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VOLUME 27 NUMBER 8

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(Includes adopted rules filed through March 24, 1995)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 21, 1995
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MARCH 20, 1995

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **May 17, 1995.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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RULE ADOPTIONS

PUBLIC NOTICES

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NEW JERSEY REGISTER

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

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 32(1995)
Elimination of Vacancy Review Board

Issued: February 23, 1995.
Effective: February 23, 1995.
Expiration: Indefinite.

WHEREAS, Executive Order No. 10, issued on July 13, 1982, established the Vacancy Review Board, consisting of the Commissioner of the Department of Personnel, the State Treasurer, and a representative from the Governor's Office; and

WHEREAS, in light of budgetary constraints, it is necessary to fully inventory and review all vacancies, including those created by resignation, transfer and disciplinary removal as well as retirement; and

WHEREAS, a more informed determination regarding the continued usefulness of a particular position can be made by the department in which the position has become available;

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 Vacancy Review Board is hereby eliminated.
2. Executive Order No. 10(1982) is rescinded.
3. Each department shall assume the functions previously performed by the Vacancy Review Board, including a review of all positions that become available in that department to determine whether the positions should be refilled at the current level, downgraded, or left vacant.
4. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 33(1995)
Modifications to Executive Order No. 21(1994)
Governor's Employee Relations Policy Council

Issued: March 6, 1995.
Effective: March 6, 1995.
Expiration: Indefinite.

WHEREAS, Executive Order No. 21 was enacted to promote harmonious relations between the State and its employees while ensuring the efficient and continuous delivery of public services; and

WHEREAS, the goal of this Administration under Executive Order No. 21 is to encourage cooperation between the State and its employees by facilitating the exchange of information and ideas between the responsible parties; and

WHEREAS, collective negotiations between the State and its employees concerning the terms and conditions of employment are about to commence; and

WHEREAS, it is the further goal of this Administration that an orderly, efficient and good faith process for conducting negotiations be established which preserves the rights of the State and its employees;

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 of New Jersey, do hereby ORDER and DIRECT:

1. Executive Order No. 21 shall remain in full force and effect except as modified herein.
2. Paragraph 2(c) of Executive Order No. 21 is hereby rescinded and replaced by the following: The Council shall advise the Governor on employee relations policy, and related matters involving State employees.
3. Paragraph 3 of Executive Order No. 21 is hereby rescinded and replaced by the following: The Council is authorized to hire such outside consultants and counsel as deemed necessary to fulfill its mandate pursuant to this Order.
4. Paragraph 7 of Executive Order No. 21 is hereby rescinded and replaced by the following: The Office of Employee Relations is hereby transferred from the Department of Personnel to the Office of the Governor and shall report to the Governor's Chief of Staff (the "Chief of Staff"). Compensation for employees of the Office of Employee Relations shall be consistent with guidelines or regulations established by the Department of Personnel.
5. Paragraph 8(c) and (d) of Executive Order No. 21 is hereby rescinded and replaced by the following: (c) providing support staff to the Chief of Staff or labor counsel and rendering such reports to labor counsel as the labor counsel may direct or the Chief of Staff determines; and (d) offering recommendations to the Governor's Employee Relations Policy Council concerning employee relations and related matters involving State employees.
6. Paragraph 9 of Executive Order No. 21 is deleted and replaced by the following: The Chief of Staff shall serve, through labor counsel, as the Governor's agent in conducting collective negotiations with employee organizations.
7. Paragraph 10(a) of Executive Order No. 21 is hereby rescinded and replaced by the following: All appropriations, personnel, records and property associated with the Office of Employee Relations shall be reallocated within the Office of the Governor in such a manner as the Chief of Staff deems appropriate in order to maximize efficiency, service and cost-effectiveness.
8. Paragraph 10(c) of Executive Order No. 21 is hereby rescinded and replaced by the following: Except as herein otherwise provided and in accordance with Title 11A, Civil Service, of the New Jersey Statutes, allocation of the Office of Employee Relations to the Office of the Governor shall not alter or change the term, tenure of office, rights, obligations, duties or responsibilities otherwise pertaining to the Office of Employee Relations.
9. This Order shall take effect immediately.

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES
STATE SOIL CONSERVATION COMMITTEE

General Provisions—Soil Erosion and Sediment Control Act; Soil and Water Conservation Project Cost Sharing-Eligible Projects and Procedural Rules

Proposed Readoption: N.J.A.C. 2:90

Authorized By: State Soil Conservation Committee, Arthur R. Brown, Jr., Chairman.
Authority: N.J.S.A. 4:24-3, 4:24-42 and 4:1C-24.
Proposal Number: PRN 1995-230.

Submit comments by May 17, 1995 to:
Samuel R. Race, Executive Secretary
State Soil Conservation Committee
CN 330
Trenton, N.J. 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:90 is scheduled to expire on June 22, 1995. The readoption of the existing rules will allow for the continuation of these current programs without interruption.

The Soil Erosion and Sediment Control Act of 1975 (N.J.S.A. 4:24-1 et seq.) as amended, requires that approval of applications for development, where more than 5,000 square feet of land surface area is disturbed, must be conditioned upon certification of a plan for soil erosion and sediment control by the soil conservation district wherein the soil disturbance occurs. The State Soil Conservation Committee (SSCC) is empowered and required to promulgate technical and administrative standards for such controls. This has been previously accomplished through the promulgation of N.J.A.C. 2:90-1. The SSCC proposes to readopt N.J.A.C. 2:90-1, which includes the existing standards and procedural rules to provide for the orderly continuation of the implementation of the Act by the SSCC and the local districts. This action will enable persons proposing to engage in development activities to meet statutory mandates and obtain erosion control plan approval upon which municipal land development and construction approvals are conditional. This subchapter also prescribes rules concerning municipal ordinances, fees and enforcement procedures.

N.J.A.C. 2:90-2 and 3 are comprised of the eligible conservation projects and procedural rules necessary for the implementation of the cost-share provisions of the Farmland Preservation Program. Specifically, they describe eligible soil and water projects and procedural rules for the approval of applications for cost sharing pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 (P.L. 1983, c.32). The rules are utilized in conjunction with N.J.A.C. 2:76-5. The SSCC proposes to readopt N.J.A.C. 2:90-2 and 3 to provide for the orderly continuation of the cost share provisions of the Farmland Preservation Program. As a result, participating landowners will be able to avail themselves of program benefits. N.J.A.C. 2:90-2 prescribes the required standards and specifications and the projects which are eligible for cost sharing. N.J.A.C. 2:90-3 prescribes eligibility requirements and procedures for landowner participation and the required approvals of participating public agencies.

While this proposal is to readopt the existing rules without change in order to allow for program continuation, a detailed review of these rules will be initiated for modification or addition to assure that current needs and state of the art conservation technologies are accommodated. Upon completion of such review an additional rule proposal is anticipated. Suggestions to be incorporated in that anticipated subsequent proposal are invited.

Social Impact

The proposed readoption of N.J.A.C. 2:90-1, which is comprised of procedural rules to implement the Soil Erosion and Sediment Control Act, will have a favorable impact upon the citizens of New Jersey through the continued control of soil erosion, sedimentation and water quality degradation related to construction and land development activities. The quality of living and the environment will be enhanced through the prevention of such damages.

Readoption of N.J.A.C. 2:90-2, prescribing eligible conservation cost share practices, will enable farmland owners enrolled in the Farmland Preservation Programs to receive cost share funding for installation of approved soil and water conservation projects. This program provides incentives to retain agriculture in the State, thereby benefiting all citizens.

Readoption of N.J.A.C. 2:90-3, prescribing procedural rules for the State cost share program, will assure that applications are processed in a manner which will result in the enhancement of the environment and promote the continuation of agricultural operations.

Economic Impact

The proposed readoption of N.J.A.C. 2:90-1, prescribing the Soil Erosion and Sediment Control Act (P.L. 1975, c.251) rules, will have a favorable impact upon the public through reduction in losses of soil and sediment damages from construction, mining and other land disturbances. Enhancement of water quality will be continued, thereby reducing public costs for correcting such problems. Persons who engage in land disturbances will be required to prevent offsite damages at their own cost, thereby eliminating or reducing public costs for correcting such damages. Costs for corrective measures have been demonstrated to be at least 20 times the cost of preventive measures which are required by these rules. A significant public cost/ratio benefit will result.

Readoption of N.J.A.C. 2:90-2, prescribing eligible conservation practices, will have a beneficial economic impact by encouraging capital investments which promote increased water use efficiency and erosion control and retain tax paying open space. Farmland productivity will also be enhanced, thereby providing a continuing and reliable food supply to State residents.

Readoption of N.J.A.C. 2:90-3, which prescribes the procedural rules for the State cost share program, will have a positive economic impact by assuring that all agency approvals are granted in a manner which is fully accountable with the requirements of the cost-share provisions of the Farmland Preservation Act.

Environmental Impact

Potential soil loss and sedimentation and resulting water and air quality impairment from construction-related land disturbances will continue to be minimized by the installation of appropriate controls required by the Soil Erosion and Sediment Control Act. Projects which cause land disturbance may not commence until proposed controls are approved and installed, thereby minimizing adverse environmental impacts.

N.J.A.C. 2:90-2 prescribing eligible conservation practices will result in a positive environmental impact by accelerating the installation of preventive and corrective land treatment measures which will control or minimize nonpoint source pollution and enhance soil productivity on agricultural lands.

The readoption of N.J.A.C. 2:90-3, which prescribes the procedural rules will assure that cost share projects are installed in accordance with best management practices and have the required technical and administrative agency review and approval. Such approvals ensure that beneficial environmental impact will result.

Executive Order No. 27 Statement

An Executive Order No. 27 Statement analysis is not required because the rulemaking requirements of the State Soil Conservation Committee are dictated by the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-1 et. seq., and are not pursuant to or the result of any Federal requirements or standards.

Regulatory Flexibility Analysis

The proposed readoption has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules in subchapter 1, pursuant to the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. directly affect contractors in the State, the vast majority of whom are considered small businesses as defined by the Regulatory Flexibility Act. The rule at N.J.A.C. 2:90-1.14, Minor subdivision, is designed to exempt the construction of one single-family dwelling from certain rules. However, compliance with all other soil erosion control measures, without exception for small businesses, has been determined

to be necessary because of the environmental concerns described in the Environmental Impact statement above. The value which results from protecting water and air quality and the prevention of subsequent problems has been shown to substantially exceed the cost to the contractor. It has been demonstrated that cost for correction may be more than 20 times the cost of preventing problems at the outset. In addition, because the greater majority of contractors are small businesses and are impacted by these regulations, establishing lesser requirements or exemption would not allow realization of the objectives of the Statute. Also any additional costs which may result from these rules are applicable to all contractors uniformly throughout the state and will not result in a competitive disadvantage.

The majority of farmland owners affected by the conservation cost share program rules in subchapters 2 and 3 are small businesses as defined by the Regulatory Flexibility Act. There are application and compliance requirements for participation in the cost share programs. The compliance requirements are based on field proven standards and are integral and essential to the programs. Participating in these programs is voluntary and the benefits outweigh costs incurred.

The proposed readoption of these rules places no new requirements on the persons or businesses regulated by the rules.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:90.

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

License Fees

Branch Office Fee for Mortgage Bankers and Broker

Proposed Amendment: N.J.A.C. 3:38-1.9

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:11B-5.

Proposal Number: PRN 1995-254.

Submit comments by May 17, 1995 to:

Rule Comments
Attn: Elaine Ballai
Regulatory Officer
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Banking proposes to increase the branch office license from $250.00 to $1,000. This will make the branch office fee for mortgage bankers and brokers consistent with the fee charged to other licensees. The increase was authorized by recent legislation which amended N.J.S.A. 17:11B-5 to increase the permissible branch office fee from $250.00 to $2,000.

Social Impact

The proposed amendment will have no discernible social impact; its impact is economic in nature.

Economic Impact

The proposed amendment will have a negative economic impact on licensees since it will increase the cost of a branch office license. There will be a corresponding positive impact for the State.

Executive Order No. 27 Statement

The proposed amendment does not contain any standards or requirements which exceed standards or requirements imposed by Federal law.

Regulatory Flexibility Statement

Most licensees are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment increases the compliance cost for licensees by increasing the licensing fee. However, since this fee is necessary to reimburse the Department of Banking for its administrative costs, no differentiation based on business size is made.

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

3:38-1.9 Office requirements

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

(d) Application for branch offices shall include the following:

1. A license fee of [$250.00] **$1,000**;

2. A general description of the area to be served by the office; **and**

3. The name and license number of the mortgage banker or broker to be in charge of the office.

(e)-(l) (No change.)

(b)

NEW JERSEY CEMETERY BOARD

Monuments

Proposed Amendments: N.J.A.C. 3:41-5.1 and 6.1

Authorized By: The New Jersey Cemetery Board, William B. Waits, Executive Director.

Authority: N.J.S.A. 8A:2-2.

Proposal Number: PRN 1995-243.

Submit comments by May 17, 1995 to:

Rule Comments
Attn: William B. Waits, Executive Director
New Jersey Cemetery Board
Department of Banking
20 W. State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments would clarify the rights of lot owners to determine the monumentation on their cemetery property. It would specify that lot owners shall have the right to place a memorial or other embellishment on any grave which he or she owns, and to approve or disapprove any memorial or other embellishment placed or sought to be placed on a grave which he or she owns, subject to reasonable rules and regulations of the cemetery company. A lot owner may not, however, unreasonably withhold approval of placing a memorial on an interment space after an interment has been made. The amendments would also provide that a person who places a memorial or other embellishment on a grave without the prior approval of the lot owner shall remove the memorial or other embellishment at his or her own expense if the lot owner so directs.

The proposed amendments would specify that a cemetery company may adopt reasonable rules and regulations regarding the size, form, color, composition, construction, placement, and inscription of any memorial or other embellishment sought to be placed on cemetery premises, and that such rules and regulations shall not give an unfair competitive advantage to a particular monument dealer. The proposed amendments would also specify that cemetery companies have an implied right, irrespective of its rules and regulations, to prohibit the installation of a memorial or other embellishment if it determines that the memorial or other embellishment would be inappropriate, offensive, or unsafe, or that it would be significantly detrimental to the uniform appearance of the cemetery, or that it would impose an unreasonable maintenance burden.

The proposed amendments would also recodify subsections (b), (c), and (d) of N.J.A.C. 3:41-5.1, which have to do with memorials, to subsections (g), (h), and (i) or N.J.A.C. 3:41-6.1.

Social Impact

The proposed amendments should have a beneficial social impact. They will clarify the rights of lot owners with regard to monumentation on their cemetery property and should thus reduce litigation and complaints on those matters. By clarifying that cemeteries have implied rights to control memorialization in certain cases even if their rules and regulations are silent on this matter, the proposed amendments would make clear that cemeteries may prohibit specified types of monuments in order to protect the uniformity, safety, and tastefulness of the cemetery for the benefit of all lot owners.

Economic Impact

The proposed amendments should have a beneficial economic impact. They should lessen the frequency of litigation on the issue covered by the amendments because they specify the rights of lot owners with regard to monumentation on their graves. In those cases, parties may simply refer to the rule rather than litigating. This should reduce the legal costs of cemeteries as well as the general public.

Executive Order No. 27 Statement

There are no Federal standards or requirements in Federal law on the subject matter of these proposed amendments. Therefore, no Executive Order No. 27 analysis is required.

Regulatory Flexibility Analysis

Many cemetery companies are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose no recordkeeping, compliance or reporting requirements on any small business. The amendments serve to clarify the rights of lot owners to determine monumentation on their cemetery property. Cemetery companies are permitted to adopt certain rules and regulations, but are not required to do so; the only requirement imposed if they do so is that no unfair competitive advantage be given to a particular monument dealer. Therefore, no further regulatory flexibility analysis is required.

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

3:41-5.1 Charges and services

(a) (No change.)

[(b) In the event that a memorial foundation installed by a cemetery company and paid for by a lot or grave owner or other interested party sinks or otherwise falls into disrepair, causing the memorial immediately above to sink or become unlevel within 10 years from the date of installation, the cemetery company shall, as soon as practical, raise, replace or repair the foundation and properly reset the memorial at its own cost and expense. Subsequent to the aforesaid 10 year period, a cemetery company may charge a lot or grave owner or a responsible party, at its actual cost for said raising, replacing or repairing of the foundation and resetting of the memorial. This subsection shall not apply to any foundation and memorial for which a specific endowed care fund has been provided.

(c) Cemetery companies are prohibited from selling commercially available bases of concrete, granite or marble to be attached to a bronze memorial, provided that the determination as to the need and design of subsurface support shall be governed by the reasonable rules of the cemetery company.

(d) For the purposes of N.J.S.A. 8A:5-23, the burial of a monument or a memorial shall be considered a removal of that monument or memorial.]

(b)-(d) (Reserved)

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

3:41-6.1 Memorials

(a) Once interment has been made in a cemetery lot or grave, **the cemetery company shall not prohibit** reasonable memorialization of the remains [must be allowed in accord with the rules and regulations of the cemetery company] **subject to (d) and (e) below.**

(b) A lot owner shall have the right to place a memorial, dedication or embellishment on any grave which he or she owns, and to approve or disapprove any memorial, dedication or embellishment placed or sought to be placed on a grave which he or she owns, except that:

1. In the absence of an agreement between the lot owner and the party having control over the remains, the lot owner shall not unreasonably withhold approval of a memorial on an interment space after an interment has been made therein; and

2. Any memorial, dedication or embellishment shall be subject to (d) and (e) below.

(c) A person who places a memorial, dedication or embellishment on a grave without the prior approval of the lot owner shall remove the memorial, dedication or embellishment at his or her own expense if the lot owner so directs.

(d) A cemetery company may adopt reasonable rules and regulations regarding the size, form, color, composition, construction, placement, and inscription of any memorial, dedication or embellishment sought to be placed on cemetery premises. Such rules and regulations shall not give an unfair competitive advantage to a particular monument dealer.

(e) Irrespective of its rules and regulations, a cemetery company may prohibit the installation of a memorial, dedication or embellishment if it determines that the memorial, dedication or embellishment would be inappropriate, offensive, or unsafe, or that it would be significantly detrimental to the uniform appearance of the cemetery, or that it would impose an unreasonable maintenance burden. If it so chooses, a cemetery company may adopt reasonable rules and regulations on these matters; however, they shall not give an unfair competitive advantage to a particular monument dealer.

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

(g) In the event that a memorial foundation installed by a cemetery company and paid for by a lot or grave owner or other interested party sinks or otherwise falls into disrepair, causing the memorial immediately above to sink or become unlevel within 10 years from the date of installation, the cemetery company shall, as soon as practical, raise, replace or repair the foundation and properly reset the memorial at its own cost and expense. Subsequent to the aforesaid 10 year period, a cemetery company may charge a lot or grave owner or a responsible party, at its actual cost for said raising, replacing or repairing of the foundation and resetting of the memorial. This subsection shall not apply to any foundation and memorial for which a specific endowed care fund has been provided.

(h) Cemetery companies are prohibited from selling commercially available bases of concrete, granite or marble to be attached to a bronze memorial, provided that the determination as to the need and design of subsurface support shall be governed by the reasonable rules of the cemetery company.

(i) For the purposes of N.J.S.A. 8A:5-23, the burial of a monument or a memorial shall be considered a removal of that monument or memorial.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Neighborhood Preservation Balanced Housing Program

Proposed Amendments: N.J.A.C. 5:14-1.4, 3.4, 3.5, 3.6, 3.7 and Appendices B and C

Proposed New Rules: N.J.A.C. 5:14- Appendices D and E

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

Authority: N.J.S.A. 52:27D-320.

Proposal Number: PRN 1995-244.

Submit written comments by May 17, 1995 to:

Michael L. Ticktin
Chief of Legislative Analysis
Department of Community Affairs
CN 802/6th Floor
Trenton, New Jersey 08625-0802
FAX Number (609)633-6729

The agency proposal follows:

Summary

The majority of Balanced Housing projects are funded in accordance with funding charts (Appendices B and C of N.J.A.C. 5:14) which provide, in general, that the subsidy amount increases in direct relation

to unit size (number of bedrooms) and in inverse relation to price/rent. The funding charts currently used by the program became effective April 6, 1992.

The proposed amendments to Appendices B and C substantially increase the maximum per unit subsidy for both homeownership and rental projects, and are necessary for the following reasons:

In the four years since the current charts were proposed (April, 1991), the cost of construction, particularly the cost of lumber, has increased substantially. For a sponsor/developer to deliver units of a given size and price/rent, the subsidies must keep pace with cost increases.

Secondly, Balanced Housing subsidies have, to date, been granted on the assumption that the Department will provide approximately one-half of the necessary subsidy. Using a Balanced Housing subsidy presupposes that (1) other subsidies are available and (2) the rules governing the other subsidies do not conflict with the Balanced Housing rules. Increasingly, these conditions have not been met. Further, even if the developer is successful in finding and obtaining these additional subsidies, the conflicting requirements and funding schedules often lead to long delays in the development process. Such delays, which could be eliminated if single source funding were available, unnecessarily inflate the cost of affordable housing.

In response to the above concerns, the proposed amendments to Appendix B provide in the case of homeownership, 100 percent of the subsidy required to ensure a given level of affordability. For rental, purchase rental and SRO projects (see Appendix C), the Department anticipates that the Balanced Housing subsidy, coupled with Low Income Housing Tax Credits, will assure the feasibility of affordable housing projects.

The existing charts provide certain urban municipalities with 20 percent additional subsidy. The proposed amendment changes that additional subsidy by making it a fixed amount per unit and expands the availability of the additional subsidy to any municipality eligible for funding in accordance with N.J.A.C. 5:14-1.2(b)6. This provision governs municipalities, also known as "urban aid" municipalities, which have been eligible at any time since fiscal year 1988 for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.). To effectuate this change, the proposed amendment includes a definition of "Urban Aid municipality" at N.J.A.C. 5:14-1.4. This change in defining urban is consistent with the Council on Affordable Housing which had originally proposed the Appendix A municipalities, but now uses this expanded definition of urban in distinguishing urban and nonurban.

This proposal replaces the two existing charts of Appendices B and C with four new charts reflecting the maximum rental and homeownership subsidy amounts for both urban aid and nonurban aid municipalities. The proposed Appendix B lists maximum subsidies for rental units located in urban aid municipalities while Appendix C governs subsidy for all other rental units. Appendices D and E list subsidy amounts for homeownership units located in urban aid and nonurban aid municipalities, respectively. The contractor's fee schedule, currently included as Appendix D, will become Appendix F.

Because of the manner in which subsidies will be calculated, the renter and purchaser profile adjustments, included in the "Adjustments" section following each of the existing charts, will now be redundant. Therefore, this information is proposed to be deleted in the proposal.

Also, in order to eliminate the confusion that currently exists regarding units which receive a project-based Section 8 certificate (that is, is the subsidy based on the Fair Market Rent or on the Range of Affordability of the household serviced?) The Department is electing to give a flat subsidy of $15,000 to any unit receiving a project-based subsidy.

In light of the substantial increase in the available subsidies, the proposed amendments to Appendices B and C also allow a $25.00 per square foot increase, from $25.00 to $50.00, in the deduction for undersized units.

Social Impact

The Balanced Housing Program provides housing opportunities for low and moderate-income households. Implementation of the proposed amendments will have a beneficial impact by simplifying the development process, allowing sponsors to serve households with greater need and encouraging urban revitalization.

Economic Impact

The proposed amendments will have a beneficial economic impact. The new funding formulas will eliminate the delays and confusion which are currently generated as a result of sponsors needing to seek and work with multiple funding sources. Those delays, in turn, cause increases in the cost of producing affordable housing. Eliminating such delays, will benefit sponsors and low-income households by providing a faster and less expensive process. It will also benefit the public since ultimately, a less expensive process will require less total public subsidy.

In addition, the proposed changes in the homeownership chart will encourage urban homeownership and revitalization. The production of housing units creates jobs and augments the municipal tax base.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the proposed amendments do not involve implementation of, compliance with or participation 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

Because the existing Balanced Housing rules generally require sponsor/developers to seek other forms of assistance, these sponsor/developers, many of which are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. are frequently faced with conflicting rules as well as delays caused by uncoordinated funding availability. The proposed changes will ameliorate such problems for both those housing sponsors/developers that are "small businesses" and those that are not. No lesser requirements as exceptions based upon business size are, therefore, necessary.

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

5:14-1.4 Definitions

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

. . .

"Urban Aid Municipality" means any municipality eligible for Balanced Housing funding in accordance with N.J.A.C. 5:14-1.2(b)6.

. . .

5:14-3.4 Rental Projects

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

(c) [The maximum allowable subsidy for a rental project shall be determined in accordance with Appendix C to this chapter, incorporated herein by reference.] **The maximum allowable Balanced Housing subsidy for any rental unit receiving a project based Section 8 certificate from the United States Department of Housing and Urban Development or any equivalent project based operating subsidy shall be $15,000. The maximum allowable subsidy for all other rental units shall be determined in accordance with Appendix B to this chapter, incorporated herein by reference, if the project is located in an urban aid municipality and in accordance with Appendix C of this chapter, incorporated herein by reference, if the project is located in a nonurban aid municipality.**

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

5:14-3.5 Purchase/Rental Projects

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

(c) [The maximum allowable subsidy for a purchase/rental project shall be determined in accordance with Appendix C.] **The maximum allowable Balanced Housing subsidy for any purchase/rental unit receiving a project based Section 8 certificate from the United States Department of Housing and Urban Development or any equivalent project based operating subsidy shall be $15,000. The maximum allowable subsidy for all other purchase/rental units shall be determined in accordance with Appendix B to this chapter, incorporated herein by reference, if the project is located in an urban aid municipality and in accordance with Appendix C of this chapter, incorporated herein by reference, if the project is located in a nonurban aid municipality.**

5:14-3.6 Single Room Occupancy Projects

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

(c) [The maximum allowable subsidy for a Single Room Occupancy Project shall be determined in accordance with Appendix C.] **The maximum allowable Balanced Housing subsidy for any single room occupancy unit receiving a project based Section 8 certificate from**

the United States Department of Housing and Urban Development or any equivalent project based operating subsidy shall be $15,000. The maximum allowable subsidy for all other single room occupancy units shall be determined in accordance with Appendix B to this chapter, incorporated herein by reference, if the project is located in an urban aid municipality and in accordance with Appendix C of this chapter, incorporated herein by reference, if the project is located in a nonurban aid municipality.

(d) (No change.)

5:14-3.7 Homeownership Projects

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

(e) The maximum subsidy for homeownership projects shall be determined in accordance with Appendix [B] **D** to this chapter, incorporated herein by reference **if the project is located in an urban aid municipality or in accordance with Appendix E, incorporated herein by reference, if the project is not located in an urban aid municipality.**

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

APPENDIX B

[Maximum Subsidy Homeownership Units]

Urban Aid Municipalities—Maximum Subsidy Rental Units

[SALES PRICE (1000's)	Studio/ 1BR	2BR	3BR	4BR
80	0	0	0	5,000
77.5	0	0	250	6,250
75	0	0	1,500	7,500
72.5	0	0	2,750	8,750
70	0	0	4,000	10,000
67.5	0	0	5,250	11,250
65	0	0	6,500	12,500
62.5	0	1,250	7,750	13,750
60	0	2,500	9,000	15,000
57.5	0	3,750	10,250	16,250
55	0	5,000	11,500	17,500
52.5	0	6,250	12,750	18,750
50	625	7,500	14,000	21,250
47.5	1,875	8,750	15,250	23,750
45	3,125	10,000	17,750	26,250
42.5	4,375	12,500	20,250	27,500
40	5,625	15,000	22,750	27,500
37.5	6,875	17,500	25,000	27,500
35	8,125	20,000	25,000	27,500
32.5	10,375	22,500	25,000	27,500
30	12,875	22,500	25,000	27,500
27.5	15,375	22,500	25,000	27,500
25	17,875	22,500	25,000	27,500
22.5 or less	20,000	22,500	25,000	27,500]

RENT*	**Studio/ SRO**	**1BR**	**2BR**	**3BR**	**4BR**
1,500 or more	**1,000**	**1,000**	**1,000**	**1,000**	**1,000**
1,025	**1,000**	**1,000**	**1,000**	**1,000**	**3,000**
1,000	**1,000**	**1,000**	**1,000**	**1,000**	**5,500**
975	**1,000**	**1,000**	**1,000**	**2,000**	**8,000**
950	**1,000**	**1,000**	**1,000**	**4,500**	**10,500**
925	**1,000**	**1,000**	**1,000**	**7,000**	**13,000**
900	**1,000**	**1,000**	**3,500**	**9,500**	**15,500**
875	**1,000**	**1,000**	**6,000**	**12,000**	**18,000**
850	**1,000**	**2,500**	**8,500**	**14,500**	**20,500**
825	**1,000**	**5,000**	**11,000**	**17,000**	**23,000**
800	**1,000**	**7,500**	**13,500**	**19,500**	**25,500**
775	**1,000**	**10,000**	**16,000**	**22,000**	**28,000**
750	**1,000**	**12,500**	**18,500**	**24,500**	**30,500**
725	**1,000**	**15,000**	**21,000**	**27,000**	**33,000**
700	**2,500**	**17,500**	**23,500**	**29,500**	**35,500**
675	**5,000**	**20,000**	**26,000**	**32,000**	**38,000**
650	**7,500**	**22,500**	**28,500**	**34,500**	**40,500**
625	**10,000**	**25,000**	**31,900**	**37,000**	**43,000**
600	**12,500**	**27,500**	**33,500**	**39,500**	**45,500**
575	**15,000**	**30,000**	**36,000**	**42,000**	**48,000**
550	**17,500**	**32,500**	**38,500**	**44,500**	**50,500**
525	**20,000**	**35,000**	**41,000**	**47,000**	**53,000**
500 or less	**20,000**	**35,000**	**41,000**	**49,500**	**55,500**

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units [of smaller square footage, deduct from the maximum subsidy $25.00 for each square foot below the minimum.] **that are smaller than the sizes listed above, subtract $50.00 for each square foot below the size indicated:**

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

[2. Purchaser Profile:

The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application. If, during occupancy, there is a need to alter the purchase price based on the actual purchaser profile, the Department may, at its discretion and subject to the availability of funds, adjust the subsidy as follows:

If the price is lowered in order to accommodate a household at the targeted range of affordability which does not meet the standard occupancy assumptions (for example, a three person household that requires a three bedroom unit), add one dollar in subsidy for each dollar that the purchase price is reduced.

For adjustments made in the price of a unit based on an altered range of affordability, the adjusted subsidy shall be calculated off the funding chart.

The total additional subsidy shall not exceed $15,000 per unit.

Units in which the occupancy has been restricted in accordance with N.J.A.C. 5:14-2.2(c) shall not be eligible for a purchaser profile adjustment.

3. Location: For units located in municipalities listed on Appendix A, add 20 percent to the maximum subsidy.]

***Rent includes tenant paid utilities. For rents in between those listed, interpolate.**

APPENDIX C

[Maximum Subsidy Rental Units]

Nonurban Aid Municipalities—Maximum Subsidy Rental Units

[Monthly Rent	Studio/ SRO	1BR	2BR	3BR	4BR
900	0	0	0	250	5,000
875	0	0	0	1,500	6,250
850	0	0	0	2,750	7,500
825	0	0	0	4,000	8,750
800	0	0	0	5,250	10,000
775	0	0	0	6,500	11,250
750	0	0	0	7,750	12,500
725	0	0	0	9,000	13,750
700	0	0	1,250	10,250	15,000
675	0	0	2,500	11,500	16,250
650	0	0	3,750	12,750	17,500
625	0	0	5,000	14,000	18,750
600	5,000	500	6,250	15,250	20,000
575	7,500	1,750	8,750	16,500	22,500
550	10,000	3,000	10,000	19,000	25,000
525	12,500	4,250	11,250	21,500	27,500

500	15,000	5,500	12,500	24,000	30,000
475	15,000	6,750	15,000	26,500	32,500
450	15,000	8,000	17,500	29,000	32,500
425	15,000	10,250	20,000	30,000	32,500
400	15,000	13,000	22,500	30,000	32,500
375	15,000	15,250	25,000	30,000	32,500
350	15,000	18,000	27,500	30,000	32,500
325	15,000	20,500	27,500	30,000	32,500
300	15,000	23,000	27,500	30,000	32,500
275	15,000	24,250	27,500	30,000	32,500
250 or less	15,000	25,000	27,500	30,000	32,500]

RENT*	Studio/ SRO	1BR	2BR	3BR	4BR
$975 or more	**1,000**	**1,000**	**1,000**	**1,000**	**1,000**
950	**1,000**	**1,000**	**1,000**	**1,000**	**2,500**
925	**1,000**	**1,000**	**1,000**	**1,000**	**5,000**
900	**1,000**	**1,000**	**1,000**	**2,500**	**7,500**
875	**1,000**	**1,000**	**1,000**	**5,000**	**10,000**
850	**1,000**	**1,000**	**2,500**	**7,500**	**12,500**
825	**1,000**	**1,000**	**5,000**	**10,000**	**15,000**
800	**1,000**	**2,500**	**7,500**	**12,500**	**17,500**
775	**1,000**	**5,000**	**10,000**	**15,000**	**20,000**
750	**1,000**	**7,500**	**12,500**	**17,500**	**22,500**
725	**1,000**	**10,000**	**15,000**	**20,000**	**25,000**
700	**1,000**	**12,500**	**17,500**	**22,500**	**27,500**
675	**1,000**	**15,000**	**20,000**	**25,000**	**30,000**
650	**2,500**	**17,500**	**22,500**	**27,500**	**32,500**
625	**7,500**	**20,000**	**25,000**	**30,000**	**35,000**
600	**10,000**	**22,500**	**27,500**	**32,500**	**37,500**
575	**12,500**	**25,000**	**30,000**	**35,000**	**40,000**
550	**15,000**	**27,500**	**32,500**	**37,500**	**42,500**
525	**17,500**	**30,000**	**35,000**	**40,000**	**45,000**
500 or less	**17,500**	**30,000**	**35,000**	**42,500**	**47,500**

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units [of smaller square footage, deduct from the maximum subsidy $25.00 for each square foot below the minimum.] **that are smaller than the sizes listed above, subtract $50.00 for each square foot below the size indicated:**

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

[2. Renter Profile:

The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application. If during occupancy there is a need to alter the rent based on the actual renter profile, the Department may, at its discretion and subject to the availability of funds, adjust the subsidy as follows:

If an adjustment in the rent is made in order to accommodate a household at the targeted range of affordability which does not meet the standard occupancy assumptions (for example, a three person household that requires a three bedroom unit) add $10.00 for each one dollar reduction in rent.

For adjustments made in the rent of a unit based on an altered range of affordability, the adjusted subsidy shall be calculated off the funding chart.

The total additional subsidy shall not exceed $15,000 per unit.

Units in which the occupancy has been restricted in accordance with N.J.A.C. 5:14-2.2(c) shall not be eligible for a renter profile adjustment.

3. Location: For units located in municipalities listed on Appendix A, add 20 percent to the maximum subsidy.]

***Rent includes tenant paid utilities. For rents in between those listed, interpolate.**

APPENDIX D

Urban Aid Municipalities—Maximum Subsidy Homeownership Units

Sales Price*	1BR	2BR	3BR	4BR
97,000 and up	**1,000**	**1,000**	**1,000**	**1,000**
95,000	**1,000**	**1,000**	**1,000**	**3,000**
92,500	**1,000**	**1,000**	**1,000**	**5,500**
90,000	**1,000**	**1,000**	**2,000**	**8,000**
87,500	**1,000**	**1,000**	**4,500**	**10,500**
85,000	**1,000**	**1,000**	**7,000**	**13,000**
82,500	**1,000**	**3,500**	**9,500**	**15,500**
80,000	**1,000**	**6,000**	**12,000**	**18,000**
77,500	**2,500**	**8,500**	**14,500**	**20,500**
75,000	**5,000**	**11,000**	**17,000**	**23,000**
72,500	**7,500**	**13,500**	**19,500**	**25,500**
70,000	**10,000**	**16,000**	**22,000**	**28,000**
67,500	**12,500**	**18,500**	**24,500**	**30,500**
65,000	**15,000**	**21,000**	**27,000**	**33,000**
62,500	**17,500**	**23,500**	**29,500**	**35,500**
60,000	**20,000**	**26,000**	**32,000**	**38,000**
57,500	**22,500**	**28,500**	**34,500**	**40,500**
55,000	**25,000**	**31,000**	**37,000**	**43,000**
52,500	**27,500**	**33,500**	**39,500**	**45,500**
50,000 or less	**30,000**	**36,000**	**42,000**	**48,000**

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	**500 Sq. Ft.**
1 Bedroom	**600 Sq. Ft.**
2 Bedrooms	**750 Sq. Ft.**
3 Bedrooms	**950 Sq. Ft.**
4 Bedrooms	**1,150 Sq. Ft.**

For units that are smaller than the sizes listed above, substract $50.00 for each square foot below the size indicated:

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

***For prices in between those listed, interpolate.**

APPENDIX E

Nonurban Aid Municipalities—Maximum Subsidy Homeownership Units

Sales Price*	1BR	2BR	3BR	4BR
$90,000 and up	**1,000**	**1,000**	**1,000**	**1,000**
87,000	**1,000**	**1,000**	**1,000**	**2,500**
85,000	**1,000**	**1,000**	**1,000**	**5,000**
82,500	**1,000**	**1,000**	**2,500**	**7,500**
80,000	**1,000**	**1,000**	**5,000**	**10,000**
77,500	**1,000**	**2,500**	**7,500**	**12,500**
75,000	**1,000**	**5,000**	**10,000**	**15,000**
72,500	**2,500**	**7,500**	**12,500**	**17,500**
70,000	**5,000**	**10,000**	**15,000**	**20,000**
67,500	**7,500**	**12,500**	**17,500**	**22,500**
65,000	**10,000**	**15,000**	**20,000**	**25,000**
62,500	**12,500**	**17,500**	**22,500**	**27,500**
60,000	**15,000**	**20,000**	**25,000**	**30,000**
57,500	**17,500**	**22,500**	**27,500**	**32,500**
55,000	**20,000**	**25,000**	**30,000**	**35,000**
52,500	**22,500**	**27,500**	**32,500**	**37,500**
50,000 or less	**25,000**	**30,000**	**35,000**	**40,000**

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	**500 Sq. Ft.**
1 Bedroom	**600 Sq. Ft.**
2 Bedrooms	**750 Sq. Ft.**
3 Bedrooms	**950 Sq. Ft.**
4 Bedrooms	**1,150 Sq. Ft.**

For units that are smaller than the sizes listed above, subtract $50.00 for each square foot below the size indicated:

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

***For prices in between those listed, interpolate.**

APPENDIX [D] F

(No change in text.)

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code Interpretations and Opinions

Proposed Amendment: N.J.A.C. 5:23-3.9

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

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

Proposal Number: PRN 1995-231.

Submit comments by May 17, 1995 to:

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

The agency proposal follows:

Summary

N.J.A.C. 5:23-3.9 is proposed to be amended to include within its scope the Construction Code Element's authority to issue bulletins. The present scope of this section includes the following:

Interpretations: The Commissioner has the authority to make any rule constituting an interpretation of any provision of the regulations. Such interpretations are binding and prospective in nature.

FTO (Formal Technical Opinion): This is intended to clarify provisions of the adopted subcodes. It is binding upon the Element and other code enforcing agencies and licensed officials.

Informal Opinion Letter: A staff member of the Element is authorized to issue an Informal Technical Opinion as to the proper application of the rules. It is not binding upon the Element or any other party.

Though not fully covered under any of the above categories, the Department has been issuing bulletins since the inception of the New Jersey Uniform Construction Code. The purpose of the bulletins is to provide necessary guidance and advice to the code enforcing agencies and builders/designers in matters relating to various subcodes and regulations. The bulletin is selected as a preferred tool to convey the message when binding rules and code provisions are not considered necessary by the Department because the issues involved are already dealt with in the rules. Such bulletins are approved by the Code Advisory Board. The Uniform Construction Code Act empowers the Commissioner to obtain such code advisory services from the Board. The inclusion of reference to the Element's authority to issue bulletins in the text of N.J.A.C. 5:23-3.9 will clarify the status of these documents.

Social Impact

Incorporating bulletins formally within the scope of the Element's authority will benefit code officials and persons doing construction alike by making clear the authoritative nature of these documents.

Economic Impact

The proposed amendment would not create any economic burden for persons engaged in construction. There may be savings as a result of assurance that reliance may be placed upon the bulletins.

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.

Regulatory Flexibility Statement

The purpose of bulletins is to provide practical guidance to persons doing construction and to code officials. By making clear the authoritative nature of these bulletins, the Department is providing persons doing construction, be they "small businesses" as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or not, with protection against the *ad hoc* imposition of additional requirements by code officials.

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

5:23-3.9 Interpretations and opinions

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

(c) The Construction Code Element may issue bulletins to provide advice to code enforcing agencies, builders, and designers. Bulletins may be issued when the Element finds that an issue that is in need of clarification is adequately dealt with by existing rules and that rulemaking is therefore not appropriate or necessary. Approval by the Code Advisory Board shall be required prior to the issuance of any bulletin.

[(c)]**(d)** (No change in text.)

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration; Third Party Liability Benefits

Proposed Amendment: N.J.A.C. 10:49-7.3

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6, 7, 7a, b, and c, and k; N.J.S.A. 30:4D-12; and 42 CFR 433.135-140.

Agency Control No.: 95-P-13.

Proposal Number: PRN 1995-240.

Submit comments by May 17, 1995 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712, Mail Code 25
Trenton, NJ 08625-0712

The agency proposal follows.

Summary

The proposed amendment at N.J.A.C. 10:49-7.3 concerns the Medicaid requirement that, with certain exceptions, Medicaid providers are required to bill other third parties, such as insurance carriers or Medicare, in order to utilize this other coverage if it is in fact available. The various types of third party liability (TPL) benefits are listed in the existing text of the rule.

The New Jersey Medicaid program, as administered by the Department of Human Services, Division of Medical Assistance and Health Services (the Division), currently requires that providers, with certain exceptions, submit a "hard copy" statement from the third party along

with the Medicaid claim in order to be reimbursed. This "hard copy" statement is referred to as an Explanation of Benefits (EOB). The Division is now proposing to eliminate the requirement to submit the "hard copy" EOB.

The Division does not feel it is necessary to require providers to submit a copy of an EOB with the claim form, because providers can retain this information in their files. Also, providers are required to submit information with the claim regarding third party billing by using the appropriate carrier code and payment amount.

Medicaid providers are still required to bill third parties, with certain exceptions, to see if there are benefits other than Medicaid that can pay the claim. Providers will be required to keep records of any third party billing activity, including any EOBs from insurance carriers or Medicare, for a period of five years.

This proposed amendment will apply to all providers, regardless of whether they bill electronically or via hard copy.

Social Impact

This proposed amendment does not directly affect recipients, who normally do not become involved in the submission and payment of their Medicaid claims. However, it will encourage providers to become or stay enrolled in the Medicaid program because of a more efficient claims processing system, which will give recipients greater access to, and more choice of, providers.

This proposed amendment will impact on providers. The amendments impact should be more economic than social because it affects billing. However, providers should prefer the removal of the requirement that they have to include a copy of the EOB with their claim.

Economic Impact

This proposed amendment affects providers who serve recipients with Third Party Liability (TPL) in that their claims will be adjudicated more quickly and efficiently.

There is no change in reimbursement methodology or fee schedules associated with this amendment. With certain exceptions, providers are still required to bill other third parties in anticipation of payment from a source other than Medicaid.

Providers may incur some expenses associated with the cost of retaining their record(s) of transactions with insurance carriers or other third party payors; however, this cost should be offset by the removal of the requirement to submit copies of third party transactions to the Division.

There will be no economic impact on recipients, who are generally not involved in provider billing activities.

Executive Order No. 27 Statement

The requirement pertaining to the use of other insurance, including Medicare, has been a long-standing Medicaid program requirement commonly known as Third Party Liability (TPL).

The amended rule contains the same standards as the Federal requirements (42 CFR 433.135-140). Providers are required to identify other third party payors on the Medicaid claim form. The only change being made by the Division is that the provider does not have to file a hard copy of the TPL statement with the Medicaid claim. This change is administrative. Providers are still required to obtain, pursue, and identify other third party payors that have or could pay part or all of the Medicaid claim.

Regulatory Flexibility Analysis

This proposed amendment could impact on those Medicaid providers who are considered small businesses under the terms of N.J.S.A. 52:14B-16.

The amendment applies equally to all providers regardless of size. Providers are already required to maintain sufficient information as necessary to fully disclose the name of the recipient, date of service, nature of service and any additional information as may be required by regulation (N.J.S.A. 30:4D-12(d)).

Providers will now be required, by this rule, to maintain records of any third party billing and any payment received by a third party for a period of five years. Providers are also required to provide this information to the Division or its agents upon request.

Providers should not have to hire any additional staff to comply with this proposal.

Providers should not incur any additional capital costs associated with this amendment. With certain exceptions, providers are already required to bill third parties if the patient has indicated there is coverage other than Medicaid.

This amendment may minimize the amount of paper work that a provider has to submit to Medicaid. The provider will not have to submit a copy of the EOB to the Medicaid program; they will retain the EOB statement in their file.

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

10:49-7.3 Third party liability (TPL) benefits

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

(e) When a Medicaid recipient has other health insurance, the [Program] **program** requires that such benefits be used first and to the fullest extent, subject to the exceptions in (h) below. Supplementation may be made by the [Program] **program**, but the combined total paid shall not exceed the amount payable under the [Program] **program** in the absence of the other coverage. The [Program] **program** shall not supplement [coverage] **covered** services rendered by a participating or contracting practitioner with any private health coverage program where the private plan calls for the practitioner to accept the plan's payment as payment in full. [When other health insurance is involved, supplementation claims shall not be filed with the Program unless accompanied by a statement of payment, Explanation of Benefits (EOB), or denial from the other carrier. Attachment of such information will expedite Medicaid claim processing.] **Providers shall retain proof of billing activity with third parties, such as insurance carriers and Medicare, including statements of payment and/or denials or any other type of Explanation of Benefits (EOBs), for a period of five years after receipt of Medicaid payment.**

1. (No change.)

(f)-(h) (No change.)

(i) In those situations where [an] **a health** insurance payment is received [from another payer] after Medicaid has been billed and has made payment, the provider must reimburse the Medicaid payment to the Medicaid program and not the Medicaid recipient. Reimbursement must be made immediately to comply with Federal regulations. To initiate the process, providers must submit an Adjustment [Noid] Request Form. (See Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual).

(j)-(k) (No change.)

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Individual Health Insurance Rate Filings

Proposed Amendment: N.J.A.C. 11:4-18.6

Authorized By: Andrew J. Karpinski, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17B:26-44.6.

Proposal Number: PRN 1995-232.

Submit comments by May 17, 1995, to:

Donald Bryan, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

The Department of Insurance proposes that N.J.A.C. 11:4-18.6(b) be deleted for its existence is no longer required, and that N.J.A.C. 11:4-18.6(c) be recodified as N.J.A.C. 11:4-18.6(b) in furtherance of that change.

The existing subsection (b) required that a completed report of premiums, claims and insured/earned loss ratios be filed yearly for each policy form currently filed in New Jersey. The Department has determined that these annual filings are no longer necessary, and the proposed deletion will eliminate the requirement.

Social Impact

There is no adverse social impact. The amendment merely eliminates the preparation and filing by insurers of a report that is no longer necessary.

Economic Impact

Cost savings will inure to insurers through the elimination of unnecessary report filings. The Department as well will benefit economically by no longer being required to process and store these reports.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for the subject proposed amendment is not liable to Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose but rather eliminates a defined compliance requirement.

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

11:4-18.6 Annual review of calendar year experience data on filed individual health insurance policy forms

(a) (No change.)

[(b) A completed report of premiums, claims, and incurred/earned loss ratios shall be filed by June 30 of each year for each policy form currently filed in New Jersey. The June 30, 1979 report shall show the accumulated experience for all previous calendar years up to December 31, 1977, the 1978 calendar year experience, and the accumulated experience as of December 31, 1978. The June 1980 report shall repeat the information shown in the June 30, 1979 report and shall add the experience for 1979 and the accumulated experience as of December 31, 1979. Reports in subsequent years will follow the same pattern.]

[(c)] as **(b)** (No change in text.)

(a)

DIVISION OF ACTUARIAL SERVICES

Funeral Insurance Policies

Reproposed New Rules: N.J.A.C. 11:4-25

Authorized By: Andrew J. Karpinski, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17B:17-5.1d.

Proposal Number: PRN 1995-233.

Submit comments by May 17, 1995 to:

Donald Bryan, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency reproposal follows:

Summary

N.J.S.A. 17B:17-5.1, which became effective December 21, 1993, requires the Department of Insurance ("Department") to regulate funeral insurance policies. "Funeral insurance policy" is defined at N.J.S.A. 17B:17-5.1a to mean "any insurance policy or annuity contract that, at the time of issue, was intended to provide, or which was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement." "Provider" is defined in part to mean "a person, firm or corporation duly licensed and registered pursuant to the 'Mortuary Science Act' [N.J.S.A. 45:7-32 et seq.] to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed . . .". "Prepaid funeral agreement" is defined to mean "a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient." Several other terms are also defined in subsection a.

N.J.S.A. 17B:17-5.1b provides that the "issuance and marketing of any funeral insurance policy shall meet all of the terms and conditions specified by the Department of Insurance as would apply to any life insurance or annuity contract, and shall in addition meet the standards and requirements specified" at N.J.S.A. 45:7-82 to 45:7-94. These standards and requirements are subject to the regulatory jurisdiction of the State Board of Mortuary Science of New Jersey.

N.J.S.A. 17B:17-5.1c provides that "[a]ny insurance policy or annuity contract used as a funeral insurance policy on or after [December 21, 1993], whether issued within the State or outside of the State, whether on a group or individual basis, and any certificates, policies, contracts, applications, forms and related material, shall be subject to all the laws and regulations of this State and the terms and conditions of the Department of Insurance, as though issued in this State, and shall at the time of filing be designated as being intended for use as a funeral insurance policy."

Finally, N.J.S.A. 17B:17-5.1d requires that the Commissioner of Insurance "adopt rules and regulations to implement the provisions of this section, including a regulation establishing the loss ratio for funeral insurance policies."

Proposed new rules intended to fulfill the statutory mandate set forth above were published in the December 5, 1994 New Jersey Register at 26 N.J.R. 4727(a). As a result of the comments received, as well as the Department's own internal review, the Department determined that substantive changes to the rules as first proposed were necessary. Consequently, the following reproposed new rules supersede the original proposal. Any comments received in response to the original proposal have either been accepted or rejected. Accordingly, any interested person who wishes to respond to the reproposal should submit written comments which are responsive to the current text as set forth herein.

The reproposed new rules contain the following major changes:

1. Four new definitions are added at N.J.A.C. 11:4-25.2. The newly defined terms are "insurance adjusted premium fund," "premium fund," "premium fund interest rate" and "premium fund mortality rate."
2. A new loss ratio standard appears at N.J.A.C. 11:4-25.5. An Appendix has been added which includes numerical examples of the loss ratio calculations.

Funeral expense insurance policies typically have the following characteristics:

1. Small initial face amounts (less than $10,000);
2. Advanced issue age (65 and above);
3. Little or no underwriting; and
4. Single premium or premium payable over a limited period (two to five years).

As a result of this singular combination of characteristics, the premium can be very large in relation to the death benefit (for example, a single premium of $900.00 per $1,000 of death benefit at age 80). The concern of the Department is that in such a case, the insured gains very little by buying the insurance contract. Unless death takes place in the first two or three years, the insured most likely would have been better off investing the $900.00 at interest.

This problem is compounded by the fact that the minimum cash value required by law if the insured surrenders the policy is significantly less than the premium. Assuming a four percent interest rate, in the case of a person age 80, the cash value per $1,000 of face amount immediately after issue would be $780.00 (male) or $744.00 (female).

Such unwise purchases do occur and exemplify the problem that N.J.A.C. 11:4-25, as originally proposed, sought to address by requiring a death benefit that would exceed the premiums paid, accumulated at the nonforfeiture interest rate.

As noted by several commenters, compliance with the proposed rule would require that the gross premium charged be significantly less than the net premium (which, in the case of a single premium policy, would be the reserve and cash value). In effect, such policies could not be prudently issued since companies would be promising a benefit whose value would be in excess of the premiums collected.

Several commenters argue, thought not conclusively, that a policy design which complies with the requirements of N.J.A.C. 11:4-25.5 could not qualify as life insurance under Internal Revenue Code section 7702. To the extent that it is true, this argument may reveal a deficiency in

section 7702. (In order to prevent abuses under policies which emphasize investment, which funeral insurance policies clearly are not, section 7702 encourages insurers to place limits on assumed increases in death benefits for income tax advantage. This results in the anomaly of a cash value which exceeds the single premium for "assumed" benefits, and therefore cannot take into account the value of an increasing benefit which is required by state law.)

The benefit accruing to policyholders resulting from qualification of these policies as life insurance contracts under section 7702 is very small. If the policy matures by death, the difference between the death benefit and the premium is not subject to Federal income tax. If the policy is considered an annuity, this difference would be subject to Federal income tax.

Some commenters interpreted the loss ratio provisions as mandating a death benefit which increases at a particular rate. These commenters question the appropriateness of such a mandated increase, or the appropriateness of the interest rate used. It was not the intent of the proposed rules to require that life insurance be sold at a loss, to require design provisions in life insurance that would disqualify contracts for Internal Revenue Code purposes, or to mandate an increase in death benefits. Rather, the intent of the proposed rules is to prohibit contracts where the premium is unreasonable in relation to the death and surrender benefits provided. This apparent conflict can be resolved by either (1) revising the limitation to take into account the benefit of life insurance provided on the life of the policyholder, or (2) by limiting the period of time over which limitations must be met. The approach now proposed by the Department is a combination of the two solutions.

The interest rate used for determining the insurance adjusted premium fund at reproposed N.J.A.C. 11:4-25.5(a)2 has been changed from the policy cash value interest rate to the interest rate specified by law for calculating minimum cash values. This is a more objective standard and less subject to manipulation. Furthermore, it is related to interest rates in the year of policy issue.

The criteria set forth at N.J.A.C. 11:4-25.5(a)1 is similar to the test applied for limited death benefit forms (N.J.A.C. 11:4-21.3(g)). Limited death benefit forms are those for which, in place of underwriting, the death benefit is reduced in the early years. Funeral insurance policies either are, or are in many ways similar to, these forms and hence should receive similar treatment.

N.J.A.C. 11:4-25.1 sets forth the purpose and scope of the reproposed new rules. As stated briefly at subsection (a), the purpose of the subchapter is "to establish rules for the filing and review of funeral insurance policies pursuant to N.J.S.A. 17B:17-5.1."

N.J.A.C. 11:4-25.2 sets forth definitions of words and terms pertinent to the reproposed new rules. This reproposal contains four new definitions.

N.J.A.C. 11:4-25.3 sets forth the submission requirements for forms stating at subsection (a) that "[n]o insurer shall issue or issue for delivery any funeral insurance policy in this State that has not been filed pursuant to law on or after December 21, 1993, or as otherwise permitted under this subchapter." Subsection (b) applies the requirements of the subchapter "to all previously filed forms as well as any forms submitted in the future." Subsection (b) also provides that "[p]reviously filed forms which do not comply with these requirements shall be deemed withdrawn as of the operative date of this subchapter." Subsection (c) requires each insurer, within 120 days after the operative date of the subchapter, to submit a list of all funeral insurance policy forms currently filed which meet the requirements of these rules. Previously filed forms not listed are to be deemed withdrawn.

N.J.A.C. 11:4-25.4 sets forth at subsection (a) certain disclosure requirements that are also found in the Mortuary Science Act at N.J.S.A. 45:7-86. Subsection (b) requires issuers to submit to the Department of Insurance for prior review "[s]ubsequent amendments to or any replacement of the prepaid funeral agreement, or any new or additional prepaid funeral agreement or agreements to be used with a filed funeral insurance policy . . ."

N.J.A.C. 11:4-25.5 sets forth a substantially revised loss ratio standard for funeral insurance policies as specifically required by N.J.S.A. 17B:17-5.1d.

N.J.A.C. 11:4-25.6 provides for severability.

N.J.A.C. 11:4-25.7 allows the Commissioner of Insurance to assess penalties, not exceeding $2,000 for each violation, against persons found to be in violation of the regulation.

An Appendix has been added which includes numerical examples of the loss ratio calculations.

Taken together, the statutory provisions at N.J.S.A. 45:7-82 to 45:7-94, N.J.S.A. 17B:17-5.1, and these reproposed new rules mandate disclosure of certain information to purchasers of these contracts not previously required with regard to funeral insurance policies and prepaid funeral agreements.

In response to the December 4, 1995 proposal, the Department received comments from the following organizations:

Forethought Life Insurance Company
Homesteaders Life Company
The Liberty Corporation
National Alliance of Life Companies
New Jersey State Funeral Directors Association, Inc.
Old American Insurance Company
Prairie States Life Insurance Company
United Family Life Insurance Company
Unity Mutual Life Insurance Company

A summary of these public comments remain on file with the Department. The Department's responses are noted below.

COMMENT: The social impact statement implies that funeral insurance policies are excessively priced. The Department offers no evidence of such excessive pricing.

RESPONSE: The rules attempt to limit situations where the relationship of premiums and benefits is unreasonable. It is not necessary to demonstrate that the regulated practice exists in order to prohibit it.

COMMENT: The rules equate funeral trust funded agreements with funeral insurance policy funded agreements. Alternatively, the rule subjects insurance policies to stronger standards than trust agreements.

RESPONSE: The rules do not equate the two types of agreements. As an example, consider the differential treatment of trust agreements and insurance or annuity agreements if the owner wishes to cancel or surrender the agreement. By law, the owner of the trust agreement must receive the balance of his or her account, accumulated at interest. Under an insurance or annuity agreement, the owner will receive a "surrender value" which will, in most cases, be less (and in the case of life insurance, often significantly less) than premiums accumulated at interest. If the Department truly intended to equate the two types of agreements, it would have required that the surrender value under insurance and annuity contracts be the premium accumulated at interest. Also, since the "surrender values" available under trust agreements provide a generally higher return than the surrender values of insurance or annuity contracts, it is difficult to argue that a more favorable standard of regulation applies to the trust agreements. Also, the Department has no regulatory authority over trust agreements.

COMMENT: A number of commenters argued strongly that the rules require a relationship between premiums and benefits that is unworkable, primarily because the premium would probably be inadequate to fund the required benefits. The negative effect would either be companies risking insolvency by selling insurance at inadequate rates, or more likely that the product would simply be unavailable.

RESPONSE: The Department is persuaded by these arguments. The reproposal includes a new loss ratio standard at N.J.A.C. 11:4-25.5 which should allow adequate premium flexibility.

COMMENT: Policies that comply with the loss ratio standard will either not conform, or will only conform under very limited circumstances, to the definition of life insurance at Internal Revenue Code section 7702. Failure to conform to this definition will be harmful to policyholders.

RESPONSE: The Department agrees that conformance to the definition of life insurance under section 7702 may be difficult or impossible under the proposed rules. Under the reproposal, however, it is less likely that this problem will arise.

COMMENT: The relationship between premiums, cash values, and death benefits set forth in Internal Revenue Code section 7702 will have the effect of increasing death benefits.

RESPONSE: This suggestion assumes that companies will conform their policies to the definition of life insurance in section 7702 using the guideline premium corridor test, rather than the net single premium test. Also, it is not clear that resulting death benefit increases will lead to a reasonable relationship between premiums and death benefits in early policy years.

COMMENT: The Department is mandating that death benefits increase at a specified rate. In particular, indexed policies based on the Consumer Price Index cannot satisfy the requirement because their rate of increase cannot be predicted.

RESPONSE: It is a misinterpretation of the proposed rules to read it as mandating increasing death benefits. This was an unintended effect. All patterns of death benefits (level, increasing at a fixed rate, increasing based on the Consumer Price Index, or non-guaranteed increases) should be permissible in principal, as long as the loss ratio requirements are satisfied.

COMMENT: The proposed loss ratio standard is not consistent with the loss ratio standards used in health insurance rating. The proposed standard does not regulate the ratio of benefits to premiums.

RESPONSE: While the loss ratio standard is not expressed as such a ratio, it effectively regulates the relationship between premiums and benefits. This is done on an individual contract, rather than an aggregate basis.

COMMENT: Loss ratios are an inappropriate measure in life insurance, since the risk of loss is 100 percent.

RESPONSE: This oversimplifies the situation. Loss ratios compare benefits to premiums with allowance for interest; therefore, the timing of death, as well as the fact of death, affects the theoretical loss ratio. In addition, some policies mature by surrender rather than death, and in general the surrender value is less than the death benefit.

COMMENT: Loss ratio regulation is equivalent to rate filing, but the Department is not granted the specific authority to require filing of life insurance rates. Also, the Department is breaking new regulatory ground by applying loss ratios to life insurance.

RESPONSE: It is the Legislature, not the Department, that required loss ratio standards. Furthermore, loss ratios in life insurance are not unheard of (for example, credit insurance). The commenter has argued that loss ratio regulation (which is in the statute) implies the requirement of a rate filing. If this implication is correct, the same statute which implies the requirement should be deemed to give the Department the authority to require the rate filing.

COMMENT: The loss ratio requirements will be difficult to administer since they are based on product characteristics.

RESPONSE: The Department foresees no problem in administering compliance with these rules. Many regulatory actions are based on specific product characteristics.

COMMENT: The death benefit increase should be tied to an external index, such as the Consumer Price Index or the Treasury Bill rate.

RESPONSE: The commenter assumes that the Department is mandating an increase in death benefits. It is not.

COMMENT: The relationship between premiums and death benefits to which the Department objects arises from guaranteed issue. Premiums would go down if underwriting were mandatory.

RESPONSE: The participants in this market seem to want guaranteed or simplified issue. The policy size is probably too small for there to be any benefit from underwriting.

COMMENT: The Department should require a death benefit of premium plus interest in the early policy years.

RESPONSE: The reproposal achieves this end.

COMMENT: Rather than regulating the death benefit, the Department should simply prohibit policies which have an inadequate death benefit.

RESPONSE: The effect of the reproposal is to reclassify policies with an inadequate death benefit as annuities.

COMMENT: Policy fees should be eliminated from premiums in satisfying the loss ratio test.

RESPONSE: Policy fees will be included. The loss ratio requirements measure value provided to the consumer in return for a premium. A policy fee is no different from any other form of premium in measuring the cost to the consumer.

COMMENT: N.J.S.A. 17B:17-5.1c requires that "any insurance policy or annuity contract used as a funeral insurance policy . . . shall be subject to all the laws and regulations of this State and the terms and conditions of the Department of Insurance, as though issued in this State, and shall at the time of filing be designated as being intended for use as a funeral insurance policy." While the language is found in the law, the rule should be interpreted to apply only to risks within the State. Any other interpretation is overly broad and may be violative of the laws or constitutions of other states or the United States.

RESPONSE: The Department interprets the statutory language to be limited in its application to insurance policies and annuity contracts used as funeral insurance policies in New Jersey. Accordingly, the words "in this State" have been inserted in the first phrase of N.J.A.C. 11:4-25.1(c) for purposes of clarification.

Social Impact

The reproposed new rules will better facilitate regulatory oversight of life insurance and annuities used to fund prepaid funeral agreements in New Jersey by providing specific rules for the filing of funeral insurance policies and the review of prepaid funeral agreements.

Consumers who choose to prearrange their funeral expenses by purchasing life insurance or annuities to fund prepaid funeral agreements will benefit from these rules. Senior citizens, in particular, will benefit from a greater degree of protection against failure to disclose, misleading information and excessive pricing.

Economic Impact

Consumers of prepaid funeral agreements and associated funeral insurance policies will derive an economic benefit from these reproposed new rules since they will be better informed about these products and thus better able to make reasoned, appropriate and beneficial decisions that will more likely result in their purchasing a product which fits their actual needs.

Insurers and providers alike will be required to adhere to stricter standards when dealing with funeral insurance policies and the prepaid funeral agreements that accompany them. Adherence to new loss ratio standards pursuant to reproposed N.J.A.C. 11:4-25.5 may result in a reduced profit margin for insurers, but this provision is required by the Legislature for the protection of consumers and is believed by the Department of Insurance to be a fair and reasonable standard.

The Department of Insurance anticipates that there will be additional costs in monitoring compliance with the reproposed new rules. However, it is expected that these costs will be contained within current budget limitations.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.A.C. 11:4-25 is not subject to any Federal requirements or standards within the meaning and intent of the Order. Internal Revenue Code section 7702, briefly discussed above, defines life insurance for purposes of taxation; it does not impose requirements or establish standards that must be met by state regulatory authorities. These reproposed new rules do not contain any standards or requirements which exceed standards or requirements imposed by Federal law.

Regulatory Flexibility Analysis

The Department of Insurance believes that few, if any, insurers subject to the reproposed new rules are "small businesses" as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Additionally, compliance with the new rules imposes no undue burden or adverse economic impact upon insurers which may qualify as "small businesses."

As evidenced by proposed N.J.A.C. 11:4-25.3(c), insurers are already required to file funeral insurance policy forms with the Department of Insurance. Proposed N.J.A.C. 11:4-25.4(a) will now require that such filings be accompanied by a copy of the prepaid funeral agreement to which the policy is related. Small companies may incur additional administrative expenses in complying with this new requirement, but the cost of compliance is not expected to be great and little change to the companies' present operations is anticipated.

Insurers presently maintain, or otherwise provide for, the type of services which may be required in order to comply with the new rules. All insurers should be able to easily absorb whatever additional costs may be incurred.

Because the cost of compliance with these reproposed new rules is expected to be minimal and represents no unduly adverse economic impact upon small businesses, no exceptions for compliance by small businesses have been incorporated into the rules.

Full text of the reproposed new rules follows:

SUBCHAPTER 25. FUNERAL INSURANCE POLICIES

11:4-25.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules for the filing and review of funeral insurance policies pursuant to N.J.S.A. 17B:17-5.1.

(b) This subchapter shall apply to all life insurance policy or annuity contract forms delivered or issued for delivery, marketed, used or designated as intended for use, as funeral insurance policies after the operative date hereof.

(c) Any insurance policy or annuity contract used as a funeral insurance policy in this State on or after December 21, 1993, whether issued within this State or outside of this State, whether on a group or individual basis, and any certificates, policies, contracts, applications, forms and related material, shall be subject to all the laws and regulations of this State and the terms and conditions of the Department of Insurance, as though issued in this State, and shall at the time of submission and filing be designated as being intended for use as a funeral insurance policy.

11:4-25.2 Definitions

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

"Funeral insurance policy" means any insurance policy or annuity contract (other than "credit life insurance" as defined at N.J.S.A. 45:7-82) that at the time of issue, was intended to provide or which was explicitly marketed for the purpose of providing funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"Funeral trust" means a commingled or non-commingled account held in a pooled trust or "P.O.D." account, established in accordance with N.J.S.A. 2A:102-13 et seq. or N.J.S.A. 3B:11-16 et seq., which is intended as the depository for cash payments connected with a prepaid funeral agreement.

"Insurance adjusted premium fund" at the end of any policy year means the quantity (E) times the following quantity: (A) plus (B), the sum multiplied by (C), less (D), where:

(A) is the insurance adjusted premium fund at the end of the previous year (or zero at policy inception);

(B) is the premium payable during the policy year;

(C) is 1 plus the premium fund interest rate;

(D) is the premium fund mortality rate times the death benefit during the policy year; and

(E) is 1 divided by 1 minus the premium fund mortality rate.

"Premium fund" means the premiums paid under the policy (including policy fees) accumulated at the "premium fund interest rate".

"Premium fund interest rate" means the interest rate used in calculating the minimum cash values required by law.

"Premium fund mortality rate" means the mortality rate used in calculating the minimum cash values required by law. This mortality rate is based on the 1980 CSO Table (with or without smoker differentiation, as applicable).

"Preneed funeral arrangements" means funeral arrangements made with an intended funeral recipient or his or her guardian, agent or next of kin, for the funeral of the intended funeral recipient.

"Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

"Provider" means a person, firm or corporation duly licensed and registered pursuant to the "Mortuary Science Act," N.J.S.A. 45:7-32 et seq., to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

1. Operating a duly registered mortuary in accordance with N.J.S.A. 45:7-32 et seq. and the regulations promulgated thereunder;

2. Having his, her or its business and practice based within the physical confines of the registered mortuary; and

3. Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

11:4-25.3 Forms submission requirements

(a) No insurer shall deliver or issue for delivery any funeral insurance policy in this State that has not been filed pursuant to law on or after December 21, 1993, or as otherwise permitted under this subchapter.

(b) The requirements of this subchapter apply to all previously filed forms as well as any forms submitted in the future. Previously filed forms which do not comply with these requirements shall be deemed withdrawn as of the operative date of this subchapter.

(c) Within 120 days after the operative date of this subchapter, each issuer shall submit to the Life Bureau of the Department of Insurance a list of all funeral insurance policy forms currently filed which meet the requirements contained herein. An executive officer of the company shall certify that the forms listed comply with these rules. Any previously filed form not listed shall be deemed withdrawn.

11:4-25.4 Disclosure requirements

(a) The submission for the filing of any funeral insurance policy shall be accompanied by a copy of the prepaid funeral agreement to which the policy is related. The prepaid funeral agreement shall provide that:

1. Cancellation of the funeral arrangements will not cancel or otherwise invalidate the funeral insurance policy;

2. Cancellation, withdrawal of, or loans made against, the proceeds or cash value of the policy shall void any price guarantees and indicate, therefore, the likelihood that inadequate funds will exist to pay for the original arrangements as intended; and

3. Cancellation of the prepaid funeral agreement will not result in the refund of premiums paid.

(b) Subsequent amendments to or any replacement of the prepaid funeral agreement, or any new or additional prepaid funeral agreement or agreeements to be used with a filed funeral insurance policy, shall be submitted to the Department of Insurance for prior review and approval to assure compliance with the requirements of (a) above.

11:4-25.5 Loss ratio standard

(a) If a funeral insurance policy is designated a life insurance contract, the death benefit payable thereon shall satisfy the following:

1. During each of the first two policy years, the death benefit shall not be less than the premium fund.

2. During each of the first seven policy years, the death benefit shall not be less than the insurance adjusted premium fund.

3. The death benefit in each year after the first two years shall not be less than the death benefit required in the second year, and the death benefit in each year after the first seven years shall not be less than that required in the seventh year. (See subchapter Appendix for numerical examples of these calculations.)

(b) Any funeral insurance contract not satisfying the standards of (a) above shall be designated an annuity contract.

(c) If a funeral insurance policy is designated an annuity contract, it shall provide for a death benefit, and the benefit payable on death or surrender shall not be less than the applicable amount required by the Standard Nonforfeiture Law for Individual Deferred Annuities at N.J.S.A. 17B:25-20.

11:4-25.6 Severability

If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

11:4-25.7 Penalties

If after notice and an opportunity for hearing the Commissioner of Insurance finds that a person has violated this regulation or the enabling legislation, a penalty, in addition to any other penalty, not exceeding $2,000 for each violation, may be imposed and shall be collected and enforced pursuant to law including, but not limited to, N.J.S.A. 2A:58-1 et seq.

APPENDIX
Sample Calculations

1. Single Premium Case

A typical problem case is a policy with a level face amount of $1,000 sold to a female aged 80 for a single premium of $900.00.

During the first two years, the Premium Fund is the initial premium accumulated at 5.75 percent.

End of Year 1: (900) (1.0575) = $951.75<1,000

End of Year 2: (951.75) (1.0575) = $1,006.48>1,000

Therefore, the death benefit at the end of Year 2 would have to be increased to $1,006.48 in order to pass the Premium Fund test. Alternatively, the single premium could be decreased slightly in order to avoid failing the test.

For the Insurance Adjusted Premium Fund, use the 1980 CSO female mortality rates at ages 80, 81 and 82: 65.99/1,000, 73.60/1,000, and 82.40/1,000. (Even though the test extends for seven years, the rates at higher ages are not needed for the reason discussed below.)

At the end of Year 1, the Insurance Adjusted Premium Fund is: [(900) (1.0575)-(.06599) (1,000)]/(1-.06599) = $948.34

This number is lower than $951.75 to reflect the value of the insurance protection provided (which was one year's insurance of the difference between $1,000 and $948.34, or about $50.00 of protection).

At the end of Year 2, the Insurance Adjusted Premium Fund is: [(948.34) (1.0575)-(.07360) (1,006.48)]/(1-.07360) = $1,002.58>1,000

Notice that the death benefit used is the actual death benefit required by the Premium Fund test. Therefore, the Premium Fund test should be applied before the Insurance Adjusted Premium Fund test.

At the end of Year 3, the Insurance Adjusted Premium Fund is: [(1,002.58) (1.0575)-(.08240) (1,060.23)]/(1-.08240) = $1,060.23

Notice that once the Insurance Adjusted Premium Fund exceeds the initial death benefit, there is no insurance protection and the Insurance Adjusted Fund grows by 5.75 percent per year.

2. Multiple Premium Case

A typical problem case is $350.00 per year for three years to pay for a policy with a level face value of $1,000, issued to a female aged 80. After three years, the total premiums paid, $1,050, exceed the future benefit. However, the policyholder has received the benefit of some insurance protection during the first two years, when the death benefit exceeded the premiums paid.

Compliance with the two-year Premium Fund test is straight forward; the accumulated premiums are:

Year 1: (0+350) (1.0575) = $370.13<1,000

Year 2: (370.13+350) (1.0575) = $761.54<1,000

For the Insurance Adjusted Premium Fund:

Year 1: [(0+350) (1.0575)-(.06599) (1,000)]/(1-.06599) = $325.62

Year 2: [(325.62+350) (1.0575)-(.07360) (1,000)]/(1-.07360) = $691.78

Year 3: [(691.78+350) (1.0575)-(.08240) (1,000)]/(1-.08240) = $1,110.81>1,000

Because the Year 3 Insurance Adjusted Premium Fund exceeds $1,000, the death benefit needs to be increased. However, the higher death benefit adjusts the calculation of the Insurance Adjusted Premium Fund (since more death protection is being provided). The modified Year 3 death benefit is:

(691.78+350) (1.0575) = $1,101.68

For the next four years (until the end of Year 7) the death benefit must grow by 5.75 percent per year.

The ultimate death benefit is:

(1,101.68) $(1.0575)^4$ = $1,377.78

LABOR

(a)

DIVISION OF UNEMPLOYMENT INSURANCE AND DISABILITY INSURANCE FINANCING

Definitions Used by Employment Security Agency and Special Employment Relationships

Proposed Readoption with Amendments: N.J.A.C. 12:19

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 43:21-1 et seq.

Proposal Number: PRN 1995-235.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Wednesday, May 10, 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 May 17, 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 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. 12:19 will expire on July 2, 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 repealed effective April 1, 1985. New rules were adopted effective July 2, 1990. A summary of the sections of N.J.A.C. 12:19 follows. Proposed amendments deemed necessary for the effective operation of the program are also provided. Specifically, the proposed readoption with amendments reflects technical changes and gender neutral language.

The title of the chapter is being changed to reflect that the definitions are for the Employment Security Agency and not just for the Division.

N.J.A.C. 12:19-1.1 sets forth the purpose of this chapter, which is to set forth definitions used throughout N.J.A.C. 12:16 through 12:19. It is being amended to accurately reflect the chapters to which the definitions apply.

N.J.A.C. 12:19-1.2 defines the words and terms used throughout N.J.A.C. 12:16 through 12:19. It is being amended to include a limited liability company in the definition of "employing unit."

N.J.A.C. 12:19-1.3 explains which conditions must be met for a partnership to be assigned a separate registration number and experience rating. This section is being amended to delete "of a group of two or more partnerships" because it is redundant to explain what constitutes a partnership.

N.J.A.C. 12:19-1.4 outlines special employment relationships which exist for tax purposes.

Social Impact

The proposed readoption with amendments will enable the Department to continue its function of providing unemployment compensation and temporary disability coverage to qualified workers. The proposed readoption with amendments will make it easier for employers to con-

form to the appropriate laws and regulations of the Department, thereby avoiding any unnecessary penalties for the failure to provide adequate coverage for workers. The definition of limited liability companies is being added to N.J.A.C. 12:19-1.2 because this type of legal entity was created by the New Jersey Limited Liability Company Act, N.J.S.A. 42:2B-1 et seq., effective as of July 30, 1993. The elimination of the reference to N.J.A.C. 12:15 in N.J.A.C. 12:19-1.1 reflects the fact that none of the definitions noted in N.J.A.C. 12:19-1.2 are actually used in N.J.A.C. 12:15.

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 definitions which are used throughout N.J.A.C. 12:16 through 12:19 and provides examples which illustrate the definitions and, in some instances, exceptions to definitions. By virtue of these defined terms, employers are required to report employees in special employment situations to the State for tax purposes, and to withhold taxes. In doing so, employers incur the costs of reporting and bookkeeping. Employees' taxes are withheld; however, the reporting of employees and tax withholdings ensure employee protection under the Unemployment Compensation and Temporary Disability Insurance Laws. The proposed amendments will eliminate unnecessary expense to employers caused by their lack of knowledge of the various changes in the Unemployment Compensation, Temporary Disability, and enactment of the Health Care Subsidy and Workforce Development Laws and will clarify the meaning of existing definitions and their applicability.

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 definitions used throughout N.J.A.C. 12:16 through 12:19 to implement the New Jersey Unemployment Compensation and Temporary Disability 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 no impact in terms of imposing additional reporting, recordkeeping or compliance requirements on businesses of any type including small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As discussed in the Economic Impact above, current requirements for employers in special employment situations to report employees and withhold taxes are continued. No professional services are required to comply with these rules. The proposed amendments merely set forth the definitions which are used throughout N.J.A.C. 12:16 through 12:19 and provide examples which illustrate the definitions and, in some instances, exceptions to the definitions. As these rules are necessary to enable employers to understand the Unemployment Compensation, Temporary Disability, Health Care Subsidy and Workforce Development Laws and how they are implemented, no exceptions or lesser requirements for small businesses are provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:19.

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

CHAPTER 19
DEFINITIONS [FOR DIVISION OF] **USED BY** EMPLOYMENT SECURITY **AGENCY** AND SPECIAL EMPLOYMENT RELATIONSHIPS

12:19-1.1 Purpose

The purpose of this chapter is to set forth the definitions to be used throughout N.J.A.C. [12:15]**12:16** through 12:19, and to provide examples illustrating the definitions and, in some instances, exceptions to the definitions.

12:19-1.2 Definitions

The following words and terms, when used [in this subchapter] **throughout N.J.A.C. 12:16 through 12:19,** shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Base of operations" means the place or fixed center of more or less permanent nature from which the employee starts work and customarily returns to in order to accomplish any of the following:

1. Receive instructions from the employer;
2. Receive instructions from customers or other persons;
3. Replenish stocks and materials;
4. Repair equipment; or
5. Perform any other functions necessary to the exercise of a particular trade or business.

Examples: [A repairman] **An individual** reports to a New Jersey site daily to stock his **or her** repair truck and receive [his] assignments for that day. The [repairman] **individual** performs services both in New Jersey and other states. This individual must be reported by the employer to New Jersey as his **or her** base of operations is in New Jersey and some services are performed in New Jersey.

A [salesman] **salesperson**, who is a New Jersey resident, works out of his **or her** home for a non-New Jersey entity. The entity does not provide office space for the [salesman] **salesperson**. The [salesman] **salesperson** receives his **or her** calls, correspondence, and communication from [his] **the** employer at [his] home. The [salesman] **salesperson** sells in a variety of states and does not perform 90 percent or more of his **or her** services in any state. This [salesman] **salesperson** must be reported by the employer to New Jersey as [his] **the** base of operations is his **or her** home, which is in New Jersey, and some services are performed in New Jersey.

. . .

"Employing unit" means an entity which has in its employ one or more individuals performing services for it within New Jersey, and includes:

1. The State of New Jersey; its instrumentalities or political subdivisions or any instrumentality of New Jersey and one or more other states or political subdivisions; individual proprietorships; partnerships; associations; trusts; estates; **limited liability companies;** joint stock companies; domestic or foreign insurance companies and corporations; receivers; trustees in bankruptcy and their successors; and legal representatives of deceased persons.

. . .

"Good cause" means, as used in N.J.S.A. 43:21-7(c)(7)(A) and N.J.A.C. 12:16-18.1(b), any situation over which the employer did not have control and which was so compelling that it would prevent the employer from acting in a timely manner. Good cause does not include: negligence, including that of an agent such as an accountant or attorney; or a mistake of law or fact.

. . .

"Place from which service is directed and controlled" means the place from which the employer's basic authority and general control emanates. This is not necessarily the place at which a [foreman] **supervisor** directly supervises the performance of services under general instructions from the place of direction and control.

Example: A consultant performs services in a variety of states. [He] **The consultant** does not have a base of operations [as he] **and** reports directly to the job site, where he **or she** receives [his] communication and directions from his **or her** employer. [His] **The** employer's headquarters, from which [he] **the consultant** receives general direction and control, are in New Jersey. Less than 90 percent of [his] **the** services are performed in any one state. This individual must be reported by the employer to New Jersey [as he has] **since there is** no **specified** base of operations, the place from which he **or she** is directed and controlled is in New Jersey, and some services are performed in New Jersey.

. . .

"Residence" means the principal place of abode for an individual as determined for a particular calendar year.

Example: A management consultant, who is a resident of New Jersey, performs consulting work for an entity in a variety of states, including New Jersey, at varying job sites. Less than 90 percent of his **or her** services are performed in any one state. [He] **The management consultant** has no base of operations [as] **since** he **or she** receives [his] instruction from [his] **the** employer at [his] varying job sites. He **or she** performs no consulting services in the state from which direction and control is provided. This individual must be

reported by the employer to New Jersey [as he has] **although there is** no base of operations in New Jersey; this individual does not perform services in the state from which direction and control is provided, but this individual does live in New Jersey and has provided some services in New Jersey.

. . .

12:19-1.3 Partnerships

(a) A separate registration number and experience rating shall be assigned to each partnership [of a group of two or more partnerships] **that is** composed of identical partners with identical interests, if all of the following conditions are met:

1. Each separate partnership joins in such a request to the Controller **or the Controller's designee** or the Controller **or the Controller's designee** determines that individual reporting is appropriate;

2.-4. (No change.)

12:19-1.4 Special employers

(a) The following situations outline special employment relationships which exist for tax purposes:

1. A crew leader shall be considered the employer of the crew which the crew leader has provided to the agricultural entity if:

i. (No change.)

ii. The crew leader has completed and submitted[, to the office of the Controller,] **Department of Labor** [form] **Form** UC-1CL, "Status Report of Crew Leader Employing Unit"; and

iii. (No change.)

2. (No change.)

[3.](**b**) For purposes of N.J.S.A. 34:8-24 et seq., an employment agency is not an "employer," but maintaining a license as an employment agency in no way precludes the Commissioner of Labor from determining that the employment agency is an "employer" for purposes of the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

[i.] **1.** Entities or persons registering under N.J.S.A. 34:8-24 should make a separate inquiry to the [Controller's Chief Auditor] **Department of Labor** for a determination as to [its] **their** status under N.J.S.A. 43:21-1 et seq.

(a)

OFFICE OF WAGE AND HOUR COMPLIANCE

Wage Collection Appeals

Proposed Amendment: N.J.A.C. 12:61-1.3

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:11-57 et seq., as amended by P.L. 1991, c.205 and R.1:1A-4 and R.4:74-8.

Proposal Number: PRN 1995-234.

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

Friday, May 12, 1995
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

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 May 17, 1995 to:

Deirdre L. Webster, Regulatory Officer
Office of Regulatory Services
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 12:61-1.3 will eliminate the provision at subsection (b) which allows an employer or employee to appeal a wage collection determination rendered by the Wage and Hour Division to the Office of Administrative Law. If so doing, the amendment conforms with the statutory authorization found at N.J.S.A. 34:11-58 as amended by P.L. 1991, c.205. This statute provides for direct appeal of wage collection determinations to the Superior Court of New Jersey, Law Division, pursuant to N.J.S.A. 32:11-63 and Rule 4:74-8 of the New Jersey Rules of Court.

Social Impact

The proposed amendment should not have adverse social impact on any specific population. The proposed amendment will conform with the appeal procedures provided by N.J.S.A. 34:11-57 et seq. and the New Jersey Rules of Court, more specifically Rule 4:74-8.

Economic Impact

The proposed amendment will have no adverse economic impact. The rule will conform with the appeal procedures provided by N.J.S.A. 34:11-57 et seq. and the New Jersey Rules of Court, more specifically Rule 4:74-8.

