapplicable.

COMMENT: A representative of the NJLESA expressed agreement with the proposed new N.J.A.C. 4A:8-1.4(a)9 requiring submission by the appointing authority to the Department of Personnel of a list of negotiations representatives.

RESPONSE: The Board appreciates the support for this amendment.

COMMENT: A representative of the NJLESA expressed opposition to the proposed amendment to N.J.A.C. 4A:8-1.4(b) that would require appointing authorities to submit the names of employees who received a rating of Marginally Below Standards or Significantly Below Standards, on the grounds that PAR ratings should play no role in seniority or layoffs.

RESPONSE: The amendment simply updates the prior language, which had provided that appointing authorities submit the names of employees who received an "unsatisfactory" rating. The PAR program now uses the terms "marginally below standards" and "significantly below standards," and therefore the language of this provision has been changed accordingly. The issue of using PAR ratings is addressed below in the response to comments on N.J.A.C. 4A:8-2.2(c).

COMMENT: A representative of the NJLESA agreed with the proposed new N.J.A.C. 4A:8-1.4(e) that would require the Department of Personnel to provide a copy of the layoff plan to negotiations representatives, but suggested that subsection (e) be amended to require such notification even prior to the Department's approval of the plan. The CWA Area Director proposed that this section require that, within 15 days of receipt of the proposed layoff plan, the Commissioner of Personnel meet with affected negotiations representatives to review the layoff plan. Further, he proposed that the majority representative be entitled to review the entire layoff plan, not just those portions of the plan which affect their represented employees.

RESPONSE: As noted above, new procedures which have been prepared for State service reductions in force provide an opportunity for informal review and consultation prior to the Department of Personnel's approval of the layoff plan. During this review, the negotiations representative will have the opportunity to present its concerns regarding the layoff plan.

COMMENT: Two commenters stated that the layoff unit, as defined in N.J.A.C. 4A:8-1.5, should be more flexible and allow for situations such as the one in which the Board of Public Utilities was allocated to the Department of Environmental Protection, and then reallocated elsewhere in State government, thus scattering certain titles between the DEP and the reallocated agency.

RESPONSE: The Board believes that the layoff unit in State service should remain the department or autonomous agency. If this provision causes a problem in a particular situation, a request for rule relaxation may be submitted.

COMMENT: The CWA Area Director proposed that N.J.A.C. 4A:8-1.5(b) be amended to provide that in local service, a negotiations representative may also request a different layoff unit consisting of one or more departments.

RESPONSE: The rule provides that such a request may be submitted by an appointing authority or the matter may be initiated by the Commissioner of Personnel. Accordingly, a negotiations representative may ask the Commissioner of Personnel to initiate a review of the layoff units in a local government jurisdiction.

COMMENT: A representative of the NJLESA expressed agreement with the proposed definition of autonomous agency in N.J.A.C. 4A:8-1.5(a). Two commenters stated that N.J.A.C. 4A:8-1.5(a) should be amended to define "principal department."

RESPONSE: The Board does not believe that an amendment is necessary, since principal departments of State government are clearly defined by law.

COMMENT: One commenter stated that the job location provisions of N.J.A.C. 4A:8-1.5(c) could cause disruption and disorientation among employees. Ten commenters expressed opposition to the proposed amendment to N.J.A.C. 4A:8-1.5(c), defining a job location as a county. Several commenters stated that, in view of the size of some counties, travelling could become a problem for some employees. One commenter stated that it was unclear whether an employee would be limited to the county in which he or she works or whether the employee could select other counties. Another commenter stated that an employee should have the option of remaining with his or her own agency whenever possible. The CWA Area Director proposed an amendment stating that, in the event an employee can demonstrate that a county job location poses a hardship, the Commissioner shall expand the job locations for that employee to named facilities or geographical areas other than a county. A representative of the NJLESA expressed support for the proposed new definition of job location.

RESPONSE: Although N.J.A.C. 4A:8-1.5(c) changes current practice in stating that each job location shall consist of a county, it must be considered in context with another provision, N.J.A.C. 4A:8-2.2(a). The latter provision provides that lateral and demotional title rights will be provided first at the employee's option within the municipality in which the facility or office is located, and then to the job locations (counties) selected by the employee. Thus, in many situations, the employee will be able to remain in the same municipality. If displacement to a different municipality within the county causes a severe hardship, this can be addressed through rule relaxation procedures or reassignment.

COMMENT: A representative of the New Jersey Affirmative Action Officers' Council proposed that N.J.A.C. 4A:8-1.6 be amended to require that all employees affected in a layoff should receive a layoff notice by certified mail. A representative of the NJLESA expressed agreement with the proposed changes to N.J.A.C. 4A:8-1.6(a) on the service to employees of layoff notices.

RESPONSE: The Board believes that personal service is the preferred method for delivering layoff notices, and that certified mail should be used only when an employee is on a leave of absence or otherwise unavailable for personal service. Therefore, this amendment will be adopted as proposed.

COMMENT: One commenter proposed that N.J.A.C. 4A:8-1.6(b) be amended to require that a layoff notice include a complete seniority record to give the employee time to correct errors and omissions in the record.

RESPONSE: The final written notice of status, as provided in N.J.A.C. 4A:8-1.6(f), includes an employee's seniority. This notice is provided after the Department of Personnel has reviewed seniority records to check for errors. If there are further errors claimed by the employee upon receipt of the final notice of status, an appeal may be filed.

COMMENT: A representative of the NJLESA expressed agreement with all of the proposed changes to N.J.A.C. 4A:8-2.1, Types of layoff rights. One commenter stated that N.J.A.C. 4A:8-2.1 should be amended to include the rights of employees with disabilities and to ensure that a disproportionate number of such employees are not adversely affected in a layoff situation.

RESPONSE: These rules are intended to apply to all employees. The rights of employees with disabilities are set forth in other laws and regulations, both State and Federal. If an employee has a complaint regarding adverse impact, appeal mechanisms are available.

COMMENT: Seven commenters expressed opposition to proposed N.J.A.C. 4A:8-2.1(d), concerning the specialized credential variant title. They did not favor a separate system of layoff rights for employees with special credentials. Other commenters stated that this type of system would run counter to the merit system. The CWA Area Director urged a number of amendments to this section, including prior notice to affected negotiations representatives and a requirement that title rights based on specialized credentialing be made at least three months prior to a proposed layoff. A representative of the New Jersey Affirmative Action Officers' Council had several concerns about the specialized credential variant title. She noted that, according to the proposed subsection, specialized credentialing would be based on at least one of four criteria. As to these, she stated, a brief description of the licensure/certification should be included. Also, the specialized education criterion should be clearly denoted in the employee's job specification and a minimum time period for serving in the title should be established for an employee to receive the benefit of this criterion. She also stated that a definition is required for the third criterion, the specialized client-based or program experience, and that the amount of time serving in the title to receive this benefit should be indicated. Also, a reason why this experience is considered a specialty must be arrived at for the employee. In general, the commenter stated that definitions need to be promulgated ahead of time to avoid biases coming into play in the layoff process. Another commenter asked whether specialized credential variant titles would be established as a separate set of titles and whether employees

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whose titles are categorized as such will see a reduction in their bumping rights. It was suggested that if the latter is the case, then affected employees should receive a notification of this fact.

RESPONSE: Several of these comments are based on a misconception regarding a specialized credential variant title. At the current time, such a title series has been established only in the Division of Consumer Affairs, Department of Law and Public Safety. For the employees serving in this title series, layoff rights would be provided as set forth in this amendment. For all other employees, layoff rights will be unaffected. In response to those objecting to the substance of this subsection, the Board believes it is appropriate to provide title rights based upon the specialized credential when such titles are established, since employees in these titles will have narrow and specific expertise which is not applicable to other areas. If another specialized credential title is established, negotiations representatives will be notified as they are notified of all new titles.

COMMENT: The CWA Area Director proposed that N.J.A.C. 4A:8-2.1(e) be amended to state that affected negotiations representatives shall be provided advance notice of meetings with employees on layoff rights.

RESPONSE: The Board agrees that prior notice of such meetings is needed in order for the negotiations representative to have the opportunity to be present. Therefore, the words "given reasonable notice and" will be inserted before the word "permitted."

COMMENT: One commenter stated that demotional rights should be based on greater continuous permanent service, so that an employee in a higher title can only displace an employee in a lower title if the employee in the higher title has greater total seniority.

RESPONSE: This revision, if implemented, would be a fundamental change in the way layoffs have been conducted. The result of such a change would be that many employees who have advanced on the basis of merit to higher titles would be separated from government service while more employees in lower titles would be retained. The Board does not believe that such a change would be beneficial to public employment.

COMMENT: One commenter stated that it will be hard for an employee to decide on lateral and demotional rights if the employee does not know where he or she is going other than to a county or municipality.

RESPONSE: When an employee is asked to choose the locations at which he or she will accept lateral and demotional rights, the employee will be provided with information concerning the facilities and offices of the department which can be found in that location. This information should give the employee a sufficient basis to make these selections.

COMMENT: One commenter stated that N.J.A.C. 4A:8-2.2(a) should be amended to ensure that employees with disabilities are able to choose a job location that is compatible with their disabilities. The commenter also urged that the rights of an employee with disabilities be protected in the exercise of lateral and demotional rights provided for in N.J.A.C. 4A:8-2.2(c), (e) and (f).

RESPONSE: As noted above, these rules are intended to apply to all employees. The rights of employees with disabilities are set forth in other laws and regulations, both State and Federal. If an employee has a complaint regarding adverse impact, appeal mechanisms are available.

COMMENT: Three commenters expressed disagreement with the proposed amendment to N.J.A.C. 4A:8-2.2(a) that would provide, in State service, that a permanent employee affected by a layoff would receive applicable lateral and demotional title rights first, at his or her option, within the municipality in which his or her office is located. Reasons given for the disagreement were that the lateral and demotional rights should be within the department. It was also suggested that this measure would create a "domino effect" in layoffs. One commenter expressed agreement with the proposed amendment.

RESPONSE: The amendment does not mean that lateral and demotional rights are exercised outside the employee's department. Rather, the amendment ensures that employees may exercise those rights within facilities and offices of that department in their current municipality. For example, an employee of the Department of Human Services (DHS) who works in a Trenton office will first be given layoff rights to DHS offices in Trenton, and then, if no positions are available in Trenton, to DHS offices and facilities located in counties selected by the employee. It is not anticipated that this process will increase the "domino effect" of bumping.

COMMENT: One commenter proposed that an employee should be given 24 hours to make a decision on the exercise of lateral and demotional rights, after being given the following information on a position: specific location, organizational sub-unit, sub-unit's supervisor and nature of job.

RESPONSE: The commenter's suggestion would not be feasible in any reduction in force involving more than a handful of employees. When hundreds of employees may be affected by a layoff action, the process could not be completed within 45 days if every employee were given 24 hours to make a decision on the exercise of layoff rights. Moreover, in most departments, it is impractical to provide the type of specific information listed by the commenter on each position.

COMMENT: Five commenters stated that performance evaluations should have no place in the layoff process, indicating that there are too many inconsistencies in employee ratings and they are often not even done. Six commenters stated that performance evaluations should not be used in determining lateral and demotional rights, as proposed in amendments to N.J.A.C. 4A:8-2.2(c), for the same reasons. The CWA Area Director objected to the amendment providing that employees with a "Marginally Below Standards" PAR rating would have less seniority than other permanent employees.

RESPONSE: With regard to the general issue of performance evaluations, it must be noted that N.J.S.A 11A:6-28 specifically authorizes the use of such evaluations in the layoff process. Moreover, N.J.S.A. 11A:1-2(c) provides that it is the public policy of this State that meritorious performance is to be rewarded and that employees are to be retained and separated from service based on their performance. The Board has deleted the provision from the previous proposal which would have provided a link between positive PAR ratings and seniority. However, the Board believes it is appropriate to retain the concept that employees with performance evaluations which are below standards should be subject to layoff before other employees who are meeting or exceeding performance standards.

COMMENT: A representative of the NJLESA expressed agreement with the proposed new N.J.A.C. 4A:8-2.2(e) concerning displacement by an employee in a professional title of employees in para-professional or non-professional titles. Two commenters expressed opposition to the proposed new subsection (e). They stated that professionals are being singled out to receive lesser rights than para-professionals and non-professionals.

RESPONSE: Demotional rights are provided between professional titles and para-professional or non-professional titles only in limited circumstances. In such situations, the Board believes that it is appropriate to ensure that experienced para-professional and non-professional employees are not unduly affected by a reduction in force.

COMMENT: A representative of the NJLESA expressed agreement with the proposed changes to N.J.A.C. 4A:8-2.2(f) and (f)1 concerning an employee's extended demotional rights to a previously held title. Five commenters indicated their opposition to the proposed new N.J.A.C. 4A:8-2.2(f)1, which would restrict such extended rights when the employee has either lateral options or demotional options to a title with a higher class code. Some of these commenters stated that the amendment would limit the lateral and demotional rights of employees which have already been properly determined. One commenter also stated that this amendment would not minimize disruption in the layoff process.

RESPONSE: Initially, it must be noted that this amendment does not limit an employee's lateral and demotional title rights. Rather, this amendment applies only to extended rights, outside of the usual demotional path, to a previously held title. Because these extended rights are in addition to an employee's lateral and demotional rights, and because the exercise of these rights has a "ripple" effect beyond the anticipated path of a reduction in force, it is appropriate to limit "previously held" title rights to those situations where employees do not have superior options based on the exercise of their regular lateral or demotional rights.

COMMENT: Fifty-nine commenters expressed opposition to the proposed amendment at N.J.A.C. 4A:8-2.2(f)2, which would restrict extended demotional rights to a previously held title if it was a professional title held more than 10 years before the effective date of the layoff. Several commenters argued that an employee would be qualified to perform the duties of a lower, previously held title. Many commenters stated that this proposal amounts to age discrimination. Another common comment was that this proposal would penalize those workers with more experience and reward those with less experience. It was also commented that the proposal would reduce employee morale and increase turnover of employees. Furthermore, it was stated that the experience in the title held more than 10 years ago could be used for

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open competitive examination eligibility, so that this limitation on demotions to titles held more than 10 years ago does not make sense. Some commenters suggested alternatives to the limitation proposed in N.J.A.C. 4A:8-2.2(f)2. These suggestions include placing this provision in a negotiations agreement instead and applying it to new employees only; and permitting demotions to titles held more than 10 years ago but subjecting such demotions to successful completion of a working test period. Another commenter stated that this limitation should not apply to "feeder" titles to the employee's current title. One commenter expressed concern that, serving in an unclassified title, he would not have the right to bump back into a career title he had held over 10 years ago. A representative of the New Jersey Affirmative Action Officers' Council urged that the proposed new (f)2 be examined to determine how it may adversely impact on minorities. A representative of the NJLESA expressed support for this proposal.

RESPONSE: In response to the overwhelming comment on this issue, the Board has decided not to adopt the 10-year limit set forth in N.J.A.C. 4A:8-2.2(f)2. However, the upcoming reduction in force in State government will be carefully monitored to review the impact of "previously held" rights. Based on the results of that review, further changes may be proposed in the future.

COMMENT: A representative of the NJLESA expressed agreement with the proposed deletion of N.J.A.C. 4A:8-2.2(g) concerning the lateral and demotional rights of intermittent employees.

RESPONSE: The Board appreciates the support for this change.

COMMENT: A representative of the NJLESA expressed support for the proposed new subsection (g) concerning employees in trainee titles. Two commenters expressed opposition to this new subsection, arguing that it will stagnate a demoted employee for a longer period at the trainee level.

RESPONSE: The requirement for a complete training period is needed in the situations described in the amendment, because service in the higher title would not provide the specific training and experience necessary to dispense with the full 12 months of the training period.

COMMENT: One commenter stated that N.J.A.C. 4A:8-2.3(a) should be amended to include language to ensure that the rights of employees with disabilities are recognized in special reemployment situations.

RESPONSE: As noted above, these rules are intended to apply to all employees. The rights of employees with disabilities are set forth in other laws and regulations, both State and Federal. If an employee has a complaint regarding adverse treatment in special reemployment situations, appeal mechanisms are available.

COMMENT: Two commenters expressed opposition to the proposed new N.J.A.C. 4A:8-2.3(a)1 which would permit an employee in State service to exercise special reemployment rights in the municipality in which his or her office was located when the employee is displaced from the municipality.

RESPONSE: This provision was added for the same reason as the similar provision concerning exercise of lateral and demotional rights: transportation or child care needs may limit the ability of an individual to accept a job outside a particular municipality. Therefore, this provision modifies the impact of county-wide job locations by giving the employee first preference in reemployment to his or her original municipality.

COMMENT: Two commenters expressed opposition to N.J.A.C. 4A:8-2.3(a)2, which limits special reemployment rights to an employee's original job location when the employee is displaced by job location but retains his or her permanent title. They argued that another county may be closer to home. One commenter did not understand the need for this subsection when paragraph (a)1 concerns special reemployment rights back to a municipality. The commenter also asked for the definition of "good cause" referred to in paragraph (a)2 for substitution of another job location for the original one.

RESPONSE: This subsection provides that when an employee remains in the same title but is displaced to another job location (in other words, another county), the employee has the right to return to the original county. The employee may decline to exercise that right if the original county is more inconvenient. Further, the employee may, for good cause, substitute a different county for the original county. "Good cause" is determined in each case based on particular circumstances. With regard to the need for this subsection, the prior subsection does not cover these situations because it refers to the right to return to the original municipality (for example, an employee displaced from Trenton to Ewing Township).

COMMENT: Three commenters expressed disagreement with N.J.A.C. 4A:8-2.3(a)3 which limits special reemployment rights to an employee's original permanent title and job location when the employee exercises a lateral title right. A commenter asked for the definition of "good cause" referred to in paragraph (a)3 for substitution of another job location for the original one.

RESPONSE: This provision reflects a longstanding practice, and recognizes that an employee who exercises a lateral right in order to preserve employment generally seeks return to his or her original job location. As noted above, the employee may decline this right or may substitute another job location for good cause.

COMMENT: Three commenters expressed opposition to N.J.A.C. 4A:8-2.3(b)2 concerning the priority of special reemployment lists over transfers and lateral title changes except those resulting from position classifications within a layoff unit. They argued that special reemployment lists should also have priority over reclassifications because reclassifications have been used to circumvent the layoff process.

RESPONSE: The rule should not be changed because there may have been instances of abuse. If an employee believes that a reclassification has been used to circumvent the layoff process, appeal mechanisms are available.

COMMENT: Two commenters expressed disagreement with N.J.A.C. 4A:8-2.3(e) because the provision would not allow an employee to select a job closer to home. Four commenters indicated opposition to this subsection, stating that removal from a special reemployment list of an employee who declines reemployment for a specific job location is a harsh measure. The CWA Area Director proposed that State employees be allowed to decline one certification for reemployment for each job location offered. After declining once, he suggested, the employee would be subject to removal from the list but would be notified and given the right to appeal. One commenter stated that N.J.A.C. 4A:8-2.3(e) should be amended to ensure that a person with a disability may decline reemployment to a job location if the job location is incompatible with the disability.

RESPONSE: As noted in the Social Impact statement accompanying the rule proposal, this amendment would ensure that special reemployment lists contain only the names of those individuals who retain a genuine interest in reemployment to the job. As specified in N.J.A.C. 4A:8-2.3(c), the process for removal from a special reemployment list is the same as removal from any other eligible list. Thus, the employee would be notified and would have the chance to appeal. In such an appeal, the individual could raise the argument that the job location offered is incompatible with the person's disability.

COMMENT: Thirty one commenters expressed opposition to the proposed amendment to N.J.A.C. 4A:8-2.4(a), which would provide for the calculation of seniority by counting an employee's continuous permanent service in the jurisdiction, instead of title seniority. The following reasons were given for opposition to this change: the seniority system would be harder to administer and it would be more difficult to verify total State service; the proposal would penalize employees with experience in title; it would discriminate against women and minorities; it would be inconsistent with the aspects of title seniority that would remain in the layoff rules; it would require retraining of employees; it would mean employee displacement between departments; and layoffs of less experienced employees should be encouraged instead. Some commenters proposed alternatives to the new method of calculating seniority, such as applying the new method to new hires only; using total State seniority for demotional situations and title seniority for lateral displacements; using title seniority to determine who is demoted and State seniority to determine which employees will be displaced; ranking by title seniority and then awarding points for total State service; and using the layoff rules in effect when affected employees made their career decisions. Finally, one commenter expressed support for this proposed amendment.

RESPONSE: The Board believes that the reasons originally advanced for the change to jurisdiction seniority remain valid; namely, placing greater value on years of service and simplifying the task of calculating seniority. Overall, this system should increase fairness and equity. Contrary to the assertions of some commenters, it is anticipated that this change will be beneficial to women and minorities, especially those who may have greater total jurisdiction seniority than seniority in a particular title. With regard to administration of reductions in force, many complications of the title seniority system will be eliminated. For example, there have been numerous disputes and appeals from employees who have undergone title changes. In responding to those appeals, enormous time and energy has been expended in determining and justifying why

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some of these title changes cause a break in title seniority while some do not. For all these reasons, the amendment will be adopted as proposed.

COMMENT: Five commenters suggested counting provisional service in the calculation of seniority, arguing that they had waited for long periods for permanent appointment through no fault of their own.

RESPONSE: While provisional service may provide valuable experience, provisional employees are not subject to merit selection and appointment requirements. The Board believes that the significance of permanent appointment would be undermined if an employee were allowed to accrue seniority upon provisional appointment.

COMMENT: Two commenters expressed support for proposed new N.J.A.C. 4A:8-2.4(a)1, which would provide that a resignation/new appointment shall not be considered a break in continuous service. Two commenters also expressed opposition to this proposal, stating that the definition of "resignation" is "break in service." One commenter suggested including all State service in seniority even if it is not continuous.

RESPONSE: This provision is based on the longstanding and widely accepted concept that seniority should accrue as long as the employee remains in permanent service, without an actual break in that service. In a resignation/new appointment, there is no actual break in service, since the employee does not interrupt employment to take the new title. Thus, a resignation/new appointment is similar to other types of employee movements (such as lateral title changes) and should be treated similarly with regard to seniority.

COMMENT: Three commenters stated that child care leave taken prior to the availability of family leave should not be deducted from seniority and N.J.A.C. 4A:8-2.4(c) should be amended accordingly.

RESPONSE: The Board understands the motivation for this suggestion. However, implementation would lead to arguments that child care leave beyond the 12 weeks authorized by the Family Leave Act should not be deducted from seniority, and that other leaves for personal reasons should not be deducted from seniority. At this time, the Board does not believe that the exception should be further broadened.

COMMENT: Four commenters expressed opposition to the proposed new provision in N.J.A.C. 4A:8-2.4(c) which states that an unpaid leave of absence for an unclassified appointment would not be deducted from seniority. Three of these commenters also objected to the similar provision regarding employment of a permanent employee in the Senior Executive Service. Another commenter expressed opposition to these provisions unless they are modified to provide for their prospective application only.

RESPONSE: When a permanent employee takes a leave of absence to accept an unclassified appointment, or is appointed to the Senior Executive Service, the employee retains the right to return to the career service and gains valuable experience in such a position. This amendment helps ensure that permanent employees are not discouraged from such career moves due to concerns about loss of seniority.

COMMENT: The CWA Area Director proposed that N.J.A.C. 4A:8-2.4(c) be amended to provide that union leave not be deducted from seniority.

RESPONSE: In contrast to leave for unclassified or SES appointment, an individual on union leave does not continue to work for the State government. Because of this distinction, the Board does not believe that a person on union leave should continue to accrue seniority.

COMMENT: Three commenters expressed opposition to the proposed new N.J.A.C. 4A:8-2.4(d), which, in State service, would limit deductions from seniority for suspensions, leaves of absence and periods of layoff to those occurring on or after March 1, 1987. They stated that the records before that date should be used. One commenter asked how any employee's merit system status may be tracked if earlier records are considereed unreliable.

RESPONSE: Although manual records may exist for State employees for periods of employment prior to March 1, 1987, it is not practical to continue to use these manual records for all seniority determinations. The cut-off date in this amendment enables the State to use electronic records with reasonable assurance of accuracy.

COMMENT: Three commenters specifically opposed the use of performance evaluations in breaking ties in seniority, as proposed in amendments to N.J.A.C. 4A:8-2.4(g). These commenters stated that these evalutions are often done unfairly or are not done at all.

RESPONSE: As noted above, N.J.S.A. 11A:6-28 specifically authorizes the use of performance evaluations in the layoff process. The Board believes it is appropriate to retain performance evaluations as a tie-breaker in determining seniority. Grievance and appeal mechanisms are available for employees who contend that performance evaluations are unfair or have not been completed.

COMMENT: The Director of Human Resources, Department of Transportation, stated with respect to N.J.A.C. 4A:8-2.4(g) that, when all seniority tie-breakers are exhausted, the following criteria should be used, in the order indicated, in the case of a professional employee: possession of a graduate degree, completion of graduate courses, Grade Point Average and pertinent work experience.

RESPONSE: N.J.A.C. 4A:8-2.4(g)11 authorizes the Commissioner of Personnel to establish other tie-breaking factors. These suggestions may be useful in some situations, and the commenter may seek the Commissioner's approval for using these factors in the Department of Transportation, but the Board is not prepared to mandate these tie-breakers for all appointing authorities.

COMMENT: One commenter expressed concern that N.J.A.C. 4A:8-2.4(g) does not include special provisions that would ensure that employees with disabilities are not adversely affected by a layoff action.

RESPONSE: As noted above, these rules are intended to apply to all employees. The rights of employees with disabilities are set forth in other laws and regulations, both State and Federal. If an employee has a complaint regarding adverse impact, appeal mechanisms are available.

COMMENT: Two commenters expressed opposition to the proposed amendments to N.J.A.C. 4A:8-2.5, Reassignments. They stated that the proposed changes place employees at a disadvantage and are inconsistent with the spirit of the merit system. One commenter stated that N.J.A.C. 4A:8-2.5(a) should be amended to preclude involuntary reassignment of an employee with a disability if the reassignment would be incompatible with the disability.

RESPONSE: It must be emphasized that the amendments continue to restrict certain kinds of involuntary reassignments, but permit voluntary reassignments. With regard to voluntary reassignments, it is not clear from the comments why such voluntary actions would place any employee at a disadvantage or violate the spirit of the merit system. Again, appeal or grievance mechanisms are available if an employee believes that an involuntary reassignment is improper.

COMMENT: The CWA Area Director proposed that N.J.A.C. 4A:8-2.5 be amended to provide for two week advance notice of voluntary reassignments to affected negotiations representatives, and the convening of a hearing by the Commissioner of Personnel to determine disputes. He further proposed that the availability of such reassignments be posted for 10 working days, and that they be made on the basis of seniority.

RESPONSE: It is agreed that the posting required in N.J.A.C. 4A:8-2.5(c) is meaningful only if employees have a sufficient opportunity to learn of the chance for reassignment. Therefore, the words "for a period of 10 working days" will be added after the word "reassignment." During this 10 day period, affected negotiations representatives will have the opportunity to raise any concerns they may have. However, the Board will not impose a requirement that reassignments be made on the basis of seniority, since this is a matter of managerial discretion.

COMMENT: One commenter proposed that N.J.A.C. 4A:8-2.6(a) include an appeal concerning a layoff whose impact falls disproportionately on employees with disabilities.

RESPONSE: If an employee believes that a layoff action is based on discriminatory purposes, this issue can be raised in a "good faith" layoff appeal.

Summary of Agency-Initiated Change:

Further Departmental review has shown that an additional change should be made to N.J.A.C. 4A:8-2.4(g)3. This provision makes title seniority a tie-breaker. However, in calculating title seniority for tie-breaking purposes, clarification is needed regarding the treatment of persons who were appointed to a "previously held" title in a prior layoff action. To clarify this treatment, language will be added stating that such an employee shall have all permanent continuous service in that "previously held" title aggregated for title seniority purposes.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the layoff procedures governed by these rules are not subject to any Federal requirement or standards.

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

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CHAPTER 8
LAYOFFS

SUBCHAPTER 1. PROCEDURES

4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

1. Demotions for economy, efficiency or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) The Commissioner or authorized representative of the Department of Personnel shall determine seniority and designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

4A:8-1.2 Alternatives to layoff

(a) In State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives.

(b) In local service, appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(c) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority for purposes of this Title, subject to the approval of the Department of Personnel;

2. Granting voluntary furloughs to employees (see N.J.A.C. 4A:6-1.23);

3. Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;

4. Providing employees with optional temporary demotional title changes; and

5. Other appropriate actions to avoid a layoff.

(d) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(e) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Department of Personnel prior to implementation. The plan shall include time periods for all alternatives, a statement of the employees' right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

4A:8-1.3 Pre-layoff actions

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;

2. Separating non-permanent employees;

3. Returning provisional employees to their permanent titles;

4. Reassigning employees; and

5. Assisting potentially affected employees in securing transfers or other employment.

(b) Appointing authorities should consult with affected negotiations representatives prior to initiating measures under this section.

(c) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

(d) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by taking pre-layoff actions which first place employees without permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

4A:8-1.4 Review by Department of Personnel

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the Department of Personnel, the following information shall be submitted by an appointing authority to the Department of Personnel:

1. The reason for the layoff;

2. The projected effective date of layoff;

3. Sample copies of the layoff notice and the projected date for issuance;

4. Any seniority listings maintained including records of preferred seniority maintained by the appointing authority pursuant to N.J.A.C. 4A:8-2.4(b)2;

5. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status, layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;

6. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;

7. A detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable;

8. A summary of consultations with affected negotiations representatives; and

9. A list of affected negotiations representatives, including addresses and the units they represent.

(b) In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the appointing authority shall also submit the names of permanent employees who have received a rating of Marginally Below Standards or Significantly Below Standards or equivalent in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in (a)6 above shall be filled, except under exceptional circumstances with the approval of the Commissioner, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the Commissioner may take appropriate remedial action, including:

1. Requiring submission of additional or corrected information;

2. Providing needed assistance to the appointing authority;

3. Directing implementation of appropriate alternative or pre-layoff measures; or

4. Directing necessary changes in the layoff notice, which may include the effective date of the layoff.

(e) Upon approval of the layoff plan, the Department of Personnel shall provide affected negotiations representatives with a copy of the plan as it affects their represented employees.

4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency. An autonomous agency is one which is in, but not under the supervision of, a principal department.

(b) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Department of Personnel, a different layoff unit consisting of one or more departments may be approved by the Commissioner under the following procedures:

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.

2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.

3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.

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4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:

i. The need for a unit larger than a department;

ii. The functional and organizational structure of the local jurisdiction;

iii. The number of employees, funding source and job titles in the proposed unit;

iv. The effect upon employee layoff rights; and

v. The impact upon service to departmental clientele and the public.

(c) In State service, the Commissioner of Personnel shall determine job locations within each department or autonomous agency.

1. Each job location shall consist of a county.

2. The Commissioner of Personnel shall assign a job location to every facility **and office** within a department or autonomous agency.

3. See N.J.A.C. 4A:8-2.2 for exercise of lateral and demotional rights within job locations. See N.J.A.C. 4A:8-2.3 for exercise of special reemployment rights within job locations.

(d) In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to the Department of Personnel and affected negotiations representatives.

1. In State service, the Commissioner may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:

1. The effective date of the layoff action; and

2. The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Commissioner for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Department of Personnel of employees who successfully complete their working test periods prior to displacement. The Department of Personnel shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Department of Personnel, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have substantially similar duties and responsibilities and, in State service, the same class code;

2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;

3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and

4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(b) A demotional title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. Demotional title rights shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have lower but substantially similar duties and responsibilities and, in State service, where applicable, a lower class code;

2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;

3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and

4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral and lower related titles. Special reemployment rights shall be determined by the Department of Personnel in the same manner as lateral and demotional rights.

1. A special reemployment list from one governmental jurisdiction shall not be certified to another jurisdiction.

i. In local service, for purposes of this chapter, an autonomous agency shall be considered a separate jurisdiction. An autonomous agency is one which, by statute, is a body corporate and has the powers of an appointing authority.

ii. In State service, the entire State government constitutes a single jurisdiction.

(d) Employees serving in a specialized credential variant title shall have title rights based upon the special credentialing, provided that the employees are serving in a specialized credential variant title on or before submission of the layoff plan, see N.J.A.C. 4A:8-1.4. Specialized credentialing shall be based upon at least one of the following, upon approval by the Department of Personnel:

1. Licensure or certification;

2. Specialized education;

3. Specialized client-based or program experience; or

4. Service as a trainee in a specialized area of operation leading to advancement to a primary title with specialized credentialing.

(e) Affected negotiations representatives shall be ***given reasonable notice and*** permitted to be present at any meeting with individual employees where layoff rights are discussed.

(f) See N.J.A.C. 4A:8-2.2 for the exercise of lateral and demotional title rights, and see N.J.A.C. 4A:8-2.3 for the exercise of special reemployment rights.

4A:8-2.2 Exercise of lateral and demotional rights

(a) In State service, a permanent employee in a position affected by a layoff action shall be provided applicable lateral and demotional title rights first at the employee's option within the municipality in which the facility or office is located, and then to the job locations selected by the employee within the department or autonomous authority. The employee shall select individual job locations in preferential order from the list of all job locations (see N.J.A.C. 4A:8-1.5(c)) and indicate:

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1. Job locations at which he or she will accept lateral title rights; and

2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(b) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(c) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;

2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;

3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be determined based on the level of the permanent title held and seniority in title;

4. The position held by the employee serving in a working test period with the least probationary time;

5. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Significantly Below Standards or equivalent rating;

6. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Marginally Below Standards or equivalent rating;

7. The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4(a)).

(d) Employees serving in their working test periods shall be provided lateral title rights in the same order as (c)1 through 4 above.

(e) When an employee in a professional title is granted demotional title rights to a para-professional or non-professional title, or when an employee in a para-professional title is granted demotional title rights to a non-professional title, displacement may be made only on the basis of greater permanent continuous service. See N.J.A.C. 4A:4-2.5 for definitions of professional, para-professional and non-professional titles.