Executive Order No. 27 Statement

The proposed amendment does 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 amendment pursuant to Executive Order No. 27 (1994) is not required.

Regulatory Flexibility Statement

The proposed amendment will not require any additional reporting, recordkeeping and other compliance requirements as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In fact, by conforming to the statutory authorization found at N.J.S.A. 34:11-57 et seq., the economic impact, and compliance requirements on small businesses will be reduced.

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

12:61-1.3 Powers of the Commissioner

(a) (No change.)

[(b) If the Commissioner determines that a matter concerning a wage collection constitutes a contested case, all hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1.

(c) The Commissioner shall make the final decision of the Department.

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of New Jersey Superior Court.]

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

[(f)](**c**) Such decision or award as mentioned in [(e)] **(b)** above shall be a judgment when a certified copy thereof is filed with the Superior Court.

[(g)](**d**) (No change in text.)

(e) The Commissioner or his or her representative shall make the final decision of the Department.

(f) Appeals of the final decision of the Department shall be made to the Superior Court of New Jersey, Law Division pursuant to N.J.S.A. 34:11-63 and Rule 4:74-8 of the New Jersey Rules of Court.

LAW AND PUBLIC SAFETY

(a)

POLICE TRAINING COMMISSION

Certificate Requirements for Vehicle Operations Instructors

Proposed Amendment: N.J.A.C. 13:1-4.6

Authorized By: Police Training Commission, Terrence P. Farley, Chairman.

Authority: N.J.S.A. 52:17B-71d.

Proposal Number: PRN 1995-221.

Submit comments in writing by May 17, 1995, to:

Terrence P. Farley, Chairman
Police Training Commission
Department of Law & Public Safety
Division of Criminal Justice
CN-085
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Police Training Act (N.J.S.A. 52:17B-66 et seq.) requires that county and municipal police officers complete a basic training course approved by the Police Training Commission before they are eligible for permanent appointment. Commencing July 1, 1995, the basic training course will include behind-the-wheel training in the operation of a motor vehicle.

The Police Training Commission is authorized by the Police Training Act (N.J.S.A. 52:17B-71d) to prescribe the minimum qualifications for instructors participating in basic training courses and to certify as qualified those instructors who have met the minimum requirements. The proposed amendment sets forth the minimum qualifications and certification process for vehicle operations instructors. Under the proposed amendment, applicants seeking certification as vehicle operations instuctors must successfully complete a Commission-approved vehicle operations instructor course. In lieu of completing a Commission-approved course, applicants may substitute a course substantially equivalent to a Commission-approved vehicle operations instructor course.

The proposed amendment has a twofold purpose. First, it satisfies the Commission's obligation to prescribe minimum qualifications for instructors participating in basic training courses. Second, the proposed amendment will ensure that those persons who are providing behind-the-wheel instruction to police officer trainees are themselves properly trained to provide instruction in vehicle operations.

Social Impact

The safe operation of emergency vehicles is a significant public concern. In response to this concern, the Police Training Commission will make behind-the-wheel training in vehicle operations part of its basic training course for police officers beginning July 1, 1995. The proposed amendment will ensure that qualified instructors provide the behind-the-wheel training. The Commission believes that the addition of behind-the-wheel training by certified instructors will reduce the danger inherent in emergency vehicle operations and increase the safety of the motoring public.

Economic Impact

Adoption of this amendment will not have a significant economic impact upon the State. Those law enforcement agencies that choose to have one or more of their members certified as a vehicle operations instructor will be obligated to send the individual(s) to a Vehicle Operations Instructors Course. The course will be approximately one week in length. There will be no application fee for certification as a vehicle operations instructor.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rule amendment contained in this proposal is governed by the Police Training Act (N.J.S.A. 52:17B-66 et seq.) and is not subject to any standards or requirements imposed by Federal law.

Regulatory Flexibility Statement

The proposed amendment applies only to those county and municipal law enforcement agencies that seek to have one or more of their members certified as vehicle operations instructors. It does not impose reporting, recordkeeping or other compliance requirements on small businesses. Therefore, no regulatory flexibility statement is required.

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

13:1-4.6 Certification requirements for instructors of certain subjects

(a) Applicants who seek certification to instruct in certain subjects must be certified as an instructor and also comply with the following requirements:

1.-5. (No change.)

6. An individual seeking certification as a vehicle operations instructor at a Commission-approved school must successfully complete a Commission-approved Vehicle Operations Instructors Course or one containing substantially equivalent instruction in driver training.

(b)

DIVISION OF MOTOR VEHICLES

Fees

Proposed Amendments: N.J.A.C. 13:18-11.4, 13:19-10.3, 13:20-17.3, and 34.5, 13:21-9.3 and 21.22, 13:23-2.3, 2.6, 3.5 and 3.7, 13:82-8.6, 8.13 and 8.19

Proposed New Rule: N.J.A.C. 13:82-9.1

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

Authority: N.J.S.A. 39:2-3, 39:3-10a, 39:3-28, 39:3-32, 39:3-33.4, 39:5-30.4, 39:6-42, 39:12-4, 39:13-7, 12:7-34.36 et seq., 12:7A-28 and P.L. 1994, c.60.

Proposal Number: PRN 1995-241.

Submit written comments by May 17, 1995 to:

C. Richard Kamin, Director
Division of Motor Vehicles
Attn: Legal Staff
225 East State Street
CN 162
Trenton, NJ 08666-0162

The agency proposal follows:

Summary

The purpose of this proposal is three-fold: to increase various fees collected by the Division of Motor Vehicles pursuant to regulation, thereby increasing the amount of monies collected by the Division which are deposited into the General Fund of the State of New Jersey; to amend other Division rules to accurately reflect various statutory fees which have been increased by statutory amendment as a result of the enactment of P.L. 1994, c.60; and to adopt new rules which codify existing certificate of ownership fees for vessels which are collected by the Division in accordance with N.J.S.A. 12:7A-1 et seq. Technical corrections to rules, such as spelling and punctuation changes, are also included as part of this proposal.

N.J.A.C. 13:18-11.4, which sets forth fees for various public records supplied by the Division, is amended by the proposal. N.J.A.C. 13:18-11.4(b)1 as amended increases the fee for driver history abstracts to $10.00 per abstract in conformity with N.J.S.A. 39:6-42 as amended by section 25 of P.L. 1994, c.60. N.J.A.C. 13:18-11.4(b)5 as amended increases the fee for copies of registration or driver license applications to $8.00 for an uncertified copy and $10.00 for a certified copy in conformity with N.J.S.A. 39:3-28 as amended by section 17 of P.L. 1994, c.60. N.J.A.C. 13:18-11.4(b)6 as amended increases the fee for copies of boat registration applications to $8.00 for an uncertified copy and $10.00 for a certified copy. This change is intended to conform the fees charged for copies of boat registration applications to the fees charged for copies of vehicle registration applications. N.J.A.C. 13:18-11.4(b)8 as

amended increases the fee for a file search of Division registration or driver license application records to $8.00 for an uncertified record and $10.00 for a certified record in conformity with N.J.S.A. 39:3-28 as amended by section 17 of P.L. 1994, c.60. These fees are charged by the Division when a search of its registration or driver license application records fails to disclose an application submitted for the vehicle or person in question. N.J.A.C. 13:18-11.4(b)9, which is added by the proposal, sets forth a fee of $6.00 for a telephonic search of Division records. N.J.A.C. 13:18-11.4(e) is amended to provide a fee of $2.00 per driver history abstract for high volume computerized data users in conformity with N.J.S.A. 39:6-42 as amended by section 25 of P.L. 1994, c.60.

N.J.A.C. 13:19-10.3(c) and 13:20-17.3, which set forth fees for attendance at a Division of Motor Vehicles' driver improvement program, are amended by the proposal. N.J.A.C. 13:19-10.3(c) and 13:20-17.3 as amended increase the fee for attendance at a Division driver improvement program to $100.00 in conformity with N.J.S.A. 39:5-30.4 as amended by section 24 of P.L. 1994, c.60.

N.J.A.C. 13:19-10.3(f), which sets forth the fee for attendance at a Division of Motor Vehicles' probationary driver program, is amended by the proposal. N.J.A.C. 13:19-10.3(f) as amended increases the fee for attendance at a Division probationary driver program to $100.00. This change is intended to conform the fee charged for attendance at a Division probationary driver program to the fee charged for attendance at a Division driver improvement program.

N.J.A.C. 13:20-34.5(a), which sets forth fees for license plates issued by the Division denoted as "courtesy marks" and "personalized marks," is amended by the proposal. N.J.A.C. 13:20-34.5(a)1 as amended increases the fee for "courtesy marks" to $30.00 in comformity with N.J.S.A. 39:3-33.4 as amended by section 21 of P.L. 1994, c.60. N.J.A.C. 13:20-34.5(a)2 as amended increases the fee for "personalized marks" to $100.00 in conformity with N.J.S.A. 39:3-33.4 as amended by section 21 of P.L. 1994, c.60. N.J.A.C. 13:20-34.5(a)3 as amended increases the fee for the replacement of lost, stolen or obliterated license plates denoted by the Division as "particular identifying marks" to $11.00 in accordance with N.J.S.A. 39:3-32. N.J.A.C. 13:20-34.5(b) as amended increases to $6.00 the fee which must be paid for the replacement of lost, stolen or obliterated license plates (except as otherwise provided by N.J.A.C. 13:20-34.5(a)3 for a replacement of "particular identifying marks") in accordance with N.J.S.A. 39:3-32.

N.J.A.C. 13:21-9.3(a) as amended by the proposal provides that a fee of $50.00 shall be collected by the Division for the restoration of any license which has been suspended or revoked by reason of the licensee's violation of any law or regulation in conformity with N.J.S.A. 39:3-10a as amended by section 14 of P.L. 1994, c.60. N.J.A.C. 13:21-9.3(b) is added by the proposal and provides that a fee of $50.00 shall be collected by the Division for the restoration of vehicle registrations which have been suspended or revoked by reason of the registrant's violation of any law in conformity with N.J.S.A. 39:3-10a as amended by section 14 of P.L. 1994, c.60. The amendment of N.J.A.C. 13:21-9.3 thus increases the fee charged for restoration of a license, and expands the rule to include registration restorations, consistent with the aforementioned statutory amendments.

N.J.A.C. 13:21-21.22(a), which sets forth the fee which must be paid to the Division for the restoration of an auto body repair facility license which has been suspended or revoked, is amended by the proposal. N.J.A.C. 13:21-21.22(a) as amended increases the license restoration fee which must be paid to the Division for the restoration of a suspended or revoked auto body repair facility license to $50.00 in conformity with N.J.S.A. 39:3-10a as amended by section 14 of P.L. 1994, c.60.

N.J.A.C. 13:23-2.3(a), which sets forth the fees for a driving school license, is amended by the proposal. N.J.A.C. 13:23-2.3(a) as amended increases the fee which must be paid to the Division for a renewal of a driving school license to $200.00 in conformity with N.J.S.A. 39:12-2 as amended by section 29 of P.L. 1994, c.60. The $250.00 fee for an initial driving school license set forth in the rule remains unchanged by the proposal.

N.J.A.C. 13:23-2.6(a), which sets forth the fee for a duplicate driving school license, is amended by the proposal. N.J.A.C. 13:23-2.6(a) as amended increases the fee which must be paid to the Division for a duplicate driving school license to $5.00 in conformity with N.J.S.A. 39:12-2 as amended by section 29 of P.L. 1994, c.60.

N.J.A.C. 13:23-3.5, which sets forth the fee for a driving school instructor's license, is amended by the proposal. N.J.A.C. 13:23-3.5 as amended increases the fee which must be paid to the Division for a renewal of a driving school instructor's license to $50.00 in conformity with N.J.S.A. 39:12-5 as amended by section 30 of P.L. 1994, c.60. The $75.00 fee for an initial driving school instructor's license set forth in the rule remains unchanged by the proposal.

N.J.A.C. 13:23-3.7(a), which sets forth the fee for a duplicate driving school instructor's license, is amended by the proposal. N.J.A.C. 13:23-3.7(a) as amended increases the fee which must be paid to the Division for a duplicate driving school instructor's license to $5.00. This change is intended to conform the fee charged for a duplicate driving school instructor's license to the fee charged for a duplicate driving school license.

N.J.A.C. 13:82-8.6(a), which sets forth the fee for duplicate vessel registration certificates, is amended by the proposal. N.J.A.C. 13:82-8.6(a), as amended, increases the fee which must be paid to the Division for a duplicate vessel registration certificate to $5.00. This change is intended to conform the fee charged for duplicate vessel registration certificates to the fee charged for duplicate vehicle registration certificates.

N.J.A.C. 13:82-8.13(c), which sets forth the fee for duplicate validation stickers, is amended by the proposal. N.J.A.C. 13:82-8.13(c), as amended, increases the fee which must be paid to the Division for a duplicate validation sticker to $5.00. This change is intended to keep the fee charged for duplicate validation stickers consistent with the fee charged for duplicate vessel registration certificates.

N.J.A.C. 13:82-8.19(b), which sets forth the fee for duplicate photo boat operator's licenses, is amended by the proposal. N.J.A.C. 13:82-8.19(b), as amended, increases the fee which must be paid to the Division for a duplicate photo boat operator's license to $5.00. This change is intended to conform the fee charged for duplicate photo boat operator's licenses to the fee charged for duplicate photo driver's licenses.

N.J.A.C. 13:82-9.1 sets forth a new rule which provides that the fees collected by the Division for issuance of certificates of ownership for vessels (for example, $20.00 for issuance of a certificate of ownership which is not subject to a security interest), for making and filing records of transactions, for issuance of duplicate certificates of ownership for vessels (that is, $25.00), for providing copies of certificate of ownership records (that is, $5.00 for a lien search and $10.50 for a chain of title), and for filing certificates and issuing corrected certificates of ownership for vessels (that is, $20.00). These fees are equivalent to the fees established in chapter 10 of Title 39 of the Revised Statutes for motor vehicle certificate of ownership-related functions performed by the Division.

Social Impact

The proposed amendments are beneficial to the public in that they conform various rules which pertain to the payment of fees to the Division to the amended fees as set forth in P.L. 1994, c.60, thus providing accurate information to interested members of the public concerning said statutory fees. The amendments and new rule increase various other fees which are payable to the Division pursuant to regulation (for example, the fees for uncertified and certified copies of boat registration applications as set forth at N.J.A.C. 13:18-11.4(b)6 and the fee for a duplicate driving school instructor's license as set forth at N.J.A.C. 13:23-3.7(a)). The proposed increases in the fees established by Division regulation are consistent with the increased fees for similar documents and services provided in P.L. 1994, c.60. The proposed amendments and new rule have no social impact upon the Division.

Economic Impact

The proposed amendments and new rule have a positive economic impact upon the State in that the Division estimates that the proposed increases in fees charged by the Division will enhance State revenues by approximately $2.9 million annually. The additional revenue collected by the Division will be deposited into the General Fund of the State of New Jersey.

The amended rules have an economic impact upon those members of the public who seek to purchase an uncertified or certified copy of a boat registration application, driver history abstract, registration application or driver license application; or who apply for "courtesy" or "personalized" license plates; or who apply for replacement license plates; or who apply for restoration of a driver license or registration; or who are required to attend a Division of Motor Vehicles' driver improvement program or probationary driver program; or who apply for a duplicate driving school or driving school instructor's license; or who apply for a duplicate registration certificate or validation sticker for a vessel; or who apply for a duplicate photo boat operator's license; or

who apply for a certificate of ownership for a vessel. The amendments and new rule increase the fees collected by the Division for said documents and services, consistent with the fee increases embodied in P.L. 1994, c.60 for similar documents and services provided by the Division. The proposed new rule codifies existing fees which are collected by the Division for issuance of certificates of ownership for vessels and other related functions.

Executive Order No. 27 (1994) Statement

An Executive Order No. 27 (1994) analysis is not required because the fees which are the subject of this proposal are either specifically set forth in Title 39 or Title 12 of the Revised Statutes or are authorized pursuant to said statutes and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

The proposed amendments and new rule have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Division estimates that most, if not all, of the business entities which are affected by the amendments and new rule are small businesses as defined in said Act, such as auto body repair facilities. Approximately 2,250 business entities are presently licensed by the Division as auto body repair facilities in the State of New Jersey. The amendments and new rule impose no reporting or recordkeeping requirements on such small businesses, nor do they require such businesses to engage additional professional services. The amendments and new rule do not necessitate any capital expenditure for compliance by such small businesses. The proposed amendment of N.J.A.C. 13:21-21.22, which increases the fee charged by the Division to restore a suspended or revoked auto body repair facility license to $50.00, conforms the Division's rule to the fee set forth in N.J.S.A. 39:3-10a as amended by section 14 of P.L. 1994, c.60.

The proposed amendment of N.J.A.C. 13:20-34.5 impacts small businesses which wish to obtain "courtesy" or "personalized" license plates for their vehicles or which apply for license plates to replace lost, stolen or obliterated "particular identifying marks" or general issue license plates for their vehicles. The fees for "courtesy" and "personalized" license plates are increased as a result of the proposed amendment of N.J.A.C. 13:20-34.5(a)1 and 2 to $30.00 and $100.00, respectively, in conformity with N.J.S.A. 39:3-33.4 as amended by section 21 of P.L. 1994, c.60. Small businesses are not exempted from the payment of said statutory fees. The fee for the replacement of lost, stolen or obliterated "particular identifying marks" is increased as a result of the proposed amendment of N.J.A.C. 13:20-34.5(a)3 to $11.00. The $11.00 fee approximates the cost to the Division to replace such plates in accordance with N.J.S.A. 39:3-32. The fee for the replacement of lost, stolen or obliterated license plates (except as otherwise provided by N.J.A.C. 13:20-34.5(a)3 for replacement of "particular identifying marks") is increased as a result of the proposed amendment of N.J.A.C. 13:20-34.5(b) to $6.00. The $6.00 fee approximates the cost to the Division to replace such plates in accordance with N.J.S.A. 39:3-32. Since the purpose of the respective replacement plate fees is to defray the cost of replacing such plates in accordance with N.J.S.A. 39:3-32, it is not feasible to exempt small businesses from the payment of said fees.

The proposed amendments of N.J.A.C. 13:23-2.3(a) and 2.6(a), which increase the fees charged by the Division for the renewal of a driving school license and for the issuance of a duplicate driving school license, respectively, conform the Division's rules to the fees set forth in N.J.S.A. 39:12-2 as amended by section 29 of P.L. 1994, c.60.

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

CHAPTER 18
EXECUTIVE AND ADMINISTRATIVE SERVICE

SUBCHAPTER 11. ORGANIZATION OF THE DIVISION OF MOTOR VEHICLES

13:18-11.4 Fees; information search; exemption

(a) (No change.)

(b) The fees are as follows:

1. A [complete] Driver History Abstract [(other than an abstract issued to an insurance company pursuant to N.J.S.A. 39:6-42)]:

i. Uncertified, [$4.00] **$8.00**.

ii. Certified, [$5.00] **$10.00**.

2.-4. (No change.)

5. Registration or Driver License Application:

i. Uncertified, [$4.00] **$8.00**.

ii. Certified, [$5.00] **$10.00**.

6. Boat Registration Application:

i. Uncertified, [$4.00] **$8.00**.

ii. Certified, [$5.00] **$10.00**.

7. (No change.)

8. File Search of Division Records:

i. Uncertified, [$4.00] **$8.00**.

ii. Certified, [$5.00] **$10.00**.

9. Telephonic Search of Division Records: $6.00.

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

(e) Notwithstanding the fees set forth in this section, the Director shall [have discretion to establish fees for] **collect a fee of $2.00 per driver history abstract from** high volume tape to tape users [depending upon the type and volume of information requested].

CHAPTER 19
DRIVER CONTROL SERVICE

SUBCHAPTER 10. POINT SYSTEM AND DRIVING DURING SUSPENSION

13:19-10.3 Driver improvement program attendance

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

(c) The fee for attendance at a Division of Motor Vehicles driver improvement program shall be [$40.00] **$100.00**.

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

(f) The fee for attendance at a Division of Motor Vehicles probationary driver program shall be [$40.00] **$100.00**.

CHAPTER 20
ENFORCEMENT SERVICE

SUBCHAPTER 17. DRIVER IMPROVEMENT SCHOOLS

13:20-17.3 Amount of fee

Any person attending a Division of Motor Vehicles driver improvement school shall pay an attendance fee of [$40.00] **$100.00**.

SUBCHAPTER 34. IDENTIFYING MARKS

13:20-34.5 Fees

(a) Fees for particular identifying marks, which shall be paid with the application therefor, shall be as follows unless otherwise provided by law:

1. "Courtesy [Marks] **marks**": [$15.00] **$30.00**;

2. "Personalized marks": [$50.00] **$100.00**;

3. Replacement of lost, stolen or obliterated "particular identifying marks": [$10.00] **$11.00**.

(b) Except as otherwise provided by (a)3 above, a fee of [$5.00] **$6.00** shall be paid for replacement of lost, stolen or obliterated license plates.

CHAPTER 21
LICENSING SERVICE

SUBCHAPTER 9. LICENSE AND REGISTRATION RENEWALS **AND RESTORATIONS**

13:21-9.3 [License restoration] **Restoration** fees

(a) A fee of [$30.00] **$50.00** shall be payable to the Director [of the Division of Motor Vehicles] for the restoration of any license which has been suspended or revoked by reason of the licensee's violation of any [of the provisions of Title 39] **law** or [any] regulation [adopted pursuant thereto].

(b) A fee of $50.00 shall be payable to the Director for the restoration of vehicle registrations which have been suspended or revoked by reason of the registrant's violation of any law.

SUBCHAPTER 21. AUTO BODY REPAIR FACILITIES

13:21-21.22 License restoration

(a) A fee of [$30.00] **$50.00** shall be payable to the Division for the restoration of an auto body repair facility license which is suspended or revoked pursuant to N.J.S.A. 39:13-1 et seq. or this subchapter. Such license restoration fee shall be paid to the Division before the license may be restored.

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

CHAPTER 23
DRIVING SCHOOLS

SUBCHAPTER 2. DRIVING SCHOOLS

13:23-2.3 License fee; term

(a) The annual fee for the initial license shall be $250.00; the fee for a renewal license shall be [$100.00] **$200.00**.

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

13:23-2.6 Lost, mutilated or destroyed licenses

(a) In the event a license, or duplicate thereof, is lost, mutilated, or destroyed, a duplicate **license** shall be issued upon proof of the facts[,] and [upon] payment of [$3.00] **a fee of $5.00** and, in the case of [multilation] **a mutilated license**, upon surrender of such mutilated license. Such proof shall be submitted in the form of an affidavit indicating:

1.-2. (No change.)

SUBCHAPTER 3. DRIVING SCHOOL INSTRUCTORS

13:23-3.5 Instructor's license fee

The instructor's license is valid for the calendar year. The fee for the initial license shall be $75.00 and the fee for the annual renewal thereof shall be [$30.00] **$50.00**.

13:23-3.7 Lost, mutilated or destroyed licenses

(a) In the event a license, or duplicate thereof, is lost, mutilated, or destroyed, a duplicate license shall be issued upon proof of the facts and payment of a fee of [$3.00] **$5.00** and, in the case of a mutilated license, upon surrender of such mutilated license. Such proof shall be submitted in the form of an affidavit indicating:

1.-2. (No change.)

CHAPTER 82
BOATING REGULATIONS

SUBCHAPTER 8. REGISTRATION AND LICENSING

13:82-8.6 Duplicate registration certificates

(a) The fee for the issuance of a duplicate registration certificate for a vessel shall be [$3.00] **$5.00**.

(b) (No change.)

13:82-8.13 Display of validation sticker and fee for duplicate

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

(c) The fee for the [duplicate] issuance of a **duplicate** validation sticker shall be [$3.00] **$5.00**.

13:82-8.19 Fee for duplicate operator's license

(a) (No change.)

(b) The fee for issuance of a duplicate boat operator's license with a photo shall be [$4.50] **$5.00**.

(c) (No change.)

SUBCHAPTER 9. CERTIFICATE OF OWNERSHIP FEES

13:82-9.1 Certificate of ownership fees

(a) The fee collected by the Division for issuing a certificate of ownership in case of a sale not subject to a security interest pursuant to N.J.S.A. 12:7A-12a shall be $20.00.

(b) The fee collected by the Division for issuing a certificate of ownership and copy thereof in case of a sale subject to a security interest pursuant to N.J.S.A. 12:7A-12b shall be $30.00.

(c) The fee collected by the Division for a certificate of ownership, upon the filing with the Director of a certificate of ownership together with a financing statement, pursuant to N.J.S.A. 12:7A-12c shall be $30.00.

(d) The fee collected by the Division for a notice of satisfaction of a lien or encumbrance of record or abstract, or termination of a security interest pursuant to N.J.S.A. 12:7A-12f shall be $10.00.

(e) The penalty collected by the Division from a purchaser who fails to comply with the provisions of N.J.S.A. 12:7A-12g shall be $25.00.

(f) The fee collected by the Division for issuing a duplicate certificate of ownership pursuant to N.J.S.A. 12:7A-13 shall be $25.00.

(g) The fees collected by the Division for providing copies of documents pursuant to N.J.S.A. 12:7A-15 shall be as follows:

1. Lien search, $5.00.

2. Chain of title, $10.50.

(h) The fee collected by the Division for issuing a corrected certificate of ownership pursuant to N.J.S.A. 12:7A-18 shall be $20.00.

(a)

DIVISION OF MOTOR VEHICLES

Driver Control Service

Motor Vehicle Insurance Surcharge

Proposed Amendments: N.J.A.C. 13:19-12.1 and 12.11

Proposed Repeal: N.J.A.C. 13:19-12.10

Proposed New Rule: N.J.A.C. 13:19-12.12

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

Authority: N.J.S.A. 17:29A-35.

Proposal Number: PRN 1995-245.

Submit written comments by May 17, 1995 to:

C. Richard Kamin, Director
Division of Motor Vehicles
Attn: Legal Staff
225 East State Street
CN 162
Trenton, NJ 08666-0162

The agency proposal follows:

Summary

The proposal implements P.L. 1994, c.64 (N.J.S.A. 17:29A-35) which amended the Merit Rating Plan surcharge provisions of the "New Jersey Automobile Insurance Reform Act of 1982" so as to provide the Division of Motor Vehicles (Division) more effective creditor remedies to collect the insurance surcharge debt which is presently outstanding. Since the enactment of the Merit Rating Plan surcharge system in 1983 (P.L. 1983, c.65), the Division has been authorized to suspend the driving privileges of persons who fail to pay insurance surcharges as billed by the Division. When the Merit Rating Plan surcharge provisions were amended on June 30, 1994, insurance surcharges in an amount in excess of $525 million remained uncollected. P.L. 1994, c.64 authorizes the Director to issue certificates of debt to the Clerk of the Superior Court. The certificate of debt identifies a person who is indebted to the Division under the Merit Rating Plan surcharge law. The certificate of debt when entered by the Clerk upon the record of docketed judgments has the force and effect of a civil judgment. The Director is authorized to take collection action against debtors and to that end may refer matters to the Attorney General or his or her designee and collection agencies.

Proposed new rule N.J.A.C. 13:19-12.12 establishes a restoration/suspension procedure for surcharge debtors which is similar to that contained in the "Motor Vehicle Security-Responsibility Law" (N.J.S.A. 39:6-24 et seq.) for unsatisfied civil judgments resulting from motor vehicle accidents. See N.J.S.A. 39:6-35 and 39:6-39. N.J.A.C. 13:19-12.12(a) provides for the Director's issuance of a certificate of debt to the Clerk of the Superior Court. N.J.A.C. 13:19-12.12(b) provides that a debtor may make application to the Director for the restoration of

driving privileges upon acknowledgement of the debtor's agreement to pay a minimum amount fixed by the Director to be followed by an installment plan to satisfy the certificate of debt. N.J.A.C. 13:19-12.12(b) also provides that the Director may restore the debtor's driving privileges when an amount fixed by the Director has been paid by the debtor in full or partial satisfaction of the principal amount of the certificate of debt, accrued interest and statutory costs imposed against the debtor. N.J.A.C. 13:19-12.12(c) provides for the suspension of a debtor's driving privileges when the debtor fails to comply with the terms fixed by the Director's designee or a court of law for satisfying the certificate of debt on an installment basis.

N.J.A.C. 13:19-12.1, which provides for suspension for failure to pay a surcharge and for notification in the form of an "Insurance Surcharge Bill," is amended by the proposal. N.J.A.C. 13:19-12.1 as amended provides for the suspension of driving privileges rather than operating privileges as presently provided in the rule. The proposal also corrects a statutory citation in N.J.A.C. 13:19-12.1(a).

N.J.A.C. 13:19-12.10, which provides for payment of surcharges in installments by indigents, is proposed for repeal in conformity with N.J.S.A. 17:29A-35b(2) as amended by section 1 of P.L. 1994, c.64. P.L. 1994, c.64 extends the installment payment provision of the Merit Rating Plan to all persons who are assessed surcharges. Indigency is no longer a criteria to be considered in determining whether surcharge payments may be made on an installment basis.

N.J.A.C. 13:19-12.11, which provides for surcharge installments for persons surcharged for driving while intoxicated convictions, is amended by the proposal. N.J.A.C. 13:19-12.11 as amended provides for the suspension of driving privileges rather than operating privileges as presently provided in the rule. The proposal also increases the number of monthly installments from six to 12 in conformity with N.J.S.A. 17:29A-35b(2) as amended by section 1 of P.L. 1994, c.64.

Social Impact

The proposed amendments, repeal and new rules will have a beneficial social impact in that they implement the public policy of this State as expressed in P.L. 1994, c.64. The amendments, repeal and new rule establish administrative procedures which are intended to reduce the oustanding Merit Rating Plan surcharge debt. Surcharge revenues are dedicated for deposit in the New Jersey Automobile Insurance Guaranty Fund for the repayment of debt incurred by insurance pools for high-risk drivers, including the Market Transition Facility (MTF). Bonds recently issued by the State to fund a portion of the MTF deficit will be repaid from Merit Rating Plan surcharge revenues collected by the Division.

Economic Impact

The proposed amendments, repeal and new rule will have a beneficial economic impact on the State. It is anticipated that this rulemaking will serve to reduce the surcharge debt that is outstanding and that the additional monies collected by the Division will be utilized by the State to retire the MTF bonds which were recently issued to fund the MTF deficit.

There is an economic impact on the State in funding the Division's Automobile Insurance Surcharge and Collection Section which is charged with the administration of the supplemental surcharge rules. Administrative costs incurred in collecting insurance surcharges are partially offset in that the Division of Motor Vehicles is permitted by N.J.S.A. 17:29A-35 to retain 10 percent of the monies collected, or the actual cost of administering the collection of the surcharge, whichever is less. The Division of Motor Vehicles is also permitted by N.J.S.A. 17:29A-35 to retain five percent of the monies collected, or the actual cost of administering the insurance cancellation notification system established pursuant to N.J.S.A. 17:33B-41, whichever is less. The remainder of the surcharge monies collected must be remitted pursuant to N.J.S.A. 17:29A-35 to the New Jersey Automobile Insurance Guaranty Fund created pursuant to N.J.S.A. 17:33B-5.

There is an adverse economic impact on drivers who are indebted to the Division for Merit Rating Plan surcharges as they will be subjected to enhanced collection activities by the State.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the subject matter of this proposal is authorized under State law (N.J.S.A. 17:29A-35) and is not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed amendments, repeal and new rule have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments, repeal and new rule impose no compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The amendments, repeal and new rule impact solely on drivers who are indebted to the Division under the Merit Rating Plan surcharge law.

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

13:19-12.1 Failure to pay surcharge; Insurance Surcharge Bill

(a) The [director] **Director** shall suspend the [operating] **driving** privileges of any person who fails to pay a surcharge levied under [subsection 6b of the New Jersey Automobile Insurance Reform Act of 1982 (N.J.S.A. 17:29A-35)] **N.J.S.A. 17:29A-35b** until said surcharge is paid to the Division of Motor Vehicles.

(b) Surcharge notification shall be in the form of an "Insurance Surcharge Bill." A person shall have 30 days from the date of surcharge notification to pay the surcharge before his or her [operating] **driving** privileges are suspended by the Director of the Division of Motor Vehicles.

13:19-12.10 [Indigents; installment payments] **(Reserved)**

[(a) Licensees who qualify as indigents may pay surcharges in six monthly installments pursuant to a schedule established by the Director of the Division of Motor Vehicles. Failure to adhere to the payment schedule will result in the immediate suspension of the licensee's operating privileges. Licensees are considered indigents if their gross family income is less than 200 percent of the Federal poverty level gross family income for the same size family, or if the licensee is a recipient of one of the following governmental assistance programs:

1. Aid to Families with Dependent Children;
2. Home Energy Assistance Program;
3. Supplemental Security Income;
4. General Assistance;
5. Women, Infants, and Children;
6. Pharmaceutical Assistance to the Aged;
7. Medicaid;
8. Food Stamps;
9. Temporary Disability Insurance;
10. Unemployment Insurance;
11. Lifeline Credit Program;

(b) The Director of the Division of Motor Vehicles, in his discretion, may consider any other evidence of indigency submitted by the licensee.]

13:19-12.11 Driving while intoxicated surcharges; installments

Licensees surcharged for driving while intoxicated convictions may pay the surcharge in [six] **12** monthly installments pursuant to a schedule established by the Director of the Division of Motor Vehicles. Failure to adhere to the payment schedule will result in the immediate suspension of the licensee's [operating] **driving** privileges.

13:19-12.12 Certificate of debt; installment payments; failure to pay installment; suspension of driving privilege

(a) The Director may, in his or her discretion, issue a certificate of debt to the Clerk of the Superior Court in accordance with N.J.S.A. 17:29A-35b(2) identifying a person as indebted to the State of New Jersey under the New Jersey Merit Rating Plan.

(b) A driver, whose driving privilege has been denied, suspended or revoked by the Division in accordance with N.J.S.A. 17:29A-35 and N.J.A.C. 13:19-12.1 because of his or her failure to pay an insurance surcharge, may make application to the Director for the restoration of his or her driving privilege upon acknowledgement of his or her agreement to satisfy the certificate of debt on an installment basis at such times and in such amounts as may be fixed by the Director, or his or her designee. The Director may, in his or her discretion, restore the driving privilege of a driver when the Director is satisfied that an amount fixed by the Director, or

his or her designee, has been paid in full or partial satisfaction of the principal amount of the certificate of debt, accrued interest and statutory collection costs.

(c) The Director may, in his or her discretion, deny, suspend or revoke a person's driving privilege when the person has failed to comply with the terms fixed by the Director, or his or her designee, or a court of law, for satisfying a certificate of debt on an installment basis. A driving privilege which has been denied, suspended or revoked pursuant to this subsection shall not be restored until the principal amount of the certificate of debt, accrued interest and statutory collection costs are satisfied in full by the driver.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Rules of Practice
Temporary Licensure of Physician Assistants
Proposed Amendment: N.J.A.C. 13:35-2B.2 and 6.13
Proposed New Rules: N.J.A.C. 13:35-2B.13, 2B.14, 2B.15 and 2B.16

Authorized By: New Jersey 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 1995-242.

Submit written comments by May 17, 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 and new rules regarding the temporary licensure of physician assistants. The proposal implements the provisions of P.L. 1993, c.337, which authorizes the issuance of temporary physician assistant licenses.

The intent of the legislation is to permit physician assistants to provide services to the public during the period between applying for licensure upon graduation and receipt of the results of the examination administered by the National Commission on Certification of Physician Assistants (NCCPA). This interim period typically stretches from graduation in May until the examination next offered in October, with the results not being known until January of the following year.

In N.J.A.C. 13:35-2B.2, the definition of "direct supervision" has been amended to include a cross-reference to the proposed new supervision requirements for temporary licensees.

Proposed new rule N.J.A.C. 13:35-2B.13 provides that an individual who meets all requirements for initial physician assistant licensure except completion of the examination, may apply for temporary licensure provided the individual has filed an application for the examination. N.J.A.C. 13:35-2B.13 also provides that an applicant for temporary licensure submit to the Board, along with a completed application form and the required fee, evidence that the applicant is at least 18 years of age, is of good moral character, has successfully completed an education program for physician assistants which is approved by the Committee on Allied Health Education and Accreditation or its successor, and has filed an application for the NCCPA examination.

N.J.A.C. 13:35-2B.14 sets forth the scope of practice for temporary licensees, which is identical to that of licensees except that temporary licensees may not issue prescriptions and must engage in practice only under the direct supervision of a physician.

Proposed new rule N.J.A.C. 13:35-2B.15 establishes the statutory supervision requirements of a temporary license holder. In any setting, the supervising physician or physician designee or a licensed physician with privileges in the same discipline must be continuously present on-site and must immediately countersign medication orders written by a temporary licensee. In addition, the supervising physician or physician designee must personally review all record and chart entries within 24 hours of the temporary license holder's entry and countersign all orders for medication written by the temporary licensee and countersigned by a licensed physician assistant.

Under proposed new rule N.J.A.C. 13:35-2B.16, a temporary license expires 30 days after the applicant has been notified that he or she passed the examination or immediately upon notification of failure to pass the examination. An applicant who fails an examination is compelled by this rule to cease and desist the performance of his or her duties. As this rule explains, a temporary license may not be renewed except in extenuating circumstances.

An amendment to the fee schedule, set out in N.J.A.C. 13:35-6.13, establishes a $50.00 temporary license fee.

Social Impact

The proposed new rules and amendments are in their entirety expected to have a beneficial social impact on consumers, licensees, and applicants for licensure. For consumers, the benefit in establishing a method for temporary licensure, lies in enabling consumers to receive services from qualified applicants for licensure, previously only available through physicians. This should result in more efficient and cost-effective service. Moreover, consumers will enjoy the protection afforded them through provisions which mandate standards for eligibility, scope of practice, supervision, and the expiration or renewal of a temporary license.

The amendments and new rules serve applicants for licensure because they will enable applicants to begin, under supervision, to offer their services, and thereby expedite the practice of the professional career for which they trained. The amendments and new rules further benefit both applicants for licensure and licensees by clarifying their appropriate areas of responsibility in situations in which a temporary license holder performs under the direct supervision of a licensed physician or physician's assistant.

Economic Impact

The promulgation of N.J.A.C. 13:35-2B.13 should create a positive economic impact on New Jersey citizens. A favorable economic impact will result from allowing applicants for licensure as physician assistants to perform tasks previously reserved to physicians, physician designees or physician assistants. This favorable result will follow because candidates for licensure will be able to liberate physicians and physician's assistants to perform other tasks and allow them to offer services previously unavailable because the physicians and their assistants were compelled to perform the jobs candidates for licensure will now be able to perform. The favorable economic result should not be diminished by problems that arise due to insufficient training of candidates for licensure because of the safeguards and supervision requirements mandated in N.J.A.C. 13:35-2B.15.

An amendment to N.J.A.C. 13:35-6.13 does not portend a negative economic impact to consumers in the State. This can be asserted because the charge for temporary licensure does not affect licensed physician assistants nor physicians. Therefore, it is unlikely that the application fee will be passed on to consumers in the form of higher fees for medical care. The small fee for and the negative economic impact to an applicant for temporary licensure is also far outweighed by the economic benefits to the applicant derived from being able to practice in their chosen profession prior to receiving notice of successful completion of the physician assistant's exam.

Executive Order No. 27 Statement

An Executive Order No. 27 Analysis is not required for the proposed amendments and rules because the practice requirements set forth in these amendments and rules involve no Federal standards or requirements. The proposed amendments and rules find their authority in the power to make board regulations governing physician's assistants conferred by N.J.S.A. 45:9-27.20, 45:9-27.24 and 45:9-27.10 et seq.

Regulatory Flexibility Statement

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., individuals practicing as physician assistants and the approximately 30 candidates for temporary licensure as physician assistants are deemed "small businesses" within the meaning of the statute, the following statements are applicable.

The slight negative economic impact to candidates for temporary licensure derived from the administrative necessity to file an application and the initial capital cost of $50.00 for a temporary license to practice as a physician assistant, is far outweighed by the economic benefit of being allowed to work in a chosen career in advance of receiving notice

of successful completion of the licensing exam. There are no recordkeeping requirements, costs for professional services or other costs for compliance.

Since physicians are not compelled to hire temporary licensees, there is no mandatory regulatory impact on physicians. To the extent that a physician utilizes the skills of a temporary licensee, the administrative cost that would result from the time spent supervising the temporary licensee and personally reviewing all entries by temporary licensees on charts and records, will be offset by the additional sources of revenue that will follow from the liberation of physician's time due to the licensee's work efforts.

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

13:35-2B.2 Definitions

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

. . .

"Direct supervision" means supervision by a plenary licensed physician which shall meet all of the conditions established in N.J.A.C. 13:35-2B.10(b) **or N.J.A.C. 13:35-2B.15, as applicable**.

. . .

13:35-2B.13 Eligibility for temporary licensure

(a) An individual who has filed an application for licensure and is waiting to take the next scheduled examination administered by the National Commission on Certification of Physician Assistants (NCCPA) or awaiting the results of the examination may apply to the Board for a temporary license to be employed under the direct supervision of a physician, as defined in N.J.A.C. 13:35-2B.2 and 2B.15.

(b) An applicant for temporary licensure shall submit to the Board, with the completed application form, the documents required pursuant to N.J.A.C. 13:35-2B.5, the required fee, and evidence that the applicant has filed an application for the NCCPA examination.

13:35-2B.14 Temporary licensure; scope of practice

(a) A temporary license holder who has complied with the practice requirements set forth in N.J.A.C. 13:35-2B.3 may perform all of the procedures within the scope of practice of a physician assistant, as set forth in N.J.A.C. 13:35-2B.4(a) and (b) and subject to the limitations therein, except that a temporary license holder shall not issue prescriptions.

(b) A temporary license holder shall engage in practice only under the direct supervision of a physician pursuant to the provisions of N.J.A.C. 13:35-2B.15.

13:35-2B.15 Supervision of temporary license holder

(a) A temporary license holder shall not render care unless the following conditions are met:

1. In any setting, the supervising physician or physician designee or a licensed physician assistant with privileges in the same discipline:

i. Is continuously present on-site; and

ii. Countersigns, immediately after its entry in the chart, any order for medication written by the temporary license holder.

2. The supervising physician or physician designee:

i. Personally reviews all charts and patient records within 24 hours of the temporary license holder's entry in the chart and record; and

ii. Countersigns any order for medication written by the temporary licensee and countersigned by a licensed physician assistant.

13:35-2B.16 Expiration of temporary license; renewal

(a) A temporary license shall expire 30 days after the temporary license holder has received notification of successful completion of the examination or immediately upon the applicant's receipt of notification of failure to pass the examination.

(b) An applicant who fails an examination shall cease and desist from the performance of his or her duties.

(c) Except in extenuating circumstances such as the applicant's critical illness or incapacitation, a temporary license may not be renewed. An applicant seeking to renew based upon extenuating circumstances shall be required to present to the Board satisfactory documentation of the basis for the renewal request.

13:35-6.13 Fee Schedule

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

1.-7. (No change.)

8. Physician Assistant (license)

i. Application fee	$125.00
ii. Temporary license fee	**50.00**

Recodify existing ii through vii as **iii through viii** (No change in text.)

9. (No change.)

(a)

VIOLENT CRIMES COMPENSATION BOARD

Compensable Damages; Reimbursement for Loss of Earnings

Proposed Amendment: N.J.A.C. 13:75-1.7

Authorized By: Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1995-51.

Submit comments by May 17, 1995 to:

Amedeo A. Gaglioti, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:75-1.7(b)2i will clarify the maximum reimbursement in all claims for loss of earnings and loss of support. The current rule sets loss of earnings award limits for applications filed "as of April 6, 1992," which the Board has used as the commencement date for the loss of earnings limits. The proposed change of "as of" April 6, 1992 to "from" April 6, 1992 is intended to make clear this interpretation of the rule by the Board. The loss of earnings award limitation itself is designed to maximize the overall benefit potential to innocent victims of crime.

Social Impact

By permitting compensation for a greater number of victims and compensation in increased amounts, the Board hopes to more fully ameliorate the problems incurred by innocent victims of crime. No social impact on the Board or society in general is anticipated.

Economic Impact

The proposed amendment will compensate innocent victims in accordance with statutory provisions of N.J.S.A. 52:4B-12 and 18(d).

The proposed amendment will allow both increased amounts of compensation and compensation to a greater number of innocent victims.

Executive Order No. 27 Statement

There are no Federal requirements applicable to the subject matter of the proposed amendment.

Regulatory Flexibility Statement

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

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

Full text of the proposed amendment follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

13:75-1.7 Compensable damages

(a) (No change.)

(b) The Board may order the payment of compensation for expenses incurred as a result of the personal injury or death of the victim. These expenses must represent a pecuniary loss to the claimant as defined by N.J.S.A. 52:4B-1 et seq. and these rules consisting of, but not limited to, work and earnings loss, dependents' loss of support, other reasonable pecuniary loss incurred by claimant due to victim's death. The Board may also award payment for such allowable expenses which the Board determines to be reimbursable within these rules, such as reasonable charges for reasonably needed products and services, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

1. (No change.)

2. In computing the earnings loss of the victim/claimant or in the case of death, the loss of support of the claimant/dependent, the Board shall only consider the victim's earnings and/or the amount of money the decedent was contributing to the household at the time of the injury or death of the victim. Where the dependents of a decedent have received or are receiving a greater sum of money from other sources by reason of the decedent's death than the sum contributed to their support by the decedent at the time of death, no compensation for loss of support shall be awarded to the dependents. The Board, however, reserves the right to review its determination should the claimant's dependency, marital or earnings status be altered, and to modify its award accordingly.

i. Notwithstanding the date of the incident, for any application filed [as of] **after** April 6, 1992, the maximum reimbursement for loss of earnings shall not exceed a total of 104 weeks. For a victim who has been rendered permanently disabled as defined by 42 U.S.C. 1381 et seq., loss of earnings may be awarded for a period of 260 weeks (five years). In either case the victim shall enroll in a retraining or rehabilitation program or establish that the victim's disability prevents participation in such program or participation in gainful employment. Maximum reimbursement for loss of support in death claims shall not exceed that of 48 months.

(c)-(m) (No change.)

(a)

VIOLENT CRIMES COMPENSATION BOARD

Secondary Victim Eligibility

Proposed Amendment: N.J.A.C. 13:75-1.28

Authorized By: Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1995-53.

Submit comments by May 17, 1995 to:

Amedeo A. Gaglioti, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:75-1.28(e) is to clarify and codify the practice and procedures of the Board as it relates to secondary victims.

The amendment will further improve benefit potential to innocent victims of crimes and their families. The amendment indicates the maximum amount of family group therapy sessions available to secondary victims for which compensation may be awarded.

Social Impact

By permitting compensation for a greater number of victims and compensation in increased amounts, the Board hopes to more fully ameliorate the problems incurred by innocent victims of crime. No social impact on the Board or society in general is anticipated.

Economic Impact

The proposed amendment will potentially increase compensation to innocent victims for family group therapy sessions in accordance with statutory provisions of N.J.S.A. 52:4B-12 and 18(d).

The proposed amendment will have no additional economic impact on the Board, but will only clarify its practice and procedure as it relates to secondary victims.

Executive Order No. 27 Statement

There are no Federal requirements applicable to the subject matter of the proposed amendment.

Regulatory Flexibility Statement

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

The proposed amendment impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since it provides for increaseed compensation potential. Therefore, a regulatory flexibility analysis is not required.

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

13:75-1.28 Secondary victim eligibility

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

(e) [Psychotherapy] **Individual psychotherapy** in the case of secondary victims shall not exceed 24 sessions per secondary victim. However, where said secondary victim was physically present at the scene of the crime as a witness or present immediately following its commission, the maximum **individual** counseling sessions permitted shall not exceed 30. Said sessions shall not include initial evaluation or impartial examinations authorized by the Board. **Additionally, the Board shall award compensation for family group therapy sessions not to exceed 20 sessions wherein the victim and members of the victim's family, as defined under (a)1 above, are counselled as one.** All costs for psychotherapy sessions will be subject to the provisions of N.J.A.C. 13:75-1.27.

(f) (No change.)

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route U.S. 40

Buena Vista Township, Atlantic County

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

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 1995-223.

Submit comments by May 17, 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. 16:28-1.6 to establish a school "speed limit" zone along Route U.S. 40

in Buena Vista Township, Atlantic County for the efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safety of children attending the John C. Milanesi School.

Based upon a request from Chief Edward K. Petrini, Chairman of the Atlantic County Highway Safety Task Force, in a letter dated November 22, 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 establishing a school "speed limit" zone along Route U.S. 40 in Buena Vista Township, Atlantic County, was warranted.

Appropriate signs shall be erected in areas where the school "speed limit" zones have been changed.

Social Impact

The proposed amendment will establish a school "speed limit" zone along Route U.S. 40 in Buena Vista Township, Atlantic County for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the school "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]):

16:28-1.6 Route U.S. 40[1]

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

1. For both directions of traffic:

i.-ii. (No change.)

iii. In Atlantic County:

(1) (No change.)

(2) Buena Vista Township:

(A) (No change.)

(B) Zone 2: 50 miles per hour between Buena-Tuckahoe Road (County Road 557) and 400 feet west of Cedar Avenue (County Road 540) **except for a 35 miles per hour school "speed limit" zone when passing through the John C. Milanesi School zone, when children are clearly visible from the roadway during recess or while children are going to or leaving school during opening or closing hours** ([Approximate] **approximate** mileposts 35.21 to 38.12); thence

(C)-(D) (No change.)

(3) (No change.)

[1](No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 181

Jefferson Township, Morris County

Proposed Amendment: N.J.A.C. 16:28-1.167

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 1995-225.

Submit comments by May 17, 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. 16:28-1.167 to establish a school "speed limit" zone along Route N.J. 181 in Jefferson Township, Morris County, for the efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safety of children attending the Consolidated School.

Based upon a request of the Township of Jefferson Police Department received on August 29, 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 establishing a school "speed limit" zone along Route N.J. 181 in Jefferson Township, Morris County, was warranted.

Appropriate signs shall be erected in areas where the school "speed limit" zone has been established.

Social Impact

The proposed amendment will establish a school "speed limit" zone along Route N.J. 181 in Jefferson Township, 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 government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the school "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]):

16:28-1.167 Route 181

(a) The rate of speed designated for State highway Route 181 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Morris County:

(1) Jefferson Township:

(A) Zone 1: 40 miles per hour between Espanong Road-Weldon Road and Prospect Point Road **except for a 25 miles per hour school "speed limit" zone when children are clearly visible from the roadway during recess or while children are going to or leaving the Consolidated School during opening or closing hours.** (approximate mileposts 0.00 to 1.45); thence

(B) (No change.)

ii. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 77

Bridgeton City, Cumberland County

Proposed Amendment: N.J.A.C. 16:28A-1.41

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1995-227.

Submit comments by May 17, 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. 16:28A-1.41 to establish bus stops on Route N.J. 77 in Bridgeton City, Cumberland County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the City of Bridgeton in a Resolution adopted on July 19, 1994, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of bus stops along Route N.J. 77 in Bridgeton City, Cumberland County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish bus stop parking restrictions zones along Route N.J. 77 in Bridgeton City, Cumberland County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. New Jersey Transit will bear the costs for the installation of appropriate parking restriction 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]):

16:28A-1.41 Route 77

(a) (No change.)

(b) The certain parts of State highway Route 77 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. In the City of Bridgeton, Cumberland County:

i. Along the southbound (westerly) side:

(1) Far side bus stops:

(A)-(C) (No change.)

[(D) East Commerce Street—Beginning at the southerly curb line of East Commerce Street and extending 142.95 feet southerly therefrom.]

(D) Beginning at the southerly curb line of McCormick Place and extending 105 feet southerly therefrom.

(E) (No change.)

(2) (No change.)

ii.-iii. (No change.)

2.-4. (No change.)

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

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route U.S. 30

Town of Hammonton, Atlantic County

Proposed Amendment: N.J.A.C. 16:28A-1.21

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1995-226.

Submit comments by May 17, 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. 16:28A-1.21 to establish no stopping or standing zones on Route U.S. 30 in the Town of Hammonton, Atlantic County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Town of Hammonton in a Resolution adopted on August 23, 1993, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of no stopping or standing zones along Route U.S. 30 in the Town of Hammonton, Atlantic County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing restrictions zones along Route U.S. 30 in the Town of Hammonton, Atlantic County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of appropriate parking restriction 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]):

16:28A-1.21 Route U.S. 30

(a) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, except in areas designated as bus stops and other approved parking restrictions.

1.-7. (No change.)

8. No stopping or standing in the Town of Hammonton, Atlantic County.

i. Along the eastbound side:

(1) Beginning at the centerline of Broadway and extending 720 feet easterly therefrom.

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 168

Audubon Park Borough, Camden County

Proposed Amendment: N.J.A.C. 16:28A-1.51

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1995-224.

Submit comments by May 17, 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. 16:28A-1.51 to establish a bus stop on Route N.J. 168 in the Borough of Audubon Park, Camden County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Borough of Audubon Park in a Resolution signed by Mayor Donald M. Pennock, adopted on January 3, 1995, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of a bus stop along Route N.J. 168 in the Borough of Audubon Park, Camden County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish a bus stop parking restriction along Route N.J. 168 in the Borough of Audubon Park, Camden County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. New Jersey Transit will bear the costs for the installation of appropriate parking restriction 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]):

16:28A-1.51 Route 168

(a) (No change.)

(b) The certain parts of State highway Route 168 described in this subsection shall be designated as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-10. (No change.)

11. Along the easterly (northbound) side in Audubon Park Borough:

i. Mid-block bus stop:

(1) Beginning 100 feet north of the northerly curb line of Kennedy Drive and extending 135 feet northerly therefrom.

(c) (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Casino Licensees

Standards for Licensure; Undue Economic Concentration

Proposed New Rule: N.J.A.C. 19:43-3.1

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63c, 69a, 82e.
Proposal Number: PRN 1995-236.

Submit written comments by May 17, 1995 to:
Mary S. LaMantia, Senior Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Act, N.J.S.A. 5:12-1 et seq., was recently amended to provide that "No person shall be issued or be the holder of a casino license if the issuance or holding results in undue economic concentration in Atlantic City casino operations by that person." (See N.J.S.A. 5:12-82e, as amended by P.L. 1995-18, effective January 25, 1995.) The Casino Control Commission (Commission) is directed to conduct a public hearing and to thereafter promulgate rules defining the criteria that it will utilize in determining what constitutes "undue economic concentration" for purposes of subsection 82e.

The Commission conducted a public hearing on March 8, 1995, for purposes of soliciting public input on a preliminary rule draft in accordance with N.J.A.C. 1:30-3.2(a). Written submissions were received from the Division of Gaming Enforcement (Division); Trump Taj Mahal Associates, Trump Plaza Associates and Trump's Castle Associates (hereinafter, "the Trump properties"); Harrah's Atlantic City and Frank A. Mangano. In addition, the Division and John Scarselletti testified at the hearing. A copy of the public hearing record may be obtained by contacting the Commission at its main office, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey. The proposal herein reflects many of the suggestions received in the oral and written submissions.

The proposed new rule at N.J.A.C. 19:43-3.1 provides a definition of "undue economic concentration," and a list of relevant criteria to be considered by the Commission. Market share is evaluated not only in terms of number of casinos, but also the percent share of casino and simulcasting facility square footage, and the number of guest rooms, table games, slot machines, revenue, win, drop and employees. Market share is considered in the context of many other relevant characteristics of the market, such as entry barriers; number and strength of the existing competition and consumer demand; the overall financial prospects for the casino industry; probable development of the industry; and the potential impact on consumer interests.

Social Impact

The proposed new rule provides both the casino industry and the casino regulatory agencies with express guidelines for determining undue economic concentration pursuant to subsection 82e of the Casino Control Act. As such, the proposed new rule enables the Commission to fulfill its statutory mandate under subsection 82e, and ensure that no casino license will be issued or held if such issuance or holding will result in undue economic concentration in Atlantic City casino operations.

Economic Impact

The proposed new rule implements a statutory requirement that no casino license be issued or held if such issuance or holding will result in undue economic concentration in Atlantic City casino operations. By facilitating this determination, the proposed new rule will help assure the future growth and development of the casino industry and of Atlantic City.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the 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 new rule affects applicants for a casino license and casino licensees, 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 proposed new rule follows:

19:43-3.1 Undue economic concentration

(a) In accordance with N.J.S.A. 5:12-82e, no casino license shall be issued to or held by a person if the Commission determines that such issuance or holding will result in undue economic concentration in Atlantic City casino operations by that person. Whether a person is considered the holder of a casino license is defined in N.J.S.A. 5:12-82e.

(b) For purposes of N.J.S.A. 5:12-82e and this section, "undue economic concentration" means that a person would have such actual or potential domination of the casino gaming market in Atlantic City as to substantially impede or suppress competition among casino licensees or adversely impact the economic stability of the casino industry in Atlantic City.

(c) In determining whether the issuance or holding of a casino license by a person will result in undue economic concentration, the Commission shall consider the following criteria:

1. The percentage share of the market presently controlled by the person in each of the following categories:
i. The total number of licensed casinos in this State;
ii. Total casino and casino simulcasting facility square footage;
iii. Total square footage of the casino hotel and related facilities;
iv. Number of guest rooms;
v. Number of slot machines;
vi. Number of table games;
vii. Net revenue;
viii. Table game win;
ix. Slot machine win;
x. Table game drop;
xi. Slot machine drop; and
xii. Number of persons employed by the casino hotel;

2. The estimated increase in the market shares in the categories in (c)1 above if the person is issued or permitted to hold an additional casino license;

3. The relative position of other persons who hold casino licenses, as evidenced by the market shares of each such person in the categories in (c)1 above;

4. The current and projected financial condition of the casino industry;

5. Current market conditions, including level of competition, consumer demand, market concentration, any consolidation trends in the industry and any other relevant characteristics of the market;

6. Whether the licensed casinos held or to be held by the person have separate organizational structures or other independent obligations;

7. The potential impact of licensure on the projected future growth and development of the casino industry and Atlantic City;

8. The barriers to entry into the casino industry, including the licensure requirements of the Act, and whether the issuance or holding of a casino license by the person will operate as a barrier to new companies and individuals desiring to enter the market;

9. Whether the issuance or holding of the license by the person will adversely impact on consumer interests, or whether such issuance or holding is likely to result in enhancing the quality and customer appeal of products and services offered by casino licensees in order to maintain or increase their respective market shares;

10. Whether a restriction on the issuance or holding of an additional license by the person is necessary in order to encourage and preserve competition and to prevent undue economic concentration in casino operations; and

11. Any other evidence deemed relevant by the Commission.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Signatures; Use of Employee Identification Number or Other Computer Identification Code as a Signature

Proposed Amendment: N.J.A.C. 19:45-1.45

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69(a), 70(j) and 99.
Proposal Number: PRN 1995-237.

Submit written comments by May 17, 1995 to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

N.J.A.C. 19:45-1.45 presently imposes certain general requirements for manual signatures. That rule also mandates that a signature shall signify that the signer has prepared, authorized or participated in a transaction to a sufficient extent to attest to the accuracy of the information recorded.

Casino licensees and their employees are increasingly relying upon computerized reports and data. For example, N.J.A.C. 19:45-1.25(k)3vii permits a countercheck to contain "the signature of the preparer, or if computer prepared, the identification code of the preparer."

The proposed amendment would acknowledge these technological advances by including within the definition of a "signature" in N.J.A.C. 19:45-1.45(a) an "employee identification number or other computer identification code issued to the employee by the casino licensee."

As noted in N.J.A.C. 19:45-1.45(a)2, when approved or required by the Commission, such a number or code could be utilized as a "signature" on certain computer-prepared documents or records. This would provide another way for employees to "sign" various forms, records and documents, thereby attesting to the accuracy of the information contained in the document or record.

Social Impact

The proposed amendment should have little or no social impact, as it would affect only a casino licensee's internal control procedures.

Economic Impact

The proposed amendment should have little or no economic impact; it simply provides another way for employees to "sign" various forms, records and documents required by the Act or Commission rules. To the extent that this change may make such procedures simpler, faster and more efficient, there may be some costs savings to casino licensees.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this proposal 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.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required. The proposed amendment would only affect casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.45 Signature

(a) Signatures shall:

1. Comply with either of the following requirements:

i. Be, at a minimum, the signer's first initial, last name and Commission license number, written by the signer [;

2. Be]**, and be** immediately adjacent to or above the clearly printed[,] or preprinted[,] title of the signer; **or**

ii. Be the employee's identification number or other computer identification code issued to the employee by the casino licensee, if the document to be signed is authorized by the Commission to be generated by computer, and such method of signature is approved or required by the Commission;

Recodify existing 3.-4. as **2.-3.** (No change in text.)

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

(b)

CASINO CONTROL COMMISSION

Applications
Forms; Business Entity Disclosure Form-Gaming Junkets
Licensure Requirements; Application for Initial Junket Enterprise License; Application for Renewal of Junket Enterprise License
Persons Doing Business with Casino Licensees
General Provisions; Application for Initial Casino Service Industry License; Application for Renewal of Casino Service Industry License

Proposed Amendments: N.J.A.C. 19:49-2.3 and 2.4; 19:51-1.3A and 1.3B
Proposed New Rule: N.J.A.C. 19:41-5.15

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 63c, 69a, 70a, 92a, 94, 95 and 102.
Proposal Number: PRN 1995-238.

Submit written comments by May 17, 1995 to:
Ruth Morgenroth, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City New Jersey 08401

The agency proposal follows:

Summary

The proposed new rule at N.J.A.C. 19:41-5.15 codifies a new form entitled, "Business Entity Disclosure Form-Gaming" (BED-Gaming). This form will be filed by corporations and partnerships applying for an initial or renewal junket enterprise license pursuant to N.J.S.A. 5:12-92c and 102 and for corporations and partnerships applying for an initial or renewal casino service industry license pursuant to N.J.S.A. 5:12-92a and b. This form will also be filed by holding companies of such applicants. The new form will replace two separate forms currently used for this purpose, namely, the Business Entity Disclosure Form-Corporate (BED-Corporate) codified at N.J.A.C. 19:41-5.6, and the Business Entity Disclosure Form-Partnership (BED-Partnership), codified at N.J.A.C. 19:41-5.6A. This one new form consolidates the information requested on these two forms and has been redesigned so that, for the most part, it can be completed in the space provided, rather than in separate attachments as is the case for the BED-Corporate and BED-Partnership forms.

The proposed amendments at N.J.A.C. 19:49-2.3 and 2.4 and N.J.A.C. 19:51-1.3A and 1.3B replace references to the BED-Corporate and the BED-Partnership in existing Commission rules regarding the form of application required to be filed by applicants for initial or renewal junket enterprise or gaming-related casino service industry licenses with references to the BED-Gaming.

Social Impact

The proposed new rule and amendments are not expected to have any significant social impact. The new rule simply describes a new disclosure form which will be filed by applicants for initial or renewal junket enterprise licenses and gaming-related casino service industry licenses, as well as, the holding companies of such applicants. However, the codification of this form should prove useful to applicants and to licensees, and to those who are considering seeking a license from the Commission, by explaining the types of information which must be furnished to complete the application process.

Economic Impact

The proposed new rule and amendments are not expected to have any significant economic impact. The new form requires essentially the same information as the forms it replaces. While it is hoped that this form will be easier to complete, applicants and licensees will nonetheless be required to incur time and expense in compiling the requisite information and in completing and filing the form. The regulatory agencies will likewise incur costs in reviewing and processing this disclosure form.

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 Analysis

The proposed amendments and new rule affect casino service enterprises some of which may qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These enterprises will be required to file the same BED-Gaming form as other gaming-related enterprises. Although professional services may be used by some applicants, the Commission believes that this form can be prepared without professional assistance.

The licensing process is necessary to enable the Commission to insure the integrity of the casino industry and related industries as mandated by the Casino Control Act. Without the information submitted as part of the application process, it would be impossible to ensure that persons with known criminal records, habits or associations are excluded therefrom. Licensing procedures must be applied uniformly to all applicants because differing standards based on business size might endanger the public interest.

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

19:41-5.15 Business Entity Disclosure Form-Gaming

(a) A Business Entity Disclosure Form-Gaming (BED-Gaming) shall be in a format prescribed by the Commission and may require the enterprise to provide the following information:

1. Current or former official and trade names used and the dates of use;

2. Current and former business addresses;

3. Business telephone number;

4. Whether the application is for initial licensure or renewal and, if renewal, the license number and expiration date of the current license;

5. If the license applicant is other than the enterprise filing this form, the reason for filing and the nature of the filing enterprise's relationship to the license applicant;

6. Business form and, as appropriate, a copy of the certificate of incorporation, charter, by-laws, partnership agreement, trust agreement or other documentation relating to the legal organization of the enterprise;

7. A description of the present and any former business engaged in by the enterprise and any holding, intermediary or subsidiary company;

8. A description of the nature, type, number of shares, terms, conditions, rights and privileges of all classes of stock issued by the enterprise, if any, or which the enterprise plans to issue;

9. The name, address, date of birth (if appropriate), number and percentage of shares held by each person or entity having a beneficial interest in any non-voting stock;

10. The name, home address, date of birth, current title or position and, if applicable, percentage of ownership for the following persons:

i. Each officer, director or trustee;

ii. Each owner, or partner, including all partners whether general, limited or otherwise;

iii. Each beneficial owner of more than five percent of the outstanding voting securities;

iv. Each sales representative or other person who will regularly solicit business from a casino licensee;

v. Each management person who supervises a regional or local office which employs sales representatives or other persons who regularly solicit business from a casino hotel; and

vi. Any other person not otherwise specified in (a)10i through v above who has signed or will sign any agreement with a casino licensee;

11. A flow chart which illustrates the ownership of any other enterprise which holds an interest in the filing enterprise;

12. The name, last known address, date of birth, position, dates the position was held, and reason for leaving for any former officers or directors who held such office during the preceding 10 years;

13. The annual compensation of each partner, officer, director and trustee;

14. The name, home address, date of birth, position, length of time employed and the amount of compensation of each person, other than the persons identified in (a)13 above, currently expected to receive annual compensation of more than $50,000;

15. A description of all bonus, profit sharing, pension, retirement, deferred compensation or similar plans;

16. If the enterprise is a partnership, describe the interest held by each partner including the amount of initial investment, amount of additional contribution, amount and nature of any anticipated future investments, degree of control of each partner and percentage of ownership of each partner;

17. A description of the nature, type, terms, covenants, and priorities of all outstanding debt and the name, address and date of birth of each debtholder or security holder, type and class of debt instrument held, original debt amount and current debt balance;

18. A description of the nature, type, terms and conditions of all securities options;

19. The following information for each account held in the name of the enterprise or its nominee or which is otherwise under the direct or indirect control of the enterprise:

i. Name and address of the financial institution;

ii. Type of account;

iii. Account numbers; and

iv. Dates held;

20. A description of all contracts of $25,000 or more in value, including employment contracts of more than one year duration, and contracts pursuant to which the enterprise has received $25,000 or more in goods or services in the past six months;

21. The name and address of each company in which the enterprise holds stock, type of stock held, purchase price per share, number of shares held, and percentage of ownership held;

22. Information regarding any transaction during the past five years involving a change in the beneficial ownership of the enterprise's securities on the part of an officer or director who owned more than 10 percent of any class of equity security;

23. A description of any civil, criminal and investigatory proceedings in any jurisdiction in which the enterprise or its subsidiaries have been involved as follows:

i. Any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;

ii. Any criminal proceeding in which the enterprise or its subsidiaries has been a party or has been named as an unindicted co-conspirator;

iii. Existing civil litigation if damages are reasonably expected to exceed $50,000, except for claims covered by insurance;

iv. Any judgment, consent decree or consent order entered against the enterprise pertaining to a violation or alleged violation of the Federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction;

24. For the enterprise and any holding or intermediary company, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act or any state insolvency law, and any receiver, fiscal agent, trustee or similar officer appointed for the property or business of the enterprise or any holding, intermediary or subsidiary company;

25. Whether the enterprise has had any license or certificate denied, suspended or revoked by any government agency in this

State or any other jurisdiction, the nature of such license or certificate, the agency and its location, the date of such action, the reasons therefore, and the facts related thereto;

26. Whether the enterprise has ever applied for a license, permit or authorization to participate in any lawful gaming operation in this State or any other jurisdiction, the agency and its location, date of application, the nature of the license permit or authorization, number and expiration date;

27. Whether the enterprise or any director, officer, partner, employee or person acting on behalf of the enterprise has made bribes or kickbacks to any employee, company, organization or government official;

28. Whether the enterprise has:

i. Donated or loaned its funds or property for the use or benefit of or in opposing any government, political party, candidate or committee, either foreign or domestic;

ii. Made any loans, donations or disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions; or

iii. Maintained a bank account or other account not reflected on its books or records, or maintained any account in the name of a nominee;

29. The names and addresses of any current or former directors, officers, employees or third parties who would have knowledge or information concerning (a)27 and 28 above;

30. A copy of each of the following:

i. Annual reports for the past five years;

ii. Any annual reports prepared within the last five years on Form 10K pursuant to sections 13 or 15d of the Securities Exchange Act of 1934;

iii. An audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;

iv. Copies of all annual financial statements, whether audited or unaudited, prepared in the last five fiscal years, any exceptions taken to such statements by an independent auditor and the management response thereto;

v. The most recent quarterly unaudited financial statement prepared by or for the enterprise or, if the enterprise is registered with the Securities Exchange Commission (SEC), a copy of the most recently filed Form 10Q;

vi. Any current report prepared due to a change in control of the enterprise, an acquisition or disposition of assets, a bankruptcy or receivership proceeding, a change in the enterprise's certifying accountant or any other material event, or, if the enterprise is registered with the SEC, a copy of the most recently filed Form 8K;

vii. The most recent Proxy or Information Statement filed pursuant to Section 14 of the Securities Exchange Act of 1934;

viii. Registration Statements filed in the last five years pursuant to the Securities Act of 1933; and

ix. All reports and correspondence submitted within the last five years by independent auditors for the enterprise which pertain to the issuance of financial statements, managerial advisory services or internal control recommendations;

31. An organizational chart of the enterprise, including position descriptions and the name of the person holding each position; and

32. Copies of all Internal Revenue Forms 1120 (corporate income tax return), all Internal Revenue Forms 1065 (partnership return) or all Internal Revenue Forms 1040 (personal return) filed for the last five years.

(b) In addition to the information in (a) above, a completed BED-Gaming shall include the following documents, which shall be dated and signed by either the president, chief executive officer, partners, general partner, sole proprietor or other authorized person and notarized:

1. An Affidavit of Truth;

2. A Release Authorization directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the enterprise as requested by the Commission and Division; and

3. An acknowledgement of receipt of notice regarding confidentiality, consent to search and non-refundability of filing fees.

19:49-2.3 Application for initial junket enterprise license

(a) An application for initial issuance of a junket enterprise license pursuant to N.J.S.A. 5:12-92c and 102 shall consist of the fee specified in N.J.A.C. 19:41-9.9A and a completed original and one copy of [the following:

1. A] **a** Business Entity Disclosure **Form-Gaming** (BED-**Gaming**) [form] for the applicant [as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A] **and for each holding company of the applicant as set forth in N.J.A.C. 19:41-5.15**;

2. (No change.)

[3. The appropriate BED form as set forth in (a)1i or ii above for each holding company of the applicant;]

Recodify existing 4.-5. as **3.-4.** (No change in text.)

19:49-2.4 Application for renewal of junket enterprise license

(a) An application for renewal of a junket enterprise license pursuant to N.J.S.A. 5:12-92c and 102 shall consist of the fee specified by N.J.A.C. 19:41-9.9A and a completed original and one copy of [the following:

1. A] **a** Business Entity Disclosure **Form-Gaming** (BED-**Gaming**) [form] for the applicant [as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6 except that documents in N.J.A.C. 19:41-5.6(a)28i, ii, iv, viii and ix, (a)29 and (a)31 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A except that documents in N.J.A.C. 19:41-5.6A(a)23 through 25 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein] **and for each holding company of the applicant as set forth in N.J.A.C. 19:41-5.15**;

2. (No change.)

[3. The appropriate BED form as set forth in (a)1i or ii above for each holding company of the applicant;]

Recodify existing 4.-6. as **3.-5.** (No change in text.)

19:51-1.3A Application for initial casino service industry license

(a) An application for an initial casino service industry license pursuant to N.J.S.A. 5:12-92a and b shall consist of the fee specified in N.J.A.C. 19:41-9.8 and a completed original and one copy of [the following:

1. A] **a** Business Entity Disclosure **Form-Gaming** (BED-**Gaming**) [form] for the applicant [as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A;

2. The appropriate BED form in (a)1i or ii above] **and** for each holding company of the applicant **as set forth in N.J.A.C. 19:41-5.15;**

3.-4. (No change.)

(b) (No change.)

19:51-1.3B Application for renewal of casino service industry license

(a) An application for renewal of a casino service industry license pursuant to N.J.S.A. 5:12-92a and b shall consist of the fee specified in N.J.A.C. 19:41-9.8 and [an] **a completed** original and one copy of [the following:

1. A] **a** Business Entity Disclosure **Form-Gaming** (BED-**Gaming**) [form] for the applicant [as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6 except that documents in N.J.A.C. 19:41-5.6(a)28i, ii, iv,

viii and ix, (a)29 and (a)31 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein; and

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A except that documents in N.J.A.C. 19:41-5.6A(a)23 through 25 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. The appropriate form in (a)1i or ii above] **and** for each holding company of the applicant **as set forth in N.J.A.C. 19:41-5.15;**

3.-5. (No change.)

(b) (No change.)

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL PROTECTION AND NEW JERSEY WASTEWATER TREATMENT TRUST

Financial Assistance Programs for Wastewater Treatment Facilities

Proposed Readoption with Amendments: N.J.A.C. 7:22

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10 and New Jersey Wastewater Treatment Trust, Ellis S. Vieser, Chairman as to N.J.A.C. 7:22-4, 5 and 9.

Authority: Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181); the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.306); the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.); the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq.; N.J.S.A. 58:10A-1 et seq.; and Executive Order No. 215 (1989) as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10 and New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.); and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88) as to N.J.A.C. 7:22-4, 5 and 9.

DEP Docket Number: 13-95-03/495.

Proposal Number: PRN 1995-239.

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

Tuesday, May 9, 1995 at 10:00 A.M.
Municipal Wastewater Assistance/
Wastewater Treatment Trust offices
Large Conference Room
1333 Brunswick Avenue
Trenton, New Jersey 08625

Submit written comments, identified by the DEP Docket Number 13-95-03/495 given above, by May 17, 1995 to:

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Office of Legal Affairs
Department of Environmental Protection
CN-402
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The agency proposal follows:

Summary

N.J.A.C. 7:22 contains the rules of the Department of Environmental Protection (Department) and the New Jersey Wastewater Treatment Trust (Trust) governing financial assistance application and award procedures, as well as related requirements, for local government units to qualify for State monies to finance wastewater treatment facilities projects. N.J.A.C. 7:22-2 are the rules that establish the matching State grants program for pojects that receive Federal grants. N.J.A.C. 7:22-3, 4 and 5 are the rules pertaining to the Wastewater Treatment Financing Program. N.J.A.C. 7:22-6 and 7 are the rules governing the Pinelands Infrastructure Trust Program. N.J.A.C. 7:22-8 establishes minimum standards of conduct for wastewater utilities officers, employees, agents and members. N.J.A.C. 7:22-9 are the rules which govern socially and economically disadvantaged contractor participation requirements pursuant to this chapter and N.J.A.C. 7:22A (Sewage Infrastructure Improvement Act rules). N.J.A.C. 7:22-10, which establishes environmental assessment requirements, applies to all wastewater projects which receive financial assistance pursuant to this chapter and N.J.A.C. 7:22A.

In accordance with the requirements of Executive Order No. 66(1978), N.J.A.C. 7:22 is set to expire on December 26, 1996. The Department and the Trust have reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Accordingly, the Department and the Trust are proposing to readopt these rules. In addition, the Department and the Trust are proposing a number of amendments to enhance and/or provide clarification of various aspects of the financing programs involved, as discussed in greater detail below.

Concerns have been raised that the allowable costs under the program rules do not sufficiently cover the actual costs associated with the construction of a wastewater treatment facilities project. When the program does not cover these costs, they must be financed locally at greater cost and are ultimately passed on to the users of the wastewater system. The amendments being proposed by the Department and Trust are in response to comments resulting from the New Jersey Wastewater Treatment Trust's outreach efforts, and from the Pinelands Commission, Department staff and other affected parties interested in enhancing the existing program. The majority of the proposed amendments to N.J.A.C. 7:22-3, 4, 5, 6 and 7 modify the existing program to relieve local government units receiving financial assistance from some of the existing eligibility limits for projects. Specifically, the proposed amendments to the rules will (1) delete the 12 percent limit on engineering costs and pay these costs based on the actual negotiated allowable cost (as part of this change, the applicant will be required to supply an affidavit attesting to its review, and acceptance of, the costs and activities in the professional services agreement); (2) raise the one percent limit on administrative costs to three percent; (3) allow project sponsors to recoup bond counsel and financial advisor fees, as well as the cost of permits required to build the project, through the administrative line item; and (4) provide five percent of the building costs as a contingency line item for each loan. The concept of including a reasonable contingency amount in addition to the low bid building cost is often used in estimating the actual cost of wastewater treatment facility construction. The negotiation and approval of change orders affecting construction materials or practices, building costs and contract time are a common occurrence during construction activities. Since it is generally unrealistic to expect that there will be no cost increases above the low bid building cost, the creation of a new line item in the loan agreements which could absorb these increased costs will provide greater flexibility to recipients in managing the financial aspects related to construction of projects. Also, the administrative costs related to applying for a supplemental loan will be eliminated in cases where the contingency sufficiently covers increased project costs.

The Department and the Trust are also proposing amendments to (1) include funds available to the Department and the Trust, including those available through the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 or future bond acts or other appropriations; (2) clarify the intent of certain provisions; (3) achieve consistency between the technical requirements for treatment works approvals at N.J.A.C. 7:14A-23, the wastewater management planning requirements of the Statewide Water Quality Management Planning Rules (N.J.A.C. 7:15) and these financing program rules regarding flow projection calculations; (4) eliminate the requirement that the project be in the top 100 on the Project Priority List to qualify for preaward approval; (5) eliminate the requirement for submittal of a draft plan of operation; (6) increase eligibility of house connections; and (7) increase the amounts to be given for planning and/or design allowances.

The following is a summary of the provisions of the individual subchapters within N.J.A.C. 7:22, as well as a description of the amendments proposed to each subchapter, if any.

Subchapter 1 is reserved.

Subchapter 2, Matching Grant Procedures and Requirements, prescribes the eligibility and application requirements for local government units (that is, municipalities, utility authorities, sewerage authorities, and so on) which seek a State grant to supplement Federal grants, awarded pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. §§1251 et seq.) as amended, for the planning, design or construction of wastewater treatment facilities. The State grant amount will not exceed eight percent of those costs determined in accordance with 40 CFR Part 35 to be allowable for Federal grant funding. This subchapter also describes the procedures to be followed by the Department in the evaluation of applications and in the related grant award process. The rules are intended to ensure that State funds appropriated are spent in a proper manner and for their intended uses. The only amendments proposed to this subchapter are to revise the name of the Department to reflect the recent reorganization and redesignation of the Department.

Subchapter 3, Fund Procedures and Requirements, establishes the procedures by which the Department provides loans to local government units for the construction of wastewater treatment facilities. It ensures that the funds are distributed by the Department according to the laws and policies of the State and in a manner which protects the public interest. Requirements for loan application and repayments are included as well as general terms and conditions of the loan agreements and minimum standards for the construction of wastewater treatment facilities.

The Wastewater Treatment Bond Act of 1985 (P.L. 1985, c. 329) established the authority under which this subchapter was originally promulgated. The 1985 Bond Act created the Wastewater Treatment Fund, administered by the Department to provide loans to local government units for the construction of wastewater treatment facilities. Subsequently, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (1989 Bond Act) and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (1992 Bond Act) were also approved by the electorate. The Department previously adopted amendments to administer the 1989 Bond Act under the provisions of N.J.A.C. 7:22.

Amendments to N.J.A.C. 7:22-3.1 and 3.3 are proposed to allow the funds available to the Department through the 1992 Bond Act and future bond acts enacted for financing construction of wastewater treatment facilities to be administered by the Department under the provisions of this subchapter. The proposed reference to future bond acts in N.J.A.C. 7:22-3.3 and several definitions in N.J.A.C. 7:22-3.4 will allow funds to be made available under the rules through a notice of administrative change published in the New Jersey Register pursuant to N.J.A.C. 1:30-2.7 which would add the name of a future bond act or appropriation passed to support the construction of wastewater treatment facilities. In addition, the reference to the two "funds" authorized by the 1985 and 1989 Bond Acts is proposed to be deleted in N.J.A.C. 7:22-3.1, Scope, and replaced with a more general expression that the subchapter governs the disposition of available monies appropriated for the purpose of providing financial assistance for wastewater projects.

The Department is proposing amendments to various definitions at N.J.A.C. 7:22-3.4. The definition of "Bond Acts" is proposed to include reference to the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act" (the 1992 Bond Act) since the proposed amendments within N.J.A.C. 7:22-3 would include this as a source of monies for financial assistance awards. A definition of the 1992 Bond Act is also proposed to be included. The Department is proposing an amendment to the definitions of "Bond Acts" and "Fund loan" to include reference to future bond acts. Further, the definition of "Fund loans" is proposed to include "any appropriations available" for the allowable costs of a project. These proposed amendments are intended to include appropriations, including those from the 1992 Bond Act as well as future bond acts or other appropriations, as sources of monies available to provide Fund loans for the construction of wastewater projects. This general language is also necessary since appropriations under the 1992 Bond Act, unlike the 1985 and 1989 Bond Acts, are not legislatively dedicated to a specific "Fund." In addition, the definition of "Department" is proposed to be amended to reflect the recent reorganization and redesignation of the Department and a definition of "professional services" is proposed to be included to clarify the type of services to be included under the requirements of the Professional Services Affidavit, which is discussed in greater detail in the description of the amendments to N.J.A.C. 7:22-3.11(d)3 below. The definition of "collection system" is proposed to be modified for clarification and to delete a sentence in order to coordinate with a proposed expansion of eligibility for collection system projects to include that portion of house connections (service laterals) that are publicly owned and maintained at N.J.A.C. 7:22-5.11 (discussed below). Finally, the definition of "Trust Act" is proposed to be amended to include and any amendatory and supplementary acts thereto.

The section headings for N.J.A.C. 7:22-3.5 and 3.6 are proposed to be modified to delete the references to the specific Funds established under the 1985 and 1989 Bond Acts since, as noted previously, Bond Act funds as well as other funds available through future bond acts for eligible wastewater projects will be awarded under this subchapter, as amended.

N.J.A.C. 7:22-3.8(b) is proposed to be modified to allow a project funded through a special project grant or loan authorized pursuant to Federal law (such as the grants authorized under P.L. 103-327, a Federal appropriations bill, approved September 28, 1994) to qualify for a Fund loan. (It should be noted that special project grants specifically exclude "Federal grants" as defined in N.J.A.C. 7:22-3.4 as Federal grants awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments.) The source of monies to make Fund loans to supplement special grants may be limited, pursuant to applicable Federal requirements, to non-Federal sources, such as State Bond Act proceeds or their repayments (although compliance with these requirements would be the responsibility of the Department rather than the local government unit). In addition, amendments are proposed to clarify that this section is intended to prohibit a project sponsor from receiving a double benefit (that is, receiving funding through two financing programs for the same cost) by deleting reference to scope of work and replacing it with reference to work within the scope of the project. This will help to ensure that eligible project costs are fully fundable when more than one funding source is involved, and that a contract may be funded from multiple sources, with the actual costs of completed work components billed to the appropriate funding source. The limitation is proposed to apply as well to financing available under the Interconnection/Cross-connection Abatement Account Procedures and Requirements at N.J.A.C. 7:22A-7. Finally, the reference to the Farmers Home Administration is proposed to be changed to the Farmers Home Administration/Rural Utilities Service to reflect this agency's recent organizational changes.

An amendment to N.J.A.C. 7:22-3.11(d)3 is proposed which would require local government units to provide a new document, a Professional Services Affidavit, for any professional services related to the project. Such services may include, but are not limited to, financial, legal, environmental or archaeological, engineering and bond counsel. Execution of this new form (MWA Form LP-11) is proposed to be a requirement of the application process so that the Department will have written confirmation from the local government unit that (1) it has procured any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other State-approved method and (2) that the local government unit has reviewed the proposed costs and activities and finds them acceptable. While the form is new, local government units are already required to comply with State laws pertaining to procurement under existing N.J.A.C. 7:22-3.17(a)1. The Professional Services Affidavit requirement is necessary in light of the proposed amendments which will reduce the eligibility limitations that are currently included in the rule at N.J.A.C. 7:22-5.4(b) for professional services. A Professional Services Affidavit is not proposed to be required for professional services associated with planning and design activities for those costs covered through an allowance in accordance with N.J.A.C. 7:22-5.12.

Amendments to N.J.A.C. 7:22-3.11(d)13 are proposed to delete the requirements related to the submittal of a draft plan of operation by the project sponsor. Instead, provisions regarding a final plan of operation are being proposed in N.J.A.C. 7:22-3.17 as discussed below. Provisions allowing a local government unit to adopt lower user charges for lower income residential users as authorized by State law are proposed to be included at N.J.A.C. 7:22-3.11(d)13iii, which would increase a project sponsor's flexibility in the estalishment of user charges.

N.J.A.C. 7:22-3.17(a)1 is proposed to be clarified so that project sponsors are not limited to the procurement methods specified in the Local Public Contracts Law and the Wastewater Treatment Privatization Act. The proposed change would allow project sponsors to utilize any procurement method authorized by State law (such as P.L. 1970, c.39, as it applies to the procurement of solid waste services by a resource recovery facility) which may apply to their project. N.J.A.C. 7:22-3.17(a)4

is proposed to be modified to specify that the provisions of N.J.A.C. 7:14-2, regarding the construction of wastewater treatment facilities and the provisions of the NJPDES rule at N.J.A.C. 7:14A (not simply compliance with the NJPDES permit), apply to projects receiving financial assistance from the Department. Amendments proposed at N.J.A.C. 7:22-3.17(a)16 require a recipient to certify that a final plan of operation has been developed for the project. The rules currently require submittal of a draft plan of operation (N.J.A.C. 7:22-3.11(d)13iii), but not a final plan of operation. The existing rules also provide for submittal of a certification that an operation and maintenance manual, which is one component of a plan of operation, has been developed for the project. The Department is proposing to extend the certification requirement to the more complete plan of operation document. The components that must be included in a final plan of operation are specified. Finally, an amendment is proposed at N.J.A.C. 7:22-3.17(d) to modify the reference to the name of the Department.

An amendment to N.J.A.C. 7:22-3.31(a) is proposed to correct an error. All sections of subchapter 5 should have been referenced as determining allowable costs (N.J.A.C. 7:22-5.12 was inadvertently omitted).

N.J.A.C. 7:22-3.32 is proposed to be modified to delete the requirement that a project must be ranked within the top 100 on the Project Priority List to qualify for preaward approval. This would allow any eligible project that is ready to proceed to qualify for preaward approval. In addition, amendments are proposed to allow project sponsors to use any State-approved procurement method, as discussed above regarding the proposed changes to N.J.A.C. 7:22-3.17(a)1.

N.J.A.C. 7:22-3.36(a) is proposed to be amended to clarify that only those unsewered needs within the service area for which planning has been completed pursuant to N.J.A.C. 7:22-10 would be eligible for loan funding. An amendment of N.J.A.C. 7:22-3.36(a) is also proposed to replace the term existing "systems" with existing "flows" to clarify the original intent of the rules (since the allowable capacity limitations are determined based on existing wastewater flows). Another proposed amendment at N.J.A.C. 7:22-3.36(a) requires that flow projection calculations for wastewater treatment facilities under this subchapter be performed in accordance with the technical requirements for treatment works approvals at N.J.A.C. 7:14A-23, which establish flow projection figures to be used according to the type of establishment (such as residential, commercial, schools and so forth) and the wastewater management planning requirements of the Statewide Water Quality Management Planning rules at N.J.A.C. 7:15-5, which identify flow projection figures to be used when specific user types are not known.

The proposed amendment of N.J.A.C. 7:22-3.36(b) deletes the requirement that the recipient pay for any incremental costs related to reserve capacity and provides that these costs are unallowable under the Fund loan agreement but may be allowable under a loan agreement with the New Jersey Wastewater Treatment Trust under existing N.J.A.C. 7:22-4.36.

An amendment is proposed to N.J.A.C. 7:22-3.37 to provide for a different threshold level at which value engineering (VE) will be required to be performed. Currently, the rules require a project with estimated building costs in excess of $10 million to perform a VE analysis (in accordance with current Federal laws and regulations). It is anticipated that the reauthorization of the Federal Clean Water Act will include a significantly higher threshold. The proposed amendment to this section will establish that VE must be performed for those projects in which building costs are greater than the threshold as established under the Federal Clean Water Act.

Subchapter 4, Wastewater Treatment Trust Procedures and Requirements, establishes the procedures by which the New Jersey Wastewater Treatment Trust provides loans to local government units for the construction of wastewater treatment facilities. It ensures that the funds are distributed by the Trust according to the laws and policies of the State and in a manner which protects the public interest. Requirements for loan application and repayments are included in this subchapter, as well as general terms and conditions of the loan agreements and minimum standards for the construction of wastewater treatment facilities.

The New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), in conjunction with the Wastewater Treatment Bond Act of 1985, established the authority under which this subchapter was promulgated and the framework under which the Wastewater Treatment Financing Program (Program) was created. The Program provides low-cost loans to a project sponsor for the construction of wastewater treatment facilities, through a combination of a loan award from the Trust pursuant to this subchapter and from the Department pursuant to N.J.A.C. 7:22-3.

N.J.A.C. 7:22-4.1 and certain definitions in N.J.A.C. 7:22-4.4 are proposed to be amended to allow funds available to the Trust, including those available through the 1992 Bond Act, and future bond acts and appropriations, to be administered by the Trust under the provisions of this subchapter. The proposed reference to future bond acts and other appropriations will allow funds to be made available under the rules through a notice of administrative change published in the New Jersey Register pursuant to N.J.A.C. 1:30-2.7 which would add the name of a future bond act or appropriation passed to support construction of wastewater treatment facilities. The definition of "Department" is proposed to be amended to reflect the recent reorganization and redesignation of the Department. In addition, a definition of "professional services" is proposed to be included to clarify the type of services to be included under the requirements of the Professional Services Affidavit, which is discussed in greater detail in the description of the amendments to N.J.A.C. 7:22-4.11(d)3 below. The definition of "collection system" is proposed to be modified for clarification and to delete a sentence in order to coordinate with a proposed expansion of eligibility for collection system projects to include that portion of house connections (service laterals) that are publicly owned and maintained at N.J.A.C. 7:22-5.11 (discussed below). Finally, the definition of "Trust Act" is proposed to be amended to include and any amendatory and supplementary acts thereto.

N.J.A.C. 7:22-4.5(b) is proposed to be modified to eliminate reference to a specific section of the 1985 Bond Act, since other bond acts may be a viable source of funds to the Trust. Notwithstanding the proposed deletion of this clause, the Trust still must deposit State bonds in the reserve and guarantee funds as authorized and appropriated by law.

N.J.A.C. 7:22-4.8(b) is proposed to be modified to enable a project funded through the Pinelands Infrastructure Trust financing program or that receives a special project grant or loan authorized under Federal law to qualify for a trust loan for those costs not funded under these programs (in the case of the Pinelands Infrastructure Trust financing program, this typically represents 40 percent of the allowable project costs). The monies to be used to establish the debt service reserve for the Trust loans may by limited, pursuant to applicable Federal requirements, to non-Federal sources, such as State Bond Act proceeds or their repayments (although compliance with these requirements would be the responsibility of the Trust rather than the local government unit). In addition, amendments are proposed to clarify that this section is intended to prohibit a project sponsor from receiving a double benefit (that is, receiving funding through two financing programs for the same cost) by deleting reference to scope of work and replacing it with reference to work within the scope of the project. This will help to ensure that eligible project costs are fully fundable when more than one funding source is involved, and that a contract may be funded from multiple sources, with the actual costs of completed work components billed to the appropriate funding source. The limitation is proposed to apply as well to financing available under the Interconnection/Cross-connection Abatement Account Procedures and Requirements at N.J.A.C. 7:22A-7. Finally, the reference to the Farmers Home Administration is proposed to be changed to the Farmers Home Administration/Rural Utilities Service to reflect this agency's recent organizational changes.

An amendment to N.J.A.C. 7:22-4.11(d)3 is proposed which would require local government units to provide a new document, a Professional Services Affidavit, for any professional services related to the project. Such services may include, but are not limited to, financial, legal, environmental or archaeological, engineering and bond counsel. Execution of this new form (MWA Form LP-11) is proposed to be a requirement of the application process so that the Trust will have written confirmation from the local government unit that (1) it has procured any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other State-approved method, and (2) that the local government unit has reviewed the proposed costs and activities and finds them acceptable. While the form is new, local government units are already required to comply with State laws pertaining to procurement under existing N.J.A.C. 7:22-4.17(a)1. The Professional Services Affidavit requirement is necessary in light of the proposed amendments which will reduce the eligibility limitations that are currently included in the rule at N.J.A.C. 7:22-5.4(b) for professional services. A Professional Services Affidavit

is not proposed to be required for professional services associated with planning and design activities for those costs covered through an allowance in accordance with N.J.A.C. 7:22-5.12.

Amendments to N.J.A.C. 7:22-4.11(d)13 are proposed to delete the requirements related to the submittal of a draft plan of operation by the project sponsor. Instead, provisions regarding a final plan of operation are being proposed in N.J.A.C. 7:22-4.17 as discussed below. Provisions allowing a local government unit to adopt lower user charges for lower income residential users as authorized by State law are proposed to be included at N.J.A.C. 7:22-4.11(d)13iii, which would increase a project sponsor's flexibility in the establishment of user charges.

N.J.A.C. 7:22-4.17(a)1 is proposed to be clarified so that project sponsors are not limited to the procurement methods specified in the Local Public Contracts Law and the Wastewater Treatment Privatization Act. The proposed change would allow project sponsors to utilize any procurement method authorized by State law (such as P.L. 1970, c.39, as it applies to the procurement of solid waste services by a resource recovery facility), which may apply to their project. N.J.A.C. 7:22-4.17(a)4 is proposed to be modified to specify that the provisions of N.J.A.C. 7:14-2, regarding the construction of wastewater treatment facilities, and the provisions of the NJPDES rule at N.J.A.C. 7:14A (not simply compliance with the NJPDES permit), apply to projects receiving financial assistance from the Trust. Amendments proposed at N.J.A.C. 7:22-4.17(a)16 require a recipient to certify that a final plan of operation has been developed for the project. The rules currently require submittal of a draft plan of operation (N.J.A.C. 7:22-4.11(d)13iii, but not a final plan of operation. The existing rules also provide for submittal of a certification that an operation and maintenance manual, which is one component of a plan of operation, has been developed for the project. The Trust is proposing to extend the certification requirement to the more complete plan of operation document. The components that must be included in a final plan of operation are specified. Finally, an amendment is proposed at N.J.A.C. 7:22-4.17(d) to modify the reference to the name of the Department.

An amendment to N.J.A.C. 7:22-4.31(a) is proposed to correct an error. All sections of subchapter 5 should have been referenced as determining allowable costs (N.J.A.C. 7:22-5.12 was inadvertently omitted).

N.J.A.C. 7:22-4.32 is proposed to be modified to delete the requirement that a project must be ranked within the top 100 on the Project Priority List to qualify for preaward approval. This would allow any eligible project that is ready to proceed to qualify for preaward approval. In addition, an amendment is proposed at N.J.A.C. 7:22-4.32(a)3 to provide that the Department will review and approve an environmental assessment prior to preaward approval, which reflects actual practice. Finally, amendments are proposed to allow project sponsors to use any State-approved procurement method, as discussed above regarding the proposed changes to N.J.A.C. 7:22-4.17(a)1.

N.J.A.C. 7:22-4.36(a) is proposed to be amended to clarify that only those unsewered needs within the service area for which planning has been completed pursuant to N.J.A.C. 7:22-10 would be eligible for loan funding. The provisions requiring that incremental costs be paid by the loan recipient are proposed to be deleted, since the Trust provides funding for reserve capacity under the existing rule at N.J.A.C. 7:22-4.36.

N.J.A.C. 7:22-4.36(d) includes proposed amendments to delete reference to existing "systems" and replace it with the term existing "flows" to clarify the original intent of the rules (since the allowable capacity limitations are determined based on existing wastewater flows). Another proposed amendment at N.J.A.C. 7:22-4.36(d) requires that flow projection calculations for wastewater treatment facilities under this subchapter be performed in accordance with the technical requirements for treatment works approvals at N.J.A.C. 7:14A-23, which establish flow projection figures to be used according to the type of establishment (such as a residential, commercial, schools, and so forth) and the wastewater management planning requirements of the Statewide Water Quality Management Planning rules at N.J.A.C. 7:15, which identify flow projection figures to be used when specific user types are not known.

An amendment is being proposed to N.J.A.C. 7:22-4.37 to provide for a different threshold level at which value engineering (VE) will be required to be performed. Currently, the rules require a project with estimated building costs in excess of $10 million to perform a VE analysis (in accordance with current Federal laws and regulations). It is anticipated that the reauthorization of the Federal Clean Water Act will include a significantly higher threshold. The proposed amendment to this section will establish that VE must be performed for those projects in which building costs are greater than the threshold as established under the Federal Clean Water Act.

Subchapter 5, Determination of Allowable Costs for Wastewater Treatment Fund and Trust, sets forth policies for determining the allowability of costs for projects which are awarded Fund and Trust loans. It describes the general criteria for, and gives specific examples of, expenditures which, according to State cost accounting principles, are necessary for efficient administration of a loan-funded project. Such allowable costs are differentiated from those expenses required to carry out routine functions inherent in the operation of a wastewater treatment facility.

Amendment of N.J.A.C. 7:22-5.2 is proposed to include a new provision that makes clear that project sponsors that have received final payment under a loan agreement may not receive additional loans for costs that become allowable through adoption after June 30, 1995 of amendments to the financing program rules.

N.J.A.C. 7:22-5.4(a) is proposed to be amended to allow a project sponsor to include a contingency line item for those loans awarded in State Fiscal Year 1996 and later. A contingency amount of up to five percent of the building cost is proposed. With this contingency line item, a project sponsor could be reimbursed by the financing program for construction cost increases as these costs are incurred, up to the five percent contingency amount. Under the existing rule, a project sponsor is required to pay these costs and can receive reimbursement only if cost underruns occur or supplemental funding is applied for and received. The contingency is not applicable to supplemental loans for differing site conditions, since these loans are based on actual costs incurred. The contingency is not proposed to be an allowable cost for loan awards made in State Fiscal Year 1995 or earlier and for which final payment has been received by the project sponsor (see proposed N.J.A.C. 7:22-5.2).

N.J.A.C. 7:22-5.4(b) is proposed to be amended to eliminate the 12 percent limit on allowable costs for construction management related activities for most projects. This limit was initially adopted for State Fiscal Year 1993 loan awards to control costs associated with these activities and to encourage project sponsors to avoid high-cost contracts since, under the Local Public Contracts Law, competitive bidding is not required. After three years of experience with this limit, several concerns have been raised. In particular, although the limit was tied to 12 percent of the low bid building cost, increases or decreases as reflected in the bid price of a project have not been observed to significantly affect the cost of construction management services. Further, project sponsors have been faced with costs in excess of this limit for various reasons, including the complexity of the project or site conditions. These facts have resulted in the proposal to remove the limit on construction management services for new loan awards made in State Fiscal Year 1996 and later. In order to reduce any problems that may result from elimination of eligibility limits on these costs, an additional application requirement in N.J.A.C. 7:22-3.11(d)3 and 4.11(d)3 for the Professional Services Affidavit is also proposed. For those projects which received loan awards in State Fiscal 1993, 1994 and 1995 and which have received final payment under Fund and Trust loan agreements, the 12 percent limit will continue to apply, since this was the basis on which the loan awards and construction management contracts were originally made and loan funds were fully disbursed.

N.J.A.C. 7:22-5.5 is proposed to be modified to expand allowable costs related to mitigation to include not only direct but indirect impacts, including monitoring facilities, that are required as specified in the Fund or Trust loan agreements.

N.J.A.C. 7:22-5.10 is proposed to be modified to maintain consistency in projecting future wastewater flows among the Department's various programs, including the Wastewater Treatment Financing Program, Water Quality Management Plans and the Treatment Works Approval process. On June 6, 1994, the Department adopted rules at N.J.A.C. 7:14A-23 to establish a uniform method by which future flows are calculated in the treatment works approval rules. Similar amendments have also been adopted recently in the Water Quality Management Planning rules at N.J.A.C. 7:15-5. Finally, this section proposes to replace the term "systems" with "flows" which was the original intent of the rule (since allowable capacity limitations are determined based on existing wastewater flows).

Amendments to N.J.A.C. 7:22-5.11(a) are proposed to increase the allowable portion of costs associated with the project sponsor's administration of a loan from one percent to three percent for loan awards

made in State Fiscal Year 1996 and later. In addition, the costs associated with bond counsel, financial advisor, bond issuance, and other expenses incidental to the approval, preparation and sale of bonds, notes or obligations of the local government unit that are required to finance the project and the interest on these bonds, notes or obligations, as well as the costs of permits required to build the project, are proposed to be allowable costs included in the three percent limit. An additional provision is proposed to specify that for loan awards made prior to State Fiscal Year 1996 and which have received final payment, administrative cost funding for items (a)1, 3 and 4 for up to one percent is allowable. In addition, the costs for the construction of the publicly owned portions of house connections (service laterals) and those to which the local government unit has access by easement for maintenance and repair are proposed to be allowable. In the past, conveyance pipes from private property to the service "Y" connections were entirely ineligible. It should be noted that the source of monies for this portion of loan awards may be limited, pursuant to applicable Federal requirements, to non-Federal sources.

Amendments to N.J.A.C. 7:22-5.11(b) are also proposed. Since the issuance and related costs of bonds are proposed to be allowable at N.J.A.C. 7:22-5.11(a), these costs are proposed to be deleted from this subsection. The costs of permits required for operation of a project are proposed to be unallowable at N.J.A.C. 7:22-5.11(b)4. The NJPDES permit is mentioned as an example of an operating rather than a building-related permit.

The planning and design allowance tables (Tables 1 and 2) in N.J.A.C. 7:22-5.12 are proposed for amendment so that the allowances will more accurately reflect the costs related to completing the planning and/or design activities required under the financing program. The tables, originally adopted in Federal regulations (40 CFR Part 35) on February 17, 1984, establish the allowable project planning and/or design allowances, which are determined by applying the percentages listed in the tables to the building cost of the project. In response to numerous comments received in the past regarding these tables, the Department has assessed reporting planning and design costs and agrees that increasing the allowance is appropriate for all projects. Since the planning and design costs typically represent a much greater percentage of building costs for smaller projects, the proposed percentage adjustment in the allowance tables is higher for smaller projects, with the percentage increase gradually reduced as project building costs increase.

Subchapter 6, Pinelands Procedures and Requirements, establishes the procedures through which local government units apply for, and are awarded, funds from the Pinelands Infrastructure Trust Fund. It ensures that funds are distributed by the Department according to the laws and policies of the State and in a manner which protects the public interest. The Pinelands Infrastructure Trust Bond Act of 1985 established the authority under which this subchapter was initially promulgated.

N.J.A.C. 7:22-6.1 and the definition of Department in N.J.A.C. 7:22-6.4 are proposed to be amended to delete "and Energy" from the name of the Department of Environmental Protection to reflect the recent reorganization and redesignation of the Department. In addition, language is proposed in N.J.A.C. 7:22-6.1 and 6.3 to indicate that future bond acts passed to provide financial assistance for planning, design or construction of wastewater treatment facilities in the Pinelands area may be administered pursuant to these rules. Reference to future bond acts in these sections of the rules will allow funds to be made available under future bond acts or appropriations to be administered under the rules through a notice of administrative change published in the New Jersey Register pursuant to N.J.A.C. 1:30-2.7 which would add the name of a future bond act or appropriation passed to support the construction of wastewater treatment facilities. The definitions of "Bond Act," "Bonds," "Pinelands Fund," "Pinelands grant" and "Pinelands loan" are also proposed to be amended to include language that references future bond acts (and appropriations, as applicable) to allow administrative revision of the rules. Further, the definitions of "Pinelands grant" and "Pinelands loan" are proposed to include reference to wastewater treatment facilities projects for consistency. In addition, a definition of "professional services" is proposed to be included in N.J.A.C. 7:22-6.4 to clarify the type of services to be included under the requirements of the Professional Services Affidavit, which is discussed in greater detail in the description of the amendments to N.J.A.C. 7:22-6.11(d)3 below. Finally, the definition of "collection system" is proposed to be modified for clarification and to delete a sentence in order to coordinate with a proposed expansion of eligibility for collection system projects to include that portion of house connections (service laterals) that are publicly owned and maintained at N.J.A.C. 7:22-7.11 (discussed below).

N.J.A.C. 7:22-6.8(b) is proposed to be modified to establish a new feature which would allow a project to qualify for financing through the Pinelands Infrastructure Trust Financing Program if funding is also received through a special project grants or loan authorized pursuant to Federal law or through a Trust loan for a portion of allowable project costs. As discussed under the proposed amendments to N.J.A.C. 7:22-3.8 above, the source of monies may be limited to non-Federal sources in accordance with applicable Federal requirements. In addition, amendments are proposed to clarify that this section is intended to prohibit a project sponsor from receiving a double benefit (that is, receiving funding through two financing programs for the same cost) by deleting reference to scope of work and replacing it with reference to work within the scope of the project. This will help to ensure that eligible project costs are fully fundable when more than one funding source is involved, and that a contract may be funded from multiple sources, with the actual costs of completed work components billed to the appropriate funding source. Finally, the reference to the Farmers Home Administration is proposed to be changed to the Farmers Home Administration/Rural Utilities Service to reflect this agency's recent organizational changes.

An amendment to N.J.A.C. 7:22-6.11(d)3 is proposed which would require local government units to provide a new document, a Professional Services Affidavit, for any professional services related to the project. Such services may include, but are not limited to, financial, legal, environmental or archaeological, engineering, and bond counsel. Execution of this new form (MWA Form LP-11) is proposed to be a requirement of the application process so that the Department will have written confirmation from the local government unit that (1) it has procured any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other State-approved method, and (2) that the local government unit has reviewed the proposed costs and activities and finds them acceptable. While the form is new, local government units are already required to comply with State laws pertaining to procurement under existing N.J.A.C. 7:22-6.17(a)1. The Professional Services Affidavit requirement is necessary in light of the proposed amendments which will reduce the eligibility limitations that are currently included in the rule at N.J.A.C. 7:22-7.4(b) for professional services. A Professional Services Affidavit is not proposed to be required for professional services associated with planning and design activities for those costs covered through an allowance in accordance with N.J.A.C. 7:22-7.12.

Amendments to N.J.A.C. 7:22-6.11(d)13 are proposed to delete the requirements related to the submittal of a draft plan of operation by the project sponsor. Instead, provisions regarding a final plan of operation are being proposed in N.J.A.C. 7:22-6.17 as discussed below. Provisions allowing a local government unit to adopt lower user charges for lower income residential users as authorized by State law are proposed to be included at N.J.A.C. 7:22-6.11(d)13iii, which would increase a project sponsor's flexibility in the establishment of user charges.

N.J.A.C. 7:22-6.11(f) and (g) provide for the award of grants for the performance of planning and design activities, respectively (as differentiated from those costs to be funded through a planning or design allowance). Amendments to N.J.A.C. 7:22-6.11(f) and (g) are proposed which would require local government units to provide a Professional Services Affidavit for any professional services associated with a planning or design grant for a project for which cost reimbursement is sought.

N.J.A.C. 7:22-6.17(a)1 is proposed to be clarified so that project sponsors are not limited to the procurement methods specified in the Local Public Contracts Law and the Wastewater Treatment Privatization Act. The proposed change would allow project sponsors to utilize any procurement method authorized by State law (such as P.L. 1970, c.39, as it applies to the procurement of solid waste sevices by a resource recovery facility), which may apply to their project. N.J.A.C. 7:22-6.17(a)4 is proposed to be modified to specify that the provisions of N.J.A.C. 7:14-2, regarding the construction of wastewater treatment facilities, apply to projects receiving financial assistance from the Department. Amendments proposed at N.J.A.C. 7:22-6.17(a)16 require a recipient to certify that a final plan of operation has been developed for the project. The rules currently require submittal of a draft plan of operation (N.J.A.C. 7:22-6.11), but not a final plan of operation. The existing rules also provide for submittal of a certification that an operation and maintenance manual, which is one component of a plan of operation, has been developed for the project. The Department is proposing to

extend the certification requirement to the more complete plan of operation document. The components that must be included in a final plan of operation are specified. Finally, an amendment is proposed at N.J.A.C. 7:22-6.17(d) to modify the reference to the name of the Department as well as to add the word "Part" to provide a correct citation to a Federal regulation.

An amendment to N.J.A.C. 7:22-6.31 is proposed to correct an error. All sections of subchapter 7 should have been referenced as determining allowable costs (N.J.A.C. 7:22-7.12 was inadvertently omitted).

Amendments are proposed at N.J.A.C. 7:22-6.32 to allow project sponsors to use any State-approved procurement method as previously discussed in the proposed changes at N.J.A.C. 7:22-6.17(a)1 and to clarify the existing rule.

N.J.A.C. 7:22-6.36 includes proposed amendments to delete reference to existing "systems" and replace it with the term existing "flows" which was the original intent of the rules (since the allowable capacity limitations are determined based on existing wastewater flows). Another proposed amendment at N.J.A.C. 7:22-6.36 requires that flow projection calculations for wastewater treatment facilities under this subchapter be performed in accordance with the technical requirements for treatment works approvals at N.J.A.C. 7:14A-23, which establish flow projection figures to be used according to the type of establishment (such as residential, commercial, schools, and so forth) and the wastewater management planning requirements of the Statewide Water Quality Management Planning Rules at N.J.A.C. 7:15, which identify flow projection figures to be used when specific user types are not known.

Subchapter 7, Allowable Costs: Pinelands, sets forth policies for determining the allowability of costs for projects which are awarded funding through the Pinelands Infrastructure Trust Financing Program. It describes the general criteria for, and gives specific examples of, expenditures which, according to State cost accounting principles, are necessary for efficient administration of the funded project. Such allowable costs are differentiated from those expenses required to carry out routine functions inherent in the operation of a wastewater treatment facility.

Amendment of N.J.A.C. 7:22-7.2 is proposed to include a new provision that makes clear that project sponsors that have received final payment under a Pinelands grant/loan agreement may not receive an additional grant/loan for costs that become allowable through adoption after June 30, 1995 of amendments to the financing program rules.

N.J.A.C. 7:22-7.4(a) is proposed to be amended to allow a project sponsor to include a contingency line item for those Pinelands grant/loan awards made in State Fiscal Year 1996 and later and which have not received final payment under a Pinelands grant or loan agreement. A contingency amount of up to five percent of the low bid building cost is proposed. With this contingency line item, a project sponsor could be reimbursed for construction cost increases by the financing program as these costs are incurred, up to the five percent contingency amount. Under the provisions of the existing rule, a project sponsor is required to pay these costs and can receive reimbursement only if cost underruns occur or if supplemental funding is applied for and received. The contingency is not proposed to be an allowable cost for grant/loan awards made in State Fiscal Year 1995 or earlier and for which final payment has been received by the project sponsor (see proposed N.J.A.C. 7:22-7.2).

N.J.A.C. 7:22-7.4(b) is proposed to be amended to eliminate the 12 percent limit on allowable costs for construction management related activities for most projects. This limit was initially adopted for State Fiscal Year 1993 grant/loan awards to control costs associated with these activities and to encourage project sponsors to avoid high-cost contracts since, under the Local Public Contracts Law, competitive bidding is not required. After three years of experience with this limit, several concerns have been raised. In particular, although the limit was tied to 12 percent of the low bid building cost, increases or decreases as reflected in the bid price of a project have not been observed to affect the cost of construction management services. Further, project sponsors have been faced with costs in excess of this limit for various reasons, including the complexity of the project or site conditions. These facts have resulted in the proposal to remove the limit on construction management services for new grant/loan awards made in State Fiscal Year 1996 and later. In order to reduce any problems that may result from elimination of eligibility limits on these costs, an additional application requirement in N.J.A.C. 7:22-6.11(d)3 for the Professional Services Affidavit is also proposed. For those projects which received Pinelands grant/loan awards in State Fiscal Year 1993, 1994 and 1995 and which have received final payment under Pinelands grant/loan agreements, the 12 percent limit will continue to apply, since this was the basis on which the grant/loan awards and construction management contracts were originally made and grant/loan funds were fully disbursed.

N.J.A.C. 7:22-7.5 is proposed to be modified to expand allowable costs related to mitigation to include not only direct but indirect impacts, including monitoring facilities, that are required as specified in the Pinelands grant/loan agreements.

N.J.A.C. 7:22-7.10 is proposed to be modified to maintain consistency in projecting future wastewater flows among the various Department's programs, including the Pinelands Infrastructure Trust Financing Program, Water Quality Management Plans and the Treatment Works Approval process. On June 6, 1994, the Department adopted rules at N.J.A.C. 7:14A-23 to establish a uniform method by which future flows are calculated in the Treatment Works Approval rules. Similar amendments have also been adopted recently in the Water Quality Management Planning rules at N.J.A.C. 7:15. Finally, this section proposes to replace the term "systems" with the term "flows" which was the original intent of the rule (since allowable capacity limitations are determined based on existing wastewater flows).

Amendments to N.J.A.C. 7:22-7.11(a) are proposed to increase the allowable portion of costs associated with the project sponsor's administration of the grant/loan from one percent to three percent for grant/loan awards made in State Fiscal Year 1996 and later. In addition, the costs associated with bond counsel, financial advisor, bond issuance, and other expenses incidental to the approval, preparation and sale of bonds, notes or obligations of the local government unit that are required to finance the project and the interest on these bonds, notes or obligations, as well as the costs of permits required to build the project, are proposed to be allowable costs included in the three percent limit. An additional provision is proposed to specify that for grant/loan awards made prior to State Fiscal Year 1996 and which have received final payment under Pinelands grant/loan agreements, administrative cost funding for items (a)1, 3 and 4 for up to one percent are allowable. In addition, the costs for the construction of the publicly owned portions of house connections (service laterals) and those to which the local government unit has access by easement for maintenance and repair, are proposed to be allowable. In the past, conveyance pipes from private property to the service "Y" connections were entirely ineligible.

Amendments to N.J.A.C. 7:22-7.11(b) are also proposed. Since the issuance and related costs of bonds are proposed to be allowable at N.J.A.C. 7:22-7.11(a), these costs are proposed to be deleted from this subsection. The costs of permits required for operation of a project are proposed to be unallowable. The NJPDES permit is mentioned as an example of an operating rather than a building-related permit.

The planning and design allowance tables (Tables 1 and 2) in N.J.A.C. 7:22-7.12 are proposed for amendment so that the allowances will more accurately reflect the costs related to completing the planning and/or design activities required under the financing program. The tables, originally adopted in Federal regulations (40 CFR Part 35) on February 17, 1984, establish the allowable project planning and/or design allowances, which are determined by applying the indicated percentages in the tables to the building cost of the project. In response to numerous comments received in the past regarding these tables, the Department has assessed reported planning and design costs and agrees that increase of the allowance is appropriate for all projects. Since the planning and design costs typically represent a much greater percentage of building costs for smaller projects, the proposed percentage adjustment of the allowance tables is higher for smaller projects, with the proposed percentage increase gradually reduced as project building costs increase.

Subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of Wastewater Utilities, provides a method of ensuring that standards of ethical conduct and financial disclosure requirements for local government officers and employees are clear, consistent, uniform in their application and enforceable on a Statewide basis. The provisions of N.J.A.C. 7:22-8 are being proposed for readoption without change.

Subchapter 9, Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, establishes procedures for providing opportunities for socially and economically disadvantaged (SED) contractors and vendors to supply materials and services under contracts for construction of wastewater treatment facilities that are financed by the Trust and the Department. Amendments proposed in this subchapter (1) revise references to the Department of Environmental Protection to reflect its recent reorganization; (2) correct several typographical

errors; and (3) modify the definition of "socially and economically disadvantaged small business concern" or "SED" as well as the related language in N.J.A.C. 7:22-9.7 and 9.9 to include, in addition to those small businesses certified by the New Jersey Department of Commerce and Economic Development, those small businesses certified under the provisions of the New Jersey Uniform Certification Act (N.J.S.A. 52:27H-1 et seq.) or pursuant to Federal certification requirements at 49 CFR Part 23 by the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, the New Jersey Transit and other agencies deemed appropriate by the Office of Equal Opportunity and Public Contract Assistance within the Department.

Subchapter 10, Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities, prescribes the requirements for environmental assessment which apply to local government units seeking financial assistance through the Department for the construction of wastewater treatment facilities. The authority for this subchapter is included in the various bond acts or other enabling legislation from which the financing programs were developed, as well as Executive Order No. 215 (1989). Environmental review requirements and procedures for planning, design and construction phases are set forth within this subchapter. Three levels of environmental review for the planning phase of wastewater treatment facilities projects are estabished. Requirements are also set forth for re-evaluating environmental decision documents, performing cultural resource impact assessments, environmental coordination and public participation.

The reference to "Department" in N.J.A.C. 7:22-10.1(a) and the definition of "Department" in N.J.A.C. 7:22-10.2 are proposed to be amended to reflect the recent reorganization and redesignation of the Department of Environmental Protection. Amendments are also proposed to N.J.A.C. 7:22-10.1(b) and (c) to include reference to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 and future bond acts and appropriations passed to provide financial assistance for wastewater treatment facilities in order to be consistent with the proposed amendments in N.J.A.C. 7:22-3 and 4 as discussed previously.

Various definitions at N.J.A.C. 7:22-10.2 are proposed to be amended. The citation of the Federal statute that establishes provisions with respect to the National Register of Historic Places under "cultural resources" is corrected. The definition of "indirect impact" is clarified to indicate that indirect impact is also known as "secondary impact" by the general public, and to provide examples of indirect impacts. The definition of "planning area" is modified in order to clarify that the planning area includes those areas that could be subject to direct or indirect impacts as a result of the proposed project and its integrally related components whether or not funding is sought for each individual component of the wastewater treatment facilities system. The definition of "professional qualified archaeologist" is amended to delete the reference to standards which are no longer used and to substitute the currently recognized standards of the Secretary of Interior at 48 Federal Register 44,716 with respect to archaeologist qualifications.

An amendment of N.J.A.C. 7:22-10.4(c)4 is proposed to clarify that the "need" to be addressed in the Level 1 environmental planning document is the "water quality" basis for the proposed project. In addition, the Department is clarifying that "costs" are intended to include both project costs and user costs. Finally, the proposed inclusion of "environmental" to describe impacts will clarify this requirement.

An amendment of N.J.A.C. 7:22-10.4(d)1 is proposed to correct a cross-reference.

N.J.A.C. 7:22-10.5(b) is proposed to be modified to reflect that the provisions of N.J.A.C. 7:22-10.8 regarding investigations and consultations with respect to cultural resource surveys must be submitted as a component of the environmental planning documentation required for a Level 2 review. This proposed amendment does not add a new requirement, but clarifies that the cultural resource provisions in the existing rule are a component of environmental planning documentation.

The Department is also proposing several other amendments to N.J.A.C. 7:22-10.5(b) in order to (1) require that the proposed project's conformance with the State Implementation Plan for air quality be addressed, at N.J.A.C. 7:22-10.5(b)3v; (2) clarify that the map of habitat types only needs to be provided in the project's direct (construction-related) impact area, at N.J.A.C. 7:22-10.5(b)3vi; (3) require that information regarding existing flows and flow calculations be in conformance with the requirements of N.J.A.C. 7:14A-23.3 or 7:15-5.18, at N.J.A.C. 7:22-10.5(b)7ii (consistent with the proposed amendments at N.J.A.C. 7:22-3.36, 4.36 and 6.36); (4) clarify the existing rule to specify consideration of depletive use impacts as well as increases in nonpoint sources of pollution associated with new development enabled by the project and to require that the extent of impacts to natural resources and critical areas be submitted in a quantified form, at N.J.A.C. 7:22-10.5(b)10; (5) include at N.J.A.C. 7:22-10.5(b)11 the clarification of "water quality" need consistent with the proposed amendment of N.J.A.C. 7:22-10.4(c) described above; and (6) require that information regarding the design flow must include both the flow identified in the NJPDES permit, which is generally on a maximum monthly average basis, and the flow on an annual average basis at N.J.A.C. 7:22-10.5(b)11i, in order to ensure that the flow figures provided may be readily compared and to avoid discrepancies in planning and permitting efforts.

The Department is proposing to amend N.J.A.C. 7:22-10.6(a) in order to indicate that the Department may require a Level 3 environmental review in response to the receipt of significant adverse comment during the preplanning or planning process (rather than waiting until the issuance of a Level 1 or Level 2 environmental assessment). This should reduce project delays that might occur during project planning/development due to the preparation of an environmental impact statement (EIS) for a controversial project. Amendments to N.J.A.C. 7:22-10.6(c)7 are proposed to clarify the requirements related to the draft EIS. In particular, the Department's role in the EIS process will include the preparation of responses to written comments, with assistance from the local government unit, rather than requiring the local government unit to prepare them. Proposed amendments to N.J.A.C. 7:22-10.6(e) clarify that the correspondence to be included as a component of the final EIS consists of those comments/responses received on the draft EIS.

An amendment at N.J.A.C. 7:22-10.6(c)8 is proposed to correct a cross-reference.

The Department is proposing an amendment at N.J.A.C. 7:22-10.8(l) to delete reference to the cultural resource requirements established at 36 CFR Part 66, since they are no longer valid, and replace it with the Secretary of Interior's current standards and guidelines for archeology and historic preservation, which were published on September 29, 1983 at 48 Federal Register 44,716.

The provisions of N.J.A.C. 7:22-10.9 establish the requirements related to environmental coordination. However, the existing rules do not specify what the local government unit's responsibility is with respect to these requirements. An amendment of N.J.A.C. 7:22-10.9(b) is proposed to specify that it is the local government unit's responsibility to comply with the requirements of other agencies that have review/approval responsibilities, which may include completing additional investigations and/or modifying the project in order to address relevant environmental issues.

N.J.A.C. 7:22-10.10 establishes the requirements for public participation. A new provision at N.J.A.C. 7:22-10.10(d)3 is proposed to specify that the Department may require additional public advertisement and/or a public hearing in cases where the public notice for the hearing does not comply with the requirements at N.J.A.C. 7:22-10.10(b) or where significant project issues including costs or impacts have not been disclosed prior to the award of financial assistance.

The Department is proposing amendments to N.J.A.C. 7:22-10.11(a) to require that the local government unit must prepare plans and specifications for the project that was approved during the planning process. Local government units may include revisions, but the revisions must be specifically identified. An additional provision is also proposed to address those instances in which the local government unit has responsibility for mitigation. In such cases, the Department would require a letter from the local government unit prior to loan award specifying that it will comply with the scope of work. This will help ensure completion of required mitigation activities. Amendments at N.J.A.C. 7:22-10.11(b)3 require that the contractor's responsibilities must be clearly identified in the specifications.

Proposed amendments to N.J.A.C. 7:22-10.11(d) include the following: (1) N.J.A.C. 7:22-10.11(d)1 is clarified to require that both temporary and permanent easement widths must be the minimum feasible for the proposed construction. (2) N.J.A.C. 7:22-10.11(i) is modified to require that steep slopes must be mulched after seeding, in order to increase the successful establishment of cover which provides protection against erosion. (3) N.J.A.C. 7:22-10.11(l)3 requires that on-site grading is allowed only to the extent needed to achieve preconstruction grade unless otherwise approved by the Department, with the remainder required to be removed and disposed of in an appropirate manner. In addition, revisions to N.J.A.C. 7:22-10.11(l)3 are proposed to delete reference to the Department and to replace it with reference to the local government

unit as being responsible to approve off-site locations for excess soil disposal. Additional changes proposed to N.J.A.C. 7:22-10.11(l)3 are in response to input received from the Soil Conservation Committee. The State's erosion and sediment control requirements, also known as Chapter 251, have been, in many cases, overlooked with regard to disposal of spoil from infrastructure projects which has resulted in severe erosion and sedimentation impacts. The proposed changes that (a) require local government approval prior to disposal of material, (b) require the contractor to obtain the appropriate certification of a soil erosion and sediment control plan from the Soil Conservation District, and (c) require additional local government unit oversight during the disposal operations, are intended to avoid adverse environmental impacts resulting from construction of projects under this chapter. (4) The provisions regarding contractor responsibility for cultural resource protection in N.J.A.C. 7:22-10.11(o) are modified. The provision which is currently within the rule at this citation is proposed to be recodified as N.J.A.C. 7:22-10.11(o)1. The phrase "is directed to" halt is replaced with the more definitive phrase "shall" halt, since the existing phrase may be misinterpreted to mean that the local government unit or the Department is responsible for directing the contractor to stop construction. A new provision at N.J.A.C. 7:22-10.11(o)2 is also proposed that prohibits a contractor from disposing of materials at, or taking soil material from, properties which are listed or eligible for listing on the New Jersey or National Registers of Historic Places in order to ensure appropriate protection of these sites. (5) N.J.A.C. 7:22-10.11(p) is amended to delete the phrase "are proved to." This subsection is intended to require the contractor to remedy defects which result from faculty workmanship or construction that is not in conformance with the project specifications. It is not intended that a situation must be "proved" in each case before the contractor is required to correct inadequate work. It should also be noted that, if the contractor believes that the defects are not a result of faulty workmanship or construction that would trigger the requirements of the environmental maintenance bond, the contractor has legal remedies available in order to correct unfair or inappropriate actions on the part of the local government unit (such as bringing suit against the local government unit or stopping work until resolution of the dispute).

The Department is proposing to amend the provisions of N.J.A.C. 7:22-10.12(a) to clarify that, while the Department will conduct environmental inspection activities to oversee construction progress, the specific requirements included in this section apply to the local government unit's environmental inspectors.

Social Impact

Readoption of the chapter is anticipated to have a positive social impact. The provisions of these subchapters provide the program framework for the award of financial assistance for the construction of wastewater treatment facilities and stormwater management facilities. The construction of these projects maintains and improves water quality and water-quality related activities (that is, swimming, fishing, boating, etc.) throughout the State. By maintaining and improving water quality, recreational activities and tourism within the State will be impacted in a positive manner. Adoption of the proposed amendments will promote local government unit participation in the financing programs, resulting in the construction of cost effective and environmentally acceptable wastewater projects, thus promoting the beneficial social impacts resulting from maintaining and improving water quality within the State.

Economic Impact

Readoption of N.J.A.C. 7:22 will have a positive economic impact on the local government units that receive financing for their wastewater treatment facilities projects under these rules. The rules establish applicable requirements for financing through the receipt of State grants (pursuant to N.J.A.C. 7:22-2) in combination with Federal grant awards, receipt of loan financing through the Wastewater Treatment Financing Program (pursuant to the provisions of N.J.A.C. 7:22-3, 4 and 5) or receipt of grant/loan awards from the Pinelands Infrastructure Trust Financing Program (pursuant to the provisions of N.J.A.C. 7:22-6 and 7). Local government units will incur costs in order to meet the technical, environmental and administrative provisions of the rules. The overall costs for planning, design and construction of the wastewater treatment facilities projects, however, will be reduced as a result of receipt of the financing provided under N.J.A.C. 7:22 in comparison with financing by the local government unit without the benefit of assistance under this chapter. Since the total project costs to be borne by the local government unit will be reduced, the charges to be paid by the users of the wastewater treatment system will also be lower.

Overall, a favorable public reaction is anticipated to the proposed amendments in these subchapters since they will provide monies available under the 1992 Bond Act for the Wastewater Treatment Financing Program, as well as to provide for monies made available through future bond acts or appropriations passed to finance construction of wastewater treatment facilities to be made available under each of these financing programs upon publication of a notice of administrative change. In addition, the amendments would expand the universe of costs which are allowable for low-cost financing from the Wastewater Treatment Financing Program and the Pinelands Infrastructure Trust Financing Program, which will help reduce the financial burden on the users of the system. Adoption of the other proposed amendments to the rules (those not dealing with allowable cost but, rather, being technical in nature) will ensure construction of cost effective and environmentally acceptable wastewater projects. The cost to local government units for compliance with these proposed technical amendments will be nominal.

There is no direct economic impact as a result of the provisions of N.J.A.C. 7:22-8 since the requirements of this subchapter establish standards of conduct. However, compliance with this subchapter allows local government units to receive the economic advantages of the financing programs discussed above.

There will continue to be a minimal expense incurred by the Department and by the local government unit as a result of the reporting requirements of N.J.A.C. 7:22-9. The Department will incur expenses by providing the reporting forms, by providing guidance in general and in monitoring for compliance. The local government unit may incur additional expenses through the necessity of appointing a public agency compliance officer and developing a SED utilization plan as well as by complying with the reporting requirements.

The price of constructing a wastewater treatment facility may possibly be higher if the SED firms cannot perform for as low a price as a contractor whose business concern is so large that it is dominant in its field. This negative impact, if it occurs, will be offset by the positive impact that will be the result of an increase in the number of successful small businesses owned and controlled by SED individuals. Eventually, as there are more and more SED firms submitting contract bids, lower overall costs for constructing a wastewater treatment facility may be realized through increased competition.

The proposed amendments to N.J.A.C. 7:22-9 will allow, in addition to those small businesses certified by the New Jersey Department of Commerce and Economic Development, those small businesses certified under the provisions of State or Federal law as SED firms. This will reduce duplication of certification requirements which may result in cost and time savings to the SED firms.

The provisions of N.J.A.C. 7:22-10 set forth the environmental assessment requirements for planning, design and construction of wastewater treatment facilities projects. The purpose of the environmental assessment process is to take into account those factors which are not readily assigned a dollar value when selecting the best overall project alternative. Therefore, any apparent higher project costs are expected to be offset by the value of the environmental resource thereby protected. The cost to local government units for compliance with the proposed amendments to this subchapter will be nominal.

Environmental Impact

The construction of new or improved wastewater treatment facilities has the potential to affect the environment in both beneficial and adverse ways. Selection of the sites where facilities will be located and the techniques to be used during construction will determine whether a proposed project will result in a significant or insignificant adverse impact on the environment. Sizing of facilities and designation of sewer service areas will determine whether a proposed project will have indirect adverse impacts on the environment primarily as the result of induced growth in undesirable amounts or locations.

Environmental assessment procedures have been required since 1969 at the Federal level and since 1973 in New Jersey to encourage the development and evaluation of alternative solutions to identified needs to determine the significance of environmental impacts of various alternatives before selecting a proposed plan. Readoption of the provisions of N.J.A.C. 7:22-10, as well as adoption of the proposed amendments, will ensure that environmental impacts as a result of the

construction of State assisted wastewater treatment facilities will be adequately evaluated and minimized, and unavoidable adverse impacts will be mitigated to the extent practicable.

Executive Order No. 27 Analysis

This statement is provided in response to the requirements of Executive Order No. 27(1994), which requires the Department to consider applicable Federal standards when adopting, readopting or amending regulations, and to indicate whether the rules contain any standards or requirements that exceed the standards or requirements imposed by Federal law. The Federal government provides monies to the State in the form of capitalization grants under the Wastewater Treatment Financing Program, which is administered pursuant to the provisions of the rules contained within N.J.A.C. 7:22-3, 4, 5, 8, 9 and 10. Federal regulations have been adopted at 40 CFR Part 35, Subpart K, which establish requirements applicable to States for the implementation and management of State Revolving Funds (SRF) pursuant to Title VI of the Federal Water Pollution Control Act (33 U.S.C. §§1251 et seq.) as amended. The regulations define eligible activities of the SRF, authorized types and limitations of SRF assistance, specific capitalization grant agreement requirements, environmental review requirements, application of other Federal authorities, provisions related to preparation of an Intended Use Plan, cash draw rules, reports and audits, and corrective action. Extensive policy documents have also been issued by the Environmental Protection Agency with respect to the SRF program, particularly the "Initial Guidance for State Revolving Funds" (January 1988), which establishes various requirements for SRF recipients. Other requirements applicable to SRF recipients are included as conditions of the Federal capitalization grants awarded to the State. N.J.A.C. 7:22 is designed to achieve conformance with these Federal requirements and to administer a long-term, self-perpetuating SRF program for the construction of cost effective, environmentally sound and implementable projects. With one possible exception as discussed below, the rules do not exceed the standards imposed by Federal law.

Federal requirements establish a "fair share" minority and women owned business enterprise (MBE/WBE) participation level to be in an amount equal to 15 percent of the State's Federal grant. The Office of Equal Opportunity and Public Contract Assistance, pursuant to the provisions of N.J.A.C. 7:22-9, administers a "fair share" program to achieve a goal of 10 percent compliance for projects receiving funding. The 10 percent compliance level for the Department and Trust loan programs individually combine to amount to a 20 percent share of the overall amount of the Federal grant. The MBE/WBE participation level is administered as a goal-oriented program with documented proof of good faith efforts determining goal achievement, and 10 percent participation is not always achieved. Further, the "New Jersey Wastewater Treatment Trust Act" (N.J.S.A. 58:11B-1 et seq.) specifically establishes a 10 percent MBE/WBE participation requirement. Through the combination of the Department and Trust loan participation, compliance with the Trust Act is achieved and Federal monies are not jeopardized for failure to meet the Federal participation requirement.

The purpose of these rules is to facilitate the administration of the various financing programs, not to establish permit or other standards. As such, the assessment of Federal standards and requirements is appropriately limited to the applicable Federal provisions with respect to the financing programs. While the rules require that projects comply with applicable State and Federal laws in order to receive funding under this chapter, any assessment of the provisions of other rules in comparison with Federal standards, such as those that establish permit requirements, is appropriately undertaken in conjunction with rulemaking actions involving those rules.

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 provisions of N.J.A.C. 7:22-2 through 8 and 10 do not impose reporting, recordkeeping or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. The purpose of these rules is to provide financial assistance to local government units, none of which qualify as "small businesses" under the Act, for the construction of wastewater treatment facilities.

N.J.A.C. 7:22-9 requires small businesses to be certified by the Department of Commerce and Economic Development as minority or women's businesses pursuant to N.J.S.A. 52:32-17 et seq. and the New Jersey Uniform Certification Act, N.J.S.A. 52:27H-21.17, in order to qualify as an eligible SED under this subchapter. This slight imposition is more than offset by the opportunity for small business concerns owned and controlled by socially and economically disadvantaged individuals to be awarded 10 percent of the total amount of all contracts for building or professional services associated with construction of a wastewater treatment facilities project under this chapter. The proposed amendments to this subchapter will increase flexibility by allowing those firms that have been certified by various State Departments pursuant to the provisions of 49 CFR Part 23 (in addition to those certified pursuant to the New Jersey Uniform Certification Act as established under the existing rule), to qualify as SED firms under this subchapter. It is anticipated that this amendment will reduce duplication of effort and reporting/recordkeeping of SED firms related to the certification process.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:22.

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

SUBCHAPTER 2. MATCHING GRANT PROCEDURES AND REQUIREMENTS

7:22-2.1 Scope and construction

(a) This subchapter constitutes the rules governing disposition of appropriations for the purposes of planning, design, and construction of wastewater treatment facilities. State matching grants (to match Federal grant awards) will be made pursuant to the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); N.J.S.A. 13:1D-1 et seq.; and N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Environmental Protection [and Energy] for the purpose of providing a State matching share to projects funded under the Federal Clean Water Act and its subsequent amendments.

(b) (No change.)

(c) The rules in this subchapter are promulgated for the following purposes:

1. To implement the purposes and objectives of the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Environmental Protection [and Energy] for the purpose of providing a State matching share to projects funded under the Federal Clean Water Act and its subsequent amendments;

2.-6. (No change.)

7:22-2.2 Definitions

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

. . .

"Department" means the New Jersey Department of Environmental Protection [and Energy] and its successors and assigns.

. . .

SUBCHAPTER 3. FUND PROCEDURES AND REQUIREMENTS

7:22-3.1 Scope

This subchapter constitutes the rules of the New Jersey Department of Environmental Protection [and Energy] governing the disposition of appropriations pursuant to the Wastewater Treatment Bond Act, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, **the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act,** the Federal Water Pollution Control Act Amendments or any other monies available **including future bond acts and appropriations** to [the Wastewater Treatment Fund or to the Stormwater Management and Combined Sewer Overflow Abatement Fund] **provide financial assistance for wastewater treatment facilities. As they are enacted, reference to such bond acts shall be added to this section through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.**

7:22-3.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act [and], the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, **the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and future bond acts and appropriations. As they are enacted, reference to such bond acts shall be added to this paragraph through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7**;

2.-8. (No change.)

7:22-3.4 Definitions

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

. . .

"Bond Acts" means the Wastewater Treatment Bond Act [and], the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, **the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and future bond acts passed for the purpose of providing funds for the construction of wastewater treatment facilities. As they are enacted, reference to such bond acts shall be added to this definition through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.**

. . .

"Collection system" means the [common lateral] sewers[,] which are primarily installed to receive wastewaters directly from individual systems or from private property and which include service "Y" connections designed for connection with those **private** facilities when owned, operated and maintained by or on behalf of the local government unit. Included in this definition are crossover sewers connecting more than one property on one side of a major street, road or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective. [This definition excludes other facilities which convey wastewater from individual structures from private property to the lateral sewer or its equivalent.]

. . .

"Department" means the New Jersey Department of Environmental Protection [and Energy] and its successors and assigns.

. . .

"Fund loan" means a loan from the Wastewater Treatment Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund [or], both Funds **or from other funds available through future bond acts or appropriations for the allowable costs of a wastewater treatment facilities project. As such bond acts are enacted, reference to such funds shall be added to this definition through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.**

. . .

"Green Acres, Clean Water, Farmland and Historic Preservation Bond Act" means the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88) and any amendatory or supplementary acts thereto.

. . .

"Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Examples include services provided by an accountant, archaeologist, attorney, auditor, bond counsel, engineer, environmentalist and financial advisor.

. . .

"Trust Act" means the New Jersey Wastewater Treatment Act (N.J.S.A. 58:11B-1 et seq.) **and any amendatory or supplementary acts thereto.**

. . .

7:22-3.5 [Wastewater Treatment Fund and Stormwater Management and Combined Sewer Overflow Abatement Fund] **Bond Act Funds**

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

7:22-3.6 Terms of the **Fund** loans [from the Wastewater Treatment Fund and the Stormwater Management and Combined Sewer Overflow Abatement Fund]

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

7:22-3.8 Eligibility for State and Federal funding

(a) (No change.)

(b) Local government units receiving funding through a Federal grant, State matching funds pursuant to N.J.A.C. 7:22-2, the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6 **and 7**, or from the Pinelands Infrastructure Trust Fund pursuant to N.J.A.C. 7:22-6 and 7 shall be ineligible for a Fund loan for the same [scope of] work (planning, design or building) **within the scope** of the wastewater treatment facilities project for which they received a Federal grant, State matching funds, Sewage Infrastructure Improvement Act funding or Pinelands Infrastructure Trust funding. Further, local government units which have executed a loan agreement to receive a Fund loan pursuant to this subchapter shall be ineligible to receive a Federal grant, Pinelands Infrastructure Trust funds, Sewage Infrastructure Improvement Act funding or State matching funds for the same [scope of] work for the planning, design or building **within the scope** of that wastewater treatment facilities project. Local government units which receive financial assistance from the United States Department of Agriculture's Farmers Home Administration**/Rural Utilities Service or its successor and/or through special project grants or loans authorized pursuant to Federal law (excluding "Federal grants" as defined at N.J.A.C. 7:22-3.4)** for the same [scope of] work [as] **within the scope of** the wastewater treatment facilities project for which they receive a Fund loan shall have their Fund loan share reduced by an amount equal to the amount of financial assistance provided by the Farmers Home Administration**/Rural Utilities Service or its successor and/or through special project grants or loans authorized pursuant to Federal law (excluding "Federal grants" as defined at N.J.A.C. 7:22-3.4)** for project costs allowable under N.J.A.C. 7:22-5. If both a Fund loan (pursuant to this subchapter) and a Trust loan (pursuant to N.J.A.C. 7:22-4) are received, the Fund and Trust loans will be proportionally reduced.

7:22-3.11 Application procedures

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

(d) The following must be submitted when applying for a Fund loan, as applicable:

1.-2. (No change.)

3. Statement of assurances ([CGA] **MWA** Form LP-4) **and an executed Professional Services Affidavit (MWA Form LP-11) for each person or firm whose professional services are procured by the local government unit for the project for which cost reimbursement is sought under this chapter. Execution of the Professional Services Affidavit is a requirement of the application process so that the Department will have written confirmation from the local government unit that it has procured any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other State-approved method and that the local goverment unit has reviewed the proposed costs and activities and finds them acceptable. This Professional Services Affidavit requirement does not apply to professional services obtained for those planning and design activities which are covered through an allowance in accordance with N.J.A.C. 7:22-5.12.**

4.-12. (No change.)

13. A sewer use ordinance[,] **and** user charge system [and draft plan of operation] acceptable to the Department;

i.-ii. (No change.)

iii. The applicant [shall submit a draft plan of operation that addresses development of: an operation and maintenance manual,

an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete wastewater treatment system] **may establish lower user charge rates for low income residential users as authorized by State law. The total revenue for operation and maintenance, including equipment replacement, of the facilities must not be reduced as a result of establishing a low income residential user class**;

14.-22. (No change.)

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

7:22-3.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-3.18 through 3.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Fund loan, and conditions to each disbursement under a Fund loan agreement:

1. The recipient shall comply with the Local Public Contracts Law[,] (N.J.S.A. 40A:11-1 et seq.) [or], the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) **or other procurement method authorized by State law**;

2.-3. (No change.)

4. The recipient shall comply with the requirements of **N.J.A.C. 7:14-2, Construction of Wastewater Treatment Facilities, and the provisions of the** NJPDES [permit pursuant to] **rules at** N.J.A.C. 7:14A.

5.-15. (No change.)

16. The recipient shall certify to the Department that **a final plan of operation, including** an operations and maintenance manual, **an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete wastewater treatment system** acceptable to the local government unit, has been developed for the project;

17.-32. (No change.)

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

(d) Neither the State of New Jersey nor the New Jersey Wastewater Treatment Trust will be a party to any contracts and subcontracts awarded pursuant to this subchapter. All such contracts and subcontracts shall include the following statement:

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection [and Energy] and the New Jersey Wastewater Treatment Trust. Neither the State of New Jersey, the New Jersey Wastewater Treatment Trust nor any of their departments, agencies or employees is, or will be a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the provisions of N.J.A.C. 7:22-3, 4, 5, 9 and 10."

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

7:22-3.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by N.J.A.C. 7:22-5.1 through [5.11]**5.12**.

(b) (No change.)

7:22-3.32 Preaward costs

(a) The Department shall not consider allowable those costs incurred for building performed prior to closing the loan for the project, [except] **unless the local government unit has met the requirements as specified in (a)1, 2 or 3, below:**

[1. Where the local government unit's project is ranked one through 100, inclusive, on the most currently approved Priority System, Intended Use Plan and Project Priority List or is part of the Department's and the Trust's request to the Legislature for inclusion in an appropriations bill providing Fund moneys in the forthcoming fiscal year for that project and of the following conditions has met (a)1i through iii or (a)1iv below:]

[i.]**1.** The local government unit has submitted items required at N.J.A.C. 7:22-3.11(d)3 through 19, to the Department prior to the advertisement of any contract for which cost reimbursement is being sought[.]; [ii. The] **the** local government unit has not advertised any contract or any addendum thereto, for which cost reimbursement is being sought, without the authorization to advertise the contracts or any addendum thereto being given by the Department[.]; **and** [iii. The] **the** local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department.

[iv.]**2.** The local government unit has submitted items required at N.J.A.C. 7:22-3.11(d)3 through 19 to the Department prior to the issuance of a notice to proceed with building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) **or other procurement method authorized by State law**.

[2.]**3.** In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Department may approve preliminary building activities such as procurement of major equipment requiring long lead times, minor sewer rehabilitation, acquisition of allowable land or advance building of minor portions of the wastewater treatment facilities. However, advance approval will not be given until after the Department reviews and approves an environmental assessment and any specific documents necessary to adequately evaluate the proposed action**, including compliance with (a)1 or 2 above**.

(b) (No change.)

(c) Any procurement is subject to the requirements of [the requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.)] **applicable State law**.

7:22-3.36 Reserve capacity

(a) The Department shall limit the recipient's Fund loan assistance to the cost of the project with a capacity based upon flow records, existing unsewered needs **for which planning has been completed in conformance with N.J.A.C. 7:22-10** and flows anticipated prior to the date of initiation of operation as established in the Fund loan agreement. In no case, however, shall the allowable capacity for existing [systems] **flows** exceed 120 gallons per capita per day. [Design flows of 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, shall be allowable for existing unsewered needs and for collection systems being built between the date of the Fund loan award and the date of initiation of operation] **Flow projections shall be calculated in accordance with N.J.A.C. 7:14A-23.3 and 7:15-5.18**.

(b) For any project providing for capacity in excess of that provided by this section, [all] incremental costs shall be [paid by the recipient] **unallowable costs under the Fund loan agreement, but may be allowable costs under a Trust loan agreement in accordance with N.J.A.C. 7:22-4.36**. Incremental costs include all costs which would not have been incurred but for the additional excess capacity (that is, any cost in addition to the most cost effective alternative with allowable capacity as described in (a) above).[)]

7:22-3.37 Value engineering

(a) The applicant shall conduct value engineering if the total estimated building cost exceeds **the building cost threshold as established in the Federal Clean Water Act and any amendatory or supplementary acts thereto. As of March 1, 1995, value engineering must be performed if the estimated building cost exceeds** $10 million.

(b) (No change.)

SUBCHAPTER 4. WASTEWATER TREATMENT TRUST PROCEDURES AND REQUIREMENTS

7:22-4.1 Scope

This subchapter constitutes the rules of the New Jersey Wastewater Treatment Trust established pursuant to the Trust Act governing the disposition of appropriations made available pursuant to the Wastewater Treatment Bond Act**, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act** or any other moneys available to the New Jersey Wastewater Treatment Trust **including**

future bond acts or other appropriations to provide financial assistance for construction of wastewater treatment facilities projects. As they are enacted, reference to such bond acts shall be added to this section through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.

7:22-4.4 Definitions

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

. . .

"Bond Acts" means the Wastewater Treatment Bond Act of 1985 [and], the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, **the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and future bond acts passed for the purpose of providing funds for the construction of wastewater treatment facilities. As they are enacted, reference to such bond acts shall be added to this definition through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.**

"Collection system" means the [common lateral] sewers[,] which are primarily installed to receive wastewaters directly from individual systems or from private property and which include service "Y" connections designed for connection with those **private** facilities when owned, operated and maintained by or on behalf of the local government unit. Included in this definition are crossover sewers connecting more than one property on one side of a major street, road or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective. [This definition excludes other facilities which convey wastewater from individual structures from private property to the lateral sewer or its equivalent.]

. . .

"Department" means the New Jersey Department of Environmental Protection [and Energy] and its successors and assigns.

. . .

"Green Acres, Clean Water, Farmland and Historic Preservation Bond Act" means the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88) and any amendatory or supplementary acts thereto.

. . .

"Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services require knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Examples include services provided by an accountant, archaeologist, attorney, auditor, bond counsel, engineer, environmentalist and financial advisor.

. . .

"Trust Act" means the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) **and any amendatory or supplementary acts thereto.**

. . .

7:22-4.5 New Jersey Wastewater Treatment Trust

(a) (No change.)

(b) The Trust shall establish reserve and guarantee funds into which will be deposited the proceeds from any State bonds [issued pursuant to section 6.b. of the Bond Act] authorized for deposit in the Trust or other funds appropriated by law to the Trust for deposit in the reserve and guarantee funds. The reserve funds will be used by the Trust to secure debt issued by the Trust. The guarantee funds will be used by the Trust to secure debt issued by a local government unit.

(c) (No change.)

7:22-4.8 Eligibility for State and Federal funding

(a) (No change.)

(b) Local government units receiving funding through a Federal grant, State matching funds pursuant to N.J.A.C. 7:22-2, **or** the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6 **and 7** [or from the Pinelands Infrastructure Trust Fund pursuant to N.J.A.C. 7:22-6 and 7:22-7] shall be ineligible for a Trust loan for the same [scope of] work (planning, design or building) **within the scope of** the wastewater treatment facilities project for which they received a Federal grant, State matching funds, **or** Sewage Infrastructure Improvement Act funding [or Pinelands Infrastructure Trust funding]. Further, local government units which have executed a loan agreement to receive a Trust loan pursuant to this subchapter shall be ineligible to receive a Federal grant, [Pinelands Infrastructure Trust funds,] Sewage Infrastructure Improvement Act funding or State matching funds for the same [scope of] work for the planning, design or building **within the scope** of that wastewater treatment facilities project. Local government units which receive financial assistance from the United States Department of Agriculture's Farmers Home Administration/**Rural Utilities Service or its successor; or from the Pinelands Infrastructure Trust Fund and/or through special project grants or loans authorized pursuant to Federal law (excluding "Federal grants" as defined at N.J.A.C. 7:22-4.4)** for the same [scope of] work [as] **within the scope** of the wastewater treatment facilities project for which they receive a Trust loan shall have their Trust loan share reduced by an amount equal to the amount of financial assistance provided by the Farmers Home Administration/**Rural Utilities Service or its successor, or from the Pinelands Infrastructure Trust Fund and/or through special project grants or loans authorized pursuant to Federal law (excluding "Federal grants" as defined at N.J.A.C. 7:22-4.4)**, for project costs allowable under N.J.A.C. 7:22-5. If both a Trust loan (pursuant to this subchapter) and a Fund loan (pursuant to N.J.A.C. 7:22-3) are received **in combination with financial assistance from the Farmers Home Administration/Rural Utilities Service or its successor**, the Fund and Trust loans will be proportionally reduced.

7:22-4.11 Application procedures

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

(d) The following must be submitted when applying for a Trust loan, as applicable:

1.-2. (No change.)

3. Statement of assurances ([CGA] **MWA** Form LP-4) **and an executed Professional Services Affidavit (MWA Form LP-11) for each person or firm whose professional services are procured by the local government unit for the project for which cost reimbursement is sought under this chapter. Execution of the Professional Services Affidavit is a requirement of the application process so that the Trust will have written confirmation from the local government unit that it has procured any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other State-approved method and that the local government unit has reviewed the proposed costs and activities and finds them acceptable. This Professional Services Affidavit requirement does not apply to professional services obtained for those planning and design activities which are covered through an allowance in accordance with N.J.A.C. 7:22-5.12.**

4.-12. (No change.)

13. A sewer use ordinance[,] **and** user charge system [and draft plan of operation] acceptable to the Trust;

i.-ii. (No change.)

iii. The applicant [shall submit a draft plan of operation that addresses development of: an operation and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete wastewater treatment system] **may establish lower user charge rates for low income residential users as authorized by State law. The total revenue for operation and maintenance, including equipment replacement, of the facilities must not be reduced as a result of establishing a low income residential user class;**

14.-22. (No change.)

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

7:22-4.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-4.18 through 4.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Trust loan, and conditions to each disbursement under a Trust loan agreement:

1. The recipient shall comply with the Local Public Contracts Law[,] (N.J.S.A. 40A:11-1 et seq.) [or], the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) **or other procurement method authorized by State law**;

2.-3. (No change.)

4. The recipient shall comply with the requirements of **N.J.A.C. 7:14-2, Construction of Wastewater Treatment Facilities, and** the **provisions of the** NJPDES [permit pursuant to] **rules at** N.J.A.C. 7:14A;

5.-15. (No change.)

16. The recipient shall certify to the Department that **a final plan of operation, including** an operations and maintenance manual, **an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete wastewater treatment system** acceptable to the local government unit, has been developed for the project;

17.-32. (No change.)

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

(d) Neither the State of New Jersey nor the New Jersey Wastewater Treatment Trust will be a party to any contracts and subcontracts awarded pursuant to this subchapter. All such contracts and subcontracts shall include the following statement:

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection [and Energy] and the New Jersey Wastewater Treatment Trust. Neither the State of New Jersey, the New Jersey Wastewater Treatment Trust nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the provisions of N.J.A.C. 7:22-3, 4, 5, 9 and 10."

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

7:22-4.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by N.J.A.C. 7:22-5.1 through [5.11] **5.12**.

(b) (No change.)

7:22-4.32 Preaward costs

(a) The Trust shall not consider allowable those costs incurred for building performed prior to closing the loan for the project, [except] **unless the local government unit has met the requirements as specified in (a)1, 2 or 3, below**:

[1. Where the local government unit's project is ranked one through 100, inclusive, on the most currently approved Priority System, Intended Use Plan and Project Priority List or is part of the Department's and the Trust's request to the Legislature for inclusion in an appropriations bill providing to the Trust authorization to make loans in the forthcoming fiscal year for that project, and of the following conditions has met (a)1i through iv or (a)1iv and (a)1v:]

[i.]**1.** The local government unit has submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19, to the Department prior to the advertisement of any contract for which cost reimbursement is being sought[.]; [ii. The] **the** local government unit has not advertised any contract or any addendum thereto, for which cost reimbursement is being sought, without the authorization to advertise the contracts or any addendum thereto being given by the Department[.]; [iii. The] **the** local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department and the Trust[.]; **and** [iv.] The local government unit has taken all required actions consistent with applicable Internal Revenue Service laws, rules and regulations, and provided evidence of such actions in a manner acceptable to the Trust.

[v.]**2.** The local government unit has submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19 to the Department and has received the Department's and the Trust's written approval thereof prior to the issuance of a notice to proceed with building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) **or other procurement method authorized by State law**.

[2.]**3.** In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Trust may approve preliminary building activities such as procurement of major equipment requiring long lead times, minor sewer rehabilitation, acquisition of allowable land or advance building of minor portions of wastewater treatment facilities. However, advance approval shall not be given until after the [Trust] **Department** reviews and approves an environmental assessment and **the Trust approves** any specific documents necessary to adequately evaluate the proposed action**, including compliance with (a)1 or 2 above**.

(b) (No change.)

(c) Any procurement is subject to the requirements of [the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.)] **applicable State law**.

7:22-4.36 Reserve capacity

(a) For those projects eligible for Trust loans in State fiscal year 1993 and beyond whose sponsor indicates in their initial loan application that they do not want to exercise their option to receive Trust loan assistance for those costs related to reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36, the Trust shall limit the recipient's Trust loan assistance to the cost of the project with a capacity based upon flow records, existing unsewered needs **for which planning has been completed in conformance with N.J.A.C. 7:22-10** and flows anticipated prior to the date of initiation of operation as established in the Trust loan agreement. [For any project providing for capacity in excess of that provided by this subsection, all incremental costs shall be paid by the recipient. Incremental costs include all costs which would not have been incurred but for the additional excess capacity.]

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

(d) In no case, however, shall the allowable capacity for existing [systems] **flows** exceed 120 gallons per capita per day. [Design flows of 70 gallons per capita per day per inch diameter per mile of new sewer or less or 75 gallons per capita per day, whichever is less, shall be allowable for existing unsewered needs and for collection systems projected to be built during the design life.] **Flow projections shall be calculated in accordance with N.J.A.C. 7:14A-23.3 or 7:15-5.18.**

(e) (No change.)

7:22-4.37 Value engineering

(a) The applicant shall conduct value engineering if the total estimated building cost exceeds **the building cost threshold as established in the Federal Clean Water Act and any amendatory or supplementary acts thereto. As of March 1, 1995, value engineering must be performed if the estimated building cost exceeds** $10 million.

(b) (No change.)

SUBCHAPTER 5. DETERINATION OF ALLOWABLE COSTS FOR WASTEWATER TREATMENT FUND AND TRUST

7:22-5.2 Applicability

The cost information contained in this subchapter applies to Fund [Loan] **loan** and Trust loan assistance awarded on or after the effective date of this subchapter. Project cost determinations are not limited to the items listed in this subchapter. Additional cost determinations based on applicable law and regulations not otherwise addressed herein shall be made on a project-by-project basis. **Further, costs that become allowable as a result of adoption after June 30, 1995 of amendments to this chapter are not allowable costs**

for a supplemental loan if the project sponsor has received final payment under a Fund or a Trust loan agreement prior to the effective date of such amendments.

7:22-5.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1. [The] **For loan awards made in State Fiscal Year 1996 and later, the** costs of subagreements for building the project**, which may include a contingency line item of up to five percent of the building costs. The funds allocated in the contingency line item must first be used for allowable change orders associated with building activities. The contingency funds can be used for activities other than building provided the Department, in the case of a Fund loan, and the Trust, in the case of a Trust loan, approve line item adjustments in accordance with N.J.A.C. 7:22-3.26 or 4.26. A supplemental loan for differing site conditions will not include contingency funds. A contingency is not an allowable cost for loan awards made prior to State Fiscal Year 1996 if final payment has been received**;

2.-8. (No change.)

(b) **For loan awards made in State Fiscal Year 1996 and later, the actual costs for items (a)2 through 8 above will be allowable. For projects which received** [their initial or supplemental] Fund or Trust loan awards in State Fiscal Year 1993 [or later]**, 1994 or 1995 and which have received the final payment under Fund and Trust loan agreements,** the sum total of the allowable costs in (a)2 through 8 above, exclusive of building costs, is limited to 12 percent of the [low bid] allowable building cost. [If a project receives a post-construction supplemental Fund or Trust loan for costs arising from differing site conditions, the sum total of allowable costs in (a)2 through 8 above, exclusive of building costs, for the portion of the project funded by the post-construction supplemental Fund or Trust loan is limited to 12 percent of the allowable building costs due to differing site conditions. The 12 percent limit may be exceeded only in instances where the Department, in the case of a Fund loan, and the Trust, in the case of a Trust loan, approve a greater amount through line item adjustments in accordance with N.J.A.C. 7:22-3.26 or 4.26.]

(c) (No change.)

7:22-5.5 Mitigation

(a) Allowable costs related to mitigation include:

1. Costs **for measures** necessary to mitigate [only] direct, adverse, physical impacts resulting from building of the wastewater treatment facilities **or measures necessary to mitigate indirect impacts of the project as specified in the Fund or Trust loan agreement as a special condition**;

2. (No change.)

3. The cost of [groundwater] monitoring facilities necessary to determine the possibility of [groundwater] **water quality** deterioration[, depletion or modification] **or other environmental impacts** resulting from building the project **as specified in the Fund or Trust loan agreement as a special condition**.

(b) (No change.)

7:22-5.10 Infiltration/inflow and reserve capacity

(a) (No change.)

(b) Unallowable costs related to infiltration/inflow and reserve capacity include:

1. [The] **For loan awards made in State Fiscal Year 1996 and later, the** incremental cost of the wastewater treatment facilities capacity which is more than 120 gallons per capita per day for existing [systems] **flows** and [70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, for existing unsewered needs and for collection systems being built between the date of loan award and the date of initiation of operation as identified in the Fund or Trust loan agreement] **flow projections calculated in accordance with N.J.A.C. 7:14A-23.3 or 7:15-5.18. The incremental cost of wastewater treatment facility capacity for future flows beyond the original date of initiation of operation as specified in the Fund loan agreement is also an unallowable cost under a Fund loan agreement**.

2. (No change.)

7:22-5.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. [The] **For loan awards made in State Fiscal Year 1996 and later, the** costs of salaries, benefits and expendable materials the recipient incurs for the project. However, the allowable portion of these administrative costs**, including the administrative costs listed in (a)3, 4, 5 and 6 below,** will be limited to [one] **three** percent of the low bid building cost. If a project receives a post-construction supplemental Fund or Trust loan for costs arising from differing site conditions, the allowable administrative costs for the portion of the project funded by the post-construction supplemental Fund or Trust loan is limited to [one] **three** percent of the allowable building costs due to differing site conditions. The [one] **three** percent limit may be exceeded only in instances where the Department, in the case of a Fund loan, and the Trust, in the case of a Trust loan, approve a greater amount through line item adjustments in accordance with N.J.A.C. 7:22-3.26 or 4.26[;]**. For loan awards made prior to State Fiscal Year 1996 and for which final payment has been made to the project sponsor, administrative cost funding for this paragraph and (a)3 and 4 below for up to one percent is allowable.**

2.-4. (No change.)

5. Costs of bond counsel, financial advisor, bond issuance and other expenses incidental to the approval, preparation and sale of bonds, notes or obligations of the local government unit that are necessary to finance the project and the interest on the bonds, notes or obligations.

6. Costs of fees for permits required for the building of the project.

7. Costs for the construction of that portion of a house connection (service lateral) owned by the local government unit and to which the local government unit has access by easement for maintenance and repair.

(b) Unallowable miscellaneous costs include:

1.-3. (No change.)

4. [Issuance costs and other expenses incidental to the approval, preparation and sale of bonds, notes or obligations of the local government unit require to finance the project and the interest on them] **Costs of fees for permits required for the oepration of the project, including the NJPDES permit pursuant to N.J.A.C. 7:14A**;

5.-11. (No change.)

7:22-5.12 Allowance for planning and design

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

TABLE 1—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building cost		Allowance as a percentage of building cost†
$ 100,000 or less	[14.4945]	**27.5396**
120,000	[14.1146]	**26.8177**
150,000	[13.6631]	**25.9599**
175,000	[13.3597]	**25.3834**
200,000	[13.1023]	**24.8944**
250,000	[12.6832]	**24.0981**
300,000	[12.3507]	**23.4663**
350,000	[12.0764]	**22.9452**
400,000	[11.8438]	**22.5032**
500,000	[11.4649]	**21.7833**
600,000	[11.1644]	**21.2124**
700,000	[10.9165]	**20.7413**
800,000	[10.7062]	**20.3418**
900,000	[10.5240]	**19.9956**
1,000,000	[10.3637]	**19.6910**
1,200,000	[10.0920]	**17.1564**
1,500,000	[9.7692]	**16.6076**
1,750,000	[9.5523]	**16.2389**
2,000,000	[9.3682]	**15.9259**
2,500,000	[9.0686]	**13.6029**
3,000,000	[8.8309]	**13.2464**

3,500,000	[8.6348]	**12.9522**
4,000,000	[8.4684]	**12.7026**
5,000,000	[8.1975]	**12.2963**
6,000,000	[7.9827]	**10.7766**
7,000,000	[7.8054]	**10.5373**
8,000,000	[7.6550]	**10.3343**
9,000,000	[7.5248]	**10.1585**
10,000,000	[7.4101]	**10.0036**
12,000,000	[7.2159]	**8.6591**
15,000,000	[6.9851]	**8.3821**
17,500,000	[6.8300]	**8.1960**
20,000,000	[6.6984]	**8.0381**
25,000,000	[6.4841]	**7.1325**
30,000,000	[6.3142]	**6.9456**
35,000,000	[6.1739]	**6.7913**
40,000,000	[6.0550]	**6.6605**
50,000,000	[5.8613]	**6.4474**
60,000,000	[5.7077]	**6.2785**
70,000,000	[5.5809]	**6.1390**
80,000,000	[5.4734]	**6.0207**
90,000,000	[5.3803]	**5.9183**
100,000,000	[5.2983]	**5.8281**
120,000,000	[5.1594]	**5.4174**
150,000,000	[4.9944]	**5.2441**
175,000,000	[4.8835]	**5.1277**
200,000,000 **(or more)**	[4.7984]	**5.0289**

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

†Interpolate between values.

TABLE 2—ALLOWANCE FOR DESIGN ONLY

Building cost		Allowance as a percentage of building cost†
$ 100,000 or less	[8.5683]	**16.2798**
120,000	[8.3808]	**15.9235**
150,000	[8.1570]	**15.4983**
175,000	[8.0059]	**15.2112**
200,000	[7.8772]	**14.9667**
250,000	[7.6668]	**14.5669**
300,000	[7.4991]	**14.2483**
350,000	[7.3602]	**13.9844**
400,000	[7.2419]	**13.7596**
500,000	[7.0485]	**13.3922**
600,000	[6.8943]	**13.0992**
700,000	[6.7666]	**12.8565**
800,000	[6.6578]	**12.6498**
900,000	[6.5634]	**12.4705**
1,000,000	[6.4300]	**12.2170**
1,200,000	[6.3383]	**10.7751**
1,500,000	[6.1690]	**10.4873**
1,750,000	[6.0547]	**10.2930**
2,000,000	[5.9574]	**10.1276**
2,500,000	[5.7983]	**8.6975**
3,000,000	[5.6714]	**8.5071**
3,500,000	[5.5664]	**8.3496**
4,000,000	[5.4769]	**8.2154**
5,000,000	[5.3306]	**7.9959**
6,000,000	[5.2140]	**7.0389**
7,000,000	[5.1174]	**6.9085**
8,000,000	[5.0352]	**6.7975**
9,000,000	[4.9637]	**6.7010**
10,000,000	[4.9007]	**6.6159**
12,000,000	[4.7935]	**5.7522**
15,000,000	[4.6655]	**5.5986**
17,500,000	[4.5790]	**5.4948**
20,000,000	[4.5054]	**5.4065**
25,000,000	[4.3851]	**4.8236**
30,000,000	[4.2892]	**4.7181**
35,000,000	[4.2097]	**4.6307**
40,000,000	[4.1421]	**4.5563**
50,000,000	[4.0314]	**4.4345**
60,000,000	[3.9432]	**4.3375**
70,000,000	[3.8702]	**4.2572**
80,000,000	[3.8080]	**4.1888**
90,000,000	[3.7540]	**4.1294**
100,000,000	[3.7063]	**4.0769**
120,000,000	[3.6252]	**3.8065**
150,000,000	[3.5284]	**3.7048**
175,000,000	[3.4630]	**3.6362**
200,000,000 **(or more)**	[3.4074]	**3.5778**

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

†Interpolate between values.

SUBCHAPTER 6. PINELANDS PROCEDURES AND REQUIREMENTS

7:22-6.1 Scope

This subchapter shall constitute the rules of the New Jersey Department of Environmental Projection [and Energy] governing the disposition of appropriations pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or other [moneys] **monies** appropriated to the Pinelands Infrastructure Trust Fund, **as well as future bond acts enacted** for the purpose[s] of awarding financial assistance to local government units through the issuance of Pinelands grants or loans for the planning, design, and construction of wastewater treatment facilities. **As they are enacted, reference to such bond acts shall be added to this section through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.** These rules prescribe the procedures to be followed by the applicant and the Department, respectively, in the application for grants and loans from the Pinelands Infrastructure Trust as well as the administration of these funds, including accounting and record keeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and standards for the construction of wastewater treatment facilities.

7:22-6.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) **and future bond acts**;

2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 and other [moneys] **monies** appropriated to the Pinelands Infrastructure Trust Fund, **as well as future bond acts passed,** for the purpose[s] of providing financial assistance to local government units through the issuance of Pinelands grants and loans for the costs planning and design, in accordance with N.J.A.C. 7:22-6.11(e), (f), and (g), and the construction of wastewater treatment facilities necessary to accommodate development in the regional growth areas as defined in the comprehensive management plan. **As they are enacted, reference to such bond acts shall be added to this paragraph through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7**;

3.-8. (No change.)

7:22-6.4 Definitions

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

. . .

"Bond Act" means the Pinelands Infrastructure Bond Act of 1985 (P.L. 1985, c.302) and any amendatory and supplementary acts thereto **as well as future bond acts passed for the purpose of providing funds for the construction of wastewater treatment facilities.**

"Bonds" means the bonds authorized to be issued, or issued, under the Pinelands Infrastructure Trust Bond Act **or future bond acts passed for the purpose of providing funds for the construction of wastewater treatment facilities.**

. . .

"Collection system" means the [common lateral] sewers[,] which are primarily installed to receive wastewaters directly from individual systems or from private property and which include service "Y" connections designed for connection with those **private** facilities when owned, operated and maintained by or on behalf of the local government. Included in this definition are crossover sewers connecting more than one property on one side of a major street, road or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and pumping units and pressurized lines serving individual structures or groups of structures when units are cost effective and are owned, operated and maintained by the local government unit. [This definition excludes other facilities which convey wastewater from individual structures from private property to the lateral sewer or its equivalent.]

. . .

"Department" means the New Jersey Department of Environmental Protection [and Energy] and its successors and assigns.

. . .

"Pinelands Fund" or "Pinelands Infrastructure Trust Fund" means the Pinelands [Infrastructure Trust Fund] **fund** established pursuant to the Pinelands Bond Act **or other fund established by a future bond act for the construction of wastewater treatment facilities.**

"Pinelands grant" or "Pinelands Infrastructure Trust grant" means a grant from the Pinelands Infrastructure Trust fund **or future bond act funds or other appropriations** for the allowable costs of a **wastewater treatment facilities** project.

. . .

"Pinelands loan" or "Pinelands Infrastructure Trust loan" means a loan from the Pinelands Infrastructure Trust Fund **or future bond act funds or other appropriations** for the allowable costs of a wastewater **treatment facilities** project.