(f) Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. Displacement may be made only on the basis of greater permanent continuous service except when a provisional or probationary employee is serving in the previously held title. In such cases, the provisional or probationary employee shall be subject to displacement.

1. Such extended rights shall not be granted when the employee has either lateral title rights options, or demotional title rights options to a title with a higher class code than the previously held title, within the selected job locations.

[2. Such extended rights shall not be granted when the previously held title is a professional title which was last held on a permanent basis more than 10 years prior to the effective date of the layoff.]

(g) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series from which they were laid off.

4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which he or she has been laid off, demoted or displaced by job location. In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see N.J.A.C. 4A:8-2.2(f)). These rights are subject to the following limitations:

1. In State service, an employee who is displaced from the municipality in which his or her facility or office was located shall, at the employee's option, be granted special reemployment rights to that municipality in addition to job locations selected by the employee.

2. An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

3. An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) Priority of special reemployment lists shall be determined as follows:

1. Special reemployment lists shall take priority over all other reemployment lists, open competitive lists and lateral title changes pending examination (see N.J.A.C. 4A:4-7.6(c)), except those resulting from position reclassifications, for the entire jurisdiction (see N.J.A.C. 4A:8-2.1(c)1). Special reemployment lists shall also take priority over promotional lists for the State department, autonomous agency or local department where the layoff occurred.

2. Special reemployment lists shall also take priority over transfers and all lateral title changes except those resulting from position reclassifications within a layoff unit.

(c) A special reemployment list shall not have an expiration date. Ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff, based on the method for calculating seniority in effect at the time of certification of the list. Appointments from the list shall be made in the order certified. Removal of names from a special reemployment list may be made in accordance with applicable rules (see N.J.A.C. 4A:4-4.7 and 4A:4-6). Following appointment from a special reemployment list, an employee's name shall be removed from the special reemployment list for any title with a lower class code (State service) or lower level (local service).

(d) Employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a special reemployment list (see N.J.A.C. 4A:4-3.1(a)3).

(e) In State service, employees who decline reemployment to a job location will be removed from future certifications to that location for that title and all lateral or lower titles. Employees who decline reemployment to their original or substituted job location (other than the original municipality) will be certified only to the original municipality for that title and all lateral or lower titles. Employees who decline reemployment to their original municipality shall be removed from the special reemployment list for that title and all lateral or lower titles.

1. However, employees who are unavailable for work when offered reemployment due to temporary disability or other good cause shall remain on the special reemployment list. Employees who decline reemployment because the position is in a different shift from the position from which they were displaced, or because the position is full time when the position from which displaced was part-time (or vice versa) shall remain on the special reemployment list.

4A:8-2.4 Seniority

(a) Seniority for purposes of this chapter is the amount of continuous permanent service in the jurisdiction, regardless of title. Seniority

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shall be based on total calendar years, months and days in continuous permanent service regardless of work week, work year or part-time status.

1. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

(b) Preferred seniority, which means greater seniority than anyone currently serving in a demotional title, shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f), will have preferred seniority.

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted will have preferred seniority. Records of preferred seniority shall be maintained by the appointing authority in a manner acceptable to the Department of Personnel.

3. If more than one employee has preferred seniority, priority will be determined on the basis of the class code in State service, or the class level in local service, of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.

(c) The following shall not be deducted from seniority calculations:

1. Voluntary furloughs;

2. All leaves with pay including sick leave injury (SLI);

3. Leaves without pay for the following purposes: military, educational, gubernatorial appointment, unclassified appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff;

4. In State service, employment in the Senior Executive Service, provided the employee had permanent service prior to the SES appointment; and

5. In local service, leave to fill elective public office.

(d) Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority. In State service, deductions will be made only for such suspensions, leaves of absence and periods of layoff which began on or after March 1, 1987.

(e) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff and reappointment shall be deducted from the employee's seniority.

(f) Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent employees serving in a provisional, temporary or interim appointment shall continue to accrue seniority in their permanent titles.

(g) If two or more employees have equal seniority, the tie shall be broken in the following order of priority:

1. A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);

2. The employee with the higher performance rating shall have priority over an empoyee with a lower rating, provided that all tied employees were rated by the same supervisor. In local service, the performance rating system must have been approved by the Department of Personnel.

3. The employee with the greater amount of continuous permanent service in the employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority*. **An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f) shall have all permanent continuous service in that title aggregated for seniority purposes***;

4. The employee with the greater seniority in the title before a break in service shall have priority;

5. The employee with greater non-continuous permanent service, regardless of title, shall have priority;

6. The employee who ranked higher on the same eligible list for the title shall have priority;

7. The employee with greater continuous service as a provisional, temporary or interim appointee in the subject title shall have priority;

8. The employee with greater total service, regardless of title or status, shall have priority;

9. The employee with the higher performance rating during the 12 month period prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel.

10. The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel.

11. Other factors as may be determined by the Commissioner.

4A:8-2.5 Reassignments

(a) For a period of 12 months after the service of the layoff notice required by N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be subject to the following types of involuntary reassignments, except as permitted by the Commissioner for good cause:

1. Reassignment to a different shift, unless the reassignment is based on a seniority program;

2. In State service, if employed in the original municipality, reassignment to a different municipality; and

3. In State service, if not employed in the original municipality, reassignment to a different job location.

(b) Specific justification for such involuntary reassignments must be shown by the appointing authority.

(c) During the period described in (a) above, notice of the types of voluntary reassignments listed in (a) above shall be provided to affected negotiations representatives, and appointing authorities should consult with such representatives upon request. Appointing authorities shall conspicuously post notices of opportunities for voluntary reassignment ***for a period of 10 working days*** at all work locations.

4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

1. Good faith appeals, based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. Such appeals shall be subject to hearing and final administrative determination by the Merit System Board (see N.J.A.C. 4A:2-2.9 et seq.); and/or

2. Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the Department of Personnel, with a right to further appeal to the Commissioner (see N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested.

(c) The burden of proof is on the appellant.

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COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Exemptions from Taxation

Adopted New Rules: N.J.A.C. 5:22

Proposed: March 6, 1995 at 27 N.J.R. 794(b).
Adopted: April 17, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: April 24, 1995 as R.1995 d.256, **without change.**
Authority: N.J.S.A. 54:4-3.141.
Effective Date: May 15, 1995.
Expiration Date: May 15, 2000.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27(1994) Statement

No Executive Order No. 27(1994) analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adopted new rules follows:

CHAPTER 22
EXEMPTIONS FROM TAXATION

SUBCHAPTER 1. RESIDENTIAL NEW CONSTRUCTION, IMPROVEMENT AND CONVERSION IN URBAN ENTERPRISE ZONE MUNCIPALITIES

5:22-1.1 Purpose

This subchapter is adopted pursuant to section 3 of P.L. 1989, c.207 for the purpose of setting forth standards by which municipalities that are deemed to be "qualified municipalities" under the statute may determine that one or more areas within the municipality are in need of rehabilitation and that one or more buildings in any such area could be advantageously converted to "qualified residential property," as defined in section 2 of the statute, or that vacant land in any such area could be advantageously used for the construction of such "qualified residential property."

5:22-1.2 Standards for municipal determinations

(a) In any municipality that is a "qualified municipality" as defined in Section 2 of P.L. 1989, c.207, a determination may be made by the municipal governing body that an area within the municipality is in need of rehabilitation only if at least one of the following criteria is satisfied:

1. The area has been previously declared, pursuant to N.J.S.A. 40:55-21.1 et seq., to be blighted;

2. There is evidence of substantial housing or health code violations in at least 25 percent of the dwelling units in the area;

3. At least 25 percent of the dwelling units in the area are in buildings at least 40 years old;

4. At least 25 percent of the dwelling units in the area in buildings having real property tax arrearages in at least the amount of one year's taxes; or

5. At least 10 percent of the land within the area, including both privately-owned property and property that is municipally-owned as a result of tax foreclosure but excluding other public property, is vacant or has only unoccupied buildings on it.

(b) No area shall be deemed to be in need of rehabilitation unless the demand for housing in the municipality exceeds the supply and the improvement or conversion of one or more existing buildings in the area, or new residential construction in the area on one or more vacant lots, or lots that might be made vacant through demolition of existing substandard structures, is determined by the governing body to be likely to increase the overall supply of safe, sanitary and decent housing affordable to those in need of it.

5:22-1.3 Relocation assistance

The improvement, conversion or demolition of any building in conjunction with any tax abatement granted under P.L. 1989, c.207 shall be deemed to be part of a "program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision" within the meaning of N.J.S.A. 20:4-2.

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Rules

Readoption with Amendments: N.J.A.C. 5:80

Proposed: January 17, 1995 at 27 N.J.R. 265(a).
Adopted: April 17, 1995 by the New Jersey Housing and Mortgage Finance Agency, Ira Oskowsky, Acting Executive Director/Secretary.
Filed: April 17, 1995 as R.1995 d.247, **without change.**
Authority: N.J.S.A. 55:14K-5g.
Effective Date: April 17, 1995, Readoption;
May 15, 1995, Amendments.
Expiration Date: April 17, 2000.

Summary of Public Comments and Agency Responses:

The Agency received one comment from Carmine R. Alampi, Esq., Smith, Don, Alampi and D'Argenio.

COMMENT: The commenter wrote in opposition to the proposed amendments at N.J.A.C. 5:80-5.10 dealing with the continuation of return on equity restrictions following prepayment. His position was that once the Agency's mortgage has been prepaid in full, return on equity restrictions should be eliminated. The commenter also contends that the rules are designed to discourage or prevent prepayment. He maintains that the Agency's adoption of the amendments to the prepayment rules would contravene the holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency,* 114 *N.J.* 226 (1989) as the "real purpose" behind the rules is not stated in the rule proposal.

RESPONSE: The prepayment rules permit an owner of an Agency-financed project to prepay the mortgage 20 years after the mortgage closing, subject to several conditions intended to preserve the project as low or moderate income housing. These conditions include a continuation of the tenant eligibility and income standards, rent increases and maintenance of reserves for repairs and replacements. Proposed amendments to these rules were first published on March 7, 1994 at 26 N.J.R. 1187(a). Those rules proposed a continuation of all return on equity restrictions following prepayment. The Agency received several comments at that time, including comments from Carmine Alampi, objecting to the continuation of return on equity restrictions following prepayment.

In response, the Agency reproposed rules which introduced a modified return on equity provision following prepayment. The reproposed rules were intended to lessen return on equity restrictions following prepayment while still maintaining sufficient fiscal controls to help preserve the low or moderate income status of the project. The reproposal was published on January 17, 1995 at 27 N.J.R. 265(a) as part of the readoption of all of the Agency's rules. The only comment in response to the reproposal was from Carmine Alampi and it essentially reiterates his earlier comments. He again states that he is opposed to any return on equity restrictions following prepayment.

In reviewing the comment, the Agency does not agree that return on equity restrictions can be entirely eliminated. As indicated above, a prepayment of the Agency's mortgage does not terminate the owner's obligation to preserve the project for low or moderate income families. Since that obligation continues after prepayment for the remainder of the original mortgage term, the Agency maintains that a limited return on equity provision is still necessary in order to preserve the low/moderate income status of the project. The Agency believes this can be accomplished through the establishment of an operating reserve

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account. The operating reserve would be three months worth of operating expenses (including debt service) for senior projects and six months of expenses for family projects. After prepayment, if a project meets the operating reserve requirement, return on equity restrictions would be eliminated. If the project thereafter falls below the operating reserve requirement, return on equity restrictions will be reimposed until the operating reserve account is again fully funded. The proposed operating reserve/return on equity restrictions represent a significant relaxation over existing limitations during the mortgage term. Currently, owners are limited to an eight percent annual return on their investment in the project. Surplus cash over this amount is not available to the owner and stays within the project account. With the amended rules, the eight percent limitation would remain in place after prepayment only until such time as the project funded an operating reserve. Once an operating reserve is funded, return on equity limitations would be removed and the owner would be entitled to all surplus cash.

The operating reserve account will provide the project with a funding source for capital improvements and repairs that are not budgeted into the reserve for repair and replacement account and for other unanticipated expenditures. As the projects by definition will be over 20 years old, the likelihood of such expenditures increases as the projects age. If return on equity restrictions are completely removed following prepayment, the only recourse to fund capital improvements or unanticipated repairs or expenses would be to raise rents or subject the project to disrepair or increased debt. Such a situation would jeopardize the safety and well-being of the tenants as well as the ability to maintain affordable rents.

In response to the commenter's second issue, the Agency believes that the operating reserve requirement is a reasonable exercise of the Agency's authority to ensure that the project will be maintained for low/moderate income housing after prepayment. In *Lower Main vs. New Jersey Housing and Mortgage Finance Agency,* 114 *N.J.* 226 (1989), the New Jersey Supreme Court affirmed the Agency's authority to condition prepayment upon continuing regulatory controls to maintain affordability. *Id.* at 236. The operating reserve/return on equity restriction is not intended as a means to discourage prepayment. Rather, its purpose serves to preserve the physical condition of the project and its financial viability through the remainder of the orginal mortgage term.

For the reasons expressed above, the Agency maintains that the prepayment rules be adopted as proposed.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules are either the same as those imposed by Federal law or not subject to any Federal standards or requirements.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:80.

Full text of the adopted amendments follows:

5:80-5.2 General policy

(a) (No change.)

(b) The prior specific review and approval of the Agency members is required if a proposed change involves a general partner, or shareholder with more than a 10 percent interest, or where the change involves a transfer of control of the housing sponsor.

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

5:80-5.8 Return on equity

(a) (No change.)

(b) The seller shall be limited to a cumulative, but not compounded, return on its equity, from project operations or sale, at the rate of return as determined by N.J.A.C. 5:80-3 and set forth in the mortgage and other contractual documents between the seller and agency.

1. Upon sale or other disposition of the project or any interest therein, the seller shall be entitled to a return of its equity in the project and any accrued but undistributed return on its equity. Such return shall be conditioned upon the Agency's mortgage and any other supplemental project financing from the Agency or other governmental agency or department being assumed by the buyer, and further conditioned upon the making of any required project repairs or improvements, pursuant to N.J.A.C. 5:80-5.4(d), and the payment of all amounts due the Agency and the funding of reserves pursuant to N.J.A.C. 5:80-5.4(e). The seller shall not be entitled to or paid any return until such conditions have been met. The seller's equity in the project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

2.-3. (No change.)

4. In cases where the sale or other disposition of the project includes a permitted prepayment of the Agency mortgage, return on equity shall be governed by the provisions of N.J.A.C. 5:80-5.10(b).

5:80-5.10 Prepayment

(a) (No change.)

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1.-6. (No change.)

7. After prepayment, return on equity rules at N.J.A.C. 5:80-3 shall continue until the expiration of the original mortgage term or until the owner funds an operating reserve account, whichever is sooner. Upon funding of an operating reserve account, return on equity rules shall terminate. The operating reserve shall be equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments. The three/six months of operating expenses shall be calculated based on the Agency-approved annual budget. Once established, interest earned on a fully-funded operating reserve account may be withdrawn by the owner upon written request to and verification by the Agency that the account is fully-funded. If the operating reserve is thereafter used, return on equity rules shall be reinstituted until the operating reserve is again fully-funded. The determination of a fully-funded operating account after its initial establishment shall be based on the Agency-approved budget in effect at the time the project first established the operating reserve account.

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

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Notice of Administrative Correction
Underground Storage Tanks
Applicability of Rules
N.J.A.C. 7:14B-1.4

Take notice that the Office of Administrative Law has discovered an error in the current text of N.J.A.C. 7:14B-1.4(b)3. Amendments to that paragraph proposed at 21 N.J.R. 2242(a) and adopted effective September 4, 1990 at 22 N.J.R. 2758(a) were not properly incorporated into the Code through the 9-17-90 Code update. Portions of the then-current rule text were adopted as deleted were retained in the rule. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

7:14B-1.4 Applicability

(a) (No change.)

(b) The following types of underground storage tank systems are exempt from the requirements of this chapter.

1.-2. (No change.)

3. Tanks [used to store heating oil for onsite consumption in a residential building, except that for the purposes of registration pursuant to this chapter, and inventory control and release detection under sections 7 and 8 of the State Act (N.J.S.A. 58:10A-27 and 58:10A-28), respectively, a tank] with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a residential building:

4.-14. (No change.)

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

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(a)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Oysters

Readoption with Amendments: N.J.S.A. 7:25A

Proposed: March 6, 1995 at 27 N.J.R. 798(a).
Adopted: April 19, 1995 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Filed: April 20, 1995, as R.1995 d.250, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:1D-9, 50:1-5, 50:1-23 and 50:1-27.
DEP Docket Number: 04-95-02-494.
Effective Date: April 20, 1995, Readoption;
May 15, 1995, Amendments.
Expiration Date: April 20, 2000.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
On April 7, 1995, Governor Christine Todd Whitman signed Assembly Bill No. 2630 into law. This bill amends N.J.S.A. 50:3-8 and 50:3-9 and provides that the season for taking oysters will commence on April 1. As a result, the Department has amended the definition of the term "Bay Season," N.J.A.C. 7:25A-1.4, to conform to this amended statutory provision.

Executive Order No. 27 Statement

These rules are not readopted under the authority of or in order to implement, comply with or participate in any program established under Federal law. The rules are also not readopted under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27(1994) does not require a comparison with Federal law.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:25A.

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

7:25A-1.4 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.
. . .
"Bay season" means *[May 1]* ***April 1*** to June 30, the season***, as established at N.J.S.A. 50:3-8,*** during which the natural seed beds are legally open for the taking of seed oysters.
. . .

(b)

POLICY AND PLANNING/AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Volatile Organic Compounds

Adopted Amendments: N.J.A.C. 7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17 and 16.18

Proposed: November 21, 1994 at 26 N.J.R. 4478(a).
Adopted: April 20, 1995 by Robert C. Shinn, Commissioner, Department of Environmental Protection.
Filed: April 24, 1995 as R.1995 d.255, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:1B-3, 13:1D-9, and 26:2C-1 et seq., in particular 26:2C-9(c) and 19.
DEP Docket Number: 47-94-10/486.
Effective Date: May 15, 1995.
Operative Date: June 19, 1995.
Expiration Date: Exempt.

The Department of Environmental Protection (the Department) hereby adopts the amendments to N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (subchapter 16) proposed on November 21, 1994. Subchapter 16, also known as VOC RACT, establishes standards and requirements for specified types of equipment and source operations capable of emitting volatile organic compounds (VOCs) into the atmosphere.

On August 2, 1993, proposed new rules and amendments to this subchapter were published in the New Jersey Register (N.J.R.) at 25 N.J.R. 3339(a). Those new rules and amendments established Reasonably Available Control Technology (RACT) requirements for several source categories not previously subject to those requirements. That proposal was adopted on May 27, 1994 and was published on June 20, 1994 at 26 N.J.R. 2600(a).

The amendments adopted herein are in direct response to some of the public comments received during the public comment period for this VOC RACT proposal and comments received from the May 27, 1994 adoption. Although the Department found merit in the changes recommended by commenters during the public comment period for the May 27, 1994 adoption, the changes were considered too substantive to be incorporated without soliciting additional public comment.

The comments previously submitted to the Department included comments from a VOC RACT public workgroup which met throughout 1992-1993. Additional comments were received on this proposal from the VOC RACT public workgroup during the public hearing held by the Department on January 11, 1995. Written comments were also received from other interested persons during the public comment period which closed on January 18, 1995. Other minor amendments have come to the attention of the Department through the implementation of the VOC RACT regulations.

Summary of Hearing Officer's Recommendations and Agency Response:
Lewis J. Nagy, Assistant Commissioner of Policy and Planning, served as the hearing officer at the January 11, 1995 public hearing held at the Department of Environmental Protection, Trenton, New Jersey. After reviewing the oral testimony presented at the public hearing and the written comments submitted directly to the Department, Assistant Commissioner Nagy recommended the amendments be adopted with the changes described below in the Summary of Public Comments and Agency Responses and Summary of Agency Initiated Changes. Specifically, Assistant Commissioner Nagy recommended that three changes be made to the rule. The definition of "source operation" should be clarified in order to avoid confusion with the term "emissions unit" and to maintain consistency with other air pollution control rules. The 550 tons per year (tpy) applicability threshold which triggers the leak detection and repair (LDAR) requirements for chemical plants, other than synthetic organic chemical or polymer manufacturing facilities, should clearly indicate that the 550 tpy excludes any in-process recycled or in-process refluxed applicable VOC and also excludes any applicable VOC generated during the process. Since the LDAR applicability threshold is being adopted so close to the May 31, 1995 deadline for completion of initial LDAR testing, a change should be made which will allow initial LDAR testing to be initiated by May 31, 1995 rather than to be completed by this date. However, full compliance with the LDAR requirements should be no later than May 31, 1996.

Interested persons may inspect a copy of the hearing record, or obtain a copy for a fee, by contacting:

ATTN: DOCKET NUMBER 47-94-10/486
Janis E. Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:
The public comment period closed on January 18, 1995. The Department received written comments from nine persons. One person presented both written and oral comments. The commenters, and their affiliations, if any, are listed below:

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1. Robert M. Baldisserotto, VOC RACT Public Workgroup, the Chemical Industry Council of New Jersey, and Hoffmann-La Roche Inc.
2. John R. Boyea, Mobil Chemical Company
3. Thomas J. Detweiler, Chemical Industry Council of New Jersey
4. Raymond A. Fernandez, PSE&G
5. Victor J. Giudice, Ganes Chemicals Inc.
6. David G. Krause, Mobil Chemical Company
7. Bradley S. Martin, DuPont Chemicals
8. Toni Wagner, Schering-Plough Corporation
9. Kenneth G. Zinis, Roche Vitamins & Fine Chemicals

The following is a summary of the comments received on the proposed amendments, and the Department's responses. The number(s) in parentheses after each comment corresponds to the commenter number(s) above.

N.J.A.C. 7:27-16.1 Definitions

1. COMMENT: A number of commenters requested that the Department clarify the definition of "source operation" in order to avoid confusion between the terms "source operation" and "emissions unit." The commenters are concerned that the way the definition is proposed implies that the term "source operation" always includes the term "emissions unit." Another commenter is opposed to the use of the phrase "which are used in a process or part thereof" in the second sentence of the definition of "source operation," and stated that, in the interest of consistency among air pollution control rules, the Department should adopt a definition of "source operation" that is consistent with the definition in N.J.A.C. 7:27-22, Operating Permits. (1,3,4,7)

RESPONSE: For the purposes of this subchapter, a "source operation" is defined as a single piece of equipment or control apparatus, or multiple pieces of equipment or control apparatus, which functions collectively to perform a specific process operation, and emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. The Department believes that most source operations will consist of a single piece of equipment and control apparatus, such as a reactor kettle and condenser. However, a source operation may also consist of several pieces of equipment or control apparatus which function together as one process (that is, a web process which includes a coater and dryer in the process).

The U.S. Environmental Protection Agency (EPA) defines the term "emissions unit" at 40 CFR Part 70.2 as "... any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant ..." The Department agrees with commenters who pointed out that a stationary source (that is, a facility) could have one "source operation" within one "emissions unit," as in the case where one process vessel vents singularly to an emission point. As the commenters pointed out, in this case the terms "source operation" and "emissions unit" are synonymous. The Department also recognizes that a number of interconnected "source operations" with different unit operations, such as a reactor kettle connected to a separate vessel, may constitute separate "source operations" within one "emissions unit."

The term "emissions unit" is an appropriate term for the purpose of permitting. However, maximum allowable emission rates and de minimis levels apply to each "source operation," not to each "emissions unit." If they applied to each "emissions unit," maximum allowable emission rates would be less than intended when the RACT limits were developed per source operation.

The Department agrees that the use of the term "emissions unit" in the definition of "source operation" is misleading since a "source operation" and an "emissions unit" are not necessarily synonymous, rendering the definition, as proposed, inaccurate. The Department also agrees that the use of the phrase "which are used in a process or part thereof" should be deleted from the definition of "source operation." Accordingly, the Department has changed the definition of "source operation", on adoption, by omitting the phrase "which are used in a process or part thereof' and the reference to "emissions unit." In a separate proposal the Department is also amending the term "source operation" in N.J.A.C. 7:27-22 in order to clarify that "source operation" and "emissions unit" are not necessarily the same (see 27 N.J.R. 1040(a)).

N.J.A.C. 7:27-16.4 VOC transfer operations, other than gasoline

2. COMMENT: Several commenters support the Department's intent to revise the formula in N.J.A.C. 7:27-16.4(d)1 for calculating the VOC emission factor to allow for the use of a transfer temperature below standard conditions ("standard conditions" means 70 degrees Fahrenheit and one atmosphere pressure). The commenters stated that emission calculations will be more accurate using the vapor pressure determined at the transfer temperature. (4, 7)

RESPONSE: The Department thanks the commenters for their support and believes that the revised formula, which allows for the use of a transfer temperature which is below standard conditions, will provide for a more accurate estimate of annual emissions from VOC transfer operations.

3. COMMENT: The commenter stated that the formulas in N.J.A.C. 7:27-16.4(d)1 and (g)1, for calculating VOC emission factors, do not effectively account for VOC control devices which are already in use, such as vapor control systems with VOC control efficiencies less than 90 percent, conservation vents, etc. The current formula provides only an "uncontrolled" VOC emission factor, and overestimates VOC emissions from transfer operations that already have VOC emissions controls. This subjects these operations to greater levels of VOC control, even though their emissions with control may be below the 1,000 and 2,000 pound per year acceptable thresholds specified in N.J.A.C. 7:27-16.4(c) and (f), respectively.

To correct this situation, the commenter suggests that the Department revise the formulas to account for control devices that are already in use. In addition, the Department should allow the use of acceptable alternative emission factors for calculating VOC emissions from transfer operations, rather than requiring the use of the emission factors specified in N.J.A.C. 7:27-16.4(d)1 and (g)1. (4)

RESPONSE: The 1,000 and 2,000 pounds per year thresholds specified in N.J.A.C. 7:27-16.4(c) and (f), respectively, are not acceptable levels as the commenter states; rather they are minimum levels which trigger the requirement for the installation of control apparatus designed to reduce total VOC emissions to the outdoor atmosphere by at least 90 percent by weight. As stated in the Summary of the VOC RACT proposal published August 2, 1993 (see 25 N.J.R. 3339(a)), EPA defines RACT to mean the lowest emission limitation that a particular source is capable of meeting through the installation of control technology that is reasonably available considering technological and economic feasibility. The existing rules at N.J.A.C. 7:27-16.4(c)1 and (f)1 require control apparatus to be at least 90 percent effective. Therefore, the use of an uncontrolled level provides a baseline trigger with which all transfer operations, other than gasoline, must comply.

With respect to acceptable alternative emission factors, a well defined and consistent method for calculating emission factors is necessary in order for the Department to take fair and predictable enforcement action and to allow the regulated community to predict such action. Therefore, the use of alternative emission factors is not acceptable.

4. COMMENT: Several commenters support the proposed changes to include tanks other than storage tanks under the provisions of N.J.A.C. 7:27-16.4(f) and (g). The commenters stated that requiring process reactor tanks to comply with this section is more reasonable than subjecting reactor tanks to facility specific VOC control plans pursuant to N.J.A.C. 7:27-16.17. (2, 6)

RESPONSE: The Summary of the proposal misstated that process reactor tanks would be included in the scope of N.J.A.C. 7:27-16.4. Process reactor tanks are currently regulated under N.J.A.C. 7:27-16.16. What is intended by deleting the adjective "storage" in N.J.A.C. 7:27-16.4(f) and (g) is to expand the types of tanks subject to the specified requirements to include holding tanks for process reactors and other tanks not solely used for storage which are part of processes.

5. COMMENT: Several commenters support the proposed change at N.J.A.C. 7:27-16.4(l) which clarifies the conditions under which delivery vessels are to be vapor-tight. The commenters note that requiring delivery vessels to be vapor-tight during transfers of VOC materials is an unreasonable requirement as it may not be physically possible in all cases, without having the delivery vessel vented to a control device during filling operations. Requirements for use of control devices for filling of delivery vessels have already been established in N.J.A.C. 7:27-16.4(f). (2, 6)

RESPONSE: The Department thanks the commenters for their support and believes that this clarification will assist the regulated community in achieving compliance with the requirements of this subchapter.

N.J.A.C. 7:27-16.8 Boilers

6. COMMENT: The commenter supports the proposal at N.J.A.C. 7:27-16.8 to allow owners or operators submitting repowering plans to establish facility-specific limits for both CO (carbon monoxide) and VOC. (4)

RESPONSE: The Department thanks the commenter for the support. This provision provides increased incentive to owners and operators and

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encourages the replacement of older higher-polluting units with new very low polluting units which go beyond RACT and will ultimately lead to greater VOC, CO and NO_x (oxides of nitrogen) reductions.

7. COMMENT: The commenter believes that although N.J.A.C. 7:27-16.8 allows companies to submit facility-specific VOC limits when submitting a repowering plan pursuant to N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen (NO_x RACT), there is little incentive to use the repowering procedures that were proposed in the NO_x RACT amendments on August 15, 1994 (see 26 N.J.R. 3298(a)). The commenter supplied comments it had previously submitted to the Department on the NO_x RACT proposal. (4)

RESPONSE: The existing rules at N.J.A.C. 7:27-16.8(k) and 16.9(j) allow owners and operators to submit facility-specific CO limits as an alternative to those specified in N.J.A.C. 7:27-16.8 and 16.9 when the owner or operator is submitting a repowering plan for a combustion source pursuant to N.J.A.C. 7:27-19. The amendments, as proposed and adopted herein, allow owners and operators to also submit facility-specific VOC limits as an alternative to those specified in N.J.A.C. 7:27-16.8 and 16.9 when the owner or operator is submitting a repowering plan for a combustion source pursuant to N.J.A.C. 7:27-19. These amendments pertain to VOC RACT and do not affect NO_x RACT. For information pertaining to the Department's position on NO_x RACT issues such as the type of information to be submitted for repowering, cost estimation of repowering, compliance deadlines and State Implementation Plan (SIP) submittals, see the adoption notice for the referenced NO_x RACT amendments (particularly the response to Comment 70) published April 17, 1995 at 27 N.J.R. 1581(a).

N.J.A.C. 7:27-16.9 Stationary gas turbines

8. COMMENT: The commenter appreciates the Department's recognition that not all gas turbines are capable of achieving the originally proposed CO emissions limit of 100 parts per million by volume, dry basis (ppmvd), when corrected to 15 percent oxygen. In order to achieve this limit, many gas turbines would need to be equipped with control technology that is not cost-effective and does not represent RACT. (4)

RESPONSE: After reviewing data supplied by the regulated community, the Department agrees that the 250 ppmvd emissions limit, adopted herein, is more appropriate with respect to RACT for existing units.

9. COMMENT: The commenter supports the proposal to allow owners or operators submitting repowering plans to establish facility-specific limits for both CO and VOC. (4)

RESPONSE: The Department thanks the commenter for the support. As stated in the response to Comment 6 above, the Department believes that repowering will encourage the installation of new equipment which will operate more efficiently and result in the use of state of the art control technology which goes beyond the scope of RACT.

10. COMMENT: N.J.A.C. 7:27-16.9(b) states that the emissions limit for CO for stationary gas turbines should be 250 ppmvd, when corrected to 15 percent oxygen. A permit was issued by the Department which includes a CO limit of 50 ppmvd, corrected to 15 percent oxygen, for one of the commenter's stationary gas turbines. The commenter questions whether the permit limit will be increased to this new allowable limit which is set in the regulations. (8)

RESPONSE: This rule applies to the retrofitting of existing equipment with RACT. When a permit is issued for a new source, the new source must install and operate state-of-the-art control technology. Once installed, the state-of-the-art technology and corresponding emission limits can not be downgraded by emission limits relevant to the retrofitting of RACT on older units. New source permits are generally issued with more stringent emissions limits, reflecting advances in state-of-the-art control technology, and these limits must be adhered to. Therefore, existing permit limits would not be increased to the RACT emissions limit.

N.J.A.C. 7:27-16.10 Stationary internal combustion engines

11. COMMENT: The commenter appreciates the Department's recognition that not all internal combustion engines are capable of achieving the orignally proposed CO emissions limit of 100 ppmvd, corrected to 15 percent oxygen, without the installation of control technology that is not cost-effective and does not represent RACT. (4)

RESPONSE: The Department agrees that a CO emissions limit of 500 ppmvd for stationary internal combustion engines, adopted herein, is more consistent with guidance provided in EPA's NO_x Alternative Control Techniques (ACT) document which was developed for the purpose of determining RACT.

12. COMMENT: The commenter recommends that an exemption from N.J.A.C. 7:27-16.10 be established for emergency generators. The emergency generators at the commenter's facility are permitted for 500 hours per year operation. The actual emissions of VOCs for one of the emergency generators for the year 1994 was 4 pounds per year VOC and 185 pounds per year CO. The costs for installing controls on this source goes beyond the scope of RACT based on the small actual amounts of emissions of VOC and CO from the source. (8)

RESPONSE: Emergency generators are exempt from the provisions of N.J.A.C. 7:27-16.10. N.J.A.C. 7:27-16.10 applies to any stationary internal combustion engine which is subject to the provisions of N.J.A.C. 7:27-19. N.J.A.C. 7:27-19.2(d) specifies that emergency generators are exempt from the provisions of N.J.A.C. 7:27-19. Therefore, if an emergency generator is exempt from the provisions of N.J.A.C. 7:27-19, it would also be exempt from the provisions of N.J.A.C. 7:27-16.10.

N.J.A.C. 7:27-16.18 Leak detection and repair

13. COMMENT: The commenter supports the proposed change in the applicability threshold for instituting a LDAR program at chemical plants other than synthetic organic chemical or polymer manufacturing facilities. A "total quantity processed" threshold seems more reasonable than a "service time" threshold. (5)

RESPONSE: The Department agrees and thanks the commenter for the support and believes that the 550 tpy threshold is an appropriate trigger for implementation of an LDAR program at chemical plants other than synthetic organic chemical or polymer manufacturing facilities.