. . .

"Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Examples include services provided by an accountant, archaeologist, attorney, auditor, bond counsel, engineer, environmentalist and financial advisor.

. . .

7:22-6.8 Pinelands Infrastructure Trust, State and Federal funding

(a) Local government units which receive funding through a grant from any Federal program**, including a special project grant or loan authorized pursuant to Federal law, or a loan from the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-4** shall also be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for the construction of the same [scope of] work (planning, design or building) **within the scope of the project**. However, in no case shall the total funding assistance under a Federal grant**, special project grant or loan, Trust loan** and the Pinelands Fund exceed the total eligible costs. However, local government units which receive funding through a loan from the Wastewater Treatment Fund pursuant to N.J.A.C. 7:22-3 [and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-4] shall not be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for construction of the same **work within the scope of the** wastewater treatment facilities **project**.

(b) (No change.)

7:22-6.11 Application procedures

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

(d) The following must be submitted when applying for Pinelands Infrastructure Trust funding for the construction of wastewater treatment facilities:

1.-2. (No change.)

3. Statement of assurances ([CGA **MWA** Form LP-4) **and an executed Professional Services Affidavit (MWA Form LP-11) for each person or firm whose professional services are procured by the local government unit for the project for which cost reimbursement is sought under this chapter, including those planning and design activities for which direct funding is provided in accordance with N.J.A.C. 7:22-6.11(f) and (g) below. Execution of the Professional Services Affidavit is a requirement of the application process so that the Department will have written confirmation from the local government unit that it has procured any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other State-approved method and that the local government unit has reviewed the proposed costs and activities and finds them acceptable. This Professional Services Affidavit requirement does not apply to professional services obtained for those planning and design activities which are covered through an allowance in accordance with N.J.A.C. 7:22-7.12;**

4.-12. (No change.)

13. A sewer use ordinance[,] **and** user charge system [and draft plan of operation] acceptable to the Department;

i.-ii. (No change.)

iii. The applicant [shall submit a draft plan of operation that addresses development of: an operation and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete wastewater treatment system] **may establish lower user charge rates for low income residential users as authorized by State law. The total revenue for operation and maintenance, including equipment replacement, of the facilities must not be reduced as a result of establishing a low income residential user class;**

14.-22. (No change.)

(e) (No change.)

(f) The following shall be submitted when applying for Pinelands Infrastructure Trust funding for the planning of wastewater treatment facilities:

1.-2. (No change.)

3. Draft engineering agreements and related cost documentation **and an executed Professional Services Affidavit (MWA Form LP-11) for each person or firm whose professional services are procured by the local government unit for the project for which cost reimbursement is sought under this chapter.**

(g) The following shall be submitted when applying for Pinelands Infrastructure Trust Funding for the design of wastewater treatment facilities:

1.-5. (No change.)

6. Draft engineering agreements and related cost documentation **and an executed Professional Services Affidavit (MWA Form LP-11) for each person or firm whose professional services are procured by the local government unit for the project for which cost reimbursement is sought under this chapter.**

(h) (No change.)

7:22-6.17 Grant and loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-6.18 through 6.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Pinelands grant and loan, and conditions to each disbursement under a Pinelands grant or loan agreement:

1. The recipient shall comply with the Local Public Contracts Law[,] (N.J.S.A. 40A:11-1 et seq.) [or], the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) **or other procurement method authorized by State law;**

2.-3. (No change.)
4. The recipient shall comply with the requirements of **N.J.A.C. 7:14-2, Construction of Wastewater Treatment Facilities, and** the **provisions of the** NJPDES [permit pursuant to] **rules at** N.J.A.C. 7:14A;
5. (No change.)
6. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with 40 C.F.R. **Part** 403;
7.-15. (No change.)
16. The recipient shall certify to the Department that **a final plan of operation, including** an operations and maintenance manual, **an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete wastewater treatment system** acceptable to the local government unit, has been developed for the project;
17.-32. (No change.)
(b)-(c) (No change.)
(d) Neither the State of New Jersey nor the Pinelands Commission will be a party to any contracts and subcontracts awarded pursuant to this subchapter. All such contracts and subcontracts shall include the following statement:
"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection [and Energy] and the Pinelands Commission. Neither the State of New Jersey, the Pinelands Commission nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to provisions of N.J.A.C. 7:22-6, 7, 9 and 10."
(e)-(g) (No change.)

7:22-6.31 Allowable project costs
(a) Project costs shall be determined allowable to the extent permitted by **N.J.A.C.** 7:22-7.1 through [7.11] **7.12.**
(b) (No change.)

7:22-6.32 Preaward costs
(a) The Department shall not consider allowable those costs incurred for building performed prior to closing the grant or loan for the project, [except] **unless the local government unit has met the requirements as specified in (a)1 or 2 below:**
1. For **allowable** building costs, [otherwise eligible for funding that of] **if** the [following conditions] **local government unit** has met (a)1i through iii or (a)1iv:
i.-iii. (No change.)
iv. The local government unit has submitted items required at N.J.A.C. 7:22-6.11(d)3 through 20 to the Department prior to the issuance of a notice to proceed for building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) **or other procurement method authorized by State law.**
2. (No change.)
(b) (No change.)
(c) Any procurement is subject to the requirements of [the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.)] **applicable State law.**

7:22-6.36 Reserve capacity
The Department shall limit the recipient's Pinelands grant or loan assistance to the cost of the project based on the ultimate build out capacity as defined by the Pinelands Commission. Design shall be based on up to 120 gallons per capita per day for existing [systems] **flows** and [70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, for systems projected to be built during the design life] **flow projections calculated in accordance with N.J.A.C. 7:14A-23.3 and 7:15-5.18.**

SUBCHAPTER 7. DETERMINATION OF ALLOWABLE COSTS: PINELANDS

7:22-7.2 Applicability
The cost information contained in this subchapter applies to Pinelands grant and loan assistance awarded on or after the effective date of this subchapter. Project cost determinations are not limited to the items listed in this subchapter. Additional cost determinations based on applicable law and regulations not otherwise addressed herein shall be made on a project-by-project basis. **Further, costs that become allowable as a result of adoption after June 30, 1995 of amendments to this subchapter are not allowable costs for a supplemental Pinelands grant or loan if the project sponsor has received final payment under a Pinelands grant or loan agreement prior to the effective date of such amendments.**

7:22-7.4 Costs related to subagreements
(a) Allowable costs related to subagreements include:
1. [The] **For Pinelands grant or loan awards made in State Fiscal Year 1996 and later, the** costs of subagreements for building the project**, which may include a contingency line item of up to five percent of the building costs. The funds allocated in the contingency line item must first be used for allowable change orders associated with building activities. The contingency funds can be used for activities other than building provided the Department approves line item adjustments in accordance with N.J.A.C. 7:22-6.26. A contingency is not an allowable cost for Pinelands grant or loan awards made prior to State Fiscal Year 1996 if final payment has been received;**
2.-8. (No change.)
(b) [The] **For Pinelands grant or loan awards made in State Fiscal Year 1996 and later, the actual costs for (a)2 through 8 above will be allowable. For projects which received the Pinelands grant or loan award in State Fiscal Year 1993, 1994 or 1995 and which have received final payment under a Pinelands grant or loan agreement, the** sum total of the allowable costs in (a)2 through 8 above**, exclusive of building costs,** will not exceed 12 percent of the low bid building cost.
(c) (No change.)

7:22-7.5 Mitigation
(a) Allowable costs related to mitigation include:
1. Costs **for measures** necessary to mitigate [only] direct, adverse, physical impacts resulting from building of the wastewater treatment facilities **or measures necessary to mitigate indirect impacts of the project as specified in the Pinelands grant or loan agreement as a special condition;**
2. (No change.)
3. The cost of [groundwater] monitoring facilities necessary to determine the possibility of [groundwater] **water quality** deterioration[, depletion or modification] **or other environmental impacts** resulting from building the project **as specified in the Pinelands grant or loan agreement as a special condition.**
(b) (No change.)

7:22-7.10 Infiltration/inflow and reserve capacity
(a) (No change.)
(b) Unallowable costs related to infiltration/inflow and reserve capacity include:
1. The incremental cost of wastewater treatment facilities capacity which is more than 20 years reserve capacity using 120 gallons per capita per day for existing [systems] **flows** and [70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day whichever is less, for existing unsewered needs and for future systems plus present and future commercial and industrial flows] **flow projections calculated in accordance with N.J.A.C. 7:14A-23.3 or 7:15-5.18.**

7:22-7.11 Miscellaneous costs
(a) Allowable miscellaneous costs include:
1. [The] **For loan awards made in State Fiscal Year 1996 and later, the** costs of salaries, benefits and expendable materials the recipient incurs for the project. However, the allowable portion of

these administrative costs**, including the administrative costs listed in (a)3, 4, 5 and 6 below,** will be limited to [one] **three** percent of the low bid building cost. **The three percent limit may be exceeded only in instances where the Department approves a greater amount through line item adjustments in accordance with N.J.A.C. 7:22-6.26. For grant or loan awards made prior to State Fiscal Year and for which final payment has been made to the project sponsor, administrative cost funding for this paragraph and (a)3 and 4 below for up to one percent is allowable.**

2.-4. (No change.)

5. Costs of bond counsel, financial advisor, bond issuance and other expenses incidental to the approval, preparation and sale of bonds, notes or obligations of the local government unit that are required to finance the project and the interest on the bonds, notes or obligations.

6. Costs of fees for permits required for the building of the project.

7. Costs for the construction of that portion of a house connection (service lateral) owned by the local government unit and to which the local government unit has access by easement for maintenance and repair.

(b) Unallowable miscellaneous costs include:

1.-3. (No change.)

4. [Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them] **Costs of fees for permits required for the operation of the project, including the NJPDES permit pursuant to N.J.A.C. 7:14A;**

5.-11. (No change.)

7:22-7.12 Allowance for planning and design

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

TABLE 1—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building cost		Allowance as a percentage of building cost†
$ 100,000 or less	[14.4945]	**27.5396**
120,000	[14.1146]	**26.8177**
150,000	[13.6631]	**25.9599**
175,000	[13.3597]	**25.3834**
200,000	[13.1023]	**24.8944**
250,000	[12.6832]	**24.0981**
300,000	[12.3507]	**23.4663**
350,000	[12.0764]	**22.9452**
400,000	[11.8438]	**22.5032**
500,000	[11.4649]	**21.7833**
600,000	[11.1644]	**21.2124**
700,000	[10.9165]	**20.7413**
800,000	[10.7062]	**20.3418**
900,000	[10.5240]	**19.9956**
1,000,000	[10.3637]	**19.6910**
1,200,000	[10.0920]	**17.1564**
1,500,000	[9.7692]	**16.6076**
1,750,000	[9.5523]	**16.2389**
2,000,000	[9.3682]	**15.9259**
2,500,000	[9.0686]	**13.6029**
3,000,000	[8.8309]	**13.2464**
3,500,000	[8.6348]	**12.9522**
4,000,000	[8.4684]	**12.7026**
5,000,000	[8.1975]	**12.2963**
6,000,000	[7.9827]	**10.7766**
7,000,000	[7.8054]	**10.5373**
8,000,000	[7.6550]	**10.3343**
9,000,000	[7.5248]	**10.1585**
10,000,000	[7.4101]	**10.0036**
12,000,000	[7.2159]	**8.6591**
15,000,000	[6.9851]	**8.3821**
17,500,000	[6.8300]	**8.1960**
20,000,000	[6.6984]	**8.0381**
25,000,000	[6.4841]	**7.1325**
30,000,000	[6.3142]	**6.9456**
35,000,000	[6.1739]	**6.7913**
40,000,000	[6.0550]	**6.6605**
50,000,000	[5.8613]	**6.4474**
60,000,000	[5.7077]	**6.2785**
70,000,000	[5.5809]	**6.1390**
80,000,000	[5.4734]	**6.0207**
90,000,000	[5.3803]	**5.9183**
100,000,000	[5.2983]	**5.8281**
120,000,000	[5.1594]	**5.4174**
150,000,000	[4.9944]	**5.2441**
175,000,000	[4.8835]	**5.1277**
200,000,000 **(or more)**	[4.7984]	**5.0289**

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

†Interpolate between values.

TABLE 2—ALLOWANCE FOR DESIGN ONLY

Building cost		Allowance as a percentage of building cost†
$ 100,000 or less	[8.5683]	**16.2798**
120,000	[8.3808]	**15.9235**
150,000	[8.1570]	**15.4983**
175,000	[8.0059]	**15.2112**
200,000	[7.8772]	**14.9667**
250,000	[7.6668]	**14.5669**
300,000	[7.4991]	**14.2483**
350,000	[7.3602]	**13.9844**
400,000	[7.2419]	**13.7596**
500,000	[7.0485]	**13.3922**
600,000	[6.8943]	**13.0992**
700,000	[6.7666]	**12.8565**
800,000	[6.6578]	**12.6498**
900,000	[6.5634]	**12.4705**
1,000,000	[6.4300]	**12.2170**
1,200,000	[6.3383]	**10.7751**
1,500,000	[6.1690]	**10.4873**
1,750,000	[6.0547]	**10.2930**
2,000,000	[5.9574]	**10.1276**
2,500,000	[5.7983]	**8.6975**
3,000,000	[5.6714]	**8.5071**
3,500,000	[5.5664]	**8.3496**
4,000,000	[5.4769]	**8.2154**
5,000,000	[5.3306]	**7.9959**
6,000,000	[5.2140]	**7.0389**
7,000,000	[5.1174]	**6.9085**
8,000,000	[5.0352]	**6.7975**
9,000,000	[4.9637]	**6.7010**
10,000,000	[4.9007]	**6.6159**
12,000,000	[4.7935]	**5.7522**
15,000,000	[4.6655]	**5.5986**
17,500,000	[4.5790]	**5.4948**
20,000,000	[4.5054]	**5.4065**
25,000,000	[4.3851]	**4.8236**
30,000,000	[4.2892]	**4.7181**
35,000,000	[4.2097]	**4.6307**
40,000,000	[4.1421]	**4.5563**
50,000,000	[4.0314]	**4.4345**
60,000,000	[3.9432]	**4.3375**
70,000,000	[3.8702]	**4.2572**
80,000,000	[3.8080]	**4.1888**
90,000,000	[3.7540]	**4.1294**
100,000,000	[3.7063]	**4.0769**
120,000,000	[3.6252]	**3.8065**

150,000,000	[3.5284]	**3.7048**
175,000,000	[3.4630]	**3.6362**
200,000,000 **(or more)**	[3.4074]	**3.5778**

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

†Interpolate between values.

SUBCHAPTER 9. AWARDING CONTRACTS FOR STATE ASSISTED PROJECTS TO SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

7:22-9.1 Scope and purpose

(a) This subchapter establishes procedures for providing opportunities for socially and economically disadvantaged ("SED") contractors and vendors to supply materials and services under State financed construction contracts for wastewater treatment facilities. To implement the policies established in N.J.S.A. 58:11B-26, N.J.S.A. 40:11A-41 et seq., and N.J.S.A. 52:32-17 et seq., this subchapter applies to wastewater treatment projects receiving financial assistance from the New Jersey Department of Environmental Protection [and Energy] and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-3, 7:22-4, 7:22-6, 7:22A-6 and 7:22A-7. Under the provisions of N.J.A.C. 7:22-3, 7:22-4, 7:22-6, 7:22A-6 and 7:22A-7, the Department and the Trust require recipients of Trust and Fund loans and other assistance to establish such programs for socially and economically disadvantaged small business concerns, to designate a public agency compliance officer, and to submit to the Department and Trust procurement plans for implementing the SED program. In [ddition] **addition**, N.J.A.C. 7:22-3.17(a)24, 4.17(a)24, 6.17(a)24 and 7:22A-2.4(a) provide that a goal of not less than 10 percent of the total amount of all contracts for building, materials and equipment, or services for a construction project must be awarded to small business concerns owned and controlled by one or more socially and economically disadvantaged individuals. Where a local government unit has a SED participation goal which exceeds 10 percent of the total amount of all contracts, the local government unit must comply with both the Department's rules and the local set-aside ordinance.

(b) (No change.)

7:22-9.2 Definitions

The following words and terms, as used in this subchapter, will have the following meanings unless the content clearly indicates otherwise.

. . .

"Department" means the New Jersey Department of Environmental Protection [and Energy] and its successors and assigns.

. . .

"Office" means the Office of Equal Opportunity and Public Contract Assistance or other program of the Department of Environmental Protection [and Energy] with the responsibility for administration of this subchapter.

. . .

"Socially and economically disadvantaged small business concern" or "SED" means any small business concern:

1.-3. (No change.)

4. Which[, prior to July 1, 1988, has been approved by and registered with the New Jersey Department of Commerce and Economic Development pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses (N.J.S.A. 52:32-17 et seq.) and after June 30, 1988,] has been certified **pursuant to the New Jersey Uniform Certification Act (N.J.S.A. 52:27H-1 et seq.) or pursuant to the provisions of 49 CFR Part 23** by the New Jersey Department of Commerce and Economic Development [pursuant to the New Jersey Uniform Certification Act (N.J.S.A. 52:27H-1 et seq.)], **the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, the New Jersey Transit or other agencies deemed appropriate by the Office,** as an eligible minority business or female business.

i.-iii. (No change.)

. . .

"Wastewater treatment facilities" means, but is not limited to, any equipment, plants, structures, machinery, apparatus, land that shall be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes, including but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections, extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunks lines, sewage collection systems, storm water [runoffs] **run-off** collection systems and other equipment, personal property and appurtenances necessary thereto.

. . .

7:22-9.7 Advertisements for SED utilization

(a) (No change.)

(b) The advertisement for bids shall indicate that the invitation to bid is on:

1. A set-aside contract or subcontract and that awards will be made[, prior to July 1, 1988,] only to small business concerns that are [approved by and registered with the New Jersey Department of Commerce and Economic Development pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. and, on or after July 1, 1988, only to small business concerns that are] certified by the New Jersey Department of Commerce and Economic Develoment [pursuant to the New Jersey Uniform Certification Act, P.L. 1986, c.195], **the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, the New Jersey Transit or other agencies deemed appropriate by the Office** as eligible minority businesses or female businesses; or

2. (No change.)

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

7:22-9.9 Acceptance of set-aside bids

When a contract or portion thereof has been designated as a set-aside, or when the contractor is required to subcontract a portion of a contract to qualified SEDs, acceptance of set-aside bids shall be confined[, prior to July 1, 1988, to small businesses that are approved and registered as minority or female businesses pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. by the New Jersey Department of Commerce and Economic Development and on or after July 1, 1988] to small business concerns that are certified as [minority or female businesses by the New Jersey Department of Commerce and Economic Development pursuant to the New Jersey Uniform Certification Act, N.J.S.A. 52:27H-21.17] **a SED.**

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED WASTEWATER TREATMENT FACILITIES

7:22-10.1 Scope and construction

(a) This subchapter constitutes the rules of the New Jersey Department of Environmental Protection [and Energy] regarding the environmental assessment requirements for projects receiving financial assistance pursuant to N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6 and 7.

(b) This subchapter shall be liberally construed to permit the Department to effectuate the purposes of the Wastewater Treatment Bond Act, the Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), the Pinelands Infrastructure Trust Bond Act (P.L. 1985, c.302), the Sewage Infrastructure Improvement Act [and], the Stormwater Management and Combined Sewer Overflow Abatement

Bond Act, **the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and future bond acts and appropriations passed to provide financial assistance for wastewater treatment facilities**.

(c) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act, the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), the Pinelands Infrastructure Trust Bond Act, the Sewage Infrastructure Improvement Act [and], the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, **the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and future bond acts and appropriations passed to provide financial assistance for wastewater treatment facilities**;

2.-4. (No change.)

7:22-10.2 Definitions

Unless otherwise specified, the terms used herein will have the same meanings as those terms are defined in N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-1. Additional definitions are as follows:

. . .

"Cultural resource" means any prehistoric or historic district, site, building, structure, or object listed in or eligible for listing in the New Jersey Register of Historic Places established pursuant to N.J.S.A. 13:1B-15.128 et seq., or the National Register of Historic Places, established pursuant to 16 U.S.C. [470-470-6] **470a(6)** (1982). Eligibility criteria for listing on the New Jersey Register of Historic Places are set forth at N.J.A.C. 7:4-1. Eligibility criteria for listing on the National Register of Historic Places are set forth at 36 CFR Part 60.6.

. . .

"Indirect impact" **(also known as a "secondary impact")** means an impact that may be caused as a result of providing new or improved wastewater management facilities, but not generally as the result of constructing the facilities. **Examples include new development made possible by improved wastewater infrastructure and the impacts to natural areas, environmentally critical areas, water supply, water quality from nonpoint sources of pollution and air quality.**

. . .

"Planning area" means that area for which a wastewater management project is proposed, including the proposed service area, as well as the extent of the area which could be impacted, directly or indirectly, by the proposed project **and its integrally related components**, as determined by the Department, **whether or not funding is sought for each individual component of the wastewater treatment facilities system**.

"Professional qualified archaeologist" means an archaeologist whose credentials satisfy the criteria as set forth in ["Recovery of Scientific, Prehistoric, Historic and Archaeological Data: Methods, Standards, and Reporting Requirements, 36 CFR Part 66, Appendix C(b) incorporated into this chapter] **the "Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation," 48 Fed. Reg. 44,716 (September 29, 1983)**.

. . .

7:22-10.4 Level 1 environmental review

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

(c) Where a Level 1 review has been determined to be appropriate, a Level 1 environmental planning document must be submitted by the local government unit to the Department for review. The Level 1 environmental planning document must be of sufficient scope to permit the Department to verify the preliminary determination to proceed with this level of review. Information to be provided in the environmental planning document includes the following:

1.-3. (No change.)

4. A summary of alternatives available, including, at a minimum, the no action alternative, and the basis for selecting the proposed action. The selected plan must be the most cost effective, environmentally sound alternative which will address the **water quality** need which has been identified and which is implementable. The most cost effective alternative is determined by taking into account the cost of environmental impacts and the cost of construction. The basis discussion must include the **project** costs, **user costs, environmental** impacts and effectiveness of the proposed alternatives relative to achieving the identified **water quality** need as compared with other alternatives considered; and

5. (No change.)

(d) The Department will review the environmental planning document submitted by the local government unit and will make one of the following determinations:

1. The Level 1 environmental planning document is complete, acceptable, and verifies the preliminary determination to proceed with this level of environmental review. In this case, the Department will prepare and issue a Level 1 decision statement as set forth in (e) below which will be sent to a project mailing list developed in accordance with N.J.A.C. 7:22-10.10(c). The local government unit shall publish a notice in a newspaper of general circulation in the planning area within two weeks of the date of the Department's decision statement. The notice must describe the proposed action, indicate the decision by the Department to approve the project, and advise the public that the local government unit shall, upon written request, make available for public review both the planning documents and the Department's decision statement. Upon issuance of the decision statement, planning is approved and the Department may proceed with award of a loan, subject to the provisions of [(e)] **(f)** below, and provided the other requirements of the program have been met as specified in the applicable program rules.

2.-3. (No change.)

(e)-(f) (No change.)

7:22-10.5 Level 2 environmental review

(a) (No change.)

(b) For a Level 2 review, environmental planning documentation must be submitted by the local government unit consisting of an environmental information document, results of investigations and consultations conducted pursuant to N.J.A.C. 7:22-**10.8 and** 10.9, and results of public participation conducted pursuant to N.J.A.C. 7:22-10.10. At a minimum, a public hearing will be required and proof of same must be included as part of a complete planning document submittal to the Department. The environmental information document must include, where applicable, the following information:

1.-2. (No change.)

3. A description of and mapping, where applicable, of existing environmental conditions and features including:

i.-ii. (No change.)

iii. Water supply source, current demand and current reliable supply. Identify any designated sole source aquifer or critical water supply areas located in the planning area, if applicable;

iv. (No change.)

v. Regional air quality and comparison to New Jersey Air Quality Standards established pursuant to N.J.S.A. 26:2C-1 et seq**. Address conformance with the State Implementation Plan for air quality (prepared pursuant to the Federal Clean Air Act, 42 U.S.C. §7401 et seq.)**;

vi. A general description of plant and animal communities existing in the planning area and a map of habitat types in the project's **direct** impact area;

vii.-ix. (No change.)

4.-6. (No change.)

7. An environmental constraints analysis is required and must be prepared according to the following procedure:

i. (No change.)

ii. Identify existing population and flow by source. Determine the extent of development which could occur according to permitted zoning in developable areas. This should be represented as a number of dwelling units and population for residential areas and area coverage for commercial and industrial areas. **Information regarding existing flows and flow projections must be calculated in accordance with N.J.A.C. 7:14A-23.3 and 7:15-5.18.** These figures must be presented in a table and used in calculating the maximum wastewater

flow that may be considered in planning wastewater treatment facilities. All assumptions used in calculating flow from units and coverage must be explained.

8.-9. (No change.)

10. A description of the environmental impacts for each alternative including beneficial and adverse direct, indirect ([that is,] **or** secondary impacts) and cumulative effects with other projects. Include an assessment of **such** impacts [of] **associated with each** alternative[s] on the following:

i. Surface water and groundwater quality and quantity and hydrology **(including new or increased depletive uses of water resources and, where new development is projected, increased nonpoint source pollution)**;

ii. Plant and animal communities or other natural resources. **Quantify by type the extent of such resources anticipated to be disturbed as a result of project construction;**

iii. Environmentally critical areas, as identified in (b)3viii above. **Quantify by type the extent of such resources anticipated to be disturbed as a result of project construction**;

iv.-vi. (No change.)

11. A description of the selected plan. The selected plan must be the most cost effective, environmentally sound alternative which addresses the identified **water quality** need and which is implementable. Include, where applicable, the following:

i. Wastewater treatment processes, treatment level, design **(as included in the NJPDES permit and on an annual average basis)**, capacity of units, effluent quality[,] **and** discharge location. Include a site plan of the construction area. Design flow shall be broken down into residential, commercial, industrial, and infiltration/inflow components;

ii.-x. (No change.)

12.-16. (No change.)

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

7:22-10.6 Level 3 environmental review

(a) The Department may determine that a Level 3 environmental review is required pursuant to N.J.A.C. 7:22-10.3, 10.5(c), or as a result of significant adverse comment received **during the preplanning or planning period or** in response to the Department's issuance of a Level 1 or Level 2 decision statement.

(b) (No change.)

(c) If a Level 3 environmental review is required by the Department prior to completion of a Level 2 environmental information document, then an environmental information document must be prepared in accordance with N.J.A.C. 7:22-10.5(b). In addition, an environmental impact statement must be prepared under a Level 3 environmental review. Environmental impact statements shall be prepared by the local government unit. The Department must approve the scope, content and conclusion of both draft and final environmental impact statements prior to publication. The procedure will be as follows:

1.-6. (No change.)

7. The local government unit shall give notice of and hold a public hearing on the draft environmental impact statement. Notification of the hearing shall be sent to the persons on the project mailing list and shall be placed in at least two newspapers of general circulation in the State at least 30 days prior to the date of the hearing. The draft environmental impact statement shall be available for public review during the 30 day notice period and the newspaper notice shall advise the public of the locations of copies of the draft environmental impact statement available for public review. The local government unit shall provide **to the Department** a verbatim transcript of the hearing. Written comments shall be accepted by the local government unit **and the Department** for a minimum of 15 days following the public hearing. **The Department will prepare responses to written comments with assistance, as needed, from the local government unit.**

8. The local government unit shall prepare a final environmental impact statement in accordance with [(f)] **(e)** below. The Department will approve the content and format of the final environmental impact statement prior to publication.

9.-10. (No change.)

(d) (No change.)

(e) The final environmental impact statement, maintained in the Department's file for the project shall contain copies of the correspondence received **on the draft EIS**, and responses to written comments, comments received at the hearing for the draft environmental impact statement, any additional information complied or modifications made to the project as the result of comments, where applicable, and mitigating measures that will be required to make the proposed project acceptable.

7:22-10.8 Cultural resource survey requirements

(a)-(k) (No change.)

(l) All archaeological materials and records resulting from investigations required by this rule must be curated in accordance with [36 CFR 66.3, "Recovery of Scientific, Prehistoric, Historic and Archaeological Data: Methods, Standards, and Reporting Requirements," incorporated herein by reference] **the "Secretary of the Interior's Standards and Guidelines for archeology and Historic Preservation," 48 Fed. Reg. 44,716 (September 29, 1983), incorporated herein by reference.**

7:22-10.9 Environmental coordination

(a) (No change.)

(b) The local government unit shall provide a written report on the results of consulation, the status of permit acquisition, statements of no jurisdiction from each applicable agency or other suitable demonstration of non-applicability, as part of the environmental planning documentation required at all levels of environmental review. Any written determination received by the local government unit from the jurisdictional agency shall be included in the documentation of coordination. **If the coordination activities require additional investigations to address relevant environmental issues and/or warrant project changes, the local government unit shall comply with these requirements.**

7:22-10.10 Public participation

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

(d) The Department may require supplemental measures to inform and solicit comment from the public under the following conditions:

1.-2. (No change.)

3. Where notice of the public hearing does not comply with the requirements of (b) above or where significant project issues including costs or impacts were not disclosed, the Department may determine that a supplemental public advertisement as in (d)1 above or a public hearing as in (b) above is required prior to award of financial assistance.

7:22-10.11 Design requirements

(a) The local government unit shall prepare design plans and specifications which **conform to the project alternative selected and approved in planning pursuant to the provisions of N.J.A.C. 7:22-10.4, 10.5 or 10.6 and which** include mitigating measures developed during planning and incorporated in the approved planning documentation. **Any revisions of the project as designed from the project as approved during planning shall be specifically identified.** In addition, the design plans and specifications shall conform to the minimum standards for each area of concern which is applicable to the proposed project as set forth below. All activities which are a part of the comprehensive wastewater treatment project(s) for the planning area must conform to the requirements of this section, regardless of the eligibility of individual components of the project. **Where any on-going environmental protection measures will be the responsibility of the local government unit, the local government unit shall submit a letter prior to loan award specifying that it will adhere to the scope of work approved by the Department.**

(b) The contract documents shall be prepared to clearly identify environmental protection measures and shall conform to the following:

1. and 2. (No change.)

3. The method of payment for environmental and cultural resource protection/restoration measures shall be specified in the ap-

plicable section of the contract documents. Where restoration and maintenance of environmental quality are necessary outside of the designated construction area or when measures for maintenance of environmental quality are required after the date of completion and acceptance of the wastewater treatment facilities, the local government unit shall [so] **clearly** state **the contractor's responsibilities** in the specifications. The local government unit shall include minimum per unit prices for materials needed for environmental and cultural resource protection and restoration.

4. (No change.)

(c) (No change.)

(d) Site and access clearing must be confined to approved construction areas. Protection of existing vegetation must be practiced wherever possible. At a minimum, the local government unit shall include provisions in the contract documents which conform to the following:

1. [Easement] **Temporary and permanent easement** widths must be reduced to the minimum feasible for the proposed construction. Unless specifically approved by the Department, permanent access roads must not be more than eight feet wide and there shall be no permanent access roads in environmentally critical areas. Access roads may be paved only where absolutely necessary, as determined by the Department.

2.-5. (No change.)

(e)-(h) (No change.)

(i) Slopes exceeding 15 percent require special treatment. Specifications shall call for measures such as water diversion berms, sodding, or the use of jute or excelsior blankets. Hay bales shall be placed at the base of the slope prior to ground disturbance. Steep slopes that have been disturbed, if not sodded, shall be seeded **and mulched** immediately after construction is complete. Slope boards or other measures necessary to prevent slumping of the disturbed slope shall be incorporated, where appropriate.

(j)-(k) (No change.)

(l) Contract requirements with regard to the location and control of stockpile, storage and disposal areas whether provided by the local government unit or the contractor, must conform to the following:

1.-2. (No change.)

3. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded on-site [or] **only to the extent needed to achieve pre-construction grade, unless otherwise specifically approved by the Department and the remainder** removed from the site and disposed of at a site approved by the [Department] **local government unit** in accordance with the following:

i. Disposal sites selected by the contractor shall be evaluated and approved by the local government unit prior to their use. The local government unit shall conduct periodic inspection of such sites to ensure compliance with the requirements of this subsection during the off-site disposal operation.

[i.]**ii.** The disposal of excess excavated material in wetlands, stream corridors and floodplains is strictly prohibited, even if the permission of the property owner is obtained. The contractor shall be responsible to remove any fill improperly placed by the contractor at the contractor's expense and restore the area impacted.

[ii.]**iii.** If excess excavated material is placed on private property, a hold harmless release in favor of the local government unit and the Department shall be obtained from the property owner[;].

[iii. Erosion by wind and water of excess excavated materials disposed of on private lands by sewer contractors is a concern. Therefore, when obtaining releases from private property owners, the contractor shall include a statement from the property owner that he or she has been apprised by the contractor of this need for erosion control and accepts complete responsibility for its implementation.]

iv. Prior to approval of a site for excess excavated material disposal, where the site exceeds 5,000 square feet, the local government unit shall ensure that the contractor or property owner has obtained the appropriate certification of the soil erosion and sediment control plan in accordance with the State's standards for soil conservation (N.J.S.A. 4:24-1 et seq., also referred to as Chapter 251). Where the site is less than 5,000 square feet, the local government unit shall advise the property owner of the need for erosion and sediment control and obtain a statement that the property owner accepts complete responsibility for implementation of appropriate methods to prevent erosion and sedimentation.

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

(o) **Provisions regarding the contractor's responsibility for cultural resource protection shall be included in contract documents that provide for the following:**

1. If a cultural resource is encountered during the course of construction, the contractor [is directed to] **shall** halt all construction activities in that area. The contractor shall immediately contact the local government unit who shall contact the Department. The Department will determine and require initiation of the appropriate actions in accordance with N.J.A.C. 7:22-10.8.

2. The contractor shall not dispose of excess excavated material at, stockpile construction materials at, or obtain borrow material from, properties which are listed or eligible for listing on the New Jersey or National Registers of Historic Places.

(p) The local government unit shall require that the contractor supply an environmental maintenance bond in the amount of $25,000 or 50 percent of the price bid for the materials needed to fulfill the environmental specifications, whichever is greater. The environmental maintenance bond shall provide that the contractor shall remedy, without cost, any defects, which [are proved to] result from faulty workmanship or from failure to comply with the specifications and which develop during the period of one year from the expiration of the performance bond, required pursuant to N.J.S.A. 40A:11-22.

(q) (No change.)

7:22-10.12 Construction phase requirements

(a) The local government unit must employ one, or more if warranted by the scope of the project, environmental inspector to ensure that the requirements of the specifications relating to environmental and cultural resource protection and restoration are effectively carried out. Individuals designated as environmental inspectors by the local government unit must possess, at a minimum, the education/experience qualifications of an Environmental Specialist employed with the Department. The Department will [utilize] **also conduct** environmental [inspectors] **inspections** to oversee the conduct of the protection/restoration measures. Responsibilities of the **local government unit's** environmental inspectors include the following:

1.-3. (No change.)

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

(a)

PINELANDS COMMISSION

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

Authorized By: New Jersey Pinelands Commission, Terrence D. Moore, Executive Director.

Authority: N.J.S.A. 13:18A-6j.

Proposal Number: PRN 1995-228.

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

Wednesday, May 3, 1995 at 4:00 P.M.
Pemberton Township Municipal Building
500 Pemberton-Browns Mills Road
Pemberton, New Jersey

Submit written comments by May 17, 1995 to:
John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064

The agency proposal follows:

Summary

The New Jersey Pinelands Commission proposes to amend subchapters 2, Interpretations and Definitions; 3, Certification of County, Municipal and Federal Installation Plans; 4, Development Review; 5, Minimum Standards for Land Uses and Intensities; 6, Management Programs and Minimum Standards; and 7, Amendments, of the Pinelands Comprehensive Management Plan (CMP). The Pinelands CMP has been guiding land use and development activities in the Pinelands since it took effect on January 14, 1981. Since that time, the CMP has been amended eight times, most recently through a series of revisions which became effective on December 5, 1994 (26 N.J.R. 4795(a)) as a result of the Commission's comprehensive plan review process.

The amendments now being proposed are intended to implement five principal goals: the incorporation of guidelines for the Commission's review of local master plans and ordinances that govern certain areas in the Pinelands National Reserve; the provision of flexibility and standards for the certification of alternative local permitting programs; the extension of certain approvals previously granted by the Commission; the revision of the Pinelands National Reserve boundary; and the incorporation of standards to address certain local communication facilities which exceed the height limitation of the CMP. In addition, a number of clarifications to existing CMP standards are also being proposed. All of these proposed amendments and clarifications are summarized below.

With respect to the Commission's review of local master plans and ordinances, the amendments being proposed to N.J.A.C. 7:50-3.39(b) seek to provide increased clarity concerning the standards by which the Commission will judge such documents when they relate to those areas of a municipality located outside the State-designated Pinelands Area but within the Pinelands National Reserve. The Commission does not exercise direct regulatory jurisdiction to implement the policies of the CMP outside the State-designated Pinelands Area. However, the CMP does include land use and development policies governing the future use and development of lands within the entire Pinelands National Reserve Area, as is required by the Pinelands Protection Act which designates the Commission as the "planning entity" for the Pinelands National Reserve. In addition, sections 502(f)4 and 8 of the National Parks and Recreation Act of 1978, Pub.L. 95-625 (16 U.S.C. Section 471i(f)4 and 8) charge the Commission with the responsibility of preparing a management plan that "details the ways in which local, State and Federal programs and policies may best be coordinated to promote the goals and policies of the management plan" and assures that local government implementation of the management plan will ensure "the continued, uniform, consistent protection of" the entire Pinelands National Reserve. The proposed amendments will help the Commission to fulfill its responsibilities relative to local government coordination and implementation, as set forth in the Federal legislation.

Guidelines for this optional review process were added to the CMP as part of the December 1994 amendments; however, a concern has recently been raised that these guidelines may not have been properly proposed and adopted. Whether or not that is the case, the Commission believes that further amendments are warranted in order to sufficiently clarify the review process and reflect the Commission's past practice.

The amendments now being proposed indicate that, when asked to do so, the Commission may make a finding that municipal master plans and land use ordinances governing areas outside the Pinelands Area but within the Pinelands National Reserve are in "substantial compliance" with the provisions of N.J.A.C. 7:50-5 and 6. In order to make such a finding, the Commission will examine such master plans and ordinances in terms of the standards set forth in N.J.A.C. 7:50-5 and 6, but will not require strict adherence to each of these standards. Rather, the Commission will rely on a determination of whether or not the master plans and ordinances result in a level of protection to Pinelands resources that is consistent with that which would be provided by strict adherence to the standards in N.J.A.C. 7:50-5 and 6. It should be noted that the Commission previously made such a finding concerning the master plans and land use ordinances of three municipalities: the Townships of Bass River and Ocean and the City of Estell Manor. As was the case with those municipalities, the Commission's review and action on master plans and ordinances governing lands outside the Pinelands Area remains optional for municipalities. The proposed amendments do, however, clarify the effects and benefits that such action may have.

With respect to alternative local permitting programs, the Commission is proposing to incorporate in the CMP a vehicle by which the Commission may review and certify local permitting procedures which differ from those set forth in N.J.A.C. 7:50-4. The CMP currently contains a provision (N.J.A.C. 7:50-4.34(b)) which allows municipalities to adopt a slightly modified procedure, involving the issuance of notices of filing and the use of a local review officer. This system has been implemented by one municipality, and the Commission has been collaborating with several other municipalities to devise ways of expediting the development review process within the current framework of N.J.A.C. 7:50-4. Based on this experience, the Commission believes that there may be a variety of permitting programs which have merit and warrant further exploration. In order to provide municipalities and the Commission with the flexibility necessary to implement such programs, a series of new rules are being proposed at N.J.A.C. 7:50-3.81 through 3.85.

As is indicated in the proposed rules, the Commission's purpose in considering alternative local permitting programs is to encourage the efficient and simplified processing of applications, as well as the delegation of certain permitting responsibilities to municipalities. Proposed N.J.A.C. 7:50-3.83 sets forth the criteria by which the Commission will be required to judge any alternative permitting program, including whether or not the county or municipality proposing the program has personnel who are capable and qualified for its administration and whether or not the program will ensure that the minimum standards of N.J.A.C. 7:50-5 and 6 are met. A standard is also included for the provision of adequate safeguards to ensure that the Commission either exercises its customary oversight responsibilities in the review of local permits or conducts a periodic review of local permit decisions to ensure that the alternative permitting program is resulting in decisions that are consistent with N.J.A.C. 7:50-5 and 6. It should be noted that the proposed rules require the Commission to follow its normal local certification procedures when reviewing and acting on alternative permitting programs. These procedures, set forth in N.J.A.C. 7:50-3, Parts II and IV, will provide the opportunity for public comment through the scheduling and conducting of a public hearing on any ordinance or regulation that has been adopted for purposes of implementing an alternative permitting program.

Since the 53 Pinelands Area municipalities and seven Pinelands Area counties have varying interests and capabilities, the proposed rules are structured to allow a wide variety of alternative permitting programs. These range from fairly simple changes in paperwork or procedures designed to streamline and simplify the application process to programs which allow local governments to make certain permitting decisions without direct Commission oversight. For example, a local government, with the Commission's concurrence, may choose to have applicants file development applications with a local permitting agency or designated local official prior to or in lieu of their filing with the Commission. Also, a local permitting agency or designated local official may be given the authority to issue completeness determinations on certain development applications in cooperation with or in lieu of such determinations by the Commission. Relative to permit decisions, a local permitting agency or designated local official may be given the authority to issue preliminary or final municipal approvals prior to or without any Commission notification or review of the associated development applications. Any such program must contain an alternative procedure to ensure that the Commission may conduct a periodic review of permits which are issued. A variety of other modifications to the procedural aspects of N.J.A.C. 7:50-4, Part III, may also be considered. One process which cannot be modified is the Commission's issuance of Waivers of Strict Compliance and this requirement is set forth in proposed N.J.A.C. 7:50-3.83(a)4.

It should be noted that in order to implement the proposed rules described above, a number of amendments to other sections of the CMP are necessary. For example, the definitions of "local review officer" and "notice of filing" are being deleted, as is the subsection in which those terms are used (N.J.A.C. 7:50-4.34(b)). The deletion of these terms and subsection is not intended to imply that a municipality cannot propose a permitting system which utilizes a local review officer or involves the issuance of notices of filing. Rather, such a system will now be only one of the many alternatives that the Commission may review and certify under its proposed rules.

With respect to the extension of certain approvals previously granted by the Commission, amendments are being proposed to N.J.A.C. 7:50-4.1 and 4.70. These amendments apply to approvals issued by the Pinelands Development Review Board (between February 8, 1979 and June 28, 1979) and by the Commission under the Interim Rules and Regulations (between June 28, 1979 and January 14, 1981) and to waivers approved by the Commission on the basis of an applicant's having secured valid municipal development approval prior to February 8, 1979 and having documented expenditures made in reliance thereon (commonly referred to as A-2 waivers). In order to be eligible for the extension being proposed, all necessary final approvals from municipal planning boards or boards of adjustment must have been obtained prior to January 14, 1991. The proposed amendments would grant an extension only for those lots which either front on a road improved at least to the extent of having a subbase installed or have a foundation or septic system that was lawfully constructed prior to January 3, 1995. Any lots meeting these criteria would be given until December 31, 1996 to obtain all necessary construction permits.

Absent the proposed extension, the approvals described above expired on December 31, 1994 by which date all construction permits were required to be obtained. That particular date was originally chosen, in part, to be consistent with the Permit Extension Act (P.L. 1992, c.82) which extended any governmental approval that was scheduled to expire between January 1, 1989 and December 31, 1994 to December 31, 1994. Although the provisions of the Permit Extension Act did not apply to approvals granted under the Interim Rules and Regulations or to A-2 waivers, the Commission determined that an extension was warranted if certain criteria were met and previously amended the CMP to that effect. The Permit Extension Act was recently extended until December 31, 1996. In light of this, the Commission was asked to consider whether any of the Pinelands Development Review Board and Interim Rules approvals and A-2 waivers could be similarly extended. The proposed amendments reflect the Commission's desire to recognize and grant extensions only to those projects where substantial investments have been made and significant development activity has occurred. It should be noted that limiting the applicability of the proposed amendments in this fashion will make the extension granted by the Commission much narrower than that granted by the amended Permit Extension Act.

With respect to the proposed revision of the Pinelands National Reserve boundary, the Commission is proposing a change at N.J.A.C. 7:50-5.3 to implement its previous approval, with modifications, of the petition submitted by Avalon Golf & Development, Inc. to amend the CMP pursuant to N.J.A.C. 7:50-7. Said petition requested that the Commission amend the Pinelands Area Jurisdiction Boundaries Map, adopted pursuant to N.J.A.C. 7:50-5.3(a)1, and the Official Map of the Pinelands, adopted pursuant to N.J.S.A. 13:18A-11.c, to conform with the petitioner's interpretation of the Pinelands National Reserve Boundary Map, as adopted by Congress in P.L. 95-625, November 10, 1978. Notice of the filing of this petition was published in the New Jersey Register on September 6, 1994 (26 N.J.R. 3752(a)). The specific amendment requested by the petitioner involved the removal of approximately 173 acres of land in Middle Township, Cape May County, from the Pinelands National Reserve. After establishing a public comment period and conducting a public meeting, the Executive Director recommended that the Commission grant the petition, with modifications, and proceed with a formal rulemaking proposal. At its November 4, 1994 meeting, the Commission accepted the recommendation of the Executive Director and approved the petition, with modifications, through its adoption of Resolution PC4-94-105. Notification of such approval was made through publication in the December 5, 1994 edition of the New Jersey Register (26 N.J.R. 4834(c)).

As proposed, the amendments to the maps listed in N.J.A.C. 7:50-5.3(a) would result in the removal of approximately 190 acres of land in Middle Township, Cape May County, from the Pinelands National Reserve. The revised boundary line would continue along Siegtown Road to its intersection with U.S. Highway Route 9, then north along U.S. Highway Route 9 to its intersection with the southern border of the State Department of Agriculture's Plant Materials Center (Block 114, Lot 5.01), then east along this lot line to its intersection with the Garden State Parkway. This revised boundary line both accomplishes the objectives of the petitioner and clarifies one area depicted on the Official Map of the Pinelands that has proven to be difficult to interpret. In a letter dated November 30, 1994, the United States Department of the Interior reaffirmed its opinion that the Commission has the authority to interpret the boundary of the Pinelands National Reserve as generally depicted on the Pinelands National Reserve Boundary Map, as referenced in Section 502 of P.L. 95-625. The Department of the Interior also indicated its opinion that changes to the boundary of the Pinelands National Reserve may be adopted as amendments to the CMP, provided any amended boundary falls within the area generally depicted on the federal Pinelands National Reserve Boundary Map. The amendment now being proposed by the Commission is in keeping with this guideline.

It should be noted that the proposed boundary changes will require no changes in the text of the CMP, since only a revision to certain maps is required.

With respect to local communication facilities, the Commission is proposing a series of amendments in response to concerns raised during the previous plan review process by representatives of the cellular telephone industry. These concerns focused on the fact that the height limitations contained in N.J.A.C. 7:50-5.4 severely restrict the ability of the industry to provide cellular telephone service in a significant portion of the Pinelands. This is the case because N.J.A.C. 7:50-5.4 sets a maximum height of 35 feet in all Pinelands management areas except Regional Growth Areas and Pinelands Towns, thereby restricting the height of structures in approximately 89 percent of the Pinelands. Cellular telephone towers are almost always taller than this and must also be located in fairly close proximity to their users (generally within five to six miles) in order to provide adequate service. In recognition of the growing importance of cellular telephones for many types of communication and in order to provide a means by which the Commission will be able to review and approve local communication systems as a whole instead of on a facility by facility basis, the following amendments are proposed.

First, a definition is being added to N.J.A.C. 7:50-2.11 to clarify the meaning of the term "local communication facility." As proposed, an antenna and any support structure intended to serve a limited, localized audience through point to point communication would be included, but a broadcasting facility or microwave transmitter would not. The term is intended to include facilities which provide cellular telephone and paging service, as well as other similar uses. Second, local communication facilities are being added as a permitted use that municipalities will have the option of permitting in the Preservation Area District (N.J.A.C. 7:50-5.22(b)17), Forest Area (N.J.A.C. 7:50-5.23(b)17), Agricultural Production Area (N.J.A.C. 7:50-5.24(b)14), Special Agricultural Production Area (N.J.A.C. 7:50-5.25(b)7) and Rural Development Area (N.J.A.C. 7:50-5.26(b)15). Third, N.J.A.C. 7:50-5.4 is proposed to be amended through the addition of a new subsection (c) to provide standards for local communication facilities that exceed 35 feet in height. These standards include requirements for the use of existing structures where feasible, the demonstration of a need for the facility to serve the needs of the Pinelands and be located in the Pinelands, and the designing of any supporting structure to accommodate the needs of other local communication providers. Other standards require that facilities be located so as to minimize visual impacts from publicly dedicated roads, low intensive recreation facilities, campgrounds, existing residential development on contiguous parcels, the river corridors of special significance listed in N.J.A.C. 7:50-6.105(a), the Pine Plains and associated area necessary to maintain its ecological integrity and the Forked River Mountains. In addition, facilities may not be located within five miles of the Forked River Mountains. Locational standards specific to the Preservation Area District, Forest Area, Special Agricultural Production Area and Rural Development Area require that facilities be located in certain non-residential zoning districts, on developed publicly owned lands, at existing first aid or fire stations or on the disturbed lands associated with an approved resource extraction operation or existing landfill.

The proposed amendments further require that when a local communication facility exceeding 35 feet in height is proposed to be located outside a Regional Growth area or Pinelands Town, a comprehensive plan for the entire Pinelands be submitted by the applicant for the Commission's certification. The intent of this requirement is to ensure that the number of facilities proposed in certain more sensitive Pinelands management areas are the least number necessary to provide adequate service. As part of the comprehensive plan, entities which provide the same type of service or which have a franchise for the area in question will be required to co-locate where possible and to share service, unless precluded from doing so by Federal law or regulation.

As mentioned previously, a number of clarifications to existing CMP standards are also being proposed. These include changes necessary to ensure the consistent use of terms throughout the CMP ("parcel"

replaces "property" and "lot"; "local permitting agency" replaces "local approval agency"; "local" replaces "municipal"). A change is also being made to N.J.A.C. 7:50-4.63(a)4 and 4.66(h) to clarify that all necessary local variances, including use variances, must have been obtained prior to the Commission's action on a Waiver of Strict Compliance intended to relieve an extraordinary hardship. Also, language is being added to N.J.A.C. 7:50-5.2(a) and (b) to clarify that existing uses which were constructed after the CMP took effect and approved in accordance with the CMP but which have since been rendered non-conforming through a local zoning change may be permitted to expand or convert to another non-conforming use under certain conditions.

With respect to Pinelands Development Credits, two clarifications are proposed. First, an amendment is being made to the allocation formula contained in N.J.A.C. 7:50-5.43(b)2iv for Agricultural Production and Special Agricultural Production Areas in order to clarify that wetlands in active field agriculture in 1979 are entitled to two Pinelands Development Credits per 39 acres, provided those lands are currently in active agriculture. Conversely, wetlands that were in active agriculture prior to 1979 that have since reverted to a cedar swamp would qualify for 0.20 rather than two Pinelands Development Credits per 39 acres. Second, an amendment is being proposed to N.J.A.C. 7:50-5.43(b)5 in order to clarify that the owners of less than one-tenth of an acre may purchase contiguous lands in order to achieve the minimum size necessary to qualify for 0.25 Pinelands Development Credits, provided that the lands acquired for this purpose are also entitled to Pinelands Development Credits.

Three final clarifications involve landscaping, pressure dosed septic systems and cultural resources. With respect to landscaping, the December 1994 CMP amendments incorporated certain limitations on the amount of managed turfed area allowed for various types of uses. The amendments now being proposed at N.J.A.C. 7:50-6.23(a)6vii specify the limitations for two-family and multi-family dwellings, as these uses were not expressly addressed by the previous amendments. With respect to pressure dosed septic systems, the Commission is proposing to delete N.J.A.C. 7:50-6.84(a)5iv(2)(A) as the Commission has recently completed the monitoring program described therein and those standards are no longer relevant. Finally, with respect to cultural resources, an amendment is being proposed at N.J.A.C. 7:50-6.156(d)2 to provide the Commission with the ability to designate a cultural resource of significance to the Pinelands at any point in time after the two years of protection afforded under a certificate of appropriateness have expired.

Social Impact

Because the proposed amendments and new rules clarify and provide the opportunity for greater flexibility of existing procedures, overall positive social impacts are expected.

In terms of the amendments proposed at N.J.A.C. 7:50-3.39(b) for the review of master plans and ordinances governing certain areas in the Pinelands National Reserve, the Commission is the planning entity designated by the State legislature for those lands in the Pinelands National Reserve outside the State designated area. The CMP is an important guidance document frequently consulted by various State and Federal agencies. The Commission believes it is important to give municipalities the opportunity to avail themselves of at least the same degree of flexibility for those areas that lands within the State-designated area are afforded. The amendments proposed at N.J.A.C. 7:50-3.39(b) will allow municipalities to voluntarily gain this benefit and receive clearer guidance on the standards that will be applied by the Commission. The amendments will also encourage increased consistency in the application of land use regulations by bringing the objectives of the State Development and Redevelopment Plan, the Coastal Area Facilities Review Act (CAFRA) regulations, CMP standards and the local master plans and land use ordinances into closer alignment.

In terms of the new rules proposed for alternative permitting programs, a variety of social benefits may be expected to result. For example, it is anticipated that the permitting process will be streamlined through the implementation of various alternative programs, thereby resulting in a significant savings of time for applicants. In addition, by delegating more permitting authority to local agencies or designated officials, some alternative programs may eliminate or greatly reduce the interaction of applicants with the Commission. Increased municipal responsibility may also lead to the ready availability of information at the local level and thus increase awareness and compliance with CMP regulations. Also, in those instances where the Commission delegates decisionmaking authority, it is expected that the partnership between local permitting agencies and the Commission will be enhanced. This will both strengthen the protection of the Pinelands and the role of local government in implementing the CMP.

In terms of the extension of certain approvals, the proposed amendments should have a positive social impact because they will enable certain partially constructed projects to complete a number of additional residences. In some cases, construction of these additional units will fill in gaps between existing houses. In other cases, the proposed extension will allow for the completion of the few remaining units in partially completed phases of a project. Construction of the remaining homes in these already disturbed areas recognizes existing development patterns and generally accepted land use planning principles.

The proposed revisions to the Pinelands National Reserve boundary merely reflect the Commission's obligation to interpret the Federal planning boundary in the most accurate way possible. As such, this proposed revision does not appear to have any other notable social impacts.

In terms of the proposed amendments for local communication facilities, there is little doubt that cellular telephone service is at the interface between being a convenience and a necessity. As such, access to its services is desired by many residents of the Pinelands and others traveling through the Pinelands. In addition, cellular phones are being used more and more frequently by emergency medical services, especially for data transferral concerning patients being transported to hospitals. Another important purpose which cellular phones continue to serve in the Pinelands is forest fire interdiction communication. Finally, cellular telephone service may be one of the only proximate communications service available in isolated areas of the Pinelands (for example, canoe areas or roads traversing Wharton State Forest), and thus is highly useful in cutting the time required to notify emergency services of an accident.

It should be stressed that although the proposed amendments do provide for increased flexibility in the location of local communication facilities, standards have also been put in place for the protection of adjacent residential land uses from visual impacts.

In terms of the various clarifications being proposed, two are expected to have minimal social impacts. First, the removal of monitoring requirements for pressure dosed septic systems will relieve property owners of the necessity of establishing special sampling ports and otherwise participating in the monitoring program. Second, the Commission's retention of the ability to designate a cultural resource even after the protection afforded by a certificate of appropriateness has expired will permit future reconsideration of the need for designation, and new protection, if the situation changes.

Economic Impact

Overall, the proposed amendments and new rules are expected to result in positive economic impacts, although in some cases the economic benefits may be of a limited nature. Most of the proposed amendments will have no adverse economic impacts. For those that do, the consequences are expected to be limited.

The proposed amendments to N.J.A.C. 7:50-3.39(b) are intended to give municipalities the opportunity to request that the Commission find that the regulations set forth in their land use ordinances for areas outside the State-designated Pinelands Area but within the Pinelands National Reserve are consistent with the CMP. Municipalities which elect to request such review by the Commission will ultimately make the application process less cumbersome for applicants because the problems created by conflicting regulations will be avoided. Time and cost savings will accrue in any municipality where a finding of substantial consistency has been made according to the proposed standards. Obviously, time saved for applicants in the permitting process can have significant positive financial implications.

A similar benefit may result from the alternative local permitting programs proposed to be permitted through the incorporation of N.J.A.C. 7:50-3.81 through 3.85. However, it is possible that some alternative programs may result in minimal additional expenditures by local governments or the increased allocation of Pinelands staff resources. These costs would be expected to decrease over time as the alternative programs become more efficient and effective.

In terms of the extension of certain approvals, the proposed amendments will provide some applicants with the ability to proceed with obtaining construction permits until December 31, 1996. After obtaining such permits, these applicants will have up to one year to begin construction. Thus, the proposed extension will have a positive impact on the

construction industry and the overall economy of the State. Furthermore, public and private capital investments will be more effectively used if these partially completed projects can be finished.

In terms of the proposed revision of the Pinelands National Reserve boundary, there is no known economic impact.

The proposed amendments for local communication facilities will allow cellular telephone access to various areas of the Pinelands and provide the opportunity for better service and enhanced marketing to the telephone service providers. Communication costs will be cut through competition and the opportunity for alternative services. Requirements for the co-location of facilities may also lessen costs. Furthermore, some landowners, including some local governments, in isolated areas will derive economic benefits from this new use.

Conversely, it may be argued that the co-location of facilities, coupled with limits on their number and location, may result in less than ideal placement of facilities. This could affect the quality of service and raise costs. The requirement for the submission of a comprehensive plan may also result in an increase in planning costs to certain providers. However, all of these costs are balanced by the increased access to the Pinelands that the proposed amendments afford.

It is anticipated that two of the proposed clarifications will have economic impacts. The addition of two-family and multi-family uses to the list of development types that may have certain amounts of managed turfed areas (N.J.A.C. 7:50-6.23(a)6vii) will allow the developers of these uses to provide for a limited amount of such lawn areas, thereby making projects slightly more marketable. Second, the elimination of the requirement for monitoring of pressure-dosed septic systems will result in a savings of at least $855.00 for each system for those applicants proposing to use such systems.

Environmental Impact

Overall, little environmental impact is expected to result from the proposed amendments, and new rules. Negative impacts from this rulemaking are expected to be few in number and very limited in scope.

With respect to the amendments proposed at N.J.A.C. 7:50-3.39(b), encouraging voluntary compliance with CMP standards for certain areas in the Pinelands National Reserve may result in increased environmental protection in areas of the State where the Commission does not exercise direct regulatory authority.

The alternative permitting programs that may be developed in accordance with proposed N.J.A.C. 7:50-3.81 through 3.85 will be carefully analyzed by the Commission in order to ensure that any such program will comply with all of the land use and environmental standards contained in N.J.A.C. 7:50-5 and 6. In addition, the proposed rules contain a requirement that periodic monitoring of local permitting decisions be guaranteed and that, where such decisions are found by the Executive Director to be inconsistent with CMP standards, the alternative procedures are to be suspended until such time as the Commission itself takes action.

The proposed extension of certain approvals will allow the development of a number of residential units which are inconsistent with the current standards of the CMP. However, the proposed amendments will not result in further impacts on the resources of the Pinelands than those anticipated when the approvals were first issued. Because the amendments will not extend those approvals which expired on January 14, 1991, nor those approvals for which substantial construction activity has not occurred prior to January 3, 1995, some level of environmental benefit will be realized. In addition, some may consider the completion of approved projects to be a better way of meeting housing needs in the Pinelands than the initiation of new projects elsewhere.

Since the area to be excluded from the Pinelands National Reserve as a result of the proposed boundary modification is still governed by CAFRA regulations, any environmental impacts from land development of the lands in question will still be managed.

With respect to local communication facilities, it should be recognized that nothing in these proposed amendments relieves any applicant proposing to develop such a facility from meeting the environmental standards (N.J.A.C. 7:50-6) of the CMP. Aside from certain scenic or visual impacts, the proposed amendments should result in minimal, if any, environmental impacts. Visual impacts will occur, although every effort has been made in the proposed amendments to minimize them. For example, use of existing facilities is required when technically feasible; new facilities are to be located on already disturbed lands; and their placement must minimize their visibility from the highways, certain areas frequented by the public and existing residential development. Finally, the proposed requirement for the submission of a comprehensive plan will minimize the number of such facilities located in the more environmentally sensitive Pinelands management areas.

One of the proposed clarifications is expected to result in the potential for increased environmental protection. Providing the Commission with the ability to designate cultural resources for which the protection afforded by a certificate of appropriateness has expired (N.J.A.C. 7:50-6.156(d)2) offers an increased opportunity for protection of important resources.

It should be noted that the proposed elimination of the monitoring requirements for pressure dosed septic systems at N.J.A.C. 7:50-6.84(a)5iv(2)(A) will not affect the Commission's study of their nitrogen attenuation capabilities since all the necessary data has now been collected and is being analyzed.

Executive Order No. 27 Statement

Only one of the proposed amendments and new rules deals with a topic for which the Federal government also has regulations, that dealing with local communication facilities in general and cellular telephone service in particular. Federal regulations do not deal with siting in terms of various zoning and other land use designations. The Federal government regulations seek to foster a climate where cellular service can succeed. The amendments being proposed also foster that goal by facilitating somewhat greater siting opportunities in the Pinelands. The Federal regulations do not preclude local siting controls (especially in federally designated reserves like the Pinelands National Reserve). The proposed regulations do not prohibit service; instead they permit it, albeit with numerous siting controls. The cellular industry, which has worked with the Commission in the review of this proposal, has conducted a survey based upon the proposed siting controls and finds that most if not all of the Pinelands could be adequately served if these regulations are adopted.

Given the above discussion, the proposed amendments and new rules do not exceed any Federal standards.

Regulatory Flexibility Analysis

Except possibly regarding local communications facilities, no new compliance or reporting requirements will be necessary for small businesses (as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.) because of the proposed amendments and new rules. In addition, no differing requirements have been established for small businesses because of the nature of this rulemaking.

A number of the proposed amendments may have a positive impact upon small businesses. For example, the delegation of permitting authority to municipalities and counties may save paperwork for small businesses. The proposed extension of certain approvals will have a positive impact on small businesses who will have additional time to obtain construction permits. In addition, many of the contractors who will be involved in the actual construction work and their suppliers may be small businesses. The proposed amendments relating to local communication facilities may offer increased opportunities for the location of such facilities at small business locations and thus provide an additional source of revenue. These amendments may also afford small businesses better communication options. In meeting the standards for a local communication facility under proposed N.J.A.C. 7:50-5.4(c), a small business would incur planning and design costs relevant to ensuring compliance with the structure and location requirements. If the facility is proposed to be located in any Pinelands management area other than a Regional Growth Area or Pinelands Town, a comprehensive plan for the entire Pinelands Area would have to be submitted to the Commission for certification. Although they would probably be shared by all those entities that provide the same type of local communication service or have a franchise within the Pinelands Area, the costs to develop such a plan could be significant, involving professionals from a number of disciplines. Such requirements are, however, necessary to balance Pinelands maintenance and protection with desirable increased communications access. In addition, it must be reiterated that the Comprehensive Management Plan does not currently permit local communications facilities exceeding 35 feet in height to be developed outside Regional Growth Areas and Pinelands Towns. Therefore, it is likely that the increased siting opportunities provided by the proposed amendments will outweigh the additional costs for small businesses that may be involved in developing the required comprehensive plans. Finally, the proposed elimination of monitoring requirements for pressure dosed septic systems may save small businesses money by relieving them of the necessity to pay for a monitoring program.

AGENCY NOTE: The maps listed in N.J.A.C. 7:50-5.3(a), showing the proposed revision to the boundary of the Pinelands National Reserve, may be reviewed at the office of the Pinelands Commission, 15 Springfield Road, New Lisbon, New Jersey. Likewise, the Executive Director's report on the petition submitted by Avalon Golf & Development, Inc. to amend the CMP is on file and may be reviewed at the Commission's office.

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

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings herein ascribed to them.

. . .

"Agricultural employee housing" means residential dwellings, for the seasonal use of employees of an agricultural or horticultural use, which because of their character or location are not to be used for permanent housekeeping units and which are otherwise accessory to a principal use of the [lot] **parcel** for agriculture.

. . .

"Certified county master plan or [ordinance] **regulation**" means any county master plan or [ordinance] **regulation** certified by the Commission pursuant to N.J.A.C. 7:50-3, Part II as being in conformance with the minimum standards of this Plan.

. . .

"Local communications facility" means an antenna and any support structure, together with any accessory facilities, which complies with the standards in N.J.A.C. 7:50-5.4 and which is intended to serve a limited, localized audience through point to point communication, including cellular telephone cells, paging systems and dispatch communications. It does not include radio or television broadcasting facilities or microwave transmitters.

. . .

["Local review officer" means an individual with experience in municipal land use and environmental permitting procedures and the Pinelands development review process who is designated by a certified municipality to administer the review procedures set forth in N.J.A.C. 7:50-4.34(b).]

. . .

["Notice of filing". See N.J.A.C. 7:50-4.34(b).]

. . .

"Uncertified municipality or county" means a municipality or county whose master plan and land use ordinances **or regulations** have not been certified by the Commission under N.J.A.C. 7:50-3.

7:50-3.11 Conformance of county master plans and [ordinances] **regulations** required

Within one year after the effective date of this Plan, or any amendment thereof, each county with jurisdiction over land located within the Pinelands Area shall adopt or amend a master plan applicable to such land and shall amend any [ordinances] **regulations** applicable to the development of land so that the master plan and [ordinances] **regulations** are in conformance with the minimum standards of this Plan.

7:50-3.12 Submission of plan and [ordinances] **regulations**

Within one year after the effective date of this Plan, or any amendment thereof, each county located in whole or in part in the Pinelands Area shall submit, in accordance with the provisions of this Part, its county master plan and any [ordinances] **regulations** applicable to the development of land to the Commission for review and determination of whether the county master plan and [ordinances] **regulations** are in conformance with the minimum requirements of this Plan. Such county master plan and [ordinances] **regulations** shall be in such form and number and shall contain such information as may be required by the Executive Director in order to make the findings required by N.J.A.C. 7:50-3.19.

7:50-3.13 Setting of hearing

After receipt of the county master plan and [ordinances] **regulations**, the Executive Director shall give notice of and set the date, time and place for a public hearing for consideration of the application, plan and [ordinances] **regulations**. The public hearing shall be held by the Executive Director within 30 days following the receipt of the plan and [ordinances] **regulations** in accordance with the provisions of N.J.A.C. 7:50-4.3.

7:50-3.14 Recommendation of Executive Director

Upon completion of the public hearing, the Executive Director shall review the application and the record of the hearings and shall, within 45 days following the receipt of the plan and ordinances, submit a report to the Commission setting forth proposed findings and a recommended order as to whether the county master plan and [ordinances] **regulations** are in conformance with the minimum standards of this Plan.

7:50-3.15 Certification of county master plans and [ordinances] **regulations**

Upon receipt of the report of the Executive Director, the Commission shall review findings, conclusions and recommendations of the Executive Director and shall, within 60 days following the receipt of the plan and [ordinances] **regulations**, issue an order certifying, certifying with conditions or disapproving the county master plan and [ordinances] **regulations**. If the county master plan or [ordinances] **regulations** are conditionally certified or disapproved, the Commission shall specify the changes necessary in order to secure Commission certification.

7:50-3.16 Responsibility of county upon conditional certification or disapproval

Any county whose master plan or [ordinances] **regulations** have been disapproved or certified with conditions shall modify such master plan or [ordinances] **regulations** as is necessary to conform to the minimum standards of this Plan, the conditions attached to a conditional certification or specified changes. Within 120 days after entry of the Commission order disapproving or certifying with conditions, each county shall submit its modified master plan and [ordinances] **regulations** for review, pursuant to the provisions of N.J.A.C. 7:50-3.13 through 3.15.

7:50-3.17 Effect of failure of county to obtain Commission approval of master plan and [ordinances] **regulations**

No person shall initiate any development which requires county approval or receive any county approval for development of land in the Preservation Area or, subsequent to one year following the adoption of this Plan, of any land in the Pinelands Area located within any county whose master plan or [ordinances] **regulations** have not been certified by the Commission pursuant to N.J.A.C. 7:50-3.15 without first obtaining approval by the Commission pursuant to N.J.A.C. 7:50-4, Part II. If the Commission conditionally certifies or disapproves an amendment to a county master plan or [ordinance] **regulation** pursuant to N.J.A.C. 7:50-3.15 and the county does not comply with the requirements of N.J.A.C. 7:50-3.16, the amendment shall be deemed to be disapproved. The county's previously certified master plan and [ordinances] **regulations** shall remain in effect unless the amendment constituted the required response to an order issued pursuant to Part VI of this subchapter or to an amendment adopted by the Commission pursuant to N.J.A.C. 7:50-7. In that case, the county's master plan and [ordinances] **regulations** shall be deemed to be uncertified.

7:50-3.18 Effect on and responsibilities of county upon certification

(a) Commission certification of a county master plan and [ordinances] **regulations** shall authorize such county:

1. (No change.)

2. To grant, to the extent that it is so authorized by [state] **State** law or county [ordinance] **regulation**, any permits or approvals within its Pinelands Area jurisdiction, subject to [Commission review pursuant to N.J.A.C. 7:50-4, Part IV] **N.J.A.C. 7:50-4.31 through 4.42 or N.J.A.C. 7:50-3.81 through 3.85**; provided, however, that all such permits or approvals granted, and any other action taken by such county with respect to the development of land within the Pinelands Area, shall be in strict conformance with the certified county master plan and [ordinances] **regulations** and the minimum standards of this Plan.

7:50-3.19 Standards for certification of county master plans and ordinances

(a) County master plans and [ordinances] **regulations**, or any parts thereof, shall be certified only if:

1.-4. (No change.)

5. They provide that no application for development within the Pinelands Area**, except as provided in N.J.A.C. 7:50-3.81 through 3.85,** shall be determined to be complete by any county department, body or agency unless:

i. It is accompanied by a Certificate of Filing issued by the Commission pursuant to N.J.A.C. 7:50-[4.24]**4.34**; and

ii. (No change.)

6. They provide that notice of the issuance of any county permit or approval which is a prerequisite to initiating development within the Pinelands Area**, except as provided in N.J.A.C. 7:50-3.81 through 3.85**, must be given to the Commission as provided in N.J.A.C. 7:50-4.25(d) or (e); and

7. (No change.)

7:50-3.21 Application by county for delegation

The governing body of any county whose master plan and [ordinances] **regulations** have been certified by the Commission pursuant to N.J.A.C. 7:50-3, Part II, may petition the Commission for authority to conduct preliminary review of municipal master plans and land use ordinances located within the county by submitting a request for such authority in such form and number and containing such information as may be required by the Executive Director.

7:50-3.38 Effect on and responsibilities of municipality upon certification

Commission certification of a municipal master plan and land use ordinances shall authorize such municipality to grant, to the extent that it is so authorized by [state] **State** law or municipal ordinance, any permits or approvals of development within its Pinelands Area jurisdiction subject to [Commission review pursuant to N.J.A.C. 7:50-4, Part III] **N.J.A.C. 7:50-4.31 through 4.42 or N.J.A.C. 7:50-3.81 through 3.85**; provided, however, that all such permits or approvals granted, and any other action taken by such municipality with respect to the development or use of land within the Pinelands Area, shall be in strict conformance with the certified municipal master plan, land use ordinances and this Plan.

7:50-3.39 Standards for certification of municipal master plans and land use ordinances

(a) Municipal master plans and land use ordinances, and any parts thereof, shall be certified only if:

1.-2. (No change.)

3. They provide that no application for development within the Pinelands Area, except [for those types of development enumerated in N.J.A.C. 7:50-4.1] **as provided in N.J.A.C. 7:50-3.81 through 3.85**, shall be determined to be complete by any municipal department, body or agency unless it is accompanied by a Certificate of Filing issued by the Commission pursuant to N.J.A.C. 7:50-4.34 and contains at least the information required by the Commission pursuant to N.J.A.C. 7:50-4.2(b)[. Certain types of applications for development may be exempted from the certificate of filing requirement if a municipality assigns review responsibility to a local review officer pursuant to N.J.A.C. 7:50-4.34(b) and the Commission finds that the municipal review system is adequate to ensure that the local review officer's responsibilities will be fulfilled];

4. (No change.)

5. They provide that no local permit shall be effective**, except as provided in N.J.A.C. 7:50-3.81 through 3.85,** until the review procedures in [N.J.A.C. 7:50-4, Part III] **N.J.A.C. 7:50-4.31 through 4.42** have been completed;

6.-12. (No change.)

(b) [The standards for certification set forth in (a)1, 2, 6, 7 and 9 through 12 above may also be used as guidelines for those areas of a municipality located outside the Pinelands Area but within the Pinelands National Reserve when said municipality elects to revise its master plan and land use ordinances applicable to such an area for purposes of conformance with the standards of this Plan.] **Municipalities with areas outside the Pinelands Area but within the Pinelands may request review by the Commission of their land use ordinances and master plans for these areas to determine substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6 of this Plan. Equivalent protection of the resources of the Pinelands will be the overall standard used in such compliance review rather than strict adherence to every standard in N.J.A.C. 7:50-5 and 6. To encourage voluntary compliance, if the Commission determines that the municipality is in substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6, the Commission will rely upon the complying master plans and ordinances, rather than a strict interpretation of this Plan, to provide comment to relevant state and federal regulatory agencies in its role as the planning entity for the Pinelands.**

7:50-3.61 Initiation by Executive Director

(a) Any person may request the Executive Director to assess whether a certified county or municipal master plan**, regulation** or ordinance is being implemented in accordance with the provisions of this Plan. Such request shall be in writing and shall specify the county or municipal acts which are alleged to be not in conformance with this Plan by date, time and other identifying characteristics.

(b) If the Executive Director determines, at any time, that any county or municipality is not implementing and enforcing its certified master plan**, regulations** or ordinances as is necessary to implement this Plan, he shall notify the Commission of such determination and upon its concurrence initiate proceedings pursuant to this Part to revoke, suspend or modify the Commission certification of the municipal or county master plan**, regulations** or ordinances.

7:50-3.62 Notice and [Hearing] **hearing**

Upon making a determination to initiate proceedings to revoke, suspend or modify Commission certification of a county or municipal master plan**, regulation** or land use ordinance, the Executive Director shall give notice and conduct a public hearing in accordance with the provisions of N.J.A.C. 7:50-4.

7:50-3.64 Action by Commission

(a) Upon receipt of the report of the Executive Director pursuant to N.J.A.C. 7:50-3.63, the Commission shall review the findings, conclusions and recommendations of the Executive Director and shall issue a final order with respect to the revocation, suspension or modification of the Commission certification of the county or municipal master plan**, regulations** or ordinances. Upon determining that the county or municipality is not implementing its master plan, **regulations,** ordinances or this Plan, the Commission shall issue an order[.]**:**

1. Revoking or suspending Commission certification of the county or municipal master plan**, regulations** or land use ordinances;

2.-3. (No change.)

7:50-3.65 Effect of modification**, suspension** or revocation of Commission certification

Revocation, suspension or modification of Commission certification of any county or municipal master plan**, regulation** or land use ordinance shall have the same effect as if the county or municipal master plan**, regulation** or land use ordinance had been disapproved or certified with conditions in the first instance as provided in N.J.A.C. 7:50-3.17 or 3.37. Any revocation, suspension or modification of Commission certification pursuant to this Part shall remain in effect until otherwise ordered by the Commission.

7:50-3.71 Commission adoption of rules and regulations for uncertified areas

In the event that any county or municipality fails to obtain certification of its land use plan**, regulations** and ordinances, the Commission shall adopt and enforce such rules and regulations as may be necessary to implement the minimum standards contained in this Plan and as may be applicable to any such county or municipality.

PART VIII—ALTERNATIVE LOCAL PERMITTING PROGRAMS

7:50-3.81 Purpose of alternative local permitting programs

In order to provide for more efficient or simplified processing of development applications or to allow municipalities to exercise ad-

ditional direct decisionmaking authority, the Commission may alter the development review procedures in N.J.A.C. 7:50-4.31 through 4.42 through its certification of county regulations or a municipal ordinance pursuant to this Subchapter.

7:50-3.82 Description of alternative permitting programs

Alternative permitting programs may establish application processing procedures or decisionmaking requirements which differ from those set forth in N.J.A.C. 7:50-4.31 through 4.42. The Commission in its discretion may disapprove a requested alternative program due to the type, magnitude, location or complexity of development to be reviewed under the proposed program.

7:50-3.83 Certification standards

(a) The Commission may certify a county regulation or municipal ordinance which contains an alternative permitting program only if the following standards are met, taking into account the type, magnitude, location or complexity of development for which the program applies:

1. The county or municipality has demonstrated capability to implement the program in an efficient and effective manner;

2. The program, including the procedures to be followed, standing alone or in combination with activities continuing to be administered by the Commission, ensures that application requirements and permit decisions are adequate to determine compliance with the relevant criteria and standards of N.J.A.C. 7:50-5 and 6 and the provisions of the relevant certified local regulation or ordinance;

3. The program ensures that adequate, qualified and capable personnel will administer the program and that safeguards exist to ensure that (a)2 above is met in the event of personnel changes;

4. The program ensures that applicants receive any necessary waivers of strict compliance from the Pinelands Commission; and

5. Either the program allows for Commission review of local approvals pursuant to N.J.A.C. 7:50-4.31 et seq. or includes an alternative procedure to ensure that periodic review of permits by the Commission may be conducted to assess consistency of the program with the standards of N.J.A.C. 7:50-5 and 6 and the provisions of the relevant certified local regulation or ordinance. The alternative procedure shall also include a requirement for all local approvals to be subject to review by the Commission pursuant to N.J.A.C. 7:50-4.31 through 4.42 in the event that the Executive Director makes a recommendation to the Commission pursuant to N.J.A.C. 7:50-3.85. In that event, the procedures for the review of local approvals set forth in N.J.A.C. 7:50-4.31 through 4.42 shall remain in effect until such time as the procedures in N.J.A.C. 7:50-3.61 through 3.65 have been followed.

7:50-3.84 Assistance and monitoring

(a) The Executive Director is authorized to provide such assistance to counties and municipalities as he or she deems necessary and appropriate and within the means of the Commission to help implement and maintain an alternative permitting program.

(b) The Executive Director shall report on each alternative permitting program to the Commission and the appropriate county or municipality in accordance with a specific review program approved by the Commission concurrent with its certification of the alternative permitting program. Such report shall describe the elements of the permitting program and evaluate their operation according to the standards of N.J.A.C. 7:50-3.83.

7:50-3.85 Failure to implement

Should the Executive Director recommend that the Commission revoke, suspend, or modify its certification of a county regulation or municipal ordinance which institutes an alternative permitting program because one or more of the certification standards is not being adequately fulfilled, the procedures set forth in N.J.A.C. 7:50-3.61 through 3.65 shall be followed. In such cases, the revocation, suspension or modification shall affect the alternative permitting program and procedures and not the certification status of the substantive provisions of the certified county regulation or municipal land use ordinance, unless such county or municipality willfully ignores or refuses to implement such revocation, suspension or modification order.

SUBCHAPTER 4. DEVELOPMENT REVIEW

INTRODUCTION

The Pinelands Protection Act charges the Pinelands Commission with ensuring that the minimum standards, goals and objectives of this Plan are implemented and enforced. The procedures by which the Commission will discharge its development review responsibilities are set out in this subchapter, according to whether the applicant is a public or private entity and whether the proposed activity is located in a certified or uncertified municipality. Part I establishes a set of uniform application requirements which include a pre-application conference which is designed to afford an applicant the opportunity to informally resolve preliminary application problems and to determine the extent and form of the information and documentation which must be submitted in the application. Part I also establishes a uniform procedure for determining when an application for development approval is complete. N.J.A.C. 7:50-4 prescribes notice and public hearing requirements for development review as well as for the certification of municipal or county plans, **regulations** and ordinances (N.J.A.C. 7:50-3), **the review of comprehensive plans submitted pursuant to N.J.A.C. 7:50-5.4, intergovernmental agreements (N.J.A.C. 7:50-4.52) and certain resource extraction issues (N.J.A.C. 7:50-6.64)** or amendments to the Plan itself (N.J.A.C. 7:50-7).

Part II of this subchapter establishes the procedures for development review in uncertified jurisdictions. Part III of this subchapter sets forth the procedures for development review in certified areas, including the Commission's authority to review development approvals at the local level. It is recognized that the specific provisions of this Part can be refined at the local level provided that the objective and goals the procedural requirements represent will be achieved. **In addition, the procedures may be modified through the implementation of alternative permitting programs as provided in N.J.A.C. 7:50-3.81 through 3.85.** Part IV contains those procedures applicable to review of public development in the Pinelands Area.

In addition, Part V of this subchapter contains provisions for the procedures to be employed in consideration of applications to waive strict compliance with the standards of the Plan. If a waiver is granted by the Commission, the applicant may proceed with the development review procedures in Part III, if in a certified area, or Part II, if in an uncertified area, or Part IV, if it is an application by a public agency.

Part VI sets forth a procedure whereby any person may secure a clarification or interpretation of the meaning or applicability of any provision of this Plan. Part VII provides for coordinated permitting with other state agencies.

Part VIII sets forth the procedures to follow if any applicant or other aggrieved person wishes to appeal a decision by the Executive Director or the Commission.

7:50-4.1 Applicability

(a) (No change.)

(b) As of January 14, 1991, the provisions of this Plan shall apply to any proposed development or portion thereof which received approval from the Pinelands Commission pursuant to the Interim Rules and Regulations or which received approval from the Pinelands Development Review Board and said approvals expired as of that date or will expire subsequent to that date, without exception, unless the requirements in (b)1, 2 and [3 or in (b)4] **either 3 or 4** below have been met and continue to be met:

1. All necessary municipal planning board or board of adjustment approvals were obtained by January 14, 1991;

2. No additional approval, extension, renewal or any other action whatsoever is required or received from either the municipal planning board or board of adjustment after January 14, 1991; and **either**

3. All necessary approvals, including all necessary construction permits, [are] **were** obtained by [December 31, 1994] **January 3, 1995** or within 18 months of the expiration of any tolling pursuant to N.J.S.A. 40:55D-21 of the running of the period of the planning board or board of adjustment approval pursuant to N.J.S.A.

40:55D-47 or 40:55D-52, whichever is later; and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after the latter of said dates; or

[4. Where no municipal planning board or board of adjustment approvals were required, all necessary construction permits were issued prior to January 14, 1991, the authorized work was commenced within 12 months after the issuance of the permits and no such permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after December 31, 1994.]

4. All necessary approvals, including all necessary construction permits, are obtained by December 31, 1996 and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after said date, provided that the lot for which the approvals and permits are issued either fronts on a road that prior to January 3, 1995 was improved at least to the extent of the installation of a subbase as a result of a prior municipal development approval involving said lot or had a foundation or septic system lawfully constructed on said lot prior to January 3, 1995.

(c) (No change.)

7:50-4.2 Pre-application conference; application requirements

(a) Pre-application conference.

1. Request: Any applicant for any application provided for in this Plan may request an informal conference with the Executive Director prior to filing an application. However, an applicant seeking approval pursuant to the provisions of Part III of this subchapter is encouraged to discuss the application with the appropriate officials in the certified municipality prior to requesting a conference with the Executive Director. All requests for a pre-application conference shall include the name and address of the applicant, the legal description and street address, if any, of the [property] **parcel** proposed for development, a brief description of the nature of any proposed development and the nature of the approval or waiver sought by the applicant.

2.-5. (No change.)

(b) Application requirements.

1. General requirements. All applications shall be submitted to the Executive Director at the principal office of the Commission in such form and number as he shall from time to time establish. The filing of an application shall be deemed to be authorization for the Executive Director or his staff to inspect the [property] **parcel** which is the subject of the application. The application shall be accompanied by a sworn statement that the requirements of (b)2 below have been satisfied.

2.-3. (No change.)

4. Application for approval of minor development: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for approval of minor development shall include at least the following information:

i. The applicant's name and address and his interest in the subject [property] **parcel**;

ii. (No change.)

iii. The legal description, including block and lot designation and street address, if any, of the subject [property] **parcel**;

iv. A description of all existing uses of the subject [property] **parcel**;

v. (No change.)

vi. A USGS Quadrangle map, or copy thereof, and a copy of the municipal tax map sheet on which the boundaries of the subject [property] **parcel** and the Pinelands management area designation and the municipal zoning designation in a certified municipality are shown;

vii. A plat or plan showing the location of all boundaries of the subject [property] **parcel**, the location of all proposed development, and existing or proposed facilities to provide water for the use and consumption of occupants of all buildings and sanitary facilities which will serve the proposed development. The following information shall be included with respect to existing or proposed sanitary facilities:

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

viii. A location map, including the area extending at least 300 feet beyond each boundary of the subject [property] **parcel**, showing ownership boundary lines, the boundary of the proposed development, owners of holdings adjoining and adjacent to the subject [property] **parcel**, existing facilities, buildings and structures on the site, all proposed development, wetlands, streams (including intermittent streams), rivers, lakes and other waterbodies and existing roads;

ix. (No change.)

x. A map showing existing vegetation, identifying predominant vegetation types in the area and showing proposed landscaping of the subject [property] **parcel**, including the location of the tree line before and after development and all areas to be disturbed as a result of the proposed development.

5. Application for approval of major development: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for approval of major development, except for forestry and resource extraction operations, shall include at least the following information:

i.-iii. (No change.)

iv. A plat or plan showing the location of all boundaries of the subject [property] **parcel**, the location of all proposed development, and existing or proposed facilities to provide water for the use and consumption of occupants of all buildings and sanitary facilities which will serve the proposed development. The following information shall be included with respect to existing or proposed wastewater treatment facilities:

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

v. A project site base map, at a scale of no less than one inch to 200 feet and including the areas extending at least 300 feet beyond each boundary of the subject [property] **parcel**, showing ownership boundary lines, the boundary of the proposed development, owners of holdings, if any, adjoining and adjacent to the subject [property] **parcel**, existing facilities, buildings and structures on the site, all proposed development, wetlands, streams (including intermittent streams), rivers, lakes and other waterbodies, and existing roads;

vi.-viii. (No change.)

ix. A proposed development map, at the same size and scale as the project site base map, showing areas of proposed development; the location of surveyor's tape or other markers placed on the site delineating the boundaries of the [property] **parcel**; the number of residential lots and other type of development in each general area, all proposed lot lines; areas proposed to be retained as open space; the applicable land use areas boundaries; the location of proposed facilities such as dams and impoundments, public or private water systems, storm drainage systems, public or private sewerage systems, public utilities, soil erosion and sedimentation control devices, industrial waste water discharges and solid waste disposal areas; sources of air pollution; the proposed primary road network; all areas to be disturbed by construction activities;

x.-xv. (No change.)

6. Application for forestry: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for a forestry operation shall include at least the following information:

i. (No change.)

ii. A forestry management plan, which details the management practices proposed to be employed, including, but not limited to, harvesting practices, reforestation and the following:

(1) (No change.)

(2) A map of the [property] **parcel** at a scale of no less than one inch to 1,000 feet showing wetlands, types of vegetation cover, receiving waters, location of stream crossings and alternatives, location of skid trails, location of access and haul roads and landings, cutting boundaries of the tracts to be harvested and size of filter or buffer strips;

(3) A [property] **parcel** description including land use; acreage of open, crop and woodland; general soil types and erodibility; range of percent of slope; timber quality and age (forest type, species, age, DBH, height, volume and reproduction); and understory;

(4)-(6) (No change.)

iii.-vii. (No change.)

7. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:

i. (No change.)

ii. A topographic map at a scale of one inch equals 200 feet, showing the proposed dimensions, location and operations on the subject [property] **parcel**;

iii.-iv. (No change.)

v. A location map, including the area extending at least 300 feet beyond each boundary of the subject [property] **parcel**, showing all streams, wetlands and significant vegetation, forest associations and wildlife habitats;

vi.-x. (No change.)

8.-10. (No change.)

(c) (No change.)

7:50-4.3 Commission hearing procedures

(a) (No change.)

(b) Notice of public hearing.

1. (No change.)

2. Persons entitled to notice:

i. Notice of public hearings shall be given by the Commission:

(1)-(3) (No change.)

(4) If the public hearing involves certification of a county master plan or [development ordinances] **regulations**, by sending a copy of the notice, by mail, to the municipal clerk and the planning board secretary of each Pinelands municipality in the county seeking certification and to the county clerk and county planning board secretary of each Pinelands county bordering the county seeking certification.

(5)-(8) (No change.)

(9) If the public hearing involves a comprehensive plan submitted to the Commission pursuant to N.J.A.C. 7:50-5.4(c)6, by sending a copy of the notice and the comprehensive plan, by mail, to the mayor of each Pinelands municipality and the freeholder director and county executive, if any, of each Pinelands county. In addition, a copy of the notice shall be published in all the official newspapers of the Pinelands Commission.

ii. (No change.)

3.-4. (No change.)

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

7:50-4.18 Report requirements of local permitting agency with respect to applications for development

(a) (No change.)

(b) Notice of application: Within seven days following a determination of completeness of an application for development, or any change to any application for development which was previously filed, notice of such application shall be given by the local agency, in writing, to the Commission. The notice shall be in such form as the Executive Director shall from time to time specify; but each such notice shall contain at least the following information:

1. (No change.)

2. The legal description and street address, if any, of the [property] **parcel** which the applicant proposes to develop;

3.-8. (No change.)

(c) (No change.)

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal **regulation or** ordinance shall be given to the Commission by the local agency, by certified mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1. (No change.)

2. The legal description and street address, if any, of the [property] **parcel** which the applicant proposes to develop;

3.-7. (No change.)

(e) Notice of final determination: Notice of any final determination approving or denying any application for development shall be given to the Commission by the local agency, by certified mail, within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1. (No change.)

2. The legal description and street address, if any, of the [property] **parcel** which the applicant proposes to develop;

3.-4. (No change.)

(f) (No change.)

7:50-4.19 Commission review following preliminary approval

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

(e) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise any issues with respect to the conformance of the proposed development with the minimum standards of the Plan. The Executive Director may also, at any time, terminate the review of the application if the local [approval] **permitting** agency whose approval has been called up for review modifies its approval so that the approval no longer raises any issues.

7:50-4.21 Notice of changes made subsequent to local preliminary approval

(a) Each local permitting agency shall give notice to the Commission of any design, engineering or other changes made to any application for development by an applicant subsequent to any local preliminary approval reported to the Commission pursuant to N.J.A.C. 7:50-4.18(d), including changes made in response to conditions imposed by the Commission pursuant to N.J.A.C. 7:50-4.20, to the Executive Director, within five days of receipt of such changes. Such notice shall be in such form as the Executive Director shall from time to time specify but shall contain at least the following information:

1. (No change.)

2. The legal description and street address, if any, of the [property] **parcel** which the applicant proposes to develop;

3.-5. (No change.)

(b) (No change.)

7:50-4.22 Commission review following final local approval

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

(d) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise any issues with respect to the conformance of the proposed development with the minimum standards of the Plan. The Executive Director may also, at any time, terminate the review of the application if the local [approval] **permitting** agency whose approval has been called up for review modifies its approval so that the approval no longer raises any issues.

7:50-4.23 Public hearing

If the Executive Director determines that the approval should be reviewed by the Commission, he shall, within 45 days following receipt of a completed notice of final determination given pursuant to N.J.A.C. 7:50-4.18(e), conduct a public hearing to be held pursuant to the procedures set out in N.J.A.C. 7:50-4.3 of this Plan. The applicant shall have the burden of going forward and the burden of proof at the public hearing. Following conclusion of the public hearing, the Executive Director shall review the record of the public hearing and issue a report on the public hearing to the Commission. The Executive Director may recommend that the Commission approve the application, approve the application with conditions or disapprove the application. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local [approval] **permitting** agency, interested

persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). However, an applicant may, at his option, waive all time limits for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-4.91.

7:50-4.31 Purpose

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

(d) The provisions of this Part may be modified through the implementation of alternative local permitting programs as provided in N.J.A.C. 7:50-3.81 through 3.85.

7:50-4.32 Applicability

The provisions of this Part shall be applicable to development of land located within a certified municipality, except for those activities specifically excepted in N.J.A.C. 7:50-4.1. **Unless otherwise provided through an alternative municipal permitting program which is implemented pursuant to N.J.A.C. 7:50-3.81 through 3.85,** [No] **no** person shall carry out any development in any portion of the Pinelands Area located within the jurisdiction of a municipality with a certified plan and land use ordinances without first complying with all applicable procedures set forth in this Part and the provisions of said certified ordinances. Any decision made pursuant to this Part shall supersede any local decision. No local decision shall impose any requirements which in any way contravene any standard contained in this Plan or the applicable certified land use ordinance.

7:50-4.33 Applicant to submit copies of local applications to Commission

Prior to filing any application for development of land in the Pinelands Area with any local permitting agency, the applicant shall [file a copy of the] **complete an** application with the Commission[, except when the application is to be filed with the designated municipal administrative officer pursuant to N.J.A.C. 7:50-4.34(b),] in accordance with the requirements of N.J.A.C. 7:50-4.2(b).

7:50-4.34 Certificate of Filing; required for determination of completeness

[(a) Except as provided in (b) below, upon] **Upon** determining that an application is complete, the Executive Director shall issue a Certificate of Filing. No local permitting agency shall determine that any application for development is complete unless it is accompanied by a Certificate of Filing issued pursuant to this section [or a determination of completeness issued by the designated local review officer as provided in (b) below]. Such certificate may identify any inconsistencies of the proposed development with the standards of this Plan or the local certified land use ordinances and may indicate that if such inconsistencies are not resolved by a local approval, that local approval will be subject to review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.37 and 4.40. Any such information contained in the Certificate of Filing is for the guidance of the applicant and local permitting agency only. Such information in no way shall be considered a final determination by either the Executive Director or the Pinelands Commission.

[(b) A certified municipality may provide in its certified land use ordinances that a completed application for specified minor development may be filed initially with the designated local review officer of the municipality. The local review officer shall be responsible for determining whether said application contains all the information required by the municipality's certified ordinances. Upon determining the application to be complete, the local review officer shall submit a duplicate copy of the application to the Executive Director along with a statement that the application has been determined to be complete. Within 15 days of receiving a duplicate copy of the application, the Executive Director shall issue a Notice of Filing stating that the Commission has received the duplicate application. The Executive Director may state in the Notice of Filing any potential deficiencies in the completeness of the application. The local review officer shall also be responsible for determining whether the application for development complies with the applicable provisions of N.J.A.C. 7:50-5 and 6 as incorporated in the certified municipal master plan and ordinances. A copy of said determination shall be submitted to the applicant and the Executive Director. The determination by the local review officer shall be subject to review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.37 and 4.40. If the Executive Director determines that the designated municipal local review officer may be willfully or negligently failing to implement the responsibilities specified above or if no local review officer has been designated by the municipality, then the procedures specified in Part VI of N.J.A.C. 7:50-3 shall be implemented by the Executive Director and the procedures specified in Part II of this subchapter shall apply for all applications for development.]

7:50-4.35 Report requirements of local permitting agency with respect to applications for development

(a) (No change.)

(b) Notice of application: Within seven days following a determination of completeness of an application for development, or any change to any application for development which was previously filed, notice of such application shall be given by the local agency, by mail, to the Commission. The notice shall be in such form as the Executive Director shall from time to time specify; but each such notice shall contain at least the following information:

1. (No change.)

2. The legal description and street address, if any, of the [property] **parcel** which the applicant proposes to develop;

3.-8. (No change.)

(c) (No change.)

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal **regulation or** ordinance shall be given to the Commission, by certified mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1. (No change.)

2. The legal description and street address, if any, of the [property] **parcel** which the applicant proposes to develop;

3.-7. (No change.)

(e) Notice of final determination: Notice of any final determination with respect to any application for development shall be given to the Commission by certified mail within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1. (No change.)

2. The legal description and street address, if any, of the [property] **parcel** which the applicant proposes to develop;

3.-4. (No change.)

(f) (No change.)

7:50-4.37 Commission review following preliminary approval

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

(e) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise a substantial issue with respect to the conformance of the proposed development with the minimum standards of the Plan and the provisions of the relevant certified local ordinance. The Executive Director may also, at any time, terminate the review of the application, if the local [approval] **permitting** agency whose approval has been called up for review modifies its approval so that the approval no longer raises any substantial issues.

7:50-4.39 Notice of changes made subsequent to local preliminary approval

(a) Each local permitting agency shall give notice to the Commission of any design, engineering or other changes made to any

application for development by an applicant subsequent to any local preliminary approval reported to the Commission pursuant to N.J.A.C. 7:50-4.35(d), including changes made in response to conditions imposed by the Commission pursuant to N.J.A.C. 7:50-4.38, to the Executive Director, by mail, within five days of receipt of such changes. Such notice shall be in such form as the Executive Director shall from time to time specify but shall contain at least the following information:

1. The name and address of **the** applicant;

2. The legal description and street address, if any, of the [property] **parcel** which the applicant proposes to develop;

3.-5. (No change.)

(b) (No change.)

7:50-4.40 Commission review following final local approval

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

(d) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate the local approval does not raise a substantial issue with respect to the conformance of the proposed development with the minimum standards of the Plan and the provisions of the relevant certified local ordinance. The Executive Director may also, at any time, terminate the review of the application if the local [approval] **permitting** agency where approval has been called up for review modifies its approval so that the approval no longer raises any substantial issues.

7:50-4.61 Purpose

This Part establishes procedures and standards pursuant to which the Commission may waive strict compliance with the Plan. Waivers from the standards of N.J.A.C. 7:50-5 or 6 may be granted in limited circumstances. Waivers granted pursuant to this Part are intended to provide relief where strict compliance with this Plan will create an extraordinary hardship or where the waiver is necessary to serve a compelling public need. The relief provided will be consistent with the protection of the resources of the Pinelands. The relief granted will only be the minimum necessary to alleviate the extraordinary hardship or the compelling public need. For some extraordinary hardship cases, the minimum relief granted will allow the development of the [property] **parcel** in question; in others the minimum relief will include an allocation of Pinelands Development Credits. These provisions are designed to provide all property owners with at least a minimum beneficial use of their [property] **parcels** consistent with constitutional requirements. For some compelling public need cases, special measures may need to be taken so there will be an overall improvement to the resources of the Pinelands.

7:50-4.62 General standards

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

(d) When approved, the waiver may only grant the minimum relief necessary to relieve the extraordinary hardship or satisfy the compelling public need.

1. Any waiver which grants relief from the standards of this Plan to permit development of the parcel in question shall require:

i. The reduction as set forth in N.J.A.C. 7:50-5.43(b)3 of any Pinelands Development Credits which are allocated to the [property] **parcel** pursuant to N.J.A.C. 7:50-5.43(b);

ii.-iv. (No change.)

2. (No change.)

7:50-4.63 Standards for establishing extraordinary hardship

(a) An extraordinary hardship is deemed to exist when the applicant demonstrates based on specific facts and the Pinelands Commission verifies that all of the following conditions exist:

1.-3. (No change.)

4. All necessary municipal **use,** lot area and density variances have been obtained if the [property] **parcel** is located in a municipality whose master plan and land use ordinances have been fully certified by the Pinelands Commission pursuant to N.J.A.C. 7:50-3; and

5. The development of the [property] **parcel** will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b).

(b) An extraordinary hardship as distinguished from a mere inconvenience also exists when the applicant demonstrates and the Pinelands Commission verifies that all of the following conditions exist:

1.-2. (No change.)

3. The parcel, including all contiguous lands which are available pursuant to (b)1 and 2 above, may not have a beneficial use considering the following factors:

i.-iii. (No change.)

iv. The ability of the property owner to either buy non-contiguous land or sell the subject [property] **parcel** to a non-contiguous property owner under a transfer of density provision contained in a certified municipal land use ordinance or pursuant to N.J.A.C. 7:50-5.30 in an uncertified municipality; and

v. Any inability to have a beneficial use relates to or arises out of the characteristics of subject parcel and results from unique circumstances peculiar to the subject [property] **parcel** which:

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

4. The development of the [property] **parcel** will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b).

7:50-4.64 Standards for establishing compelling public need

(a) (No change.)

(b) The applicant shall also demonstrate either that the development of the [property] **parcel** will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b) or that if one or more of the criteria are violated that the development meets the requirements of N.J.A.C. 7:50-4.65(c).

7:50-4.66 Application

(a)-(g) (No change.)

(h) For an application submitted pursuant to N.J.A.C. 7:50-4.63(a) for which a municipal **use,** lot area or density variance is required pursuant to N.J.A.C. 7:50-4.63(a)4, the notice required pursuant to (b) above shall not be separately required by the Pinelands Commission provided that the notice for the municipal variance is submitted to the Pinelands Commission and contains at least the information specified in (d) above and the application to the Pinelands Commission is completed within one year of the municipal approval of the variance.

(i) (No change.)

7:50-4.70 Effect of grant of waiver; expiration; recordation; effective date

(a) (No change.)

(b) Waivers approved under former N.J.A.C. 7:50-4.66(a)1ii, repealed effective November 2, 1987, and former N.J.A.C. 7:50-4.55(a)1iii, repealed effective September 12, 1985, shall expire as follows:

1. (No change.)

2. Any waiver previously approved under the prior municipal development approval standard contained in the previously repealed N.J.A.C. 7:50-4.66(a)1ii **has** expired [as of January 14, 1991] or will expire, [subsequent to that date,] without exception, unless the requirements in (b)2i, ii and [iii or in (b)2iv] **either iii or iv** below have been and continue to be met:

i. All necessary municipal planning board or board of adjustment approvals were obtained by January 14, 1991;

ii. No additional approval, extension, renewal or any other action whatsoever is required or received from either the municipal planning board or board of adjustment after January 14, 1991; and **either**

iii. All necessary approvals, including all necessary construction permits, [are] **were** obtained by [December 31, 1994] **January 3, 1995** or within 18 months of the expiration of any tolling pursuant to N.J.S.A. 40:55D-21 of the running of the period of the planning board or board of adjustment approval pursuant to N.J.S.A. 40:55D-47 or 40:55D-52, whichever is later; and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after the latter of said dates; or

[iv. Where no municipal planning board or board of adjustment approvals were required, all necessary construction permits were issued prior to January 14, 1991, the authorized work was com-

menced within 12 months after the issuance of the permits and no such permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after December 31, 1994.]

iv. All necessary approvals, including all necessary construction permits, are obtained by December 31, 1996 and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after said date, provided that the lot for which the approvals and permits are issued either fronts on a road that prior to January 3, 1995 was improved at least to the extent of the installation of a subbase as a result of a prior municipal development approval involving said lot or had a foundation or septic system lawfully constructed on said lot prior to January 3, 1995.

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

7:50-4.73 Request for interpretation

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

(c) An applicant for a letter of clarification or interpretation not involving a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application as follows:

1. (No change.)

2. Notice shall be given by publication in the official newspaper, if any, of the municipality in which the [property] **parcel** subject to the proposed interpretation or clarification is located or, if there is no official newspaper in any such municipality, then in a newspaper of general circulation in that municipality.

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

7:50-4.83 Notice from State agencies with respect to applications for development

(a) (No change.)

(b) Notice of application: Notice of submission of any application for development shall be given by mail within seven days following such filing and shall contain the following information:

1. (No change.)

2. The legal description and street address, if any, of the [property] **parcel** which the applicant proposes to develop;

3.-7. (No change.)

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

7:50-5.2 Expansion and changes of existing uses

(a) Notwithstanding the use restrictions contained in Part III of this subchapter, a municipality may permit the expansion or alteration of any use existing on January 14, 1981 that is currently non-conforming or any use which was constructed based upon an approval granted pursuant to this Plan **which is currently non-conforming**, other than intensive recreation facilities and those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

1.-3. (No change.)

(b) A municipality may include in its ordinance a provision which, notwithstanding the use restrictions contained in Part III of this subchapter, permits a change in any use existing on January 14, 1981 that is currently non-conforming or any use which was constructed based upon an approval granted pursuant to this Plan **that is currently non-conforming**, other than those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

1.-3. (No change.)

(c) (No change.)

7:50-5.3 Map status

(a) The following maps, the originals of which are maintained at the offices of the Commission, are hereby designated and established as a part of this Plan and shall be as much a part of this Plan as if they were set out in full in this Plan:

1. Pinelands Area Jurisdiction Boundaries, Plate 1, **as amended as of (effective date of these rules)**;

2. Surficial Geology, Plate 2, **as amended as of (the effective date of these rules)**;

3. (No change.)

4. Hydrogeologic Features, Plate 4, **as amended as of (the effective date of these rules)**;

5. Surface Water Hydrology, Plate 5, **as amended as of (the effective date of these rules)**;

6. Agricultural Soils, Plate 6, **as amended as of (the effective date of these rules)**;

7. Depth to Seasonal High Water Table, Plate 7, **as amended as of (the effective date of these rules)**;

8. Hydrologic Soil Group, Plate 8, **as amended as of (the effective date of these rules)**;

9. Soil Factors Limiting Use for Septic Tank Absorption Fields, Plate 9, **as amended as of (the effective date of these rules)**;

10. Vegetation, Plate 10, **as amended as of (the effective date of these rules)**;

11. Wildland Fire Hazard Classification, Plate 11, **as amended as of (the effective date of these rules)**;

12. (No change.)

13. Prehistoric Archaeologic Resources, Plate 13, **as amended as of (the effective date of these rules)**;

14. Historic, Archaeologic and Architectural Resources, Plate 14, **as amended as of (the effective date of these rules)**;

15. Cultural Subregions, Plate 15, **as amended as of (the effective date of these rules)**;

16. Land Use, Plate 16, **as amended as of (the effective date of these rules)**;

17. Sewer Service Areas, Plate 17, **as amended as of (the effective date of these rules)**;

18. Water Service Areas, Plate 18, **as amended as of (the effective date of these rules)**;

19. Solid Waste Disposal Sites, Plate 19, **as amended as of (the effective date of these rules)**;

20. Transportation Systems, Plate 20, **as amended as of (the effective date of these rules)**;

21. Major Public Land Holdings, Plate 21, **as amended as of (the effective date of these rules)**;

22. Resource Extraction Areas, Plate 22, **as amended as of (the effective date of these rules)**;

23. Ecological Critical Area Importance Values, Plate 27, **as amended as of (the effective date of these rules)**;

24. Land Capability, Plate 28, as amended **as of (the effective date of these rules)**;

25.-26. (No change.)

7:50-5.4 Height limitations

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

(c) The height limitation in (a) above shall not apply to the antenna and any supporting structure of a local communication facility of greater than 35 feet, provided that:

1. There is a demonstrated need for the facility to serve the local communication needs of the Pinelands, including those related to public health and safety, as well as a demonstrated need to locate the facility in the Pinelands in order to provide adequate service to meet these needs;

2. The supporting structure is designed to accommodate the needs of any other local communications provider which has identified a need to locate a facility within an overlapping service area;

3. The antenna utilizes an existing communications or other suitable structure, to the extent practicable;

4. If an existing communications or other suitable structure cannot be utilized, the antenna and any necessary supporting structure is located such that it:

i. Meets technical operating requirements;

ii. Minimizes visual impacts as viewed from publicly dedicated roads and highways and from other areas frequented by the public by, in order of decreasing priority:

(1) Avoiding, to the maximum extent practicable, any direct line of sight from low intensive recreation facilities and campgrounds; and

(2) Minimizing the length of time that an antenna structure is visible from publicly dedicated roads and highways;

iii. Avoids, to the maximum extent practicable, visual impacts as viewed from the wild and scenic rivers and special scenic corridors listed in N.J.A.C. 7:50-6.105(a), the Pine Plains and area necessary to maintain the ecological integrity of the Pine Plains, as depicted on the Special Areas Map, Figure 7.1;

iv. Maintains a distance of at least five miles from the Forked River Mountains and otherwise minimizes visual impacts as viewed from the Forked River Mountains, as depicted on the Special Areas Map, Figure 7.1;

v. Minimizes visual impacts as viewed from existing residential dwellings located on contiguous parcels through adherence to the buffer and setback requirements established in the certified land use ordinances of the municipality in which the facility is proposed to be located; and

vi. If proposed in the Preservation Area District, Forest Area, Special Agricultural Production Area, or Rural Development Area, is located in one of the following areas:

(1) In a certified municipal commercial or industrial zone, including a mixed use zone which permits a variety of non-residential uses. If the facility is proposed in an industrial zone within the Forest or Preservation Area District where resource extraction is the primary permitted use, the facility shall be located on the parcel of an approved resource extraction operation in accordance with (c)4vi(3) below;

(2) On developed publicly owned lands within 500 feet of an existing structure, provided that the facility will be located on previously disturbed lands that have not subsequently been restored and that no facility will be located on State, county, or municipal conservation lands, State recreation lands or county and municipal lands used for low intensity recreational purposes;

(3) On the parcel of an approved resource extraction operation, provided that the facility will be located on previously disturbed lands that have not subsequently been restored;

(4) On the parcel of an existing first aid or fire station; or

(5) On the parcel of an existing landfill, provided that the facility will be located on previously disturbed lands that have not subsequently been restored;

5. The antenna and any supporting structure does not exceed 200 feet in height but, if of a lesser height, shall be designed so that its height can be increased to 200 feet if necessary to accommodate other local communications facilities in the future;

6. If the facility is proposed to be located in any Pinelands management area other than a Regional Growth Area or a Pinelands Town, a comprehensive plan for the entire Pinelands Area must be submitted to the Pinelands Commission for certification. If the facility is proposed to be located in a Military and Federal Installation Area, submission of such a plan shall only be required if the facility is to be located outside the substantially developed area of the installation. Said plan shall include five and 10 year horizons, a review of alternative technologies that may become available for use in the near future, and the approximate location of all proposed facilities. Said plan shall also demonstrate that the facilities to be located in the Preservation Area District, Forest Area, Special Agricultural Production Area and Pinelands Villages of Bamber Lake, Beckerville, Belcoville, Belleplain, Brookville, Chatsworth, Dorothy, Eldora, Elwood, Estell Manor, Green Bank, Jenkins, Lower Bank, North Dennis, Sweetwater, Warren Grove and Weekstown are the least number necessary to provide adequate service, taking into consideration the location of facilities outside the Pinelands that may influence the number and location of facilities needed within the Pinelands. Said plan shall also demonstrate consistency with (c)1 and 3 above and either demonstrate, or note the need to demonstrate, consistency with (c)2, 4 and 5 when the actual siting of facilities is proposed. Where more than one entity is providing the same type of service or has a franchise for the area in question, the plan shall be agreed to and submitted jointly by all such providers and shall provide for the joint construction and use of the least number of facilities that will provide adequate service by all providers for the local communication system intended. Shared service between entities, unless precluded by Federal law or regulation, shall be part of the plan when such shared services will reduce the number of facilities to be otherwise developed.

i. Upon receipt of the comprehensive plan, or amendments to a previously approved plan, the Executive Director shall give notice of and set the date, time, and place for a public hearing for consideration of the plan. The public hearing shall be held by the Executive Director within 60 days following receipt of the comprehensive plan in accordance with the provisions of N.J.A.C. 7:50-4.3.

ii. Upon completion of the public hearing, the Executive Director shall review the comprehensive plan and the record of the hearing and shall, within 90 days following receipt of the plan, submit a report to the Commission setting forth proposed findings and a recommended order as to whether the plan is in conformance with the minimum standards of this section.

iii. Upon receipt of the report of the Executive Director, the Commission shall review the findings, conclusions, and recommendation of the Executive Director and shall, within 120 days following receipt of the plan, approve, approve with conditions or disapprove the plan. If the plan is disapproved or conditionally approved, the Commission shall specify the changes necessary in order to secure Commission approval of the plan.

iv. Upon Commission approval of a comprehensive plan, the Commission shall review any proposed development in accordance with the standards of N.J.A.C. 7:50-5.4(c)1 through 3, 4i through v and 5, the approved plan, and the other standards of this Plan.

v. Applicants may propose amendments to an approved plan from time to time. Any such amendments shall be agreed to and submitted jointly by all of the local communications providers who provide the same type of service or have a franchise within the Pinelands Area. Operators with newly awarded franchises that did not participate in the development of the original plan shall be given the opportunity to participate in the proposal of amendments. In the event that any provider declines to participate in the amendment process, the Commission may proceed with its review of the amendment. All amendments shall be reviewed by the Commission according to the requirements set forth in (c)6 above and according to the procedures set forth in (c)6i through iii above;

7. A certification is submitted to the Commission and the appropriate municipality every five years that the facility is still in use and that its current height can not be decreased because of operational needs. Any facility shall be removed and restoration of the parcel shall be completed in accordance with N.J.A.C. 7:50-6.23(a)1 through 6 within 12 months of the original user or users ceasing operations, unless the Commission determines that the facility is necessary for additional users that otherwise would qualify for the construction of a new local communications facility pursuant to this section. Any oversized facility shall be reduced within 12 months of the certification.

(d) Computer simulation models, photographic juxtaposition and other similar techniques may be used by the Commission in determining compliance with the visual impact standards set forth in (c)4ii, iii and iv above.

7:50-5.22 Minimum standards governing the distribution and intensity of development and land use in the Preservation Area District

(a) (No change.)

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in the Preservation Area District:

1.-9. (No change.)

10. Local communications facilities.

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

7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas

(a) (No change.)

(b) In addition to **the** uses permitted under (a) above, a municipality may, at its option, permit the following uses in a Forest Area:

1.-16. (No change.)

17. Local communications facilities.

7:50-5.24 Minimum standards governing the distribution and intensity of development and land use in Agricultural Production Areas

(a) (No change.)

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in an Agricultural Production Area:

1.-13. (No change.)

14. Local communications facilities.

(c) (No change.)

7:50-5.25 Minimum standards governing the distribution and intensity of development and land use in Special Agricultural Production Areas

(a) (No change.)

(b) In addition to the uses permitted under (a) above, a municipality may permit, at its option, the following uses in a Special Agricultural Production Area:

1.-5. (No change.)

6. Signs[.]; **and**

7. Local communications facilities.

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

7:50-5.26 Minimum standards governing the distribution and intensity of development and land use in Rural Development Areas

(a) (No change.)

(b) In addition to the residential uses permitted under (a) above, a municipality may permit any use which is compatible with the essential character of the Pinelands environment and is similar in character, intensity and impact to the following uses:

1.-12. (No change.)

13. Signs; [and]

14. Accessory uses[.]; **and**

15. Local communications facilities.

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

7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be permitted in a Regional Growth Area, provided that:

1.-4. (No change.)

5. Any [local] **municipal** variance for an approval of residential development approved in a zone in which residential development is not otherwise permitted shall require that Pinelands Development Credits be used for all dwelling units in such development.

6.-7. (No change.)

(b) (No change.)

7:50-5.30 Development transfer programs in Forest Areas and Rural Development Areas

(a) (No change.)

(b) The density transfer programs shall adhere to the following minimum standards:

1.-3. (No change.)

4. Any parcel whose acreage is being utilized to meet the density requirement but which will not be developed shall be permanently dedicated as open space through recordation of a restriction on the deed to the [property] **parcel** with no further development permitted except agriculture, forestry and low intensity recreational use.

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

7:50-5.43 Pinelands Development Credits established

(a) (No change.)

(b) Pinelands Development Credits are hereby established at the following ratios:

1. (No change.)

2. In the Agricultural Production Area and Special Agricultural Production Area:

i.-iii. (No change.)

iv. Wetlands in active field agricultural use **currently and** as of February 7, 1979: two Pinelands Development Credits per 39 acres; and

v. (No change.)

3. The allocations established in (b)1 and 2 above shall be reduced as follows:

i. Any [property] **parcel** of 10 acres or less which is developed for a commercial, industrial, resource extraction, intensive recreation, institutional, campground or landfill use shall not receive Pinelands Development Credit entitlement. For such an improved [property] **parcel** of more than 10 acres, the area actively used for such use or 10 acres, whichever is greater, shall not receive Pinelands Development Credit entitlement.

ii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each existing dwelling unit on the [property] **parcel**;

iii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each reserved right to build a dwelling unit on the parcel retained by the owner of the [property] **parcel** pursuant to N.J.A.C. 7:50-5.44(b).

4. (No change.)

5. The provisions of (b)4 above shall also apply to owners of record of less than one-tenth acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979, provided that said owners acquire vacant, contiguous lands **to which Pinelands Development Credits are allocated pursuant to (a) and (b) above** which **lands**, when combined with the acreage of the [original] parcel **owned prior to February 7, 1979**, total at least one-tenth of an acre.

(c) (No change.)

7:50-5.44 Limitations on the use of Pinelands Development Credits

(a) (No change.)

(b) Notwithstanding the provisions of (a) above, an owner of [property] **a parcel** from which Pinelands Development Credits are sold may retain a right for residential development on that [property] **parcel,** provided that the recorded deed restriction expressly provides for same and that the total allocation of Pinelands Development Credits for that [property] **parcel** is reduced by .25 Pinelands Development Credits for each reserved right to build a dwelling unit. Subdivision of the [property] **parcel** shall not be required until such time as the residential development right is exercised.

(c) The bonus density of a parcel of land on which Pinelands Development Credits are used shall not exceed the upper limits of the density range of the municipal zone or district in which the [property] **parcel** is located.

7:50-5.46 Aggregation of **Pinelands** Development Credits

Pinelands Development Credits may be aggregated from different parcels for use in securing a bonus for a single parcel of land in a Regional Growth Area, provided that the density does not exceed the limits of the density range specified in the municipal district in which the [property] **parcel** is located.

7:50-6.23 Vegetation removal and landscaping standards

(a) The clearing of more than 1,500 square feet of vegetation from any parcel of land, other than clearing for agricultural activities, and the development of previously cleared lands shall be authorized only if the applicant can demonstrate:

1. That the removal is necessary to accommodate the development or maintenance of a permitted structure or to carry out a permitted use of the [property] **parcel**; or

2.-5. (No change.)

6. That the cleared area will be landscaped in accordance with the following requirements:

i.-vi. (No change.)

vii. Managed turfed areas which require supplemental water, application of soil amendments or the use of herbicides, fungicides and pesticides shall be limited as set forth in **(a)6vii**(1) through (3) below, whether or not such areas are composed of native or non-native grasses. Managed turfed areas shall include those areas planted with non-native grasses in accordance with (a)**6**vi(1) above. Nothing herein shall be construed as relieving an applicant of the requirement to demonstrate that the clearing of more than 1,500 square feet of vegetation from any parcel of land complies with (a)1 through 5 above. Managed turfed areas shall not exceed the following:

(1) For single family detached dwellings **and two-family dwellings**, 10,000 square feet for each [dwelling unit] **lot**;

(2) For non-residential uses **and multi-family dwellings**, 25 percent of the parcel being landscaped; and

(3) (No change.)

(b) (No change.)

7:50-6.84 Minimum standards for point and non-point source discharges

(a) The following point and non-point sources may be permitted in the Pinelands:

1.-4. (No change.)

5. Individual on-site septic waste water treatment systems which are intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

i.-iii. (No change.)

iv. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located, will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, (Appendix A) subject to the provisions of (a)5v below and based on the following assumptions and requirements. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47:

(1) (No change.)

(2) For pressure dosed septic systems:

(A) For residential development, either the system will be located on a lot of at least one acre for each individual single family residential dwelling unit or the system or systems for multi-family developments will be located on a parcel with an overall density equal to or greater than one residential dwelling unit per acre of land; **or** [and each system shall comply with the following monitoring program either by contributing $855.00 to the Commission monitoring program and agreeing to have each system monitored by the Commission or by having the system monitored in accordance with the following requirements:

(I) Within each system effluent samples shall be collected from the septic tank, the pump tank, and from each of the following depths at three randomly located points within the disposal area: six inches below the disposal bed; three feet below the disposal bed; and one foot below the select fill-native soil interface. Porous alundum cup tension lysimeters shall be used to collect wastewater samples from the disposal area. Dose counters shall be installed in all pressure dosed systems and monitored to estimate wastewater flows. All sampling equipment designs shall be approved by the Pinelands Commission and all sampling equipment shall be installed under the supervision of the Pinelands Commission during construction of each system; and

(II) For a three year period, duplicate samples shall be collected on a quarterly basis from the septic tank and pump tank and individual samples shall be collected on a quarterly basis from each of the nine disposal area lysimeters. Parameters to be measured during each sampling event shall include temperature, pH, alkalinity, dissolved oxygen, Kjeldhal-nitrogen, nitrite-nitrogen, nitrate-nitrogen, ammonia-nitrogen, total phosphorus, total organic carbon, dissolved organic carbon, and chloride. Chemical analysis shall follow methods required of New Jersey state certified laboratories; or]

(B) (No change.)

(3) (No change.)

v.-ix. (No change.)

6. (No change.)

7:50-6.156 Treatment of resources

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

(d) Effect of Issuance of Certificate of Appropriateness:

1. (No change.)

2. Notwithstanding (d)1 above, a certificate of appropriateness issued for a resource determined to be significant pursuant to N.J.A.C. 7:50-6.155 but not presently designated pursuant to N.J.A.C. 7:50-6.154 shall be valid for two years. If the resource is not designated by the Pinelands Commission or by the municipal governing body in the zoning ordinance within two years, the standards of this Part shall [thereafter] not apply to the cultural resource in question **until such time as the Pinelands Commission designates the resource pursuant to N.J.A.C. 7:50-6.154.**

7:50-7.3 Petitions for amendment

(a) (No change.)

(b) Any other person desiring to petition the Commission for an amendment to this Plan shall file a petition with the Executive Director in such form and number as the Executive Director shall from time to time establish and containing at least the following information:

1.-4. (No change.)

5. In the event that the proposed amendment would change the classification of any parcel as shown on the Land Capability Map:

i. The street address and legal description of the [property] **parcel** proposed to be reclassified;

ii. The petitioner's interest in the subject [property] **parcel**;

iii.-iv. (No change.)

v. The present classification and existing uses of the [property] **parcel** proposed to be reclassified; and

vi. The area of the [property] **parcel** proposed to be reclassified stated in square feet or acres, or fraction thereof.

6. (No change.)

(c) (No change.)

(a)

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan Acquisition of Properties with Limited Practical Use Proposed New Rules: N.J.A.C. 7:50-9

Authorized By: New Jersey Pinelands Commission, Terrence D. Moore, Executive Director.

Authority: N.J.S.A. 13:18A-6j.

Proposal Number: PRN 1995-229.

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

Wednesday, May 3, 1995 at 7:00 P.M.
Pemberton Township Municipal Building
500 Pemberton-Browns Mills Road
Pemberton, New Jersey

Submit written comments by May 17, 1995 to:

John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064

The agency proposal follows:

Summary

Federal legislation has been enacted to authorize the acquisition of lands in the Pinelands considered as having a limited practical use as set forth in section 502(k)(2)(C) of the National Parks and Recreation Act of 1978, Pub.L. 95-265 (16 U.S.C. Section 471i(k)(2)(C)). The Federal legislation required that the Federal funds appropriated for this purpose be matched by an equal State appropriation. The State of New Jersey has recently made matching funds available for this program by appropriating moneys from the Water Conservation Bond Act (P.L. 1969, c.127). The State legislation describes the purpose of the funding as being "for the acquisition of lands in the pinelands area, which lands have been deemed to have limited practical use because of their location in the pinelands area and are held by landowners who own less than 50 acres in the pinelands area and have exhausted remedies to secure relief, and which acquisition is necessary for the purpose of augmenting, increasing, improving, preserving, protecting, or conserving natural water

resources and supplies important to New Jersey and facilitating recreational uses incidental thereto." Such lands would be acquired by the State Department of Environmental Protection.

The New Jersey Pinelands Commission adopted policies for the Federally authorized program to acquire properties with limited practical use in the Pinelands on December 7, 1990. These policies were subsequently revised by the Commission on June 7, 1991, September 9, 1994 and February 17, 1995. Now that the State matching funds have been appropriated, the Pinelands Commission is now implementing the policies for the limited practical use program by amending the Pinelands Comprehensive Management Plan by creation of a new subchapter 9. The program of purchasing parcels of land that have limited practical use is subject to the availability of Federal and matching State funds.

The proposed subchapter sets forth the standards that will be used to identify those parcels that are considered to have a limited practical use. For example, the parcel to be acquired must be under 50 acres in size and contain no existing residential dwellings or economically viable non-residential structures. In addition, the Commission must have denied a Waiver of Strict Compliance for the parcel in question pursuant to N.J.A.C. 7:50-4, Part V or, under now repealed regulations, approved such a Waiver but granted a transferable residential development right to other lands in the Pinelands Protection Area rather than an approval for development on the parcel. This standard is to implement the Federally imposed requirement that all remedies for the development of the parcel have been exhausted. Also, as required by the Federal legislation, the owner of the parcel in question must own less than 50 acres of land in the Pinelands. Parcels which are in corporate ownership or which have been sold since the date of the Commission's action on the Waiver of Strict Compliance will not be considered eligible for the acquisition program. In addition, parcels that, due to the Commission's certification of municipal land use ordinances or the current availability of sewer service, now have a clear ability to be developed will not be eligible.

An additional criteria involves the Pinelands Development Credits to which a qualifying parcel may be entitled pursuant to N.J.A.C. 7:50-5.43. In order to be eligible for acquisition, parcels that are entitled to 0.25 or more Pinelands Development Credits will be required to sever those credits in accordance with N.J.A.C. 7:50-5.47. This requirement will apply to parcels located in the Preservation Area District, Agricultural Production Area and Special Agricultural Production Area, as these are the Pinelands management areas eligible for the allocation of Pinelands Development Credits.

It should be noted that the severance of Pinelands Development Credits, as discussed above, does not require that those credits be sold by the parcel owner. Severance means only the legal separation of Pinelands Development Credits from a parcel of land, together with the recordation of a deed restriction on the parcel to preclude further development other than certain agricultural, forestry and low intensity recreational uses. The owner of the parcel may retain the Pinelands Development Credits for future sale or immediately begin the process of finding an interested buyer on the private market.

In order to provide the owners of parcels eligible for acquisition under the limited practical use program with an additional option, the Commission would strongly encourage the New Jersey Pinelands Development Credit Bank to consider offering to purchase any Pinelands Development Credits severed from eligible parcels. The Commission believes that such purchase by the Bank would certainly serve to further the goals of the Comprehensive Management Plan, as well as aiding in the alleviation of any economic hardship which the owners of parcels of limited practical use may have. Of course, the decision of whether or not to sell Pinelands Development Credits to the Bank would remain the prerogative of the parcel owner.

The new subchapter also outlines the procedure by which landowners may request to participate in the limited practical use program, including submission of a questionnaire which will be used by the Commission to determine the eligibility of a particular parcel. The proposed rules also establish priorities for acquisition among the eligible parcels according to the date on which the Commission acted on the Waiver of Strict Compliance associated with the parcel. The earlier the date of the Commission's action, the higher the priority assigned to a parcel.

It should be noted that the acquisition program implemented by the proposed rules is entirely voluntary on the part of landowners.

Social Impact

Since this acquisition program will provide relief to property owners affected by the standards of the Pinelands Comprehensive Management Plan, as well as increase public land holdings in the environmentally sensitive Pinelands, the social impacts of the proposed amendment are demonstrably positive. The proposed rules have been crafted to identify small landowners in the region who have explored all the options for development of a residence or non-residential use on their parcels to no avail, as evidenced by the Commission's action on a Waiver of Strict Compliance. Purchase of these modest parcels will give these individuals, many of whom have held the land for years in anticipation of its future development potential, the opportunity to sell their land for its fair market value. The people of New Jersey in general also profit by these acquisitions in that lands of ecological value may enter the public domain, thereby being protected for future generations to cherish and enjoy. In addition, some of the parcels that are acquired may subsequently be sold to adjacent landowners or other interested parties as long as they remain undeveloped, thereby providing an increased benefit to those persons. No adverse social impact is anticipated as a consequence of the adoption of these rules.

Economic Impact

The economic impact of the proposed rules is clearly beneficial to those owners of small parcels of land in the Pinelands of otherwise limited economic potential which will be acquired by the State. To date, the Commission has identified approximately 400 parcels of land in the Pinelands Area that may potentially be eligible for acquisition.

The acquisitions will obviously cost the State money. However, while 50 percent of the cost of these purchases will be provided by New Jersey (the remainder being contributed by the Federal government), the acquisitions will not increase the indebtedness of the State. No new revenue source is required for this program. The allocated funds had already been authorized through a public referendum, which committed the proceeds from the sale of bonds to purposes which would enhance the quality of New Jersey's water resources. The program will only be expending a portion of those funds, which were expressly obligated to this activity. Protection of the State's water quality will also have the indirect economic advantage of making the area more generally desirable as a place to live and do business.

Since State lands are not subject to local property taxes, the proposed rules may have an effect upon municipal tax rolls through the potential removal of a number of lots which are currently taxed. The impact should not be very significant, however, because the parcels to be acquired are small, spread out among a number of municipalities and presumably already assessed at a lower rate, given their limited potential for on-site development. In addition, the State will be interested in retaining ownership of only a small percentage of the parcels which it acquires under this program. It is anticipated that a number of the parcels will be sold to adjacent landowners or other interested parties subsequent to acquisition by the State, where they would remain on the tax rolls, albeit at a low value.

The cost to owners of eligible parcels will be minimal; only the costs of having the questionnaire notarized and the fees associated with a title search must be borne by the landowner. The modest fee associated with a title search will be all that is required from a financial standpoint for the owners of eligible parcels when accomplishing the required severance of Pinelands Development Credits as well, although some owners may elect to pay for the service of attorneys to help them through the process. It is estimated that of the 400 potentially eligible parcels identified to date, 51 might be eligible for the allocation of Pinelands Development Credits pursuant to N.J.A.C. 7:50-5.43 and therefore be required to sever such credits prior to acquisition.

Environmental Impact

The proposed rules are expected to have a demonstrably positive environmental impact as they will result in the State acquisition of lands, a large portion of which are likely to be located in the most environmentally sensitive portions of the Pinelands. Such State acquisition will ensure that the lands in question remain undeveloped in perpetuity. It is estimated that the approximately 400 parcels that have been identified as potentially eligible to date contain well over 2,000 acres of land. No adverse environmental impacts are anticipated from the proposed rules.

Executive Order No. 27 Statement

The proposed rules respond directly to Federal legislation which authorized funding for the acquisition of lands of limited practical use

in the Pinelands. Their only purpose is to provide the necessary standards and procedures for the effective and equitable distribution of these funds, as well as matching State funds. As such, the proposed rules do not exceed any Federal standards.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because the proposed rules do not impose reporting or recordkeeping requirements on small businesses, as that term is defined in N.J.S.A. 52:14B-16 et seq. In fact, the new rules may benefit those small business owners who own lands in the Pinelands that are eligible for acquisition under the terms of the limited practical use program. As described in the Economic Impact above, a small business owner of an eligible parcel who wishes to participate need only incur the cost of questionnaire notorization, having a title search performed and Pinelands Development Credit severance, if applicable. Attorneys may be employed, but are not required. Given the minimal nature of these requirements and the beneficial purpose of the program, no lesser requirements are provided based on business size.

Full text of the proposed new rules follows:

SUBCHAPTER 9. ACQUISITION OF PROPERTIES WITH LIMITED PRACTICAL USE

7:50-9.1 Purpose

Federal legislation has been enacted to authorize the acquisition of lands considered as having a limited practical use as set forth in section 502(k)(2)(C) of the National Parks and Recreation Act of 1978, Pub.L. 95-265 (16 U.S.C. Section 471i(k)(2)(C)). The Federal legislation required that the Federal funds appropriated for this purpose be matched by an equal state appropriation. The State of New Jersey has made matching funds available for this program. The purpose of this subchapter is to implement the program of purchasing parcels that have limited practical use, to the extent that Federal funds and matching state funds allow.

7:50-9.2 General standards

(a) The Department of Environmental Protection may acquire parcels of land which are located in the Pinelands Area and are found to be of limited practical use in accordance with the following:

1. The Commission has either denied a Waiver of Strict Compliance for the parcel in question pursuant to N.J.A.C. 7:50-4, Part V or has approved a Waiver of Strict Compliance for the parcel in question and granted a transferable residential development right to other lands in the Protection Area, in accordance with former N.J.A.C. 7:50-4.66(b)3 and 5.30(a), repealed effective March 2, 1992;

2. The parcel in question is less than 50 acres in size; and

3. The standards set forth in N.J.A.C. 7:50-9.3 relative to the ownership and the present and potential uses of the parcel in question have been met.

7:50-9.3 Standards for present and potential uses and ownership

(a) In order to be eligible for acquisition under the provisions of this subchapter, the owner of the parcel shall demonstrate and the Commission shall verify that all of the following conditions exist:

1. Present and potential uses, as follows:

i. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, contains no residential dwelling unit;

ii. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, contains no substantial principal non-residential structure that has an economically viable use, except for structures that are used exclusively for agricultural purposes;

iii. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, has not been approved for resource extraction pursuant to the provisions of this Plan;

iv. If the parcel, including all contiguous lands in common ownership on or after January 14, 1981, is entitled to at least 0.25 Pinelands Development Credits pursuant to N.J.A.C. 7:50-5.43, those Credits have been severed from the parcel pursuant to N.J.A.C. 7:50-5.47;

v. No approval for development of a residential dwelling or substantial principal non-residential structure on the parcel, including all contiguous lands in common ownership on or after January 14, 1981, has been granted pursuant to this Plan provided that approval is still valid; and

vi. There is not a realistic expectation that the parcel, including all contiguous lands in common ownership on or after January 14, 1981, will qualify for the development of either a residential dwelling or a substantial principal non-residential structure in accordance with the provisions of this Plan absent a Waiver of Strict Compliance, taking into consideration the following factors:

(1) The availability of centralized waste water treatment and collection service;

(2) The certification of any municipal land use ordinance pursuant to N.J.A.C. 7:50-3.35 or 3.45; and

(3) The information used by the Commission in its review and action on the Waiver of Strict Compliance relative to the parcel in question.

2. Ownership, as follows:

i. The parcel has been in the same ownership since the date of the Commission's action on the Waiver of Strict Compliance, except that transfer in ownership solely through gift or inheritance shall not render the parcel ineligible for acquisition;

ii. The owner can transfer good title to the parcel which is currently owned in fee simple absolute;

iii. The parcel is not held in corporate ownership; and

iv. The owner owns less than 50 acres of land in the Pinelands, including the parcel in question, as of (the effective date of these rules). For purposes of determining whether this requirement is met, all lands in the Pinelands in which the owner has an ownership interest either directly or through a legal entity in which the owner has an ownership interest shall be included in the total acreage based upon the pro-rata share of the total acreage of such land owned by the owner of the parcel in question. Said land shall only be included if the owner owns at least a 10 percent share of said land or said land is owned by a corporation, partnership or other legal entity in which the owner has at least a 10 percent ownership interest.

7:50-9.4 Submission of questionnaires

In order to have a parcel of land considered for acquisition, the owner of the parcel must complete and submit to the Commission the responses to the questionnaire developed by the Executive Director pursuant to N.J.A.C. 7:50-1.21. The questionnaire shall be designed to determine the eligibility of the parcel for acquisition based on the criteria set forth in N.J.A.C. 7:50-9.2 and 9.3. Copies of the questionnaire shall be available from the Commission and shall include any information necessary to enable landowners to contact the Commission for assistance in completing the questionnaire.

7:50-9.5 Notice of intent to acquire lands

The Commission shall publish notice of the intent to purchase parcels of land of limited practical use in all the official newspapers of the Commission. The notice shall include the date by which questionnaires must be submitted for consideration by the Commission during the then current round of acquisitions.

7:50-9.6 Determination and record of eligible parcels

(a) The Executive Director shall periodically establish a date by which completed questionnaires must be received by the Commission in order to be eligible for the then current round of acquisitions. The Executive Director may extend the deadline pursuant to N.J.A.C. 7:50-4.4(a).

(b) The Executive Director shall review each completed questionnaire and inform the owner if any other information is necessary in order to determine the parcel's eligibility for acquisition. If so, the owner shall have 30 days within which to provide the necessary information.

(c) Within 60 days after the deadline established for the receipt of questionnaires for each round of acquisitions or any extension thereto, the Executive Director shall review each completed questionnaire, all other information submitted on behalf of the parcel owner and all other information available to the Pinelands Commission concerning each parcel for which a questionnaire was completed and determine those parcels which qualify for acquisition. No

parcel may be recommended for acquisition unless it meets the standards contained in N.J.A.C. 7:50-9.2 and 9.3. The Executive Director shall give written notification of his or her findings and conclusion to the owner of the parcel, the Commission, all persons who have requested a copy of said determination and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(d) The Executive Director shall retain a record of all questionnaires received, the determination as to their eligibility for acquisition and the acquisition round in which the determination was made.

7:50-9.7 Rights of appeal

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this subchapter may, within 15 days, appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by requesting a hearing pursuant to N.J.A.C. 7:50-4.91.

7:50-9.8 Priorities for acquisition

(a) At the conclusion of the appeal period set forth in N.J.A.C. 7:50-9.7, the Executive Director shall recommend to the Pinelands Commission which parcels qualify for acquisition. The parcels shall be prioritized for acquisition chronologically according to the date of the Commission's action on the Waiver of Strict Compliance, as set forth in N.J.A.C. 7:50-9.2(a)1. The earlier the date of the Commission's action, the higher the priority that will be assigned to the subject parcel. The priority list shall be comprised of:

1. Parcels determined to be eligible during the current round of acquisition;
2. Parcels found to be eligible during a previous round of acquisition that were not acquired due to lack of funding; and
3. Parcels found to be eligible during a previous round of acquisition that the Department of Environmental Protection declined to acquire for any reason other than those specified in N.J.A.C. 7:50-9.11(b)1 and 2.

(b) At the next Commission meeting after receiving the Executive Director's recommendations, the Commission shall consider the Executive Director's recommendation for each parcel and may either approve the recommendation or refer that recommendation to the Office of Administrative Law for a hearing.

(c) The Executive Director shall transmit the chronological list of parcels approved for acquisition to the Department of Environmental Protection within 10 days of the Commission approving those parcels.

(d) The Executive Director shall also inform the Department of Environmental Protection of any parcels which have been referred to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 7:50-9.7 or 9.8(b) and where each such parcel would be on the chronological list if the parcel is subsequently approved for acquisition. Within 10 days of the Commission's action on any parcel referred to the Office of Administrative Law for a hearing, the Executive Director shall inform the Department of Environmental Protection of such action. No owner of a parcel determined to be eligible for acquisition by the Commission following referral to the Office of Administrative Law shall in any way be prejudiced by the fact that the matter was referred to the Office of Administrative Law.

7:50-9.9 Access

By submission of the questionnaire to determine eligibility, the owner agrees to allow access to the parcel during reasonable hours to Commission and Department of Environmental Protection personnel in order to determine the eligibility of the parcel for acquisition and to aid in assessing its value.

7:50-9.10 Acquisition funding

The acquisition of eligible parcels may be funded by moneys expressly appropriated for this purpose by the State of New Jersey and the United States. No acquisitions for this purpose may occur if funding is unavailable for any reason.

7:50-9.11 Purchase and conditions

(a) To the extent that funding permits, the Department of Environmental Protection shall pursue the acquisition of eligible parcels in the order established in N.J.A.C. 7:50-9.8.

(b) The Department of Environmental Protection may decline to acquire any parcel for the following reasons:

1. The parcel does not meet the standards set forth in N.J.A.C. 7:50-9.2 and 9.3;
2. Failure of the owner of the parcel to respond to a purchase offer within a reasonable time period or to accept the offer made by the Department of Environmental Protection; or
3. Conditions exist either on the parcel or on contiguous lands which either would require remediation in order to alleviate a hazard to the public or would otherwise incur additional costs to resolve.

7:50-9.12 Landowner right of refusal

(a) The public acquisition of lands considered to possess limited practical use is a voluntary program on the part of the owner of the parcel. Nothing contained in this subchapter shall be construed to require the owner to relinquish title to a parcel of land.

(b) The parcel owner and the Department of Environmental Protection may withdraw from the acquisition process at any time prior to the transfer of title. If the owner of the parcel fails to submit the questionnaire required pursuant to N.J.A.C. 7:50-9.4 or otherwise declines to participate or withdraws from the acquisition process at any time, the parcel shall not be considered for acquisition during the then current round of acquisitions. In order for the parcel to be considered eligible for a later acquisition round, the parcel owner must submit a new completed questionnaire pursuant to N.J.A.C. 7:50-9.4.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

License Fees and Examination Charges; Failure to Pay

Adopted New Rule: N.J.A.C. 3:1-6.7

Adopted Amendments: N.J.A.C. 3:18-10.5 and 3:38-1.6

Proposed: January 3, 1995 at 27 N.J.R. 20(b).
Adopted: March 16, 1995 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: March 21, 1995 as R.1995 d.208, **without change.**

Authority: N.J.S.A. 17:16D-8, 8.1, 17:10-10, 17:11A-39.1, 17:11B-9, 17:15A-48, 17:15B-11, 17:16C-10, 17:16C-84, 17:16D-6 and 45:22-8.

Effective Date: April 17, 1995.
Expiration Date: January 4, 1996, N.J.A.C. 3:1;
December 24, 1997, N.J.A.C. 3:18;
September 11, 1997, N.J.A.C. 3:38.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

There are no Federal requirements applicable to the subject matter of the adopted amendments and new rule.

Full text of the adoption follows:

3:1-6.7 Failure to pay license and examination charges

(a) If a licensee pays an examination charge, application fee, license fee or any other fee or charge with a check which is returned for insufficient funds or is not paid for any other reason, the Department shall advise the licensee by letter. The licensee shall have 20 days from the date of such letter to provide the Department with a certified or cashiers check payable to the State of New Jersey for the amount of the dishonored check plus $10.00. If the Department does not receive a certified or cashiers check within 20 days of the date of this letter, the Department shall suspend the license of the licensee until payment by certified or cashiers check is received.

(b) If a licensee fails to pay an examination charge within 30 days after the bill is sent, the Department shall send a second billing. The licensee shall have 20 days from the date of such letter to provide the Department with payment of the fee. If the licensee fails to provide such payment within 20 days, the Department shall suspend the license of the licensee until payment is received.

3:18-10.5 Bonds

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

(f) When the Department receives notice from a surety company of a claim against a licensee which appears valid, a consumer is unable to obtain payment of a court judgment which was obtained against the licensee for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the licensee conducts or conducted business advising consumer of their right to file claims against the bond. The Department is not required to publish notice when it has a claim against the bond for an examination charge or any other fee, charge or penalty if there are no consumer claims or complaints which appear valid and which may require payment from the bond. If the Department determines a notice is necessary the notice shall be in the following form:

(No change in notice text.)

(g)-(n) (No change.)

3:38-1.6 Bonds

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

(g) When the Department receives notice from a surety company of a claim against a licensee which appears valid, a consumer is unable to obtain payment of a court judgment which was obtained against the licensee for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the licensee conducts or conducted business advising consumer of their right to file claims against the bond. The Department is not required to publish notice when it has a claim against the bond for an examination charge or any other fee, charge or penalty if there are no consumer claims or complaints which appear valid and which may require payment from the bond. If the Department determines a notice is necessary the notice shall be in the following form:

(No change in notice text.)

(h)-(i) (No change.)

ENVIRONMENTAL PROTECTION

(b)

ENVIRONMENTAL REGULATION

Payment Schedule for Permit Application Fees

Adopted New Rules: N.J.A.C. 7:1L and 7:14B-3.9

Adopted Amendments: N.J.A.C. 7:1C-1.5, 7:7A-16.1, 7:10-15.1, 7:14A-1.8, 7:19-3.8, 7:26-3A.1, 4.1 and 4A.1, 7:26A-2.1, 7:26B-1.10, 7:27-8.11, 7:30-1.1 and 7:31-1.1

Proposed: October 3, 1994 at 26 N.J.R. 3922(a).
Adopted: March 16, 1995 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Filed: March 17, 1995 as R.1995 d.205, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-124.
DEP Docket Number: 43-94-09/471.

Effective Date: April 17, 1995.
Expiration Date: April 17, 2000, N.J.A.C. 7:1L;
June 15, 1995, N.J.A.C. 7:1C;
March 16, 1997, N.J.A.C. 7:7A;
December 31, 1995, N.J.A.C. 7:10;
June 2, 1995, N.J.A.C. 7:14A;
November 18, 1997, N.J.A.C. 7:14B;
February 24, 2000, N.J.A.C. 7:19;
October 25, 1995, N.J.A.C. 7:26;
November 18, 1996, N.J.A.C. 7:26A;
November 18, 1997, N.J.A.C. 7:26B;
Exempt, N.J.A.C. 7:27;
November 24, 1997, N.J.A.C. 7:30;
June 18, 1998, N.J.A.C. 7:31.

Summary of Hearing Officer's Recommendations and Agency Response:

On October 3, 1994, the Department of Environmental Protection ("Department") proposed to adopt new rules, N.J.A.C. 7:1L, which establish a payment schedule for certain permit application fees exceeding $1,000.

Under the rules, one-third of the fee is due when the application is submitted; one-third is due when the Department finds that the application is complete; and one-third is due when the Department takes final action on the application.

The new rules implement legislation which took effect on July 1, 1994 (P.L. 1993, c.361; N.J.S.A. 13:1D-120 through 124). The Department already began implementing the legislation on July 1 by allowing fees which exceed $1,000 to be paid in three equal installments if the applicant wished.

The payment schedule is available for permit applications under the waterfront development law; the Solid Waste Management Act; the Comprehensive Regulated Medical Waste Management Act; the law governing leaf composting facilities; the Statewide Mandatory Source Separation and Recycling Act; the Pesticide Control Act; the Industrial Site Recovery Act; the Toxic Catastrophe Prevention Act; the Wetlands Act of 1970; the Freshwater Wetlands Protection Act; the Coastal Area Facility Review Act; the Air Pollution Control Act; the Water Supply Management Act; the law governing well drillers and pump installers; the Water Pollution Control Act (excluding modifications or renewals of NJPDES permits); the law governing underground storage tanks; the Safe Drinking Water Act; and the Flood Hazard Area Control Act.

The Department held a public hearing on the proposed new rules on October 21, 1994 in Trenton, New Jersey. The public comment period was open until November 2, 1994. Sam Wolfe, of the Department's Office of Legal Affairs, chaired the hearing at which no one testified. As a result of the public hearing, Mr. Wolfe recommended that the Department adopt the proposed new rules, with the changes discussed below in the Summary of Public Comments and Agency Responses. The Department agrees with this recommendation. Commissioner Robert C. Shinn, Jr. has considered all comments submitted, and the rules as adopted reflect that consideration.

Interested persons may inspect the public hearing record or obtain a copy upon payment of the Department's normal copying charges by contacting Janis E. Hoagland, Esq., Department of Environmental Protection, Office of Legal Affairs, CN 402, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Response:

Based upon public comment, the Department has clarified the rules upon adoption to specify that "20 days" means 20 calendar days. In addition, the Department has amended N.J.A.C. 7:1L-2.2(c), in response to comment, to specify that the notice of action on a permit application will include the date on which the action was taken.

The following persons submitted written comments on the proposal.

Name—Affiliation

1. Boynton, Perry—Jersey Central Power & Light Company
2. Lehotsky, Vincent

The submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the commenter(s) listed above.

General

1. COMMENT: The commenter likes the proposal. (2)

2. COMMENT: The commenter supports the adoption of these regulations with some revisions. (1)

3. COMMENT: Adoption of these rules will ensure that the Department's permitting/administrative review process becomes more efficient, with both the applicant and the Agency being held more accountable. (1)

RESPONSE: The Department acknowledges these comments in support of the proposal.

4. COMMENT: Is the pay one-third now, one-third then, one-third last, the only option proposed? (2)

RESPONSE: Yes. This installment payment schedule is the only option established in the legislation.

5. COMMENT: Does this fee payment schedule imply that the Department will become a rubber stamp of approval for every permit application? (2)

RESPONSE: No. The Department will continue to review each permit application in accordance with the specific regulations applicable to it.

6. COMMENT: Pursuant to N.J.A.C. 7:1L-2.2(a), regarding the determination of a completed application, the Department will have to certify the date the project was "logged-in" and the date the application was declared administratively complete (or deemed a completed application) to ensure compliance with N.J.S.A. 13:1D-102b and the 30 day review period. (1)

RESPONSE: The Department agrees with the commenter. The Department already records the dates on which applications are "logged-in" and declared administratively complete, and will continue to do so to ensure compliance with the timeframes established in the Ninety-Day Construction Permits Law and other applicable laws and regulations.

7. COMMENT: When the Department identifies the date the installment is due, it must be clarified if it is 20 calendar days or 20 working days. Under N.J.A.C. 7:1C-1.7(a), the Department identifies the timeframe as "working days." (1)

RESPONSE: The Department had intended that the 20-day periods established in the rules would refer to calendar days. To avoid any confusion, the Department has clarified the rule upon adoption to specify calendar days.

8. COMMENT: Are the 20 days from the date of the notification, postmarked date or date received by the applicant? (1)

RESPONSE: N.J.A.C. 7:1L-2.2(a)4 states that the payment is due 20 days after the date the notice is mailed to the applicant. Therefore the 20 day period begins on the postmark date.

9. COMMENT: Once the Department determines it is taking final action on the application, it must not only identify what the action is but also identify the date on which the decision was made to ensure compliance with the 90 Day Construction Permit Rules, N.J.A.C. 7:1C-1.8. (1)

RESPONSE: The Department agrees with the commenter. The Department has amended the rule at N.J.A.C. 7:1L-2.2(c), upon adoption, to clarify that the written notice of the action will indicate the date upon which such action was taken.

10. COMMENT: Will the applicant be required to make the second and third payments even if the applicant's business goes out of business? (2)

RESPONSE: Generally, the applicant will still be required to make the second and third payments. However, the applicant may request that the Department discontinue its review of the application; in that case, the applicant is required to pay only the costs that the Department incurred in reviewing the application before receiving the request to discontinue review. See N.J.A.C. 7:1L-2.4.

11. COMMENT: The commenter compared this provision with the procedure for installment payments for automobile insurance where a person pays the first installment and not the rest, and drives the vehicle possessing an insurance card indicating they are fully insured. (2)

RESPONSE: This problem would not arise under these rules. The applicant does not receive the permit upon payment of the first installment, as is the case the commenter describes with the insurance card. Issuance of a permit under these rules is conditioned on payment of the fee in full. See N.J.A.C. 7:1L-2.6.

12. COMMENT: Will a fine be assessed if any payments are missed? (2)

RESPONSE: These rules do not limit the Department's remedies under any applicable law or regulation in connection with an unpaid installment of a permit application fee. Such remedies may include the assessment of penalties.

Summary of Agency-Initiated Changes:

The following changes have been made upon adoption to correctly codify the amendments cross-referencing N.J.A.C. 7:1L:

1. Proposed N.J.A.C. 7:1C-1.5(m) is adopted at N.J.A.C. 7:1C-1.5(k). Rule amendments effective July 5, 1994 (26 N.J.R. 2789(a)) deleted N.J.A.C. 7:1C-1.5(k) and (l).

2. Proposed N.J.A.C. 7:19-3.8(i) is adopted at N.J.A.C. 7:19-3.5(h). N.J.A.C. 7:19-3.8 was recodified to N.J.A.C. 7:19-3.5 when the Department recently readopted the Water Supply Allocation rules. See 27 N.J.R. 1265(a) (March 20, 1995). Since the requirements of N.J.A.C. 7:19-3.5(h) as recently adopted are now set forth in N.J.A.C. 7:1L as adopted herein, this subsection cross-referencing N.J.A.C. 7:1L is substituted with this adoption at N.J.A.C. 7:19-3.5(h).

3. Proposed N.J.A.C. 7:27-8.11(e) is adopted at N.J.A.C. 7:27-8.11(g) to correspond with rule changes adopted and published October 3, 1994 (26 N.J.R. 3943(b), 3991).

Executive Order No. 27 Statement

These new rules and amendments are not under the authority of or in order to implement, comply with or participate in any program established under Federal law. These new rules and amendments 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.

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

CHAPTER 1C
NINETY-DAY CONSTRUCTION PERMITS

SUBCHAPTER 1. 90 DAY CONSTRUCTION PERMIT RULES

7:1C-1.5 Fees

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

*[(m)]**(k)* Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 1L
PAYMENT SCHEDULE FOR PERMIT APPLICATION FEES

SUBCHAPTER 1. GENERAL PROVISIONS

7:1L-1.1 Purpose and applicability

(a) This chapter institutes a system for the payment of permit application fees in installments. The amount of each installment is one-third of the total fee. The due dates for the installments are based upon the Department's completion of its duties and responsibilities at specific stages of the application review process.

(b) This chapter applies to any application for a permit for which the permit application fee is more than $1,000, except as provided in (c) and (d) below. If an applicant submits applications for more than one permit, the applicability of this chapter is based on the permit application fee for each permit, and not upon the aggregate of the permit application fees for all of the permits.

(c) This chapter does not apply to any license or certification fee.

(d) This chapter does not apply to the payment of a permit application fee if:

1. Another applicable provision of this title provides for the permit application fee to be payable in installments based on milestones in the permit process; and

2. The fee for a given milestone under that other provision of this title is less than the installment would be payable under N.J.A.C. 7:1L-2.1.

(e) This chapter does not apply to a fee for an application to renew or modify a New Jersey Pollutant Discharge Elimination System permit under N.J.A.C. 7:14A.

7:1L-1.2 Definitions

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

"Applicant" means the person in whose name a permit is to be issued.

"Completed application" means an application containing all of the information designated on the checklist adopted by the Department under N.J.S.A. 13:1D-101, for the class or category of permit for which an application is made.

"Department" means the Department of Environmental Protection.

"Final action" means a decision to issue a permit, deny a permit, or conditionally issue a permit.

"License or certification fee" means any fee, assessment or other charge imposed by the Department in connection with the licensing or certification of any member of a regulated profession or occupation, or any person seeking to become a member of a regulated profession or occupation.

"Member of a regulated profession or occupation" means any person subject to regulation by licensure or certification by the Department pursuant to any law of this State.

"Permit" means any permit, registration or license issued by the Department, establishing the regulatory and management requirements for an ongoing regulated activity as authorized by federal law or the following State laws, as such laws are amended and supplemented:

1. The laws governing waterfront and harbor facilities, N.J.S.A. 12:5-1 through 11;

2. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., including without limitation N.J.S.A. 13:1E-5 and 26;

3. The Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 through 48.25;

4. The laws governing leaf composting facilities, N.J.S.A. 13:1E-99.21a through 99.21f;

5. The Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 through 99.39, including without limitation 13:1E-99.21a through 99.21f;

6. The Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 through 18;

7. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 through 13;

8. The Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 through 32;

9. The Wetlands Act of 1970, N.J.S.A. 13:9A-1 through 10;

10. The Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 through 30;

11. The Coastal Area Facility Review Act, N.J.S.A. 13:19-1 through 21;

12. The Air Pollution Control Act, N.J.S.A. 26:2C-1 through 19.5;

13. The Water Supply Management Act, N.J.S.A. 58:1A-1 through 17;

14. The laws governing well drillers and pump installers, N.J.S.A. 58:4A-5 through 28;

15. The Water Pollution Control Act, N.J.S.A. 58:10A-1 through 14.6;

16. The laws governing the underground storage of hazardous substances, N.J.S.A. 58:10A-21 through 37;

17. The Safe Drinking Water Act; N.J.S.A. 58:12A-1 through 25; and

18. The Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 through 66.

"Permit application fee" or "fee" means any fee, assessment or other charge imposed by the Department for a permit.

"Person" means any individual or entity.

SUBCHAPTER 2. PAYMENT SCHEDULES

7:1L-2.1 Payment of permit application fees in installments

(a) If the fee for a permit application is more than $1,000, the applicant seeking the permit may pay the fee in accordance with the schedule set forth in (a)1, 2 and 3 below:

1. One-third of the total fee at the time the applicant files the application for the permit.

2. One-third of the total fee within 20 ***calendar*** days after the date specified in the notice under N.J.A.C. 7:1L-2.2, stating that the application for the permit is a "completed application"; and

3. One-third of the total fee within 20 ***calendar*** days after the date specified in the notice under N.J.A.C. 7:1L-2.2, stating that the Department has taken final action on the permit application. The due date of this final installment may be postponed in accordance with N.J.A.C. 7:1L-2.3.

7:1L-2.2 Notice by the Department

(a) After the Department determines that an application for a permit is a "completed application," the Department shall send written notice of this determination to the applicant. In the notice, the Department shall:

1. Certify that it has completed administrative review of the application;

2. State that it has determined that the application is a "completed application";

3. State the amount of the fee installment that is due; and

4. State the date on which the fee installment is due. The due date is 20 ***calendar*** days after the date the notice is mailed to the applicant.

(b) If an application becomes a "completed application" by operation of N.J.S.A. 13:1D-30, 13:1D-102(b), or any other law that deems an application complete if the Department fails to notify the applicant of deficiencies in the application within a specified time, the Department shall send written notice to the applicant. In the notice, the Department shall:

1. Certify that the application has become a "completed application" by operation of law; and

2. State the amount of the fee installment that is due; and

3. State the date on which the fee installment is due. The due date is 20 *calendar* days after the date the notice is mailed to the applicant.

(c) After the Department determines the final action to be taken on a permit, the Department shall send written notice of the action to the applicant*, specifying therein the date on which the action was taken*. If the final action is to issue the permit or to conditionally issue a permit, the Department may satisfy this requirement by sending a copy of the permit (which may be marked "void" on one or more pages) to the applicant, and stating the amount of the fee installment that is due and the due date of the installment. If the Department does not send a copy of the permit, in the notice the Department shall:

1. Certify that it is taking final action on the permit;
2. Specify the action and its findings or conclusions with regard to the application;
3. State the amount of the fee installment that is due; and
4. State the date on which the fee installment is due. The due date is 20 *calendar* days after the date the notice is mailed to the applicant.

7:1L-2.3 Payment of fees in contested cases

(a) When an applicant appeals a decision of the Department to deny a permit or to include certain terms or conditions in a permit, and the appeal results in a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 through 21, the fee installment required under N.J.A.C. 7:1L-2.1(a)3 shall not be payable until:

1. A final decision in the contested case has been issued by the Commissioner of the Department pursuant to N.J.A.C. 1:1-18.6(a) or (c); or
2. The contested case has been concluded before the issuance of the final decision, such as through a settlement under N.J.A.C. 1:1-19.1 or a withdrawal under N.J.A.C. 1:1-19.2.

7:1L-2.4 Payment of fees when permit review is discontinued

If the Department discontinues its review of an application at the applicant's request, the applicant shall pay the Department the costs it incurred in reviewing the application before receiving the request to discontinue review. The Department shall send a written notice to the applicant, stating the amount of such costs and the date on which payment of such costs is due. The due date is 20 *calendar* days after the date the notice is mailed to the applicant.

7:1L-2.5 Effect of non-payment of fees

(a) The determination that an application is a "completed application" depends in part upon the submission of the requisite fee. Accordingly, if an applicant fails to pay an installment of a permit application fee when the installment is due, the application will no longer be considered a "completed application" until the installment is paid.

(b) In determining when the time allotted to the Department to approve, condition or disapprove an application for a permit under any law or regulation (including, without limitation, N.J.S.A. 13:1D-31 and 32) expires, the running of that time shall be considered suspended during the period in which an application is temporarily not considered a "completed application" pursuant to (a) above.

(c) If an applicant fails to pay an installment of a permit application fee when the installment is due, that non-payment is grounds for the Department to suspend its review of the permit until the installment is paid.

(d) If an applicant has not yet paid an installment of a permit application fee within 20 *calendar* days after payment was due, that non-payment is grounds for the Department to deny the application.

(e) If within 120 *calendar* days after a denial for non-payment under (d) above, the Department receives a written request from the applicant stating that the applicant desires to reinstate the application, then:

1. The original application will be deemed to have been resubmitted as a new application, and any time limit for reaching a decision on the application will again be allotted to the Department in full; and

2. The fees that the applicant paid in connection with the original application shall be credited toward the new application.

(f) Fees may be credited under (e)2 above only for the first resubmittal under (e)1 above.

7:1L-2.6 Permit conditioned on payment of fee

No permit issued by the Department shall become effective until the applicant pays the fee in full. After the Department receives payment in full in connection with a permit that is to be issued or conditionally issued, the Department shall notify the applicant in writing that the permit is effective. If the Department has previously sent the applicant a copy of the permit marked "void" on selected pages, the Department shall send the applicant the originals of such pages without the marking.

7:1L-2.7 Action for nonpayment

This subchapter shall not be construed to limit the Department's remedies under any applicable law or regulation in connection with an unpaid installment of a permit application fee. Such remedies may include, without limitation, the assessment of penalties and interest, and the taking of administrative or legal action to collect the unpaid installments and interest thereon.

CHAPTER 7A
FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 16. FEES

7:7A-16.1 Payment of fees

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

(e) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 10
SAFE DRINKING WATER ACT

SUBCHAPTER 15. FEES

7:10-15.1 Scope and authority

(a) This subchapter shall constitute the rules governing the establishment of Safe Drinking Water Program fees as authorized by the Safe Drinking Water Act at N.J.S.A. 58:12A-9. This subchapter shall be operative as of July 1, 1988.

(b) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 14A
THE NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM

SUBCHAPTER 1. GENERAL INFORMATION

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a)-(k) (No change.)

(l) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 14B
UNDERGROUND STORAGE TANKS

SUBCHAPTER 3. FEES

7:14B-3.9 Payment of fees in installments

Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 19
WATER SUPPLY ALLOCATION PERMITS

SUBCHAPTER 3. FEE SCHEDULE FOR WATER SUPPLY ALLOCATION PERMITS

7:19-3.5 Fees for Water Allocation Permits

(a)-(g) (No change.)

*[(h) In accordance with N.J.S.A. 13:1D-120 through 124, an application for a new or modified permit for which the application fee exceeds $1,000 may pay such fee in three equal installments.

The first installment is due at the time the applicant submits the application for the permit. The second installment is due when the Department notifies the applicant that the permit application is administratively complete. The last installment is due when the Department takes final action on the application.]*

*[(i)]**(h)* Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 26
DIVISION OF WASTE MANAGEMENT

SUBCHAPTER 3A. REGULATED MEDICAL WASTE

7:26-3A.1 Purpose, scope and applicability

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

(g) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

SUBCHAPTER 4. FEES FOR SOLID WASTE, EXCLUDING HAZARDOUS WASTE FEES

7:26-4.1 General provisions

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

(c) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

SUBCHAPTER 4A. HAZARDOUS WASTE FEES

7:26-4A.1 General provisions

In accordance with N.J.S.A. 13:1E-1 et seq., specifically 13:1E-6, 13:1E-18, 13:1E-42.2, and 13:1E-60d, there is hereby established a fee schedule for hazardous waste generators, transporters, and treatment, storage, or disposal facilities. Notwithstanding provisions in N.J.A.C. 7:26-4, this subchapter constitutes the rules of the Department for hazardous waste fees. Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 26A
RECYCLING RULES

SUBCHAPTER 2. ANNUAL FEES FOR A GENERAL OR LIMITED APPROVAL TO OPERATE A RECYCLING CENTER FOR CLASS B RECYCLABLE MATERIAL

7:26A-2.1 Fees for general or limited approval

(a) The following apply to the application fee for general or limited approval, provided however that any fee under this subsection that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L:

1.-2. (No change.)

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

CHAPTER 26B
ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:26B-1.10 Fee schedule

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

(j) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 27
AIR POLLUTION CONTROL

SUBCHAPTER 8. PERMITS AND CERTIFICATES

7:27-8.11 Service fees

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

(e) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 30
PESTICIDE CONTROL CODE

SUBCHAPTER 1. PESTICIDE PRODUCT REGISTRATION AND GENERAL REQUIREMENTS

7:30-1.1 Scope

(a) Unless otherwise provided by rule or statute, the following shall constitute the rule of the Office of Pesticide Control and shall govern the manufacturing, labeling, registration, and classification of pesticides, the registration of pesticide dealers and pesticide dealer businesses, the registration of applicators of pesticides, and the distribution, use, application, storage, handling, transportation, and disposal of pesticides in the State of New Jersey.

(b) Any fee under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

CHAPTER 31
TOXIC CATASTROPHE PREVENTION ACT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:31-1.1 Scope and applicability

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

(c) Any fee under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

(a)

SITE REMEDIATION

Notice of Rates for the Oversight Cost Formula in the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C, and Fees Pursuant to the Industrial Site Recovery Act, Underground Storage of Hazardous Substances Act, and Remediation Discharge to Ground Water Permits under the Water Pollution Control Act

N.J.A.C. 7:26C Appendix I

Take notice that the Department of Environmental Protection (Department) hereby announces the oversight cost rates for fiscal year 1995. The Department will use these rates to calculate its oversight costs for parties conducting remediation of a contaminated site. The Department will also use these same oversight cost rates in assessing fees pursuant to the fee regulations under the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-1 et seq., and for remediation discharge to ground water permits pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

Effective May 17, 1993, the Department adopted rules regarding Department Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C (see 25 N.J.R. 2002(a)). An integral part of any oversight document developed pursuant to those rules is that the person responsible for conducting the remediation must pay the Department's costs of overseeing the remediation. The Department calculates its oversight costs pursuant to the Oversight Cost Formula which is included in Appendix I of N.J.A.C. 7:26C. Two of the rates used in the formula vary from year to year, the indirect cost rate and the fringe benefit rate.

Fringe Benefit Rate = 24.25 percent

The Department obtains the applicable fringe benefit rate from the New Jersey Office of Management and Budget. The Office of Management and Budget negotiates with the United States Department of Health and Human Services for a composite fringe benefit rate of a certain percentage of base salaries. The rate is applicable to personnel who are members of the Public Employees' Retirement System and covers charges for the following benefits: pension, health benefits including prescription drug and dental care programs, workers compensation, temporary disability insurance and unused sick leave. The employer's share of FICA taxes is added to the composite fringe benefit rate. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, Dedicated and Non-State programs.

Indirect Cost Rate = 81.80 percent

The Department developed the indirect cost rate in accordance with Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

The components of the Department's indirect cost rate include indirect salaries and various indirect non-salary costs (such as operating expenses) incurred by Department management, the Division of Publicly Funded Site Remediation, the Division of Responsible Party Site Remediation, and divisional indirect offices—Commissioner, Division Directors and Assistant Directors, the Division of Financial Management and General Services, and the Division of Personnel.

Building rent and the Departmental allocation as determined by the Department of Treasury in the Statewide Cost Allocation Plan are also included as part of the indirect costs. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30.

The total of these indirect costs divided by the total direct costs of the Site Remediation Program determined the indirect cost rate.

Any person needing more information on this matter should contact Mr. Ronald Corcory, Assistant Director, Responsible Party Cleanup Element, at (609) 633-1480.

(a)

POLICY AND PLANNING/AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution from Oxides of Nitrogen

Adopted Amendments: N.J.A.C. 7:27-19.1 through 19.10, 19.13, 19.14, 19.15, 19.19; 7:27A-3.10(l)

Adopted New Rules: N.J.A.C. 7:27-19.20 through 19.25

Proposed: August 15, 1994 at 26 N.J.R. 3298(a).

Adopted: March 24, 1995 by Robert C. Shinn, Jr. Commissioner, Department of Environmental Protection.

Filed: March 24, 1995 as R.1995 d.214 **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-8, 9(c) and 19.

DEPE Docket Number: 35-94-07/413.

Effective Date: April 17 , 1995.

Operative Date: May 23, 1995.

Expiration Date: Exempt, N.J.A.C. 7:27;
December 2, 1999, N.J.A.C. 7:27A.

N.J.A.C. 7:27-19, Control and Prohibition of Oxides of Nitrogen (NO_x), establishes reasonable available control technology (RACT) emission limits for several categories of combustion sources. N.J.A.C. 7:27-19 was promulgated on December 20, 1993, at 25 N.J.R. 5957(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). When the Department proposed N.J.A.C. 7:27-19 to satisfy this requirement, members of the public and the regulated community submitted comments and suggestions, particularly concerning expanding various options for compliance in the rule to other combustion sources. In addition, EPA has, since the adoption of N.J.A.C. 7:27-19, provided guidance relevant to the rules (on fuel switching, repowering and on the use of innovative control technology to meet NO_x RACT requirements). In reviewing the public's comments and EPA guidance, the Department determined that revisions were necessary to provide flexibility in meeting the requirements of the subchapter.

These amendments were proposed on August 15, 1994, at 26 N.J.R. 3298(a). A public hearing was held on September 16, 1994.

Summary of Hearing Officer's Recommendations and Agency Response:

Lewis Nagy, Assistant Commissioner of Policy and Planning, served as the hearing officer at the September 16, 1994 public hearing held at the Department of Environmental Protection in Trenton, New Jersey. Seven people spoke at the hearing. After reviewing the oral testimony presented at the public hearing, Assistant Commissioner Nagy recommended that the Department eliminate the requirement to "deliver, as opposed to send" various pieces of information. Assistant Commissioner Nagy also recommended that the Maximum Emergency Generation (MEG) Alert exemption be expanded to include independent power producers (IPPs) as well as utilities. The Agency accepts the recommendations.

Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

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

Summary of Public Comments and Agency Responses:

The following persons made oral or written comments related to the proposed amendments:

(1) Charles Ash, Atlantic Electric
(2) Robert Baldisserotto, Hoffman-Laroche
(3) D. J. Campbell, Mobil Oil Corporation
(4) Peter Chant, Shell Oil Company
(5) Eric Degesero, Fuel Merchants Association of New Jersey
(6) Victor Guidice, Ganes Chemical, Inc.
(7) Stephen Gordon, Beveridge & Diamond, P.C.
(8) Franco Juricic, Merck & Company, Inc.
(9) Adam Kaufman, Independent Energy Producers of New Jersey
(10) John A. Maxwell, New Jersey Petroleum Council
(11) Robert Morrid, Coastal Corporation
(12) Matteo Petrillo, Durand Glass
(13) J.A. Shissias, Public Service Electric and Gas Company
(14) Rebecca Stanfield, New Jersey Public Interest Research Group
(15) Toni Wagner, Schering Laboratories
(16) Walter Wenner, Kimble Glass Company
(17) Jan Zmuda, R.C. Environmental Services
(18) David Gaglione, Clean Air Action Corporation
(19) Steve Gabel,Independent Energy Associates

The following is a summary of the comments received on the proposal adopted herein and the Department's responses. The number(s) in parentheses after each comment identifies the person(s), as listed above, who provided comment.

General

1. COMMENT: The commenter supports the majority of the initiatives proposed in the amendments to N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen, particularly the provisions for phased-in compliance with the NO_x RACT requirements. (8)

RESPONSE: The Department appreciates the support for the amendments.

2. COMMENT: The economic impact statement indicates that this proposal will have a positive economic impact. In the section under "Seasonal Fuel Switching," there is a list of the activities that the Department states might have a positive economic impact. Absent from this list is the consideration of the loss of jobs (as well as corresponding revenue to the State) in the oil heat industry that could result from adoption of this rule. (5)

RESPONSE: The Department's intent is to provide RACT measures for all types of fuel based on what is reasonably achievable, and not to require the use of natural gas. Many comments were received in response to the initial NO_x RACT rule proposal requesting that the fuel switching option be expanded to sources other than wet-bottom, coal fired utility boilers. As this fuel switching would occur during the ozone season and decrease the total amount of NO_x emitted, the Department agrees that this option should be available to all sources. The Department has no reason to believe that allowing fuel switching as an option for compliance with the NO_x RACT rules will result in loss of jobs in the oil heat industry. It is anticipated that many owners and operators will elect to fuel switch based primarily on economic reasons.

3. COMMENT: The NJDEP, through these Amendments, should make the rule no more stringent than what is required by the 1990 Clean Air Act Amendments (CAAA). By being more stringent, an unfair disadvantage is placed on the New Jersey regulated community when compared to the regulated community of other states. (1)

RESPONSE: While the Clean Air Act requires the State to develop and implement NO_x RACT measures, the legislation is silent on the details concerning the specific regulations which fulfill the mandate. The Department feels the amendments as adopted impose only necessary and reasonable requirements. States which are in attainment of the National Ambient Air Quality Standard (NAAQS) for Ozone, however, do not have the same requirements that a "serious" nonattainment area such as New Jersey has. The Department is working with other states to develop regionwide strategies to consistently develop air pollution programs and to share the burden of air pollution. These regional strategies are intended to level the playing field in regard to competitiveness and environmental regulations.

4. COMMENT: The commenter supports the additional flexibility offered by the amendments with respect to seasonal use of natural gas for all sources, innovative control technology provisions, repowering provisions, and phased in compliance. (1) The proposed amendments allow the regulated community additional flexibility. (1)

RESPONSE: The Department appreciates the support for the amendments. The Department feels flexibility is an important element of environmental regulation.

5. COMMENT: The Department should be commended for its efforts in reducing the amounts of ozone people are exposed to in New Jersey every day. Ozone is of special concern because of the extreme health consequences from the daily exposure to it. Ozone is responsible for causing heart and lung disease and, in addition, on high ozone days, asthma sufferers are sent to New Jersey emergency rooms seven to nine times more frequently. Ozone disproportionately affects society's most vulnerable people, the elderly and the very young. (14).

RESPONSE: The Department thanks the commenter for its support. The health effects of high ozone concentrations on the public is the primary motivation behind the Clean Air Act Amendments of 1990 (CAAA) and behind State regulation in response to these Amendments.

6. COMMENT: The 1991 Energy Master Plan stated a goal for the State that by the year 2000 25 percent of current capacity would be replaced with energy efficiency. The State is nowhere near that goal and is barely moving towards it. This is exactly the type of regulation which could move the State in that direction. So far it does not. (17)

RESPONSE: The purpose of these amendments is to provide options and flexibility for owners and operators of affected sources to comply with the NO_x RACT rule in response to comments received on the initial NO_x RACT proposal, which was mandated by the 1990 CAAA. These amendments do not address sources of energy. While the Department works closely with the Board of Public Utilities (BPU), it has limited jurisdiction beyond existing environmental regulations to influence the types of planning decisions made by utilities. The utilities are required to file with the BPU a 20-year Integrated Resource Plan (IRP) which considers the impacts of various resource options on, among other things, environmental quality.

7. COMMENT: Over the last year and a half, the Department has accomplished much, in concert with governmental, environmental, and industry interests, to develop and implement a cost-effective compliance driven trading system. There is still much to be done: both legislatively, to establish the foundation of an unrestricted trading system in New Jersey and throughout the Northeast and from a regulatory standpoint, to implement a workable system along the lines of the acid rain allowance program. (13)

RESPONSE: The Department agrees that much has been accomplished, yet much remains to be done in the near future to implement an emissions allowance trading system. The Department is working with other member states of Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid Atlantic Region Air Management Association (MARAMA) to develop a regional trading system. The regulated community, as well as other members of the public, will be encouraged to participate with the Department in the effort to develop this trading system.

8. COMMENT: The Department has struck an excellent balance to make sure that the Title I issues will be met on NO_x RACT, yet not making it unreasonable for industry to have to comply. (2)

RESPONSE: The Department appreciates the support. The main purpose of the amendments is to provide options and flexibility for owners and operators of sources affected by the NO_x RACT rule in response to public comment.

9. COMMENT: DEP should be commended for working with industry to make the proposed NO_x rule more flexible for the refining industry in New Jersey. It reflects a commonsense approach that reduces NO_x emissions and contributes to cleaner air while providing flexibility to industry to achieve a cost effective NO_x reduction. A flexible cost-effective approach allows regulations to fit the way businesses actually work and provides the basis for a more level playing field while achieving real results for the environment. (10)

RESPONSE: The Department appreciates the support and is committed to facilitating participation by all stakeholders in rule development.

10. COMMENT: The State must continue to consider the regional nature of the NO_x problem. New Jersey is part of a broader region whose air transport alone puts New Jersey in nonattainment of the National Ambient Air Quality Standard (NAAQS) for ozone. If every NO_x source in New Jersey were shut down,the State would still be out of attainment; and New Jersey has tighter controls than its neighbors.

DEP should insist on a regionwide standard and vigorously oppose the Pennsylvania DER plan that allows for less stringent NO_x controls in western Pennsylvania while calling for more stringent controls here in New Jersey. This is a competitive issue as well as an environmental one.

By implementing a regionwide NO_x standard, government and industry has a chance to implement a practical, commonsense approach to an emissions trading and credit program that would be cost effective and environmentally beneficial. Failure to do this further jeopardizes the economic life of the northeast as it competes for jobs with other regions of the country and world. (10)

RESPONSE: In September, the Department signed a Memorandum of Understanding with 10 Ozone Transport Region (OTR) states that commits New Jersey to the development of a regional strategy concerning the control of stationary source nitrogen oxide emissions (a NO_x Phase II strategy). Pennsylvania is a part of this agreement also. The agreement defines three air transport zones: a Northern Zone, an Inner Zone and an Outer Zone. The Northern Zone consists of Maine, Vermont, New Hampshire and the northern part of New York State. The Inner Zone consists of a number of states roughly the equivalent of the "Amtrak Northeast Corridor" area. The Outer Zone consists of western Pennsylvania, southwestern New York State and parts of Delaware and Maryland. Under the agreement, the states agree to propose regulations that require subject sources (250 million BTU heat input rate or greater) in an Outer Zone to reduce their rate of NO_x emissions by 55 percent from base year levels by May 1, 1999, or to emit NO_x at a rate no greater than 0.2 pounds per million BTU. Sources in the Inner Zone would be required to reduce their rate of NO_x emissions by 65 percent from base year levels by May 1, 1999, or to emit NO_x at a rate no greater than 0.2 pounds per million BTU. Sources in both the Inner and the Outer Zone would be required to reduce their rate of NO_x emissions by 75 percent from base year levels by May 1, 2003, or to emit NO_x at a rate no greater than 0.15 pounds per million BTU.

Since both the Inner and Outer Zones are required to implement the same level of control by 2003, the Department does not feel this strategy will unduly prejudice one state against another. The Department has been working with other states in the OTR to develop model rule language to allow interstate emissions trading and consistency among states.

11. COMMENT: The commenter supports DEP's efforts to control NO_x and the overall initiative to meet the clean air requirements imposed on the State of New Jersey. (19)

RESPONSE: The Department appreciates the support.

12. COMMENT: The proposed amendments should be revised to allow a regulated entity to resubmit its previously submitted NO_x reduction plan until 60 days after the effective date of the proposed amendments. This will allow regulated entities the option of submitting a revised plan which can take into account implementation of the proposed amendments. (16)

RESPONSE: A revised NO_x Control Plan may be resubmitted to be consistent with these amendments.

13. COMMENT: Existing N.J.A.C. 7:27-19.10(e) states that, beginning in calendar year 1994, the owner or operator of a glass manufacturing furnace subject to these rules must adjust the combustion process of the furnace in accordance with N.J.A.C. 7:27-19.17 before May 1 of each calendar year. The cross-reference should be corrected to N.J.A.C. 7:27-19.16, Adjusting combustion processes.

RESPONSE: The Department has corrected this error and thanks the commenter for pointing it out.

14. COMMENT: It is important for the Department to recognize that its actions in support of cleaner air can have significant impacts on the emerging competition between independent power producers (IPPs) and utilities to develop and market electricity. IPPs provide an estimated nine percent of the electric capacity in the state. As a result, IPPs have a strong interest in these rules. The Department should consider carefully how its rules will impact the emerging marketplace in electricity such that the lowest cost and highest quality projects are promoted by New Jersey regulators and utilities alike. The current draft rules and rule amendments do not recognize even the potential existence of non-utility alternatives to so-called "repowering" or "fuel switching" projects and the rightful reason the rules should be reconsidered and modified appropriately. (9)

RESPONSE: The Department did not intend to exclude the purchase of heat or power from "repowering" options available to a utility. Whether future power comes from a rebuilt unit or a new electric generating source, NO_x emissions will be reduced relative to older more polluting units. The Department has modified the definition of "repowering" at N.J.A.C. 7:27-19.1 and has also made minor modifications to N.J.A.C. 7:27-19.21 to reflect both "repowering" options. In both cases, the Department will allow an interim RACT limit above those specified in N.J.A.C. 7:27-19 in return for the commitment to obtain much cleaner energy by 1999. Although the Department provides regulatory oversight in terms of air pollution control criteria for proposed facilities the analysis of possible alternatives to a proposed facility is the jurisdiction of the Board of Public Utilities(BPU). Currently, the decision whether proposed capacity would be subject to a Certificate of Need approval (and thus require an analysis of alternatives pursuant to the Electric Facility Need Assessment Act, EFNA) is made by the BPU. Currently, when the Department receives a utility project for review, it is sent to the Director of the Division of Energy, BPU. Air pollution control permits are not issued until the Director indicates the unit is not subject to EFNA or, if it is subject to EFNA, the certificate of need is obtained.

15. COMMENT: The Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. §§13201 et seq., and the Energy Policy Act (The Act), were both designed to promote a more efficient and competitive electric supply marketplace in the nation—to the betterment of consumers, the economy and the environment alike. Such a competitive marketplace would not be—and has not been—limited to traditional electric utilities as the sole providers of electric power. Both PURPA and the Act intended that when utilities consider the source of new power generating capacity, they would look to a competitive marketplace to supply much of that power; in brief, utilities would determine (subject to overall PURPA and state guidance) whether to build or "repower" their own electric generating stations or to buy the power from IPPs (the "build or buy" choice).

As a result, it is now clear that this competitive marketplace must include competitive opportunities for non-utility power producers—notably, independent power producers (IPPs) who primarily develop qualifying facility cogeneration and small power production facilities ("qualifying facilities" or "QFs"), as defined in PURPA. If IPPs can demonstrate that their proposed QF projects will produce electricity at lower direct (economic) and indirect (environmental) cost than traditional electricity sources from utilities, then these QFs should be the power supply of choice for utilities and regulators alike. Because of New Jersey's strong policies during the 1980's in support of lower electricity costs and a better environment, QFs developed rapidly to supply New Jersey's energy needs at the lower possible rates consistent with the highest possible levels of environmental protection and energy efficiency. But in order for this determination to be made, a mechanism must be in place for comparing utility projects to alternatives, such as IPP/QF units. (9)

RESPONSE: As stated above in the response to Comment 14, these decisions are currently the responsibility of the Division of Energy in BPU. When the Department receives a utility project for review, it is sent to the Director of the Division of Energy, BPU. Air pollution control permits are not issued until the Director determines the unit is not subject to EFNA or, if it is subject to EFNA, the certificate of need is obtained. The Department, however, has clarified the definition of "repowering" and clarified the language of N.J.A.C. 7:27-19.21, to clarify that a unit which plans to shutdown by 1999 and purchase power from a new source may do so under the repowering provisions of N.J.A.C. 7:27-19. This option is currently available through the existing N.J.A.C. 7:27-19.13, Facility- specific NO_x emission limits under which a facility may seek approval of a facility- specific NO_x control plan. These modifications on adoption clarify this option is available.

16. COMMENT: The commenter is supportive of the provisions which allow extensions for those in the regulated community which intend to either use innovative control technology and repowering or existing sources to comply with the rule.

RESPONSE: The Department appreciates the support for the amendments.

N.J.A.C. 7:27-19.1 Definitions

17. COMMENT: The requirement in the proposed definition of "repowering" that a new combustion source have a "maximum gross heat output rate" that is at least 50 percent of the maximum gross heat output rate of the combustion source it replaces is overly restrictive and should be removed. The Department should not dictate the size of replacement units. Any replacement unit, regardless of its size, must incorporate "advances in the art of air pollution" pursuant to N.J.A.C. 7:27- 8.6(b). Therefore, if the new unit is smaller than the existing unit, its air contaminant emissions, including NO_x emissions, will be significantly lower than those of the existing unit. A new unit that is smaller than 50 percent of the size of existing units will simply have even lower air contaminant emissions compared to the existing unit. From a practical standpoint, it does not make sense for the Department to reject a repowering plan simply because the new unit is less than 50 percent of the size of the existing unit. (1)

RESPONSE: The Department's intention is to allow a later compliance date beyond May 31, 1995, for facilities that are repowering a combustion source (that is a substantial replacement of older equipment with high emission potential) and not merely modifying an existing unit. During the interim period until the repowering, the unit need not be modified with control technology in return for the commitment to repower.

The replacement requirement of "50 percent of the maximum gross heat output rate" was chosen as a point which represents a substantial modification and thus a substantial potential to reduce emissions. The Department seeks to encourage repowering projects that are of a magnitude that will maximize the significant environmental benefit of repowering.

The Department feels this definition is consistent with "repowering" as defined in section 402 of the Clean Air Act (CAA) which states repowering generally means the replacement of an existing boiler with a technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. This definition clearly contemplates a major overhaul of at least a 50 percent replacement of the maximum gross heat output and power rate of the combustion source.

18. COMMENT: The Department should allow the selection of a "base year" for fuel switching other than 1990, and that any year prior to 1990 or after 1990 could be used as a "base year" if sufficient documentation and justification are provided to demonstrate a representative year. (1)

19. COMMENT: The proposed definition of "base year" is too restrictive because it specifies 1990 as the base year for calculating emission rate for fuel switching and allows the use of 1991, 1992, or 1993 as an alternative only if one of these years is more representative of normal operations. Extended outages or other operating considerations, such as the voluntary burning of natural gas instead of coal or oil to reduce emissions of nitrogen oxides (NO_x), may make the years 1990 through 1993 not representative and therefore unsuitable for selection as the base year. As a result, fuel switching may be precluded even when it is an otherwise viable cost-effective means of compliance for a unit. Therefore, the Department should allow the selection of a base year prior to 1990, if it is more representative of normal operations than 1990 through 1993. (1)

RESPONSE: In order to ensure reductions, it is necessary to limit the time period from which alternative base years may be selected. The calendar year 1990 is a benchmark for many of the CAAA mandates since many CAAA requirements (such as reasonable further progress) stem from this date. States are required to develop a comprehensive 1990 emissions inventory. The most accurate information is available for calendar year 1990. The Department believes that allowing exceptions to the 1990 base year for extraordinary circumstances where calendar year 1991, 1992, or 1993 is demonstrated to be more representative of historic actual operating conditions is sufficient accommodation for those

units that did not experience an average year in 1990. This requirement is consistent with EPA's July 30, 1993 memo authored by Michael Shapiro on "Fuel Switching to Meet RACT Requirements for NO_x". Presumably, those units which switched to natural gas prior to 1990 received economic benefits from the switch.

20. COMMENT: The Department should provide additional flexibility in determining the "peak daily heat input rate" of a unit. The units in an electric utility generating system operate in a coordinated manner, and their operation is constrained by unit availability, cost, and customer demand. Utilities are required by law to maintain a margin of excess generating capacity, and even on the highest electric demand days, all units in a system may not operate simultaneously. Therefore, an averaging demonstration which assumes all units operate simultaneously at their maximum capacities is unrealistic. Typically, this type of analysis is not representative of system operations and, in some instances, may be impossible to achieve. Allowing owners or operators to evaluate the five days in which the heat input to the entire designated set was the highest provides a much more realistic description of the way an electric utility generating system operates.

Some adjustments of peak daily heat input rates may be necessary to account for changes in the designated set which will have a direct effect on the way in which owners and operators, especially electric utilities, operate each unit. For example, over the last five years, several major projects have been undertaken involving the retirement and/or modification of existing fuel combustion equipment. The overall effect of these projects has been a significant reduction in air contaminant, particularly NO_x, emissions. Also the new units are more efficient than the units they replaced, meaning that the new units are likely to be dispatched sooner and operated more frequently that the units they replaced. Therefore, the "average" maximum daily capacity factors for the new units are expected to be higher than the "average" maximum daily capacity factors of the retired units. In addition, operating the newer more efficient units means that less efficient, typically higher NO_x emitting units will operate less than they have historically. The peak daily heat inputs of individual units should be allowed to be "adjusted" or "re-allocated" to account for changes in equipment in a designated set as well as the effect these changes will have on system operations. This would establish realistic, but still very conservative values for peak daily heat input rates. (1)

RESPONSE: The Department recognizes that the assumption that all averaging units operate simultaneously at their maximum capacities may not be a realistic event for all facilities. Therefore, N.J.A.C. 7:27-19.6 has been revised to include the option to base the averaging demonstration on the peak daily heat input rate of the designated set.

If new units are replacing older units in a designated set, a new emissions averaging plan can be submitted to the Department.

21. COMMENT: The commenter objects to the definition of "repowering" because it does not confine a utility "repowering" to one site but allows repowering to be on any site within the State of New Jersey so long as the site is controlled by the same owner. That may be problematic in that the only potential entities which can avail themselves of the opportunity to call a retirement on Site A and new facility on Site B a repowering are probably electric utilities. Moreover, utilities do not have a steam or process heat load which they must service by locating a cogenerator close to a given industrial location.

Utilities would, just by the nature of their business (compared with the nature of the independent power business), in all likelihood be the only ones who could avail themselves of the incentives under the rule and, therefore, they could obtain an unfair competitive advantage over IPP/QF sources—not because of their ingenuity, their cost effectiveness, but simply because of the way these rules are drafted. Arguably, this problem could be remedied by modifying the rule to permit a utility to achieve compliance by off-site utility-owned or utility-contracted capacity (that is, IPP projects under contract to supply bulk power to a New Jersey utility). But this hypothetical remedy would still not address several concerns, for example, some IPP cogenerators do not sell capacity to New Jersey utilities or they may displace utility power consumption on-site or they may sell to utilities in other states. Such cogenerators could not participate under the rule, even if so amended. Moreover, utilities retain such a strong self-interest in doing their own repowering projects—which allow them to redeploy depreciated assets (old power plant sites) to obtain major infusions of revenue—that even such regulatory "even- handedness" would not be likely to tip the scales toward even-handed consideration by utilities of the IPP option. (9)

RESPONSE: While the effect of the repowering definition may not be beneficial for electric generating units that are not located on more than one site, the intent is to provide a realistic approach to decision-making for a current system where owners and operators require geographic flexibility for repowering projects. The Department seeks to decrease NO_x emissions in the State as a whole.

The Department has, however, modified the definition of "repowering." See the responses to Comments 14 and 15 above.

The repowering provisions provide for delayed compliance with NO_x RACT requirements, provided an interim less stringent RACT limit is complied with. However, there are other compliance options in the rules. The facility-specific emission limit provisions specified in N.J.A.C. 7:27-19.13 would allow a utility that would shut down a unit by May 1999 to seek an alternative emission limit, without committing to repowering.

22. COMMENT: From a marketplace point of view, the retirement and replacement of a unit should be viewed as two separate decision points. If a utility decides to retire a power plant to meet Clean Air Act requirements or because the unit simply is getting antiquated, that is one decision. What replaces that capacity should be another decision. As to whether the replacement will be provided by a utility or a non-utility, both should be starting from the same point with respect to the stringency of the environmental requirements that will be imposed. (19)

RESPONSE: The Department has no role in the analysis of alternatives to proposed facilities other than to set the air pollution control requirements which must be met by any subject facility. Currently, when the Department receives a utility project for review, it is sent to the Board of Public Utilities (BPU). Air pollution control permits are not issued until BPU indicates the unit is not subject to EFNA or, if it is subject to EFNA, the certificate of need is obtained.

N.J.A.C. 7:27-19.2 Purpose, scope and applicability

23. COMMENT: At present the rule does not exempt sources at facilities where the facility's potential to emit is greater than or equal to 25 tons per year and 137 pounds per calendar day. This language seems to include every source present at a facility including sources that are non-continuous in nature. This would mean that batch type sources would not be exempt if operated at a site that has the potential to emit greater than the 137 pounds per day of NO_x. For example, a reactor that emits 100 pounds of NO_x for approximately one hour per year would be subject to NO_x RACT requirements. Regulating small quantity NO_x emitting sources will not significantly impact the overall reduction of NO_x emissions from New Jersey and will be unproductive from a regulatory standpoint. Also add-on control devices for NO_x emissions from non-continuous sources would be extremely expensive and an unreasonable economic burden to the regulated community. Language should be added to the rule that would exempt individual sources that emit less than a certain number of tons of NO_x per year. This would apply even if the site-wide NO_x emissions are greater than 25 tons per year. (6)

RESPONSE: The rules include provisions to address these types of sources. Sources that are located in major facilities and that have the potential to emit 137 pounds per day, but have the potential to emit only minimal NO_x emissions per year may file for an alternative emission limit pursuant to N.J.A.C. 7:27-19.13 to avoid installation of air pollution control devices. These sources would have to limit the annual potential to emit through enforceable permit conditions and demonstrate that the cost of compliance with the rule emission limits would exceed costs that could be considered RACT.

24. COMMENT: The commenter objects to the lengthening of the ozone season by 14 days by starting it on May 1 instead of May 15. The costs associated with the additional 14 days in which sources must comply with these rules significantly exceeds any environmental benefits that may be achieved. (13)

25. COMMENT: In the summary of the proposed rules (26 N.J.R. 3300), the Department indicates that under the existing rules, the ozone season runs from May 1 through September 30 of each year and that under the proposed new rules the ozone season will end on September 15. This statement makes itappear that the Department has proposed to reduce the length of the ozone season by 15 days. Although this may be true for units that use fuel switching to comply with the rule, this is not true for all other units. In fact, the Department has proposed to lengthen the ozone season for all other units by 14 days by starting it on May 1 instead of May 15. This change was not discussed or explained in the Summary.

An example of this lengthening of the ozone season occurs in the proposed N.J.A.C. 7:27-19.6(f)(1). Units which are included in a NO_x emissions averaging plan must now comply with calendar day average NO_x emission limits instead of a 30-day rolling average limits, for an additional 14 days. Complying with a calendar day average is much more difficult than complying with a 30-day average because it imposes daily, rather than monthly, operating restrictions on a unit or units. Because these restrictions can have a substantial negative impact on operating flexibility, and increase compliance costs without significant environmental benefit, the ozone season should be consistent throughout the entire rule and be defined as the period from May 15 through September 15. (13)

RESPONSE: The commenter is correct in stating that, for some units, the ozone compliance season is lengthened by 14 days. When the NO_x RACT rules were first adopted (see 25 N.J.R.5957(a)), two different time periods were used to denote the ozone season. In N.J.A.C. 7:27-19.2, Purpose, scope and applicability, and in N.J.A.C. 7:27-19.6, Emissions averaging, the ozone season was defined as May 15 through September 15. In N.J.A.C. 7:27-19-4, Utility boilers, the ozone season for fuel switching for coal-fired, wet-bottom utility boilers was defined as May 1 through September 30. These amendments make the ozone season consistent throughout the subchapter, May 1 through September 15, which does shorten by 15 days the time period for fuel switching for coal-fired, wet-bottom utility boilers. This is the same ozone season for fuel switching as established by New York State, and is 15 days less than the ozone season established by Massachusetts, Rhode Island, Connecticut and Maine (May 1 through September 30) and 45 days less than the ozone season for fuel switching as defined in Delaware and Maryland.

The Department feels it is important to have only one ozone season definition in the subchapter. May 1 through September 15 is reasonable based on historical data for ozone exceedances and, as pointed out above is not inconsistent with neighboring Northeast and Midatlantic states. The Department believes that May 1 is the appropriate starting time for the ozone season, since, in 1993, two exceedances of the ozone NAAQS occurred between May 1 and May 15.

The Department may impose a five month ozone season in future rulemaking to implement NO_x Phase II reductions as required by the September 27, 1994 Ozone Transport Commission (OTC) Memorandum of Understanding (MOU) on development of a regional strategy concerning the control of stationary source NO_x emissions.

N.J.A.C. 7:27-19.4 Utility boilers

26. COMMENT: Footnote 1 in Table 1 should be removed because it no longer applies. The emission limits which apply to coal wet-bottom face-fired or tangential-fired boilers complying through fuel switching are now contained in proposed N.J.A.C. 7:27-19.20(g)3, (g)4 and (g)5. (13)

RESPONSE: The commenter is correct. The footnote has been deleted on adoption.

N.J.A.C. 7:27-19.6 Emissions averaging

27. COMMENT: The second sentence of N.J.A.C. 7:27-19.6(b)6ii should read: "The peak allowable emissions for each averaging unit equals the applicable NO_x emission limit set forth in ..."It appears that the underlined phrase was inadvertently omitted from the text of the amendments. (13)

RESPONSE: The commenter is correct. The omitted words, which appear in the existing rule, have been restored on adoption.

28. COMMENT: The third sentence of N.J.A.C. 7:27-19.6(b)6ii should be revised as follows:

"For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27-19.20, the peak allowable applicable NO_x emission limit from May 1 through September 15 is the limit established under N.J.A.C. 7:27-19.20(d) or 19.20(g)3 as applicable, and the peak allowable applicable NO_x emission limit from September 16 through April 30 is the limit established under N.J.A.C. 7:27-19.20(g)4."

The reference to N.J.A.C. 7:27-19.20(g)3 is needed because N.J.A.C. 7:27-19.20(d) does not address the applicable NO_x emission limit for coal wet-bottom face-fired or tangential-fired utility boilers; the applicable NO_x emission limits for these boilers are addressed in N.J.A.C. 7:27-19.20(g)3. The other changes make the language consistent with the existing rule and with proposed in N.J.A.C. 7:27-19.6(d)2ii. (13)

RESPONSE: The Department concurs and has made the suggested revisions on adoption.

29. COMMENT: The second sentence of proposed N.J.A.C. 7:27-19.6(f)2 should be revised as follows:

"The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire 30-day period. The owner or operator shall perform the calculations and make a record of them by the 15th day of each month, for all 30-day periods ending in the proceeding month."

The underlined portion is in the existing rule but seems to have been inadvertently omitted from the proposed amendments. (13)

RESPONSE: The commenter is correct. The omitted language has been restored to the rule on adoption.

N.J.A.C. 7:27-19.7 Non-utility boilers and other indirect heat exchangers

30. COMMENT: The commenters support the proposal to add refinery fuel gas as a separate fuel source in N.J.A.C. 7:27-19.7. Refinery fuel gas is a significant by-product of the refining process and its reuse as a fuel is necessary both environmentally and economically. The commenters support the 0.2 lbs NO_x/MMBTU limit for all refinery heaters greater than 50 MMBTU/hr. The technical reasons for this include variations in fuel composition from a process produced fuel which varies in hydrogen and hydrocarbon content. These normal fuel variations are caused by changes in crude oil type, daily unit operation and market driven product needs. (3) (10)

RESPONSE: The Department learned of the need for a refinery gas fuel category from the workgroup and discussions with the petroleum industry during the development of the proposal. This is an example of how a cooperative effort between industry and the Department can result in regulations which appropriately reflect actual conditions and achieve better environmental protection.

31. COMMENT: The expansion of the non-utility boiler section to include indirect heat exchangers is appropriate. (2)

The inclusion of other indirect heat exchangers, such as process heaters, will allow owners or operators of such equipment to avoid the time consuming and resource intensive process of performing the facility-specific NO_x control analyses required by N.J.A.C. 7:27-19.13. (13)

RESPONSE: The Department supports the standardization of compliance requirements, where possible, to provide certainty to the regulated community and to avoid costly and time consuming case-by-case analyses.

32. COMMENT: The commenter is concerned about the requirement in N.J.A.C. 7:27-19.7 which requires continuous emissions monitors (CEMs) for non-utility boilers and other indirect heat exchangers which vary in size between 20 and 50 million BTUs per hour. This requirement will impose costly CEMs on sources which are very small, and the cost associated with the installation and operation of those CEMs would be disproportionate with respect to the benefits associate with the data that these monitors would provide. CEMs should not be required, but should be one of several options which an owner/operator could use for compliance demonstrations on these sources (that is, compliance stack testing, alternative CEMs, fuel flow monitoring). This provision of the rule should be modified to require compliance demonstrations, but allow the owner/operator the flexibility to determine the most cost effective method of determining compliance. (1)

RESPONSE: CEMs are required for non-utility boilers in the 20 to 50 MMBTU per hour range only if the owner or operator chooses the compliance alternative of meeting the emission limits in Table 4. The other compliance alternative for non-utility boilers (and indirect heat exchangers) in this size category is to annually adjust the combustion process in accordance with N.J.A.C. 7:27-19.16 before May 1 of each year. In summary there are two options available for non-utility boilers in this size range: meet the limits in Table 4 using CEMs or annually adjust the combustion process and conduct stack testing.

33. COMMENT: The inclusion of duct burners in the definition of "indirect heat exchangers" may be problematic when it subjects a fuel combustion system to a more stringent NO_x emission limit than that implied in the current rule, or to two different compliance limits (that is, one limit for the source, such as a gas turbine, and another limit for the duct burner). For example, consider the case of a combined-cycle gas turbine with a heat recovery steam generator which is supplementary-fired with a duct burner. Both the gas turbine and the duct burner burn No. 2 fuel oil and exhaust through the same stack. The NO_x limit in N.J.A.C. 7:27-19.5 for an oil-fired combined cycle gas turbine is 0.35 lb/MMBTU. The proposed NO_x limit at N.J.A.C. 7:27-19.7(b) for a No. 2 fuel oil-fired duct burner is 0.12 lb/MMBTU. Therefore, the duct burner is subject to a much more stringent NO_x limit than the gas turbine. If the duct burner and gas turbine operate simultaneously and

exhaust through the same stack, it will be difficult to determine the compliance status of each piece of equipment. Combined-cycle gas turbines equipped with duct burners should be subject to the same limits as combined-cycle gas turbines without duct burners; that is, the existing limits of 0.15 pounds per million British Thermal Unit (lb/MMBtu) for gas firing and 0.35 lb/MMBtu for oil firing should apply to combined-cycle gas turbines with duct burners. (13)

RESPONSE: The applicable emission limit would be calculated from the heat inputs contributed by each piece of equipment. During stack testing, the heat inputs to the turbine and to the duct burner would be determined. Thus the appropriate RACT limit would be calculated as follows:

((turbine limit × heat input to turbine) + (duct burner limit × heat input to the duct burner)) divided by the total heat input to turbine and duct burner. This limit would be compared to the stack tested emission limit.

34. COMMENT: Proposed N.J.A.C. 7:27-19.7(d)1 should be revised to state that the requirement to annually adjust the combustion process will be applicable starting in 1995. This will clarify when owners or operators must begin combustion process adjustments.

RESPONSE: Because the amendments will become effective, at the earliest, in late May 1995, the suggested change is not necessary.

35. COMMENT: Clarification is requested for the requirement that all boilers be annually adjusted before May of each year. The implication of this requirement is that all boilers must be adjusted between January 1 and April 30 of each year. Although we understand the Department's intent to have the adjustments occur before the ozone season, this stipulation is unreasonable on two counts. First, it is often not feasible for a power plant to adequately satisfy peak winter season power demands unless all boilers are available. If one of five boilers was not operational because of mechanical difficulties and another had to be taken off-line to perform an annual adjustment during a winter cold spell, an acceptable response to site power demands would be unlikely. It is virtually impossible to adjust all site boilers between the end of the cold weather winter season and May 1. Second most boilers are tuned up and inspected annually, at some point during the calendar year. It is economically and logistically burdensome to require a separate downtime period for boilers before May 1 of each year. The most feasible, opportune and logical time in which to adjust a boiler is during its annual inspection. For these reasons, the commenter proposes that if annual adjustments are to be required for all boilers with maximum heat input values less than 250 million BTUs, that the rule only require that they be performed annually and not necessarily before May 1. (8)

RESPONSE: The Department agrees and has modified N.J.A.C. 7:27-19.7(a)1 and (d)1 on adoption to require that non-utility boilers with a maximum gross heat input rate of less than 250 million Btus per hour that must annually adjust the combustion process must do so each calendar year.

N.J.A.C. 7:27-19.13 Facility-specific NO_x emission limits

36. COMMENT: Any condition in the amendments which specifically references increases in the emissions of criteria pollutants causing or contributing to a violation of a NAAQS, PSD increment or any violation of the CAAA, is an unnecessary condition (N.J.A.C. 7:27-19.13(g)6 and 19.14(e)2). These requirements are codified elsewhere in regulation, and specific reference to these requirements in N.J.A.C. 7:27-19 is unnecessary. In any event, such evaluations of potential ambient air quality impacts should not be required unless there is a compelling reason to do so. (1)

RESPONSE: The Department will not approve a facility-specific NO_x control plan or an alternate emission limit if the approval of such will have a detrimental impact on the ambient air quality. The Department feels it is important to emphasize this requirement as a specific constraint in the conditions for approval to deviate from the emission limits or approval of an unspecified category of NO_x emitters. The Department has clarified the provision upon adoption as explained in Comment and Response 37 below.

37. COMMENT: The requirement at N.J.A.C. 7:27-19.13(g)6 generally should not include an evaluation of potential ambient air quality impacts. This language should be changed to clarify that a source is not considered to contribute to a violation of an ambient air quality standard or Prevention of Significant Deterioration ("PSD") increment unless the emission increase is a "significant net emission increase" as defined in N.J.A.C. 7:27-18. This language should be revised to be entirely consistent with the language in N.J.A.C. 7:27-19.14(e)2. Therefore, proposed N.J.A.C. 7:27-19.13(g)6 should be revised as follows:

"Any significant net emission Increases in the emissions of any criteria pollutant (as determined pursuant to N.J.A.C. 7:27-19.17 or 19.18, as applicable) will not cause or significantly contribute to an exceedance of an National Ambient Air Quality Standard, an exceedance of a Federal Prevention of Significant Deterioration increment if applicable, or any other violation of the Clean Air Act, 42 U.S.C. 7401 et seq. A significant net emission increase of any criteria pollutant, and the determination of when such an increase causes or significantly contributes to an exceedance of a National Ambient Air Quality Standard, shall be determined pursuant to N.J.A.C. 7:27-18." (13)

RESPONSE: The Department agrees it is appropriate to use the definition of "any significant net emission of any criteria pollutant" which is already defined elsewhere in the air pollution rules and has made the recommended changes on adoption at both N.J.A.C. 7:27-19.13(g)6 and 19.14(e)2.

38. COMMENT: The commenter is operating two tableware glass manufacturing furnaces which are in the category of glass manufacturing furnaces. However, in existing N.J.A.C. 7:27-19.10, only commercial container, specialty container and borosilicate recipe glass manufacturing furnaces categories are specifically addressed. In response to the commenter's written comments regarding N.J.A.C. 7:27-19.10 as proposed, the Department stated that "The owner or operator of any glass manufacturing furnace which produces tableware glass or flat glass and meets the criteria specified at N.J.A.C. 7:27-19.2(c) will be required to submit a facility-specific NO_x control plan in accordance with the provisions of N.J.A.C. 7:27-19.13". See 25 N.J.R. 5957(a).

In order to remove any ambiguity from the rules and amendments, the commenter suggests that N.J.A.C. 7:27-19.13(a)1 be modified to clarify that the glass manufacturing furnaces of the type listed in N.J.A.C. 7:27-19.10(a), (b) or (c)) are not subject to the facility-specific NO_x emissions limits of N.J.A.C. 7:27-19.13. (12)

RESPONSE: The Department does not believe the suggested change is necessary since N.J.A.C. 7:27-19.13(a)1 limits the applicability of the section to major NO_x facilities containing any source operation or item of equipment of a category not listed in N.J.A.C. 7:27-19.2(b). Since the types of glass furnaces the commenter mentions are listed in N.J.A.C. 7:27-19.2(b), they are not subject to N.J.A.C. 7:27-19.13.

N.J.A.C. 7:27-19.15 Procedures and deadlines for demonstrating compliance

39. COMMENT: Certifiable stack test results conducted in accordance with acceptable NJDEP methods for representative units would be submitted by May 31, 1996, consistent with existing N.J.A.C. 7:27-19.15(b). This emission stack testing should not be required to be completed any more frequently than every five years. If testing is required more frequently than every five years, or if testing is required for each individual unit, the environment will suffer since these units will be operated for testing during periods when they would not otherwise be operating. In some instances, the commenter's simple cycle combustion turbines would operate nearly the same number of hours for testing as they would operate under normal dispatch conditions. This would require additional expense for fuel, for testing oversight, for Department oversight of testing, for transportation, for contractors and other factors associated with such projects. (1)

RESPONSE: N.J.A.C. 7:27-19.15 (b) specifies that for any equipment or source operation which was in operation before January 1, 1995, the owner or operator shall demonstrate compliance by May 31, 1996 and thereafter at the frequency set forth in the permit for such equipment or source operation. Subchapter 19 does not require testing in addition to that required in a unit's individual permit. Frequently the testing interval specified in permits is five years.

N.J.A.C. 7:27-19.16 Adjusting combustion processes

40. COMMENT: Pursuant to N.J.A.C. 7:27-19.7(a), duct burners in the range of 20 to 50 million BTU per hour are required to annually adjust the combustion process or meet a specified emission limit. Under the procedures for such annual adjustment, N.J.A.C. 7:27-19.16(a)3, the owner or operator must inspect the system controlling the air-to-fuel ratio and ensure that it is correctly calibrated and functioning properly. It is not clear how to do this for a system where an exhaust gas stream comes out of a turbine into a duct burner. For duct burners in this size range, only the inspections described in N.J.A.C. 7:27-19.16(a)1 and 2 should be required. (2)

RESPONSE: The objective of annual adjustments is to correct gross misalignment of the duct burner. If the duct burner operates only when the turbine is operating, and there is no combustion air injection at the

duct burner (that is, the fuel introduced at the duct burner combusts using the oxygen in the off gas from the turbine), then the requirement to adjust the air to fuel ratio at the duct burner would obviously not apply. If a unit has a CEM on it, the CEM readings can be used to satisfy this annual requirement.

41. COMMENT: A system that has a CEM should be exempt from annual testing tune-up requirement of N.J.A.C. 7:27-19.7(a). (2)

RESPONSE: The Department agrees that the readings from a CEM can be used to satisfy this requirement. N.J.A.C. 7:27-19.7 states a unit must perform an annual tune-up or meet the specified limits with a continuous emissions monitoring system.

N.J.A.C. 7:27-19.19 Recordkeeping and reporting

42. COMMENT: The supplemental maintenance and recordkeeping requirements of N.J.A.C. 7:27-19.19 are redundant when performed in addition to the compliance demonstration required by N.J.A.C. 7:27-19.15 and enforceable permit limits. The proposal Summary at 26 N.J.R. 3305 states that "the purpose of this requirement is to ensure that the NO_x control measures installed on such units are performing adequately." A permittee that has expended significant capital to install control equipment, that faces stiff penalties for any exceedance of permit limits and that must otherwise demonstrate compliance is already compelled to ensure that NO_x control units are performing adequately. (8)

RESPONSE: The Department has received a considerable amount of negative comment on the maintenance and recordkeeping requirements, and has modified N.J.A.C. 7:27-19.19 to minimize the amount of reporting to the Department that is required. Many of the sources affected by the reporting requirements have existing permits with specified reporting requirements. Sources which have continuous emissions monitors (CEMs) are required to submit quarterly reports that specify any violations of applicable permit conditions and regulations. The Department feels that notice of any violations of applicable emission limits is the most important information needed to determine compliance and on which to base any enforcement action. Therefore, the Department has modified the reporting requirements of N.J.A.C. 7:27-19.19 to only require violations to be regularly submitted to the Department. The same records, however, must be maintained on site and made available to the Department on request.

43. COMMENT: Any source that plans to comply with the rule using the innovative control or repowering provisions should not be subject to the same recordkeeping and reporting requirements that are proposed in the amendments. The recordkeeping and reporting requirements which apply to these sources should be determined on a case-by-case basis. (1)

RESPONSE: The recordkeeping and reporting requirements for sources which plan on repowering or using innovative technology to comply with the rule are standard and do not differ from source to source. The intent of rulemaking is to standardize requirements where appropriate, thereby streamlining the permit and approval processes and providing certainty to the regulated community. The reporting requirements of N.J.A.C. 7:27-19.19 have been modified upon adoption to require only violations to be reported on a regular basis to the Department. See the response to Comment 42 above.

44. COMMENT: The amendments require that the amount, type and higher heating value of each fuel consumed during each day be recorded. However, this requirement is overly burdensome for many facilities because the sources are located at remote, unmanned sites. Such a requirement would require sending a person to these sites daily to collect fuel samples. Daily fuel sampling and analysis of these fuels would be quite costly. This portion of the amendments should be changed to require that each shipment of fuel be sampled, and the pertinent information from the analysis be recorded for that shipment. The results of this analysis would provide data that would be representative of the fuel consumed. The commenter questions the need to even collect and record this data since compliance demonstrations using either stack testing or CEMs are also required. (1)

RESPONSE: There is no need to sample each shipment of fuel. The amount, type and higher heating value of each fuel must be recorded. The heating value of fuel, if not known, can be estimated or based on historical data.

45. COMMENT: The recordkeeping and reporting requirements proposed in the amendments specify many records that must be maintained. In many cases, the permits for a facility often require this data to be maintained, but at a different frequency than specified in the amendments. (1)

46. COMMENT: A source which is complying with the rule through fuel switching will be subject to additional recordkeeping and reporting requirements which are not necessary. If the source already has a Certificate to Operate, it must not only comply with the recordkeeping and reporting requirements of the Certificate, but also separately record its daily NO_x emissions during the ozone season and its 30-day average NO_x emissions during each day of the non-ozone season. The source must also file two reports annually, summarizing its compliance with the limits in the rule. An additional statement must be included annually related to compliance with the newly added annual NO_x emission limits. Thus, the Department could be notified of an exceedance immediately, within two days, within three days, within 30 days, quarterly, semi-annually and annually. This amount of recordkeeping and reporting is excessive. Instead of specifically setting forth the reporting and recordkeeping methodology in the proposed amendments to the rule, each fuel switching plan should include a reporting section and a recordkeeping section which are consistent with the source's applicable permits. This will allow the Department's enforcement needs to be satisfied and minimize the cost to the regulated community. (13)

47. COMMENT: The requirement to submit reports on October 30 and March 1 concerning compliance status conflicts with many current practices and permits. Many sources which are currently permitted in New Jersey must also submit quarterly excess emissions reports to the Regional Enforcement Offices which detail any periods of non-compliance for the previous quarter. Additionally, many permits also require that any excess emissions be reported to the Department via the Hotline, and that the exceedance must be explained in writing within a predefined time period following the exceedance (usually two or three days). Therefore, the information required by these amendments is already being tracked, but on a different reporting schedule. The Department also receives much of the required data through the Emissions Statement Program, and these additional reporting requirements impose other deadlines for submission of data which has already been submitted to the Department. Periods of non-compliance with any portion of the rule be reported to the Department through channels currently in place. These additional reporting requirements are unnecessary. (1)

48. COMMENT: All reporting and recordkeeping requirements need to be streamlined so that data is submitted to the Department only once by the regulated community. Additionally, all data required to be collected should be consistent with existing permit conditions. This section of the amendments should either be removed or rewritten to specify that any existing permit conditions concerning reporting and recordkeeping supersede the requirements of this regulation. (1)

49. COMMENT: Certificates to Operate typically require three-day written notice of an emission exceedance and submission of a quarterly excess emission report. In some instances, an exceedance also requires immediate notification to the Department. If an affirmative defense is sought, the source must also notify the Department within two days and file a written report of an exceedance within 30 days. In total, the Department must be notified of a single exceedance in five separate ways. Consistency and minimization of reporting and recordkeeping are particularly important for major facilities which will be subject to the operating permits rules at N.J.A.C. 7:27-22. All these programs will contain additional, and often redundant, reporting requirements. (13)

RESPONSE: The Department agrees that some of the proposed reporting requirements would be redundant of existing permit conditions and has modified the reporting requirements of N.J.A.C. 7:27-19.19 to require only violations be regularly reported to the Department. See the response to Comment 42 above. All records, however, must still be maintained on site and available to the Department upon request.

Requirements for recording fuel switching may change in the future when the Department promulgates regulations for Phase II NO_x control, which may be based on an ozone season compliance period, rather than a 24-hour ozone season day basis.

50. COMMENT: The amendments require that a permanently bound log book containing the pertinent information be maintained on site. This condition should be revised to reflect that the information must be readily available either through electronic media (that is, the corporate mainframe which can be accessed at all sites) or in the corporate office. It is not uncommon that the persons responsible for maintaining such documentation are not the same as the persons responsible for operation and maintenance of the facility. (1)

RESPONSE: The Department agrees and has modified proposed N.J.A.C. 7:27-19.19(e) on adoption to allow the alternative of electronic

recordkeeping since such a method will serve the Department's regulatory needs equally well.

51. COMMENT: The amendments require specific documents to be submitted to the Department within 30 days after the effective date of the rule, and has included language regarding applications which are submitted later than 30 days. Additional language should be added to the amendments which allows previously submitted applications for use of innovative control technology or repowering to satisfy the submission deadlines.

RESPONSE: The Department agrees that previously submitted applications should be allowed to fulfill the requirements of N.J.A.C. 7:27-19.21 and 19.23 but does not believe necessary to expressly state such in the rule. Thirty days after the effective date of the rule is a maximum amount of time for such submittals.

52. COMMENT: The proposed amendments to the rule significantly expand its recordkeeping and reporting requirements, particularly for sources which plan to comply with the rule through fuel switching. Although recordkeeping and reporting is understandable as a part of the Department's enforcement requirements, these requirements must be balanced with the operational needs of the regulated community. Recordkeeping and reporting require a great deal of time, effort and cost, often without any attendant environmental benefit. Only the minimum necessary recordkeeping and reporting should be required and such recordkeeping should be consistent throughout New Jersey's Air Pollution Control Program. (13)

RESPONSE: The Department has modified N.J.A.C. 7:27-19.19 to minimize the amount of reporting to the Department that is required. While the same records must be maintained on site and made available to the Department on request, only violations must be routinely be reported to the Department. See the response to Comment 42.

53. COMMENT: With respect to recordkeeping and reporting, the requirement to "deliver (as opposed to send)" certain written notices to the Department was briefly addressed by the commenter at the public hearing, and it warrants additional clarification in writing. The requirement to deliver (as opposed to send) requires the regulated community to drive a vehicle some distance to provide a document to the Department. Such a delivery would be time consuming and costly for the regulated community due to vehicle costs, lost productivity costs, etc. The delivery of documents also encourages the use of single occupancy vehicles. Any requirements to deliver (as opposed to send) should throughout these amendments (and the entire regulation) be revised to require submission of those documents either through the use of an overnight delivery service or submission via fax machine. (1)

RESPONSE: The Department agrees that requiring the "delivery" of notice of noncompliance to the Department would be unnecessarily burdensome. Accordingly, N.J.A.C. 7:27-19.19(i) has been modified on adoption to provide that the owner or operator is required only to keep records on site available for inspection by request of the Department. In the case of a MEG alert, N.J.A.C. 7:27-19.24, the owner or operator is not required to "deliver" notice to the Department but onlly send notification. These changes will meet the Department's needs to have adequate documentation with a minimum of inconvenience to the regulated facilities' owners and operators.

54. COMMENT: For the first time in the New Jersey Air Pollution Control Program, the Department is referencing "the individual responsible for recordkeeping and recording" and requiring that such an individual's name be included in various NO_x RACT filings. Pursuant to the requirements of the Clean Air Act amendments, the Title V operating permits will require the "responsible official" to file any reports. New Jersey's Certificate to Operate rules require that the highest ranking individual with overall responsibility and direct knowledge, file reports with the Department. N.J.A.C. 7:27-19 specifies an additional, different individual whose name must be included on the reports. First, the inclusion of a third individual in the reporting process is objectionable. Secondly, it should be noted that often the person responsible for recordkeeping and reporting are not the same person. The Department should be consistent in its use of terminology and the imposition of reporting requirements throughout its Air Pollution Control Program. (13)

RESPONSE: The Department agrees that the certification required should be consistent with other requirements in the Air Pollution Control Act rules, and has modified the certification requirement to reference N.J.A.C. 7:27-1.39.

N.J.A.C. 7:27-19.20 Fuel switching

55. COMMENT: Explicit in the proposal is the statement that natural gas is cleaner than oil. However, nowhere does it state the fact that natural gas emits high levels of methane which is a powerful greenhouse gas that contributes to global warming. (5)

RESPONSE: Natural gas used as a fuel emits less NO_x than coal or oil per unit of heat input. The use of natural gas is encouraged as a strategy to reduce NO_x emissions during the ozone season (May 1 through September 15) and thus reduce the formation of ground-level ozone. The commenter is correct, however, that methane, the major component of natural gas, is a greenhouse gas which contributes to global warming, second in importance only to carbon dioxide. While New Jersey is required by the Clean Air Act section 182(b) to implement Reasonably Available Control Technology (RACT) measures to reduce the emissions of NO_x, no mandatory legislative measures to reduce methane have been passed by the Federal or State legislatures. The Department is, however, concerned that its regulations do not contribute to one environmental problem (global warming) in an attempt to solve another one (the ozone problem). The Department's intent is not to encourage the use of one fuel over another but rather to provide opportunities to reduce NO_x emissions by allowing units for which fuel switching is advantageous to do so. The regulation does not mandate the use of any particular fuel but merely provides the necessary procedures should an owner or operator desire to fuel switch to comply with the NO_x RACT requirement.

56. COMMENT: The proposed rule should be revised to reflect that the emission rate calculations described in proposed N.J.A.C. 7:27-19.20(d)4 through (d)7 do not have to be performed for coal wet-bottom face-fired or tangential-fired boilers. Coal wet-bottom face-fired or tangential-fired boilers are subject to specified calendar day, 30-day, and calendar year average NO_x emission limits in proposed N.J.A.C. 7:27-19.20(g)3 through (g)5. The calculations in proposed N.J.A.C. 7:27-19.20(d)4 through (d)7 are not used to determine NO_x emission limits for coal wet-bottom face-fired or tangential-fired boilers. (13)

RESPONSE: The Department agrees with this comment for the reason stated and has added appropriate language at N.J.A.C. 7:27-19.20(d).

57. COMMENT: The proposed methods for determining applicable calendar day, 30-day, and calendar year NO_x emission rates for units that fuel switch are inappropriate and an extreme disincentive to fuel switching, and must be revised. New Jersey industry and utility customers may be adversely impacted by their stringency. (13)

RESPONSE: Because fuel switching allows the primary fuel rate to be met on an annual basis, it is important to calculate and document what the actual NO_x emissions are during the ozone season on a daily basis and otherwise on a 30-day basis. These recordkeeping and reporting requirements may change in the future when the Department promulgates regulations implementing Phase II NO_x controls which may be based on an ozone season compliance period as opposed to a 24-hour calendar day basis.

58. COMMENT: The proposed 30-day average non-ozone season NO_x emission limit of 1.5 lb/MMBtu in N.J.A.C. 7:27-19.20(g)4 is too stringent for coal wet-bottom face-fired or tangential-fired boilers. The non-ozone season NO_x emission limit for boilers using fuel switching should be based on uncontrolled NO_x levels achievable with the primary fuel. A 1.8 lb/MMBtu limit is a more appropriate 30-day rolling average NO_x emission rate for coal wet-bottom face-fired or tangential-fired boilers when burning coal. A 30 day limit of 1.8 Lb/MMBtu provides the flexibility for compliance with the calendar year average NO_x emission rate of 1.5 lb/MMBtu specified in proposed N.J.A.C. 7:27-19.20(g)(5). (The commenter submitted a summary of hourly continuous emission monitoring data for NO_x during two typical non-ozone season days from a coal wet-bottom face-fired boiler which will be using seasonal fuel switching to comply with the rule.) (13)

RESPONSE: The rate of 1.5 lb/MMBtu is already at the high end of the range for boilers of this type throughout the country. Recent information indicates that even lower rates than 1.5 lb/MMBtu can be achieved for boilers of this type with Selective Non Catalytic Reduction (SNCR) and the costs are comparable to other costs incurred to meet RACT requirements. Consequently, the Department has not made the requested change to the standard.

59. COMMENT: The proposed limit on annual NO_x emissions specified in N.J.A.C. 7:27-19.20(i)3, (j), and (k) is unnecessary and redundant, and should be removed. Under proposed N.J.A.C. 7:27-19.20(g)3 through(g)5, each unit already will be subject to calendar

day, 30-day, and calendar year NO_x emission limits expressed in pounds, on the unit. If a unit is not in compliance with the calendar year average lb/MMBtu NO_x emission limit in N.J.A.C. 7:27-19.20(g)5, there is no need to impose an annual NO_x emission limit, expressed in pounds, on the unit. If a unit is not in compliance with the calendar year average lb/MMBtu NO_x emission limit, it would be a violation of N.J.A.C. 7:27-19.20(g)5; there is not need to put the unit in "double jeopardy" by requiring owners or operators to perform unnecessary annual NO_x emission calculations and making it a violation if these calculations are not maintained. Therefore, proposed N.J.A.C. 7:27-19.20(i)3, (j), and (k) should be deleted. (13)

RESPONSE: The Department feels these constraints on units that elect to meet the RACT requirements through fuel switching are necessary at this time. In addition to knowing the various rates for different time intervals (daily, 30-day and calendar year), the Department is interested in the total amount of NO_x emissions of a source that is fuel switching (the rate multiplied by the fuel usage). This information is necessary to demonstrate to EPA that allowing a unit to fuel switch provides at least as much emission reductions as implementing a RACT limit on an annual basis. This information is currently being reported in the annual Emissions Statement that a major source must submit to the Department. Fuel switching requirements may change in the future when the Department promulgates regulations for Phase II NO_x control which may be based on an ozone season compliance period, rather than a 24-hour daily basis.

60. COMMENT: Expanding the seasonal fuel switch provisions to all industries is positive in that it will enable more facilities to cost effectively comply with the regulations. More importantly, this flexibility will allow more sources to reduce emissions further than they would have achieved without this option. (17)

RESPONSE: Several commenters, in response to the initially proposed NO_x RACT rules, requested that fuel switching be allowed for sources other than wet-bottom, coal-fired utility boilers. The Department agrees that this is a cost-effective means of compliance which lends flexibility and will enable sources to achieve additional reductions.

61. COMMENT: Sources should be allowed to consider other years beyond 1990 through 1993 as the base year for determining eligibility to use the fuel switch option. By allowing sources to consider other years, more facilities will be able to use this provision of the rule to demonstrate compliance.

Through work with a facility in New Jersey, two basic trends in industry have been discovered. One is that since 1990 more facilities recognize there is a concern with ozone, and more particularly during the ozone seaon. As a result more companies have used seasonal fuel switching. Secondly, pricing of fuels has been such that in the late 1980's through the 1990's, pricing of natural gas has been fairly competitive and has enabled these sources to use a competitive fuel. So for these two reasons, competitiveness of the fuel as well as emission reductions, this option has already been practiced by a number of facilities. As a result, because these facilities are already practicing fuel switching during the 1990 through 1993 period, this option is no longer available to them because they cannot demonstrate a base year in which seasonal fuel switching was not practiced. (17)

RESPONSE: In the amendments, any year from 1990 through 1993 can be used if it is demonstrated that year is more "representative." Not withstanding the fact that more facilities have been fuel switching in the last few years, the Department must establish some time period to use to determine the average weighted NO_x emission for a unit. The Department's intent is not to discriminate against those facilities that switched "early on" but rather to provide an incentive to those that have not yet switched. Presumably a facility which switched to natural gas before 1990 was motivated to do so for an economic benefit. Furthermore, the Department is constrained by EPA's guidance (which recommends the use of 1990 as a base year with allowance for later years which are more representative).

A facility which switched early on can still take advantage of the fuel switching provision by burning natural gas (or a cleaner fuel) to a greater extent for the entire ozone season.

62. COMMENT: The Department may be ignoring cleaner pollution control devices—that is, cleaner than repowering or fuel switching, as promoted in this rulemaking. As a recent study concluded, "cost-effective technology is available to support tighter restrictions on nitrogen oxides from utility power plants." According to an Energy Daily summary, "an association representing state and local air regulators said the cost of various NO_x control technologies for power plants had dropped dramatically over the last two years. As a result ... state and local regulators facing tough smog problems should look at stricter controls on utilities as a cost-effective means of getting additional NO_x reductions." The report, Controlling Nitrogen Oxides Under the Clean Air Act: A Menu of Options (July 1994), by State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), specifically found that the costs of Selective Catalytic Reduction or "SCR" have fallen significantly. William Becker, STAPPA executive director, is paraphrased as follows: "While **SCR** was estimated to cost $3,000-$5,000 per ton of NO_x removed as recently as two years ago, it now is pegged at between $1,000 and $2,000 per ton of NO_x according to the latest information. . . ." As a result, STAPPA believes that the use of SCR to retrofit utility power plants "represents a substantial decrease from current RACT limits for utility NO_x emissions in many states." In light of what is now known about the comparative costs and effectiveness of SCR, it is not clear why utilities should be excused from similar requirements. (9)

RESPONSE: It is true that the costs of NO_x control technologies have decreased dramatically in the last few years. Given the length of the rulemaking process (approximately one year to 18 months), the emission limits proposed in the initial NO_x RACT rule in January 1993 are now less expensive to achieve. The Department's approach to establishing NO_x RACT has been to establish emission rates for source categories based on the type of fuel used primarily by that source, not to dictate the type of technology that must be installed. SCR is typically required of new units. Older units, however, may not be able to install SCR because of space or hardware difficulties. The availabilities of these NO_x control technologies will be a major factor when the Department, along with other states in the Ozone Transport Region (OTR), drafts rules for NO_x Phase II, reductions required beyond RACT. The Department is concerned that all sectors, mobile and stationary sources of NO_x as well as sources of VOC, are equitably impacted by regulations for ozone attainment.

63. COMMENT: Through informal channels (telephone calls to Department officials), the commenter requested a modest extension in which to file its formal comments on this rulemaking. At least some additional time is required because (1) the transcript of the September 16, 1994, public hearing was not prepared until Thursday, September 22, 1994, less than 24 hours before written comments were due; and (2) as the utilities themselves stated in their public testimony, they would not specify the changes they sought in the proposed rulemaking during the public hearing, because they would prefer to make their comments known in writing by the date for filing such written comments. Thus, in order to know what the utilities comments are and to respond meaningfully to those proposals, such that the Department has a fuller record on which to decide whether to adopt, modify or reject the current rulemaking, additional time is needed to review both the transcripts and the utilities' written comments.

The Department faces some considerable "time pressure" from the United States Environmental Protection Administration ("USEPA") to devise new NO_x reduction rules, but such time pressure by itself should not be the basis for denying what is set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-4(a)(3): "a reasonable opportunity to submit data, views or argument orally or in writing" on the proposed rulemaking. The commenter respectfully suggests that a "reasonable opportunity" under these circumstances requires at least two weeks from the September 23 close of comment period to file its comments to address more fully the rulemaking and proposals submitted by the utilities and others. (9)

RESPONSE: The purpose of the minimum 30-day public comment period mandated by the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq, is to provide sufficient opportunity for regulated entities and other members of the public to respond to the proposed rule, not to provide commenters an opportunity to comment on other commenters' responses to the rule. The Department considers all relevant comments on its rule proposal that are submitted in a timely fashion. However, because of the already lengthy rulemaking process and the intense time pressure associated with most of the Department's rules, the public comment period is only extended under extraordinary circumstances, such as many requests from the regulated community. Typically, these requests are made at the public hearing or at least in writing to the appropriate Department personnel. The Department was thus unable to accommodate the request for two weeks additional time.

N.J.A.C. 7:27-19.21 Phased compliance—repowering

64. COMMENT: The exemptions from NO_x emissions limits for utilities that are being repowered and for polluters who are developing

innovative technology have the potential to allow the emission of a very large amount of NO_x, and to hinder progress towards clean air. Especially as more facilities reach the end of their useful lives, we should be looking for ways of replacing old capacity without burning fossil fuels at all. The proposed exemptions encourage the use of technology that will reduce emissions from fossil fuel burning plants, which is great, but they do absolutely nothing to encourage technology that moves beyond fossil fuels and eliminates NO_x entirely. (13)

RESPONSE: The Department does not dictate to utilities and others in the regulated community what type of fuel or facilities they "should be" investing in. The Department's role is to require that the appropriate air pollution control apparatus be installed (such as state-of-the-art for new facilities), regardless of fuel type, and that adequate consideration is given to other environmental issues. The exemption for innovative technology is exactly the type of provision which could encourage the elimination of NO_x entirely and encourage movement to fuels other than fossil fuels.

65. COMMENT: The Department is requesting that milestones be submitted in order to facilitate approval of innovative technology or repowering provisions. The company believes that submissions of such milestones should not be required by regulation, but rather the Department and each member of the regulated community should work cooperatively with respect to progress in these areas. Planning replacement power is an intense and long process; evaluating the amount of power needed, the best technology for obtaining that power, and optimum location of the power is a process which takes much study and is subject to change. Other factors such as economics, technological developments, and other considerations can affect schedules and milestones. By requiring milestones within the regulation, flexibility is removed and the regulated community likelihood of being able to comply is jeopardized. (1)

RESPONSE: The requirement for milestones is a very general one. The rationale for such a requirement is that some assurance is needed by the Department for sources which will not be in compliance by May 31, 1995 that they are making sufficient progress and effort in complying. The particular details of the milestones will be specific to a source and part of the Repowering Plan submitted for approval to the Department.

66. COMMENT: In the event that a source determines that the repowering is not reasonable, then that source should be allowed to operate until May 1999. (1)

RESPONSE: A source that has committed to repower and then determines not to pursue repowering may only continue operating if it meets the applicable NO_x RACT emission limits in subchapter 19 (or obtains an alternate emission limit (AEL) pursuant to N.J.A.C. 7:27-19.13). A source cannot receive the benefits of delayed compliance with applicable limits after it abandons plans to repower.

67. COMMENT: The Department has reserved the right to terminate agreements that result from the innovative control technology and the repowering provisions. This portion of the provision also specifies that if the Department revokes the agreement, the NO_x emissions rates in the rule are effective. Language such as this places the regulated community at a high level of risk for non-compliance and should be removed from the amendments altogether. (1)

RESPONSE: For both innovative control technology arrangements and in repowering agreements, the Department is excusing sources from compliance with the otherwise applicable NO_x emission limits in return for a promise of much greater reduction of NO_x emissions in the future. The Department, in essence, is risking nonattainment at a future date if such a source defaults on its plan. Without penalty provisions for noncompliance with interim measures and milestones, the source could abandon a project previously committed to and the Department would be further behind in making necessary reductions to attain the air quality standard for ozone. The language is provided as a disincentive to noncompliance and to ensure only that Repowering and Innovative Technology Plans with a high likelihood of success are entered into.

68. COMMENT: The amendments do not specifically address the means of demonstrating and measuring compliance for sources subject to the innovative control technology or repowering provisions. Sources which will be utilizing either of these methods of compliance should be required to conduct emissions compliance testing on representative units once every five years. The first testing results for sources affected by this section of the amendments would be submitted by May 31, 1996, consistent with the compliance demonstration section of the rule. This would be the most cost effective method of compliance for the regulated community, and would also provide data required by the Department to be collected without adverse environmental impact. Requiring testing on units with low capacity factors (less than one percent per year) would necessitate operating those units at times when they would otherwise not be operating, and therefore increasing the amount of emissions to the atmosphere simply for collection of data. (1)

RESPONSE: The frequency of emissions compliance testing would be part of a specific Innovative Control Technology Plan or Repowering Plan submitted for approval to the Department. The Department would not require the operation of units solely for the purpose of testing, provided the owner or operator has a plan to test low capacity units when they are in operation for a reasonable time.

69. COMMENT: Continuous emissions monitors (CEMs) should not be required for sources which will be repowering or using the innovative control technology provisions of the amendments. Any monitors which would be installed at this time would be obsolete due to the fact that emissions characteristics are likely to change after the innovative control or repowering is completed. (1)

RESPONSE: Generally, all utility boilers and non-utility boilers with a greater than 250 million BTU per hour input rate are required to install CEMs. If there is a reason why a continuous emission monitor would not be useful after innovative technology is installed or for repowering, this should be part of the facility-specific Innovative Control Technology or Repowering Plan submitted for approval to the Department.

70. COMMENT: The commenter appreciates the Department's efforts to provide a consistent set of repowering options for all affected sources. However, there is little incentive to utilize the proposed provisions for several reasons.

First, 30 days after the operative date of the rule is simply not enough time to prepare and submit detailed repowering and compliance plans. Considering the vital importance of the repowering projects from both an economic and environmental standpoint, the Department must provide additional time to submit these applications. This is especially true considering that the applications must include, for each unit in the plan, a rigorous analysis of the technological and economic feasibility of all available NO_x control technologies to determine an "interim RACT."

Second, the proposed requirement to perform an extensive case-by-case analysis of NO_x control technologies to establish an "interim RACT" for each unit to be repowered discourages the use of the repowering provisions. Repowering should be encouraged as an environmentally beneficial NO_x compliance option by making the process as economical and flexible as possible.

Third, under the proposed N.J.A.C. 7:27-19.21(f)2 and (g), a revision to the State Implementation Plan ("SIP") is required for a repowering plan unless fuel switching or selective non-catalytic reduction ("SNCR") is used as an interim RACT measure. A SIP revision, which can be a lengthy process, may not be needed if EPA approves the repowering provisions in the rule, and the Department approves repowering plans in accordance with these provisions. Also, excluding only the use of fuel switching and SNCR from requiring a SIP revision may unfairly penalize equipment using other types of NO_x controls which can achieve equivalent or greater levels or NO_x reduction than fuel switching or SNCR. (13)

RESPONSE: The CAA deadline for compliance with NO_x RACT is May 31, 1995. The Department does not have authority to alter this deadline. Although required by EPA by November 1992, the initial NO_x RACT rules were not promulgated until December 1993. Hence these amendments to the rules will become operative very close to the compliance deadline. Because all air pollution regulations become operative 60 days after adoption, that is, 60 days after signature by the Commissioner of the Department, the 30 day deadline is necessary to enable sources to be in compliance. Sources may, however, apply for an extended compliance deadline pursuant to N.J.A.C. 7:27-19.22 which would require certain commitments from the owner or operator to assure compliance at a certain future date.

Sources that are to be repowered are subject to the same requirement to implement RACT by May 31, 1995. Because the compliance date for repowering is not until 1999, substantial emissions can occur between the May 31, 1995 compliance date and complete repowering, making "interim RACT" necessary. However, the State's determination of what constitutes RACT requirements would include consideration of an owner or operator's commitment to repower. In that case, the State's RACT analysis would focus on the technical and economic feasibility of controls over the interim period between May 31, 1995 and the repowering date. EPA's guidance on repowering provides that an owner or operator who

wishes to repower a unit should document the cost, cost effectiveness, and emissions reductions of all technologically feasible controls. In the determination of cost effectiveness, however, the utility may annualize controls over the period of time between May 31, 1995 and the date the unit will be repowered, to the extent it is shown that the controls installed to meet the May 31, 1995 deadline have no usefulness once the unit is repowered. On the other hand, if certain controls will be useful once the unit is repowered, the cost of these controls cannot be annualized over a shortened period of time. Interim RACT is meant to be a flexible, facility-specific concept. For some facilities, interim RACT may be an annual tuneup (adjustment of combustion processes) to achieve NO_x emissions reductions in the interim period.

EPA requires the commitment to repower as well as interim RACT requirements for a source be submitted as a SIP revision. Thus, the commitment and the interim RACT requirements would be enforceable by the State and, upon approval, by EPA. If the commitment were not enforceable, then compliance with NO_x RACT would be unreliable. As an alternative to source specific SIP revisions, states may make the repowering and interim RACT requirements enforceable by including them directly in the NO_x RACT rules (as the Department has done for SNCR and seasonal fuel switching). In this case, the State is specifying, when the rules are formally submitted to EPA, that the interim requirements constitute at least RACT for the particular sources.

71. COMMENT: A utility should not be encouraged to repower in all circumstances. Older, high polluting generators should be retired: however, it is wrong to assume that repowering is the best way to replace those generators.

New fossil fuel power plants may emit less NO_x, but they still emit NO_x and a host of other pollutants. On the other hand, if the old generators are replaced with energy efficient or with renewable energy sources, the NO_x problem ceases to exist. If there is to be an exemption from the NO_x emission limits, the utility should first be required to seek the least polluting replacement for that capacity. Utilities should be afforded the exemption only if they replace the old capacity with energy efficient capacity. Alternatively, there could be a hierarchy established whereby the repowering facility would receive an exemption only after making a good faith effort to replace the lost capacity with energy efficient or renewable energy first. (14)

RESPONSE: The air pollution control requirements that would apply to a repowered combustion unit are state of the art emission controls that represent advances in the art of air pollution control resulting in new units emitting very low NO_x relative to older existing units (some close to 100 years old). The Department agrees that energy efficient and renewable energy sources should be encouraged. The role of the Department, however, through these NO_x RACT amendments is not to dictate to a company what type of facility to invest in but to ensure that repowering projects are conducted in a manner to minimize NO_x emissions.

72. COMMENT: Repowering gets a good deal of attention in this rule as part of an initiative to meet the requirements imposed on the State. It is important to take a second look at that and make sure that the benefits of co-generated power, likewise, or perhaps more so, receive the attention of State policymakers. Co-generation not only uses state-of-the-art emission control, but also leads to the retirement of industrial boilers. Those benefits should be properly recognized and proper incentive, as appropriate, be given to co-generation. (9) (19)

73. COMMENT: The essence of the proposed rulemaking is the promotion of electric utility "repowering" of aged utility power plants as a key NO_x reduction strategy. Such a policy is grounded on certain misconceptions. True, newer utility power stations, all else held equal, are cleaner than what they replace. But all else is seldom held equal. New power plants operate more often than the 30-to-50-year-old plants they replace. As a result, repowering can lead to a cleaner power plant but more air pollution. (The commenter referenced, and also attached to its statement, comments previously submitted to the Department on a utility's proposed project. Those comments assert that the proposed new facility will increase five of seven measured pollutants, including two ozone precursors.) Thus, the Department errs if it assumes that utility repowering projects necessarily lead to cleaner air or a more rapid attainment of Federal ozone standards. (9)

74. COMMENT: The rule as proposed fails to recognize that the retirement and replacement of old units are two separate decision points. If a utility decides to retire a power plant to meet the Clean Air Act requirements or because the unit is simply antiquated, that is one decision. What replaces the unit should be another decision. As between utility and the non-utility competitors which may build the replacement, both should be starting from the same point with respect to the stringency of the environmental requirements that will be imposed. Moreover, the "broader state policies," strongly favor cogeneration, not utility-built facilities. (9)

RESPONSE: These amendments to the NO_x RACT rule contain provisions for repowering that apply to utility units, boilers and turbines at industrial and commercial facilities as well as other sources regulated by the rule. This broadening of the option to repower responds to numerous requests from owners and operators of non-utility boilers who commented on the original NO_x RACT rule proposal. The intent is not specifically to encourage electric utility repowering.

The Department did not intend to exclude the purchase of heat or power from "repowering" options available to a utility. Whether future power comes from a rebuilt nit or a new electric generating source, NO_x emissions will be reduced relative to older more polluting units. The Department has modified the definition of "repowering" as well as minor modifications to N.J.A.C. 7:27-19.21 to reflect both "repowering" options. In both cases, the Department will allow an interim RACT limit above those specified in N.J.A.C. 7:27-19 in return for the commitment to obtain much cleaner energy by 1999. Although the Department provides regulatory oversight in terms of air pollution control criteria for proposed facilities the analysis of possible alternatives to a proposed facility is the jurisdiction of the Board of Public Utilities (BPU). Currently, the decision whether proposed capacity would be subject to a Certificate of Need approval (and thus require an analysis of alternatives pursuant to the Electric Facility Need Assessment Act, EFNA) is made by the BPU. Currently, when the Department receives a utility project for review, it is sent to the Director of the Division of Energy, BPU. Air permits are not issued until the Director determines the unit is not subject to EFNA or, if it is subject to EFNA, the certificate of need is obtained.

75. COMMENT: Other alternatives to repowering also include energy efficiency and conservation improvements, which are strongly favored in state policies.

RESPONSE: The amendments do not discourage energy efficiency and conservation. The Department recognizes that energy efficiency and conservation would reduce emissions of nitrogen oxides as well as save valuable energy resources.

76. COMMENT: The Department's clean air policies can affect severely the emerging marketplace in electricity, to the detriment of IPP opportunities, the economy and the environment alike. David Hawkins, Former Assistant Administrator of the USEPA for air pollution control programs, made these points cogently in his testimony in response to a USEPA rulemaking on the so-called "WEPCO fix" (see 56 F.R. 27630, June 14, 1991) regarding proposed changes to the USEPA's "New and Modified Source" rules. The testimony of David Hawkins which discusses whether existing plants should be allowed to be completely overhauled increasing usable capacity substantially above current generating levels and extending their operating life for 20-30 years or more without taking steps to prevent pollution increases at those plants. The testimony discusses an exemption from new source review for plants that are overhauled. This exemption would provide a subsidy for "grandfathering" that tilts the playing field unfairly against other utilities and independent power producers that are required to meet more stringent new source requirements. The exempted categories would be allowed to externalize the environmental costs of added generation while other companies would be required to internalize more of such costs for the same amount of new supply.

The environmental and cost-saving advantages of renewables and demand-side management also would be discriminated against under a policy that would exempt investments at existing units from new source review. Renewables and efficiency projects will be selected or rejected based on cost comparisons with other options. If the costs of life-extending existing units are kept artificially low by grandfathering such projects from pollution controls, then fewer renewables and efficiency projects will be selected.

RESPONSE: The situation for which the commenter provides David Hawkin's testimony can be distinguished from the repowering provisions of the NO_x RACT amendments. Unlike the proposed USEPA "New and Modified Source" rule, in repowering, there is no "grandfathering" of existing units from air pollution control requirements. Repowered units must meet the same emission limits as new facilities, which are quite stringent relative to the limits prior to repowering. Such investments at existing facilities would not be exempt from new source review.

77. COMMENT: Independent power producer (IPP) sources of electricity (principally cogeneration, pursuant to Public Utility Regulatory Policies Act of 1978, PURPA, standards of efficiency and ownership) should be given an equal opportunity to demonstrate that they can replace aging, dirty utility power plants at lower cost to ratepayers and the environment. These proposed rules, which seek to provide regulatory incentives for utilities to replace old units with "repowering" or "fuel switching" projects, seem to have been drafted without regard to the rapidly emerging cogeneration option. A fair, open, and competitive opportunity has not been provided. If IPP projects can be cleaner than utility units, while comparably priced for ratepayers, then the public interest is served by (1) the utility retiring its old units as rapidly as possible, and (2) replacing them with IPP cogenerators under contract to supply the utility with "bulk" (wholesale) power for resale to consumers. Conversely, if it can be shown that utility repowering projects will produce more benefits at lower cost than the IPP cogeneration option, then the utility units should be retired and new ones constructed, as the rule intends. A fair competitive opportunity is sought before enormous investment opportunities are lost—leading to degraded air and less economic growth for New Jersey. (9)

RESPONSE: The rules already provide equal opportunity to the repowering option for a replacement with purchased power. If a utility chooses to retire a unit by May 1999 and replace the unit with purchased power from an IPP, then the utility may seek compliance with NO_x RACT rules under the provision of N.J.A.C. 7:27-19.13, Facility-specific NO_x emissions limits. In this case the utility would commit to retiring the unit by May 1999 and would seek to demonstrate that installation of RACT controls would not be cost effective. The technical and procedural requirements that are applicable under both options are similar. However, the Department has modified the definition of "repowering" to explicitly include the option of purchasing heat or power from another newer, cleaner source in the future.

78. COMMENT: The cogeneration option can be given a fair opportunity during the review of a repowering plan by one of the three following mechanisms: First, if the capacity of the power plant or units which the utility would develop in its "repowering" project will equal or exceed 100 megawatts, then such a comparison will take place pursuant to the "certificate of need" requirements of the Electric Facility Need Assessment Act ("EFNA"), N.J.S.A. 48:7-16 et seq. See, especially, N.J.S.A. 48:7-21, for a listing of the alternatives which must be weighed to the utility project in order to assure that the lowest cost and highest quality project (from an environmental perspective) will be selected.

Second, for all energy projects in New Jersey, the Director of the Division of Energy Planning and Conservation ("DEPAC") is given the duty of assessing such energy facilities pursuant to N.J.S.A. 52:27F-15c. The Department should institute a system of coordinating reviews of repowering projects with the DEPAC so as to assure inter-agency cooperation and full public input into the process. The DEPAC would examine the utility project and engage in a kind of "mini-EFNA" review of alternatives, thus providing the Department with invaluable and timely guidance before major resource investments are committed.

Third, the Board of Public Utilities ("BPU") recently declared that it will require utilities to justify their decisions to engage in repowering projects through a "market test" of each such project. See *In the Matter of the Petition of Jersey Central Power and Light Company for Review and Approval of Power Purchase and Related Agreements,* BPU Docket EM91010067, Order Rejecting Initial Decision, July 29, 1994, at p. 19. The parameters of such a market test have not been devised. Any market test of power sources, whether categorized as "repowering" or "fuel switching" or new "greenfield" projects, should include a scoring system which allows for—indeed, emphasizes—utility selection not simply of the lowest price source (which could be polluting and inefficient) but also the highest quality source (cleaner, more efficient and providing New Jersey jobs at the same time). Such a "market test" must account for "externalities," as proposed by former U.S. EPA Administrator Hawkins, among many others. (9)

RESPONSE: The evaluation of alternatives to repowering to determine whether a utility should be allowed to increase capacity is performed under the jurisdiction of the Board of Public Utilities (BPU).

EFNA is implemented by the Board of Public Utilities. Before the Department approves a new utility unit, a formal determination on the applicability and compliance with EFNA would be obtained from BPU. This review includes environmental considerations and concurrence from the DEP commissioner.

The Department has, however, modified the definition of "repowering" to include the option to purchase heat or power from another source that meets the repowering criteria. See the response to Comments 14, 15 and 72.

79. COMMENT: It is questionable whether relaxing regulatory requirements for major utility repowering projects as in the proposed amendments complies with the Clean Air Act amendments of 1990. Therefore, the commenter recommends that the Department request clear legal guidance from the Office of Attorney General on this threshold matter. (9)

RESPONSE: While the CAAA of 1990 do not speak to repowering as a NO_x RACT compliance strategy, they do specifically provide for repowering of sources under Title IV in Phase II of the Acid Rain program. The states are afforded great latitude in determining what sources, emission limits and methods of compliance should be included in an individual state's NO_x RACT rule. Furthermore, EPA's Office of Air Quality Planning and Standards has issued a guidance memo, dated March 9, 1994, entitled "NO_x RACT for the repowering of utility boilers" which sets forth guidance for states on issues such as interim RACT, SIP revisions and including sources other than utility boilers. The Department's repowering provisions are consistent with this guidance. Several states have submitted and had approved by EPA, NO_x RACT rules which include similar repowering provisions. The Division of Law has reviewed and approved the proposed amendments.

N.J.A.C. 7:27-19.22 Phased compliance-impracticability of full compliance by May 31, 1995

80. COMMENT: The commenter is especially appreciative of the phased-in compliance provisions proposed by DEP and the addition of other indirect heat exchangers (including duct burners) into Section 19.7 Non-Utility Boilers. (2)

RESPONSE: The Department appreciates the support.

81. COMMENT: The commenter acknowledges the effort that the New Jersey Department of Environmental Protection has expended in the development of these rules. The commenter commends the Department for working with the regulated community to make this rule more flexible. This type of cooperative effort can result in common sense solutions that are cleaner, cheaper and smarter. These proposed revisions will result in air that is cleaner by reducing NO_x emissions that contribute to the ozone problem in a way that is both cheaper, because it allows for the necessary flexibility the regulated industry needs to implement cost effective NO_x controls, and smarter by working together to provide better ways to protect the environment. If all rulemaking could use these guidelines as a test for effectiveness, New Jersey citizens would be well served. (3)

RESPONSE: The Department agrees and will continue to work with the regulated community and other interested parties to find flexible and cost effective ways to clean the air.

82. COMMENT: One commenter supports the Department's efforts to provide phased compliance for units which cannot practicably achieve compliance by May 31, 1995. However, 30 days after the operative date of the rule is not an appropriate deadline for submittal of applications seeking approval of a phased compliance plan. The Department must provide additional time to submit these applications. (13)

RESPONSE: The Department realizes the timeframe for compliance with these amendments is extremely compressed but has no authority to extend the May 31, 1995 Clean Air Act compliance deadline.

N.J.A.C. 7:27-19.23 Phased compliance—use of innovative control technology

83. COMMENT: Although it is understandable that the Department would provide a deadline for phased compliance plan applications because of its own time constraints, a provision should be offered whereby owners or operators could apply for delayed compliance beyond 30 days after the operative date of the adopted rule. These rules provide no protection from enforcement action to any owner or operators who may be forced to miss the May 31, 1995 compliance deadline despite best faith efforts. Such scenarios could include failed equipment deliveries for which the owner or operator is not at fault, unanticipated boiler shutdowns that preclude the performance of equipment upgrades, or the failure of an emissions trade for compliance beyond 30 days after the operative date of these amendments. Owners or operators who discover, more than 30 days after the operative date of the revised rules, that they will be unable to comply with the May 31, 1995 deadline for NO_x RACT compliance should be provided with the opportunity to apply for phased compliance. (8)

RESPONSE: The Department reasonably anticipates that owners and operators have been aware of the impending May 31, 1995 deadline from

the 1990 Clean Air Act amendments (CAAA) at least since the proposal of the NO_x RACT rule in February 1993 and its adoption in November 1993. Given the nature of the modifications to existing equipment that are anticipated to comply with the May 31, 1995 deadline and the time usually associated with such modifications, it is unlikely an owner or operator would not be aware of a possible scheduling problem within the 30 day period following the operative date of the rule. While the 30 day period is short, the Department feels it is necessary to offer the delayed compliance option to owners and operators yet preserve the original intent of the CAAA to have affected sources in compliance by the May 1995 deadline.