14. COMMENT: A number of commenters requested that the Department clarify the chemical plant LDAR program applicability trigger of 550 tpy of VOC processed in the equipment to exclude any in-process recycled or refluxed VOC. In the rule proposal Summary (see 26 N.J.R. 4480) the Department states, "These chemical plants have a broad spectrum of operations, some of which have no recycling of VOC in their processes and some which have a significant amount. For these reasons, the Department has decided that the appropriate trigger is a total quantity of 550 tpy of VOC processed in equipment. The Department acknowledges that this approach differs from that employed for leak detection programs required for synthetic organic chemical or polymer manufacturing facilities, but feels it is appropriate given the wide variation in percentage of VOC recycled in chemical plant processes and the difficulty in estimating the amount of recycled VOC." In October 1993, the VOC RACT public workgroup submitted comments to the Department suggesting an 1100 tpy VOC usage applicability trigger which included recycled VOC. The Department's proposal to lower the trigger to 550 tpy VOC processed presumably eliminates recycled VOC from the applicability determintion. The Department should adopt a definition for VOC processed that specifically excludes VOC from in-processed recycling or reflex activities. Triggering LDAR requirements for chemical plant equipment with greater than 550 tpy VOC processed (excluding in-process recycling and reflux) is fair and promotes pollution prevention by encouraging VOC recycling activities. (1, 2, 3, 5, 6)

RESPONSE: As mentioned in the rule Summary of the proposal published November 21, 1994 at 26 N.J.R. 4478(a), the applicability threshold for the LDAR requirements of N.J.A.C. 7:27-16.18 generated significant comment during the public comment period following the 1993 proposal of the VOC RACT regulations at 25 N.J.R. 3339(a). The Department's intent, after considering public comments and evaluating the wide variation in percentage of VOC recycled in chemical plant processes and the difficulty in estimating the amount of recycled VOC, was to establish a threshold which included applicable VOCs charged to the process and excluded any appliable VOC which was recycled, refluxed, or generated during the process. The quantity of applicable VOC processed includes the total annual quantity of applicable VOC charged to all processes used in the equipment. The 550 tpy threshold includes all virgin (new) and out-of-process recycled applicable VOCs. The 550 tpy threshold does not include any in-process recycled or in-process refluxed applicable VOC, nor does it include any applicable VOC generated during the process. The following example clarifies this issue:

A chemical process reactor has the following VOC annual throughput:

A. 400 tpy of virgin toluene is fed to the reactor as a solvent.

B. 200 tpy of recovered toluene is fed to the reactor as a solvent. The recovered toluene originates from an out-of-process purification/recovery operation.

C. 25 tpy of methyl chloride (VOC) is generated by chemical reaction in the reactor.

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D. 100 tpy of recycled toluene is returned to the reactor as a solvent. This toluene originates from an in-process recycling/distillation/reuse operation.

E. 50 tpy of a mixture of the above A, B, D grades of toluene is refluxed back into the reactor from the unit's process condenser during the chemical reaction.

Of the five VOC streams listed above, only A and B should be summed (600 tpy) in order to determine if the 550 tpy VOC processed trigger applies. The 25 tpy in stream C results from VOC generated during the process and streams D and E originate from either in-process recycling or reflux. These three streams would not be counted towards the 550 tpy VOC processed trigger. The Department is adding, on adoption, additional wording at N.J.A.C. 7:27-16.18(b)4 in order to clarify that the 550 tpy threshold excludes any in-process recycled or in-process refluxed applicable VOC and also excludes any applicable VOC generated during the process.

15. COMMENT: Two comments were received concerning equipment to be covered under a LDAR program. If a facility triggers the 550 tpy threshold, what equipment is included in the LDAR requirements? Does it include only that equipment which processes 550 tpy or does it include all equipment at the facility which is in contact with material that contains 10 percent by weight VOC materials? Only equipment which processes 550 tpy should be included. (2, 6)

RESPONSE: The LDAR requirements for chemical plants covered under N.J.A.C. 7:27-16.18(b)4 apply only to that equipment which is used to process 550 tpy of a substance that is at least 10 percent or greater by weight applicable VOC. Equipment which is in contact with a substance that is less than 10 percent by weight applicable VOC would not be a significant source of VOC emissions. As the commenters recommend, only equipment which is used to process the 550 tpy applicable VOC is covered under the LDAR requirements.

16. COMMENT: N.J.A.C. 7:27-16.18(b)4 has been proposed to include any chemical plant that exceeds the applicability threshold of 550 tons VOC processed per year. Based on the Department's estimate, there are 1,000 chemical plants that will be affected by LDAR. The existing portion of the adopted LDAR rules indicate that chemical plants will have to complete initial LDAR testing by May 31, 1995. Once the threshold limit is established by the Department, affected facilities will have to survey their sites, seek proposals for testing services and have testing completed. This extremely short time frame would be inadequate. It is also conceivable that testing service companies may not be able to complete the work for so many customers in such a short time. The commenter believes that additional time is needed to allow the chemical plants coming under LDAR to meet these new requirements. (9)

RESPONSE: The requirements for a LDAR program at chemical facilities, other than synthetic organic chemical and polymer manufacturing facilities, were originally proposed in the New Jersey Register on August 2, 1993 (see 25 N.J.R. 3339, and particularly 25 N.J.R. 3357). Based on comments received by members of the regulated community, and in particular the workgroup on leak detection and repair, the Department reserved N.J.A.C. 7:27-16.18(b)4 in order to reevaluate the applicability threshold for the LDAR program. Generally, the Department feels that the regulated community has had ample notice of the requirement to develop and institute an LDAR program, which includes provisions for testing. However, the Department agrees with the commenter that some facilities may require additional time to fully implement a LDAR program since the new applicability threshold adopted herein dictates which equipment at the facility is subject to LDAR requirements. The Department believes that whereas other regulated industries, such as petroleum refineries, natural gas/gasoline processing plants, and synthetic organic chemical or polymer manufacturing facilities, received sufficient lead time in order to initiate testing, facilities covered under N.J.A.C. 7:27-16.18(b)4 may be at a disadvantage since notification of the established threshold was clarified (as per this adoption) at such a late date. The Department also agrees that testing service companies may have a difficult, if not impossible, time trying to meet the May 31, 1995 deadline for all equipment at each facility in the State. Therefore, the Department has changed the wording at N.J.A.C. 7:27-16.18(i)4, on adoption, to specify that testing shall be initiated no later than May 31, 1995. The Department expects that facilities required to develop a LDAR program covered under N.J.A.C. 7:27-16.18(b)4 will initiate testing by May 31, 1995, with additional testing to be conducted in accordance with the frequency specified in N.J.A.C. 7:27-16.18(i). In order to maintain compliance a facility must complete additional testing within the alloted time period, as specified in N.J.A.C. 7:27-16.18(i), using May 31, 1995 as the baseline. For example, all agitators, pumps, valves and pressure relief devices in light liquid service are to be tested annually, in accordance with N.J.A.C. 7:27-16.18(i)1i, and would therefore initially be tested no later than May 31, 1996 and annually thereafter. Also, as per N.J.A.C. 7:27-16.18(i)1iii, all single mechanical seals and packed seal pumps are to be visually inspected by June 30, 1995 initially and monthly thereafter.

The Department believes that this change will not have any negative impact on the environment. The testing schedule in N.J.A.C. 7:27-16.18(i) provides for equipment with the greatest potential to emit VOCs to be tested at shorter intervals (that is, monthly) and equipment with a lesser potential to emit VOCs to be tested at less frequent intervals (that is, annually). Also, any detected regulated leak must be repaired as per the schedule set forth in Tables 18A and 18B in the existing rule. Therefore the more serious leaks will be eliminated quickly, reducing a significant portion of VOC emissions, and equipment less likely to leak will be tested and repaired, if necessary, at a later date.

Summary of Agency Initiated Changes

1. At N.J.A.C. 7:27-16.8(b) and (c), three modifications are made to provide conformity with recent amendments to N.J.A.C. 7:27-19.7. The existing rules at N.J.A.C. 7:27-16.8, which apply only to boilers which are subject to the provisions of N.J.A.C. 7:27-19 (NO_x RACT), establish VOC and CO emissions limits, set a time frame for adjusting boiler combustion processes, and require certain boilers to install and operate continuous emissions monitoring systems (CEMs) for CO. In the recent amendments to N.J.A.C. 7:27-19.7 (April 17, 1995, see 27 N.J.R. 1581(a)) provisions were made to allow certain boilers the flexibility to perform the required annual adjustment of the combustion process at a time more appropriate to the facilities' need, rather than between January 1 and May 1 of each year. Smaller boilers usually adjust their combustion process at the beginning of the heating season (that is, early fall) rather than at the end of the season (that is, late spring). The intent of the combustion process adjustment is to require boiler owners and operators to operate their equipment in a manner which is likely to have the lowest emissions. The change in the time of year (for certain size boilers) will achieve this goal.

The Department is also correcting a duplication in the rule at N.J.A.C. 7:27-16.8(c) which requires utility and non-utility boilers having a maximum gross heat input rate of at least 20,000,000 British thermal units but less than 50,000,000 British thermal units to perform the adjustment by May 1 of each year. All utility boilers, regardless of size, are covered under the provisions of N.J.A.C. 7:27-16.8(b). Small non-utility boilers having a maximum gross heat input rate of at least 20,000,000 British thermal units but less than 50,000,000 British thermal units are covered under the provisions of N.J.A.C. 7:27-16.8(c) but are not required to comply with the VOC and CO emission limits specified in 16.8(b). Utility boilers having a maximum gross heat input rate of at least 20,000,000 British thermal units but less than 50,000,000 British thermal units are covered under the provisions of N.J.A.C. 7:27-16.8(b) and are required to comply with the VOC and CO emission limits specified in N.J.A.C. 7:27-16.8(b). To correct this inconsistency the Department is deleting the words "utility boilers or" from the wording in N.J.A.C. 7:27-16.8(c).

The Department is amending N.J.A.C. 7:27-16.8(b) and (c) to allow the owners and operators of certain size non-utility boilers the same flexibility provided by the NO_x RACT amendments. No changes have been made to the VOC and CO emissions limits or the requirements to install and operate CEMs for CO. N.J.A.C. 7:27-16.8(b) and (c) still require owners and operators of utility and non-utility boilers to annually adjust their combustion process in accordance with N.J.A.C. 7:27-16.24. However, N.J.A.C. 7:27-16.8(b) has been amended, on adoption, to allow non-utility boilers having a maximum gross heat input rate of at least 50,000,000 British thermal units but less than 250,000,000 British thermal units to perform the adjustment once annually (that is, at the beginning of the heating season instead of at the end) rather than by May 1 of each year. A similar change has been made, on adoption, at N.J.A.C. 7:27-16.8(c) to allow non-utility boilers having a maximum gross heat input rate of at least 20,000,000 British thermal units but less than 50,000,000 British thermal units to perform the adjustment once annually rather than by May 1 of each year. These changes are consistent with recent changes made to N.J.A.C. 7:27-19.7 (see 27 N.J.R. 1581(a)).

2. At N.J.A.C. 7:27-16.17(i) and (o), two modification are made to conform the rules to EPA terminology and policy. These changes clarify the role of EPA and the Department in the approval of an alternative VOC control plan. Specifically, at subsection (i) language has been added to complete the sentence since alternate VOC control plans are sub-

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mitted to EPA for its approval. In addition, language has been added to subsection (o) to clarify that should EPA disapprove a proposed VOC control plan by rejecting the SIP revision containing the plan, the Department will revoke its own prior approval of the plan. Since approval of such a VOC plan is contingent upon Federal SIP approval, the Department has no discretion but to revoke its State approval once EPA has rejected a SIP revision.

3. At N.J.A.C. 7:27-16.17(t), the Department is correcting an error of omission to specify that source operations covered under an existing preconstruction permit and operating certificate or an operating permit are exempt from the requirement to submit the demonstration required in N.J.A.C. 7:27-16.17(b). As stated in the Summary of the proposal (see 26 N.J.R. 4479), the Department's intent was to exempt currently permitted sources from submitting a demonstration if the source already meets the 90 percent capture and 90 percent control standard.

4. At N.J.A.C. 7:27-16.18(g)8, the Department has corrected a typographical error. The reference to paragraphs (f)1 through 6 has been corrected to indicate paragraphs (g)1 through 6.

5. At N.J.A.C. 7:27-16.18(h)8, the Department has corrected a typographical error. The reference to paragraphs (f)1 through 6 has been corrected to indicate paragraphs (h)1 through 6.

6. At N.J.A.C. 7:27-16.18(i)8, the Department has corrected a typographical error. The reference to paragraphs (f)1 through 6 has been corrected to indicate paragraphs (i)1 through 6.

7. At N.J.A.C. 7:27-16.18(j)2, the Department has clarified that the required reports are to be submitted to the Department's regional enforcement office which has jurisdiction over the facility.

Executive Order No. 27 Statement

Executive Order No. 27(1994) requires State agencies that adopt, readopt, or amend State regulations that exceed Federal standards or requirements to include a comparison with Federal law. The Department has determined that these amendments do not impose standards or requirements that exceed Federal law. N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds, establishes reasonably available control technology emission limits for specific types of equipment and source operations capable of emitting volatile organic compounds into the atmosphere. The VOC RACT provisions at N.J.A.C. 7:27-16 were promulgated on January 28, 1992 (see 24 N.J.R. 792(a). The Department promulgated the rules in response to the requirements of the Federal Clean Air Act, 42 U.S.C. section 7401 et seq. (Act) as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990 (CAAA).

The CAAA directs states in which severe nonattainment areas for ozone are located to revise their state implementation plans to require certain sources of volatile organic compounds to implement reasonably available control technology to reduce emissions. P.L. 101-549, section 182(b)2. The CAAA requires this implementation as expeditiously as possible, but no later than May 31, 1995.

EPA has defined RACT to mean the lowest emission limits 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. The CAAA do not specify what emission limits are RACT. Rather each individual State has determined what emission limits are appropriate and attainable for the type and range of sources located therein.

On August 2, 1993, proposed new rules and amendments to N.J.A.C. 7:27-16 were published in the New Jersey Register at 25 N.J.R. 3339(a). Those new rules and amendments established reasonably available control technology requirements for several source categories not previously subject to those requirements. That proposal was adopted on May 27, 1994 and was published on June 20, 1994 at 26 N.J.R. 2600(a). The Department received public comments on the August 2, 1993 proposal which were considered too substantive to be incorporated into the adoption without soliciting additional public comment. The amendments adopted herein are in direct response to some of the public comments received during the public comment period for the August 2, 1993 proposal and comments received during the public comment period for this proposal.

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

7:27-16.1 Definitions

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

. . .

"Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. **A source operation may include one or more pieces of equipment or control apparatus** *[which are used in a process or part thereof. This term includes the term "emissions unit" as defined at 40 CFR 70.2]*.

. . .

7:27-16.4 VOC transfer operations, other than gasoline

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

(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 or cooled, this term is the vapor pressure of the VOC at the temperature at the point of transfer; if the VOC is not heated or cooled, 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.-3. (No change.)

(e) (No change.)

(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 tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater and 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.-2. (No change.)

(g) For the purposes of (f) above, the total calculated annual emission rate of applicable VOC transferred into delivery vessel from each tank shall be determined in accordance with the following procedure:

1.-3. (No change.)

(h)-(k) (No change.)

(l) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transport or storage 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.-4. (No change.)

(m)-(q) (No change.)

7:27-16.8 Boilers

(a) (No change.)

(b) The owner or operator of any ***utility boiler, regardless of size, or 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;

2. Cause it to emit CO in concentrations that do not exceed 100 ppmvd at seven percent oxygen; and

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 1995.]* ***as follows:***

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i. For any utility boiler, regardless of size, or any non-utility boiler with a maximum gross heat input rate of at least 250,000,000 British thermal units per hour, by May 1 of each year beginning in 1995; or

ii. For any non-utility boiler with a maximum gross heat input rate of at least 50,000,000 British thermal units per hour but less than 250,000,000 British thermal units per hour, each calendar year beginning in 1995.*

(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 1995.

(d)-(j) (No change.)

(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 and VOC 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) (No change.)

(b) The owner or operator of any stationary turbine shall cause it to emit CO in concentrations that do not exceed 250 parts per million by volume, dry basis (ppmvd) at 15 percent oxygen.

(c)-(i) (No change.)

(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 and VOC 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) (No change.)

(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 500 parts per million by volume, dry basis (ppmvd) at 15 percent oxygen.

(c)-(h) (No change.)

7:27-16.17 Facility-specific VOC control rquirements

(a) This section establishes procedures and standards for the establishment of VOC control requirements for any source operation that:

1. Is located at a major facility and has the potential to emit at least three pounds per hour (potential batch cycle emission rate of three pounds per hour for batch processes), and:

i. Is not regulated elsewhere in this subchapter; and

ii. (No change.)

2. (No change.)

(b) Except as provided at (t) below, the owner or operator of any facility that contains a source operation subject to (a)1 above shall:

1.-2. (No change.)

(c)-(h) (No change.)

(i) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed alternative VOC control plan. The Department shall publish a Notice of Opportunity for Public Comment in a newspaper for general circulation in the area in which the major VOC facility is located. In addition, the Department shall submit any approved alternative VOC control plan to EPA ***for approval*** as a *[proposed]* revision to New Jersey's State Implementation Plan.

(j)-(n) (No change.)

(o) ***The Department will revoke an approval of an alternative VOC control plan by written notice to the holder of the approval if EPA denies approval of the proposed VOC plan as a revision to the State Implementation Plan.*** The Department may revoke an approval of an alternative VOC control plan, compliance plan or demonstration by written notice to the holder of the approval, if:

1. (No change.)

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the owner or operator's submission or any supporting documentation; ***or***

3. The Department determines that continued use of the subject source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment*[; or]***.***

[4. For an alternative VOC control plan, EPA denies approval of the plan as a revision to the State Implementation Plan.]

(p)-(s) (No change.)

(t) If a source operation is covered by a preconstruction permit and operating certificate or an operating permit, either of which requires the source operation to utilize a control apparatus ***which attains at least 90 percent capture and 90 percent control***, the owner or operator need only be in compliance with that permit or certificate to be deemed in compliance with this section; the owner or operator need not submit the demonstration required by (b) above.

7:27-16.18 Leak detection and repair

(a) (No change.)

(b) The provisions of this section shall apply only 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 10 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. The total quantity processed shall include the total annual quantity of applicable VOC charged to all operations for which the equipment is used ***and does not include any in-process recycled and in-process refluxed applicable VOC and any applicable VOC which is generated during the process***.

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

(g) The owner or operator of any natural gas/gasoline processing plan 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.-7. (No change.)

8. Notwithstanding paragraphs *[(f)1]****(g)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.-7. (No change.)

8. Notwithstanding paragraphs *[(f)1]****(h)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 (c) and (d) above if such equipment is not subject to the provisions of (f), (g), or (h) above. The program shall include the following provisions:

1.-3. (No change.)

4. By May 31, 1995, the initial leak tests shall be *[completed]* ***initiated at the frequency required by (i)1i through (i)1v above***.

5.-7. (No change.)

8. Notwithstanding paragraphs *[(f)1]****(i)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) The 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

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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. (No change.)

2. Within 30 days following the last day of every third month, a report shall be submitted to the *[Department]* ***Department's regional enforcement office*** 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)-(t) (No change.)

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Readoption with Amendment: N.J.A.C. 8:44

Proposed: February 21, 1995 at 27 N.J.R. 626(a).

Adopted: April 10, 1995 by the Public Health Council, John D. Slade, M.D., Chair.

Filed: April 12, 1995 as R.1995 d.239, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:1A-7 and 45:9-42.34.

Effective Date: April 12, 1995, Readoption;
May 15, 1995, Amendments.

Expiration Date: April 12, 2000.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing concerning the proposed readoption was held on March 13, 1995 at the Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey. The hearing officer was William Frascella, Jr., O.D., Member, Public Health Council. No one from the public attended or commented. The hearing officer made no recommendations. The hearing record may be reviewed by contacting Sue Eates, Department of Health, CN 360, Trenton, NJ 08625.

Summary of Public Comments and Agency Responses:

Opportunity to be heard regarding the proposal was invited via notice published in the New Jersey Register on February 21, 1995. The Department also mailed notice of the proposal to representatives of organizations which would be affected by the rules and to individuals and groups who had previously expressed interest in receiving said notice.

Written comments were received from Henry G. Schriever, M.D., New Jersey Society of Pathologists; Terry A. Hurlbut, III, M.D., Pathology and Laboratory Services, Kimball Medical Center; Peter Kovanic, M.D., Laboratory Director, Columbus Hospital; Jeffrey J. Sherrin, American Association of Bioanalysts (AAB); Geraldine Moon, Vice President, Hospital Operations, New Jersey Hospital Association.

COMMENT: Dr. Schriever suggests that instead of the present rule which requires laboratories to check each batch of bacteriological media with control organisms (N.J.A.C. 8:44-2.8(b)), the Department should adopt the National Committee for Clinical Laboratory Standards' recommendation that the media manufacturers' own quality control checks should suffice for those types of media that have been found to be less prone to deterioration.

RESPONSE: While conceding that some types of media are less likely than others to degenerate, the Department nonetheless remains concerned about the issue of continuing viability under varying distribution conditions. In addition, in some laboratories, if there were to be no quality control of the media, there would also be no quality control check on the technique of the laboratory personnel. Therefore, the Department cannot accept the requested change.

COMMENT: Dr. Schriever suggests that to qualify as a general supervisor, a master's or bachelor's degree and one year of experience should suffice instead of the current rule (N.J.A.C. 8:44-2.4(c)2 and 3) which requires four years of experience with a master's degree and six years of experience with a bachelor's degree.

RESPONSE: The Department agrees that the required years of experience are excessive and less stringent clinical requirements will be incorporated in future revisions of these rules. The suggested changes cannot be made at this time, due to the requirements for public notice and comment which are contained in N.J.A.C. 1:30 and N.J.S.A. 52:14B-1 et seq.

COMMENT: Dr. Schriever suggests that the rule describing the required qualifications of testing personnel (N.J.A.C. 8:44-2.6) should be modified to permit personnel such as nurses to perform bedside testing under certain conditions.

RESPONSE: The Department agrees with this suggestion but, while a clarification of the current rule would be helpful, no significant revision is necessary, since nurses do already qualify to perform testing, provided that testing is performed under the direction of the laboratory director and under the supervision of the laboratory supervisor. Any minor modifications needed will be incorporated in future revisions of these rules.

COMMENT: Dr. Schriever suggests that N.J.A.C. 8:44-2.7(g) should specify every category of person authorized to order laboratory tests and to receive reports.

RESPONSE: The Department agrees that the authorized persons or categories of persons do need to be specified and this suggestion will be incorporated in future revisions of these rules.

COMMENT: Dr. Schriever suggests that the rule dealing with the reporting of a reference laboratory's results (N.J.A.C. 8:44-2.7(i)) should permit laboratories to enter a reference facility's results into their computers and onto their own test reports, provided their reports identify the reference laboratory.

RESPONSE: The current rule does not specifically preclude this possibility and the practice has been permitted under certain conditions that will be clarified when the current rule is revised. However, the Department would have to oppose the routine transcription of a reference laboratory's results since regulatory experience has shown that both transcription errors and the reporting of incorrect, normal ranges are common consequences of this practice.

COMMENT: Dr. Schriever suggests that the rule pertaining to the disposal of contaminated materials (N.J.A.C. 8:44-2.7(f)) be modified to permit "orange bagging" of contaminated materials for removal by a medical waste disposal company.

RESPONSE: The Department agrees and the updating of outmoded rules such as N.J.A.C. 8:44-2.7(f) will be given priority in the revision of the current rules.

COMMENT: Dr. Schriever comments that it is wasteful and no longer necessary to include two control samples with every 20 patient specimens (N.J.A.C. 8:44-2.8(b)3).

RESPONSE: The Department agrees that, depending on the type of analytical technology involved, the use of two controls per 20 patients is not always essential and, in revising the rules, it will provide for the use of fewer controls with certain types of test systems.

COMMENT: Dr. Hurlbut expresses concern about the relative stringency of the State versus the Federal rules. Dr. Hurlbut comments that he sees no reason for the State of New Jersey to continue to impose rules that are more stringent than the rules imposed by the Federal authorities and he maintains these more stringent rules unnecessarily increase the cost of laboratory operations. As examples of excessive rules he refers to the two quality control issues that were raised by the preceding comments which have already been addressed above.

RESPONSE: The Department does not agree that the State should not impose any requirements that are more stringent than the Federal rules. As explained below in the Executive Order No. 27 Analysis, some of the Federal rules cannot provide adequate assurances of reliable patient test results and consequently the need to remedy errors could ultimately prove to be more costly than compliance with the stricter performance standards.

COMMENT: Dr. Hurlbut approved of the Department's decision to accept College of American Pathologists (CAP) is an alternate Proficien-

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cy Testing (PT) provider but requested clarification regarding the extent to which CAP PT reports would meet or not meet licensure requirements.

RESPONSE: It has always been the Department's intention regarding laboratory evaluation by proficiency testing to provide a reasonably balanced playing field among Department approved PT providers, regardless of choice. However, each provider, depending on its method of evaluation, varies in its interpretation of satisfactory performance. As a result, the Department's policy has always been to diligently review the performance reports of New Jersey licensed laboratories forwarded by the PT providers. For example, as part of this process, the Department has required a laboratory to enroll in a PT survey more appropriate to its level of service while its accrediting agency had accepted enrollment in one which did not adequately provide evaluation of its routine patient workload. To this extent, the Department will continue to maintain authority over participation and performance in alternate PT programs to assure compliance with the Department's standards and to ensure those individuals and entities utilizing New Jersey licensed laboratories services of a minimum standard of satisfactory performance.

COMMENT: Dr. Kovanic suggests that, as provided for under current rules, the Department retain the ability to make exceptions to the use of either the Department of Health or CAP's PT programs when these providers cannot provide for appropriate evaluation of a certain individual test/methodology or when they cannot supply additional samples for the purpose of remedial action.

RESPONSE: Dr. Kovanic's suggestion pointed out the inadvertent deletion of the last sentence of the current rule regarding enrollment in proficiency testing programs for licensed clinical laboratories. The current rule, which reflects the Department's long standing policy and practice, has always provided for exception in the above cited circumstances when it was determined by the Department to be appropriate. Omission of this provision from the proposed amendment precludes the Department from accepting other PT providers when the Department determines it to be appropriate. Further, the omission of this provision would be both technically and financially burdensome and not in the best interest of the regulated community. Therefore, the commentor's suggestion will be incorporated into the final text of this amendment, at N.J.A.C. 8:44-2.5(b).

COMMENT: Mr. Sherrin requested consideration be given by the Department to continuing the AAB's status as a Department approved alternate PT provider.

RESPONSE: Since the 1980's, in the absence of formal rulemaking, the Department has had a de facto recognition of specific surveys in only two alternate PT programs: CAP and AAB. Historically, New Jersey licensed facilities have overwhelmingly enrolled in the Department sponsored PT surveys, while the majority of hospitals enrolled primarily in CAP. In 1995, the total number of laboratories enrolled either partially or totally in AAB is approximately six percent of all licensed facilities. These facts, in light of State budgetary constraints, prompted the Department to reconsider AAB as an approved alternative provider since the time and effort required to oversee both provider and participant is always significant when attempting to ensure appropriate enrollment and true satisfactory performance. However, reconsidering the decade-long history and time-tested knowledge of the AAB as a PT provider, and in view of the small enrollment of New Jersey participants, the Department will continue to provide a workable option for the regulated community via the AAB.

It should be noted however, that despite the existence of more than 20 PT programs, the Department does not anticipate the approval of new alternative providers in the future because of the prohibitive costs required to thoroughly review program policies and content, verify and document participant enrollment and review and follow-up participant performance for State licensed facilities. Access to unlimited numbers of alternative PT providers would severely impact the Department's ability to provide for the important work of ensuring immediate corrective action for poor performance and quick handling of problems regarding quality testing.

COMMENT: The NJHA supports the amendment which recognizes CAP enrollment and participation for state licensure purposes.

RESPONSE: The Department appreciates the favorable comment and thanks the Association for its support.

Executive Order No. 27 Analysis

The readopted rules with amendment, N.J.A.C. 8:44, do impose some standards on clinical laboratories in New Jersey that exceed those contained in the Federal regulations promulgated pursuant to the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88). The more stringent standards are described and justified below.

While N.J.A.C. 8:44-2.3(b)2 requires the director to spend time on the laboratory's premises, the corresponding Federal rule, 42 CFR 493.1445(c), allows the director to fulfill his or her responsibilities by being accessible for telephone or electronic consultation.

If a director does not periodically visit the laboratory and personally observe its practices and procedures, then he or she will only be aware of those problems that the staff are able and willing to recongize and report. It has been the Department's experience that, even with the rule requiring on-site consultations, many directors do not spend sufficient time in the laboratory and that, when serious deficiencies are found, they will claim to have been unaware of the existence of the observed problems. In these cases, the directors themselves propose more on-site time as their plan of correction. It is also significant that in those cases where laboratories were found to pose an imminent threat to the public health, their directors frequently asserted that they knew nothing about the dangerous practices because they had spent little or no time on the laboratories' premises.

While a laboratory may have to pay a director less if he or she never actually visits the facility, what it does pay would represent a cost without any real benefit. On the other hand, if the director does visit the laboratory and does know how it is being operated, then the extra cost, if any, for the on-site time should be offset by the benefit of an increased assurance of reliable patient test results.

Similarly, while N.J.A.C. 8:44-2.3(b)1 prohibits an individual from serving as director of more than three laboratories, the Federal rule, 42 CFR 493.1445(d), allows one individual to direct five laboratories.

Given the Department's experience with existing directors' inability to supervise three or fewer laboratories of substantial size, the Department is reluctant to allow supervision of over five laboratories. In all likelihood, Federal regulations are based upon the need in some states for laboratory directors to supervise multiple small laboratories. In New Jersey, the size of the average laboratory would prohibit a blanket authorization to supervise five laboratories, as the level of supervision necessary for such large laboratories is substantially greater than that of laboratories of much smaller size and complexity.

Until the issue of laboratory size has been addressed, the three-laboratory limit can be justified for the same reasons as those used above to defend the rule requiring the director to spend time on the laboratory premises.

While N.J.A.C. 8:44-2.4(b)1 and 2 require a general supervisor to be on the laboratory premises during normal hours of operation, the corresponding Federal rule, 42 CFR 493.1463(a)3, only requires on-site supervision when high complexity testing is being performed by individuals who have no education beyond a high school diploma.

Both State and Federal rules allow high school graduates to work in clinical laboratories and neither the State rule nor the Federal rule require the graduates to have taken any high school math or science courses beyond the minimum already required for graduation. However, while the State rule only allows the graduates to work under direct supervision, the Federal rule allows them to perform, unsupervised, a wide variety of technically difficult procedures and to operate, unsupervised, a wide variety of sophisticated automated analyzers.

The State rule is necessary since, without such a rule, there would be nothing to prevent even large laboratories full of sophisticated automated analyzers and doing millions of tests a year from being staffed exclusively by high school graduates who are only directed and supervised via the telephone or computers. Under such circumstances, there is a high potential that errors will frequently go undetected or unrecognized. Depending on the circumstances, the consequences of erroneous test reports can be inestimable. For example, an erroneous bilirubin result on a newborn baby's specimen could lead to mental retardation, resulting in untold future costs.

While N.J.A.C. 8:44-2.4(c) essentially requires a general supervisor to have a bachelor of science degree followed by six years of laboratory experience, the Federal rule, 42 CFR 493.1461(c)2, only requires an associate degree in science and two years of experience.

Given the fact that some laboratories perform extremely complex and technically demanding tests such as, for example, virological tissue cultures, an associate's degree and two years of experience cannot assure the necessary level of knowledge and competence. While it may cost more to hire personnel with additional education and training, the benefit to the public health is great because correctly performing and reporting

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laboratory tests will aid in the diagnosis and treatment of disease, thereby decreasing overall morbidity and mortality and in some cases preventing the spread of infectious diseases.

While N.J.A.C. 8:44-2.8(b)1(i) requires the use of control organisms to check the realiability of each batch of microbiological culture medium, the corresponding Federal rule, 42 CFR 493.1218(f)4, accepts the media manufacturers' in-house quality control in lieu of control checks performed by the laboratory.

The more stringent State rule is necessary because the manufacturer's quality control only assures the reliability of the media at the time it leaves the plant and provides no assurance that the same media will still be viable after distributors have transported and stored it under varying environmental conditions and for various periods of time.

While there is a cost associated with controlling any materials, efficient laboratories can minimize these costs by purchasing large rather than small batches of each medium. In microbiology, the cost/benefit ratios are particularly high, since an incorrect microbiological, as opposed to an incorrect chemistry result, will almost invariably have serious consequences. For example, undetected media deterioration can end in a failure to recover a pathological organism which can in turn lead to untreated infections and even the spread of a communicable disease.

While N.J.A.C. 8:44-2.8(b)3(i) requires the use of two chemistry controls with each batch of 20 specimens tested, the Federal rule, 42 CFR 493.1218(b), only requires the use of controls every 24 hours.

Although the Federal standard is adequate for certain types of test systems with prepackaged reagents, it cannot assure reliable results from methods that still require the analyst to prepare and measure reagents each time one or more patient specimens are tested. Errors occurring in these types of systems will not be detected unless a control is included with each test run. As stated above, the cost of even a single erroneous laboratory result can be extremely high and can far exceed the cost of running a few extra controls each day.

While N.J.A.C. 8:44-2.11 and 8:44-2.12 require laboratories to report various hazardous substances and communicable diseases to State and local health agencies, the Federal CLIA '88 regulations have no comparable requirements. The CLIA regulations are probably silent on this issue because the Federal government gathers its communicable disease data via state agencies rather than directly from physicians and laboratories. Reporting of hazardous substances and communicable diseases is an integral component of maintaining the public health. The reports allow the Department and other public health officials to assess the impact of these dangers upon the public and, if necessary, take measures that would prevent harm. The benefits of this reporting requirement clearly justify the modest costs of data collection and postage.

The amendment being adopted does not exceed those contained in the Federal regulations promulgated pursuant to the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) regarding laboratory enrollment in approved proficiency testing (PT) programs.

N.J.A.C. 8:44-2.5(b) proposes to require enrollment in either the Department-sponsored program, specific College of American Pathologists (CAP) or specific American Association of Bioanalysts (AAB) proficiency testing surveys for state licensed clinical laboratories and the corresponding Federal rule, 42 CFR 493.801, requires enrollment in HHS-approved programs for all entities performing moderate or high complexity testing.

Currently, there are more than 20 HHS-approved PT programs, including the New Jersey State Department of Health, CAP and AAB. Historically, New Jersey licensed clinical laboratories have enrolled overwhelmingly in either the Department-sponsored or the CAP-sponsored programs. Limiting the number of alternative PT provider options for State licensed laboratories is programatically imperative in light of current budgetary constraints.

Clearly, both the logistical and financial resources needed to independently approve alternative programs, verify laboratory enrollment, and receive, catalog and review PT data submitted by all HHS-approved providers for the purpose of monitoring performance on state licensed laboratories would be prohibitive. More significantly, it would result in a shift of program priorities and dilute the Department's ability to provide for its own program participants. While this rulemaking grants equivalency to specific CAP and AAB surveys, it does not delegate or relinquish the Department's statutory obligation to prescribe minimum standards of performance or monitor laboratories to determine if these standards are being met. Staff who now perform all components of the Department-sponsored program would also perform all documentation and evaluation functions required to ensure State licensure compliance for those laboratories opting for an alternative provider. Unquestionably, access to an unlimited number of alternate providers would severely limit the Department's ability to focus on ensuring accurate test results, require immediate corrective action for laboratories failing to maintain satisfactory performance and respond quickly to issues of quality testing.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:44.

Full text of the adopted amendment follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions indicated with brackets and asterisks *[thus]*):

8:44-2.5 Tests performed

(a) (No change.)

(b) All clinical laboratories shall enroll and successfully participate in either the Department of Health proficiency testing (PT) program, or specifically designated surveys in the College of American Pathologists' CAP Surveys Program ***or the American Association of Bioanalysts (AAB) PT Program***. Enrollment in the CAP Surveys ***or AAB PT*** Program***s*** must cover all clinical laboratory specialties, analytes and/or subspecialties for which a given laboratory is approved to perform tests which have been designated by the Department as requiring proficiency testing. Laboratories shall: enroll and participate in proficiency testing surveys appropriate to their level of service*[,]***;*** receive and examine and/or analyze specimens delivered by mail or messenger, at such times as designated by the proficiency testing provider; and maintain records of all proficiency testing results in surveys in which they participate and make such records, including results, interpretations and cumulative performance data routinely available to the Department of Health. The Department of Health shall reserve authority to regrade data from the CAP Surveys Program ***or the AAB PT Program*** (that is, survey scores and cumulative performance interpretations) through the Clinical Laboratory Improvement Service according to its own licensing standards. Any report issued by the CAP Surveys Program ***or the AAB PT Program*** by itself shall not be construed as determinative of compliance with the New Jersey licensing standards. ***An exception to the enrollment requirements of this subsection may be made, provided the Department of Health determines that an appropriate proficiency testing survey is not readily available.***

(c) (No change.)

(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL, AND OCCUPATIONAL HEALTH SERVICES
DIVISION OF AIDS PREVENTION AND CONTROL
Communicable Diseases
Readoption: N.J.A.C. 8:57

Proposed: February 6, 1995 at 27 N.J.R. 420(a).

Adopted: April 10, 1995 by Len Fishman, Commissioner, Department of Health and the Public Health Council, John D. Slade, M.D., Chair.

Filed: April 12, 1995 as R.1995 d.240, **with the proposed repeal and new rules at N.J.A.C. 8:57-1 not adopted but still pending.**

Authority: N.J.S.A. 26:1A-7, 26:4-1 and 26:5C-5 et seq.

Effective Date: April 12, 1995.

Expiration Date: April 12, 2000.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing concerning the proposed readoption was held on March 13, 1995 at the Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey. The hearing officer was William Frascella, Jr., O.D., Member, Public Health Council. No one from the public attended or commented. The hearing officer made no recommendations. The hearing record may be reviewed by contacting Sue Eates, Department of Health, CN 360, Trenton, NJ 08625.

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Summary of Public Comments and Agency Responses:

Opportunity to be heard regarding the proposal was invited via notice published on February 6, 1995 at 27 N.J.R. 420(a). The Department also mailed notice of the proposal to representatives of organizations which would be affected by the rule and to individuals and groups who had previously expressed interest in receiving said notice.

Written comments were received from David A. Henry, Health Officer, Township of Montgomery, Virginia Sturmfels, Corning Metpath, and Rosalie Becce, R.N., B.A.C.I.C., Christine Renyolds, New Jersey Family Planning League, Inc. and Kenneth Wolski, R.N., Association for Professionals in Infection Control. The public comment period closed on March 13, 1995. The comments are available for inspection at the Office of the Assistant Commissioner, Division of Epidemiology, Environmental, and Occupational Health Services, University Office Plaza, 3635 Quakerbridge Road, Trenton, New Jersey 08619-1247.

The comments received all questioned the proposed new rules dealing with reportable communicable diseases. The Department is considering making some modifications to the new rules as a result of these comments, but additional time is needed to properly consider any changes. To avoid the expiration of Chapter 57, the Department will proceed with the readoption of the chapter at this time and will adopt the repeal and new rule at N.J.A.C. 8:57-1 in June, after considering and responding to all the comments and incorporating some changes.

Executive Order No. 27 Statement

The readoption of N.J.A.C. 8:57-1 is not under the authority of or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements.

The readoption of N.J.A.C. 8:57-2 does not impose standards on health care providers or clinical laboratories that exceed those contained in Federal guidelines for the surveillance of HIV and AIDS as set forth in the December 18, 1992, issue of the *Morbidity and Mortality Weekly Report* (Volume 41, No. RR-17) published by Centers for Disease Control and Prevention. Additionally, N.J.S.A. 26:5C-5 et seq. requires the Commissioner to promulgate any necessary rules and regulations to implement the Act.

The readoption of N.J.A.C. 8:57-3 is not under the authority of or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements.

The readoption of N.J.A.C. 8:57-4 does not impose standards on schools, preschools, child care centers, or health care providers in New Jersey that exceed those contained in Federal guidelines as set forth by the Advisory Committee on Immunization Practices, U.S. Public Health Service, U.S. Department of Health and Human Services.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:57.

(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL, AND OCCUPATIONAL HEALTH SERVICES

Cancer Registry

Readoption with Amendment: N.J.A.C. 8:57A
Adopted Repeal and New Rule: N.J.A.C. 8:57A-1.2

Proposed: February 21, 1995 at 27 N.J.R. 629(a).

Adopted: April 10, 1995 by Len Fishman, Commissioner, Department of Health (in consultation with the Public Health Council).

Filed: April 12, 1995 as R.1995 d.241, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 26:2-104 et seq.

Effective Date: April 12, 1995, Readoption;
May 15, 1995, Amendment.

Expiration Date: April 12, 2000.

Summary of Public Comments and Agency Responses:

Opportunity to be heard regarding the proposal was invited via notice published on February 21, 1995 at 27 N.J.R. 629(a). The Department also mailed notice of the proposal to representatives of organizations which would be affected by the rule and to individuals and groups who had previously expressed interest in receiving said notice. The public comment period closed on March 23, 1995.

Comments were received from the following: Jack Goldberg, M.D. and Carol Anzalone from Cooper Hospital University Medical Center; Lucia Cahill and Lynn Lutwin from the Medical Center at Princeton; Susan Moshier from Morristown Memorial Hospital; Angeline Laden from Monmouth Medical Center; and Donna Cartwright from Wayne General Hospital. The comments are available for inspection at the Office of the Director, Epidemiology and Resource Services, University Office Plaza, 3635 Quakerbridge Road, Trenton, New Jersey 08625-0369.

COMMENT: Comments received from Monmouth Medical Center, Morristown Memorial Hospital, and Cooper Hospital concerned diseases on the reportable list. The hospitals requested either clarification of reporting of benign or borderline conditions, or that the conditions be dropped from the reportable list because they are not considered cancerous.

RESPONSE: Based on the comments and consultation with experts in the field, the Department has made changes to N.J.A.C. 8:57A-1.2(e), the reportable list, to eliminate additional benign conditions. Several conditions were qualified by the addition of the terms "malignant only" to indicate that benign conditions of the same name are not reportable. One condition was deleted because of outdated nomenclature and replaced with the nomenclature in current practice.

COMMENT: Cooper commented in support of the requirement on the electronic submission of cases but was concerned that its software vendor would not be approved.

RESPONSE: The Department thanks the commenter for its support of the requirement and can report that Cooper's software vendor has recently submitted test data which has been accepted by the Registry.

COMMENT: Wayne General had questions regarding the timetable for submission of electronic data and commented that it will require hiring additional staff for which it has not budgeted.

RESPONSE: While the Department understands that additional staffing may be necessary in some hospitals, it is necessary for complete, timely and accurate cancer data. Without uniform reporting by all hospitals, the Registry data could be seriously flawed.

COMMENT: Cooper Hospital also commented that it was pleased with the change in requirement to submit supplemental information on a request basis. The hospital requested a longer time period for reporting of cancer cases, up to six months after discharge.

RESPONSE: The period allowed to report a case has not changed since cancer became a reportable disease. The Department has an interest in obtaining timely cancer data and this time period is in conformance with standards set by the Centers for Disease Control in Atlanta. The Department could not change this requirement without jeopardizing the utility of the data.

COMMENT: The Medical Center at Princeton stated that the requirement of reporting cancer patients previously diagnosed at another facility is redundant.

RESPONSE: The reporting of cancers first diagnosed at another facility is not a change from the previous rules. This provision helps guarantee complete reporting by all hospitals and allows collection of data on all cancer patients. Thus, this provision cannot be changed without jeopardizing the integrity of the database.

Executive Order No. 27 Statement

The readoption of N.J.A.C. 8:57A with amendments is not proposed under the authority of or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:57A.

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

8:57A-1.1 Reporting of cancer

(a) Cases of cancer and other specified tumorous and precancerous diseases shall be reported to the State Department of Health. The reportable diseases shall be specified in a listing to be supplied by the Commissioner of Health, in accordance with N.J.A.C. 8:57A-1.2.

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(b) The administrative officer of every health care facility shall report to the State Department of Health every case of cancer or other specified tumorous and precancerous disease when it is initially diagnosed or when the patient is first admitted or treated for any reason in that facility. A report shall also be submitted for each subsequent primary cancer diagnosed in that individual. The information to be reported shall be submitted electronically in a standard format specified by the State Department of Health, which shall include patient identifying information, medical history, and cancer treatment.

1. Health care facility means a facility as defined at N.J.S.A. 26:2H-1 et seq. and amendments thereto.

(c) Every physician, dentist, or other health care provider who diagnoses or provides treatment for cancer patients shall report to the State Department of Health an initial diagnosis of each case of cancer or other specified tumorous and precancerous disease not referred to or previously diagnosed in a health care facility in the State of New Jersey. The information to be reported shall be submitted on forms specified by the State Department of Health (see (b) above). Alternatively, the physician, dentist, or other health care provider may submit the reports electronically.

(d) The director of every independent clinical laboratory shall report to the State Department of Health the results of examinations of tissue specimens and/or hematology examinations indicating the existence of cancer or other specified tumorous and precancerous disease not previously reported from that laboratory. The information to be reported shall be submitted on forms specified by the State Department of Health (see (b) above). Alternatively, the director may submit the reports electronically.

(e) Health care insurers and other third party health care payors may report to the State Department of Health cases of cancer based upon selection criteria specified by the Cancer Registry. The information shall be submitted electronically in a standard format specified by the State Department of Health (see (b) above).

(f) Supplemental information to clarify medical or demographic data shall be supplied upon request of the State Department of Health. This supplemental information shall include, but not be limited to, copies of pathology and/or hematology reports, operative reports, treatment information, history and physical sections of the medical records, and the discharge summary.

(g) All case reports shall be submitted within six months of the date of diagnosis or within three months of the date of discharge from the reporting facility, whichever is sooner.

(h) Follow-up reports shall be sent to the New Jersey State Cancer Registry on each cancer case at least annually to confirm vital status until the patient's death.

(i) Every hospital, health care facility, independent clinical laboratory, physician, dentist, or other health care provider who diagnoses or provides treatment for cancer patients shall allow representatives of the State Department of Health to obtain information from all medical, pathological, and other pertinent records and logs related to cancer cases, as necessary for fulfilling the functions of the cancer registry program.

(j) Every hospital, health care facility, independent clinical laboratory, physician, dentist, or other health care provider who diagnoses or provides treatment for cancer patients shall allow access to information or provide necessary information on specified cancer patients and other patients specified by characteristics for research studies related to cancer etiology, prevention, and control which are conducted by the State Department of Health. These studies shall have been approved by the State Commissioner of Health after appropriate review to assure protection of human subjects. This access or provision of information shall include patients who came under the care of the hospital, health care facility, physician, dentist, or other health care provider prior to the effective date of N.J.S.A. 26:2-104 et seq., November 18, 1977.

8:57A-1.2 Reportable list

(a) If a diagnosis includes the following words, the case shall be reported in accordance with N.J.A.C. 8:57A-1.1:

Cancer	Lymphoma
Carcinoma	Malignant
Leukemia	Sarcoma

(b) Any cases of the reportable diagnoses listed in (e) below which contain the following terms in the final diagnosis shall be reported in accordance with N.J.A.C. 8:57A-1.1:

Compatible with	Probable
Consistent with	Suspect

(c) Basal cell carcinomas of the skin need not be reported, except when diagnosed in the following sites: labia, clitoris, vulva, prepuce, penis and scrotum. Carcinoma *in situ* of the cervix is not reportable. Certain other tumors, along with the more common carcinomas and sarcomas of particular body sites, are reportable, as listed in (e) below under the body site of the primary tumor. The State Registry Office should be contacted for guidance if any uncertainty regarding reporting a particular case exists.

(d) Since "soft tissue" tumors can arise in almost any body site, the primary site soft tissue shall also be consulted for any questionable neoplasm.

(e) The following conditions shall be reported by each New Jersey facility, in accordance with N.J.A.C. 8:57A-1.1:

ADRENAL
- Adrenal cortical carcinoma
- *[Chromaffin paraganglioma]*
- Ganglioneuroblastoma
- Neuroblastoma
- Neuroendocrine carcinoma
- Neuroepithelioma
- Paraganglioma (+)
- Pheochromocytoma***, malignant only***
- Sympathicoblastoma

ANUS (see G-I tract)

APPENDIX (see G-I tract)

BILE DUCTS (see gall bladder and bile ducts)

BLOOD (see Hematopoietic/Lymphoid)

BLOOD VESSELS (see soft tissues)

BONE AND JOINTS
- Adamantinoma
- Ameloblastoma, malignant
- Angioblastoma (+)
- Angiosarcoma
- Chondrosarcoma
- Chordoma
- Ewing's Sarcoma
- Fibrosarcoma (medullary, periosteal, central, endosteal)
- Giant cell tumor of bone (+)
- Giant cell tumor, malignant
- Hemangioendothelioma, malignant
- Mesenchymal chondrosarcoma
- Myeloma
- Osteoclastoma (+)
- Osteogenic Sarcoma
- Osteosarcoma
- Parosteal osteoma
- Plasmacytoma

BONE MARROW (see Hematopoietic/Lymphoid)

BRAIN AND SPINAL CORD
- Astroblastoma
- Astrocytoma (Fibrillary, gemistocytic, pilocytic, protoplasmic)
- Choroid plexus papilloma, malignant
- Ependymoblastoma
- Ependymoma
- Ganglioneuroblastoma
- Germinoma
- Glioblastoma multiforme
- Glioma, all types
- Hemangiopericytoma***, malignant only***
- Medulloblastoma
- Medulloepithelioma

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Meningioma, malignant ***only***
Myxopapillary ependymoma (+)
Neuroblastoma
Oligodendrocytoma or oligodendroblastoma
Oligodendroglioma
[Pinealocytoma]
Pinealoma (+)
Pineal teratoma, malignant
Pineoblastoma
Pineocytoma (+)
Polarespongioblastoma
Spongioblastoma
Subependymal astrocytoma (+)
Subependymoma (+)

BREAST
Adenocarcinoma
Apocrine carcinoma
Colloid carcinoma
Comedocarcinoma
Cribiform carcinoma
Cystosarcoma phyllodes, malignant only
Ductal carcinoma, in situ
Fibroadenoma, malignant only
Glycogen rich carcinoma
Infiltrating carcinoma of the breast such as:
Carcinoma, NOS
Duct adenocarcinoma
Duct and lobular
Duct carcinoma
Duct and Paget's disease
Ductular
Lobular
Lipid-rich carcinoma
Lobular carcinoma, in situ
Lobular and intraductal, in situ
Lobular neoplasia
Medullary carcinoma
Papillary carcinoma, in situ
Paget's disease
Phyllodes tumor, malignant
Stromal sarcoma of breast
Tubular carcinoma

BRONCHUS (see lung)

CERVIX (see uterus)

COLON (see G-I tract)

EAR (see skin, soft tissue)

ENDOMETRIUM (see uterus)

ESOPHAGUS (see G-I tract)

EYE
Epidermoid carcinoma
Melanoma, malignant
Retinoblastoma
Squamous cell carcinoma
Squamous cell epithelioma
(Tumors of the orbit: See soft tissues and Hematopoietic/Lymphoid)

EXTRA-ADRENAL PARAGANGLIA (see adrenal)

FALLOPIAN TUBE (see uterus)

GALL BLADDER AND BILE DUCTS
Adenocarcinoma
Carcinoma (other)

GASTRO-INTESTINAL TRACT (esophagus, stomach, intestine, appendix, colon, anus)
Adenoacanthoma
Adenocarcinoma
Adenoidcystic carcinoma
(Adeno) carcinoma in Adenomatus polyp with or without invasion of stalk
Adenosarcoma
Apudoma (+)
Argentaffinoma (+)
Bowen's disease of anus
Carcinoid (except benign—e.g., appendix)
Carcinosarcoma
[Clear cell leiomyoma]
Cloacogenic carcinoma
Epidermoid carcinoma
Gastrinoma (+)
Immunoproliferative disease, small intestinal
Kaposi's Sarcoma
Leiomyosarcoma, malignant only
Linitis plastica
Lymphoma
Mixed tumor of esophagus, malignant only
Neuroendocrine carcinoma
Paget's disease of anus
Polypoid adenoma***, malignant only***
Signet ring cell carcinoma
Squamous cell carcinoma
Squamous cell epithelioma
Transitional cell carcinoma

HEMATOPOIETIC/LYMPHOID) (Including blood, bone marrow, lymph nodes, spleen, and tumors of hematopoietic or lymphoid histogenesis found in other sites.)
Acute erythremic myelosis
Acute megakaryocytic myelosis
DiGuglielmo syndrome
Erythroleukemia
Gamma heavy chain disease (Franklin's Disease)
Histiocytic medullary reticulosis
Histiocytosis, malignant
Histiocytosis-X***, malignant only***
Hodgkin's Disease, all such as:
Histiocyte predominant
Lymphocyte depleted
Lymphocyte predominant
Mixed cellularity
Nodular sclerosing
Immunoproliferative Disease, NOS
Letterer-Siwe's Disease
Leukemia, all
Leukemic reticuloendotheliosis
Lymphoma, all
Lymphosarcoma
Lymphoreticular process, malignant
[Megakaryocytic myelosis]
Megakaryocytosis, malignant
Mutliple myeloma
Mycosis fungoides
Myelofibrosis with myeloid metaplasia***, malignant only***
Myeloma
Myeloproliferative disease (+)
Myelosclerosis (with myeloid metaplasia) (+)
Panmyelosis, acute
Polycythemia Vera (+)
Reticulosis, malignant
Reticulum cell sarcoma
Sezary's disease or syndrome
Waldenstrom's macroglobulinemia or syndrome

HYPOPHARYNX (see oral cavity)

KIDNEY
Adenocarcinoma
Adenomyosarcoma
Clear cell carcinoma
Hypernephroma
Nephroblastoma
Renal cell carcinoma
Squamous cell carcinoma

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Transitional cell carcinoma
Tubular adenoma, borderline or malignant only
Wilms's Tumor

LARYNX AND TRACHEA
Adenocarcinoma
Adenocystic carcinoma
Cylindroma
Squamous cell carcinoma

LIP (see oral cavity)

LIVER
Angiosarcoma
Bile duct carcinoma
Cholangiocarcinoma
Hepatoblastoma
Hepatocellular carcinoma
Hepatoma, malignant only

LUNG AND BRONCHUS
Adenocarcinoma
Adenoid cystic carcinoma
Apudoma (+)
Argentaffinoma (+)
Bronchial adenoma (+)
Bronchial adenoma (carcinoid type)
Cylindroma
Epidermoid carcinoma
Large cell (anaplastic) carcinoma
Neuroendocrine carcinoma
Oat cell carcinoma
Pulmonary blastoma
Small cell (anaplastic) carcinoma
Squamous cell carcinoma
Undifferentiated carcinoma

LYMPH NODE (see Hematopoietic/Lymphoid)

MEDIASTINUM (see Hematopoietic/Lymphoid, soft tissue, or thymus)

MENINGES (see brain)

MUSCLE (see soft tissue)

NERVE (see soft tissue)

NOSE (Nasal cavity, Para-nasal sinus and Nasopharynx)
Adenocarcinoma
Epidermoid carcinoma
Esthesioneuroblastoma
Lymphoepithelioma
Mesenchymoma, malignant
Neuroblastoma
Rhabdomyosarcoma
Sarcoma botryoides
Squamous cell carcinoma

ORAL CAVITY AND SALIVARY GLANDS
Adenocarcinoma
Adenoid cystic carcinoma
Acinic cell carcinoma
Acinic cell tumor (+)
Cylindroma
Epidermoid carcinoma
Lymphoepithelioma
Melanoma
Mixed tumor, salivary gland type, malignant only
Mucoepidermoid carcinoma
Mucoepidermoid tumor (+)
Pleomorphic adenoma, malignant only
Squamous cell carcinoma
Transitional cell carcinoma
Undifferentiated carcinoma
Verrucous carcinoma

OROPHARYNX (see oral cavity)

OVARY
Adenocarcinoma, NOS
Arrhenoblastoma, malignant
Brenner tumor, malignant only
Choriocarcinoma
Clear cell carcinoma
Dysgerminoma
Embryonal carcinoma
Endodermal sinus tumor
Endometrioid carcinoma
Granulosa cell tumor (+)
Granulosa cell carcinoma
Granulosa cell tumor, malignant
Granulosa-theca cell tumor (+)
Gonadoblastoma (+)
Gynandroblastoma (+)
Leydig cell tumor, malignant
Mesonephroid carcinoma
Mucinous cystadenoma, borderline malignancy (pseudomucinous cystadenoma, borderline malignancy)
Mucinous cystadenocarcinoma
Mucinous papillary cystadenoma of borderline malignancy
Mucinous papillary cystadenoma with low malignant potential
Papillary cystadenoma, borderline malignancy
Papillary mucinous cystadenoma, borderline malignancy
Papillary mucinous tumor of low malignant potential
Papillary serous cystadenoma, borderline malignancy (papillary serous tumor of low malignant potential)
Papillary serous cystadenocarcinoma
Pseudomucinous cystadenocarcinoma
Seminoma
Serous papillary cystadenocarcinoma
Serous papillary cystadenoma of borderline malignancy
Serous papillary cystadenoma with low malignant potential
Sertoli-leydig cell carcinoma
Teratoma, malignant
Theca-granulosa cell tumor (+)
Yolk-sac tumor

PANCREAS
Adenocarcinoma
Cystoadenocarcinoma
Gastrinoma (+)
Glucagonoma, malignant only
Islet cell adenoma (+)
Islet cell carcinoma
Pancreatoblastoma
Papillary cystic tumor (+)
Squamous cell carcinoma

PARAGANGLIA
Non-chromaffin paraganglioma (+)
(see also adrenal gland)

PARATHYROID
Carcinoma, all

PARANASAL SINUSES (see nose)

PENIS
Basal cell carcinoma of Penis and Prepuce (skin of)
Bowen's disease
Erythroplasia of Queyrat
Squamous cell carcinoma
Verrucous carcinoma

PERICARDIUM (see pleura)

PERITONEUM (see pleura)

PHARYNX (see oral cavity)

PINEAL (see brain)

PITUITARY
Craniopharyngioma, malignant only

PLACENTA
Choriocarcinoma
Chorioepithelioma
Hydatiform mole, malignant (+)
Invasive mole (+)

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PLEURA, PERITONEUM, PERICARDIUM
- Fibrosarcoma
- Mesothelioma
- Sarcoma

PROSTATE AND SEMINAL VESICLE
- Adenocarcinoma
- Adenoid cystic carcinoma
- Alveolar rhabdomyosarcoma
- Carcinosarcoma
- Endometrioid carcinoma
- Rhabdomyosarcoma

RECTUM (see G-I Tract)

SALIVARY GLANDS (see oral cavity)

SKIN
- Amelanotic melonama
- Basal cell carcinoma of labia, clitoris, vulva, prepuce, penis and scrotum
- Bowen's disease of anus and penis
- Hutchinson's melanotic freckle
- Lentigo maligna
- Melanocarcinoma
- Melanoma
- Melansarcoma
- Merkle cell tumor
- Mycosis Fungoides
- Pilomatrix carcinoma
- Squamous cell carcinoma with—regional or distant spread only
- Superficial spreading melanoma
- Sweat gland carcinoma

SOFT TISSUE (including retroperitoneum, peripheral nerve)
- Alveolar rhabdomyosarcoma
- Alveolar soft parts sarcoma
- Angiofibrosarcoma
- Angiosarcoma
- Angiomyxoma (+)
- Chondrosarcoma
- Clear cell sarcoma of tendons
- Dermatofibrosarcoma protuberans
- Embryonal rhabdomyosarcoma
- Fibromyxosarcoma
- Fibrosarcoma
- Fibrous histiocytoma, malignant
- Granular cell tumor, malignant
- Hemangioendothelial sarcoma
- Hemangioendothelioma, malignant only
- Hemangiopericytoma***, malignant only***
- Juvenile rhabdomyosarcoma
- Kaposi's sarcoma
- Leiomyosarcoma
- Liposarcoma
- Lymphangioendothelioma, malignant
- Lymphangiosarcoma
- Mesenchymoma, malignant
- Metastasizing leiomyoma
- *[Myofibromatosis (congenital generalized fibromatosis)]*
- Myosarcoma
- Myxosarcoma
- Neuroblastoma
- Neurogenic sarcoma
- Neurilemmoma, malignant
- Neurilemmosarcoma
- Osteosarcoma
- Paraganglioma, malignant
- Pigmented dermatofibrosarcoma protuberans bednar tumor
- Reticulum cell sarcoma
- Rhabdomyoma, malignant
- Rhabdomyosarcoma
- Sarcoma botryoides
- Schwannoma, malignant
- Schwannoma, malignant with rhabdomyoblastomatous differentiation
- Synovial sarcoma
- Xanthofibroma, malignant

SPINAL CORD (see brain)

SPLEEN (see Hematopoietic/Lymphoid)

STOMACH (G-I Tract)

TESTIS
- Carcinoid tumor (+)
- Choriocarcinoma
- Chorioepithelioma
- Embryoma
- Embryonal carcinoma
- Embryonal teratoma
- Endodermal sinus tumor
- Germ cell carcinoma
- Gonadal stromal tumor, malignant only
- Gonadoblastoma (+)
- Interstitial cell carcinoma
- Leydig cell carcinoma
- *[Mesonephroma]*
- ***Mesonephric adenocarcinoma (infantile, juvenile embryonal carcinoma)***
- Polyembryoma
- Seminoma
- Sertoli cell carcinoma
- Spermatoblastoma
- Spermatocytic seminoma
- Spermatocytoma
- Teratoblastoma
- Teratocarcinoma
- Teratoma (+)
- Vitelline tumor
- Yolk sac tumor

THYMUS
- Epithelioid thymoma, malignant only
- Lymphocytic thymoma, malignant only
- Seminoma
- Spindle cell thymoma, malignant only
- Thymic carcinoid
- Thymoma, malignant

THYROID
- Adenocarcinoma
- Anaplastic carcinoma
- Follicular carcinoma
- Giant cell carcinoma
- Hurthle cell adenoma, malignant only
- Hurthle cell tumor, malignant only
- Medullary carcinoma
- Occult sclerosing carcinoma
- Papillary carcinoma
- Undifferentiated carcinoma

TRACHEA (see Larynx)

URINARY BLADDER, URETER, URETHRA
- Adenocarcinoma
- Adenosarcoma
- Carcinosarcoma
- Chemodectoma, malignant only
- Mullerian mixed tumors
- Papillary transitional cell carcinoma
- Paraganglioma (+)
- Pheochromocytoma***, malignant only***
- Rhabdomyosarcoma
- Squamous cell carcinoma
- Transitional cell carcinoma

UTERUS, UTERINE TUBES, CERVIX
- Adenoacanthoma
- Adenocarcinoma
- Adenosarcoma
- Adenosquamous carcinoma

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Endolymphatic stromal myosis ***(low grade sarcoma)***
Endometrial stromal sarcoma
Endometrioid carcinoma
Leiomyosarcoma
Mesonephric carcinoma
[Mesonephroma]
Mixed mesodermal tumor
Squamous cell carcinoma

VULVA AND VAGINA
Basal cell carcinoma of vulva, clitoris, and labia
Clear cell carcinoma
Mesonephroid carcinoma
[Mesonephroma]
Paget's disease
Squamous cell carcinoma

NOTE: The following symbol indicates the nature of other than overtly malignant reportable tumors listed:
(+) Borderline, reportable

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS EDUCATIONAL OPPORTUNITY FUND

Administrative Policies and Procedures Program Support

Adopted Recodification with Amendments: N.J.A.C. 9:11 to 9A:11 and 9:12 to 9A:12

Proposed: March 6, 1995 at 27 N.J.R. 812(a).
Adopted: April 17, 1995 by the Educational Opportunity Fund Board of Directors, Ernest L. Jolly, Chairman.
Filed: April 18, 1995 as R.1995 d.248, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: May 15, 1995.
Expiration Date: April 11, 1999.

Summary of Public Comments and Agency Responses:
Passaic County Community College (PCCC), the County College sector of the New Jersey Educational Opportunity Fund Professional Association (CCNJEOFPA), and the University of Medicine and Dentistry of New Jersey (UMDNJ)—Robert Wood Johnson Medical School submitted comments.

COMMENT: PCCC sought clarification of the new subsection at N.J.A.C. 9A:11-1.2(b), which begins "Eligiblity for EOF is determined at the time of initial application . . .," because that language seemed to suggest that campus EOF programs would no longer have to annually ensure returning EOF students' continued financial need.

RESPONSE: The EOF Board referred the institutional representative to N.J.A.C. 9A:11-1.8, Grant amount; N.J.A.C. 9A:11-1.9, Duration of student eligibility; and N.J.A.C. 9A:11-1.1, Academic progress. These sections of the EOF administrative policies and procedures detail what institutions must do each year to verify EOF students' continued eligibility for grant aid, whereas the new language at N.J.A.C. 9A:11-1.2(b) eliminates the practice of institutions' requiring EOF students to verify annually a background of historical poverty.

COMMENT: The CCNJEOFPA read the amended N.J.A.C. 9A:11-1.2(c)5i as rendering ineligible for EOF students served by county colleges, which do not require SAT scores for admission, because the subparagraph now links EOF eligibility to both not being admittable under the college's regular standards (where applicable) and having admission test scores below the college's norms.

RESPONSE: The EOF Board informed county college EOF staff that the words "where applicable" accommodate the fact that county colleges do not use SAT scores as an admissions criterion. The Board noted further that N.J.A.C. 9A:11-1.2(c)5i applies primarily to EOF applicants at four-year institutions, whereas subparagraph (c)5ii, which requires for EOF eligibility a combination of nonadmittability under regular admissions standards and the need for basic skills remediation or extra preparation in the applicant's intended major, applies primarily to EOF applicants at county colleges.

COMMENT: UMDNJ expressed concern that the amendment to N.J.A.C. 9A:11-2.2(a)5, which includes being a first-generation college student as one criterion of student eligibility for an EOF graduate grant, would render ineligible students whose parent(s) had obtained a college degree.

RESPONSE: The EOF Board clarified for the institutional representative that N.J.A.C. 9A:11-2.2(a)5 is just one of five alternative criteria of historical poverty, and so the language is not exclusionary. Although first-generation college students are the EOF program's primary target population, institutions retain the discretion and flexibility to admit students who meet the spirit and intent of the EOF program, as the institution's letter of comment describes.

Executive Order No. 27 Statement
The amendments to N.J.A.C. 9:11-1.2, 1.6, 2.2 and 2.5 are not subject to the Federal exceedance standards because the Educational Opportunity Fund Program was created by the State of New Jersey, is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

Summary of Changes Upon Adoption:
At N.J.A.C. 9A:11-2.5(f), a typographical error in referencing nonexistent "N.J.A.C. 9:11A" is corrected as "N.J.A.C. 9A:11."

Full text of the adopted recodification with amendments follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

(**Agency Note:** The numerous necessary changes to N.J.A.C. 9:11 and 9:12 in the recodified rules are not reflected as changed below, but will be made upon incorporation of the adopted recodification into the New Jersey Administrative Code.)

9A:11-1.1 (No change in text.)