84. COMMENT: The use of alternative monitoring (that is, other than CEMs) should be allowed for all peaking simple cycle combustion turbines and internal combustion engines, regardless of the use of the innovative control technology. This opinion is based on the fact that the emissions that will result from testing are disproportionate to the emissions that would result if the unit was not tested, based upon previous operating history.

For instance, during 1993, 10 of the commenter's simple cycle combustion turbines operated at a capacity factor of less than one percent (that is, less than 86 hours per year), and testing would have required each unit to operate. This also equates to 10 percent more emissions, and 10 percent more fuel used. In fact, if CEMs were installed on a unit, the QA/QC Requirements to perform relative accuracy test audits would cause these units to operate for testing during a period when they would otherwise not have operated. For these reasons, the simple cycle combustion turbines which will be complying through the innovative control technology provisions should not be required to be tested individually, but rather the regulations should allow sister units be tested only once every five years. Such an approach will minimize impact to the regulated community and the environment while providing the Department with emissions data.

Any latitude for alternative monitoring for peaking boilers is already defined by 40 CFR Part 75, and the NJDEP should adopt this approach for monitoring of peaking boilers.

RESPONSE: The amendments do not specify that a combustion source included in an innovative control technology plan must use a continuous emissions monitoring system (CEM). An alternative monitoring system as described in NJAC 7:27-19.18 could be used in lieu of a CEM.

The Department agrees that low capacity factor units should not be operated solely for the purpose of testing, provided the utility has a plan to test these units when in operation for a reasonable time.

85. COMMENT: The commenter appreciates the Department's efforts to provide phased compliance for units which employ innovative control technology. However, there is little incentive to utilize the proposed provisions for several reasons.

First, 30 days after the operative date of the rule is simply not enough time to prepare and submit detailed applications seeking approval of an innovative control technology plan. The Department must provide additional time to submit these applications. This is especially true considering that the applications must include, for each unit in the plan, a rigorous analysis of the technological and economic feasibility of all available NO_x control technologies to determine an "interim RACT."

Second, the proposed requirement to perform an extensive case-by-case analysis of NO_x control technologies to establish an interim RACT for each unit discourages the use of the proposed provisions. The Department must streamline the interim RACT process and make it as economical and flexible as possible.

Third, under the proposed N.J.A.C. 7:27-19.23(d)2i, the innovative control technology must have a substantial likelihood of achieving NO_x emission levels less than the RACT limits specified in the rule. Furthermore, the proposed N.J.A.C. 7:27-19.23(e)8 requires each unit to incorporate advances in the art of air pollution control. Requiring units which use innovative control technology to not only achieve NO_x levels more stringent than RACT, but to achieve "state-of-the-art" levels of NO_x emissions goes well beyond the intent of RACT, and is an extreme disincentive to utilize the proposed provisions.

Fourth, by definition, "innovative control technology" has not been adequately demonstrated. Therefore, the levels of NO_x reduction achievable with innovative technology are highly uncertain. However, under the proposed N.J.A.C. 7:27-19.23(h)5, the Department can unilaterally terminate an innovative technology plan if the technology fails to achieve the required reduction levels. This unfairly penalizes owners or operators proposing to use a promising but not adequately demonstrated technology which falls short of expectations during actual testing and implementation. It is doubtful that any owner or operator would assume the risk of operating a unit equipped with unproven technology for potentially several years after May 31, 1995, knowing that the Department can terminate an innovative control technology plan if the technology fails to perform as anticipated.

Finally, under the proposed N.J.A.C. 7:27-19.23(f)2 and (g), a revision to the State Implementation Plan ("SIP") is required for an innovative control technology plan unless fuel switching or selective non-catalytic reduction ("SNCR") is used as an interim RACT measure. A SIP revision, which can be a lengthy process, may not be needed if EPA approves the innovative control technology provisions in the rule, and the Department approves innovative control technology plans in accordance with these provisions. Also, excluding only the use of fuel switching and SNCR from requiring a SIP revision may unfairly penalize equipment using other types of NO_x controls which can achieve equivalent or greater levels or NO_x reduction than fuel switching or SNCR. (13)

RESPONSE: The Department acknowledges that the deadlines for submittals under these amendments are extremely short but feels they are necessary given the timing of the amendments relative to the Clean Air Act deadline. The intent of this section of the rules, "Phased compliance for the use of innovative control technology," is to encourage innovative technology that may not be available for installation and commercial operation by May 31, 1995 because of the important environmental benefits that could accrue through the use of innovative technology. The Department believes it is appropriate to allow sources developing innovative control technologies that promise greater emission reductions to have an alternative compliance schedule. The elements of this type of phased compliance (such as the requirement to have greater emission reductions than RACT, the reservation by the State of the right to terminate the phased compliance if the technology fails), and the required SIP revision are specified by EPA in the July 5, 1994 memorandum from John Seitz (Office of Air Quality Policy and Standards) entitled "Reasonably Available Control Technology (RACT) and innovative technology projects." The Department has added the requirement of an "interim RACT" to ensure that measures are taken where practicable to reduce NO_x emissions prior to final installation and operation of the innovative control technology.

The requirement to perform a case-by-case analysis of NO_x control technologies to establish an interim RACT is intended to provide maximum flexibility to the wide range of sources which may elect to seek approval of an innovative control technology plan, as opposed to dictating what the interim RACT procedure should be. The Department is committed to processing all submittals as expediently as possible to enable sources to be in compliance and to improve air quality.

Because a unit electing to implement innovative control technology is not required to be in compliance on May 31, 1995, the Department requires the innovative technology achieve NO_x levels below RACT to compensate for the delay. If the innovative control technology achieved emission reductions that are only equivalent to RACT or only slightly lower, air quality would not benefit from this form of phased compliance. The potential of achieving much greater emission reductions than RACT is the very core of this delayed compliance option.

The Department believes it is necessary to reserve the right to terminate an innovative control technology plan as a disincentive to those who would use this compliance option for purposes other than the intended encouragement of new technologies which promise significant NO_x emission reductions.

86. COMMENT: Phased compliance for use of innovative control technology should be reconsidered in light of the fact that emissions trading is right around the corner for this region. When a facility develops a technology that allows it to reduce emissions beyond the standard, it will be able to sell those emission credits to facilities that have not been able to achieve compliance. Therefore, there is already an incentive for industries to develop new technology, and the benefits of any incentive that the exemption might add is likely to be outweighed by the detrimental effect of having allowed more NO_x to be emitted in the first place. The environmental detriment of the exemption may indeed outweigh the benefit of the exemption because the new technology would probably have been developed even without the exemption as a response to emissions trading. (14)

RESPONSE: The Department agrees that in an emissions trading program, there is an incentive to develop new technology. The Department does not, however, have a functional emissions trading program

yet. Once there is a trading program and if emission credits created by a source through repowering or through the use of innovative technology, it is likely the Department would require such a source to first compensate the Department, through the use of credits, for the excess emissions which occurred from the higher interim RACT which was allowed by the Department. The Department is in the process of developing an emissions trading program and will consider this comment in that context.

87. COMMENT: The commenter is supportive of the innovative technology section of the proposed amendments and is currently planning to participate in a project for simple cycle combustion turbines which could potentially yield reductions of NO_x emissions which are superior to today's available technology for such units. The specific requirements with regards to the compliance demonstrations which may be needed during the interim period between May 31, 1995 and the final and complete installation of an innovative technology need to be identified. (1)

RESPONSE: Compliance requirements will be determined on a case-by-case basis through discussions with Department staff and the submittal of an Innovative Technology Plan.

88. COMMENT: Continuous emissions monitors (CEMs) should not be required until after the innovative technology is installed, if it is determined that the innovative technology is feasible. Installation of CEMs prior to development of the innovative technology is risky since such technology may sufficiently change flue gas characteristics (volumetric flow rate, oxygen levels of the flue gas, temperature of the flue gas, carbon monoxide concentrations, and most obviously, changes in NO_x concentration of the flue gas) so as to require installation of new monitoring equipment.

The simple cycle combustion turbines which are candidates for the innovative technology portion of the regulation are peaking units, used during times of high electrical demand. The capacity factor of these units is typically below five percent and usually on the order of one to two percent. Given the minimal operating hours of these units, the cost associated with installation and maintaining CEMs is considered to be prohibitive, particularly during the interim period between 1995 and final development of innovative technology for these units.

Installation of CEMs on representative units would be acceptable after determination that the innovative technology is feasible and, if feasible, has been commercially installed. (1)

RESPONSE: CEMs are not necessarily required for innovative technology. The monitoring requirements would be project specific and incorporated into the innovative Technology Plan.

89. COMMENT: The existing NO_x RACT rules allow at N.J.A.C. 7:27-19.6 for the utilization of emissions averaging plans. Under N.J.A.C. 7:27-19.6, an owner/operator in compliance with an approved emissions averaging plan is not required to comply with the emissions limitations for each item of equipment or source operation otherwise required by the NO_x rules. The proposed amendments allow, at N.J.A.C. 7:27-19.23, for phased compliance for innovative control technology if there is a substantial likelihood that the technology will enable the source to achieve greater than the 30 percent reduction required by the NO_x rules. The proposed amendments should be revised to allow a regulated entity to utilize both N.J.A.C. 7:27-19.6 and 19.23 simultaneously. This would allow owners/operators of equipment or source operations the maximum flexibility to comply while simultaneously providing a strong incentive to reduce NO_x emissions by more than 30 percent. (16)

RESPONSE: An emissions averaging plan means some source would be controlled to lower than the allowable limits established in the rule and some sources would emit more than the allowable limits. However, when the actual emissions from all sources are summed together, they would be less than or equal to the allowable emissions for the entire set of units.

If a source is seeking compliance under the innovative technology provisions, it would be allowed to emit more than the applicable RACT limits in the interim. During this interim time period, this source may be included in an averaging plan as an interim RACT control measure. When the source installs the innovative control technology it would be subject to a new allowable emission limit that would be lower than the RACT limit that is otherwise applicable to that source. The difference between the RACT limit and innovative control technology limit would not entitle the source to an emission credit to be used in an averaging plan or used in any other manner because the source emitted a higher limit than RACT before 1999 and the lower emissions achieved with the innovative technology were intended to compensate for that allowance.

90. COMMENT: The Department should hold NO_x sources accountable for reductions which will not "practicably" be in full compliance by May 31, 1995 as a result of the installation of equipment being too "time-consuming" or because of the limited supply of some control equipment. A source should be required to "meet the standards" by using Surplus Discrete Emission Reductions (SDR's) that another facility was able to manufacture through over or early compliance, until such time as the source comes into compliance themselves. Economic relief is thus provided, but without compromising New Jersey's progress in improving air quality. In addition, a market for SDRs encourages general over and early compliance by those sources which are capable. (18)

RESPONSE: The Department is supportive of an emission reductions market and intends to propose an emission reductions trading rule within the next year. Because the feasibility of purchasing and using Emission Reductions was not anticipated at the time of the proposed amendments, there is no explicit rule language concerning such compensation for phased compliance and thus the Department cannot require such compensation without undertaking administrative rulemaking. It is probable these types of delayed compliance mechanisms will include emission reductions as compensation in the future.

N.J.A.C. 7:27-19.24 MEG alerts

91. COMMENT: The commenter supports the MEG alert conditions and the emergency use of fuel conditions which have been proposed in the amendments.

RESPONSE: The Department appreciates the support.

92. COMMENT: The requirement to require an offset of 1.3:1 for those periods during a MEG Alert are considered to be unreasonable. A MEG alert occurs as a result of a critical electric power deficiency, and a need for additional capacity and energy from customers within the utility's service territory and outside the utility's service territory. A MEG alert could be the result of a catastrophic event, unforeseen failures of generating facilities and/or transmission lines, bad weather or other factors which are beyond the control of the utility. Since the utility is obligated to serve its customers, it is unfair and unreasonable for the Department to penalize an operator for operating above its permit limits, and then to require additional offsets. Such a requirement penalizes the electric utilities for acting in a prudent manner and in the best interest of the community, business, and industry. (1)

93. COMMENT: The MEG alert conditions of the amendments should be changed to recognize the fact that persons have installed control apparatus for reducing NO_x emissions, and the possibility exists for a MEG alert to occur when that control apparatus is inoperative. An example of such a circumstance occurred in January 1994 when the record cold weather blanketed the Northeastern United States and the Governor declared an energy emergency. Due to the extremely cold temperatures and the high energy demand, the commenter was placed in the compromising position of operating without the benefit of water injection systems in order to meet the obligation to serve. The MEG alert conditions should be modified to reflect such possibilities, and further stress that an emission offset should not be required when such an alert exists. The utilities should not be penalized by an enforcement proceeding for operating out of compliance or by obtaining NO_x offsets because of the obligation to serve customers. (1)

RESPONSE: The Department realizes a MEG alert is beyond the control of a utility. This is why the MEG alert exemption from the NO_x emission limits in N.J.A.C. 7:27-19 was proposed as part of these amendments. During a MEG alert a utility would not be subject to any fines or other enforcement action by the Department. Because the NO_x RACT emission limits are exceeded during a MEG alert the Department feels it is appropriate to require compensation for that exceedance. Since the majority of MEG alerts have historically occurred during the ozone season, the Department is concerned that numerous MEG alerts without compensation could jeopardize reasonable further progress towards and attainment of the NAAQS for ozone. The ratio of 1.3:1 is from the emissions offsets requirement for new sources in nonattainment areas of the Clean Air Act amendments and reflects the concern that an exceedance of established limits of NO_x (even if exempted) in a nonattainment area should be reimbursed with a ratio greater than one to ensure a net air quality benefit. Further, the amendment provides the utility with a lengthy time period in which the offsets are to be obtained so that utilities can plan ahead for MEG alert reimbursement or can procure the offsets after the MEG alert occurs.

The Department agrees it is necessary to eliminate the risk that utilities would be liable for violations of air pollution control laws when responding to an emergency. The compensation requirement enables the Depart-

ment to protect air quality without creating a deterrent to meeting electricity demand.

94. COMMENT: The MEG alert conditions of the amendments should also recognize the possibility that a particular fuel may be unavailable for use during a MEG alert. The regulated community should not be penalized for use of a fuel that is not typically utilized by that source if said fuel is used to assist in alleviating the MEG alert condition. (1)

RESPONSE: The amendments provide an exemption for the emergency use of fuel oil at N.J.A.C. 7:27-19.25. This exemption is necessary because of the large number of facilities that have interruptible natural gas supply contracts. The Department does not see the need for other fuel use exemptions.

95. COMMENT: The position to not require an offset during periods when a MEG alert exists is further strengthened by the fact that the Department has not required any offset for those periods when fuel oil is used in an emergency situation. (1)

RESPONSE: The Department can distinguish the two situations. During a MEG alert, utilities would operate sources that do not normally operate and requiring controls on these sources would be too costly, not RACT. Furthermore, natural gas is usually interrupted during the non-ozone season and an emergency fuel exemption is unlikely to cause an ozone exceedance. MEG alerts, on the other hand, more typically occur during the ozone season and thus there is a need for such exceedances to be offset.

96. COMMENT:Under the proposed N.J.A.C 7:27-19.24(a), the MEG alert provisions expire on November 15, 2005. It is premature to establish an expiration date for the MEG provisions, and that the proposed deadline should be removed.

In the preamble to the proposed rule (26 N.J.R. 3305), the Department indicates that"... extending the MEG alert exemption beyond that date would hinder the State's efforts to reach attainment by that date. The 10 year life of the exemption will allow for modifications to electric generating units that can eliminate the need for the exemption."

This is not necessarily true. Under proposed N.J.A.C. 7:27-19.24(c), compensating NO_x emission reductions are required at a ratio of 1.3 to 1 for any excess NO_x emissions which occur during MEG alerts. These compensating reductions should help, rather than hinder, the Department's ozone attainment efforts. In addition, the excess emissions during MEG alerts are expected to be extremely small compared to the total contribution of NO_x from all sources in the state.

Also, it is anticipated that the Department may require a second phase of NO_x reductions in order to achieve attainment of the National Ambient Air Quality Standard ("NAAQS") for ozone. This second phase of NO_x reductions may reduce allowable NO_x emissions from affected units, and units may need to be modified to achieve these new, lower NO_x limits. However, unless these new NO_x limits are designed to be achieved by all units under MEG conditions, exemptions for excess emissions from units operating at emergency capacity will still be needed.

For these reasons, and because there will still be a need to operate units at emergency capacity beyond November 15, 2005, the Department should remove the proposed expiration date for the MEG provisions at this time. (13)

RESPONSE: The Department feels that 10 years notice is sufficient for utilities to plan adequate generating capacity to prevent the exceedance of NO_x RACT limits during MEG alerts. November 15, 2005, is the primary standard attainment date for ozone established under section 181(a)1 of the Clean Air Act for much of the State. The Department expects that extending the MEG alert exemption beyond this date would hinder the State's efforts to reach attainment by that date.

97. COMMENT: The Department must revise the proposed MEG provisions to include up to 12 hour per year of performance testing per boiler or gas turbine as mandated by PJM. (15)

RESPONSE: The Department agrees that up to 12 hours of performance testing per boiler or gas turbine may be included under the MEG alert exemption provided this testing is not performed during the ozone season. The reason for including this testing is because it is required to ensure the unit's ability to respond to a MEG alert.

98. COMMENT: Regarding the issue of compensation for any excess NO_x emissions resulting from MEG conditions, the Department must provide maximum flexibility in the way in which compensating emission reduction credits are determined. For example, when actual NO_x emissions from a designated set of equipment in an averaging plan are less than the NO_x RACT rule allowables for the designated set, the difference between the actual and allowable emissions should be considered a creditable emission reduction suitable for compensating for any excess emissions during MEG conditions. Also NO_x emission reductions which are banked in accordance with the provisions of N.J.A.C. 7:27-18 should be eligible for providing compensation for excess emissions which occur during MEG alerts. (13)

RESPONSE: Compensating emission reductions must be actual reductions below allowables. Actual emissions reductions of NO_x from any emission reduction strategy, including banked emission credits, can be used to compensate for the excess emissions during a MEG alert. The emission reductions must occur within a four year period as specified in N.J.A.C. 9:27-19.25

99. COMMENT: The requirement in the regulation to "deliver" as opposed to "send" various pieces of information to the regional enforcement offices should be reevaluated. Such a requirement encourages the use of single occupancy vehicles. In these days of employer trip reduction programs and carpooling, a requirement to deliver information to the Department has the appearance of being contradictory to the mission of clean air. A FAX submission should be sufficient. (1)

100. COMMENT: The Department is requiring the regulated community to deliver notice to the Department. The only way to assure "delivery" is to either pay the expense of an overnight delivery service or to actually hand deliver such notification to the Department. This is an unnecessary burden on the regulated community. The Air Pollution Control Act, specifically N.J.S.A. 26:2C-19(e), requires immediate notification of instances where potential harm exists as a result of an exceedance, thereby assuring that the Department learns of any emergent circumstances. In other instances, the Department should be willing to wait until the U.S. Mail delivers a notice. (13)

RESPONSE: The Department agrees that requiring "delivery" of the notification would be unnecessarily burdensome and has modified N.J.A.C. 7:27-19.24(b) to allow that the electric generating facility must "notify" the Department with a report confirming the MEG alert within two days. A FAX submission would be sufficient. The rule language has been changed to reflect this.

101. COMMENT: The allowance that is given during maximum energy generation periods is given only to utility generation, the so-called "MEG" alert exemption. The independent power industry is a wholesale provider. It does provide power to the power pool and to the utilities, and as such makes the same contribution in times of peak constraint periods to meet customers' needs. As such, the same liberties and freedoms or allowances that are given to utility generating plants during those MEG periods should, likewise, be given to independent power providers. (9)

102. COMMENT: With respect to their electrical generation function, cogeneration facilities operate in much the same way as do electric generating units owned by utility companies. Electric generating units, whether owned by a utility or non-utility, are connected to the power supply grid, and have a responsibility to operate as part of the overall electric energy supply system. This includes contractual obligations to respond to Maximum Emergency Generation situations. Under the proposed rule, however, the MEG alert exemption from compliance with the NO_x limitations in subchapter 19 is limited exclusively to electric generating units owned by an electric generating utility. As defined in subchapter 19, electric generating utilities do not include most cogenerators, which are exempt from the State's utility regulation pursuant to the federal Public Utility Regulatory Policies Act of 1978 ("PURPA"). Thus, qualifying cogeneration units are excluded from the proposed MEG alert exemption. There is no legitimate basis for this exclusion. Cogeneration represents a significant portion of the generating capacity within the State. Cogen Technologies, which sells 100 percent of its power to electric utilities, is the third largest electricity producer in the State. Under a MEG alert, there is no relevant distinction between the utility and non-utility units in the State. Any generating unit that is connected to the power distribution grid is capable of responding to a MEG alert.

Therefore, the proposed rule should be amended as follows:

a. "Electric generating unit" should be defined as "a combustion source used for generating electricity that delivers all or part of its power to the electric power distribution grid for commercial sale."

b. All references to "electric generating utility" should be deleted from the "MEG alert" definition and all relevant portions of N.J.A.C. 7:27-19.24(a) and replaced with "owner or operator of an electric generating unit." (7)

RESPONSE: The Department agrees and has modified the rule language to reflect these changes in N.J.A.C. 7:27-19.1 and 19.24. These

changes reflect the Department's intent in the proposal to provide MEG alert relief to those who are called upon to supply energy in emergency situations. There was no intent to exclude energy facilities such as those described in the comment.

103. COMMENT: Electric utilities should be required to use emission reduction credits to compensate for excess emissions from maximum emergency generation situations. Sources could be required to hold an inventory of SDR's from which to draw upon. A similar proposal should be added that enables all NO_x sources to hold SDR's as "insurance" against unexpected breaches in NO_x limits. (18)

RESPONSE: Utilities are required pursuant to N.J.A.C. 7:27-19.24(c) to compensate for excess emissions during MEG alert situations by obtaining emission reductions, surplus to those required by any Federal or State law, in the ratio of 1.3:1. The Department is supportive of an Emission Reductions market and intends to propose an emission reductions trading rule within the next year.

104. COMMENT: Some cogeneration plants located in New Jersey are connected to the Consolidated Edison ("Con Ed") power distribution grid. If Con Ed experiences a MEG alert, these plants would be expected to operate at emergency capacity. However, in order to qualify for the MEG alert exemption, the proposed N.J.A.C. 7:27-19.4 requires the generating unit to have received notice from the "load dispatcher," which is defined exclusively as the "PJM employee or agent" with the responsibility for declaring a MEG alert. Thus, even if a plant has been requested to respond to a MEG alert by Con Ed, its load dispatcher, it will be unable to satisfy the conditions established in the proposed N.J.A.C. 7:27-19.4. The Linden plant will never receive such a notice from a PJM dispatcher. We believe that this exclusion of non-PJM dispatcher is an impermissible discrimination against interstate commerce in violation of the U.S. Constitution. In addition, there are significant exchanges of electric power between PJM and other power pools, such as the New York power pool. By not allowing facilities to respond to MEG alerts issued by non-PJM dispatchers, the proposed rule would also be restricting PJM's ability to draw from these other power pools. Thus, the exclusive focus on PJM MEG alerts frustrates the intended purpose of avoiding voltage reductions and service interruptions. Therefore, the definition of "load dispatcher" should be revised to read:

"the employee or agent of the electric power distribution network, to which the electric generating unit is connected, who is responsible for determining that a MEG alert is the only feasible means of preventing or mitigating either a voltage reduction or an interruption in electric service or both."(7)

RESPONSE: The Department agrees and has made the necessary changes to the definition of "load dispatcher" in N.J.A.C. 7:27-19.1 to be more generic as to include non-PJM dispatchers. The revised definition meets the intended purpose of the proposed definition.

105. COMMENT: Currently, the commenter's generating units are subject to NO_x emission limits in their permits issued under N.J.A.C. 7:27-8. These limits, which range from 0.028 to 0.043 lbs/Btu (for natural gas operation) and from 0.033 to 0.093 lbs/Btu (for backup fuel operations) are substantially below the applicable limits established in subchapter 19, that is, 0.15 lbs/Btu (gas) and 0.35 lbs/Btu (oil). Under a MEG alert situation, these units would exceed their permit limits well before exceeding the subchapter 19 NO_x limits. Since the proposed rule appears to grant relief only from the limitations established under subchapter 19, and not the limits established elsewhere in the air regulations or a facility's permit, owners/operators of modern facilities would be unable to benefit from the proposed MEG alert provision. This will restrict the ability of modern and more efficient generating units to respond to MEG alerts and will result in the unintended effect of encouraging greater use of older units with higher NO_x emissions.

Therefore, the proposed rule should be revised to allow exceedances of any NO_x limit imposed under the Department's regulations or under a facility's permit. With the offset provision proposed in N.J.A.C. 7:27-19.24(c), the net environmental benefit will still be maintained specifically:

a. the first sentence in N.J.A.C. 7:27-19.24(a) should read: During a MEG alert that occurs on or before November 15, 2005, an electric generating unit that is operating at emergency capacity may exceed the NO_x emissions limits applicable under this chapter, including any limits set forth in the unit's permit.

b. the word "subchapter" in the first paragraph of N.J.A.C. 7:27-19.24(b)6 should be changed to "chapter."

c. N.J.A.C. 7:27-19.24(b)6iii should read:

M is the most stringent applicable NO_x emissions limit established under this chapter.

As an alternative, the Department should consider including MEG alerts as a basis for an affirmative defense to permit violations. If a MEG alert is a sufficient basis for exemptions from the NO_x emission limits in subchapter 19, it should also be justifiable to allow exceedances of emission limits for other pollutants. As long as appropriate offsets are obtained, the environmental benefit of the permit limits should be preserved. (7)

RESPONSE: In a MEG alert, a unit would be exempted from permit limits which are below the applicable NO_x RACT emission limit for that unit. The rule language of N.J.A.C. 7:27-19.24 has been modified to reflect this. This is consistent with the Department's original intent to allow energy providers an "out" during emergency circumstances. While the Department only proposed exemption from N.J.A.C. 7:27-19, the provision would be rendered ineffective if not applied to permit limits as well since some energy providers are permitted at limits more stringent than NO_x RACT. The Department intended that an electric generating unit, in its efforts to provide uninterrupted electric service during a MEG alert, would not incur penalties for exceeding otherwise applicable emission limits. However, any exceeded permit limits or N.J.A.C. 7:27-19 limits must be compensated by emission reductions made at another time.

106. COMMENT: One commenter requested the Department's confirmation that the following interpretation of N.J.A.C. 7:27-19.24(c) is correct: The required emission reductions can be taken from any over compliance that any source (not necessarily the unit responding to the MEG alert) has achieved during the four-year period ending one year after the MEG alert ends. Emission reductions would be calculated by subtracting the source's actual NO_x emissions from its allowable emissions (as determined by the most stringent applicable NO_x emission limit). Emission reductions would not need to be generated through enforceable permit conditions or source modifications and would not need to continue beyond the applicable four-year period. (7)

RESPONSE: The interpretation is not correct. The emission reductions must be actual (that is, the difference between the lower of the actual or allowable emissions before reduction and the actual emissions during the reduction). The emission reductions must be above and beyond the reductions required under Federal or State law, rule, regulation, permit or order.

N.J.A.C. 7:27-19.25 Exemption for emergency use of fuel oil

107. COMMENT: The commenter agrees with the intent of the proposed exemption for emergency use of fuel oil. Many industrial sources which burn natural gas as fuel are subject to interruptible service provisions in their supply contracts. Notably, the interruptions in service to industrial customers generally occur outside of the ozone season, in the winter months, when residential customer demand for natural gas is at its peak. Allowing natural gas burning industrial sources to burn backup fuel oil for a maximum of 500 hours per year when natural gas service is interrupted is an appropriate provision for the Department to propose in its amendments to the NO_x RACT regulations. The brief period of oil firing provided in the proposed regulation is likely to have an insignificant impact on air quality while allowing industrial sources to avoid shutting down or installing cost-ineffective NO_x controls to allow limited oil firing by a primarily gas-fired source. (11)

RESPONSE: The Department appreciates the support for the exemption. The exemption is in response to many requests for such an exemption in the original NO_x RACT rule proposal.

108. COMMENT: Refinery fuel gas is a byproduct of the refining operation and is composed of light-end hydrocarbons and hydrogen. It is used as a fuel in process heaters to recover the heat value, otherwise it would need to be flared without obtaining any beneficial use. As a supplement to refinery fuel gas, natural gas is also fired in the refinery process heaters and other combustion sources. Fuel oil is generally fired in refinery combustion sources only as a backup fuel when refinery fuel gas and natural gas are unavailable. Refinery fuel gas, like natural gas, is considered to be a low NO_x -emitting fuel than fuel oil. Consequently, there is no reason to exclude combustion sources firing refinery fuel gas as primary fuel and natural gas as secondary fuel from the proposed N.J.A.C. 7:27-19.25 exemption for emergency use of fuel oil. (11)

RESPONSE: The Department agrees and has modified the language of N.J.A.C. 7:27-19.25(b) accordingly. The exemption for emergency use of fuel oil would also be available to those units which primarily burn refinery gas (which includes a significant portion of natural gas). Burning refinery fuel gas is included in the exemption since it fulfills the Department's interest in burning fuels that are relatively low NO_x emitters.

109. COMMENT: The general revision to exempt liquid back-up fuels from meeting the NO_x emission requirements set for the primary natural gas fuel should be amended for the following reasons:

To reflect the existence of liquid fuels specifically developed and proven for use as back-up fuels for interruptible natural gas which do, in fact, give emissions equal to those of natural gas without the need for additional emission control retrofit equipment.

In its present form, the rule would clearly discourage organizations from continuing such development of other fuels to help improve the overall situation related to unwanted emissions which would appear contrary to the positive support given by the State of New Jersey to innovative technologies in general.

It is thought that this proposed amendment should have no major impact on the social-economic aspects of the proposed revision and should enable unwanted emissions from such situations to be kept to a minimum.

It is also accepted that the use of very low NO_x emission fuels may not be 'reasonable' in every situation but suggest that it should be the responsibility of the source owner to demonstrate that the use of such a fuel is not 'reasonable' under the general provisions of RACT. If, in fact, the source owner can successfully demonstrate that the use of such a fuel is not reasonable, then he should be allowed to utilize the proposed revision and be exempt from meeting the emission requirements while using another liquid back-up fuel. If however, he should choose to use a back-up fuel which did give NO_x emissions equivalent to those of natural gas, he could, in addition, benefit from the fact that he should not have to be restricted to the 500 hours per year limit on the use of the back-up fuel. This would allow a lower preferred natural gas contract rate to the negotiated as well as allow unrestricted use of this fuel for reasons other than the interruption of the natural gas including maintenance and the like.

If a combustion source temporarily combusts fuel oil or other liquid fuel in place of natural gas in accordance with this section, the owner or operator is not required to have the combustion source comply with the applicable NO_x emission limits in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 or an applicable NO_x emission limit established under N.J.A.C. 7:27-19.13, 19.20, 19.21, 19.22 or 19.23 while the fuel oil or other liquid fuel is burned unless, at any time, there is a fuel oil or liquid fuel commercially available as a back-up fuel for the interruptible natural gas. This backup fuel will allow the emission levels set for the natural gas to be met by the liquid fuel and which can be used by the combustion source in place of fuel oil or other liquid fuel without significant equipment modification. In this case, the fuel oil or liquid back-up fuel with the NO_x emission level equivalent to that of natural gas shall be used by the source as the back-up fuel for the interruptible natural gas and the exemption shall no longer be applicable unless the source owner or operator can demonstrate that, for its particular situation, the low emission fuel is not a reasonable alternative under the general provisions of RACT. (The commenter also submitted technical literature on Shell low NO_x fuel and a technical report which illustrates low NO_x fuel along with other three other clean fuels did not present a significant health risk from toxic air emissions.) (4)

RESPONSE: The Department agrees that under some circumstances, it would be reasonable to require low NO_x fuels be used in lieu of ordinary fuel oil and will consider requiring use of such low NO_x fuels as backup fuels in future amendments to this subchapter. However, because this provision was not proposed along with the amendments, the Department cannot include such a provision upon adoption.

110. COMMENT: The 500 hour per year limit proposed for emergency fuel oil use during natural gas curtailments should only apply from May 1 through September 15 annually. This is the case for the seasonal fuel switching exemption. There should be no annual hours limit on the emergency use of fuel oil during winter emergency natural gas curtailment periods.

Last winter's extreme cold resulted in greater than normal natural gas curtailment periods. Industries are required by their gas utility companies to switch from primary natural gas to emergency back-up fuel oils or, pay a significant cost penalty for continued use of gas. Last winter, one site had 673 hours and another New Jersey site totaled 744 hours of natural gas curtailment periods. Most companies only experience natural gas curtailments from November 1 through March 30 annually. In DEP's summary to this rule at 26 N.J.R. 3301 under Emergency Use of Fuel Oil, DEP indicates, "It is unlikely that the exemption will jeopardize achievement of the NAAQS for ozone because curtailments of the natural gas supply occur most commonly outside the ozone seson." First, the commenter agrees with the Department since its curtailment periods do not occur in the ozone season. Second, the excessive costs associated with installing NO_x controls on the back-up/emergency fuel oil combustion sources for winter only curtailments will not yield large enough emission reductions to be considered RACT. (2)

111. COMMENT: N.J.A.C. 7:27-19.25, which exempts emergency use of fuel oil from meeting the NO_x RACT emission limits, has an existing limit of 500 hours. This limit should be increased to 750 hours per year based on historical data for natural gas curtailment at a particular facility. As these are winter curtailments, the increase of this limit will not impact the ozone season. (2)

RESPONSE: The Department remains concerned about winter emissions of NO_x. NO_x RACT is a year-round requirement. The winter of 1994 notwithstanding, the Department feels that a maximum of 500 hours is adequate to provide an exemption during true emergencies of gas curtailment. If a facility has natural gas interruptions greater than 500 hours per year, there is a need to install low NO_x burners or other mechanisms to reduce NO_x emissions below the NO_x RACT limits for these units in order to comply with this subchapter. If exceedance of the 500 hours maximum is probable or routine for a facility, the facility should investigate a natural gas supply contract which will provide for less interruptions or use a low NO_x fuel oil (rather than regular fuel oil) that would comply with the emission limits applicable to oil.

112. COMMENT: In N.J.A.C. 7:27-19.25, the Department requires that within two days after continuing to combust fuel oil or other liquid fuel in place of natural gas in accordance with this section, the owner/operator shall send a written notice to the Department with specific information on the natural gas curtailment period. In the interest of reducing paperwork, the DEP should eliminate this requirement for companies to submit these written notices. The Regional Enforcement Offices will literally receive hundreds of notices each time regulated companies are subject to a utility mandated natural gas curtailment. If the Department feels some notification and annual recordkeeping of these curtailment periods is required, it is suggested that either an annual report be provided to the Department or that the curtailment periods be indicated on quarterly reports to the Department for those sources already completing these reports. (2)

113. COMMENT: The commenter supports the Department's provision of an exemption for the emergency use of fuel oil. However, the period of notification in N.J.A.C. 7:27-19.25(d) should be extended to at least three working days. In some cases, emergency fuel switch conditions occur on Friday evenings or on the Saturday of a holiday weekend. In these and other cases, it is impossible to send written notification via certified mail within two calendar days because post offices are closed. Therefore, the notification for emergency fuel oil use should be extended to three working days. Working days should be defined as normal New Jersey State Government working days. (13)

RESPONSE: The Department agrees and has modified the language on adoption to require records of curtailment periods be kept and included in quarterly reports submitted to the Department for those sources with continuous emissions monitoring systems and on an annual basis for those sources without such a system. This type of reporting will satisfy the Department's regulatory needs while easing paperwork requirements.

114. COMMENT: The provisions for emergency use of fuel oil should be extended to all sources, not just sources which utilize natural gas as primary fuel or seasonally. Such a provision should be extended to all sources, regardless of primary fuel type. (1)

RESPONSE: The interruption of natural gas supplies is a common occurrence during winter months. Other types of sources and fuels ordinarily would not be interrupted with the same frequency and magnitude as occurs with curtailments of natural gas, and therefore including other types of sources (such as coal-fired boilers) would not be appropriate. If a national emergency should exist (for instance, a coal worker strike), the Department would deal with that on a case-by-case basis.

115. COMMENT: The exemption at N.J.A.C. 7:27-19.25 is extremely beneficial for the operation of a combustion facility in light of the past winter season which brought about many periods of gas curtailment. Clarification is needed as to the applicability of this section to a combustion source which has a prior permitted allowable quantity of fuel oil for combustion.

The exemption for the 500 hours of fuel use allotted by this section should be allowed in addition to any permitted allowable fuel oil for a source. Such a source, which can demonstrate and be in compliance

with subchapter 19 limits when burning fuel oil, should be given the same benefit of emergency use of fuel oil as a source that need not meet the subchapter 19 limits. (15)

RESPONSE: In most situations, the permitted NO_x emission limits would be lower than the N.J.A.C. 7:27-19 specified limits. The allowable quantity of fuel oil in the permit is specific to that unit and would override the N.J.A.C. 7:27-19.25 exemption from NO_x RACT limits for emergency use of fuel. The exemption would not be applicable.

N.J.A.C. 7:27A-3.10 Civil administrative penalties

116. COMMENT: In the penalty schedule at N.J.A.C. 7:27A-3.10(e), under N.J.A.C. 7:27-19.7(b) or (c), the heat input is incorrectly listed as 57 MMBtu, instead of 50 MMBtu. Also, to avoid confusion, all heat inputs should be listed in MMBtu per hour. (15)

RESPONSE: The Department agrees and has corrected the penalty schedule on adoption.

Summary of Agency-Initiated Changes:

At N.J.A.C. 7:27-19.13(h) and (l) two modifications 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 a facility-specific NO_x emission limit.

At N.J.A.C. 7:27-19.13(p), the erroneous word "subchapter" is replaced with the intended word "section." Although the last sentence of the provision states the intent of the provision (that a major NO_x facility is exempted from submitting a facility-specific NO_x control plan if its only equipment or source operations with the potential to emit 10 tons or more of NO_x per year are non-utility boilers), the use of the word "subchapter" could be interpreted to exempt such a facility from more than the requirements of N.J.A.C. 7:27-19.13.

Also at N.J.A.C. 7:27-19.13(p), an exemption from the requirements of the subchapter is included for thermal oxidizers. The Department did not intend that these types of air pollution control equipment would be subject to NO_x RACT requirements by consideration of thermal oxidizers as unregulated sources. Evidence of the Department's intent to exclude thermal oxidizers from the NO_x RACT requirements can be found in the exclusion of thermal oxidizers form the definition of "incinerator" in N.J.A.C. 7:27-19. It is the experience of the Department in reviewing NO_x Control Plans for these sources that there is no existing NO_x control technology that could appropriately be considered RACT. Thermal oxidizers are currently being exempted from NO_x RACT requirements as a result of the review of NO_x Control Plans for thermal oxidizers on a case-by-case demonstration. The inclusion of this exemption will formalize existing practice and will eliminate unnecessary and time consuming submittals to the Department.

At N.J.A.C. 7:27-19.19(c)3 and (e) the Department has reduced the recordkeeping requirements for an owner or operator that temporarily combusts fuel oil or other liquid fuel in place of natural gas. Such an owner or operator will not be required to record NO_x emissions but only the number of hours that fuel oil or other liquid fuel is burned during the emergency disruption of the natural gas supply. The only restrictions on such a unit is the number of total hours this exemption from the NO_x emission limits is available (500 hours), and thus the quality of actual emissions during this emergency use of fuel oil is not relevant.

At N.J.A.C. 7:27-19.19(d)5, the Department has added the requirement that a record be kept of the allowable quantity of NO_x emissions as expressed in pounds or tons for the day or 30-day period as determined according to N.J.A.C. 7:27-19.20, 19.21 or 19.23. The allowable NO_x emissions will vary by unit for those units which employ these provisions and thus, should be included with information on the actual emissions. Recording all the requested information listed in N.J.A.C. 7:27-19.19(d) as a whole will enable a compliance determination to be made.

The civil administrative penalty schedule is being adopted at N.J.A.C. 7:27A-3.10(l), reflecting interim adoptions of amendments to the penalties rules.

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. 7:27-19, Control and Prohibition of Oxides of Nitrogen (NO_x), establishes reasonable available control technology (RACT) emission limits for several categories of combustion sources. N.J.A.C. 7:27-19 was promulgated on December 20, 1993. 25 N.J.R. 5957(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 (SIPs) to require major stationary sources of NO_x to implement reasonably available control technology (RACT) to reduce emissions. P.L. 101-549, section 182(f). 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 limit 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 combustion sources located therein.

When the Department proposed N.J.A.C. 7:27-19 to satisfy this requirement, members of the public and the regulated community submitted comments and suggestions, particularly concerning expanding various options for compliance in the rule to other combustion sources. In addition, EPA has, since the adoption of N.J.A.C. 7:27-19, provided guidance relevant to the rule (on fuel switching, repowering and on the use of innovative control technology to meet NO_x RACT requirements). In reviewing the public's comments and EPA guidance, the Department determined that revisions were necessary to provide flexibility in meeting the requirements of the subchapter. These amendments make those revisions.

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

7:27-19.1 Definitions

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

. . .

"Base year" means calendar year 1990 or other calendar year determined pursuant to N.J.A.C. 7:27-19.20(d)1, in connection with a plan for seasonal fuel switching.

. . .

"Cleaner fuel" means a fuel other than a combustion source's primary fuel, the combustion of which results in a rate of NO_x emissions that is less than the rate of NO_x emissions when the primary fuel is combusted, all other circumstances being equal.

. . .

"Criteria pollutant" means any air contaminant for which a NAAQS has been promulgated under 40 CFR 50 or for which a New Jersey Ambient Air Quality Standard has been promulgated in N.J.A.C. 7:27-13.

. . .

"Duct burner" means an item of equipment used with a combined cycle gas turbine or a stationary internal combustion engine to increase the steam generating capacity of heat recovery steam generators. A duct burner consists of pipes and small burners that are placed in the exhaust duct upstream of the heat recovery steam generator; the duct burner allows firing of additional fuel to increase the exhaust heat energy. A duct burner is a type of indirect heat exchanger.

"Electric generating unit" means a combustion source *[owned or operated by an electric generating utility and]* used for generating electricity ***that delivers all or part of its power to the electric power distribution grid*** for commercial sale.

. . .

"Emergency capacity" means the generation of electricity by an electric generating unit at a rate in excess of the unit's maximum normal power output rating. This maximum normal power output rating shall be that agreed upon by PJM and the owner or operator of the unit, and published by the owner or operator.

. . .

"Indirect heat exchanger" means equipment in which heat from the combustion of fuel is transferred by conduction through a heat-conducting material to a substance being heated, so that the latter is not contacted by, and adds nothing to, the products of combustion.

Examples of indirect heat exchangers include boilers, duct burners and process heaters.

"Innovative control technology" means a NO_x control measure that has a substantial likelihood of achieving lower continuous levels of NO_x emissions than are required under this subchapter, but has not been adequately demonstrated and is not available to be implemented before May 31, 1995. An item of equipment or control apparatus, a change in a process, or a pollution prevention strategy may qualify as an innovative control technology.

"Interim period" means the period of time beginning on May 31, 1995, and ending when phased compliance under N.J.A.C. 7:27-19.21, 19.22 or 19.23 (as applicable) is to be completed.

1. For purposes of phased compliance for repowering pursuant to N.J.A.C. 7:27-19.21, the interim period ends on the date when repowering of a combustion source is to be completed.

2. For purposes of phased compliance for reasons of practicability pursuant to N.J.A.C. 7:27-19.22, the interim period ends on the date when a combustion source is to attain full compliance with this subchapter.

3. For purposes of phased compliance for innovative control technology pursuant to N.J.A.C. 7:27-19.23, the interim period ends on the date when the innovative control technology is to be fully implemented.

. . .

"Lb/MMBTU" means pounds per million British Thermal Units.

. . .

"Load dispatcher" means the *[PJM]* employee or agent ***of the electric power distribution network, to which the electric generating unit is connected, who is*** responsible for determining that an MEG alert is the only feasible means of preventing or mitigating either a voltage reduction or an interruption in electric service or both.

. . .

"MEG alert" means a period in which *[an electric generating utility operates]* one or more electric generating units ***are operated*** at emergency capacity at the direction of the load dispatcher, in order to prevent or mitigate voltage reductions or interruptions in electric service, or both. A MEG alert begins and ends as follows:

1. An alert begins when *[the electric generating utility begins to operate]* one or more electric generating units ***are operated*** at emergency capacity after receiving notice from the load dispatcher, directing the *[utility]* ***electric generating unit*** to do so; and

2. An alert ends when the electric generating *[utility]* ***unit*** ceases operating its electric generating units at emergency capacity.

. . .

"MMBTU" means million British Thermal Units.

. . .

"Peak daily heat input rate," for a combustion source ***or for a designated set*** that has no operating history, means the maximum gross heat input rate of the source ***or of all the sources in the designated set***. For a combustion source ***or for a designated set*** that has an operating history, "peak daily heat input rate" means the average of the daily heat inputs to a combustion source ***or to a designated set*** on the five days on which the heat input was highest, over the following period:

1. For a combustion source ***or for a designated set*** that has been operating for at least five years, the five years preceding the date on which the owner or operator applied to the Department for approval of an emissions averaging plan, pursuant to N.J.A.C. 7:27-19.6; and

2. For a combustion source that has been operating for less than five years, the entire period during which the combustion source has been operating.

"Pennsylvania-New Jersey-Maryland Interconnection" or "PJM" means the combination of electric generating utilities, linked physically and through contractual arrangements, for coordinated electricity planning and operation in an area that as of 1994 includes New Jersey, Maryland, Pennsylvania, Virginia, Delaware and the District of Columbia.

. . .

"Primary fuel" means the fuel that provided the greatest heat input (expressed in BTU) to a combustion source in the base year.

"Process heater" means an item of equipment in which heat from fuel combustion is transferred to fluids contained in tubes without coming into contact with the fluid. A process heater is a type of indirect heat exchanger.

. . .

"Refinery fuel gas" means gaseous fuel derived from the refining process and used as a fuel at the refinery where it was produced.

"Refining process" means the combination of physical and chemical operations including, but not limited to, distillation, cracking, and reformulation, performed on crude oil (or derivatives of crude oil) in order to produce petroleum products.

. . .

"Repowering" means the series of actions described in 1 and 2 below by an owner or operator:

1. The permanent ceasing of the operations of the steam generator in a steam generating unit, the gas turbine in a simple-cycle or combined-cycle gas turbine, or any other combustion source; and

2. The installation in the State of a new combustion source ***or the purchase of heat or power from the owner of a new combustion source that is located in the State*** that:

i. Has a maximum gross heat output rate that is at least 50 percent of the maximum gross heat output rate of the combustion source that is shut down under 1 above, or has a power output rate that is at least 50 percent of the power output rate of the combustion source that is shut down; and

ii. Incorporates technology capable of controlling multiple combustion emissions simultaneously with improved fuel efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

. . .

"Selective noncatalytic reduction" or "SNCR" means a noncombustion technology that reduces NO_x emissions without a catalyst by injecting a reducing agent (such as ammonia, urea or cyanuric acid) into the flue gas, downstream of the combustion zone; the injection of the reducing agent converts NO_x to molecular nitrogen, water, and (if the reducing agent is urea or cyanuric acid) carbon dioxide (CO_2).

. . .

7:27-19.2 Purpose, scope and applicability

(a) (No change.)

(b) The following types of equipment and source operations are subject to the provisions of this subchapter:

1. (No change.)

2. Any non-utility boiler or other indirect heat exchanger which has a maximum gross heat input rate of at least 20 million BTUs per hour;

3.-8. (No change.)

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

(f) The owner or operator of a facility containing any equipment or source operation listed in (b) above may apply to the Department for an exemption from this subchapter. The procedure for obtaining the Department's approval of such an exemption is set forth in N.J.A.C. 7:27-19.14. The Department shall approve the exemption only if the facility satisfies the requirements of (f)1 and 2 below:

1. (No change.)

2. The facility's potential to emit NO_x on any calendar day from May 1 to September 15 is less than 137 pounds per day.

7:27-19.3 General provisions

(a)-(e) (No change)

(f) In lieu of complying with the applicable emission limits set forth at N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, the owner or operator of a utility boiler, stationary gas turbine, non- utility boiler, indirect-fired heat exchanger, stationary internal combustion engine, asphalt plant or glass manufacturing furnace may comply with one of the following, or with a combination of (f)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.13;
3. A seasonal fuel switching plan for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or
4. A plan for phased compliance for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

(g) (No change)

(h) A person required to provide notice to the Department under this subchapter shall send the notice to the applicable address listed below:

1. If the notice concerns a combustion source located in Burlington County, Mercer County, Middlesex County, Monmouth County or Ocean County, the person shall send the notice to:
Central Regional Office
Horizon Center
CN 407
Robbinsville, NJ 08625-0407

2. If the notice concerns a combustion source located in Bergen County, Essex County, Hudson County or Union County, the person shall send the notice to:
Metro Regional Office
2 Babcock Place
West Orange, NJ 07052-5504

3. If the notice concerns a combustion source located in Hunterdon County, Morris County, Passaic County, Somerset County, Sussex County or Warren County, the person shall send the notice to:
Northern Regional Office
1259 Route 46 East
Parsippany, NJ 07054-4191

4. If notice concerns a combustion source located in Atlantic County, Camden County, Cape May County, Cumberland County, Gloucester County or Salem County, the person shall send the notice to:
Southern Regional Office
20 East Clementon Road
3rd Floor, Suite 302
Gibbsboro, NJ 08026-1175

5. If the notice concerns an averaging plan, the person shall determine the county in which the averaging unit with the highest potential to emit NO_x is located, and send the notice to the address applicable to that county under (h)1 through 4 above.

7:27-19.4 Utility boilers

(a) The owner or operator of a utility boiler shall cause it to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 1 below, unless the owner or operator of the utility boiler is complying with one of the following, or with a combination of (a)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;
2. An alternative maximum allowable emission rate for the boiler, approved by the Department pursuant to N.J.A.C. 7:27-19.13;
3. A seasonal fuel switching plan for the boiler, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or
4. A plan for phased compliance for the boiler, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

TABLE 1
Maximum Allowable NO_x Emission Rates for Utility Boilers
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0*[1]*	1.0*[1]*	0.60
Coal—Dry Bottom	0.38	0.45	0.55
Oil and/or Gas	0.20	0.28	0.43
Gas Only	0.20	0.20	0.43

[[1]Except as provided in (b) below.]

(b) (No change in text.)

7:27-19.5 Stationary gas turbines

(a) No stationary simple cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO_x at a rate greater than the applicable maximum allowable NO_x emission rate specified in Table 2 below, unless the owner or operator is complying with one of the following, or with a combination of (a)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;
2. An alternative maximum allowable emission rate for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.13;
3. A seasonal fuel switching plan for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or
4. A plan for phased compliance for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

TABLE 2
Maximum Allowable NO_x Emission Rate for
Simple Cycle Gas Turbines
(Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.4
Gas	0.2

(b) No combined cycle gas turbine or regenerative cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO_x at a rate greater than the applicable maximum allowable NO_x emission rate specified in Table 3 below, unless the owner or operator is complying with one of the following, or with a combination of (b)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;
2. An alternative maximum allowable emission rate for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.13;
3. A seasonal fuel switching plan for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or
4. A plan for phased compliance for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

TABLE 3
Maximum Allowable NO_x Emission Rate for
Combined Cycle or Regenerative Cycle Gas Turbines
(Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.35
Gas	0.15

(c) (No change.)

7:27-19.6 Emissions averaging

(a) The Department may authorize an owner or operator to comply with an averaging plan approved by the Department pursuant to this section and N.J.A.C. 7:27-19.14. An owner or operator in compliance with such an approved averaging plan is not required to have each averaging unit comply with any emission limit set forth in this subchapter which would be applicable in the absence of an approved averaging plan.

(b) An owner or operator of two or more source operations or items of equipment may request that the Department authorize an averaging plan for two or more averaging units designated by the owner or operator. The owner or operator seeking authorization for averaging shall submit a written application to the Department in accordance with N.J.A.C. 7:27-19.14(a), (b) and (c). The owner or operator shall include the following information in the application:

1.-4. (No change.)

5. The peak daily heat input rate ***of each averaging unit or of the designated set***, expressed in MMBTU;

6. A demonstration that in operating at *[their]* ***the*** peak daily heat input rate*[s]*, of all the averaging units together ***or of the designated set*** would satisfy the following equation:

$$TPEE \leq TPAE$$

where:

i. TPEE means total peak estimated emissions and is equal to the sum of the peak estimated emissions for each averaging unit ***or the peak estimated emission of the designated set***. The peak estimated emissions for each averaging unit equals the maximum emission rate listed in (b)4 above for that averaging unit, multiplied by the peak daily heat input rate listed in (b)5 above for that averaging unit***. The peak estimated emissions of the designated set equals the sum of the maximum emission rates listed in (b)4 above for each averaging unit multiplied by the daily heat input rate to that averaging unit at the time of the peak daily heat input rate to the designated set as listed in (b)5 above***; and

ii. TPAE means tota! peak allowable emissions, and is equal to the sum of the total peak allowable emissions for each averaging unit ***or the peak allowable emissions of the designated set***. The peak allowable ***emissions for each averaging unit equals the applicable*** NO_x emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, multiplied by the peak daily heat input rate listed in (b)5 above for that averaging unit. ***The TPAE of the designated set means the applicable NO_x emission limit for each averaging unit multiplied by the heat input rate to that averaging unit at the time of the peak daily heat input rate to the designated set.*** For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27-19.20, the *[peak allowable]* ***applicable*** NO_x emission limit from May 1 through September 15 is the limit established under N.J.A.C. 7:27-19.20(d) ***or 19.20(g)3 as applicable***, and the *[peak allowable]* ***applicable*** NO_x emission limit from September 16 through April 30 is the limit established under N.J.A.C. 7:27-19.20(g)4;

7.-9. (No change.)

(c) The Department shall approve an averaging plan only if the following requirements are satisfied:

1. (No change.)

2. The request for authorization satisfies all requirements of (b) above; and

3. The owner and operator of the averaging units to be included in the designated set enter into a Federally enforceable agreement with the Department (such as the inclusion of conditions in the applicable permits or operating certificates, or both), requiring any averaging unit for which the NO_x emission rate specified under (b)4 above is less than the applicable maximum allowable NO_x emission rate specified at N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 to continue to emit NO_x at a rate no greater than that specified under (b)4 above.

(d) The owner or operator of the designated set shall operate each unit in the designated set in compliance with the following:

1. (No change.)

2. The sum of the actual NO_x emissions from all averaging units in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the sum of the allowable NO_x emissions for all averaging units in the designated set. The allowable NO_x emissions for each averaging unit is calculated according to the following formula:

$$\text{Allowable } NO_x \text{ emissions} = H \times AL$$

where:

i. (No change.)

ii. AL means the applicable NO_x emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, expressed in pounds of NO_x per million BTUs. For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27-19.20, the applicable NO_x emission limit from May 1 through September 15 is the limit established under N.J.A.C. 7:27-19.20(g)3, and the applicable NO_x emission limit from September 16 through April 30 is the limit established under N.J.A.C. 7:27-19.20(g)4.

(e) (No change.)

(f) The owner or operator shall demonstrate compliance with this section as follows:

1. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for each calendar day during the period beginning May 1 and ending September 15 of each year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire calendar day. The owner or operator shall perform the calculations and make a record of them within three working days after the date which is the subject of the calculation; and

2. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for the 30-day period ending on September 16 of each year, and the 30-day period ending on each subsequent day through April 30 of the following year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging ***unit over the entire 30-day period. The owner or operator shall perform the*** calculations and make a record of them by the 15th day of each month, for all 30-day periods ending in the preceding month.

(g) The owner or operator of a designated set shall maintain the records listed below for five years from the date on which each record was made. The owner or operator shall maintain such records in a permanently bound log book ***or an electronic method***, in a format that enables the Department to readily determine whether the designated set and each averaging unit are in compliance. The owner or operator shall maintain the following records:

1.-9. (No change.)

(h) (No change.)

(i) If the emissions from the designated set or from any averaging unit do not comply with (d) above for any time period described in (f) above, the owner or operator of the designated set shall deliver (as opposed to send) written notice of the non-compliance to the Department within two working days after the date on which the owner or operator was required to calculate compliance under (f) above. The owner or operator shall provide the notice in writing to the Regional Enforcement Officer, at the address specified at N.J.A.C. 7:27-19.3(h) for the county in which the averaging unit with the highest NO_x emission rate is located. The owner or operator shall include the following information in the notification:

1.-5. (No change.)

(j) An owner or operator of an averaging unit which cannot be operated due to sudden and reasonably unforeseeable circumstances beyond the control of the owner or operator, and for which the NO_x emission rate specified under (b)4 above is less than the applicable maximum allowable NO_x emission rate under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, or 19.10 shall take the following actions:

1.-3. (No change.)

7:27-19.7 Non-utility boilers and other indirect heat exchangers

(a) Beginning in calendar year 1995, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 20 million but less than 50 million BTUs per hour shall:

1. Annually adjust the combustion process in accordance with N.J.A.C. 7:27-19.16, *[before May 1 of]* each ***calendar*** year; or

2. Cause the boiler or other indirect heat exchanger to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 4 below, and establish compliance with this requirement by continuous emissions monitoring pursuant to N.J.A.C. 7:27-19.15(a)1.

(b) Beginning on May 31, 1995, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 50 million but less than 100 million BTUs per hour shall cause the boiler or other indirect heat exchanger to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 4 below, and comply with the applicable requirements of (d) below.

TABLE 4
Maximum Allowable NO_x Emission Rates for
Non-utility Boilers and other Indirect Heat Exchangers
Subject to N.J.A.C. 7:27-19.7(b)
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0	1.0	0.55
Coal—Dry Bottom	0.38	0.43	0.55
#2 Fuel Oil	0.12	0.12	0.12
Other Liquid Fuels	0.3	0.3	0.3
Refinery fuel gas	0.20	0.20	N/A
Natural Gas	0.1	0.1	0.1

(c) Beginning on May 31, 1995, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 100 million BTUs per hour shall cause the boiler or other indirect heat exchanger to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 5 below, and comply with the applicable requirements of (d) below.

TABLE 5
Maximum Allowable NO_x Emission Rates for
Non-utility Boilers and other Indirect Heat Exchangers
Subject to N.J.A.C. 7:26-19.7(c)
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0	1.0	0.60
Coal—Dry Bottom	0.38	0.45	0.55
Oil and/or Gas	0.20	0.28	0.43
Refinery fuel gas	0.20	0.20	N/A
Gas Only	0.20	0.20	0.43

(d) In addition to complying with (c) above, the owner or operator of any non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 250 million BTUs per hour shall install a continuous emissions monitoring system in accordance with N.J.A.C. 7:27-19.18. In addition to complying with (b) or (c) above, as applicable, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 50 million BTUs per hour but less than 250 million BTUs per hour shall either:

1. Annually adjust the combustion process in accordance with N.J.A.C. 7:27-19.16, *[before May 1 of]* each ***calendar*** year; or

2. Establish compliance with the applicable maximum allowable emission rate by continuous emissions monitoring pursuant to N.J.A.C. 7:27-19.15(a)1.

(e) In lieu of complying with a NO_x emission limit under (b) or (c) above, the owner or operator of a non-utility boiler or other indirect heat exchanger may comply with one of the following, or with a combination of (e)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.13;

3. A seasonal fuel switching plan for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or

4. A plan for phased compliance for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

7:27-19.8 Stationary internal combustion engines

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

(d) In lieu of complying with a NO_x emission limit under (a), (b) or (c) above, the owner or operator of a stationary internal combustion engine may comply with one of the following, or with a combination of (d)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the engine, approved by the Department pursuant to N.J.A.C. 7:27-19.13;

3. A seasonal fuel switching plan for the engine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or

4. A plan for phased compliance for the engine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

7:27-19.9 Asphalt plants

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

(c) In lieu of complying with a NO_x emission limit under (a) above, the owner or operator of an asphalt plant may comply with one of the following, or with a combination of (c)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.13;

3. A seasonal fuel switching plan for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or

4. A plan for phased compliance for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

7:27-19.10 Glass manufacturing furnaces

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

(e) Beginning in calendar year 1994, the owner or operator of a glass manufacturing furnace subject to this subchapter shall adjust the combustion process of the furnace in accordance with N.J.A.C. 7:27-*[19.17]* ***19.16*** before May 1 of each calendar year.

(f) In lieu of complying with a NO_x emission limit under (a), (b) or (c) above, the owner or operator of a glass manufacturing furnace may comply with one of the following, or with a combination of (f)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the furnace, approved by the Department pursuant to N.J.A.C. 7:27-19.13;

3. A seasonal fuel switching plan for the furnace, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or

4. A plan for phased compliance for the furnace, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

7:27-19.13 Facility-specific NO_x emissions limits

(a) This section establishes procedures and standards for the establishment of facility-specific NO_x emissions limits in the following circumstances:

1. If a major NO_x facility contains any source operation or item of equipment of a category not listed in N.J.A.C. 7:27-19.2(b) (that is, any source operation or item of equipment other than a utility boiler, a non-utility boiler, a stationary gas turbine, a stationary internal combustion engine, a rotary dryer located at an asphalt plant, or a glass manufacturing furnace) which has the potential to emit more than 10 tons of NO_x per year, except as provided in (p) below; or

2. (No change.)

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

(g) Within six months after receiving a complete proposed NO_x control plan or request for an alternative maximum allowable emission rate, the Department shall approve, approve and modify, or disapprove the proposed plan or request and notify the owner or operator of the decision in writing. The Department shall approve the proposed plan or request only if it satisfies the following requirements:

1.-5. (No change.)

6. *[Increases in the emissions]* ***Any significant net emission*** of any criteria pollutant (as determined pursuant to N.J.A.C.

7:27-19.17 or 19.18, as applicable) do not cause or significantly contribute to a violation of a National Ambient Air Quality Standard, an exceedance of a Federal Prevention of Significant Deterioration increment ***if applicable***, or any violation of the Clean Air Act, 42 U.S.C. 7401 et seq. ***A significant net emission increase of any criteria pollutant, and the determination of when such an increase causes or significantly contributes to an exceedance of a National Ambient Air Quality Standard, shall be determined pursuant to N.J.A.C. 7:27-18.***

(h) Any alternate emissions limit pursuant to N.J.A.C. 7:27-19.13(c) or NO_x Control Plan pursuant to 7:27-19.13(b) approved by the Department will be submitted to EPA *[as an amendment to the]* ***for approval as a revision to the*** State Implementation Plan (SIP) for ozone.

(i)-(k) (No change.)

(l) ***The Department will revoke an approval of a NO_x control plan by written notice to the holder of the approval if EPA denies approval of the proposed NO_x plan as a revision to the State Implementation Plan.*** The Department may revoke an approval of a NO_x control plan by written notice to the holder of the approval, if:

1.-2. (No change.)

[3. EPA denies approval of the proposed NO_x plan as a revision to the State Implementation Plan;] or

*[4.]***3.*** The Department determines that continued use of the subject equipment or source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment.

(m)-(o) (No change.)

(p) A major NO_x facility satisfies the requirements of this *[subchapter]* ***section*** if its only equipment or source operations with the potential to emit 10 tons or more of NO_x per year are non-utility boilers ***or thermal oxidizers***. The owner or operator of such a facility is not required to submit a facility-specific NO_x control plan for the facility.

7:27-19.14 Procedures for obtaining approvals under this subchapter

(a) This section establishes the procedure for obtaining any of the following from the Department:

1. (No change)

2. Approval of a fuel switching plan under N.J.A.C. 7:27-19.20, and authorization to operate under the plan;

3. Approval of a plan for phased compliance under N.J.A.C. 7:27-19.21, 19.22 or 19.23, and authorization to operate under the plan;

4. Approval of compliance with the requirements of N.J.A.C. 7:27-19.5(c) for a stationary gas turbine;

5. Approval of an emissions averaging plan under N.J.A.C. 7:27-19.6, and authorization to operate under the plan; or

6. Approval of an alternative monitoring plan pursuant to N.J.A.C. 7:27-19.18(b).

(b) (No change)

(c) The person seeking the approval under (a) above shall include the following information in the application submitted under (b) above:

1. Any information required under N.J.A.C. 7:27-19.2(f), 19.5(c), 19.6(b), 19.18(c), 19.20 or 19.21, as applicable;

2.-7. (No change)

(d) (No change)

(e) Within six months after receiving a complete application, the Department shall grant its approval under this section only if:

1. The applicant satisfies all eligibility requirements set forth in N.J.A.C. 7:27-19.5(c), 19.6(c), 19.20, or 19.21 as applicable; and

2. *[Increases in the emissions]* ***Any significant net emission*** of any criteria pollutant (as determined pursuant to N.J.A.C. 7:27-19.17 or 19.18, as applicable) do not cause or significantly contribute to a violation of a National Ambient Air Quality Standard as determined pursuant to N.J.A.C. 7:27-18, an exceedance of a Federal Prevention of Significant Deterioration increment ***if applicable***, or any violation of the Clean Air Act, 42 U.S.C. 7401 et seq. ***A significant net emission increase of any criteria pollutant, and the determination of when such an increase causes or significantly contributes to an exceedance of a National Ambient Air Quality Standard, shall be determined pursuant to N.J.A.C. 7:27-18.***

(f)-(j) (No change)

7:27-19.15 Procedures and deadlines for demonstrating compliance

(a) The owner or operator of equipment or a source operation subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit as follows:

1. If a continuous emissions monitoring system has been installed on the equipment or source operation, or if any other provision of this subchapter requires emissions from the equipment or source operation to be monitored by a continuous emissions monitoring system under N.J.A.C. 7:27-19.18, the owner or operator shall calculate the average NO_x emission rate using the data from such a system for the NO_x concentration in the flue gas and either the flue gas flow rate or the fuel flow rate. To calculate the emission rate using the NO_x concentration and fuel flow rate, the owner or operator shall use the conversion procedure set forth in the Acid Rain regulations at 40 CFR part 75, Appendix F, or an alternative procedure that the Department determines will yield the same result. Compliance with the limit shall be based upon the average of emissions:

i. Between May 1 and September 15, over each calendar day; and

ii. From September 16 through April 30 of the following year, over the 30-day period ending on each such day; or

2. If no continuous emissions monitoring system has been or is required to be installed on the equipment or source operation, compliance with the limit shall be based upon the average of three one-hour tests, each performed over a consecutive 60-minute period specified by the Department, and performed in compliance with N.J.A.C. 7:27-19.17.

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

7:27-19.19 Recordkeeping and reporting

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

(c) The recordkeeping requirements in (d) and *[(e)]* ***(f)*** below apply to the owner or operator of any combustion source that is:

1. Included in a fuel switching plan approved under N.J.A.C. 7:27-19.14 and 19.20; ***or***

2. Included in a plan for phased compliance approved under N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21 or 19.23*[; or

3. Temporarily combusting fuel oil or other liquid fuel in place of natural gas, pursuant to N.J.A.C. 7:27-19.25]*.

(d) For each combustion source listed in (c) above, the owner or operator shall record the following information for each day from May 1 through September 15, for the 30-day period ending on September 16, and for each 30-day period ending on each subsequent day through April 30 of the following year:

1. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, the company stack designation, and any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the owner or operator;

2. The day or 30-day period, as applicable, for which the record is being made;

3. The amount, type and higher heating value of each fuel consumed during each day from May 1 through September 15, during the 30-day period ending on September 16, and during each 30-day period ending on each subsequent day through April 30 of the following year;

4. The quantity of NO_x emitted during the day or 30-day period, as applicable, determined in accordance with N.J.A.C. 7:27-19.15(a) and expressed in pounds or tons; *[and]*

5. The allowable quantity of NO_x emissions as expressed in pounds or tons for the day or 30-day period as determined according to N.J.A.C. 7:27-19.20, 19.21 or 19.23; and

*[5.]***6.*** Any other information required to be maintained as a condition of an approval granted under N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.20, 19.21 or 19.23.

(e) The owner or operator of any combustion source that is temporarily combusting fuel oil or other liquid fuel in place of natural gas pursuant to N.J.A.C. 7:27-19.25 shall keep on site a record of the number of hours such fuel has been combusted.

*[(e)]***(f)*** The owner or operator of a combustion source listed in (c) or ***(e)*** above shall keep the records required under (d) ***and (e)*** above at the facility in a permanently bound log book ***or by an electronic method that is easily accessible on site and at the time of inspection***, in a format that enables the Department to readily determine whether the combustion source is in compliance.

*[(f)]***(g)*** The reporting requirements in *[(g) through (i)]* below apply to the owner or operator of any combustion source that is*[:

1. Included in a fuel switching plan approved under N.J.A.C. 7:27-19.14 and 19.20;
2. To be repowered pursuant to a plan for phased compliance approved under N.J.A.C. 7:27-19.14 and 19.21; or
3. To be implementing innovative control technology pursuant to a plan for phased compliance approved under N.J.A.C. 7:27-19.14 and 19.23.

*[(g) The owner or operator of a combustion source listed in (f) above shall submit a report to the Department on October 30 of each year, concerning the period from May 1 through September 15. The owner or operator shall include in the report the following information concerning each combustion source listed in (f) above:

1. The records listed in (d) above;
2. A statement whether the combustion source complied with the applicable limit on daily NO_x emissions on each day; and
3. The basis for the statement in 2 above.

(h) On March 1 of each year, the owner or operator of a combustion source listed in (f) above shall submit to the Department an annual report for the preceding calendar year. The owner or operator need not include information which has already been submitted in the report under (g) above, but shall include the following information in the annual report for each combustion source listed in (f) above:

1. The records listed in (d) above;
2. A statement whether the combustion source complied with the applicable limit on NO_x emissions for each 30-day period ending on each day from January 1 through April 30, and for each 30-day period ending on each day from September 16 through December 31;
3. For each combustion source included in a fuel switching plan, a statement whether the combustion source complied with the applicable limit on annual NO_x emissions; and
4. The basis for the statements in 2 and 3 above.

(i) If the emissions from any combustion source listed in (f) above do not comply with the applicable limit on daily NO_x emissions for any day from May 1 through September 15, the owner or operator shall deliver (as opposed to send) written notice of the non-compliance within two working days after the date on which the owner or operator was required to determine whether the source was in compliance with the daily limit. The owner or operator shall provide the notice in writing at the applicable address specified at N.J.A.C. 7:27-19.3(h). The owner or operator shall include the following information in the notification:

1. The name of the owner or operator;
2. The name and telephone number of the individual responsible for recordkeeping and reporting;
3. All information required to be recorded under (d) above;
4. A statement of the reasons for the non-compliance, if known; and
5. Certification of the notification, in accordance with N.J.A.C. 7:27-8.24.]*

***listed in (c) or (e) above as follows:**

1. If a continuous emissions monitoring system has been installed on the equipment or source operation, an owner or operator shall submit to the Department a quarterly report in accordance with the requirement to report excess emissions contained in the Preconstruction Permit and Operating Certificate or an Operating Permit for the equipment or source operation. For an owner or operators subject to (c) above, the information pursuant to (d) above shall be submitted with the report for each day or 30-day period of a violation. If no violations occurred during the quarter, the owner or operator should provide certification that no violations occurred and that the records are maintained at the facility. Certification of the notification should be in accordance with N.J.A.C. 7:27-1.39; or

2. If no such continuous emissions monitoring system has been installed the owner or operator shall submit to the Department on March 1 of each year an annual report for the preceding calendar year. Such annual report shall include any violations which occurred during the previous year. If no violations occurred during the year, the owner or operator shall provide certification that no violations occurred and that the records are maintained at the facility. Certification of the notification shall be in accordance with N.J.A.C. 7:27-1.39.*

7:27-19.20 Fuel switching

(a) The owner or operator of a combustion source included in a plan for fuel switching is authorized to comply with the plan if the Department approves the plan pursuant to this section and N.J.A.C. 7:27-19.14. The owner or operator's compliance with the plan is in lieu of causing the combustion source to comply with the emission limit under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would otherwise apply to the combustion source.

(b) A combustion source may be included in a fuel switching plan only if it will be deriving from a cleaner fuel a greater percentage of its total heat input than it derived in the base year.

(c) An owner or operator seeking approval of a plan for fuel switching shall submit an application to the Department by *[(date that is 30 days after operative date of these amendments)]* ***June 22, 1995***, in accordance with N.J.A.C. 7:27-19.14(a), (b) and (c). In addition to the information required under N.J.A.C. 7:27-19.14(c), the owner or operator shall include in the application the following information regarding each combustion source that is to combust a cleaner fuel seasonally:

1. Information sufficient to identify the combustion source, including a brief description, (for example, "dry-bottom coal-fired utility boiler" or "oil-fired simple-cycle gas turbine"), its location, its permit number, its company stack designation, any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the applicant;
2. The maximum gross heat input rate of the combustion source, expressed in million BTUs per hour;
3. The type of fuel or fuels combusted in the combustion source;
4. The maximum allowable NO_x emission rate for the combustion source, determined under (d) below, together with the calculations made to determine that rate;
5. The method to be used to measure the actual NO_x emission rate of each combustion source;
6. A statement that the owner or operator will operate each combustion source included in the plan in accordance with the requirements of (g) below;
7. The name and business telephone number of the individual responsible for recordkeeping and reporting required under N.J.A.C. 7:27-19.19; and
8. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the source operations and items of equipment subject to fuel switching will comply with the requirements of this section.

(d) The maximum daily and annual NO_x emission rate for a combustion source included in the fuel switching plan is determined as follows ***(except that for a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method, only (d)1 through 3 below apply)***:

1. Establish the base year. The base year is calendar year 1990, unless the Department approves the use of calendar year 1991, 1992 or 1993 as the base year. The Department shall approve the use of 1991, 1992 or 1993 as the base year only if the owner or operator demonstrates that the alternative year is more representative of the normal operation of the combustion source;

2. For each fuel that the combustion source combusted during the base year (established under (d)1 above), determine the heat input (in MMBTU) that the combustion source derived from the combustion of that fuel during the base year;

3. Determine the maximum allowable NO_x emissions rate (in lb/MMBTU) for the combustion of each fuel, under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable;

4. For each fuel, multiply the heat input in the base year (determined under (d)2 above) by the maximum allowable emissions rate (determined under (d)3 above);

5. Add all of the amounts determined under (d)4 above;

6. Divide the total determined under (d)5 above by the sum of all of the heat inputs that the combustion source derived from the combustion of each fuel (determined under (d)2 above). The result is the maximum allowable NO_x emission rate, expressed in lb/MMBTU, provided, however, that the maximum allowable NO_x emission rate shall not be greater than the rate under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would apply if the combustion source were combusting the primary fuel that it had used in the base year;

7. The calculations under (d)4, 5 and 6 above can be expressed in the following equation:

$$M = \frac{(HI_1\ L_1) + (HI_2 \times L_2) + \ldots + (HI_N \times L_N)}{(HI_1 + HI_2 + \ldots + HI_N)}$$

where:

i. M is the maximum allowable NO_x emission rate, in lb/MMBTU;

ii. HI_1 is the heat input that the combustion source derived from the combustion of Fuel 1 during the base year, expressed in MMBTU;

iii. L_1 is the maximum allowable emissions rate (in lb/MMBTU) for the combustion of Fuel 1, under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable;

iv. HI_2 is the heat input that the combustion source derived from the combustion of Fuel 2 during the base year, expressed in MMBTU;

v. L_2 is the maximum allowable emissions rate (in lb/MMBTU) for the combustion of Fuel 2, under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable;

vi. N is number of fuels combusted during the base year;

vii. HI_N is the heat input that the combustion source derived from the combustion of Fuel N during the base year, expressed in MMBTU; and

viii. L_N is the maximum allowable emissions rate (in lb/MMBTU) for the combustion of Fuel N, under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable.

(e) The Department shall approve a plan for fuel switching only if the application satisfies all requirements of (c) above and N.J.A.C. 7:27-19.14. A plan for fuel switching shall be deemed to meet these requirements if it provides for a combustion source to attain compliance with the emission limits under (g)3, 4 and 5 below partly through combustion of cleaner fuel and partly through the use of other NO_x control measures, and satisfies all other requirements of (c) above and N.J.A.C. 7:27-19.14.

(f) Any owner or operator seeking to comply with this subchapter by fuel switching in accordance with this section shall obtain the Department's written approval of the application pursuant to N.J.A.C. 7:27-19.14 before May 1, 1995, and maintain that approval in effect.

(g) Beginning in calendar year 1995, the owner or operator shall operate each combustion source included in the plan in compliance with the following:

1. All conditions of the Department's written approval of the fuel switching plan shall be met;

2. From May 1 through September 15 of each year, the combustion source shall combust the cleaner fuel exclusively, or derive a higher percentage of its total heat input from cleaner fuel than the percentage it derived from May 1 through September 15 of the base year;

3. During each calendar day from May 1 through September 15 of each year, the combustion source shall emit NO_x at an average rate no higher than the maximum allowable NO_x emission rate determined under (d) above; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method, the maximum allowable NO_x emission rate shall be 1.0 lb/MMBTU;

4. During the 30-day period ending on September 16 of each year, and each 30-day period ending on each subsequent day thereafter until April 30 of the following year, the combustion source shall emit NO_x at an average rate no higher than the rate under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would apply if the combustion source were combusting the primary fuel that it had used in the base year; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method shall emit NO_x at a rate no higher than 1.5 lb/MMBTU; and

5. During each calendar year, the combustion source shall emit NO_x at an average rate no higher than the maximum NO_x emission rate determined under (d) above; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method shall emit NO_x at a rate no higher than 1.5 lb/MMBTU. Compliance with this requirement shall be determined based on averaging over each calendar year.

(h) The owner or operator shall determine the NO_x emissions from each combustion source included in an approved fuel switching plan in accordance with N.J.A.C. 7:27-19.15(a).

(i) The owner or operator shall demonstrate compliance with this section as follows:

1. Each calendar day from May 1 through September 15 of each year, the owner or operator shall determine whether each combustion source included in the plan is in compliance with the applicable daily NO_x emission limit under (g)3 above. The owner or operator shall perform the calculations necessary to verify compliance and make a record of them within three working days after the date that is the subject of the calculation;

2. For the 30-day period ending on September 16, and for each 30-day period ending on each subsequent day until April 30 of the following year, the owner and operator shall determine whether each combustion source included in the plan is in compliance with the applicable 30-day NO_x emission limit under (g)4 above; and

3. By January 15 of each year, the owner or operator shall determine whether the total actual NO_x emissions from each combustion source included in the plan (determined under (k) below) complied with the limit on annual NO_x emissions (determined under (j) below) during the preceding calendar year.

(j) The limit on annual NO_x emissions is calculated as follows:

1. For each fuel that the combustion source combusted during the year, determine the heat input (in MMBTU) that the combustion source derived from the combustion of that fuel during the year;

2. Add all of the amounts determined under (j)1 above;

3. Multiply the sum determined under (j)2 above by the maximum NO_x emissions rate determined under (d) above. The result is the limit on annual NO_x emissions, expressed in pounds;

4. The calculations under (j)2 and 3 above can be expressed in the following equation:

$$L = M \times (AHI_1 + AHI_2 + \ldots + AHI_N)$$

where:

i. L is the limit on annual NO_x emissions, in pounds;

ii. M is the maximum allowable emissions rate determined under (d) above;

iii. AHI_1 is the heat input that the combustion source derived from the combustion of Fuel 1 during the year, expressed in MMBTU;

iv. AHI_2 is the heat input that the combustion source derived from the combustion of Fuel 2 during the year, expressed in MMBTU;

v. N is number of fuels combusted during the year; and

vi. AHI_N is the heat input that the combustion source derived from the combustion of Fuel N during the year, expressed in MMBTU.

(k) The actual annual NO_x emissions from the combustion source are calculated as follows:

1. Determine the heat input (expressed in MMBTU) that the combustion source actually derived from each fuel it combusted during the year;

2. Determine the average rate (in lb/MMBTU) at which the combustion source actually emitted NO_x when combusting each fuel listed in 1 above, in accordance with N.J.A.C. 7:27-19.15(a);

3. For each fuel combusted during the year, multiply the heat input (determined under (k)1 above) by the average rate of NO_x emissions (determined under (k)2 above);

4. Add all of the amounts determined under (k)3 above;

5. The calculations under (k)3 and 4 above can be expressed in the following equation:

$$AE = (AHI_1 \times AR_1) + (AHI_2 \times AR_2) + \ldots + (AHI_N \times AR_N)$$

where:

i. AE is the actual NO_x emissions during the year from the combustion source, expressed in pounds;

ii. AHI_1 is the heat input that the combustion source actually derived from the combustion of Fuel 1 during the year, expressed in MMBTU;

iii. AR_1 is the average rate at which the combustion source actually emitted NO_x when combusting Fuel 1 during the year, expressed in lb/MMBTU;

iv. AHI_2 is the heat input that the combustion source actually derived from the combustion of Fuel 2 during the year, expressed in MMBTU;

v. AR_2 is the average rate at which the combustion source actually emitted NO_x when combusting Fuel 2 during the year, expressed in lb/MMBTU;

vi. N is number of fuels that the combustion source actually combusted;

vii. AHI_N is the heat input that the combustion source actually derived from the combustion of Fuel N during the year, expressed in MMBTU; and

viii. AR_N is the average rate at which the combustion source actually emitted NO_x when combusting Fuel N during the year, expressed in lb/MMBTU.

(l) For each combustion source included in the approved plan, the owner or operator shall comply with the recordkeeping and reporting requirements of N.J.A.C. 7:27-19.19.

7:27-19.21 Phased compliance—repowering

(a) The owner or operator of a combustion source included in a repowering plan is authorized to comply with the plan if the Department approves the plan pursuant to this section and N.J.A.C. 7:27-19.14. The owner or operator's compliance with the plan is in lieu of causing the combustion source to comply with emission limit under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would otherwise apply to the combustion source.

(b) By *[(date that is 30 days after operative date of these amendments)]* ***June 22, 1995***, an owner or operator seeking approval of a repowering plan shall submit to the Department an application for approval of the repowering plan pursuant to N.J.A.C. 7:27-19.14, including a repowering plan pursuant to (c) below. If an owner or operator fails to submit the application by *[(date that is 30 days after operative date of these amendments)]* ***June 22, 1995***, the Department may reject the application. The Department may elect to process a late application, based on how late the application is, the nature and extent of the owner or operator's efforts to submit the application on time, whether the owner or operator advised the Department before the application due date that a late application would be submitted, and the extent of the emission reductions promised in the late application. If the Department elects to process a late application, the pendency of the application shall not be a defense to a violation of a NO_x emission limit to which the source is subject in the absence of an approved plan.

(c) The owner or operator shall include the following information in the repowering plan with respect to each combustion source included in the plan:

1. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, the company stack designation, and any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the owner or operator;

2. A proposed schedule setting dates by which the owner or operator will complete the following milestones for the combustion source:

i. Submitting applications for all necessary permits and certificates ***if installing a new combustion source***;

ii. Obtaining all necessary permits and certificates ***if installing a new combustion source***;

iii. Awarding contracts to repower the source ***including contracts for the purchase of heat or power from a new combustion source*** or placing orders for the purchase of component parts and/or equipment necessary to repower the source;

iv. Initiating construction and/or installation of the replacement unit ***if installing a new combustion source***; and

v. Completing the repowering.

3. Specific procedures and schedules for implementing interim measures for control of NO_x emissions for the combustion source during the interim period;

4. A list of all NO_x control technologies available for use with the combustion source;

5. An analysis of the technological feasibility of installing and operating each NO_x emission control technology identified in 4 above for the interim period;

6. For each control technology that is technologically feasible to install and operate, an estimate of the cost of installation and operation;

7. An estimate of the reduction in NO_x emissions attainable through the use of each control technology which is technologically feasible to install and operate. If a control technology installed before the combustion source is repowered cannot be used after repowering, the owner or operator may limit the estimate of emission reductions to those that will be attained during the interim period;

8. An analysis of the cost-effectiveness of each control technology, based on the costs of installation and operation under (c)6 above and the estimated emission reductions under (c)7 above;

9. The NO_x control measures that the owner or operator proposes to employ during the interim period;

10. The proposed interim NO_x emission limit with which the source will comply during the interim period;

11. The method to be used to measure the actual NO_x emission rate of the combustion source;

12. The name and business telephone number of the person responsible for recordkeeping and reporting under N.J.A.C. 7:27-19.19 and under (e)8 below;

13. The location of the proposed replacement unit; and

14. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the operation of combustion sources included in the repowering plan will comply with the requirements of this section.