9A:11-1.2 Student eligibility
(a) The undergraduate EOF Program is designed to provide an opportunity for higher education to disadvantaged New Jersey residents who would not be able to attend and/or succeed academically in college without the financial assistance and special services that are part of this program. The program is geared toward the student who shows potential, and who traditionally has been unable to attend college because of poor high school preparation, and whose economic background reflects a history of poverty as defined by:
1. Having attended or graduated from a District Factor Group A or B school district or a special needs school district, as identified by the New Jersey Department of Education;
2. Having resided in a municipality known as a "high distress" area. Such a place is defined by the New Jersey Office of Management and Budget as one which, in comparison with the rest of the state, is characterized by old or substandard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families;
3. Having resided in an area that historically has been populated by low-income families; such an area, commonly called a "pocket of poverty", is characterized by the criteria outlined in (a)2 above, even if the larger area, or municipality, is not so characterized;
4. Having a sibling who was, or is currently, enrolled in an EOF Program; or
5. Being eligible (the student or the student's family) for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs, free and reduced breakfast/lunch programs, food stamps) and being a first-generation college student. The term "first-generation college student" means an applicant whose parents or parent (in the case of an applicant who regularly resided with and received support from only one parent) did not complete a baccalaureate degree.
(b) Eligibility for EOF is determined at the time of initial application by the admitting institution. A broad assessment of motivation and talent (latent as well as demonstrated) based on interviews,

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recommendations, high school records, and other requisite application materials shall be made by the admitting institution in the context of its own selectivity.

(c) To be initially eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1.-3. (No change except internal recodification.)

4. As an undergraduate student, is enrolled or intends to be enrolled full time and matriculated in a curriculum leading to an undergraduate degree or certificate in an eligible institution of collegiate grade in New Jersey approved or licensed by the Commission on Higher Education and participating in the EOF Program. Degree or certificate programs must have a minimum requirement equivalent to 24 semester hours and be at least one academic year in duration.

5. In addition, an eligible student must exhibit evidence of the potential to succeed in college, but:

i. Has not demonstrated sufficient academic preparation to gain admission to an approved institution of higher education under its regular standards of admission (where applicable) and has standardized test scores that are below the institutional norms; or

ii. Has not demonstrated sufficient academic preparation to gain admission to an approved institution of higher education under its regular standards of admission (where applicable) and has an educational background that indicates a need for improvement in basic skills or for additional preparation for the applicant's desired degree program.

Recodify existing (c) and (d) as (d) and (e) (No change in text.)

Recodify existing N.J.A.C. 9:11-1.3 through 1.5 as 9A:11-1.3 through 9A:11-1.5. (No change in text.)

9A:11-1.6 Financial eligibility for undergraduate grants

(a) The EOF Executive Director shall annually inform institutions of adjustments to the EOF Income Eligibility Scale in accordance with the official national poverty threshold published in the Federal Register and adjusted by 200 percent to reflect the higher cost of living in New Jersey.

1. Dependent and independent students (as defined in N.J.A.C. 9:11A-1.5) are financially eligible for an initial EOF undergraduate grant if their gross household income does not exceed the applicable amounts set forth in the EOF Income Eligibility Scale, as follows:

Applicants with a Household size of	Gross Income (Not to Exceed)
1	$14,720
2	19,680
3	24,640
4	29,600
5	34,560
6	39,520
7	44,480
8	49,440

2. For each additional member of the household, an allowance of $2,480 shall be added to this amount in order to determine EOF eligibility for the 1995-96 academic year. This allowance shall be adjusted annually to reflect changes in the national poverty threshold as published in the Federal Register. In addition, the gross income level for each household size also shall be adjusted annually.

(b) An applicant who comes from a household with two wage earners (either both parents/guardians or both applicant and spouse) whose combined incomes exceed the applicable amount set forth in the EOF Income Eligibility Scale above may be eligible for EOF, only if:

1. The total income does not still exceed the applicable amount set forth in the EOF Income Eligibility Scale when 50 percent of the smaller income is subtracted from the gross household income.

2. Documentation in each applicant's file includes the mathematical computation described above along with wage and tax statements (form W2) of both wage earners.

(c) An applicant whose family receives welfare as the primary means of family support is presumed to be eligible without regard to the amount of primary welfare support.

(d) In determining financial eligibility for an EOF undergraduate grant, separation or divorce or the death of a wage earner in the calendar year prior to the academic year for which eligibility is being determined, with an accompanying decrease in household income below the EOF Income Eligibility Scale, does not automatically satisfy the characteristic of historical poverty (as stated in N.J.A.C. 9A:11-1.2(a)1 through 5) expected of EOF students.

(e) (No change.)

(f) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the campus EOF director has the discretion to admit, up to a maximum of 10 percent of the annual freshman class, students with family incomes as high as, but no more than, 281 percent of the official national poverty threshold as published annually by the federal government. These discretionary admits, however, must also meet all other eligibility provisions of N.J.A.C. 9A:11-1.1 and 1.2.

(g) The student's record must contain sufficient documentation to verify the discretionary criteria. Every effort should be made to give priority to those students whose incomes are within the limits of N.J.A.C. 9A:11-1.6.

(h) Institutions must receive permission from the Executive Director of the EOF Program to exceed the 10 percent discretionary over-income waiver set forth in (f) and (g) above.

Recodify existing N.J.A.C. 9:11-1.7 through 9:11-2.1 as 9A:11-1.7 through 9A:11-2.1. (No change in text.)

9A:11-2.2 Student eligibility

(a) The academic deficiencies that serve to identify the undergraduate student as educationally disadvantaged are not applicable at the graduate level. The graduate EOF Program is designed to provide the opportunity for New Jersey residents whose undergraduate record reflects the potential for advanced study beyond the baccalaureate degree, and whose economic background reflects a history of poverty as defined by:

1. Having attended or graduated from a District Factor Group A or B school district or a special needs school district, as identified by the New Jersey Department of Education;

2. Having resided in a municipality known as a "high distress" area; such a place is defined by the New Jersey Office of Management and Budget as one which, in comparison with the rest of the state, is characterized by old or substandard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families;

3. Having resided in an area that historically has been populated by low-income families; such as area, commonly called a "pocket of poverty", is characterized by the criteria outlined in (a)2 above, even if the larger area, or municipality, is not so characterized;

4. Having a sibling who was, or is, currently enrolled in an EOF Program; or

5. Being eligible (the student or the student's family) for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs, free and reduced breakfast/lunch programs, food stamps) and being a first-generation college student. The term "first-generation college student" means an applicant whose parents or parent (in the case of an applicant who regularly resided with and received support from only one parent) did not complete a baccalaureate degree.

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

Recodify existing N.J.A.C. 9:11-2.3 and 2.4 to 9A:11-2.3 and 2.4. (No change in text.)

9A:11-2.5 Financial eligibility for graduate grants

(a) The EOF Executive Director shall annually inform institutions of adjustments to the EOF Income Eligibility Scale in accordance with the official national poverty threshold published in the Federal Register and adjusted by 200 percent to reflect the higher cost of living in New Jersey.

1. Students are financially eligible for an EOF graduate grant if their gross household income does not exceed the applicable amounts set forth in the EOF Income Eligibility Scale, as follows:

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Applicants with a Household size of	Gross Income (Not to Exceed)
1	$14,720
2	19,680
3	24,640
4	29,600
5	34,560
6	39,520
7	44,480
8	49,440

2. For each additional member of the household, an allowance of $2,480 shall be added to the last amount to determine EOF eligibility for the 1995-96 academic year. This allowance shall be adjusted annually to reflect changes in the national poverty threshold as published in the Federal Register. In addition, the gross income level for each household size also shall be adjusted annually.

(b) An applicant who comes from a household with two wage earners (both applicant and spouse) whose combined incomes exceed the applicable amount set forth in the EOF Income Eligibility Scale above may be eligible for EOF, only if:

1. The total income does not still exceed the applicable amount set forth in the EOF Income Eligibility Scale when 50 percent of the smaller income is subtracted from the gross household income.

2. Documentation in each applicant's file includes the mathematical computation described above along with wage and tax statements (form W2) of both wage earners.

(c) A graudate student who receives welfare as the primary means of family support is presumed to be eligible without regard to the amount of primary welfare support.

(d) In determining financial eligibility for an EOF graduate grant, separation or divorce or the death of a wage earner in the calendar year prior to the academic year for which eligibility is being determined, with an accompanying decrease in household income below the EOF Income Eligibility Scale, does not automatically satisfy the characteristic of historical poverty (as stated in N.J.A.C. 9A:11-2.1 and 2.2(a)1 through 5) expected of EOF students.

(e) (No change in text.)

(f) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the campus EOF director may seek permission from the Executive Director of the EOF Program to admit students with household incomes as high as, but not more than, 281 percent of the official national poverty threshold as published annually by the Federal government. However, these students must first meet all other eligibility provisions of N.J.A.C. *[9:11A]***9A:11***-2.1 and 2.2.

(g) The student's record must contain sufficient documentation to verify the discretionary criteria. Every effort should be made to give priority to those students whose incomes are within the limits of N.J.A.C. 9A:11-2.5.

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

Recodify existing N.J.A.C. 9:11-2.6 through 4.3 as 9A:11-2.6 through 4.3. (No change in text.)

Recodify existing N.J.A.C. 9:12-1.1 through 2.10 as 9A:12-1.1 through 2.10. (No change in text.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
THE ESSENTIAL HEALTH SERVICES COMMISSION

Manual for Hospital Services
Charity Care Eligibility
Joint Adopted New Rules: N.J.A.C. 10:52-10

Proposed: February 21, 1995 at 27 N.J.R. 656(a).

Adopted: April 25, 1995 by William Waldman, Commissioner, Department of Human Services and April 24, 1995 by The Essential Health Services Commission, Anne F. Weiss, Executive Director.

Filed: April 25, 1995 as R.1995 d.258, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b, and c; 30:4D-12, P.L. 1992, c.160; N.J.S.A. 26:2H-5 and 13.

Agency Control Number: 95-P-5.

Effective Date: May 15, 1995.

Expiration Date: February 3, 2000.

Comments were received from the following providers, associations and interested parties:

Barnert Hospital, Paterson; Alfred R. Fetter, CPA, Vice President for Finance:

Bayonne Hospital, Bayonne; Arlene McGough, Director, Patient Information Services:

County of Bergen, Bergen Pines County Hospitals, Paramus; Laurie A. Wheatley, Associate Director of Finance:

Besler & Company, Inc., North Brunswick; Brian P. Sherin, Senior Manager:

Cathedral Health Care System, Newark; George A. Popko, Senior VP, Finance and Administration:

Centra State Medical Center, Freehold; Janice McAvenia, Director, Patient Accounts and Connie Lippincott, Assistant Patient Accounts Manager:

Christ Hospital, Jersey City; Teodor Kowalyk:

Community/Kimball Health Care System, Toms River; John A. Forsman, Senior Vice President, Corporate CEO:

Elizabeth General Medical Center, Elizabeth; Frank Villares, Vice President/Finance:

HHL Financial Services, Inc., Eatontown; John J. Dalton, CMPA, Vice President:

Hackettstown Community Hospital, Hackettstown; Gene C. Milton, FACHE, President and CEO:

Healthcare Access Management, Newark; Darrell Dees:

Healthcare Financial Management Association, Belleville; John Calandriello, President:

Helene Fuld Medical Center, Trenton; Charles T. Kleppick, CPA, Chief Financial Officer:

Hospital Alliance of New Jersey, Trenton; Mary K. Brennan, Executive Director:

JFK Health Systems, Inc., Edison; Richard C. Smith, Vice President for Hospital Finance:

Jersey City Medical Center, Jersey City; James P. Lawler, Executive Vice President:

Legal Services of New Jersey, Edison; Leighton A. Holness:

The Mountainside Hospital, Glen Ridge/Montclair; Gregory A. Alban, Director of Finance:

Newark Beth Israel Medical Center, Newark; Arthur W. Ellermann, Executive Vice President-Finance:

New Jersey Hospital Association, Princeton; John J. Pesce, Acting VP-Financial Management:

New Jersey Patient Account Managers Association, Princeton; Dennis J. Hemenway, President, NJPAMA:

Northwest Covenant Healthcare System, Dover; Sean D. O'Rourke, Senior Vice President, Finance:

Our Lady of Lourdes, Camden; Keith Kalbach, CPAM, Director, Business Office:

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Passaic Beth Israel, Passaic; Joseph Aqilante, Vice President/Fiscal Affairs:

Rahway Hospital, Rahway; John D. Probus, Director of Finance:

St. Joseph Hospital and Medical Center, Paterson; Alan P. Zollo, Vice President:

The Valley Hospital, Ridgewood; Anthony T. Orlando, Director of Finance:

Wayne General Hospital, Wayne; Kevin Kelly, CPA, Vice President and Chief Financial Officer.

Summary of Public Comments and Agency Responses:

COMMENT: Several commenters stated that N.J.A.C. 10:52-10.6(a)3 is not clear regarding the types of attestations which may be acceptable to document New Jersey residency without being counted toward the 10 percent cap. There appears to be confusion over whether attestations signed by a third party would count in the 10 percent cap.

RESPONSE: The intent of this section was to continue the Department of Health's former policy of allowing an attestation of New Jersey residency signed by a third party with whom the patient resides to be counted as acceptable proof of residency (not subject to the 10 percent cap). An attestation signed only by the patient would be counted under the 10 percent cap. Since members of the industry believe that the current version of this section is not clear on this point, the language in this section has been revised.

COMMENT: One commenter indicated that N.J.A.C. 10:52-10.7(d) should be revised to allow all New Jersey residents whose medical bills exceed 30 percent of their gross annual income to qualify for charity care, and not be limited to only those who are eligible for reduced charge charity care.

RESPONSE: This issue was discussed at length by members of the Charity Care Eligibility Advisory Committee of the New Jersey Essential Health Service Commission prior to the proposal of the rule. The decision to maintain the current policy of limiting the 30 percent provision to those who are eligible for reduced charge charity care is based on two factors. First, the amount of the Charity Care Subsidy Fund is limited by statute. The intent of the legislation is to provide charity care assistance to the most needy people in the State. If people making over 300 percent of the poverty guidelines were eligible, then the availability of charity care to many applicants with lower incomes would be jeopardized. Second, the intent of the Legislature is to encourage those who are able to afford it to purchase health insurance. Catastrophic coverage to all New Jerseyans regardless of income would provide a perverse incentive against purchasing health insurance.

COMMENT: Two commenters requested clarification of how abandoned applicants may document their income. Another questioned the ability to document a spouse who has abandoned the applicant.

RESPONSE: The intent of N.J.A.C. 10:52-10.8(d) is to include patients who have been abandoned by their spouses, that is, the abandonment is referred to as a separation. If the applicant is able to document that he or she has no financial ties with the spouse in accordance with this section, the requirement for documentation of the spouse's income is waived. An attestation stating that the applicant has been abandoned is not sufficient documentation. The rules concerning documentation of abandonment are not being changed. The documentation of spousal abandonment will be decided on a case by case basis. A minor applicant who documents that both parents have abandoned him or her must provide documentation of income and assets of his or her guardian(s).

COMMENT: Some commenters believe that the standardized application form referred to in N.J.A.C. 10:52-10.12(a) should be made easier to understand for the applicants.

RESPONSE: The current standardized application form was designed with significant input from the Charity Care Policy Committee of the New Jersey Patient Account Managers Association and approved by the Essential Health Services Commission. The Committee was comprised of 20 members representing about 14 hospitals, which included rural, urban, and inner-city institutions. The final version of the standardized application was an attempt to make the application less burdensome and understandable to all applicants. If hospitals find that patients are experiencing problems with the standardized form, the Department of Health is willing to participate on a committee with industry representatives to revisit this issue.

COMMENT: One commenter noted that the proposed rule does not include a provision for assessing an applicant's income after the date of service, in cases where his or her income is dramatically reduced after hospitalization.

RESPONSE: The proposed rule will maintain the current standard of assessing charity care applicants' income either one, three or 12 months prior to the date of service. The rationale for this standard is that the Charity Care Subsidy Fund is limited to a predetermined amount each year and does not allow for the funding of catastrophic care for individuals who were able to purchase health insurance policies.

COMMENT: One commenter asked if N.J.A.C. 10:52-10.4(c) considers a payment or a decline from the patient's insurance company as appropriate contact on the part of the hospital.

RESPONSE: The intent of the proposed rule is to have hospitals verify insurance coverage on all potential charity care applicants at the time of service. Therefore, evidence of a subsequent payment or denial does not answer the question of whether the hospital had adequately investigated alternative payment options before classifying an account as charity care.

COMMENT: Several commenters suggested that the Department of Health conduct charity care audits once a year rather than the four to six times annually described in the proposed rule.

RESPONSE: Since the Department of Health and the Essential Health Services Commission or its successor plan to calculate hospitals' charity care subsidy payments using audited charity care as the basis of the formula, current data are needed in a timely manner. One annual audit after the close of a given year would not allow for the most current data to be used in the calculation.

COMMENT: One commenter asked that "reconsideration be given to the use of a weighted average poverty index and the Federal census tract data for income eligibility."

RESPONSE: This comment relates primarily to the allocation of charity care subsidies not to individual patients' eligibility for charity care. Chapter 160 requires that, in the absence of a claims processing system, subsidies be allocated based on the charity care costs incurred by hospitals.

COMMENT: Many commenters objected to preparing the audit list at the Medicaid rate. One position is that it would be extremely difficult to calculate rates for outpatient cases. Subsequently, the Department of Health may request listings of accounts for audit purposes and there are provisions for fines for audit lists that are not available within 30 days after initial requests. The hospitals may not have had time to post charity care allowances from the Unisys remittance advice. It is suggested that hospitals be permitted to report charity care accounts at hospital specific charges. When the data become available, the Department can convert the charges to the Medicaid rate.

RESPONSE: The Department of Health agrees with the commenters on this issue. Provisions will be made, for 1995, to accept the audit listings at total charges or at the Medicaid rate. The basis for the list must be consistent throughout the year. The Department of Health notes that hospitals making submissions under the claims pricing system can currently receive monthly pricing of charity care claims at the Medicaid rate.

COMMENT: Various commenters contend that the 10 percent limit on accounts with alternative documentation is too stringent. They maintain that the intent of the new rules is to broaden the availability of charity care to those residents who otherwise would not meet the requirements and be written off as bad debt. One concern is that the 10 percent rule applies to dollars sampled, as opposed to the number of accounts. It is argued that if the 10 percent rule was applied to the number of accounts, then the intent to relax this section of the regulations would be accomplished. If the 10 percent is applied to dollars sampled in its present form, the Department of Health will inadvertently encourage discriminating practices for approving applicants. In addition to the above, the related dollars sampled are not known until specific accounts are selected for audit.

RESPONSE: The general purpose of an audit is to uphold the integrity and reasonable fairness of an implemented system. The Department of Health maintains that the unit dollar sampling method, outlined in the Herbert Arkin "Handbook of Sampling for Audit and Accounting," (3d Edition), McGraw-Hill Publishing Company, accomplishes the intended goals. The unit dollar sampling method proportionately adjusts and converts charity care accounts to "weighted" values. Therefore, when a sample size is selected, the dollars associated with the sample are converted to sample dollars. As a result, the sample dollar method allows for equal and random testing within the hospital industry.

The Department of Health will not recommend any changes to the unit dollar sampling methodology. The Department of Health maintains that the procedures utilized will allow for fairness and accountability within the hospital industry.

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COMMENT: Several commenters stated that N.J.A.C. 10:52-10.7(e) could be interpreted to require only written verification from the welfare office. It is requested that the wording be changed to permit hospitals to obtain verification either by telephone or in writing.

RESPONSE: The intent of this section of the rule was to continue the Department of Health's former policy of allowing either written or telephone verification. Since members of the industry request that this intent be specified more clearly in the new rule, the language in this section has been revised.

COMMENT: One commenter suggested that the family income of a minor should not include that minor's step-parent's income since that income could not be used to recover on an unpaid hospital bill. In addition, this commenter argued that the mother in a "broken home" should qualify equally for charity care as her child.

RESPONSE: Requiring that the income of the step-parent of a minor applicant be included in a charity care application is consistent with the philosophy that persons assume greater responsibility for their family's welfare. Should this step-parent prove uncooperative with the charity care process, the rules do have a provision that enables the minor applicant's application to proceed following enumerated steps. (N.J.A.C. 10:52-10.8(c)1 through 3.)

COMMENT: One commenter stated that farm workers are adversely affected by the income verification procedure at N.J.A.C. 10:52-10.7(e), particularly since these workers do not work 12 consecutive months.

RESPONSE: The rules require that the applicant document income earned for the period immediately preceding the date of service of one month, three months, or 12 consecutive months (whichever benefits the applicant the most). It does not require that only months that included income be considered. The more months a person is unemployed, the better he or she will fare under this rule. The disparate time periods should also allow an applicant to represent his or her lowest income.

COMMENT: One commenter requested that the requirement in N.J.A.C. 10:52-10.4(d) to "advise the medical assistance office of the applicant's possible eligibility" be removed.

RESPONSE: In response to the commenter's suggestion, the Department believes it is appropriate for hospitals to refer clients to the medical assistance program and to notify the medical assistance office of the referred person, because a person found Medicaid-eligible can receive additional medical services, including those that are not available under charity care.

COMMENT: One commenter requested clarification regarding the time periods involved in documenting assets. Under N.J.A.C. 10:52-10.9(d)2, the Departments of Health and Human Services mention both a one month and a three month period of account balance documentation. A request was also made to clarify if the time period in question applies only prior to the date of service.

RESPONSE: The rule should require only a one month period of account balance documentation. Consideration of that one month period is not limited to days prior to, providing the date of service is embraced by that period. Mention of a three month period will be deleted. The language in the rule has been revised to clarify this issue.

COMMENT: Some commenters requested that the Department of Health utilize and offer hospitals a pre-determined audit schedule.

RESPONSE: Historically, the State has attempted to provide both the hospital industry and its audit subcontractor, Blue Cross, with as much flexibility regarding scheduling of audits as possible. This policy has generally received positive feedback from involved parties. A predetermined audit schedule will not be used at this time.

COMMENT: Some commenters requested that the rules define the phrase "immediate medical attention" as used in N.J.A.C. 10:52-10.6(c).

RESPONSE: The rule defines an emergency medical condition requiring immediate medical attention as "a serious medical situation requiring immediate treatment, in which delay would cause serious risk to life or health." "Immediate medical attention" is that medical attention which is given to the patient who is suffering from an emergency medical condition, as determined by a physician. The Department of Health believes this to be a workable definition. It is recommended that a hospital contact the Department of Health should there be any confusion over particular circumstances.

COMMENT: Some commenters expressed concern that reliance on another hospital's determination of an applicant's income may jeopardize their audit.

RESPONSE: This rule does not hold a hospital responsible for another hospital's performance. This rule requires only that the hospital must obtain identification and contact the first hospital for verification purposes.

COMMENT: The proposed new rules state that beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules, at 42 C.F.R. 447.296. These cited regulations make no reference to excluding underinsured individuals from access to disproportionate share funding.

RESPONSE: Federal rules governing the availability of disproportionate share payments are provided in the Omnibus Reconciliation Act of 1993, Section 13621. Implementing regulations have not been issued by the Health Care Financing Administration. Since 42 CFR. 447.296 does not contain the entire policy including the rule implementing the statute, the references to 42 CFR 447.296 will be deleted.

COMMENT: The proposed new rules state that beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules. Federal rules governing the availability of disproportionate share payments are provided in the Omnibus Reconciliation Act of 1993, Section 13621. These rules permit disproportionate share payments for the cost of services provided to Medicaid beneficiaries and individuals who have no health insurance (or other source of third party coverage). This appears to exclude disproportionate share payments for underinsured individuals. Many commenters objected to having underinsured individuals excluded from access to charity care. These objections are based on the potential financial obligations that may be placed upon medically needy or working poor individuals due to limited health insurance coverage and/or high annual deductibles.

RESPONSE: The State will only use funds available for the charity care program to reimburse for those costs which are within the Federal limit as prescribed by the Omnibus Reconciliation Act of 1993. The Federal rules concerning the availability of disproportionate share payments limit payment to "... individuals who have no health insurance." Because of the lack of regulations and detailed instructions from the Federal Health Care Financing Administration (HCFA) for the State of New Jersey can not now provide a specific explanation and/or analysis of the impact of this 1993 legislation at this time. The State has requested additional information from the Federal government concerning this issue. The State intends to provide further information and instruction to affected health care facilities as it becomes available.

The State is conscious of the potential effects the impending rule changes could have upon the hospitals that serve medically needy and working poor citizens. The State is committed in its continuing efforts to provide access to cost effective, quality health care for these and all citizens in the State. Therefore, the Department and Commission are vigorously pursuing the maximum available Federal funding for disproportionate share payments to hospitals in New Jersey and will fully inform affected health care providers of their efforts in this endeavor.

COMMENT: Commenters have objected to the 10 percent limit on charity care that can be supported by alternative documentation.

RESPONSE: Historically a charity care application has required independent documentation of its most important criteria: identification, residency, income and assets. Longstanding exceptions to this independent documentation requirement include homeless persons who have never needed to provide independent documentation of their residency and persons with no income or assets who have always been able to provide unsupported attestations to that effect. It was recognized that in these cases independent documentation was impossible to obtain.

The proposed amendments would allow hospitals to qualify patients for charity if, after trying to get independently verified evidence of eligibility, the hospital can only obtain less reliable documentation in the form of a patient attestation.

Because this is a significant break with both past practice and typical documentation requirements for a publicly funded program, the proposed rule limits the amount of charity care funding that can be paid out based on alternative documentation to 10 percent of the total amount.

COMMENT: Two commenters requested that the rules be made retroactive to January 1, 1995, while other commenters requested that, unless certain specific changes were made, the rules should be effective July 1, 1995. Those who wanted the rules to be effective July 1, 1995 were concerned about their ability to process the applications effectively, given the residency requirements proposed at N.J.A.C. 10:52-10.6.

RESPONSE: The proposed amendments were developed in order to help hospitals more readily qualify patients for charity care. The State would therefore prefer the earliest effective date that could be feasibly

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and legally implemented. During and after the comment period, the Department of Health and the Essential Health Services Commission met with interested parties to determine how quickly these rules could be in place in the hospitals. The commenters who preferred July 1 stated that they wanted that date in order to have time to meet the requirements imposed by N.J.A.C. 10:52-10.6 regarding residency. Since the residency requirements have been amended on adoption (see item 7, in the summary of changes which follows), and no longer constitute a problem for those hospitals, all the hospitals the Commission met with agreed to begin the eligibility period January 1, 1995. This date was selected because it will have a positive effect on patients and hospitals, and because it will provide more accurate data for predictions of future distributions. The change will affect distributions in subsequent years. The expansion of the eligibility time frame to include expenses for hospital services rendered on and after January 1, 1995 is expected to increase the number of eligible patients, providing a benefit to those patients. Since expenditures are capped, there is no change in the State budget.

COMMENT: Commenters opposed institution of a $2,500 penalty for failure to provide an audit list within the Department of Health's time frames. Others state that this provision puts them in jeopardy for other party's actions. Still others suggested that the claims pricing list for the quarter should be used which would then eliminate the need to obtain a separate list from the hospital and the need for a penalty.

RESPONSE: The quarterly audits will require a rapid turnaround time and an ambitious schedule by the Department of Health and its audit contractors. Therefore, it is necessary that audit lists not unreasonably delay the process. The audit list is currently entirely in the control of the hospital; thus, failure to provide the audit list will not be the result of an unrelated party's failure to perform. The Division of Medical Assistance and Health Services and the Commission are extremely interested in the concept of using the claims pricing process to develop an audit list. This would constitute a streamlining of the system which would also have additional internal controls and assurances of consistency. However, the claims pricing system is not being used by enough hospitals to be their audit basis in 1995. The State will seriously consider this proposal and the consequent elimination of the penalty in future years.

COMMENT: Two commenters requested that the Department of Health and the Department of Human Services reinstate the appeals process for charity care.

RESPONSE: These rules set forth the procedures by which the Department of Health will conduct an audit of the hospital's provision of charity care, in accordance with rules at N.J.A.C. 10:52-10.2. Charity care subsidies are currently distributed by formula in accordance with N.J.A.C. 10:52-8.2. Reinstating the appeals process would inappropriately put the Department of Health into an adjudicatory role for which the Department of Health has no statutory authority. Currently, patients are formally notified of the process of determining charity care eligibility by hospitals and are referred to the Department of Health as a resource for information. The Department of Health mediates determinations for eligibility for many patients Statewide. Patient rights are protected by more direct access to the court system should they need to further pursue eligibility determinations.

COMMENT: One hospital questioned when the charity care claims processing system would be implemented.

RESPONSE: The Essential Health Services Commission has already begun the charity care claims processing system. Most hospitals have already submitted at least one month's data to be priced.

COMMENT: One commenter claimed that the 90 day residency requirement was unconstitutional, and provided a copy of an Attorney General Opinion.

RESPONSE: The Attorney General's opinion, dated June 19, 1992, which cites several cases (*Shapiro v. Thompson,* 394 U.S. 618, 89 *S.Ct.* 1322, 22 *L.Ed. 2d* 600 (1969); (*Memorial Hospital v. Maricopa County,* 415 *U.S.* 250, 94 *S.Ct.* 1076, 39 *L.Ed. 2d* 306 (1974); and *Attorney General of New York v. Soto-Lopez,* 476 *U.S.* 898, 106 *S.Ct.* 2317, 90 *L.Ed. 2d* 899) dealt with proposed legislation that would impose a durational residency requirement for benefits under the AFDC program. In light of the comment, and related arguments, such as the application of the equal protection clause of the United States Constitution, the Department of Human Services and the Essential Health Services Commission have agreed to revise the rules to eliminate all reference to a durational residency requirement. Instead, an applicant must demonstrate that he or she was a resident of New Jersey at the time of service, not a resident of another state or country, and that he or she intends to remain in New Jersey.

COMMENT: One commenter stated that N.J.A.C. 10:52-10.4(d)1 penalizes applicants who affirmatively decline to be screened for charity care.

RESPONSE: If a patient who declines to apply for charity care at the time of service is billed for such care, that patient may still apply at anytime up to one year from the date of service according to N.J.A.C. 10:52-10.12(b).

Summary of Agency-Initiated Changes:

1. N.J.A.C. 10:52-10.2 Sampling methodology

N.J.A.C. 10:52-10.2(a)1 has been revised to allow hospitals in 1995 to report their charity care accounts for audit at either gross charges or the Medicaid rate as long as this is done consistently throughout the year. Since the audit sampling methodology will not be affected by the listing method the hospital chooses, this change to the rule does not require reproposal.

2. N.J.A.C. 10:52-10.3 Charity care write off amount

The citation to 42 CFR 447.296 was deleted and the wording "including the Omnibus Budget Reconciliation Act of 1993, Section 13621" was added, in order to reflect current legislation.

3. N.J.A.C. 10:52-10.6 New Jersey residency

The general intent of the proposed rule is to expand the documentation requirements to make it easier for patients to prove their eligibility for charity care. After writing the new rule, it was noticed that some of the new language had inadvertently made the documentation requirements stricter. The following revisions correct these areas to comply with the rule's original intent.

Subsection (a) has been changed to allow several items for documentation of New Jersey residency which were previously in step three, the alternative documentation, to count as step two. The second step is not subject to the 10 percent cap; a provision from the former rule allowing patients to document residency with an attestation from a New Jersey resident with whom they reside has also been added. Step three was revised to include only a signed attestation by the applicant. These changes further clarify the Department of Human Services' and the Department of Health's intent to expand the acceptable documentation for residency, and therefore, are appropriate upon adoption. Proposed subsection (b) was deleted as unnecessary, since provisions of proposal subsection (c) cover migrant workers. As explained above, durational residency requirements have been eliminated.

4. N.J.A.C. 10:52-10.7 Income eligibility criteria and documentation

Paragraph (e)5 now allows acquisition of the applicant's current benefit amount from the local welfare office to be in writing or by phone. This change represents a minor clarification requested by the industry and does not constitute a major change from the proposal.

5. N.J.A.C. 10:52-10.9 Assets eligibility criteria

In paragraph (d)2, changes were made to correct an error made by the writers of the rule to specify the method of documenting an applicant's bank accounts using an average daily balance within one month of the date of service. The sentence "In the case of a checking or savings account, the applicant shall provide a statement of the average daily balance of the account(s) for the month in which he or she receives services" was deleted; the word "value" was replaced with the term "average daily balance" and one month was substituted for three months. Since this was a minor error on the part of the writers, and did not change the intent of the rule, this correction is not a substantive change.

6. N.J.A.C. 10:52-10.10, Limit on accounts with alternative documentation, and N.J.A.C. 10:52-10.14, Adjustment methodology

Both of these sections have been revised to reflect a clarified formula which will be used to make adjustments in the hospitals' charity care amount for accounts subject to the alternative documentation steps.

The original proposal said that hospitals would have 10 percent leeway on compliance adjustments as well as 10 percent leeway on accounts with alternative documentation. N.J.A.C. 10:52-10.10 inadvertently combined the two so that a hospital got only 10 percent leeway divided between the two types of fails. This was contrary to other sections of the proposal and is, therefore, correctable upon adoption.

7. N.J.A.C. 10:52-10.4(l) was added to indicate that a charity care applicant may apply for charity care for services rendered per N.J.A.C. 8:31B-4.38 on or after January 1, 1995, if he or she meets the criteria in N.J.A.C. 10:52-10.4 through 10.9. This additional cross references the Department of Health rules while no one will be able to apply until after the effective date of these rules, May 15, 1995, an applicant may

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apply for payment for services which were rendered to him or her before that date, up to January 1, 1995. The ability of patients to apply for assistance with debts they have incurred for medical care rendered them in the recent past, that is, any services rendered after January 1, 1995, will benefit such patients.

Executive Order No. 27 Statement

Federal law provides for disproportionate share (DSH) payments to hospitals which serve a disproportionate number of patients with low incomes who do not have insurance up to the allowable cost for serving the population.

The Federal requirements apply to the State, and the rules proposed herein apply to the hospitals and to the patients. The Federal requirements are broad, and implementation of the Federal disproportionate share payments is left to the States. There are no Title XIX (Medicaid) Federal standards regarding documentation, screening, and notification requirements related to disproportionate share payments.

The rules do incorporate by reference the Federal Poverty Guidelines, which is a national standard which is available for the use of states in determining financial eligibility for programs, such as the Charity Care program.

Since there are no Federal Title XIX (Medicaid) standards which correspond to the rules, an Executive Order No. 27 analysis is not required.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 10. CHARITY CARE

10:52-10.1 Charity care audit functions

(a) The Department of Health shall conduct an audit of acute care hospitals' charity care reported as written-off each calendar year. The Department of Health shall audit charity care at least once, but no more than six times each calendar year.

(b) The Department of Health shall make a monthly report to the Essential Health Services Commission on charity care. This report shall include any adjustments made pursuant to N.J.A.C. 10:52-10.14 or approvals made pursuant to N.J.A.C. 10:52-10.8(c) and (d).

10:52-10.2 Sampling methodology

(a) The Department of Health shall audit charity care claims based on a sample which will be developed in the following way:

1. Hospitals shall maintain their charity care list in a way that will allow the Department of Health to select unduplicated accounts for unit dollar sampling on a quarterly basis. The unit dollar sampling method used to select the accounts for audit is explained in the "Handbook of Sampling for Audit and Accounting" (3d edition), by Herbert Arkin. The list shall include patient name, account number, write-off date, and write-off amount. Hospitals shall rank all charity care accounts from the smallest to the largest, based on the rate that Medicaid would have paid for each account, and run a cumulative dollar balance on the list. ***For 1995, a hospital may report accounts either at the Medicaid rate or gross charges provided that the reporting is done consistently throughout the year.***

2. Once the selection of sample dollars has been completed and the associated patient accounts have been identified, hospitals will be required to retrieve the patient account files according to the following schedule:

Number of files to be retrieved	Time to retrieve
0-500 files	One week
501-1100 files	Two weeks
1101-1800 files	Three weeks
1801 files and above	Four weeks

(b) The Department of Health shall require hospitals to make a small number of additional charity care accounts available upon audit.

(c) The hospital shall provide the audit list to the Department of Health no later than 30 days from the request date. If the hospital does not submit its audit list to the Department by the 30 day deadline, the Department shall assess a penalty of $2,500 per day for each day after the deadline.

10:52-10.3 Charity care write off amount

(a) The Department of Health shall value charity care claims at the Medicaid rate by multiplying the hospital's actual charity care service charges by the hospital-specific ratio of Medicaid payments to hospital charges. For write-off and billing purposes, the hospital shall use the following procedures:

1. Charity Care Write Off Amount equals Charity Care Eligibility Percentage, as determined by N.J.A.C. 10:52-10.7(b)-(c), multiplied by the Medicaid payment rate.

2. In the event that there is a partial payment from a third party, the charity care write-off amount is determined as follows: Charity Care Write Off Amount equals Medicaid payment rate minus third party payment multiplied by Charity Care Eligibility Percentage. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to ***all*** Federal disproportionate share rules*[, at 42 C.F.R. 447.296]***, **including the Omnibus Budget Reconciliation Act of 1993, Section 13621***.

3. If the third party payment is greater than the Medicaid payment rate, the charity care write-off amount shall be listed as zero.

(b) Applicants eligible for charity care at 100 percent shall not be billed. Any difference between hospital charges and the Medicaid rate shall be recorded as a contractual allowance.

(c) Applicants eligible for charity care at less than 100 percent shall be billed as follows:

1. Applicant Responsibility equals 100 percent minus Charity Care Eligibility Percentage multiplied by Hospital Charges minus any third party payment.

2. Contractual allowance equals Hospital Charges minus any third party payment minus Charity Care Write Off plus Applicant Responsibility.

(d) The Essential Health Services Commission will calculate the cost of charity care services at the rate that would have been paid by the New Jersey Medicaid program.

10:52-10.4 Charity care screening and documentation requirements

(a) The hospital shall provide all patients with an individual written notice of the availability of charity care and Medicaid, in a form provided by the Essential Health Services Commission, at the time of service, but no later than the issuance of the first billing statement to the patient.

(b) The hospital shall correctly assess and document the applicant's eligibility for charity care, based upon the criteria set forth in this section through N.J.A.C. 10:52-10.9. The applicant's financial file for audit shall contain the completed charity care application in a format approved by the Essential Health Services Commission, as well as the supporting documentation which led to the determination of eligibility. For purposes of the audit, the hospital shall include in or with the file all other information necessary to demonstrate compliance with any of the audit steps.

(c) The hospital shall ask the applicant if he or she has any third party health insurance, including, but not limited to, coverage through a parent or spouse or coverage for the services under an automobile insurance or workers compensation policy. If the applicant claims to have insurance, the hospital shall document the name of the insurer and the insured, and all other information pertinent to the insurance coverage. The hospital shall also document that the insurance coverage was verified, or the reason why the coverage could not be verified. Verification of insurance shall include the hospital contacting the identified third party insurer. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules.

(d) If the applicant is uninsured, or the applicant's health insurance is unlikely to pay the bill in full (based on hospital staff's previous experience with the insurer), and the applicant has not paid at the time of service any amounts likely to be remaining, the hospital shall make an initial determination for eligibility for any medical assistance programs available. The hospital shall refer the applicant to the appropriate medical assistance program and shall advise the

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medical assistance office of the applicant's possible eligibility. The applicant's financial file for audit shall indicate either that the applicant declined to be screened for medical assistance; that the applicant was screened but was determined ineligible; or that the applicant was screened and referred to the medical assistance program for possible eligibility. If the hospital does not screen the applicant for medical assistance, the record shall indicate the reason(s) why the applicant was not screened and the efforts the hospital made to obtain the screening. If an applicant affirmatively declines to be screened or is referred to a medical assistance program and does not return with an appropriate determination, the hospital will use the following procedures:

1. If the applicant affirmatively declines to be screened, or does not complete the medical assistance application process within three months after the date of service, or files an application after the application deadline, but is otherwise documented as eligible for charity care, the hospital:

i. May bill the applicant, consistent with the manner applied to other patients;

ii. Shall report the Medicaid value amount as charity care; and

iii. Shall report any amounts collected from the applicant or any third party as a charity care recovery.

2. If the hospital has not received a response to the medical assistance application from the county welfare or other medical assistance office within seven months of receipt of a complete application, the hospital shall approve the applicant's charity care application, if the applicant meets all other charity care criteria. Should medical assistance be approved following the hospital's charity care approval, the hospital shall report the amounts collected from the medical assistance program as a charity care recovery and issue a redetermination that states that because the applicant is eligible for medical assistance, he or she is no longer eligible for charity care.

3. If the hospital does not inform the applicant of medical assistance by the individual written notice required in (a) above or does not refer an applicant who could reasonably be considered eligible for a medical assistance program within three months of the date of service, the hospital shall record the applicant's bill as a courtesy adjustment and shall not bill or otherwise attempt to collect from the applicant or the Charity Care Program.

(e) Hospitals shall make arrangements for reimbursement for services from private sources, and Federal, state and local government third party payers when a person is found to be eligible for such payment. Hospitals shall collect from any party liable to pay all or part of a person's bill, prior to attributing the services to charity care except in the situations described in (h) and (i) below. The hospital shall, as part of this obligation, pursue reimbursement for the uncollected copayments and deductibles of indigent participants in Title XVIII of the Social Security Act (Medicare). Hospitals shall report any amounts collected from any third party as a charity care recovery. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules.

(f) An applicant who is responsible for complying with his or her insurer's pre-certification requirements (the specific steps with which the insured must comply in order to have the services reimbursed) shall not be determined to be eligible for charity care, if the bill was unpaid because he or she failed to comply with these requirements. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules.

(g) An applicant who is determined to be eligible for, and is accepted into, the HealthStart Program shall not be deemed eligible for charity care for services which are covered under this program. Beginning July 1, 1995, charity care availability shall be subject to Federal disproportionate share rules.

(h) Applicants who are eligible for reimbursement under the Violent Crimes Compensation Program shall be screened for eligibility for charity care before referral to the Violent Crimes Compensation Program (see N.J.A.C. 13:75). If the applicant is not eligible for 100 percent coverage under charity care, the charges which are not eligible for coverage under charity care shall be referred to the Violent Crimes Compensation Program. The hospital shall request the applicant to submit a copy of his or her charity care determination form to the Violent Crimes Compensation Board.

(i) Applicants who are eligible for reimbursement under the Catastrophic Illness in Children Relief Fund shall be screened for eligibility for charity care, before referral to this Fund (see N.J.A.C. 8:18). If the applicant is not eligible for 100 percent coverage under charity care, the applicant shall be referred to the Catastrophic Illness in Children Relief Fund for the uncovered portion of the claims.

(j) Hospitals with a Federal Hill-Burton obligation at the time of the application may include applicants written-off to the Hill-Burton Program as eligible for charity care, if the applicant meets all of the eligibility standards and documentation requirements set forth in this section through N.J.A.C. 10:52-10.10.

(k) The Charity Care Program shall be the payer of last resort, except for the payers identified in (h) and (i) above.

(l) A charity care applicant may apply for charity care for services rendered per N.J.A.C. 8:31B-4.38 on or after January 1, 1995 if he or she meets the criteria in this section through N.J.A.C. 10:52-10.9.

10:52-10.5 Identification

(a) Applicants for charity care shall provide the hospital with the following proper identification: Paragraph 3 below represents an alternative measure for documenting identification as described in N.J.A.C. 10:52-10.10.

1. The applicant shall provide the hospital with one of the following identification documents: driver's license, social security card, alien registry card, birth certificate, passport, visa, death certificate, employee identification, or an attestation that the person is homeless and does not possess any of the above mentioned identification documents. If the documents listed above are not available to the applicant, the hospital staff shall document why the applicant was unable to comply, and shall ask for one of the identification documents listed in (a)2 below. If the applicant is unable to comply for medical reasons, such as, if the applicant is deceased, or non-communicative until discharge for medical reasons, and a person to identify the patient cannot be found, the requirement for identification shall be waived.

2. The applicant shall provide the hospital with one of the following documents containing his or her name and address: a voter registration card, a union membership card, an insurance or welfare plan identification card, a student identification card, a baptismal certification, a utility bill, a Federal income tax form, a state income tax form, a paycheck stub or an unemployment benefits statement. If the documents listed above are not available to the applicant, the hospital staff shall document why the applicant was unable to comply and shall ask for proof of identification as described in (a)3 below.

3. The applicant shall provide proof of identification in one of the following ways: a piece of mail addressed and delivered to the applicant; a signed attestation (which includes the party's name, address and telephone number) from a third party attesting to the applicant's identity; or a signed statement attesting to his or her own identity.

(b) The hospital shall obtain a photocopy of the applicant's identification or attestation and shall produce the copy on audit.

(c) The hospital shall attempt to collect the following information regarding the applicant and, if applicable, the responsible party: name; mailing address; residence telephone number; date of birth; social security number; place and type of employment; and employment address and telephone number, as applicable.

10:52-10.6 New Jersey residency

(a) Applicants for charity care shall provide the hospital with proof of New Jersey residency. An applicant shall provide proof that he or she has been residing in New Jersey *[for at least three months prior to]* ***since*** the *[date]* ***time*** of service, ***has no residency in any other state or country,*** and *[that he or she]* has the intent

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to remain in the State. *[N.J.A.C. 10:52-10.6]* ***Paragraph*** (a)3 below represents an alternative measure for documenting proof of residency as described in N.J.A.C. 10:52-10.11.

1. The applicant shall provide the hospital with any of the identification documents listed in N.J.A.C. 10:52-10.5(a)1 which contains the applicant's current residence address and a date from which the hospital can reasonably infer that the applicant has resided in New Jersey *[for at least three months]* ***since the time of service, has no residency in any other state or country, and has the intent to remain in the State***. The hospital may accept an attestation from the applicant that he or she is homeless. If the applicant is unable to provide one of the documents listed above, the hospital staff shall document why the applicant was unable to comply, and shall ask for proof of residency as described in (a)2 below.

2. The applicant shall provide the hospital with any of the identification listed in N.J.A.C. 10:52-10.5(a)2 which contains the applicant's current residence address and a date from which the hospital can reasonably infer that the applicant has resided in New Jersey *[for at least three months]* ***since the time of service, has no residency in any other state or country, and has the intent to remain in the State; or the applicant shall supply a copy of any undated identification listed in (a)1 and this paragraph, or any mail received showing the applicant's name and current residence address, and an attestation that the applicant has resided in New Jersey since the time of service, has no residency in any other state or country, and has the intent to remain in New Jersey; or the applicant shall supply a letter from a New Jersey resident with whom the applicant is living stating that the applicant is residing with him or her.*** If the applicant is unable to provide one of these documents, the hospital staff shall document why the applicant was unable to comply and ask for proof of residency as described in (a)3 below.

3. *[The applicant shall supply a copy of any undated identification listed in (a)1 and 2 above, or any mail received showing the applicant's name and current residence address, and an attestation that the applicant has resided in New Jersey for at least three months; or]* ***The applicant shall provide*** a signed attestation stating *[his or her New Jersey address for at least the three months prior to the date of service]* ***that he or she has been residing in New Jersey since the time of service, has no residency in any other state or country, and has the intent to remain in the State***.

[(b) Applicants who are migrant workers residing in New Jersey for the one month period prior to receiving services shall be deemed New Jersey residents.]

*[(c)]****(b)*** Non-New Jersey residents requiring immediate medical attention for an emergency medical condition may apply for charity care. Emergency medical condition shall be restrictively defined as a serious medical situation requiring immediate treatment, in which delay would cause serious risk to life or health. Services available to non-New Jersey residents shall include only those not reasonably available at an alternative non-New Jersey site at the time services are requested.

10:52-10.7 Income eligibility criteria and documentation

(a) The hospital shall determine the applicant's family size in accordance with this section. Family size for an adult applicant includes the applicant, spouse, any minor children whom he or she supports, and adults for whom the applicant is legally responsible. The family size for a minor applicant includes both parents, the spouse of a parent, minor siblings and any adults in the family for whom the applicant's parent(s) are legally responsible. If an applicant documents that he or she has been abandoned by a spouse or parent, that spouse or parent shall not be included as a family member. A pregnant female counts as two family members.

(b) The provisions of 42 U.S.C. 9902(2), the poverty guidelines revised annually by the United States Department of Health and Human Services (HHS), are hereby incorporated by reference. (For further information on the poverty guidelines, contact the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, D.C. 20201, Telephone (202) 690-6141.) A person is eligible for charity care or reduced charge charity care if he or she falls into one of the following categories:

1. A person whose individual or, if applicable, family income, as determined by (e) below, is less than or equal to 200 percent of the HHS Poverty Guidelines shall be eligible for charity care for necessary health services without cost.

2. A person whose individual or, if applicable, family, income as determined by (e) below, is greater than 200 percent of the HHS Poverty Guidelines but not more than 300 percent of these guidelines is eligible for charity care at a reduced rate as described in (c) below.

(c) A person who is eligible for reduced charge health services shall be charged a percentage of the normal charge for health services as described in the table below. The reduced percentage can be applied to the total bill or, until July 1, 1995, to any remainder after third party payment. Beginning July 1, 1995, charity care availability for persons with health insurance shall be subject to Federal disproportionate share rules.

Income as a percentage of HHS Poverty Guidelines	Percentage of Charges Paid by Applicant
>200 to 225	20
>225 to 250	40
>250 to 275	60
>275 to 300	80

(d) If qualified medical expenses, as defined for the purposes of Federal income tax deductibility, for applicants eligible for reduced charge charity care exceeds 30 percent of the applicant's or family's, if applicable, annual gross income as calculated by (e) below, such excess will be eligible for 100 percent coverage under charity care. The 30 percent threshold must be met once per family in a 12 month period.

(e) An applicant's income, for the purpose of determining eligibility for charity care or reduced charge charity care, shall be determined as follows:

1. The applicant may provide proof of the actual gross income for the 12 months immediately preceding the services;

2. The applicant may provide proof of actual gross income for the three months immediately preceding services. The hospital shall multiply this amount by four to determine the gross annual income; or

3. The applicant may provide proof of actual gross income for the month immediately preceding service. The hospital shall multiply this amount by 12 to determine the gross annual income.

4. If the applicant provides documentation for more than one salary period specified in paragraphs (e)1 through 3 above, the hospital shall use the period of time during which the salary was the lowest.

5. If the applicant is a welfare recipient and has not documented income as described in (e)1 through 3 above, the hospital shall document income status by obtaining a photocopy of the applicant's welfare identification, and document*[ing]* that the staff of the hospital obtained verification ***in writing or by phone*** of the applicant's current benefit amount from the appropriate local welfare office.

6. An applicant shall supply a signed attestation showing his or her unreported income in order for that income to be considered in the eligibility determination, as described in (b) above.

10:52-10.8 Proof of income

(a) Applicants for charity care shall provide the hospital with proof of income as listed below. N.J.A.C. 10:52-10.8(a)3 below shall be considered alternative documentation, as described in N.J.A.C. 10:52-10.10 above.

1. An applicant shall provide the hospital with proof of income, which includes the following items: Federal or State income tax return; pay check stubs; W-2 forms; a letter from an employer on company letterhead stating the applicant's income; or a statement of the gross benefit amount from any governmental agency providing benefit to the applicant. If an applicant has been employed for at least one month, he or she may document his or her income by

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providing one paycheck stub immediately prior to the date of service if the paycheck stub indicates a year-to-date income, and if the applicant documents the length of time he or she has been employed by the employer.

i. If an applicant is a recipient of Social Security benefits, he or she may document this income by either providing the annual benefits statement from the Social Security Administration, or copies of bank statements from three months prior which indicate direct deposit of the social security check, or a copy of one social security check.

ii. An applicant with no income or benefits of any type may present the hospital with a signed attestation to this effect. If the applicant is homeless, the hospital may accept a signed attestation which states that the applicant is homeless and receives no support, income or benefits.

iii. If the applicant is unable to provide one of the documents listed above, the hospital staff shall document reasons for the applicant's inability to comply and request the documentation listed in (a)2 below.

2. An applicant may document his or her income by providing one paycheck stub immediately prior to the date of service. If the applicant is unable to provide this documentation, the hospital staff must document reasons for the applicant's inability to comply and request the documentation listed in (a)3 below.

3. An applicant may document his or her income by providing an attestation which states the income received in one of the time periods described in N.J.A.C. 10:52-10.7(e)1 through 3.

(b) Family income that must be considered for the eligibility determination includes the income of all members for whom the applicant is legally responsible including, but not limited to, a spouse and any minor children for an adult. For a minor applicant, the income of the family, as determined by N.J.A.C. 10:52-10.7(a), will be considered. In situations where a minor applicant's parents are divorced, and the custodial parent(s) are remarried, the nonparental spouse's income shall be considered. In situations where both divorced parents have responsibility for the minor applicant's medical care, each parent shall complete a charity care application. For a minor applicant, the income of the family shall be considered, except for earned income of the minor child and siblings. In cases where an adult applicant has been abandoned by a spouse, or a minor applicant has been abandoned by a parent, the applicant may document that a spouse's or parent's income is not available by the following steps in (c) below.

(c) If a minor applicant's parents are divorced, and one of the parents is uncooperative, as defined in (c)1 through 3 below, with the application process, the requirement for that parent's income may be waived by the hospital, after the case is reviewed by the Department of Health, based on the following:

1. A parent or spouse may be deemed uncooperative if the applicant documents at least one unsuccessful attempt to obtain the necessary information from the parent or spouse; and

2. The parent or spouse does not respond to a letter from the hospital indicating the possibility of collection or legal action if he or she does not provide the necessary information for the application; and

3. The parent or spouse does not respond to the hospital in-house collection process.

(d) If an applicant is separated, but not legally divorced, from his or her spouse, the applicant may document that he or she has no financial ties with the estranged spouse in accordance with (d)1 through 4 below, and the hospital may waive the requirement for the estranged spouse's income, after the case is reviewed by the Department of Health, if documentation has been provided in accordance with the following:

1. A separated spouse may be deemed to have no financial ties to the applicant if the applicant provides proof to the hospital that he or she is not living with the estranged spouse, and does not own any property or share a lease to a rental property with the estranged spouse; and

2. The applicant provides a copy of his or her most recent tax return indicating that the applicant filed taxes separately. If estrangement occurred after filing jointly, the hospital may hold the application until the applicant files the next tax return separately. If an applicant does not file tax returns, he or she must sign an attestation to this effect explaining his or her reasons; and

3. The applicant provides copies of all his or her financial accounts showing the applicant with sole ownership of his or her assets; and

4. The applicant provides an affidavit stating that he or she is separated from and has no financial ties to the estranged spouse.

(e) The hospital may request that the applicant document his or her living expenses.

(f) A minor applicant who documents that both parents have abandoned him or her shall provide documentation of the income and assets of his or her guardian(s).

*[(f)]***(g)*** The hospital may accept a charity care determination from another New Jersey hospital as proof of income, provided that the effective date of the charity care determination is not more than one year earlier than the date of service at the second hospital and that the second hospital verifies the determination with the hospital that issued the determination. The determination by the second hospital is valid for one year from the effectve date of the first hospital's determination.

10:52-10.9 Assets eligibility criteria

(a) An applicant shall provide proof that:

1. His or her individual assets as of the date of service do not exceed $7,500; and

2. His or her family's assets, if applicable, do not exceed $15,000 as of the date of service.

(b) Family members whose assets must be considered are all legally responsible individuals as defined in N.J.A.C. 10:52-10.7(a).

(c) Assets, as used in this section, are items which are, or which can be readily converted into, cash. This includes, but is not limited to, cash, savings and checking accounts, certificates of deposit, treasury bills, negotiable paper, corporate stocks and bonds, Individual Retirement Accounts (IRAs), trust funds, and equity in real estate other than the applicant's or family's, if applicable, primary residence. A primary residence, for purposes of charity care, is defined as a structure within which the applicant currently lives. If an applicant jointly owns assets with another person(s), for whom the applicant is not legally responsible, the value of these assets shall be prorated equally among all the owners.

(d) The applicant shall document the value of all applicable assets as described in (d)1 through 3 below. *[N.J.A.C. 10:52-10.9]* ***Paragraph*** (d)3 below represents alternative documentation as described in N.J.A.C. 10:52-10.10.

1. The applicant shall present the hospital with a statement from a bank or other applicable financial institution showing the value of the asset(s) as of the date of service. If an applicant has no assets, he or she may sign an attestation to that effect, and this fulfills the requirement for proof of assets. If the applicant is unable to obtain such documentation, the hospital staff shall document, in writing, the reason why the proof could not be provided, and request proof of assets as described in (d)2 below.

2. *[In the case of a checking or savings account, the applicant shall provide a statement of the average daily balance of the account(s) for the month in which he or she receives services.]* The applicant shall provide the hospital with a statement from the bank or other applicable financial institution showing the *[value]* ***average daily balance*** of the asset(s) within *[three months]* ***one month*** of the date of service. If the applicant is unable to obtain such documentation, the hospital staff shall document, in writing, the reason why the proof could not be provided, and request proof of assets as described in (d)3 below.

3. The applicant shall present the hospital with a signed statement attesting to the type and value of the assets.

(e) The assets of an applicant for charity care shall be counted only after the applicant has had an opportunity to apply any amount of assets in excess of the limits in (a) above toward qualified medical expenses. Qualified medical expenses are those amounts deductible for the purpose of calculation of Federal income tax liability.

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10:52-10.10 Limit on accounts with alternative documentation

The total of all sample dollars in which identification, New Jersey residency, income, and assets documented by the alternative procedures described in N.J.A.C. 10:52-10.5(a)3, 10.6(a)3, 10.8(a)3 or 10.9(d)3 shall be limited to no more than 10 percent of the total dollars sampled on audit. Sample dollars that exceed 10 percent on the expanded sample shall be *[considered failed sample dollars for the purpose of calculating an audit adjustment.]* ***adjusted in accordance with N.J.A.C. 10:52-10.14(b) below.***

10:52-10.11 Additional information to be supplied to facility by applicant

(a) A hospital shall, as a condition of finding any applicant eligible for charity care or reduced charge charity care, require the applicant to furnish any information that is reasonably necessary to substantiate the applicant's income and assets and that is within the applicant's ability to supply.

(b) An applicant who willfully presents false information will be liable for all hospital charges and subject to civil penalties pursuant to N.J.S.A. 26:2H-18.63.

10:52-10.12 Application and determination

(a) The Essential Health Services Commission shall provide acute care hospitals with a standardized application and determination form. This application and determination form shall be used by all acute care hospitals for the Charity Care Program. The application form shall advise patients of the penalties for providing false information on a charity care application.

(b) An applicant or responsible party may request a hospital to make a determination for charity care or reduced charge charity care at any time up to one year from the date of service. A hospital may, at its discretion, accept applications after one year from the date of service. The hospital shall make the charity care determination and notify the applicant in writing, as soon as possible, but no later than 10 working days from the day the applicant submits a completed application. If the application does not include sufficient documentation to make the determination, the hospital shall notify the applicant, in writing, as soon as possible, but no later than 10 working days from the day the applicant submits an incomplete application. The applicant shall be permitted to supply additional documentation at any time up to one year after the date of service.

(c) A determination that an applicant is eligible shall indicate:

1. The date on which the eligibility determination was made;
2. The date on which hospital services were requested;
3. The date on which the services were or will be provided to the applicant;
4. That the facility will provide charity care services at no charge or at a specified charge which is less than the allowable charge for the services;
5. The applicant's family size, income and eligibility computation;
6. The length of time that the hospital will provide charity care based on this determination. A hospital shall not provide charity care on the basis of a determination of eligibility that is more than one year old; and
7. The name and telephone number of a person a hospital can contact to verify eligibility pursuant to N.J.A.C. 10:52-10.8(b).

(d) The hospital shall provide each applicant who requests charity care and is denied it, in whole or part, with a written and dated statement of the reasons for the denial, including information required in (c) above. In addition, this notice shall state that the applicant may reapply if the applicant believes his or her financial circumstances have changed so as to make him or her eligible for charity care for future services. Where a denial is based on a presumption that the applicant is eligible for, but not enrolled in, Medicaid, the information upon which the denial is based must be documented.

10:52-10.13 Collection procedures and prohibited action

Persons determined to be eligible for charity care shall not receive a bill for services or be subject to collection procedures. Persons determined to be eligible for reduced charge charity care shall not be billed or subject to collection procedures for the portion of the bill that is reduced charge charity care.

10:52-10.14 Adjustment methodology

(a) For a listing adjustment, the charity care write off amount for each account should agree with the reimbursement rate that would have been paid to the hospital by the Medicaid program. To the extent that charity care write off amounts are overstated, the hospital's listing total will be reduced by the amount of the overstatement.

(b) For an alternative documentation adjustment, a ratio shall be developed using sample dollars with alternative documentation as a percentage of total sample dollars. If this ratio is less than or equal to .10, there shall be no adjustment. If this ratio is greater than .10, the ratio shall be reduced by .10 and then multiplied by hospital charity care at the Medicaid rate. This amount shall be subtracted from hospital charity care at the Medicaid rate. The result shall be used in the compliance adjustment calculation in (c) below.

*[(b)]****(c)*** For a compliance adjustment, each file reviewed must pass the compliance steps in N.J.A.C. 10:52-10.4 through 10.10. Failure in any one step fails the file and associated sample dollars. A failure rate (failed dollars divided by the total dollars sampled) that meets or exceeds 10 percent shall require an adjustment to the hospital's charity care listing total, based on unit dollar sampling.

*[(c)]****(d)*** The hospital's charity care total adjusted for (a) *[and (b)]****, (b) and (c)*** above will constitute the hospital's audited charity care amount.

*[(d)]****(e)*** A hospital which disagrees with the audit findings may request a review of auditor judgment with representatives from the Department of Health within 15 days of the date that the Department of Health staff or the Department of Health's audit subcontractor finishes their review of the hospital's charity care files and provides the hospital with a copy of the audit results.

*[(e)]****(f)*** A hospital which disagrees with the audit findings may request an administrative hearing, which shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

DIVISION OF FAMILY DEVELOPMENT

Home Energy Assistance Handbook Eligibility Requirements; Income Eligibility Guidelines

Adopted Concurrent Amendments: N.J.A.C. 10:89-2.3 and 3.1

Proposed: March 6, 1995 at 27 N.J.R. 942(a).
Adopted: April 13, 1995 by William Waldman, Commissioner, Department of Human Services.
Filed: April 17, 1995 as R.1995 d.246, **without change.**
Authority: N.J.S.A. 30:4B-2.
Effective Date: April 17, 1995.
Expiration Date: February 27, 2000.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

These rules contain standards which are the same as those imposed by Federal law.

Full text of the adoption follows:

10:89-2.3 Income eligibility

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

(e) Income exclusions: The following income is not considered in the determination of gross income for this program:

1.-5. (No change.)
6. Income excluded by law:
i.-iv. (No change.)
v. Payments from the Child Care and Development Block Grant (CCDBG) program: Payments received by eligible parents under

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CCDBG shall not be counted as income when determining eligibility or benefit levels under LIHEAP.

vi. Payments made to individuals because of their status as victims of Nazi persecution shall not be counted as income when determining eligibility under LIHEAP.

vii. Wages and or salaries, including any training allowances under the Green Thumb Program, are to be excluded when determining eligibility under LIHEAP.

7. (No change.)

(f) Income computation: Countable gross monthly earned and unearned income, as defined in (c) and (d) above, and verified in accordance with N.J.A.C. 10:89-4.1(d), shall be added to determine the household's total gross monthly income. Cents shall be rounded to the nearest dollar. If the household's total gross monthly income is equal to or less than the gross income limit for the household size, the household is income eligible for Home Energy Assistance.

1.-5. (No change.)

6. Households placed in rental assistance slots utilizing temporary emergency funding made available through the State's emergency assistance initiatives will not be excluded from eligibility for Home Energy Assistance as a tenant whose heat is included in rent.

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limits
1	920
2	1230
3	1540
4	1850
5	2160
6	2470
7	2780
8	3090
9	3400
10	3710
Each Additional Member	+310

10:89-3.1 Automatic payments to certain households

(a) Recipient households:

1. Certain households eligible for and receiving AFDC or non-public assistance (NPA) Food Stamps (FS) will receive automatic payments based on the information regarding income, household size, heating arrangement and fuel type contained in computer records maintained by the Division of Family Development. Where the household receives FS as a public assistance (PA) household and the PA FS household is greater than the AFDC eligible unit, the automatic payment shall be based on the PA FS household size. This information will be collected from the head of the household at each application, reapplication or recertification for AFDC or FS and will be updated whenever the household reports a change. However, once a household becomes eligible for automatic payments, the entitlement cannot be adjusted.

i. Automatic payments will only be made during the heating season. Entitlements will be paid in one installment. Households which do not receive automatic payments must submit an application to receive HEA.

ii. The entitlement will be paid as a full benefit to all households.

iii. (No change.)

2.-3. (No change.)

LABOR

(a)

DIVISION OF WAGE AND HOUR COMPLIANCE

Seasonal Farm Workers
Field Sanitation
Readoption with Amendment: N.J.A.C. 12:102

Proposed: March 20, 1995 at 27 N.J.R. 1133(a).

Adopted: April 24, 1995 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: April 24, 1995 as R.1995 d.257, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:9A-37 et seq., specifically 34:9A-39.

Effective Date: April 24, 1995, Readoption;
May 15, 1995, Amendment.

Expiration Date: April 24, 2000.

Summary of Hearing Officer's Report and Agency Responses:

A public hearing on the proposed readoption with amendment was held on April 12, 1995 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdré L. Webster, Regulatory Officer, was available to preside at the hearing and to receive testimony. However, no one appeared to give testimony on the proposed readoption with amendments. As a result, the hearing officer recommended that the rules be adopted without change from the proposal. The public hearing record may be reviewed by contacting Deirdré L. Webster, Regulatory Officer, Office of Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, New Jersey 08625-0110.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

The readoption with amendment does not exceed standards or requirements imposed by Federal law. The rules set forth at N.J.A.C. 12:102 provide field sanitation standards for seasonal farm workers when there are fewer than 10 workers in the field. Although Federal OSHA standards found at 29 C.F.R. 1928.110 do not cover these employees, it is noted that the State standards proposed for readoption with amendment are consistent with those imposed by Federal law. In addition, State law codified at N.J.S.A. 34:9A-37 et seq. requires that these standards be established to protect the health, safety and welfare of all farm workers. Furthermore, it is noted that farm operators who employ less than 10 workers will not incur any additional costs by being required to comply with these standards since the majority of them have already established facilities which meet these requirements.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:102.

Full text of the adopted amendment follows:

CHAPTER 102
SEASONAL FARM WORKERS

12:102-1.4 Water containers

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

(d) The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

(e) (No change.)

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LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Housing Discrimination

Adopted Amendments: N.J.A.C. 13:4; 13:9-1.1; and 13:13

Adopted New Rules: N.J.A.C. 13:13-3.7 and 13:15

Proposed: May 16, 1994 at 26 N.J.R. 1942(a).

Adopted: April 10, 1995 by C. Gregory Stewart, Director, Division on Civil Rights.

Filed: April 13, 1995 as R.1995 d.243, **with substantive change and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 10:5-1 to 42.

Effective Date: May 15, 1995.

Expiration Date: May 15, 2000, N.J.A.C. 13:9 and 13:15
January 17, 1996, N.J.A.C. 13:4
July 16, 1995, N.J.A.C. 13:13.

Summary of Public Comments and Agency Responses:

The proposed amendments and new rules were published on May 16, 1994. **No comments were received during the comment period,** which closed on June 15, 1994. One comment was submitted subsequent to the expiration of the comment period from the Community Health Law Project.

Summary of Agency-Initiated Changes:

The proposed new rule defines "covered multifamily dwellings" to mean "multifamily dwellings" as the term is defined by the Barrier-Free Subcode of the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq. and N.J.A.C. 5:23-7. Since publishing the proposed rules it has come to the Division's attention that the Barrier-Free Subcode contains no definition of multifamily dwelling. Instead, the Barrier-Free Subcode refers to "buildings or projects," but explicitly exempts from coverage buildings or projects with three or fewer dwelling units, N.J.A.C. 5:23-7.3(a)1, and buildings and projects composed of "townhouse units," which are defined as single-family dwelling units attached to at least one other such unit which has two or more stories of living space exclusive of the basement and attic, and which has its primary entrance directly from exterior grade. N.J.A.C. 5:23-7.3(a)2.

It was the intent of the proposal to require that the design and construction of certain multifamily dwellings comply with the Barrier-Free Subcode and to cover those multifamily dwellings covered by the Barrier-Free Subcode. The proposed definition of "covered multifamily dwellings" has been modified in the final rule adoption to effectuate the intent of the rule by clarifying that those multifamily dwellings covered by the Barrier-Free Subcode are covered by the rule. This change simply clarifies the proposal and does not enlarge or curtail either the scope or burden of the rule, or who or what will be affected by the rule, nor change what is being prescribed, proscribed or mandated by the rule. Therefore, it is not a substantial change requiring a new notice of proposed rule and public opportunity to be heard (See N.J.A.C. 1:30-4.3).

The following technical changes have been made to correct printing errors:

In proposed N.J.A.C. 13:4-1.4, the addresses of the Vineland and Asbury Park offices have been deleted to reflect that these offices have been closed.

In the Statement to proposed N.J.A.C. 13:9, the word "and" in the phrase "property and public housing" has been changed to "or."

In proposed N.J.A.C. 13:13-2.4(c), the word "requirement" has been changed to "requirements."

In proposed N.J.A.C. 13:13-3.5, the section heading "Evication" has been changed to "Eviction."

In proposed N.J.A.C. 13:15-1.5(b), the word "buy" has been changed to "by."

In proposed N.J.A.C. 13:15-1.5(e), Example 3, the word "a" has been changed to "at."

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the adopted amendments and new rules are intended to clarify the New Jersey Law Against Discrimination (LAD) and to implement certain changes to the LAD enacted since 1990. Some of these regulatory provisions are being amended or adopted to enable the New Jersey Division on Civil Rights to be certified by the United States Department of Housing and Urban Development (HUD) under the federal Fair Housing Act, 42 U.S.C. 3610(f). To that extent, however, the standards or requirements contained in these rules do not exceed the standards or requirements imposed by the FHA. If the Division achieves such certification by HUD, New Jersey would become eligible for Federal reimbursement for investigating claims of housing discrimination under the LAD.

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

13:4-1.4 Definitions

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

. . .

"Office of the Division" means the offices located at 31 Clinton Street, Newark, New Jersey; 100 Hamilton Plaza, Paterson, New Jersey; 383 West State Street, Trenton, New Jersey; 101 Haddon Avenue, Camden, New Jersey; 1548 Atlantic Avenue, Atlantic City, New Jersey; *[501 Landis Avenue, Vineland, New Jersey; 601 Bangs Avenue, Asbury Park, New Jersey;]* and any additional offices which may from time to time be established.

. . .

13:4-2.1 Director's investigations

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

(c) In connection with an investigation of the operation of any real property, as defined by N.J.S.A. 10:5-5n, the Director may require the submission of information concerning the race, creed, color, national origin, ancestry, handicap, marital status, sex, nationality, affectional or sexual orientation or familial status of the occupants of such real property, the terms and conditions on which the sale or lease of said real property is to be made to the general public, the vacancy rate of such real property subject to rent, the plans for advertising or notifying the public of the availability of said real property for rental or sale, the standard form documents used in the rental or sale of such real property, and such other information as may be reasonably necessary to carry out the provisions of the Law Against Discrimination.

(d) In connection with an investigation of any employer as defined by N.J.S.A. 10:5-5(e), the Director may require the submission of information concerning:

1. The race, creed, color, national origin, handicap, ancestry, age, marital status, sex, nationality, affectional or sexual orientation, atypical hereditary cellular or blood trait or military status of employees;

2.-6. (No change.)

(e) (No change.)

13:4-3.3 Filing complaints and other pleadings; notices

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

(e) Upon receipt of the complaint, the Division shall provide the complainant with a form adopted by the Director, which notifies the complainant of his or her rights under the Law Against and the Discrimination, including the right to file a complaint in the Superior Court of New Jersey and be heard before a jury; the jurisdictional limitations of the Division; and any other provisions of the Law Against Discrimination that may apply to the complaint. The jurisdictional limitations of the Division include the limitation of the Division on Civil Rights to only administer claims under the Law Against Discrimination, and the inability of the Division on Civil Rights to afford parties the opportunity of a jury trial in discrimination claims heard before the Office of Administrative Law.

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13:4-3.5 Contents of complaint

(a) The complaint shall set forth in separate numbered paragraphs the following:

1.-2. (No change.)

3. A statement of whether the race, creed, color, national origin, nationality, handicap, ancestry, marital status, sex, military status, affectional or sexual orientation, atypical hereditary cellular or blood trait, familial status or age of the complainant or of any person residing with or otherwise associated with the complainant, gave rise to the alleged discrimination;

4.-8. (No change.)

13:4-4.3 Rights of Parties; Notification of Settlement

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

(c) All complainants and individuals on whose behalf a complaint has been filed pursuant to (b) above and (d) below shall be notified of any settlement of individual grievances and of the right to file a motion urging the Director to continue the proceeding.

(d) (No change.)

13:4-6.1 Findings of probable cause

(a) After the filing of the complaint, the Director shall cause an investigation to be made by an investigator of the Division as to the allegations of the complaint. The investigation may include a fact-finding conference pursuant to N.J.A.C. 13:4-2.3, document and information requests, and any other investigative methods authorized by N.J.S.A. 10:5-8(i).

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

13:4-10.1 Consolidation or severance of complaints

(a) (No change.)

(b) Following transmittal of a case to the Office of Administrative Law, all motions to sever or consolidate shall be initially presented to the OAL, pursuant to N.J.A.C. 1:1. Subject to the requirements of N.J.S.A. 10:5-13, requests for consolidation of cases pending before the Division with cases pending before OAL but involving the jurisdiction of other agencies shall be handled in accordance with N.J.A.C. 1:1.

13:4-11.1 Conciliation conference; notice; failure to attend

(a) After a finding of probable cause, the Director or his or her representative shall, to the extent feasible, schedule a conciliation conference and engage in conciliation with respect to the verified complaint, in accordance with N.J.S.A. 10:5-4.

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

(f) Any conciliation agreement arising out of conciliation efforts by the Division shall be an agreement between the respondent and the complainant, and shall be subject to the approval of the Division.

(g) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Division determines that disclosure is not required as otherwise provided by law and the Director in his or her discretion determines that disclosure is not appropriate.

13:4-12.1 When hearings ordered

(a) The Director shall determine when a hearing shall be necessary in any matter.

(b) When conciliation has failed to eliminate the alleged practices of discrimination or when, in the judgment of the Director, conciliation would not be feasible, the Director shall order a hearing.

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

13:4-12.4 Conduct of hearings

The procedure for conducting hearings, issuing initial decisions and issuing final orders shall be governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

CHAPTER 9
NEWSPAPER ADVERTISEMENT RELATING TO REAL PROPERTY

STATEMENT

It is a violation of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., for a newspaper to print, publish, circulate, issue or display any advertisement relating to real property *[and]* ***or*** public housing which is discriminatory on the basis of race, creed, color, national origin, ancestry, marital status, sex, nationality, handicap, affectional or sexual orientation or familial status. N.J.S.A. 10:5-12e, f, g(3), h(3). The law is couched in very broad terms and includes the prohibition of any ad for the sale, lease, rental, assignment or sublease of any real property which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, sex, nationality, handicap, affectional or sexual orientation or familial status. It is evident that newspapers may not publish in this State any advertisement which would aid such discrmination, when the content of the advertisement be overtly or subtly discriminatory.

In actual practice, such phrases as "integrated," "open to all," "everybody welcome," in newspaper ads of housing for sale or for rent, usually mean just the opposite of what they say. It is evident that these ads invariably are for homes or apartments in neighborhoods which are already segregated. The publishing of such ads helps to continue and to extend the segregation. A landlord or property owner who truly intends to rent or sell his or her property, without distinction based on race, is merely obeying the law and serves no honest purpose in proclaiming his or her law-abiding character (at so much per line) in a newspaper ad.

The burden of interpretation placed upon newspapers publishing or circulating in this State would be onerous without some clarification of the law's broad interdiction.

13:9-1.1 Discriminatory advertising regarding realty

(a) It shall be a violation of the Law Against Discrimination, N.J.S.A. 10:5-1 to 42, for any newspaper, published or circulated within this State, to print, publish, circulate, issue, display, utter or disseminate any advertisement regarding the sale, lease, sub-lease, rental assignment of any real property, which expresses, overtly or subtly, directly or indirectly, any limitation, or discrimination prohibited by the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

(b) (No change.)

13:13-1.1 Purpose

This chapter is designed to implement the Law Against Discrimination, N.J.S.A. 10:5-1 to 42 ("the act" or "the statute"), as it pertains specifically to discrimination on the basis of physical and mental handicap.

13:13-1.3 Definitions

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

"Covered multifamily dwellings" means *[multifamily dwellings as it is defined by]* ***buildings covered by the provisions of*** the Barrier-Free Subcode of the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq. and N.J.A.C. 5:23-7.

"Handicapped" as used in this chapter will have the same meaning as that term is given by N.J.S.A. 10:5-5(q). It is also unlawful to take any action prohibited by this chapter:

1. Because of a perception or belief that an individual suffers from a handicap, whether or not that individual is actually handicapped;

2. Because a person has been at any time handicapped; or

3. Because a handicapped person will be residing or intends to reside in a dwelling or because of the handicap of any person associated with a buyer or renter.

13:13-2.4 Pre-employment inquiries

(a) It shall be an unlawful practice for an employer, employment agency or labor organization to elicit or attempt to elicit, either verbally or through the use of an application form or request for documentation, any information which would tend to divulge the existence of a handicap or health condition, unless required or necessitated by Federal law or regulation. An employer, employment agency or labor organization may inquire whether an applicant is precluded from satisfactorily performing the job duties in question.

(b) It is not unlawful for an employer to invite applicants for employment to identify themselves as handicapped:

1. To satisfy the affirmative action requirements of Federal law;

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2. To implement a court ordered or other bona fide affirmative action plan to promote the employment of handicapped persons; or

3. To implement a special program which is designed to benefit handicapped persons when a condition for a person's participation in the program is that he or she is handicapped.

(c) Employers who request such information must observe requirement*s* under Section 503 of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., regarding the manner in which the information is requested and used, and the procedure for maintaining such information as a separate, confidential record, apart from regular personnel records.

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

13:13-3.1 Application

This subchapter on discrimination in real property applies to vendors and lessors of property and their agents, real estate brokers, agents and salespersons, lending institutions and other persons. For the purpose of this subchapter lending institutions include banks, building and loan associations, insurance companies and any other enterprise whose business consists in whole or in part in the making of commercial loans or other forms of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations.

13:13-3.2 Advertising and solicitation

(a) This section applies to real property, public housing and the rental of:

1. A single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence or the household of the owner's family at the time of such rental; and

2. A room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence or the household of the owner's or occupant's family at the time of such rental.

Recodify existing (a)-(c) as (b)-(d) (No change in text.)

13:13-3.3 Inquiries

It is unlawful for any person to make or cause to be made any written or oral inquiry or record concerning the handicap of any prospective purchaser, tenant or prospective occupant of any real property, or the handicap of any other person associated with a prospective purchaser, tenant or prospective occupant, unless such information is required by an agency of local, state or Federal government and the person states clearly that the information requested is intended for use solely by the government agency.

13:13-3.4 Sale or rental

(a) (No change.)

(b) It is unlawful for any person to misrepresent the price of real property listed for sale, rent or lease or to fail to communicate to the seller or lessor any offer made by a prospective buyer or lessor because the applicant or prospective occupant possesses a handicap, or because of the handicap of any other person associated with the applicant or prospective occupant.

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

(e) It is unlawful for any person to:

1. Refuse to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person full enjoyment of the premises, except that, in the case of a rental, the landlord may:

i. Where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

ii. Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations and, the interest in such account shall accrue to the benefit of the tenant; and

iii. Condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained; and

2. Refuse to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

(f) It is unlawful for any person to fail or refuse to rent to, or to impose different terms of tenancy upon, any handicapped individual because that individual is a recipient of Federal, state or local assistance, including medical assistance or housing subsidies.

13:13-3.5 *[Evication]* ***Eviction***

It is an unlawful act of discrimination for any person to evict a tenant because the tenant possesses a handicap, or because that person is associated with another person who possesses a handicap.

13:13-3.6 Financing

It is unlawful for any lending institution or person to discriminate against an individual seeking a loan or other form of financial assistance whether in the initial extension of credit or in the terms and conditions of the obligation because that individual or an intended occupant of real property possesses a handicap, or because that individual or intended occupant is associated with another person who possesses a handicap. An application for loans or other forms of financial assistance means and extends to the purchase of an existing property, the construction of new buildings and the rehabilition, repair or maintenance of existing property.

13:13-3.7 Covered multifamily dwellings

In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, it shall be unlawful to fail to design and construct dwellings which comply with the standards set forth in the Barrier-Free subcode of the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., and N.J.A.C. 5:23-7.

CHAPTER 15
HOUSING FOR OLDER PERSONS

SUBCHAPTER 1. GENERAL PROVISIONS

13:15-1.1 Purpose

The purpose of this chapter is to effectuate the exemption in the Law Against Discrimination, N.J.S.A. 10:5-1 to 42, and the Fair Housing Act, 42 U.S.C. §3601 et seq., that relates to housing for older persons.

13:15-1.2 Exemption

(a) The provisions regarding familial status in this chapter do not apply to housing which satisfies the requirements of N.J.A.C. 13:15-1.3, 1.4 or 1.5.

(b) Nothing in this chapter limits the applicability of any reasonable local or State restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

13:15-1.3 Elderly housing programs

The provisions regarding familial status in this chapter shall not apply to housing provided under any State program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the State program.

13:15-1.4 62 or over housing

(a) The provisions regarding familial status in this chapter shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

1. There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

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2. There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over; and

3. There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of (a) above:

Example 1: John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of a age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in 24 C.F.R. §100.304, as set forth by the Secretary of Housing and Urban Development to administer and enforce Title VIII of the Federal Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

Example 2: The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave Blueberry Hill to qualify for the "62 or over" exemption.

13:15-1.5 55 or over housing

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing satisfies the requirements of (b)1 or (b)2 below, and the requirements of (c).

(b) If either of the following requirements, and the requirements of (c) below, are satisfied, the provisions regarding familial status shall not apply to housing intended for occupancy *[buy]* ***by*** at least one person 55 years of age or older per unit:

1. The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care of programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

2. It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this paragraph, the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this paragraph:

i. Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable;

ii. The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale;

iii. The income range of the residents of the housing facility;

iv. The demand for housing for older persons in the relevant geographic area;

v. The range of housing choices for older persons within the relevant geographic area;

vi. The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this paragraph; and

vii. The vacancy rate of the housing facility.

(c) If the following requirements of this subsection, and of either (b)1 or 2 above, are satisfied, the provisions regarding familial status shall not apply to housing intended for occupancy by at least one person 55 years of age or older per unit:

1. At least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older per unit, except that a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this paragraph until 25 percent of the units in the facility are occupied; and

2. The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph:

i. The manner in which the housing facility is described to prospective residents;

ii. The nature of any advertising designed to attract prospective residents;

iii. Age verification procedures;

iv. Lease provisions;

v. Written rules and regulations; and

vi. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(d) Housing satisfies the requirements of this section even though:

1. On September 13, 1988, under 80 percent of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

2. There are unoccupied units, provided that at least 80 percent of such units are reserved for occupancy by at least one person 55 years of age or over.

3. There are units occupied by employees of the housing facility (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(e) The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty units are occupied by at least one person who is 55 years of age or older. Eighteen units are occupied exclusively by persons who are under 55. Among the units occupied by new occupants after September 13, 1988 were 18 units occupied exclusively by persons who are under 55. Two units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82 percent of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years or older. If John or Mary are accepted for occupancy, then 81 out of the 99 occupied units (82 percent) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption.

B. If only 78 out of the 98 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services specifically designed

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to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988, 67 percent of the Green Meadow's occupied units (600 out of 900) were occupied by at least one person 55 years of age or older. Under (d)1 above, Green Meadows qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80 percent of the occupied units of the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that were occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Under (d) above, Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80 percent of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility to be constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in (c)1 above that at least 80 percent of the occupied units be occupied by at least one person 55 years of age or older per unit until 50 units (25 percent) are occupied. When the 50th unit is occupied, then 80 percent of the 50 occupied units (that is, 40 units) must be occupied by *[a]* ***at*** least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF ARCHITECTS

Notice of Administrative Corrections
Board of Architects Rules
Definitions; Eligibility of Licensed Professional Engineer for Licensure as an Architect by Limited Examination; Fees
N.J.A.C. 13:27-3.1, 4.9 and 4.11

Take notice that the Board of Architects has discovered errors in the text of recently adopted new rules at N.J.A.C. 13:27, proposed at 26 N.J.R. 4952(a) and adopted effective February 21, 1995 at 27 N.J.R. 716(a).

A printing error in the publication of the adoption omitted text in the first sentence of the definition of " 'architectural services' or 'practice of architecture' " in N.J.A.C. 13:27-3.1. The original proposal document, PRN 1994-654, and the publication resulting therefrom, misspelled the Architect Registration Examination in N.J.A.C. 13:27-4.9 as "Architects Registration Examination." In N.J.A.C. 13:27-4.11(c)2i, the fee for an Initial Registration Certificate of Authorization fee, if paid in the first year of a biennial renewal period, was erroneously published in the proposal and adoption as "$50.00"; as stated in the proposal's Economic Impact, the fee was to remain unchanged from that in the former rule N.J.A.C. 13:27-5.8, which fee was $500.00. That this was the fee intended to be published by the Board can also be deduced from the $250.00 fee charged if paid in the second year of a biennial renewal period.

This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

13:27-3.1 Definitions

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

. . .

"Architectural services" **or "practice of architecture" means the rendering of any of the following services in connection with the design, construction**, enlargement, or alteration of a building or a group of buildings and the space within or surrounding those buildings, which have as their principal purpose human use or habitation. These services include site planning, providing preliminary studies, architectural designs, drawings, specifications, other technical documentation, and construction supervision for the purpose of determining compliance with construction documents.

. . .

13:27-4.9 Eligibility of licensed professional engineer for licensure as an architect by limited examination

A professional engineer licensed in the State of New Jersey in good standing, holding an accredited degree in engineering, and without restriction of complaint or charge of illegal practice of architecture shall be eligible for licensure upon successful completion of the following sections of the Architect[s] Registration Examination (ARE): Division A (Pre-Design); Division B (Site Design—Written and Graphic); and Division C (Building Design).

13:27-4.11 Fees

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

(c) Certificate of Authorization fees shall be as follows:

1. (No change.)

2. Initial registration

i. If paid in the first year of a biennial renewal period ..... [$50.00] **$500.00**

ii. (No change.)

3. (No change.)

TRANSPORTATION

(b)

DIVISION OF RIGHT OF WAY
BUREAU OF ACQUISITIONS

Copmensation of Condemnees for Income Loss Resulting from the Harvesting of Standing Crops
Adopted New Rules: N.J.A.C. 16:5

Proposed: March 6, 1995 at 27 N.J.R. 822(a).

Adopted: April 7, 1995 by W. Dennis Keck, Deputy Assistant Commissioner for Planning and Development.

Filed: April 21, 1995 as R.1995 d.252, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-22, 27:7-44.6 and 20:3-29.1.

Effective Date: May 15, 1995.

Expiration Date: May 15, 2000.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of this rulemaking are dictated by State statute and are not subject to Federal requirements or standards. The adopted new rules compensate owners for loss of income resulting from the harvesting of standing crops, in compliance with the provisions of N.J.S.A. 20:3-29.1.

Full text of the adoption follows:

CHAPTER 5
COMPENSATION OF CONDEMNEES FOR INCOME LOSS RESULTING FROM HARVESTING OF STANDING CROPS

SUBCHAPTER 1. GENERAL PROVISIONS

16:5-1.1 Purpose

The rules in this chapter govern compensation to owners for any loss of income resulting from the harvesting of standing crops.

16:5-1.2 Definitions

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

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"Condemnation" means the taking of private property for a public purpose under the power of eminent domain as prescribed by the Eminent Domain Act of 1971, N.J.S.A. 20:3-1, and the obtaining of title in fee or a lesser interest through a contract of sale or by the filing of a complaint under eminent domain.

"Department" means the New Jersey Department of Transportation.

"Owner" means the person or entity who holds title of record to the property or easement being condemned.

"Parcel" means the fee or lesser interest for which the Department has made an offer as reflected on a general property parcel map or an entire tract map as prepared by the Department.

"Property" or "real estate" means any interest in real estate including, but not limited to, the underlying fee interest, land, buildings, fixtures, leasehold, reparian rights and easements.

SUBCHAPTER 2. AGRICULTURAL OR HORTICULTURAL LAND

16:5-2.1 Authority

All provisions of this subchapter were adopted by the Commissioner of Transportation, pursuant to authority delegated at N.J.S.A. 20:3-29.1, which became effective July 17, 1986.

16:5-2.2 General provisions

The Department, in acquiring agricultural or horticultural land which is eligible for valuation, assessment and taxation under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., shall compensate the owner for any loss of income resulting from the interference of the acquisition with the harvesting of any standing crops or other agricultural commodities, in an amount determined according to their appropriate time of harvest and for the remainder of their average productive life, separate and apart from compensation for the fair market value of the land.

16:5-2.3 Eligibility requirements

To be considered eligible for compensation, a property must be eligible for valuation, assessment and taxation under the Farmland Assessment Act of 1964. Additionally, the property must be currently planted in crops and the condemnation proceedings must interfere with the harvesting of the crop. The Department, however, within its sole discretion, will allow the harvesting of a current annual crop or the current crop of a biannual or perennial crop, so long as such harvesting does not unreasonably interfere with or delay the construction of a project.

16:5-2.4 Valuation of standing crop income

The anticipated annual average income from the standing crop over its remaining average productive life will be developed for the Department by a qualified agricultural expert, as determined by the Department. The specialist will estimate the average remaining productive life of the crop, the average anticipated gross income from the impacted crop and the anticipated expenses related to harvest and sale of the produce. The net anticipated income from the crop over the average remaining productive life of the crop, if not an annual crop, will then be capitalized by the Department into a present value.

16:5-2.5 Procedure

(a) No compensation will be made where an annual crop has been harvested by the owner or anyone acting under contract with the owner, notwithstanding, that a declaration of taking has been filed and recorded.

(b) As to any claim for compensation under N.J.S.A. 20:3-29.1 for loss of crop income, the owner should file an application with the Division representative assigned to handle the negotiations for the parcel. The owner, at the time of application, shall provide all pertinent information regarding the claim, including photographs where available and a description of the crop.

(c) An inventory shall be taken before the Department takes possession of a parcel with standing crops or having agricultural commodities. The owner shall be afforded an opportunity to review the inventory prior to a value determination.

(d) Where the effect of the acquisition, if any, on the ability to harvest is known or can readily be ascertained, a crop valuation will be provided within 90 days of a completed application. However, where a determination as to crop loss cannot be reasonably made prior to execution of an agreement or the commencement of a condemnation proceeding, the owner's rights to such compensation, if any, shall be preserved until a determination can be made.

16:5-2.6 Condemnation

Offers of compensation tendered under this subchapter will not be considered a part of the valuation of the real property for the purpose of acquisition of the real property.

16:5-2.7 Appeals

The owner may appeal the Department's determination as to amount of, or eligibility for, payments under this subchapter, in accordance with N.J.A.C. 16:6-3.3.

SUBCHAPTER 3. ORGANIZATION AND PROCEDURES

16:5-3.1 Delegation of powers

The Division of Right of Way will be responsible for administering these rules and the attendant State law, on behalf of the Commissioner of Transportation.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Filing by Electronic Facsimile

Adopted Amendments: N.J.A.C. 19:25-8.6, 8.9, 8.10, 8.12, 9.3, 9.4 and 9.6

Proposed: March 20, 1995 at 27 N.J.R. 1161(a).

Adopted: April 21, 1995 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: April 21, 1995 as R.1995 d.253, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 19:44A-6.

Effective Date: May 15, 1995.

Expiration Date: October 1, 1995.

Summary of Public Comment and Agency Response:

COMMENT: An anonymous commenter suggested a spelling change, specifically that the word "fax" be written in lower case letters (that is, "fax") rather than in upper case letters (that is, "FAX").

RESPONSE: The Department agrees that the word "fax" should be spelled in lower case letters, and has made this technical change in the text.

Executive Order No. 27 Statement

The adopted amendments are not subject to any Federal standards or requirements, and accordingly a Federal exceedance analysis is not applicable to the rulemaking.

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

19:25-8.6 Contributions received immediately before an election

(a) (No change.)

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of receipt of the contribution, and shall be signed by the campaign treasurer or a candidate, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, *[FAX]* ***fax***) to file the report or written notice is permitted.

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19:25-8.9 Political committee contributions received immediately before an election

(a) (No change.)

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of receipt of the contribution, and shall be signed by the campaign treasurer, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, *[FAX]* ***fax***) to file the report or written notice is permitted.

19:25-8.10 Political committee expenditures made immediately before an election

(a) (No change.)

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of the making of the expenditure, and shall be signed by the campaign treasurer, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, *[FAX]* ***fax***) to file the report or written notice is permitted.

19:25-8.12 Time and place of filing reports

(a) An original and two copies of all reports required to be filed must be received at the Commission offices no later than 5:00 P.M. on the date the report is due for filing in order to be deemed timely filed. A report submitted by United States mail postmarked on or before a filing date but not received until after 5:00 P.M. of the date the report is due for filing will not be deemed timely filed. A report or written notice of contributions received immediately before an election made pursuant to N.J.A.C. 19:25-8.6 or 8.9, or a report or written notice of expenditures made immediately before an election pursuant to N.J.A.C. 19:25-8.10, may be filed by electronic facsimile transmission (that is, *[FAX]* ***fax***).

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

19:25-9.3 Contributions received immediately before an election

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

(d) The report or written notice described in (a) above shall be signed by the organizational treasurer, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, *[FAX]* ***fax***) to file the report or written notice is permitted.

19:25-9.4 Continuing political committee expenditures made immediately before a primary or general election

(a) (No change.)

(b) The report or written notice described in (a) above shall be signed by the organizational treasurer and filed with the Commission within 48 hours of the making, authorizing or incurring of the expenditure, or aggregate expenditures, except that all expenditures or aggregate expenditures made, incurred or authorized before 12:01 A.M. on the 13th day preceding the date of a primary or general election may be reported together on a report or written notice to be filed no later than the 11th day before that election. A report of an expenditure or aggregate expenditures in excess of $500.00 made, incurred or authorized on or after 12:01 A.M. on the 13th day preceding the date of a primary or general election shall be filed within 48 hours of receipt, and such a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, *[FAX]* ***fax***) to file the report or written notice is permitted.

19:25-9.6 Time and place of filing reports

An original and two copies of all reports required to be filed must be received at the Commission offices no later than 5:00 P.M. on the date the report is due for filing in order to be deemed timely filed. A report submitted by United States mail postmarked on or before a filing date but not received until after 5:00 P.M. of the date the report is due for filing will not be deemed timely filed. A report or written notice pursuant to N.J.A.C. 19:25-9.3 of contributions received immediately before an election, or a report or written notice pursuant to N.J.A.C. 19:25-9.4 of expenditures made immediately before an election, may be made by electronic facsimile transmission (that is, *[FAX]* ***fax***).

(a)

CASINO CONTROL COMMISSION

Applications

Readoption: N.J.A.C. 19:41

Proposed: February 21, 1995 at 27 N.J.R. 647(a).

Adopted: April 10, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: April 13, 1995 as R.1995 d.242, **without change.**

Authority: N.J.S.A. 5:12-63c, 69a, 70a-c, 70e, 89, 90, 91, 92, 93, 139 and 141.

Effective Date: April 13, 1995.

Expiration Date: April 13, 2000.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Casino Control Commission are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:41.

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Exclusion of Match Play Coupons from Cash Complimentary Limits

Adopted Amendment: N.J.A.C. 19:45-1.9B

Proposed: March 6, 1995 at 27 N.J.R. 848(a).

Adopted: April 19, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: April 24, 1995 as R.1995 d.254, **without change.**

Authority: N.J.S.A. 5:12-69(a), 70(g), 99(a)4 and 102(m).

Effective Date: May 15, 1995.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

COMMENT: Harrah's Atlantic City and the Division of Gaming Enforcement indicated that they support the proposal.

RESPONSE: Accepted.

COMMENT: TropWorld Casino and Entertainment Resort did not object to the proposal, but suggests that N.J.A.C. 19:45-1.9B(a)6 be amended to add the phrase "Match play coupons, other than those distributed to patrons pursuant to N.J.A.C. 19:45-1.46 and/or N.J.A.C. 19:45-1.9B." TropWorld believes that this would clarify the type of match play coupons that would be deemed to be complimentary cash gifts.

RESPONSE: Accepted in part, rejected in part. As TropWorld correctly notes, many match play coupons are generally exempt from the monetary limitations in N.J.A.C. 19:45-1.9B(g) and the reporting requirements in N.J.A.C. 19:45-1.9(e). However, even if exempt from such requirements, they are still deemed to be cash complimentaries.

The purpose of this proposal is simply to exempt a match play coupon from the cash complimentary amount limitation in N.J.A.C. 19:45-1.9B(g) if it is not otherwise exempt. Such a coupon would still be a cash complimentary, and must be reported pursuant to N.J.A.C. 19:45-1.9(e) unless otherwise exempt. Thus, TropWorld's proposed language is too broad.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this adoption are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

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19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) No casino licensee shall offer or provide, either directly or indirectly, any complimentary cash or noncash gift to any person or his or her guests except in accordance with the provisions of N.J.S.A. 5:12-102m and this section. For the purposes of this section, "complimentary cash or noncash gift" does not refer to any complimentary service or item which is provided pursuant to N.J.S.A. 5:12-102m(1) through (3), N.J.A.C. 19:45-1.9(f), 19:45-1.9(h) or 19:45-1.46. Complimentary cash gifts shall include, without limitation:

1.-3. (No change.)

4. Cash complimentaries issued to patrons as a result of actual gaming activity;

5. Cash complimentaries issued to participants in complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g), except as otherwise provided in this section; and

6. Match play coupons.

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

(h) Notwithstanding the provisions of (g) above, complimentary cash gifts which are provided to persons pursuant to complimentary incentive programs regulated by N.J.A.C. 19:45-1.9(f), complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g), direct mass marketing complimentary programs regulated by N.J.A.C. 19:45-1.9(h) or complimentary distribution programs regulated by N.J.A.C. 19:45-1.46 shall be governed by any limitations contained in those respective rules and shall not be subject to the annual limits specified in (g) above. Additionally, match play coupons shall not be subject to the annual limitations specified in (g) above.

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

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Notice of Receipt of Petition for Rulemaking Recertification of Individuals Certified to Perform Services on Regulated Underground Storage Tanks

Petitioner: Petroleum Equipment Contractors Association.

Take notice that on February 2, 1995, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the amendment of the Department's rules governing the recertification of individuals certified to perform services on regulated underground storage tanks. The recertification is governed by N.J.S.A. 58:10A-24.3(c) and 24.4.

Petitioner, the Petroleum Equipment Contractors Association ("PECA"), is an association of individuals certified to perform services on regulated underground storage tanks. A number of petitioner's members are certified through the "grandfather" provisions of N.J.S.A. 58:10A-23.3(c), and must pass a written examination administered by the Department to renew their certification.

Petitioner asks that the Department promulgate rules governing the recertification examination, providing for testing through practical demonstrations in the field and the dissemination of source materials to be relied upon by examination candidates.

(b)

DIVISION OF PARKS AND FORESTRY

Notice of Public Hearing Proposed Sale of Land Comprising Forked River State Marina

Take notice that the Department of Environmental Protection will hold **two public hearings** to seek comment on the proposed sale of State-owned land.

The Department of Environmental Protection proposes to sell the following property located in Forked River, Lacey Township, Ocean County: Block 230, Lots 1, 2, 18-20, 30, Block 233, Lots 1-6, 18, Block 235, Lot 5, Block 271, Lots 1, 9, 10.

Containing 14.63 Acres of which 4.12 Acres are flowed by the north branch of the Forked River, known as Forked River State Marina.

Forked River State Marina currently provides only berth rentals to the public at large. The channel marking unit of DEP also operates from this location. Although the Department has received no formal proposed operation plan from the buyers, it is anticipated that the facility will become a full service marina, providing boat maintenance, on land storage and the like. The purchaser has indicated a desire to lease the Aids to Navigation section back to the Department upon consummation of the sale.

The **public hearings** are scheduled as follows:

Friday, June 23, 1995 at 7:00 P.M.
Lacey Township
Court Room
Lacey Township Municipal Building
818 West Lacey Road
Forked River, New Jersey

Monday, July 10, 1995 at 4:30 P.M.
City of Trenton
New Jersey Department of Environmental Protection
Public Hearing Room
First Floor
401 East State Street
Trenton, New Jersey

Persons wishing to make oral presentations are asked to limit their comments to a five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing record will be kept open for the period of 14 days following the date of the public hearing for additional written comments.

Interested persons may submit written comments until August 4, 1995 to and request information from:

Gregory A. Marshall, Director
Division of Parks and Forestry
Department of Environmental Protection
CN 404
Trenton, NJ 08625

(c)

WATER SUPPLY ELEMENT

Notice of Availability of Loans Water Supply Rehabilitation and Interconnection Loan Programs

Take notice that the Department of Environmental Protection (Department) announces the availability of the following State loan funds:

A. Name of program: Water Supply Rehabilitation and Interconnection Loan Programs.

B. Authority: Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended, and the Water Supply Loan Programs Rules, N.J.A.C. 7:1A.

C. Purpose: The purpose of the Water Supply Rehabilitation and Interconnection Loan Programs is to provide financial assistance in the form of low-interest loans to local units for projects involving the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply facilities, and/or the interconnection of unconnected or inadequately connected water supply systems.

D. Amount of money in the program: To date, the Legislature has appropriated to the Department $100 million in bond funds from the Water Supply Fund to fund water supply rehabilitation projects, and has appropriated $8.068 million in bond funds to fund water supply interconnection projects. The Department will apply the uncommitted balance of these loan funds to projects for which it has received applications during all previous funding periods, up to and including the Fiscal Year 1994 application period. Because the Department estimates that the total amount of funding required to fund projects for which it has already received rehabilitation loan applications exceeds the uncommitted balance of rehabilitation loan funds by approximately $5.23 million, funding will not be available for the Fiscal Year 1995 rehabilitation loan applications without further legislative appropriations. Accordingly, the Department has submitted a request to the Legislature for an additional $20 million appropriation for rehabilitation loans. In addition, a balance of approximately $3.63 million will be available to fund the Fiscal Year 1995 interconnection loan applications. Any loans issued by the Department under these programs are subject to this appropriation and the availability of funds.

E. Individuals or organizations who may apply for funding under this program: Any political subdivision of the State or agency thereof may apply for a loan under these programs.

F. Qualifications needed by an applicant to be considered for the program: Loans awarded under the Water Supply Rehabilitation and Interconnection Loan Programs are governed by the Water Supply Loan Programs Rules at N.J.A.C. 7:1A. These rules define eligible rehabilitation and interconnection projects, prescribe procedures and standards for obtaining loans from these programs, and establish minimum standards of conduct for borrowers.

G. Procedures for potential applicants: Applications for water supply rehabilitation and interconnection loans may be requested from:

Philip Royer
Department of Environmental Protection
Water Supply Element
CN 426
Trenton, New Jersey 08625-0426
(609) 292-5550

Pursuant to N.J.A.C. 7:1A-2.3(a), all applicants must schedule an informal pre-application conference with the Water Supply Element

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prior to submitting a formal application for a water supply rehabilitation and/or interconnection loan.

H. Deadline by which applications must be submitted: Applications for funding during Fiscal Year 1995 must be submitted by June 30, 1995.

I. Date by which applicants will be notified of preliminary approval or disapproval: Within one month of submission, the Department will send applicants for water supply rehabilitation and interconnection loans a status letter regarding their applications.

(a)

OFFICE OF ENVIRONMENTAL PLANNING

Amendment to the Upper Raritan and Upper Delaware Water Quality Management Plans

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed amendment to the Upper Raritan and Upper Delaware Water Quality Management (WQM) Plans. This amendment, submitted by Washington Township Municipal Utilities Authority (WTMUA), would amend the Township of Washington, Morris County Wastewater Management Plan. A new wastewater treatment plant (WTP) discharging to the South Branch of the Raritan River is proposed. The facility will be owned and operated by the WTMUA and serve the Village Area of Long Valley and the Parker Acres area. The projected wastewater flow to be discharged is 243,993 gallons per day. The existing Old Farmer's Road School, Long Valley Middle School, and Long Valley Inn on-site ground water disposal systems will be abandoned and their flows conveyed to the proposed Long Valley Village WTP. Additionally, while no expansion of the WTMUA Schooley's Mountain WTP is proposed, modifications to the service area to delete some areas and add others are proposed.

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.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Raritan WQM Plan. All information relating to the WQM Plan, and the proposed amendment is located at the Department, Office of Environmental Planning, CN 418, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Environmental Planning at (609) 633-1179.

Interested persons may submit written comments on the amendment to Dr. Daniel J. Van Abs, Office of Environmental Planning, at the Department address cited above with a copy sent to Mr. Paul J. Costic, III, Executive Director, Washington Township Municipal Utilities Authority, P.O. Box 226—46 E. Mill Road, Long Valley, New Jersey 07853. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Department with respect to the amendment request.

Any interested person may request in writing that the Department hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Dr. Van Abs at the Department address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

OFFICE OF ENVIRONMENTAL PLANNING

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed amendment to the Monmouth County Water Quality Management (WQM) Plan. The proposed amendment was submitted on behalf of the Rojen, Incorporated Commercial Center located on the southwest corner of Route 34 and Route 537 (Block 46, Lots 13 and 14) in the Township of Colts Neck. The 41,777 square foot proposed commercial center would contain retail and medical office uses in an existing "B" Business Zone District. The proposed New Jersey Pollutant Discharge Elimination System (NJPDES) permitted facility anticipates a wastewater flow of 5,222 gallons per day (gpd) from an on-site sewage treatment system with discharge to ground water. The proposed site would be identified in the Township of Colts Neck Wastewater Management Plan as a "Proposed Service Area Served By On-Site Treatment Facilities With Ground Water Disposal (less than 20,000 gpd)". The proposed amendment would also identify the correct location of the Delicious Orchards site (Block 46, Lot 15) on the Township of Colts Neck Wastewater Management Plan Existing and Proposed Service Areas Map PLATE I.

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.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Department, Office of Environmental Planning, CN 418, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Environmental Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the Department address cited above with a copy sent to Mr. Peter S. Wersinger III, Heffernan & Wersinger, 4 Truman Drive, Marlboro, New Jersey 07746. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Department with respect to the amendment request.

Any interested persons may request in writing that the Department hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Dr. Van Abs at the Department address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HUMAN SERVICES

(c)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Action on Petition for Rulemaking

Petitioner: Monmouth Medical Center, by Frank Ciesla, Esq., Giordano, Halleran & Ciesla, PC.

Take notice that on March 23, 1995, the New Jersey Department of Human Services received a Petition for Rulemaking concerning N.J.A.C.

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10:52-1.1, 8.2, the rules for Hospital reimbursement. (See notice of receipt of petition in the May 1, 1995 New Jersey Register.) Petitioner is Giordano, Halleran & Ciesla, a law firm representing Monmouth Medical Center.

The petitioner requested that the New Jersey Department of Human Services amend N.J.A.C. 1:52-1.1 to include a definition of non-Federal payors to mean all third party payors except for Medicare, Medicaid and the CHAMPUS program. The petitioner also requested that the New Jersey Department of Human Services amend N.J.A.C. 10:52-8.2(d) to base hospitals' eligibility for, and payment amount from, the Hospital Relief Subsidy Fund (HRSF) upon the most recent hospital data available.

In response to the petition for rulemaking, pursuant to N.J.A.C. 1:30-3.6(c), the Department of Human Services (the Department), through the Division of Medical Assistance and Health Services (the Division) has filed a rule pre-proposal pursuant to N.J.A.C. 1:30-3.2 with the Office of Administrative Law. The pre-proposal is published elsewhere in this issue of the New Jersey Register.

The notice of pre-proposal contains provisions for both written comments and an informal conference pursuant to N.J.A.C. 1:30-3.2(c)4i and ii.

The pre-proposal is designed to solicit public comment on changing the methodology for the payments from the Hospital Relief Fund (HRSF). Because the petitioner has raised valid concerns about the existing rules (N.J.A.C. 10:52- 1.1 and 8.2(d)), the Division believes it should solicit comments from the public and other interested parties prior to initiating a formal rule proposal.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department/Division will mail to the petitioner a copy of the Notice of Action on the petition which was filed with the Office of Administrative Law. A copy of the pre-proposal will also be sent to the petitioner.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Notice of Receipt of Petition for Rulemaking Medical Fee Schedules: Automobile Insurance Personal Injury Protection and Motor Bus Medical Expense Insurance Coverage N.J.A.C. 11:3-29.6

Petitioners: New Jersey Dental Association and Henry W. Finger, D.D.S.

Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 1:30-3.6 and 11:1-15.

Take notice that on April 17, 1995, the Department of Insurance (Department) received a petition for rulemaking from the New Jersey Dental Association and Henry W. Finger, D.D.S., requesting that the Department amend the Medical Fee Schedule for dental services set forth at N.J.A.C. 11:3-29.6(b) by substantially increasing the fees.

The petition alleges that a medical fee schedule for dental services was adopted effective January 15, 1991, and although more than four years have elapsed since adoption, the schedule for dental services has not been revised.

The petition further alleges that almost all fees listed in the present dental fee schedule are below the 75th percentile and that many of the fees fall between the 25th and 50th percentiles, and that some even fall below the 25th percentile. N.J.S.A. 39:6A-4.6 provides, in pertinent part, that the fee schedules "shall incorporate the reasonable and prevailing fees of 75% of the practitioners within the region" and "shall be reviewed biannually [twice a year] by the Commissioner." The petitioners maintain that "if fees incorporated in the dental fee schedule are below the reasonable and prevailing fees of 75% of the practitioners in each applicable region, then dentists are being regularly and unfairly underpaid on a daily basis."

The New Jersey Dental Association is a membership organization which represents approximately 70 percent of all New Jersey dentists. Dr. Henry W. Finger is a dentist practicing in the State of New Jersey and is subject to the dental fee schedule.

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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 April 3, 1995 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.1995 d.1 means the first rule filed for 1995.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MARCH 20, 1995

NEXT UPDATE: SUPPLEMENT APRIL 17, 1995

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
26 N.J.R. 1739 and 1904	May 2, 1994	26 N.J.R. 4471 and 4720	November 21, 1994
26 N.J.R. 1905 and 2166	May 16, 1994	26 N.J.R. 4721 and 4856	December 5, 1994
26 N.J.R. 2167 and 2510	June 6, 1994	26 N.J.R. 4857 and 5138	December 19, 1994
26 N.J.R. 2511 and 2692	June 20, 1994	27 N.J.R. 1 and 262	January 3, 1995
26 N.J.R. 2693 and 2828	July 5, 1994	27 N.J.R. 263 and 410	January 17, 1995
26 N.J.R. 2829 and 3102	July 18, 1994	27 N.J.R. 411 and 606	February 6, 1995
26 N.J.R. 3103 and 3230	August 1, 1994	27 N.J.R. 607 and 790	February 21, 1995
26 N.J.R. 3231 and 3504	August 15, 1994	27 N.J.R. 791 and 966	March 6, 1995
26 N.J.R. 3505 and 3780	September 6, 1994	27 N.J.R. 967 and 1336	March 20, 1995
26 N.J.R. 3781 and 3916	September 19, 1994	27 N.J.R. 1337 and 1502	April 3, 1995
26 N.J.R. 3917 and 4120	October 3, 1994	27 N.J.R. 1503 and 1712	April 17, 1995
26 N.J.R. 4121 and 4244	October 17, 1994	27 N.J.R. 1713 and 1832	May 1, 1995
26 N.J.R. 4245 and 4470	November 7, 1994	27 N.J.R. 1833 and 2028	May 15, 1995

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.2, 14.10, 14.14	Conduct of contested cases: fines for misconduct	27 N.J.R. 609(a)		
1:1-19.1	Settlements	27 N.J.R. 1343(a)		
1:7A	Department of Environmental Protection cases	26 N.J.R. 4124(a)	R.1995 d.184	27 N.J.R. 1399(a)
1:7A-1.1, 8.1	Department of Environmental Protection Cases: public hearing and extension of comment period	26 N.J.R. 4863(a)		
1:30-1.2, 3.1, 4.1	Agency rulemaking: Federal standards	27 N.J.R. 414(a)		
1:30-1.9	Agency rulemaking: document copying fees	27 N.J.R. 416(a)		
Most recent update to Title 1: TRANSMITTAL 1995-1 (supplement March 20, 1995)				
AGRICULTURE—TITLE 2				
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)	R.1995 d.199	27 N.J.R. 1399(b)
2:24	Diseases of bees	27 N.J.R. 5(a)	R.1995 d.200	27 N.J.R. 1400(a)
2:32-2.22	Sire Stakes Program: qualifying standards	27 N.J.R. 969(a)		
2:33	Agricultural fairs	27 N.J.R. 610(a)	R.1995 d.226	27 N.J.R. 1791(a)
2:52	Milk processors, dealers and subdealers	27 N.J.R. 1343(a)		
2:69-1.11	Commercial values of primary plant nutrients	27 N.J.R. 1344(a)		
2:76-3.3, 3.5, 3.6, 3.9, 3.10, 3.12	Creation of farmland preservation programs	27 N.J.R. 8(a)		
2:76-4.3, 4.5, 4.6, 4.9, 4.11	Creation of municipally approved farmland preservation programs	27 N.J.R. 10(a)		
2:76-6.2, 6.5, 6.6, 6.7, 6.9–6.18B	Acquisition of development easements	27 N.J.R. 13(a)		
2:90	State Soil Conservation Committee: soil erosion and sediment control; farmland preservation project cost-sharing	27 N.J.R. 1506(a)		
Most recent update to Title 2: TRANSMITTAL 1995-2 (supplement February 21, 1995)				
BANKING—TITLE 3				
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-6.7	Failure to pay license fees and examination charges	27 N.J.R. 20(b)	R.1995 d.208	27 N.J.R. 1576(a)
3:2	Advertising by banking institutions	27 N.J.R. 1715(a)		
3:2-1.2, 1.3, 1.4	Disclosures and advertising of accounts	27 N.J.R. 793(a)		
3:7-4	Disclosures and advertising of accounts	27 N.J.R. 793(a)		
3:11-7.8	Lending limitations of banks	27 N.J.R. 794(a)	R.1995 d.245	27 N.J.R. 1967(a)
3:18-10.5	Failure to pay license fees and examination charges	27 N.J.R. 20(b)	R.1995 d.208	27 N.J.R. 1576(a)
3:23-2.1	Check cashing businesses	26 N.J.R. 4863(b)	R.1995 d.189	27 N.J.R. 1442(c)
3:24	Check cashing businesses	26 N.J.R. 4863(b)	R.1995 d.189	27 N.J.R. 1442(c)
3:38-1.6	Failure to pay license fees and examination charges	27 N.J.R. 20(b)	R.1995 d.208	27 N.J.R. 1576(a)
3:38-1.9	Branch office fee for mortgage bankers and brokers	27 N.J.R. 1507(a)		
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3:41-5.1, 6.1	New Jersey Cemetery Board: monuments	27 N.J.R. 1507(b)		
Most recent update to Title 3: TRANSMITTAL 1995-2 (supplement March 20, 1995)				
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Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)				

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4A:2-3.1	Performance evaluations	26 N.J.R. 3509(a)		
4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
4A:8	Layoffs	27 N.J.R. 482(a)		
4A:8	Layoffs	27 N.J.R. 612(a)	R.1995 d.251	27 N.J.R. 1967(b)
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5:2	Organization of the Department	Exempt	R.1995 d.186	27 N.J.R. 1404(a)
5:2-2	Petitions for rules	27 N.J.R. 1715(b)		
5:10-1.10	Maintenance of hotels and multiple dwellings: inspections	27 N.J.R. 1345(a)		
5:14-1.4, 3.4–3.7, App. B, C, D, E	Neighborhood Preservation Balanced Housing Program	27 N.J.R. 1508(a)		
5:16	Local Housing Authority and Municipal Redevelopment Agency Training Program	26 N.J.R. 4867(a)		
5:17	Lead Hazard Evaluation and Abatement Code	27 N.J.R. 970(a)		
5:18-2.11A	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:22-1	Urban enterprise zone municipalities: exemptions from taxation for residential new construction, improvement and conversion	27 N.J.R. 794(b)	R.1995 d.256	27 N.J.R. 1977(a)
5:23-1.4, 2.4, 2.7, 2.14, 2.15, 2.17A, 2.23, 4.18, 4.20	Lead Hazard Evaluation and Abatement Code	27 N.J.R. 970(a)		
5:23-2.9, 2.34–2.37, 4.40	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:23-2.14, 4.18, 4.20	Uniform Construction Code: training for annual permit holders	27 N.J.R. 1716(a)		
5:23-3.9	Uniform Construction Code Element: issuance of bulletins	27 N.J.R. 1512(a)		
5:23-3.14	Uniform Construction Code: building subcode	27 N.J.R. 1717(a)		
5:23-3.14, 7	Barrier Free Subcode: correction of public hearing date	26 N.J.R. 3524(a)		
5:23-2.20, 4.5	Uniform Construction Code: heating equipment installation	27 N.J.R. 619(a)		
5:24	Condominium, fee simple and cooperative conversion and mobile home park retirement	27 N.J.R. 1718(a)		
5:27	Rooming and boarding houses	27 N.J.R. 1346(a)		
5:71	County offices on aging	27 N.J.R. 1719(a)		
5:80	New Jersey Housing and Mortgage Finance Agency rules	27 N.J.R. 265(a)	R.1995 d.247	27 N.J.R. 1977(b)
5:80-33	Housing and Mortgage Finance Agency: low income housing tax credit qualified allocation plan	27 N.J.R. 986(a)		
5:100	Office of the Ombudsman for the Institutionalized Elderly: practice and procedure	27 N.J.R. 1348(a)		
Most recent update to Title 5: TRANSMITTAL 1995-3 (supplement March 20, 1995)				
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Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)				
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6:28-2.10, 4.2	Special Education: least restrictive environment; program options	27 N.J.R. 416(c)	R.1995 d.228	27 N.J.R. 1792(a)
6:68	State Library assistance programs	27 N.J.R. 620(a)		
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7:1C	Ninety-day construction permits	27 N.J.R. 998(a)		
7:1C-1.5	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:1H	County Environmental Health Act rules: pre-proposal	26 N.J.R. 3526(a)		
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7:1H	County environmental health standards: administrative procedure and performance	27 N.J.R. 1720(a)		
7:1L	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:2-17.1	State Park Service: Spring Meadow Golf Course fees	———	———	27 N.J.R. 1404(b)
7:7-1.3, 2.1, 2.2, 2.3, 4.2, 4.4–4.7, 4.10, 5.1, 7.1–7.4, App.	Coastal Permit Program	27 N.J.R. 1005(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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7:7E	Coastal zone management	27 N.J.R. 417(a)		
7:9	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:9B	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:10-15.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:11-2.2, 2.3, 2.4, 2.10, 2.12	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System: sale of water	26 N.J.R. 4907(a)		
7:11-4.3, 4.4, 4.9, 4.13	Manasquan Reservoir Water Supply System: sale of water	26 N.J.R. 4910(a)		
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7:14A	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A-1.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
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7:14B-3.9	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:15	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:19-3.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:20	Dam safety standards	27 N.J.R. 795(a)		
7:22	Financial assistance programs for wastewater treatment facilities	27 N.J.R. 1536(a)		
7:25-4.18	Endangered and Nongame Species Advisory Committee: term limitations requirement	27 N.J.R. 797(a)		
7:25-18.1	Recreational summer flounder season: administrative change	_____	_____	27 N.J.R. 1793(a)
7:25-18.5, 18.12, 18.14	Marine fisheries: administrative corrections	_____	_____	27 N.J.R. 1794(a)
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7:25A	Oyster management and harvest	27 N.J.R. 798(a)	R.1995 d.250	27 N.J.R. 1979(a)
7:26-1.4, 3.4, 3.6, 4.3, 4.7	Solid waste management: intermodal container facilities	27 N.J.R. 801(a)		
7:26-3A.1, 4.1, 4A.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:26A-2.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:26B-1.10	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:26C	Contaminated sites remediation: Oversight Cost Formula rates	_____	_____	27 N.J.R. 1580(a)
7:27-8.1, 16.1, 17.1, 19.1, 21.1, 22.1, 23.2, 25.1	Definition of volatile organic compound: administrative correction	_____	_____	27 N.J.R. 1406(a)
7:27-8.11	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17, 16.18	Control and prohibition of air pollution by volatile organic compounds	26 N.J.R. 4478(a)	R.1995 d.255	27 N.J.R. 1979(b)
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)	R.1995 d.214	27 N.J.R. 1581(a)
7:27-22	Air pollution control: facility operating permits	27 N.J.R. 1040(a)		
7:27-22.1, 22.31	Air Quality Regulation Program: facility operating permit fees	27 N.J.R. 22(b)		
7:27-24	Volatile organic compounds: control and prohibition from consumer and commercial products	27 N.J.R. 1077(a)		
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7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-26	Low Emission Vehicles Program: extension of comment period	26 N.J.R. 4482(a)		
7:27A-3.2	Definition of volatile organic compound: administrative correction	_____	_____	27 N.J.R. 1406(a)
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)	R.1995 d.214	27 N.J.R. 1581(a)
7:27B-3.1	Definition of volatile organic compound: administrative correction	_____	_____	27 N.J.R. 1406(a)

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7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:28-48.7	Registration fees for non-ionizing radiation producing sources: administrative correction	27 N.J.R. 498(b)		
7:29	Noise control	27 N.J.R. 1091(a)		
7:30-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:31-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:50-2.11, 3, 4, 5, 6.23, 6.84, 6.156, 7.3	Pinelands Comprehensive Management Plan revisions	27 N.J.R. 1557(a)		
7:50-6.48	Pinelands Comprehensive Management Plan: administrative correction regarding source discharges	———	———	27 N.J.R. 1410(a)
7:50-9	Pinelands Comprehensive Management Plan: acquisition of properties with limited practical use	27 N.J.R. 1572(a)		
7:62	Landscape irrigation contractors	27 N.J.R. 1098(a)		

Most recent update to Title 7: TRANSMITTAL 1995-3 (supplement March 20, 1995)

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8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:7-1.11–1.18	Licensure of persons for public health positions	27 N.J.R. 267(a)		
8:19	Newborn Screening Program	27 N.J.R. 807(a)		
8:20	Birth Defects Registry	27 N.J.R. 269(a)	R.1995 d.182	27 N.J.R. 1410(b)
8:33P	Designation of Level I and II trauma centers: certificate of need requirements	27 N.J.R. 1350(a)		
8:41-8.1, 10.1	Approved drug formulary for mobile intensive care units	27 N.J.R. 808(a)		
8:43E	Health care facilities: enforcement of licensure standards	26 N.J.R. 4527(a)	R.1995 d.198	27 N.J.R. 1411(a)
8:43G-5.1, 5.2	Hospital licensing standards: administrative change regarding smoke-free policy	———	———	27 N.J.R. 1615(a)
8:43G-6.3	Hospital licensing standards: administrative correction regarding anesthesia administration	———	———	27 N.J.R. 1800(a)
8:44	Operation of clinical laboratories	27 N.J.R. 626(a)	R.1995 d.239	27 N.J.R. 1985(a)
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:57	Communicable diseases	27 N.J.R. 420(a)	R.1995 d.240	27 N.J.R. 1987(a)
8:57-4	Immunization of children attending schools and preschool facilities	27 N.J.R. 270(a)	R.1995 d.201	27 N.J.R. 1417(a)
8:57-4.13	Rubella vaccination of children: administrative correction	———	———	27 N.J.R. 1801(a)
8:57-5	Confinement of persons with tuberculosis	26 N.J.R. 3236(a)		
8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
8:57-6	Hepatitis Inoculation Fund (recodified as 8:57B)	27 N.J.R. 28(a)	R.1995 d.207	27 N.J.R. 1615(b)
8:57A	Cancer Registry	27 N.J.R. 629(a)	R.1995 d.241	27 N.J.R. 1988(a)
8:60	Asbestos licenses and permits	27 N.J.R. 71(a)	R.1995 d.193	27 N.J.R. 1465(a)
8:60-2.1	Asbestos licenses and permits: administrative corrections	———	———	27 N.J.R. 1806(a)
8:66	Repeal (see 8:66A)	27 N.J.R. 274(a)	R.1995 d.183	27 N.J.R. 1420(a)
8:66A	Intoxicated Driving Program	27 N.J.R. 274(a)	R.1995 d.183	27 N.J.R. 1420(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(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 (see 26 N.J.R. 2025(b), 2901(a), 3715(b), 4387(a))	26 N.J.R. 1190(b)	R.1995 d.31	27 N.J.R. 355(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a), 4388(a))	26 N.J.R. 1821(a)	R.1995 d.33	27 N.J.R. 357(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b), 4388(b), 27 N.J.R. 355(b))	26 N.J.R. 1822(a)	R.1995 d.178	27 N.J.R. 1300(a)
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8:71	Interchangeable drug products	26 N.J.R. 4288(a)	R.1995 d.39	27 N.J.R. 351(b)
8:71	Interchangeable drug products	26 N.J.R. 4293(a)	R.1995 d.30	27 N.J.R. 354(a)
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9:4-1.9, 5, 6, 7	Community colleges: policies and procedures (recodify as 9A:7-1.1, 2, 3, 4)	27 N.J.R. 1388(a)		
9:5-1	Repeal (see 9A:5)	27 N.J.R. 1727(a)		
9:6	State colleges	27 N.J.R. 1392(a)		
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9:6A	State college personnel (recodify as 9A:6)	27 N.J.R. 1395(a)		
9:11	EOF Program (recodify as 9A:11)	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)
9:12	EOF Program (recodify as 9A:12)	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)
9A:5	Tuition residency requirements	27 N.J.R. 1727(a)		
9A:11	Educational Opportunity Fund Program	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)
9A:12	Educational Opportunity Fund Program	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)

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10:19	Manual of Standards for Juvenile Detention Facilities	27 N.J.R. 1101(a)		
10:37-5.28–5.34	Repeal (see 10:37E)	26 N.J.R. 3608(a)		
10:37-5.46–5.51	Repeal (see 10:37F)	26 N.J.R. 4547(a)		
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
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10:46A	Family Support Service System: administrative correction and extension of comment period	26 N.J.R. 3610(a)		
10:46C	Division of Developmental Disabilities: waiting list procedures for community services	26 N.J.R. 1752(a)	R.1995 d.197	27 N.J.R. 1652(a)
10:49-7.3	Medicaid program: third party liability benefits	27 N.J.R. 1512(b)		
10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)		
10:49-19	Repeal (see 10:74)	27 N.J.R. 853(a)		
10:51-1.11, 1.12	Pharmaceutical Services Manual: Medicaid coverage of non-legend drugs provided to children and adolescents	27 N.J.R. 1104(a)		
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52	Hospital Services Manual	26 N.J.R. 4551(a)	R.1995 d.123	27 N.J.R. 1660(a)
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10:55	Medicaid program: Prosthetic and Orthotic Services Manual	26 N.J.R. 4979(a)	R.1995 d.185	27 N.J.R. 1446(a)
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
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10:121	Division Youth and Family Services: standards regarding adoptions	27 N.J.R. 1122(a)		
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10:123	Social Services Program for Individuals and Families	27 N.J.R. 1123(a)		
10:125	Division of Youth and Family Services: capital funding program for community-based facilities	27 N.J.R. 431(a)		
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10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
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10:133F	Division of Youth and Family Services: collection of support monies and government benefits	27 N.J.R. 865(a)		
10:133G	Division of Youth and Family Services: client information	27 N.J.R. 38(a)		
10:133I	Division of Youth and Family Services: reasonable efforts; reasonable and diligent efforts; necessary activities to achieve a case goal	27 N.J.R. 433(a)		

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10A:31	Adult county correctional facilities	27 N.J.R. 1728(a)		
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11:21-2.5	Small Employer Health Benefits Program: public hearing on Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(b)		
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13:62	Division of State Police: motor vehicle race track rules	27 N.J.R. 445(a)	R.1995 d.206	27 N.J.R. 1622(a)

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13:70-6.5, 6.58	Thoroughbred racing: coupled horses; limitation of entries by trainers	27 N.J.R. 464(a)		
13:70-9.29, 9.31	Thoroughbred racing: apprenticed jockey weight allowances	27 N.J.R. 643(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)		
13:70-29.50	Thoroughbred racing: Daily Triple	27 N.J.R. 306(a)	R.1995 d.211	27 N.J.R. 1642(a)
13:71-16.5, 16.12	Harness racing: entries; limitations of entries by trainers	27 N.J.R. 466(a)		
13:71-19.6	Harness racing: safety vests	26 N.J.R. 4482(b)	R.1995 d.203	27 N.J.R. 1440(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)		
13:71-27.54	Harness racing: Daily Triple	27 N.J.R. 306(b)	R.1995 d.212	27 N.J.R. 1643(a)
13:75-1.5	Violent Crimes Compensation Board: victim counseling referral	27 N.J.R. 307(a)	R.1995 d.216	27 N.J.R. 1808(a)
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	27 N.J.R. 307(b)	R.1995 d.217	27 N.J.R. 1808(b)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for loss of earnings	27 N.J.R. 1527(a)		
13:75-1.27	Violent Crimes Compensation Board: award of additional counseling sessions	27 N.J.R. 467(a)	R.1995 d.210	27 N.J.R. 1643(b)
13:75-1.28	Violent Crimes Compensation Board: secondary victim eligibility	27 N.J.R. 1528(a)		
13:82-3.18	Boat Regulation Commission: personal flotation devices requirement on Round Valley Reservoir	27 N.J.R. 1144(b)		
13:82-8.6, 8.13, 8.19, 9.1	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:85	Motorcycle Safety Education Program	27 N.J.R. 1145(a)		
13:86	Drunk Driving Enforcement Fund	27 N.J.R. 1367(a)		

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14:11-8	Natural gas (recodify as 14:7-1)	27 N.J.R. 870(a)		
14:18	Cable television	27 N.J.R. 873(a)		
14:33	Energy Facility Review Board	26 N.J.R. 4484(a)		
14:34	Periodic reporting of energy information by energy industries	26 N.J.R. 4484(b)		

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16:5	Compensation to owners for income loss resulting from harvesting of standing crops	27 N.J.R. 822(a)	R.1995 d.252	27 N.J.R. 2009(a)
16:23	Railroads: track safety and service requirements	27 N.J.R. 1155(a)		
16:28-1.6	School zone along U.S. 40 in Buena Vista	27 N.J.R. 1528(b)		
16:28-1.42	Speed limit zones along Route 152 in Somers Point City and Egg Harbor Township	27 N.J.R. 1369(a)		
16:28-1.64	Speed limit zone along Grove Street-Haddonfield Road-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(a)	R.1995 d.219	27 N.J.R. 1808(c)
16:28-1.65	Speed limit zone along Penn Avenue-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(b)	R.1995 d.221	27 N.J.R. 1809(a)
16:28-1.71	Speed limit zone along Park Boulevard-Route 70 connector ramp in Cherry Hill	27 N.J.R. 469(a)	R.1995 d.220	27 N.J.R. 1809(b)
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.82	Speed limit zone along Route 129 in Hamilton Township and Trenton	27 N.J.R. 1764(a)		

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16:28A-1.21	Restricted parking and stopping along U.S. 130 in Hammonton	27 N.J.R. 1530(b)		
16:28A-1.41	Restricted parking and stopping along Route 77 in Bridgeton	27 N.J.R. 1530(a)		
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood	27 N.J.R. 823(a)		
16:28A-1.51	Restricted parking and stopping along Route 168 in Audubon Park	27 N.J.R. 1531(a)		
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township: administrative correction and extension of comment period	26 N.J.R. 4487(a)		
16:28A-1.69	Parking restrictions on Route 124 in Springfield	27 N.J.R. 1765(a)		
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)		
16:30-3.16	Left turn only lane on U.S. 206 in Lawrence Township	27 N.J.R. 1156(a)		
16:30-5.4	Traffic and parking restrictions at DOT Regional 1 Facility	27 N.J.R. 824(a)		
16:30-7.3	Bicycle use along Route 55 Freeway in Cumberland, Salem and Gloucester counties	27 N.J.R. 1766(a)		
16:30-10.17	Midblock crosswalk on Route 45 in Salem	27 N.J.R. 1766(b)		
16:30-11.3	Traffic and parking restrictions at I-295 scenic overlook in Hamilton Township	27 N.J.R. 825(a)		
16:31-1.22	Turn prohibition on U.S. 130 in Mansfield Township	27 N.J.R. 826(a)		
16:31-1.37	Turn prohibitions along Route 70 in Cherry Hill	27 N.J.R. 643(b)	R.1995 d.222	27 N.J.R. 1809(c)
16:41B	Newspaper boxes on State highway right-of-way	27 N.J.R. 1157(a)		
16:41D	Motorist service signing for non-urban Interstate and limited access highways	27 N.J.R. 1369(b)		
16:43	Junkyards adjacent to the Interstate and national highway systems	27 N.J.R. 644(a)	R.1995 d.229	27 N.J.R. 1810(a)
16:50	Employer Trip Reduction Program	27 N.J.R. 827(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		

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17:12	Purchase Bureau rules: extension of comment period	26 N.J.R. 4166(a)		
17:13	Goods and services contracts for small businesses and female and minority businesses	27 N.J.R. 52(a)	R.1995 d.224	27 N.J.R. 1811(b)
17:14	Minority and female contractor and subcontractor participation in State construction contracts	27 N.J.R. 54(a)	R.1995 d.225	27 N.J.R. 1814(a)
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18:7-3.21	Corporation Business Tax: manufacturing equipment and employment investment credit	27 N.J.R. 838(a)		
18:7-3.22	Corporation Business Tax: new jobs investment credit	27 N.J.R. 840(a)		
18:7-3.23	Corporation Business Tax: research credit	27 N.J.R. 842(a)		
18:7-13.1, 13.8	Corporation Business Tax: assessment and reassessment; claims for refund	27 N.J.R. 645(a)		
18:22-5.5, 11.12, 14	Public Utility Tax: expression of tax rates; Municipal Purposes Tax Assistance Fund	27 N.J.R. 473(a)	R.1995 d.195	27 N.J.R. 1441(a)
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18:35-1.14, 1.25	Gross Income Tax: partners and partnerships	27 N.J.R. 475(a)		
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19:25-8.6, 8.9, 8.10, 8.12, 9.3, 9.4, 9.6	Filing of 48-hour notices by electronic facsimile transmission	27 N.J.R. 1161(a)	R.1995 d.253	27 N.J.R. 2010(a)
19:61-6.4	Executive Commission on Ethical Standards: attendance by State official at event sponsored by interested party	27 N.J.R. 1376(a)		

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19:41-1.5A	Super Pan 9	27 N.J.R. 648(a)		
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-5.13, 5.14, 7.1A, 12.1–12.12	Labor Organization Registration Statement and Labor Organization Individual Disclosure Form	27 N.J.R. 1165(a)		
19:41-5.15	Junket enterprise and casino service industry licensure: Business Entity Disclosure Form—Gaming	27 N.J.R. 1533(b)		
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)		
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