(d) The Department shall approve a repowering plan only if the following requirements are satisfied:

1. The application satisfies all the requirements of N.J.A.C. 7:27-19.14 and (c) above, including without limitation the requirement that the proposed repowering plan consider all control technologies available for the control of NO_x emissions from each type of combustion source included in the plan during the interim period;

2. For each combustion source included in the plan, the replacement unit will incorporate advances in the art of air pollution control for the kind and amount of air contaminant emitted;

3. The repowering will improve the efficiency with which each combustion source included in the plan combusts fuel and/or generates power;

4. The completion date listed in (c)2v above is no later than May 1, 1999;

5. For any control technologies described in (c)4 above that the owner or operator does not propose to use on the combustion source, the proposed plan demonstrates that the control technology:

i. Would be ineffective in controlling NO_x emissions from the combustion source;

ii. Is unsuitable for use with the combustion source, or duplicative of control technology which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the NO_x emissions rate that the control technology is

likely to achieve, or disproportionately large in comparison to the total reduction in NO_x emissions that the control technology is likely to achieve over its useful life; or

iv. Would carry costs disproportionate to the costs incurred for the control of NO_x emissions from the same type of combustion sources used by other persons in the owner or operator's industry who are also subject to the NO_x RACT requirements of P.L. 101-549, §182(f).

6. For each combustion source included in the plan, the interim emission limit proposed under (c)10 above is the lowest rate that can practicably be achieved at a cost within the limits described in (d)5iii and iv above;

7. For each combustion source included in the plan, the cost of achieving an additional emission reduction beyond the interim emission limit proposed under (c)10 above would be disproportionate to the size and environmental impact of that additional emission reduction; and

8. The owner or operator has entered into an agreement with the Department in accordance with the requirements of (h) below.

(e) An owner or operator who has obtained the Department's approval of a repowering plan shall:

1. Beginning on May 31, 1995, operate all combustion sources included in the approved repowering plan in a manner that complies with the plan and with all conditions of the Department's approval;

2. Meet the compliance milestones in the approved plan;

3. Repower the combustion sources included in the plan by the date specified in the approved plan;

4. Beginning on May 31, 1995, determine the actual NO_x emissions from each combustion source included in the repowering plan in accordance with N.J.A.C. 7:27-19.15(a);

5. If the approved plan provides for the owner or operator to annually adjust the combustion process for a combustion source included in the plan, do so in accordance with the general procedures set forth at N.J.A.C. 7:27-19.16 before May 1 of each calendar year beginning with 1995, until repowering is completed;

6. Beginning on May 31, 1995, comply with the recordkeeping and reporting requirements of N.J.A.C. 7:27-19.19;

7. Within 15 days after the date specified in the approved repowering plan for completion of a milestone listed in (c)2 above, notify the Department in writing that the milestone has or has not been completed. If the milestone has not been completed, the owner or operator shall include in the notice the reason for the delay and the expected date on which the milestone will be completed;

8. Incorporate advances in the art of air pollution control into each repowered source, as required in the preconstruction permit for the replacement equipment;

9. If the plan includes a utility boiler, cause the repowered utility boiler to emit NO_x at a rate no higher than the applicable maximum allowable NO_x listed in Table 6 below (provided however, that the NO_x emission limits in Table 6 shall not be construed to limit the owner or operator's obligations under (e)8 above); and

10. If repowering of any combustion source included in the plan is not completed by May 1, 1999, cease operating the combustion source to be repowered by May 1, 1999.

TABLE 6

Maximum Allowable NO_x Emission Rates for Utility Boilers Which Have Been Repowered (pounds per m illion BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	0.2	0.2	0.2
Coal—Dry Bottom	0.2	0.2	N/A
Oil and/or Gas	0.1	0.1	0.1
Gas Only	0.1	0.1	0.1

(f) Except as provided in (g) below:

1. The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed repowering plan. The Department shall publish notice of opportunity for public comment in a newspaper of general circulation in the area in which each combustion source included in the plan is located;

2. The Department shall submit any repowering plan (and agreement to repower) approved under this section to EPA, as a proposed revision to New Jersey's State Implementation Plan; and

3. Upon EPA's approval of the revision to New Jersey's State Implementation Plan, it shall be Federally enforceable. Plans listed under (g) below shall be Federally enforceable upon the issuance of the Department's approval.

(g) A repowering plan (and agreement to repower) approved under this section is not required to be submitted to EPA as a proposed revision to New Jersey's State Implementation Plan, if the plan provides that NO_x emissions from each combustion source included in the plan will be controlled during the interim period through one of the following methods:

1. Fuel switching under N.J.A.C. 7:27-19.20, using natural gas as the "cleaner fuel"; or

2. The use of selective non-catalytic reduction from May 1 through September 15 of each year.

(h) Before the Department approves a repowering plan, the owner or operator shall enter into a Federally enforceable agreement containing the following provisions:

1. Information sufficient to identify the owner or operator;

2. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, the company stack designation, and any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the owner or operator;

3. The owner or operator's undertaking of the following duties:

i. Completing the milestones listed in (c)2 above by specified dates;

ii. Ceasing to operate a combustion source if repowering is not completed by a date specified for that source;

iii. Implementing interim measures to control NO_x emissions from each combustion source during the interim period;

iv. Causing each combustion source to emit NO_x at a rate no greater than a specified interim NO_x emission limit applicable during the interim period;

v. Using a specified method to measure the actual NO_x emission rate of the combustion source; and

vi. Maintaining the Department's approval in effect;

4. A provision for delay of compliance caused by a "force majeure" event beyond the control of and without the fault of the owner or operator;

5. A provision under which the Department can terminate the agreement and its approval of the repowering plan if the owner or operator materially fails to complete the repowering or any other milestone by the date specified in the approved plan. Termination of the agreement and the approval of the plan is in addition to any other remedies the Department has under this chapter and N.J.A.C. 7:27A; and

6. Other provisions necessary to make the agreement Federally enforceable, to accomplish the purposes of this subchapter, or to allow the agreement to be administered effectively.

7:27-19.22 Phased compliance—impracticability of full compliance by May 31, 1995

(a) The owner or operator of a combustion source included in a phased compliance plan is authorized to comply with the plan if the Department approves the planp ursuant to this section and N.J.A.C. 7:27-19.14. The owner or operator's compliance with the plan is in lieu of causing the combustion source to comply with the emission limit under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would otherwise apply to the combustion source.

(b) By *[(date that is 30 days after operative date of these amendments)]* ***June 22, 1995***, an owner or operator seeking approval of a phased compliance plan shall submit to the Department an application for approval of the phased compliance plan pursuant to N.J.A.C. 7:27-19.14. If an owner or operator fails to submit the application by *[(date that is 30 days after operative date of these

amendments)]* ***June 22, 1995***, the Department may reject the application. The Department may elect to process a late application, based on how late the application is, the nature and extent of the owner or operator's efforts to submit the application on time, and whether the owner or operator advised the Department before the application due date that a late application would be submitted. If the Department elects to process a late application, the pendency of the application shall not be a defense to a violation of a NO_x emission limit to which the source is subject in the absence of an approved plan. In the application, the owner or operator shall include the following information in addition to the information required under N.J.A.C. 7:27-19.14:

1. The phased compliance plan described in (c) below;

2. A description of the steps that the owner or operator has taken to cause each combustion source included in the plan to attain compliance with the applicable NO_x emission limit under this subchapter; and

3. For each combustion source included in the plan, a detailed explanation of the reasons why the owner or operator believes that compliance with the applicable NO_x emission limit by May 31, 1995 is impracticable.

(c) The owner or operator shall include the following information in the phased compliance plan with respect to each combustion source included in the plan:

1. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, the company stack designation, and any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the owner or operator;

2. A proposed schedule setting dates by which the owner or operator will complete the following milestones for the combustion source:

i. Submit applications for all necessary permits and certificates;

ii. Obtain all necessary permits and certificates;

iii. Award contracts for the implementation of control measures or place orders for the purchase of component parts, equipment and/or control apparatus necessary to attain compliance with the applicable NO_x emission limit under this subchapter;

iv. Initiate construction and/or installation of the component parts, equipment and/or control apparatus necessary to attain compliance with the applicable NO_x emission limit under this subchapter; and

v. Attain full compliance with the applicable NO_x emission limit under this subchapter;

3. The NO_x control measures or technology that the owner or operator proposes to employ during the interim period; and

4. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the operation of combustion sources included in the phased compliance plan will comply with the requirements of this section.

(d) The Department shall approve a phased compliance plan only if the following requirements are satisfied with respect to each combustion source included in the plan:

1. The application satisfies all the requirements of N.J.A.C. 7:27-19.14 and (b) above;

2. The information submitted under (b)1ii above establishes that the owner or operator has made a good faith effort to cause the combustion source to attain compliance with the applicable NO_x emission limit under this subchapter;

3. The information submitted under (b)1iii above, evaluated in light of the criteria set forth in (e) below, establishes that it is impracticable for the combustion source to attain compliance with the applicable NO_x emission limit under this subchapter by May 31, 1995; and

4. The interim period is less than 12 months.

(e) In determining whether compliance with the applicable NO_x emission limit under this subchapter by May 31, 1995 is impracticable, the Department shall apply the following criteria:

1. The amount of time needed to obtain all permits and certificates necessary to attain compliance, following the submission of an administratively complete application;

2. The amount of time needed to obtain all component parts and/or equipment necessary to attain compliance, following the placement of orders for such parts and/or equipment. The estimate of time may reflect shortages in the supply of such parts and/or equipment;

3. The amount of time needed to complete construction and/or installation of the component parts and/or equipment necessary to attain compliance, following the initiation of construction and/or installation; and

4. The nature, extent and probability of any harm to public safety or welfare that could result from accelerating construction and/or installation in order to attain compliance by May 31, 1995. For example, if it were probable that an electric generating utility could not cause all of its electric generating units to attain compliance by that date without subjecting a substantial number of customers to voltage reductions and/or interruptions in electric service, that fact would be relevant in establishing impracticability.

(f) On the date that the approved compliance plan provides for a combustion source to attain full compliance with the applicable NO_x emission limit under this subchapter, the Department's approval of the plan shall expire. Upon expiration of the Department's approval, the combustion source shall be subject to all applicable requirements of this subchapter, including the NO_x emission limits that would have applied to the source in the absence of an approved plan.

(g) An owner or operator who has obtained the Department's approval of a phased compliance plan shall:

1. Operate all combustion sources included in the plan in a manner that complies with the plan and with all conditions of the Department's approval;

2. Meet all milestones in the approved phased compliance plan;

3. Within 15 days after the date of each milestone in the approved phased compliance plan, advise the Department in writing whether the owner or operator has met the milestone; and

4. During the interim period, control NO_x emissions from the combustion source as follows:

i. By adjusting the combustion process in accordance with N.J.A.C. 7:27-19.16, if the source's air-to-fuel ratio can be adjusted in a manner that reduces NO_x emissions; or

ii. By seasonally combusting natural gas in accordance with N.J.A.C. 7:27-19.20, implementing selective non-catalytic reduction, or implementing other measures that the Department determines are appropriate in light of the costs involved and the total quantity of NO_x reductions that will be achieved until the full compliance date listed in (c)2v above.

7:27-19.23 Phased compliance—use of innovative control technology

(a) The owner or operator of a combustion source included in a phased compliance plan is authorized to comply with the plan if the Department approves the planp ursuant to this section and N.J.A.C. 7:27-19.14. The owner or operator's compliance with the plan is in lieu of causing the combustion source to comply with the emission limit under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would otherwise apply to the combustion source.

(b) By *[(30 days after operative date of these amendments)]* ***June 22, 1995***, an owner or operator seeking approval of an innovative control technology plan shall submit to the Department an application pursuant to N.J.A.C. 7:27-19.14 and the plan itself pursuant to (c) below. If an owner or operator fails to submit the application by *[(30 days after operative date of these amendments)]* ***June 22, 1995***, the Department may reject the application. The Department may elect to process a late application, based on how late the application is, the nature and extent of the owner or operator's efforts to submit the application on time, whether the owner or operator advised the Department before the application due date that a late application would be submitted, and the extent of the emission reductions promised in the late application. If the Department elects to process a late application, the pendency of the application shall not be a defense to a violation of a NO_x emission limit to which the source would be subject in the absence of an approved plan.

(c) The owner or operator shall include the following information in the innovative control technology plan with respect to each combustion source included in the plan:

1. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, the company stack designation, and any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the owner or operator;

2. A description of the NO_x control measures that the owner or operator proposes to employ as innovative control technology;

3. The rate of NO_x emissions that the owner or operator expects that the source will attain in employing the proposed innovative control technology, and the basis for that expectation;

4. Information establishing that the proposed innovative control technology is technically sound and sufficiently developed to be implemented by May 1, 1999;

5. A proposed schedule setting dates by which the owner or operator will complete the following milestones for the combustion source:

i. Submitting applications for all necessary permits and certificates;

ii. Obtaining all necessary permits and certificates;

iii. Awarding contracts for the implementation of the innovative control technology, or placing orders for the purchase of any component parts, equipment and/or control apparatus associated with the innovative control technology;

iv. Awarding contracts and initiating implementation of the innovative control technology (including any construction and/or installation, if applicable); and

v. Completing the implementation of the innovative control technology.

6. Specific procedures and schedules for implementing interim measures for control of NO_x emissions for the combustion source during the interim period;

7. A list of all NO_x control technologies available for interim use with the combustion source during the interim period;

8. An analysis of the technological feasibility of installing and operating each NO_x emission control technology identified in (c)7 above for the interim period;

9. For each control technology that is technologically feasible to install and operate, an estimate of the cost of installation and operation;

10. An estimate of the reduction in NO_x emissions attainable through the use of each control technology which is technologically feasible to install and operate. If a control technology installed before the innovative control technology is implemented cannot be used after that time, the owner or operator may limit the estimate of emission reductions to those that will be attained during the interim period;

11. An analysis of the cost-effectiveness of each control technology, based on the costs of installation and operation under (c)9 above and the estimated emission reductions under (c)10 above;

12. The NO_x control measures that the owner or operator proposes to employ during the interim period;

13. The proposed interim NO_x emission limit with which the source will comply during the interim period;

14. The method to be used to measure the actual NO_x emission rate of the combustion source;

15. The name and business telephone number of the person responsible for recordkeeping and reporting under N.J.A.C. 7:27-19.19 and under (e)8 below; and

16. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the operation of combustion sources included in the plan will comply with the requirements of this section.

(d) The Department shall approve an innovative control technology plan only if the following requirements are satisfied:

1. The application satisfies all the requirements of N.J.A.C. 7:27-19.14 and (c) above, including the requirement that the plan consider all control technologies available for the control of NO_x emissions during the interim period from each type of combustion source included in the plan;

2. The innovative control technology proposed for each combustion source in the plan:

i. Has a substantial likelihood of enabling the source to achieve greater continuous NO_x emissions reductions than are required to meet the applicable limit under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10. If the expected extent of NO_x emission reductions is only marginally greater than are required to meet the applicable limit, the proposed innovative control technology will not be deemed to meet this standard;

ii. Is technically sound;

iii. Is sufficiently developed so that it can be implemented by May 1, 1999; and

iv. Cannot practicably be implemented by May 31, 1995.

3. The completion date listed in (c)5v above is no later than May 1, 1999;

4. For any control technologies described in (c)7 above that the owner or operator does not propose to use with the combustion source during the interim period, the proposed plan demonstrates that the control technology:

i. Would be ineffective in controlling NO_x emissions from the combustion source;

ii. Is unsuitable for use with the combustion source, or duplicative of control technology which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the NO_x emissions rate that the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in NO_x emissions that the control technology is likely to achieve during the interim period; or

iv. Would carry costs disproportionate to the costs incurred for the control of NO_x emissions from the same type of combustion sources used by other persons in the owner or operator's industry who are also subject to the NO_x RACT requirements of P.L. 101-549, 182(f).

5. For each combustion source included in the plan, the interim emission limit proposed under (c)13 above is the lowest rate that can practicably be achieved at a cost within the limits described in (d)4iii and iv above;

6. For each combustion source included in the plan, the cost of achieving an additional emission reduction beyond the interim emission limit proposed under (c)13 above would be disproportionate to the size and environmental impact of that additional emission reduction; and

7. The owner or operator has entered into an agreement with the Department in accordance with the requirements of (h) below.

(e) An owner or operator who has obtained the Department's approval of an innovative control technology plan shall:

1. Beginning on May 31, 1995, operate all combustion sources included in the approved plan in a manner that complies with the plan and with all conditions of the Department's approval;

2. Meet the compliance milestones in the approved plan;

3. Implement the innovative control technology for the combustion sources included in the plan by the date specified in the approved plan;

4. Beginning on May 31, 1995, determine the actual NO_x emissions from each combustion source included in the innovative control technology plan in accordance with N.J.A.C. 7:27-19.15(a);

5. If the approved plan provides for the owner or operator to annually adjust the combustion process for a combustion source included in the plan, do so in accordance with the general procedures set forth at N.J.A.C. 7:27-19.16 before May 1 of each calendar year beginning with 1995, until the innovative control technology is implemented;

6. Beginning on May 31, 1995, comply with the recordkeeping and reporting requirements of N.J.A.C. 7:27-19.19;

7. Within 15 days after the date specified in the approved innovative control technology plan for completion of a milestone listed in (c)5 above, notify the Department in writing that the milestone has or has not been completed. If the milestone has not been completed, the owner or operator shall include in the notice the

reason for the delay and the expected date on which the milestone will be completed;

8. Incorporate advances in the art of air pollution control into each source included in the plan, as required in the preconstruction permit for the replacement equipment; and

9. If the innovative control technology for any combustion source included in the plan is not implemented by May 1, 1999, cease operating the combustion source by May 1, 1999.

(f) Except as provided in (g) below:

1. The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed innovative control technology plan. The Department shall publish notice of opportunity for public comment in a newspaper of general circulation in the area in which each combustion source included in the plan is located;

2. The Department shall submit any innovative control technology plan (and agreement under (h) below) approved under this section to EPA, as a proposed revision to New Jersey's State Implementation Plan; and

3. Upon EPA's approval of the revision to New Jersey's State Implementation Plan, the innovative control technology plan and agreement under (h) below shall be federally enforceable. Plans listed under (g) below shall be federally enforceable upon the issuance of the Department's approval.

(g) An innovative control technology plan approved under this section is not required to be submitted to EPA as a proposed revision to New Jersey's State Implementation Plan, if the plan provides that NO_x emissions from each combustion source included in the plan will be controlled during the interim period through one of the following methods:

1. Fuel switching under N.J.A.C. 7:27-19.20;

2. The use of selective non-catalytic reduction.

(h) Before the Department approves an innovative control technology plan, the owner or operator shall enter in*~ a Federally enforceable agreement containing the following provisions:

1. Information sufficient to identify the owner or operator;

2. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, the company stack designation, and any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the owner or operator;

3. The owner or operator's undertaking of the following duties:

i. Completing the milestones listed in (c)5 above by specified dates;

ii. Implementing interim measures to control NO_x emissions from each combustion source during the interim period;

iii. Causing each combustion source to emit NO_x at a rate no greater than a specified interim NO_x emission limit applicable during the interim period;

iv. Using a specified method to measure the actual NO_x emission rate of the combustion source; and

v. Maintaining the Department's approval in effect;

4. A provision for delay of compliance caused by a "force majeure" event beyond the control of and without the fault of the owner or operator;

5. A provision under which the Department can terminate the agreement and its approval of the innovative control technology plan if the owner or operator materially fails to complete implementation of the innovative control technology or any other milestone by the date specified in the approved plan, or if the innovative control technology program fails to achieve the required reduction levels. By the date specified by the Department in the agreement, in ts approval of the plan, or in the notice of termination, the owner or operatorshall attain compliance with the NO_x emissions limit under this subchapter that would apply to the combustion source in the absence of an approved plan. Termination of the agreement and the approval of the plan is in addition to any other remedies the Department has under this chapter and N.J.A.C. 7:27A; and

6. Other provisions necessary to make the agreement federally enforceable, to accomplish the purposes of this subchapter, or to allow the agreement to be administered effectively.

7:27-19.24 MEG alerts

(a) During a MEG alert that occurs on or before November 15, 2005, an electric generating unit that is operating at emergency capacity may exceed the NO_x emissions limits applicable under this *[subchapter]* ***chapter, including any limits set forth in the unit's permit***. ***This exemption includes up to 12 hours per year of performance testing per boiler or gas turbine, provided this testing is not performed during the ozone season.*** This exemption is available only if the *[electric generating utility that owns or operates the]* ***the owner or operator of an*** electric generating unit complies with the requirements of this section.

(b) Within two working days after the end of the MEG alert, the electric generating utility shall *[deliver (as opposed to send) to]* ***notify*** the Department ***by way of*** a report confirming the occurrence of the MEG alert. The electric generating utility shall certify the report in accordance with N.J.A.C. 7:27-8.24. In the report, the electric generating utility shall include the following information:

1. Information sufficient to identify each electric generating unit that operted at emergency capacity, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the utility;

2. The date and time at which the electric generating utility received notice from the load dispatcher, directing the utility to operate one or more electric generating units at emergency capacity;

3. For each electric generating unit listed in (b)1 above, the date and time at which the electric generating utility began to operate the electric generating unit at emergency capacity;

4. The date and time at which the electric generating utility received notice from the load dispatcher, advising the utility that it could cease operating its electric generating units at emergency capacity;

5. For each electric generating unit listed in (b)1 above, the date and time at which the electric generating utility ceased operating the electric generating unit at emergency capacity;

6. For each electric generating unit listed in 1 above, the amount by which the unit's NO_x emissions (expressed in pounds) during the MEG alert exceeded the maximum quantity of NO_x emissions allowed under this *[subchapter]* ***chapter***. The excess NO_x emissions shall be calculated as follows for each day that the MEG alert continued:

$$E = (ER–M) \times H$$

where:

i. E is the excess NO_x emissions from the electric generating unit;

ii. ER is the average rate at which the electric generating unit emitted NO_x during the day of the MEG alert, determined in accordance with N.J.A.C. 7:27-19.15(a) and expressed in lb/MMBTU;

iii. M is the ***most stringent applicable*** NO_x emissions limit *[applicable under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, or an applicable NO_x emission limit established under N.J.A.C. 7:27-19.13, 19.20, 19.21, 19.22 or 19.23, expressed in lb/MMBTU]* ***established under this chapter***; and

iv. H the actual daily heat input to the electric generating unit during the MEG alert, expressed in MMBTU;

7. A copy of the calculations performed under (b)6 above; and

8. A description of the method by which the electric generating utility has provided or will provide compensatory reductions in NO_x emissions as required under (c) below.

(c) The electric generating utility shall submit to the Department documentation of actual NO_x emission reductions in compensation for the excess NO_x emissions during the MEG alert, in accordance with the following requirements:

1. Within the period beginning three years before the MEG alert begins and ending one year after the MEG alert ends, the electric generating utility shall obtain (or shall have obtained) reductions in NO_x emissions from a combustion source through measures (which may include pollution prevention measures) above and beyond those required under any Federal or State law, rule, regulation, permit or order.

2. The ratio of the amount of the NO_x emission reductions under (c)1 above to the amount of the excess NO_x emissions calculated under (b)6 above shall be 1.3:1; and

3. Emissions reductions from any shutdown or curtailment of operations of a combustion source shall not be credited toward meeting this requirement.

7:27-19.25 Exemption for emergency use of fuel oil

(a) If a combustion source temporarily combusts fuel oil or other liquid fuel in place of natural gas in accordance with this section, the owner or operator is not required to have the combustion source comply with the applicable NO_x emission limits in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, or an applicable NO_x emission limit established under N.J.A.C. 7:27-19.13, 19.20, 19.21, 19.22 or 19.23, while the fuel oil or other liquid fuel is burned. On each day that this exemption applies, for purposes of calculating daily or annual NO_x emissions the combustion source will be deemed to have emitted no NO_x and to have derived a heat input of 0.0 BTU.

(b) The exemption under (a) above is available only for a combustion source that uses natural gas as its primary fuel, or is seasonally combusting natural gas pursuant to a plan approved under N.J.A.C. 7:27-19.14 and 19.20. For a combustion source that uses natural gas as its primary fuel, the exemption under (a) above is available at any time during the year. For a combustion source that is seasonally combusting natural gas, the exemption under (a) above is available only from May 1 through September 15. ***This exemption is also available for those combustion sources which combust refinery gas as a primary fuel.***

(c) The owner or operator of the combustion source is eligible for the exemption under (a) above only if the following requirements are met:

1. The owner or operator is not practicably able to obtain a sufficient supply of natural gas;

2. The owner or operator's inability to obtain natural gas is due to circumstances beyond the control of the owner or operator, such as a natural gas curtailment;

3. The combustion source ceases using fuel oil or other liquid fuel in place of natural gas and resumes using natural gas as soon as a sufficient supply of natural gas becomes practicably available;

4. The use of fuel oil or liquid fuel does not exceed 500 hours during any consecutive 12-month period; and

5. The owner or operator satisfies the recordkeeping requirements of N.J.A.C. 7:27-19.19(d) and (e), and the reporting requirements of (d) below.

(d) *[Within two days after beginning to combust fuel oil or other liquid fuel in place of natural gas in accordance with this section, the owner or operator shall send a written notice to the Department at the address designated in N.J.A.C. 7:27-19.3(h). In the notice, the owner or operator shall]* ***The owner or operator shall keep records of curtailment periods and incorporate such records into the required quarterly reports submitted to the Department. Such records shall*** include the following information:

1. Information sufficient to identify each combustion source for which the owner or operator claims an exemption under this section, including a brief description of the source (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the utility;

2. A statement that the owner or operator is not practicably able to obtain a sufficient supply of natural gas;

3. The date and time at which the owner or operator first became practicably unable to obtain natural gas; and

4. A description of the circumstances causing the owner or operator's inability to obtain natural gas.

7:27-19.26 (No change in text.)

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

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

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke an operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections correspond to the number of the corresponding subchapter in N.J.A.C. 7:27.

(f)-(k) (No change.)

(l) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this section are provided for informational purposes only and have no legal effect.

1.-18. (No change.)

19. The violations of N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen, and the civil administrative penalty amounts for each violation are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-19.3(d)	Failure to Submit Application or Plan	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.4(a)	Utility Boilers Actual Emissions (pounds per million BTU ***per hour***): 1.-3. (No change).				
N.J.A.C. 7:27-19.4*[(d)]****(b)***	Failure to Install CEM	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.5(a) or (b)	Stationary Gas Turbines Actual Emission (pounds per million BTU): 3-10 MW Turbine 1.-3. (No change). 11-50 MW Turbine 1.-3. (No change). Greater than 50 MW Turbine 1.-3. (No change).				
N.J.A.C. 7:27-19.5(c)5	Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.5(c)6	Adjust Combustion Process	$ 2,000	$ 4,000	$10,000	$30,000

N.J.A.C. 7:27-19.6(d)1 and 2	Emissions Averaging Actual Emission (pounds per million BTU): 1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	2. Twenty-five percent or greater percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.6(f)1 or 2	Record Keeping of Compliance Demonstration	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.6(g)	Log	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.6(h)	Quarterly Reports	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.6(i)	Notice of Noncompliance	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.6(j)1	Provide Notice of Ceased Operations	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.7(a)	Adjust combustion process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.7(b) or (c)	Non-Utility boilers and other indirect heat exchangers Actual Emission (pounds per million BTU): Less than 25 MMBTU ***per hour***				
	1.-3. (No change).				
	25-*[57]***50* MMBTU ***per hour***				
	1.-3. (No change).				
	Greater than *[57]* ***50*** MMBTU ***per hour***				
	1.-3. (No change).				
N.J.A.C. 7:27-19.7(d)	Heat input rate of 250 MMBTU per hour or greater Failure to install CEM	$10,000	$20,000	$50,000	$50,000
	Heat input rate of 50 MMBTU to less than 250 MMBTU per hour Adjust combustion process or install CEM	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.8(a),(b) or (c)	Stationary Internal Combustion Engines Actual Emission (grams per horsepower hour): 1000 Hp or less				
	1.-3. (No change).				
	Greater than 1000 Hp				
	1.-3. (No change).				
N.J.A.C. 7:27-19.9(a)	Asphalt Plants Maximum Actual Emissions				
	1.-3. (No change).				
N.J.A.C. 7:27-19.9(b)	Adjust combustion process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.10(a) or (b)	Glass Manufacturing Furnaces Maximum Actual Emission: For less than 10 pounds per hour:				
	1.-3. (No change).				
	From 10 pounds through 22.8 pounds per hour:				
	1.-3. (No change).				
	From greater than 22.8 pounds per hour:				
	1.-3. (No change).				
N.J.A.C. 7:27-19.10(c)1	Determine baseline NO_x emission rate	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.10(c)2	Submit Emission Reduction Plan	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.10(c)3	Implement Emission Reduction Plan	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.10(c)4	Reduce Emissions 30% Maximum Actual Emission: For less than 10 pounds per hour:				
	1.-3. (No change).				
	From 10 pounds through 22.8 pounds per hour:				
	1.-3. (No change).				
	From greater than 22.8 pounds per hour:				
	1.-3. (No change).				

N.J.A.C. 7:27-19.10(e)	Adjust combustion process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.13(j)	Modify NO_x Control Plan for alterations	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.13(n)	Implement NO_x Control Plan	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.15(c)	Demonstrate Compliance	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.16(c)	Log	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.17(a)1	Conduct Stack Tests	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.17(a)2,3 or 4	Information	$ 300	$ 600	$ 1,500	$ 4,500
N.J.A.C. 7:27-19.17(b)	Sampling and Testing Facilities	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.17(e)	Record keeping	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.18(a)2,3,4 or 5	Monitoring	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.18(h)	Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.19(a) or (b)	Record keeping	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.19(d)	Record keeping	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.19(e)	*[Log]* ***Recordkeeping***	$ 500	$ 1,000	$ 2,500	$ 7,500
***N.J.A.C. 7:27-19.19(f)**	***Recordkeeping***	**$ 500**	**$ 1,000**	**$ 2,500**	**$ 7,500***
N.J.A.C. 7:27-19.19(g)***1 or 2***	Submit Report	$ 500	$ 1,000	$ 2,500	$ 7,500
*[N.J.A.C. 7:27-19.19(h)	Submit Report	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.19(i)	Notice of noncompliance	$ 500	$ 1,000	$ 2,500	$ 7,500]*
N.J.A.C. 7:27-19.20(d)	Compliance with Maximum Annual Emission Rate				
	Actual Emissions (pounds per million BTU).				
	1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	2. Twenty-five percent or greater percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.20(g)1	Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.20(g)2	Combust Cleaner Fuel	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.20(g)3	Compliance with Maximum Allowable Emission Rate				
	Actual Emissions (pounds per million BTU)				
	1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	2. Twenty-five percent or greater percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.20(g)4	Compliance with Maximum Allowable Emission Rate				
	Class: Utility Boilers See N.J.A.C. 7:27A-3.10*[(e)]***(l)*19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.4(a).				
	Class: Stationary Gas Turbines See N.J.A.C. 7:27A-3.10*[(e)]***(l)*19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.5(a) or (b).				
	Class: Nonutility Boilers and other Indirect Heat Exchangers See N.J.A.C. 7:27A-3.10*[(e)]***(l)*19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.7(b) or (c).				
	Class: Stationary Internal Combustion Engines See N.J.A.C. 7:27A-3.10*[(e)]***(l)*19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.8(a), (b) or (c).				

	Class: Asphalt Plants See N.J.A.C. 7:27A-3.10*[(e)]***(l)*19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.9(a).				
	Class: Glass Manufacturing Furnaces See N.J.A.C. 7:27A-3.10*[(e)]***(l)*19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.10(a) or (b).				
N.J.A.C. 7:27-19.20(g)5	Compliance with Maximum Annual Emission Rate				
	Actual Emissions (pounds per million BTU).				
	1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	2. Twenty-five percent or greater percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.20(i)1,2 or 3	Maintain Emission Calculations	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.21(e)1	Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.21(e)2	Compliance Milestones	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.21(e)4	Determine Actual NO_x Emissions	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.21(e)5	Adjust combustion process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.21(e)6	Record Keeping and Reporting	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.21(e)7	Notification	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.21(e)9	Compliance with Maximum Allowable Emission Rate				
	Class: Utility Boilers See N.J.A.C. 7:27A-3.10*[(e)]***(l)*19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.5(a) or (b).				
N.J.A.C. 7:27-19.21(e)10	Cease Operating	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.22(g)1	Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.22(g)2	Compliance Milestones	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.22(g)3	Notification	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.22(g)4	Control Emissions	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.23(e)1	Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.23(e)2	Compliance Milestones	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.23(e)3	Implement Innovative Control Technology	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.23(e)4	Determine Actual NO_x Emissions	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.23(e)5	Adjust Combustion Process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.23(e)6	Record Keeping and Reporting	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.23(e)7	Notification	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.23(e)9	Cease Operating	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.24(b)	Report	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.25(d)	*[Notification]* ***Recordkeeping***	$ 500	$ 1,000	$ 2,500	$ 7,500

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Administrative Change
Hospital Licensing Standards
Administrative and Hospital-Wide Policies and Procedures
Smoke-Free Policy
N.J.A.C. 8:43G-5.1 and 5.2

Take notice that the Department of Health has requested, and the Office of Administrative Law has agreed to permit, an administrative change to N.J.A.C. 8:43G-5.1, as adopted effective March 20, 1995 at 27 N.J.R. 1290(a). The change recodifies subsection (1) concerning the development and implementation of a facility smoke-free policy from the facility structural organization rule to the more appropriate facility policies and procedures rule, N.J.A.C. 8:43G-5.2, as subsection (q). This notice of administrative change is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the changed rules follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

8:43G-5.1 Administrative and hospital-wide structural organization

(a)-(k) (No change.)

[(l) The Hospital shall develop and implement a policy for the facility to be smoke-free by April 1, 1995. The hospital shall ensure that there is no smoking in the facility by employees, visitors or patients.]

8:43G-5.2 Administrative and hospital-wide policies and procedures

(a)-(p) (No change.)

(q) The Hospital shall develop and implement a policy for the facility to be smoke-free by April 1, 1995. The Hospital shall ensure that there is no smoking in the facility by employees, visitors or patients.

(b)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL, AND OCCUPATIONAL HEALTH SERVICES COMMUNICABLE DISEASE CONTROL SERVICE

Hepatitis Inoculation Fund
Adopted New Rules: N.J.A.C. 8:57B

Proposed: January 3, 1995 at 27 N.J.R. 28(a).

Adopted: March 9, 1995 by Len Fishman, Commissioner, Department of Health, and William E. Parkin, D.V.M., Dr.P.H., Assistant Commissioner for the Division of Epidemiology, Environmental, and Occupational Health Services.

Filed: March 17, 1995 as R.1995 d.207, **with technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:4-100.13 et seq.

Effective Date: April 17, 1995.

Expiration Date: April 17, 2000.

Summary of Public Comments and Agency Responses:

Opportunity to be heard regarding the proposal was invited via notice published on January 3, 1995 at 27 N.J.R. 28(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 February 2, 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.

During the 30-day comment period, which closed on February 2, 1995, the Department received three written comments regarding the proposal. A list of commenters follows:

1. Kipp T. Kretchmann, Director, Mobile Intensive Care Services, Wayne General Hospital.
2. Carl S. Christensen, Chair, Board of Fire Commissioners, District No. 9.
3. Kevin G. Sumner, Assistant Health Officer, Middle-Brook Regional Health Commission.

COMMENT: Two of the commenters expressed approval of the rules and supported their adoption.

RESPONSE: The Department and Division acknowledge the commenters' support of the new rules and appreciate these comments.

COMMENT: One commenter, while supporting the program, was concerned that the proposal does not include Emergency Medical Technicians—Paramedic (EMT-P) and suggested that they be included in the program for reimbursement.

RESPONSE: The statute only authorizes reimbursement for Emergency Medical Technicians—Ambulance (EMT-A); the Department is therefore prohibited from distributing the monies to other groups not specified in the statute. On December 6, 1991, the Federal Occupational Safety and Health Administration adopted 29 C.F.R. 1910.1030, Occupational Exposure to Bloodborne Pathogens. This standard protects workers in the private sector who come into contact with blood or other potentially infectious materials. Insofar as EMT-Ps are private employees, they are covered by the Federal standard. As such, EMT-P employers must make the hepatitis B vaccine and vaccination series available to all employees. In addition, EMT-P employers must make post-exposure evaluation and follow-up available to all employees who experience an exposure incident. The vaccine and vaccinations, as well as all medical evaluations and follow-up, must be made available at no cost to the employee.

COMMENT: It appears that only cities are eligible to receive reimbursement. Insofar as the monies for the Fund are derived throughout the State, the entire State should be eligible.

RESPONSE: The source of the fund is a statutorily defined percentage of proceeds collected from property forfeiture and cash seizures pursuant to N.J.S.A. 2C:64-6. Nothing in the Act or rules precludes any municipality in the State, whether city, borough or town, from applying for and receiving reimbursement. The rule at N.J.A.C. 8:57-6.3(b) does, however, specify that applications for reimbursement will only be accepted from municipalities. This provision was framed to streamline the application process and to prevent multiple and conflicting submissions and the confusion which can be engendered thereby. Any municipality (city, borough or town) wishing to apply for reimbursement must name a point-of-contact person who will be responsible for preparing and submitting applications to the Department on behalf of all emergency services personnel within its jurisdiction. This point-of-contact person may be the municipal emergency services coordinator, business administrator, municipal clerk, etc.

COMMENT: The rules seem to imply that reimbursement should be sought through an individual's health insurance. This action would help alleviate some of the financial burdens experienced by municipalities. Does the Department encourage or discourage this action?

RESPONSE: The cost of hepatitis B vaccine is expensive relative to that of other biologics. This factor alone could create not only a disincentive to volunteerism, but also pose a heavy financial burden on municipalities. As such, any alternative method to fund compliance with Occupational Exposure to Bloodborne Pathogens, N.J.A.C. 12:100-4.2, including the use of third-party payment, is encouraged. For example, public employers have access to a State contract number through which vaccine may be obtained from the manufacturer at a favorable rate, and some municipalities have made arrangements with local hospitals or health care providers to supply and administer the vaccine at no cost as a goodwill gesture. These are some successful strategies which have been employed to defray and/or offset the costs of compliance.

The comment turns on the fact that the rule at N.J.A.C. 8:57-6.3(e) expressly prohibits those persons whose medical insurance pays for the full cost of the inoculation from being reimbursed through the fund. This provision is based upon statutory language at N.J.S.A. 26:4-100.13(b) and was so framed to extend the effectiveness of the available limited financial resources.

COMMENT: There does not appear to be a mechanism in place for the reimbursement of continuing costs, that is, for new or redesignated employees.

RESPONSE: To date, $377,328 has been deposited into the Fund by the Office of the Attorney General (OAG). This amount represents 10 percent of proceeds obtained from property forfeitures and seizures since August 6, 1993. This amount, plus any additions made to the Fund prior to the first disbursement, is earmarked for those municipalities who have begun to provide heptatis B vaccinations to covered individuals as of March 6, 1992—the effective date of the Federal standard. It was felt that the lump sum cost associated with initial compliance would pose more of a financial burden than would the costs associated with continued compliance. Any continuing costs incurred after a municipality submits its initial application can be claimed during a subsequent reimbursement cycle. Once all eligibility Tiers have been reimbursed, the Division will reopen the application period for subsequent reimbursement cycles.

COMMENT: Although $5,000 will assist municipalities in relieving the financial burden of complying with Occupational Exposure to Bloodborne Pathogens, even small communities can incur costs greater than the cap set forth at N.J.A.C. 8:57-6.5(b). It is also felt that State-mandated programs should be 100 percent financially supported by the State.

RESPONSE: The Department agrees that State-mandated programs should be fully funded. However, deposits into the Hepatitis Inoculation Fund by the Office of the Attorney General have been subject to the contingencies and vagaries of property seizures and the rate at which the forfeited property is liquidated. Early on, it was realized that deposits would be inadequate to fully fund reimbursable costs. Legislative input was sought and, after a review of the available options, it was determined that the Legislature intended to make limited funds available to as many municipalities as possible. As such, any one reimbursement was capped at $5,000.

COMMENT: What is the time of the "reimbursement cycle" at N.J.A.C. 8:57-6.5(b)?

RESPONSE: One reimbursement cycle is defined as the cycle of fund distribution commencing at Tier I eligibility and proceeding serially through Tiers II and III.

COMMENT: The phrase "shall not supplant budgeted funding or any other available funding currently in existence" is unclear. It could be interpreted to mean that if the hepatitis B vaccination program has been budgeted for by a municipality then that municipality is not eligible for reimbursement. Thus, those municipalities that are attempting to comply with Occupational Exposure to Bloodborne Pathogens will be penalized.

RESPONSE: The aforementioned provision at N.J.A.C. 8:57-6.7 is not meant to penalize municipalities who are in the process of complying, but rather to prohibit municipalities from using monies from this fund for purposes other than reimburseable costs as defined at N.J.A.C. 8:57-6.2.

Executive Order No. 27 Statement

The proposed new rules are 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 referred to Federal law, Federal standards, or Federal guidelines.

Summary of Agency-Initiated Changes:

The Department and Division have made a technical change in punctuation, and minor changes in order to clarify the intent of the rules and to use consistent wording, as follows:

1. The following technical change has been made to correct a printing error. At N.J.A.C. 8:57B-1.2, in the definition of "covered individual", the acronym "EMTA" has been changed to "EMT-A".

2. At N.J.A.C. 8:57B-1.6(a), the phrase "by the Division" has been added after the word "reviewed" as a matter of form.

3. At N.J.A.C. 8:57B-1.6(d)1, the word "will" which appears twice in the second sentence has been changed to "shall" as a matter of form.

The Department and Division have also recodified the rules to N.J.A.C. 8:57B, since N.J.A.C. 8:57 contains rules within the purview of the Public Health Council and these adopted rules concern only the administration of the Hepatitis Inoculation Fund.

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

SUBCHAPTER 6. ***(RESERVED)***

***CHAPTER 57B**
HEPATITIS INOCULATION FUND*

SUBCHAPTER 1. *[HEPATITIS INOCULATION]* FUND ***PROVISIONS***

[8:57-6.1] ***8:57B-1.1*** Purpose and scope

The purpose of this subchapter is to establish a uniform process for allocating the Fund's resources among municipalities in accordance with the priorities set forth in the Act. The Fund shall be used exclusively to reimburse municipalities for expenses incurred in the provision of hepatitis B inoculations of emergency medical technicians—ambulance, firefighters, and police officers. The following rules are established to implement the Hepatitis Inoculation Fund Act, N.J.S.A. 26:4-100.13 et seq. (P.L. 1993, c.227), an Act providing for the payment of the cost of hepatitis inoculations for certain health and safety workers.

[8:57-6.2] ***8:57B-1.2*** Definitions

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

"Act" means P.L. 1993, c.227, which establishes the Hepatitis Inoculation Fund.

"Commissioner" means the New Jersey State Commissioner of Health.

"Covered individual" means emergency medical technician—ambulance (*[EMTA]* ***EMT-A***), firefighters, and police officers.

"Department" means the New Jersey State Department of Health.

"Division" means the Division of Epidemiology, Environmental, and Occupational Health Services.

"Emergency medical technician—ambulance" or "EMT-A" means an individual trained and currently certified or recognized by the Commissioner, in accordance with the United States Department of Transportation EMT-A training course, as outlined in the standards established by the Federal Highway Traffic Safety Act of 1966, 23 U.S.C. 401 et seq. (amended) to deliver basic life support services, and who has completed the national standard curriculum, as published by the United States Department of Transportation for Emergency Medical Technician Ambulance.

"Hepatitis Inoculation Fund" or "Fund" means a separate, nonlapsing, revolving account used to reimburse municipalities for expenses incurred in the provision of hepatitis B inoculations to certain emergency services personnel. The Fund shall be administered by the Division of Epidemiology, Environmental, and Occupational Health Services. The source of this Fund is the statutorily defined percentage of proceeds collected from property forfeiture and cash seizures pursuant to N.J.S.A. 2C:64-6.

"May" means that the action referred to is discretionary.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Reimbursable costs" means the cost of hepatitis B vaccine, equal to, or less than, the cost of the purchase of the vaccine at the prevailing State contract rate, and the cost of such fees for professional medical services for administration of the vaccine.

"Shall" means that the action referred to is mandatory.

"Volunteer" means a person who gives services without any express or implied promise of remuneration.

[8:57-6.3] ***8:57B-1.3*** General requirements

(a) The Fund shall provide financial assistance to municipalities in the form of reimbursement of expenses incurred in providing hepatitis B inoculations to certain emergency services personnel.

(b) Each applicant municipality shall appoint a liaison who shall be responsible for preparing and submitting an application to the Division on behalf of all emergency services personnel within its jurisdiction.

1. Applications received by the Division directly from individual first aid and rescue squads, fire companies, departments, and districts, and police departments or their members and/or staffs shall be disallowed.

(c) Funds shall be allocated to municipalities in accordance with the following tiered eligibility schedule of covered individuals:

1. Tier I: Volunteer emergency medical technicians—ambulance and volunteer firefighters;

2. Tier II: All other emergency medical technicians—ambulance, firefighters and police officers in squads or departments with less than 100 members; and

3. Tier III: All other emergency medical technicians—ambulance, firefighters and police officers.

(d) Fund distributions shall commence at Tier I eligibility and shall proceed through Tier I until all eligible applicant municipalities in Tier I have been reimbursed. Upon completion of Tier I reimbursement, Fund distribution will proceed to Tier II and upon completion of Tier II reimbursement, Fund distribution will proceed to Tier III.

(e) A municipality shall not claim expense reimbursement for a covered individual whose medical insurance pays for the full cost of the hepatitis inoculation, but may claim expense reimbursement for any portion of the cost disallowed by such medical insurance.

*[8:57-6.4]***8:57B-6.4*** Application process by municipalities for reimbursement

(a) Municipalities shall submit an application for reimbursable costs in the format prescribed at (d) below no later than *[90 days after the effective date of this rule]* ***July 16, 1995***. This application shall remain valid until all municipalities have been reimbursed.

(b) Reimbursable costs shall include the cost of the hepatitis B vaccine and the cost of fees for professional medical services for administration of the vaccine. Reimbursable cost of the hepatitis B vaccine shall not exceed the cost of the purchase of the vaccine at the prevailing State contract rate.

(c) Only applications for reimbursable costs from municipalities shall be honored. Requests for reimbursement from individual first aid and rescue squads, fire departments, districts, and companies, and police departments or their members and/or staffs shall be disallowed.

(d) Each application for reimbursable costs shall be in the form of a letter and shall include the following information:

1. The name of the municipality;

2. The total amount expended for inoculations of each of the individuals specified in (d)4 below;

3. The amount sought for reimbursement;

4. The composition of the municipality's emergency services personnel, including the number of volunteer emergency medical technicians—ambulance, the number of volunteer firefighters, the number of paid emergency medical technicians—ambulance, the number of paid firefighters, and the number of police officers;

5. Actual reimbursable costs incurred for inoculations of each of the individuals specified in (d)4 above, categorized according to total amount incurred for the hepatitis B vaccine and the cost of fees of professional medical services for administration of the vaccine; and

6. A statement certifying that the reimbursement applied for represents actual costs incurred and that such costs are not eligible for coverage, and have not been covered through any other source.

(e) The municipality shall maintain all records which were relied upon in making applications for reimbursement for five years after receiving reimbursement from the Division.

*[8:57-6.5]***8:57B-1.5*** Funding and allocation

(a) The amount available to fund reimbursable costs is contingent upon the total amount collected and deposited into the Fund and designated by the State Treasurer as available for distribution.

(b) The amount of reimbursement per municipality shall not exceed $5,000 per reimbursement cycle.

(c) All reimbursements shall be made based on the cost of the purchase of vaccine at the prevailing State contract rate.

(d) All reimbursements may include the cost of professional medical services to administer the vaccine which are reasonable and customary in the locality.

*[8:57-6.6]***8:57B-1.6*** Lottery

(a) At the close of the application period, all applications shall be reviewed ***by the Division*** for eligibility and subsequently sorted into the tiers as specified in the eligibility schedule at N.J.A.C. *[8:57-6.3(c)]* ***8:57B-1.3(c)***.

1. An applicant municipality which falls into more than one tier on the eligiblity schedule, for example, those which have both volunteer and paid EMT-As, shall submit applications for each eligibility category to which they are entitled, pursuant to N.J.A.C. *[8:57-6.3(c)]* ***8:57B-1.3(c)***.

(b) A lottery shall be held by the Division to determine the order in which eligible applicant municipalities shall receive distributions from the Fund.

1. *[Within 60 days of the close of the application period]* ***By September 14, 1995***, all municipalities which have applied for reimbursement pursuant to N.J.A.C. *[8:57-6.4]* ***8:57B-1.4*** and are deemed eligible shall be included in the lottery.

2. Applications from all eligible municipalities shall be sorted into the tiers specified in the eligibility schedule.

3. All eligible municipalities shall be assigned a unique identification number by the Division. This number shall be the County-Municipality Code number as used by the New Jersey Department of the Treasury, Division of Taxation.

4. These numbers shall be written on slips of paper which are identical in size and shape to every other slip of paper.

5. The slips with the code numbers written thereon shall be placed in a suitable container.

6. To ensure random distribution of the slips, the slips shall be mixed by shaking the container, by stirring the contents of the container, or by a combination of both methods.

7. Slips shall be drawn blindly one-at-a-time from the container by staff from the Division.

i. The drawing shall commence with Tier I eligibility and shall proceed through Tier I until all eligible applicant municipalities in Tier I have been selected.

ii. The drawing shall continue with Tier II eligibility and shall proceed through Tier II until all eligible applicant municipalities in Tier II have been selected.

iii. The drawing shall continue with Tier III eligibility and shall proceed through Tier III until all eligible applicant municipalities in Tier III have been selected.

8. Upon being drawn from the container the slip shall be read aloud and another staff member shall determine which municipality was drawn. A list of the results of the lottery shall be constructed and maintained.

9. The lottery shall be witnessed by representatives of the health and safety workers who are affected by the Act and this subchapter, that is, EMTs, firefighters, and police officers.

(c) The Division shall disclose the lottery outcome, notifying applicant municipalities of their lottery standings by mail within one month of the conclusion of the lottery.

(d) Fund distributions shall be made in accordance with the lottery standings as monies become available for distribution and shall continue until all available funds are distributed.

1. Fund distributions shall commence at Tier I eligibility and shall proceed through Tier I until all eligible applicant municipalities in Tier I have been reimbursed. Upon completion of Tier I reimbursement, Fund distribution *[will]* ***shall*** proceed to Tier II and upon completion of Tier II reimbursement, Fund distribution *[will]* ***shall*** proceed to Tier III.

2. If the Fund is exhausted prior to completion of any tier, distribution shall be suspended pending sufficient deposits into the Fund by the Attorney General.

(e) The lottery standings shall remain in effect until the next succeeding lottery.

*[8:57-6.7]***8:57B-1.7*** Use of hepatitis inoculation funds by municipalities

Moneys from the Fund which are distributed to the municipalities shall be used exclusively for the purposes specified in the Act and shall not supplant budgeted funding or any other available funding currently in existence.

*[8:57-6.8]***8:57B-1.8*** Accounting and audit

The State of New Jersey reserves the right to periodically audit any of the records referenced in this subchapter.

*[8:57-6.9]***8:57B-1.9*** Division responsibilities

(a) The Division shall:

1. Screen requests for reimbursement from municipal applicants to determine eligibility;
2. Conduct a lottery to determine municipal ranking;
3. Maintain oversight of the program; and
4. Administer the Fund on a day-to-day basis;

(b) Administrative costs of the program shall be paid from the Fund to the Division prior to any distribution to municipalities.

CORRECTIONS

(a)

THE COMMISSIONER

Juvenile Records

Adopted Amendments: N.J.A.C. 10A:22-2.10

Proposed: February 6, 1995 at 27 N.J.R. 436(b).

Adopted: March 16, 1995 by William H. Fauver, Commissioner, Department of Corrections.

Filed: March 24, 1995 as R.1995 d.213, **without change.**

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and N.J.S.A. 2A:4A-60.

Effective Date: April 17, 1995.

Expiration Date: March 7, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for the adopted amendments because the rulemaking requirements of the Department of Corrections are governed by N.J.S.A. 30:1B-6 and 30:1B-10. The adopted amendments are not subject to any Federal requirements or standards.

Full text of the adoption follows:

10A:22-2.10 Juvenile records

(a) (No change.)

(b) Juvenile records shall be made available only to the following agencies or persons:

1.-6. (No change.)

7. The Division of Youth and Family Services, if providing care or custody of the juvenile;

8. A law enforcement agency of New Jersey, another state or the United States for the purposes of law enforcement; or

9. Any person or agency interested in a case or in the work of the agency keeping the records, by order of the court for good cause shown; and

10. Any institution to which the juvenile is currently committed.

(c) Pursuant to N.J.S.A. 2A:4A-60, at the time of charge, adjudication or disposition, information as to the identity of a juvenile charged with an offense, the offense charged, the adjudication and disposition shall, upon request, be disclosed to:

1.-4. (No change.)

5. A party in a subsequent legal proceeding involving the juvenile, upon approval by the court; or

6. The principal, on a confidential basis, of the school where the juvenile is enrolled for use by the principal and such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety, or discipline in the school or to planning programs relevant to the juvenile's educational and social development provided that no record of such information shall be maintained except as authorized by regulation of the Department of Education.

INSURANCE

(b)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Notice of Administrative Correction Consumer Information Statement N.J.A.C. 11:5-1.43

Take notice that the New Jersey Real Estate Commission has discovered an error in the text of recently adopted new rule N.J.A.C. 11:5-1.43 (see 27 N.J.R. 697(a)). Specifically, the phrase "after having verbally informed the buyer of the four business relationships" in the second sentence of subparagraph (c)2ii should instead read "after having verbally informed the seller of the four business relationships" in keeping with N.J.A.C. 11:5-1.43(c)2i's requirement to verbally inform the seller of such relationships and the "seller" context of paragraph (c)2. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

11:5-1.43 Consumer Information Statement

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

(c) All licensees shall supply information on business relationships to buyers and sellers in accordance with the following:

1. (No change.)
2. With respect to sellers:

i. (No change.)

ii. If the first such discussion occurs during a business meeting on the seller's real estate needs, licensees shall deliver the written Consumer Information Statement to the sellers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the [buyer] **seller** of the four business relationships, deliver the written Consumer Information Statement to the seller at their next meeting. However, if prior to their first business meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the seller, the Consumer Information Statement shall be included with such material.

iii. (No change.)

(f)-(l) (No change.)

(c)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Definitions; Carrier Acting as Administrator for Small Employers; Non-member Status Summary of Public Comments and Agency Responses

Adopted Amendments: N.J.A.C. 11:21-1.2, 7.4 and 8.3

Proposed: September 28, 1994 in accordance with N.J.S.A. 17B:27A-51, at 26 N.J.R. 4308(a).

Adopted: October 26, 1994, by the New Jersey Small Employer Health Benefits Program Board, Maureen E. Lopes, Chair. **See** 26 N.J.R. 4629(a).

Filed: October 27, 1994 as R.1994 d.583, **without change.**

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, P.L. 1994, c.11, and P.L. 1994, c.97.

Effective Date: October 27, 1994.

Expiration Date: October 15, 1998.

These rules were adopted pursuant to N.J.S.A. 17B:27A-51, a special procedure whereby the SEH Board may adopt its intended action im-

mediately upon the close of the specified comment period by submitting the adopted action to the Office of Administrative Law ("OAL"). Pursuant to this special procedure, the Board is required to respond to the comments timely submitted within a reasonable period of time thereafter. The SEH Board reviewed the comments timely received and considered them before adopting the proposal, which adoption was published in the November 21, 1994 New Jersey Register at 26 N.J.R. 4629(a). The following is the Board's responses to comments received which report is for public distribution and publication by the OAL in the New Jersey Register.

The SEH Board received timely comments from:

1. Great-West Life & Annuity Insurance Company; and
2. Fortis Benefits Insurance Company

Summary of Public Comments and Agency Responses:

COMMENT: One commenter suggested that the implementation of the stop loss limits proposed in N.J.A.C. 11:21-1.2 should be deferred until the National Association of Insurance Commissioners ("NAIC") has completed its study on the same subject.

RESPONSE: The SEH Board recognizes that a published study from the NAIC on the issue of stop loss coverage limits would be of assistance to the Board in developing its regulations. Indeed, the SEH Board intends to review any study published by the NAIC regarding this matter and, if appropriate, incorporate the NAIC's recommendations in the rule.

At this time, the SEH Board believes that it cannot postpone its regulatory responsibilities until the NAIC completes its study. The lack of established limits with regard to the provision of stop loss coverage in conjunction with an administrative services organization ("ASO") contract has allowed carriers to circumvent the requirements and protections of the Small Employer Health Benefits ("SEH") Act. A guaranteed issue, modified community rated small employer health insurance market, as required by the SEH Act, is not viable or sustainable if carriers may offer stop loss coverage that substantially duplicates the level of risk of a fully insured arrangement. Indeed, the term "self-insured" is a misnomer if the administrative services can be coupled with stop loss coverage that duplicates the benefits of a fully insured plan. Carriers offering such coverage would likely be able to offer attractive savings only to employers with low-risk employees. Their removal from the modified community rated market would result in increased rates by carriers offering guaranteed issue modified community rated SEH plans. In addition, the guaranteed issue feature of the SEH Program could not prevent such groups from reentering the insured market in the event the experience of the group worsened. Such adverse selection also would drive up the cost of insurance for small employers. Therefore, the Board viewed as critical the need to set reasonable stop loss standards and has decided not to wait for publication of the NAIC study.

The Board adopted specific and aggregate thresholds with the intention that plans which include both specific and aggregate stop-loss attachment points would have to ensure that both thresholds met or exceeded the thresholds established by the Board. Where a self-insured health plan includes either a specific or aggregate threshold, the stop loss would have to comply with the applicable limit in the rules. A carrier may not choose to meet one threshold and not the other, where its plan employs both specific and aggregate stop loss attachment points.

The limits set forth in the rule are actuarially supportable and are reasonably consistent with the range of limits in other states. As a result, no changes have been made in response to the comment.

COMMENT: Two commenters asserted that the stop loss limits proposed by the Board were excessively high and were, thus, preempted by the Employee Retirement Income Security Act of 1974 ("ERISA").

RESPONSE: The Board recognizes that ERISA protects the right of employers to self-insure and the Board does not intend to affect that right. However, ERISA does not preempt states from regulating the business of insurance. The purpose of this rule is to regulate the stop loss coverage a carrier may offer to small employers who elect to limit their potential losses under a self-insured plan. The Board disagrees that the stop loss limits established in the rule are excessively high. With respect to the specific stop loss limit of $25,000, this number is consistent with the limit set by the state of Tennessee. Indeed, the commenter states that, in its experience, "most small employers choose levels of $15,000-$25,000 per year" for specific stop loss and one of the commenters recommends that the Board adopt a limit between $10,000 and $20,000. The Board does not believe the chosen limit of $25,000 far exceeds the recommendation of the commenter. The Board also reviewed an actuarial memorandum submitted by a carrier that supports a specific stop loss limit for groups of fewer than 50 employees in the range of $10,000-$25,000. These limits were found to have generated the least fluctuations in claims in excess of the specific stop loss limit and the most stable premiums. Further, the Board chose the limit of $25,000 because it wants to ensure that there is a substantial transfer of risk when an employer chooses to self-insure rather than opt for a fully insured SEH plan.

With regard to the aggregate limit of 125 percent of expected claims, the Board believes it is well within actuarially supportable limits and the range of limits established in other states. For example: Kansas—120 percent; Missouri—120 percent; New York—125 percent; Ohio—no more than 125 percent; Oregon—120 percent; Tennessee—$150,000; Washington—120 percent. One of the commenters recommends a threshold of 120 percent. The Board has reviewed an actuarial memorandum that suggests that an attachment point of 130 to 135 percent generates the most stable results for groups of fewer than 50 employees. However, the difference between results for those limits and 125 percent were not great. One of the commenters also submitted a memorandum by Coopers and Lybrand Consulting which analyzed various stop loss limits. The memorandum did not set forth clear recommendations for specific or aggregate stop loss levels that the Board could consider. The Board believes the limits proposed are not excessively high or violative of ERISA. Therefore, the proposal has not been amended in this regard.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Motorized Bicycles

Readoption with Amendments: N.J.A.C. 13:25

Proposed: February 6, 1995 at 27 N.J.R. 440(a).

Adopted: March 13, 1995, C. Richard Kamin, Director, Division of Motor Vehicles.

Filed: March 15, 1995 as R.1995 d.204, **without change**.

Authority: N.J.S.A. 39:2-3, 39:3-10a, 39:4-14.3, 39:4-14.3a et seq. and 39:5-30.

Effective Date: March 15, 1995, Readoption;
April 17, 1995, Amendments.

Expiration Date: March 15, 2000.

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in the February 6, 1995 New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. **No comments were received** from the public with regard to the proposal.

Executive Order No. 27(1994) Analysis

N.J.A.C. 13:25-9.3, which provides that protective helmets used by the operators of motorized bicycles must have a reflectorized surface on both sides or have securely affixed thereto reflectorized material on both the left and right side of the helmet, sets forth a requirement which exceeds the standards for motorcycle helmets set forth in 49 CFR §571.218. The Federal motorcycle helmet standards have been made applicable to helmets used by motorized bicycle operators pursuant to N.J.A.C. 13:25-9.2 as amended, but the Federal standard does not contain the reflectorization requirement set forth in N.J.A.C. 13:25-9.3. However, N.J.A.C. 13:25-9.3 as amended also requires that protective helmets used by motorized bicycle operators be in compliance with N.J.S.A. 39:3-76.7, a New Jersey statute pertaining to motorcycle helmets which predates the enactment of the aforementioned Federal standard and which contains a reflectorization requirement. Although the New Jersey Legislature has amended N.J.S.A. 39:3-76.7 twice since the adoption of 49 CFR §571.218, it has chosen not to delete the reflectorization provision contained in the statute. Accordingly, the Division has retained the reflectorization requirement for protective helmets set forth in N.J.A.C. 13:25-9.3 because, although the cost to motorized bicycle operators to reflectorize a protective helmet is relatively modest (it may be accomplished by means of reflective tape), the use of reflectorization may prevent accidents by assisting other motorists in the identification of motorized bicycle operators during nighttime hours. The Division perceives no rational basis upon which to impose less stringent protective helmet standards on operators of motorized bicycles.

N.J.A.C. 13:25-9.2 and 9.4 each require compliance with the Federal motorcycle helmet standards set forth in 49 CFR §571.218, but do not impose a standard which exceeds the Federal standards.

An Executive Order No. 27(1994) analysis is not required for the remainder of the readopted rules because the subject matter of said rules is authorized under State law and is not subject to Federal requirements or standards.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:25.

Full text of the adopted amendments follow:

13:25-1.1 Definitions

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

. . .

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

. . .

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

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

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

. . .

13:25-3.4 Motorized bicycle operating privilege status

(a) An individual may neither apply for nor receive a motorized bicycle license during a period of suspension or revocation of any of his or her driving privileges.

(b) An individual may neither apply for nor receive any class of driver license during a period of suspension or revocation of his or her motorized bicycle operating privileges.

13:25-3.6 Written test

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

13:25-3.7 Oral test

(a) The oral test is a test given to applicants for a New Jersey motorized bicycle license who are unable to read English or experience difficulty in understanding the English language so that they are unable to complete the written test.

(b) This test shall consist of two parts as follows:

1. Slides, transparencies or other facsimiles which can be used to show the image of official traffic control devices. The number of slides, transparencies and/or other facsimiles shall not exceed 30. Applicants will be required to read and explain the meaning of each slide, transparency or other facsimile. The percentage value of each slide, transparency or other facsimile shall be an equal percentage. A passing grade of 80 percent must be attained by the applicant.

2. Questionnaires concerning the safe operation of a motorized bicycle, the New Jersey motor vehicle laws and regulations, as may be contained in the motorized bicycle operator's manual or any supplement thereto. The questions on these questionnaires will be asked orally of the applicants. The number of questions shall not exceed 30. A passing grade of 80 percent must be attained by the applicant.

13:25-3.9 Visual acuity test standards

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

(e) In the event any special device or equipment is used or needed to meet the minimum requirements of this section, the matter may be referred to the Director or his or her designee for final determination.

13:25-3.10 Color perception check standards

(a) (No change.)

(b) An applicant may not be denied a motorized bicycle license solely upon the basis of a color deficiency.

13:25-3.11 Necessity of motorized bicycle driving test

Every applicant for a New Jersey motorized bicycle license must satisfactorily complete a practical demonstration of his or her ability to exercise ordinary and reasonable control in the operation of a motorized bicycle.

13:25-3.12 Motorized bicycle driving test maneuvers

(a) The motorized bicycle driving test may include, but is not limited to, the following maneuvers:

1.-6. (No change.)

(b) (No change.)

13:25-3.13 Motorized bicycle used in driving demonstration

The motorized bicycle used for the driving demonstration will be provided by the applicant who must have a valid motorized bicycle learner's permit in his or her possession.

13:25-3.14 Failure of motorized bicycle driving test

An applicant who fails the motorized bicycle driving test may not be retested until a period of at least two weeks has elapsed.

13:25-3.15 Expiration of motorized bicycle license; photo license requirement; fee

(a) Every motorized bicycle license shall expire on the last day of the 48th calendar month following the calendar month in which the license was issued.

(b) Photo licenses shall be mandatory for all initial motorized bicycle licensees and for motorized bicycle license renewals issued to applicants therefor who are under the age of 21.

(c) The fee for issuance of a motorized bicycle license with a photo shall be $2.00.

(d) No fee shall be charged for issuance of a motorized bicycle license renewal without a photo.

13:25-3.16 *[(Reserved)]* **Restoration fees**

(a) A fee of $50.00 shall be payable to the Director for the restoration of any license which has been suspended or revoked by reason of the licensee's violation of any law or regulation.

(b) A fee of $50.00 shall be payable to the Director for the restoration of vehicle registrations which have been suspended or revoked by reason of the registrant's violation of any law.

13:25-3.19 Surrender of motorized bicycle license

An individual's motorized bicycle license shall become null and void upon issuance to the individual of a valid basic driver's license or motorcycle license in the State of New Jersey. Said motorized bicycle license shall be surrendered to the Division at the time of such issuance.

SUBCHAPTER 4. CONVULSIVE SEIZURES

13:25-4.1 Satisfaction of physical qualifications

Any person who suffers or who has suffered from recurrent convulsive seizures, recurrent periods of impaired consciousness or from impairment or loss of motor coordination due to conditions such as, but not limited to, epilepsy, in any of its forms, shall as a prerequisite to the issuance of a motorized bicycle learner's permit or motorized bicycle license, renewal of a motorized bicycle license or retention of a motorized bicycle license establish to the satisfaction of the Director that he or she has been free from recurrent convulsive seizures, recurrent periods of impaired consciousness or from impairment or loss of motor coordination for a period of one year with or without medication and that he or she is physically qualified to operate a motorized bicycle.

13:25-4.2 Physically unqualified pending hearing

When it shall appear to the Director that a licensed motorized bicycle operator or an applicant for a motorized bicycle learner's permit or motorized bicycle license suffers or has suffered from

recurrent convulsive seizures, recurrent periods of impaired consciousness or from impairment or loss of motor coordination the Director may, upon notice and an opportunity to be heard, suspend the motorized operating privilege of, or refuse to issue a motorized bicycle learner's permit or a motorized bicycle license to such person as physically unqualified to operate a motorized bicycle with safety; provided, however, the Director may, in the exercise of his or her discretion, suspend such motorized bicycle license or refuse to issue such motorized bicycle learner's permit or motorized bicycle license pending hearing, if it shall appear to the Director to be in the interest of public safety that immediate action be taken.

13:25-4.3 History of seizures and physician's report

(a) When it shall appear to the Director, upon information received or an investigation conducted, that a licensed motorized bicycle operator or an applicant for a motorized bicycle learner's permit or motorized bicycle license suffers or has suffered from recurrent convulsive seizures, recurrent periods of impaired consciousness or from impairment or loss of motor coordination, he or she may require from such person on forms approved by the Director:

1. A statement by the applicant or licensee of his or her case history;

2. (No change.)

3. Any other information which the Director may deem necessary to evaluate the motorized bicycle operator's qualification to operate a motorized bicycle.

13:25-4.4 Neurological Disorder Committee

(a) The Director shall appoint a Neurological Disorder Committee of three members to advise him or her as to issuing licenses to persons suffering from recurrent convulsive seizures, recurrent periods of impaired consciousness or from impairment or loss of motor coordination.

(b) The Director shall appoint the Committee upon consultation with and advice of the Medical Society of the State of New Jersey.

13:25-4.5 Committee review of case

When the Director deems it necessary to refer a specific case to the Committee, all available information concerning the licensed motorized bicycle operator or applicant, including the licensee's or applicant's statement of the case history and the treating physician's statement as to diagnosis, treatment and prognosis will be referred to the Committee for review, advice and recommendation.

13:25-4.6 Report of findings

Each member of the Committee shall separately report his or her findings and recommendations to the Director.

13:25-4.7 Committee recommendations

Notwithstanding the provisions of N.J.A.C. 13:25-4.1, the Director, upon consultation with the members of the Committee, may grant a motorized bicycle learner's permit or initial motorized bicycle license or permit a motorized bicycle operator to retain his or her motorized bicycle license although such person may have suffered a seizure, period of impaired consciousness, or from impairment or loss of motor coordination within a one-year period from the date of the Director's determination when the specific characteristics or a person's disorder do not adversely impact on the person's ability to safely operate a motorized bicycle.

13:25-4.8 Restoration qualifications

(a) When the Director has denied an applicant a motorized bicycle license or has suspended the license of a licensed motorized bicycle operator pursuant to this subchapter, issuance or restoration may be considered providing the individual submits:

1. A current statement of his or her case history;

2. (No change.)

3. A current report covering the results of an electroencephalographic examination, if required;

4. Satisfactory evidence that N.J.A.C. 13:25-4.1 or 4.7 have been complied with where applicable.

13:25-4.9 Interval report of seizures

(a) As a condition precedent to the issuance, retention or restoration of motorized bicycle operating privileges pursuant to this subchapter, the individual shall agree in writing to submit to the Director periodic reports on forms approved by the Director. The reports shall contain a statement of the individual's case history and a statement by the treating physician.

(b) These reports shall be submitted every six months for a period of two years from the date that approval is given to hold a motorized bicycle license.

(c) Subsequent reports shall be submitted on a yearly basis.

13:25-4.10 Driver reexamination

When necessary in the interest of public safety, and/or that of the operating individual, as a condition precedent to the issuance, retention or restoration of motorized bicycle operating privileges, the Director may require that a motorist be given a motorized bicycle driving test and examination at a Division of Motor Vehicles Driver Testing Center.

SUBCHAPTER 5. CARDIOVASCULAR DISORDERS

13:25-5.1 Cardiovascular Committee

The Director, in consultation with the Medical Society of New Jersey, shall appoint a Cardiovascular Committee of specialists in cardiovascular disorders for the purpose of guiding him or her in making determinations as to whether persons are physically qualified to operate a motorized bicycle with safety.

13:25-5.2 Case history and physician's statement

(a) Where it shall appear to the Director upon information or investigation that any applicant for a motorized bicycle license or licensed motorized bicycle operator suffers or has suffered from a cardiovascular condition, he or she may require from such person on forms furnished by the Director:

1. A statement by the applicant or licensed driver of his or her case history;

2. A statement by a physician including all pertinent information relative to the applicant's or licensed driver's case including diagnosis, treatment and prognosis.

13:25-5.3 Review and recommendation

(a) When the Director deems it necessary to refer a specific case to the Committee, all available information including the applicant's or licensed motorized bicycle operator's statement of his or her case history and the attending physician's report will be referred to the Cardiovascular Committee for review and recommendation.

(b) If in the opinion of the Committee it is advisable, the applicant or licensed driver may be required to be examined by a specialist in internal medicine or cardiology including x-ray and/or electrocardiogram.

13:25-5.4 Findings report

The members of the Cardiovascular Committee will report their findings and recommendations to the Director and the Director will determine whether or not a person may be issued a motorized bicycle license.

13:25-5.5 Consideration of restoration

When the Director has denied an applicant a motorized bicycle license pursuant to this subchapter, restoration of the motorized bicycle operating privilege may be considered; provided, however, the period of time has expired which is determined by the Director, upon consultation with the Cardiovascular Committee, to be applicable in the case.

13:25-5.6 Case referral

Upon application for restoration, the case may be referred to the Cardiovascular Committee as provided in N.J.A.C. 13:25-5.3.

13:25-5.7 Interval reports

(a) As a condition precedent to the issuance, retention or restoration of motorized bicycle operating privileges pursuant to this subchapter, the individual shall agree in writing to submit to the Director periodic reports on forms approved by the Director. The

reports shall contain a statement of the individual's case history and a statement by the treating physician.

(b) These reports shall be submitted every six months from the date that approval is given to hold a motorized bicycle license.

(c) When necessary in the interest of public safety, and/or that of the operating individual, the Director may, in his or her discretion, waive or change the interval report requirement of (b) above.

13:25-5.8 Driver reexamination

When necessary in the interest of public safety, and/or that of the operating individual, as a condition precedent to the issuance, retention or restoration of motorized bicycle operating privileges, the Director may require that a motorist be given a motorized bicycle driving test and examination at a Division of Motor Vehicles Driver Testing Center.

13:25-9.1 Approval of helmets

No person shall sell, offer for sale, or distribute any protective helmets for use by the operators of motorized bicycles unless they meet the helmet approval specifications set forth at N.J.A.C. 13:25-9.2.

13:25-9.2 Helmet approval specifications

Safety helmets shall meet the specifications established by the United States Department of Transportation as set forth in 49 CFR §571.218.

13:25-9.3 Reflectorized surface on helmets

Each helmet worn by the operator of a motorized bicycle shall, in compliance with N.J.S.A. 39:3-76.7, have a reflectorized surface on both sides, or have securely affixed thereto reflectorized material on both the left and right side of the helmet. Such reflectorization must cover an area of at least four square inches on each side of the helmet. If reflectorized safety tape is attached to each side of the helmet, it must be affixed in a permanent, weather-proof manner.

13:25-9.4 Identification label on helmets

Each approved helmet shall be labeled in accordance with 49 CFR §571.218.

13:25-9.6 (Reserved)

13:25-9.7 (Reserved)

(a)

DIVISION OF STATE POLICE

Motor Vehicle Race Track Rules

Readoption with Amendments: N.J.A.C. 13:62
Adopted Repeal: N.J.A.C. 13:62-3
Adopted Repeals and New Rules: N.J.A.C. 13:62-4, 5, 6, 7, 10, 11, 13 and 14
Adopted New Rules: N.J.A.C. 13:62-6A, 6B, 12A, 12B, 15 and 16

Proposed: February 6, 1995 at 27 N.J.R. 445(a).

Adopted: March 9, 1995 by Colonel Carl Williams, Superintendent, Division of State Police.

Filed: March 17, 1995 as R.1995 d.206, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:7-8 et seq. and Attorney General's Executive Directive 1982-2.

Effective Date: March 17, 1995, Readoption;
April 17, 1995, Amendments, Repeals and New Rules.

Expiration Date: March 17, 2000.

Summary of Public Comments and Agency Responses:

The Division of State Police is adopting amendments to N.J.A.C. 13:62, a repeal at N.J.A.C. 13:62-3 repeals and new rules at N.J.A.C. 13:62-4, 5, 6, 7, 10, 11, 13, and 14, and new rules at N.J.A.C. 13:62-6A, 6B, 12A, 12B, 15 and 16. These new rules and amendments proposals were published on February 6, 1995 at 27 N.J.R. 445(a). A public hearing was held on February 17, 1995 at the HRDI Training Center in Princeton, New Jersey. The hearing officer, Tpr. I.M. Theckston of the M.V. Racing Control Unit, received comments but made no recommendations and did not file any separate report. The comment period closed on March 8, 1995. Oral comments were presented by individuals at the public hearing and written comments were also presented prior to the closing of the comment period. The commenters were race track owners, race track participants, race track officials and interested citizens.

Persons wishing to review the transcript of the hearing may contact Trooper I M. Theckston, Motor Vehicle Racing Control Unit, New Jersey State Police, P.O. Box 7068, West Trenton, New Jersey 08628-0068.

The following is a list of the persons, with their affiliations, if any, who made timely written or oral comments on the proposal. The number in the parenthesis after each comment identifies the commenter(s) listed below.

Individual-Organization

1. Rick McCaulhey, Flemington Speedway
2. Ross Smith, Ridge Riders Motorcycle Club
3. Vincent Napoliello, Old Bridge Twsp. Raceway Park
4. Bill Quist, Sussex County Farm & Horse Show
5. Tina Quist, Sussex County Farm & Horse Show
6. David Brogden, South Jersey Enduro Riders
7. Steven T. Peters, American Racing Drivers Club
8. Bob Lang, National Hot Rod Asso.
9. Curt LaShure, National Hot Rod Asso.
10. Jennie J. Nicol, Wall Stadium
11. Jim Cardinal, East Windsor Speedway
12. Jack Siminons, East Windsor Speedway
13. Don Jonesnr, East Windsor Speedway
14. Jack Capor, Wall Stadium
15. Greg Xakelli, National Hot Rod Asso.
16. Martha Xakelli, National Hot Rod Asso.
17. Ace Lane, Flemington Kart. Racing
18. Jim Fitzpatrick, Garden State Quarter Midget Clubs
19. Robert Marion, National Speed Sport News
20. John Fillimon
21. Jeff Gravatt, Wall Stadium & East Windsor Speedway
22. Patricia Hodges, N.J. Trails Conservancy
23. Bob Deboise, A.T.Q.M.R.A.
24. Walt Olsen, Bridgeport Speedway
25. George Planthaber, N.J. State Racing Advisory Board Member
26. Charlie Pistorio, Grand Product Inc.
27. Jim Stueber
28. W. Edward Franks, N.J. State Racing Advisory Board Member
29. Joe Sway, Atco Raceway
30. Ford Shaw, N.N.S.R. Porsche Club
31. Catherine Kowalick, Island Dragway
32. Tony DeMark, Island Dragway
33. Barry Seppy, Meteor Motorcycle Club
34. Michael Barr, N.J.T.C.—Meteor Motorcycle Club
35. Thomas J. Demarest, Garden State International Speedway Corp.
36. Grahm K. Light, National Hot Rod Asso.
37. George T. Lucas, G.S.R.C.A. Ad Hoc Safety Committee
38. Paul Weisel, Jr., K.L.A.S.C.A.R.
39. Doug Reed, S.C.C.A.

The following is a summary of the comments timely submitted on the proposal and the Division's responses.

1. COMMENT: The commenter believes that fence height at Drag racing events should be lowered to four feet in height. (3)

RESPONSE: The Division disagrees with the comment. The Division believes that a six foot fence would prevent spectators from climbing over the fence and also provides greater protection against any flying debris and injury. N.J.S.A. 5:7-10(b) mandates that the fence height be set at six feet for Drag racing type events. Therefore, N.J.A.C. 13:62-4.2 can not be changed without being in violation of N.J.S.A. 5-7.

2. COMMENT: The commenter believes that in Drag racing events vehicles that run quicker than 9.99 elapsed time or faster that 135 mph in the quarter mile shall have a steel mat, plate or blanket installed over the transmission so as to protect the driver from any injury. (3) (28)

RESPONSE: The Division agrees with the commenter. N.J.A.C. 13:62-5.24 will be changed. The proposed rule already provides what the commenter requests, by virtue of its requirement that all vehicles with automatic transmissions have a steel mat, plate or blanket installed over

the transmission. The Division concurs with N.H.R.A. statistical information (the national sanctioning body for the drag strips in New Jersey) stating that vehicles traveling over 135 m.p.h. or quicker than 9.99 elapsed time have a greater possibility of fragmentation problems with the transmission. Also vehicles traveling slower than 135 m.p.h. or slower than 9.99 elapsed time have been racing without this requirement prior to the proposal change with no additional safety hazard to the participants (N.J.S.P. M.V. Racing Control Unit statistics). The Division feels that additional public comment on this change is not required because the Division is only reiterating as to the national standard (N.H.R.A. Technical and Competition Guidelines) in which the participants have been previously following prior to the proposed change.

3. COMMENT: The commenter believes that in Drag racing events vehicles running 13.99 or quicker shall have an enclosed drive shaft in the front and vehicles traveling with an elapsed time of 14.00 and slower equipped with street tires should not have an enclosed drive shaft. (3) (28)

RESPONSE: The Division agrees with the commenter. N.J.A.C. 13:62-5.25 will be changed. The proposed rule already provides what the commenter requests, by virtue of its requirement, that all vehicles shall have an enclosed drive shaft in both the front and rear of the vehicle. The Division did not foresee that by requiring that all vehicles have an enclosed drive shaft to the rear of the vehicle, this would cause an undue cost to the participants and that it is virtually mechanically impossible to achieve. The Division believes that additional public comment on this change is not required since vehicles have been competing without the rear enclosed drive shaft with no additional hazards to the participants.

4. COMMENT: The commenter believes that imposing a five m.p.h. pit area and staging lane speed limit in Drag racing events would cause many race cars to stall. (3)

RESPONSE: The Division disagrees with the commenter. In N.J.A.C. 13:62-5.36 the age of individuals have been lowered than in the past. In the past only individual 18 years old or older were permitted in the pits. With the lowering of the age requirement for individuals permitted in the pits it is the Division's belief that there will be an increase of spectators in the pit areas and the speed of vehicles traveling in these pits must be lowered. Vehicles that have difficulty traveling at this speed must then find other means of traveling in the pits after their respective pass in the drag strip (that is, towing of the vehicle).

5. COMMENT: The commenter questioned if N.J.A.C. 13:62-6.2(a), which the commenter believes is being deleted, could be used for wording with respect to fencing. (3)

RESPONSE: The Division disagrees with the commenter. The Division has no intentions in deleting or removing N.J.A.C. 13:62-6.2(a) which pertains to oval racing for motorcycles and quad vehicles. The wording can not be used to represent fences used at these events. Fences are addressed in N.J.A.C. 13:62-6.4 with respect to these types of events.

6. COMMENT: The commenter would like to change the verbiage in N.J.A.C. 13:62-12B.8(a)2 to read N.H.R.A. Jr. Drag Racing League 1995 Supplemental program as the minimum requirements. (3) (28)

RESPONSE: The Division disagrees with the commenter. The Division has researched the N.H.R.A. Junior Drag Racing League 1993 Supplemental Program and believes that these rules must be followed along with any other provisions that these rules require for this type of racing. The Division has reviewed the 1995 N.H.R.A. Junior Drag Racing League Supplemental Program and feels that this is not appropriate in New Jersey. This is because it allows the Junior Drag vehicle to travel at faster speeds and elapsed times for the ⅛ mile.

7. COMMENT: The commenter would like to change the verbiage to N.J.A.C. 13:62-12B.8(a)8 to say that junior dragster vehicles shall be equipped with a shut off switch on top or near the top of the roll bar. (3) (28)

RESPONSE: The Division disagrees with the commenter. The Division believes that if there is uniformity to where the shut off switch is located than there would be no confusion in case of an emergency.

8. COMMENT: The commenter would like to change the verbiage to N.J.A.C. 13:62-12B.9(a) to include, "60 m.p.h. can be exceeded if the driver has had at least one year of racing experience and has demonstrated their racing ability to the satisfaction of the track officials." (3) (28) (36)

RESPONSE: The Division disagrees with the commenter. the Division believes that the maximum speed for this type of racing should not exceed 60 miles per hour regardless of the experience of the driver. Taken into consideration by the Division was the ages of the participants and the commenter's inability to provide facts stating that exceeding this speed would not cause any further undue risk to the participants. The commenter further failed to provide any proofs as to maximum safety speeds for the type of body construction that these vehicles have.

9. COMMENT: The commenter would like N.J.A.C. 13:62-5.36 deleted from the Administrative Code if the five m.p.h. rule is instituted as provided in N.J.A.C. 13:62-5.34(b). The commenter also states that insurance companies and national organizations allow all people of any age into the staging lanes to assist their participating relatives with tire pressure checks, helmet, safety belts and other pre race preparations. (3)

RESPONSE: The Division disagrees with the commenter. With the possible increase of spectators in the pit areas vehicles that are returning to there designated areas after a race shall adhere to the five m.p.h. administrative code as provided in N.J.A.C. 13:62-5.34(b). The Division further disagrees with the commenter to allow persons under the age of 17 into the staging lanes as provided by N.J.A.C. 13:62-5.36(b). The area considered the staging area has constant movement of vehicles in close proximity to other vehicles and participants which causes a greater risk of injury to younger and/or inexperienced individuals. The commenter has stated that these individuals assist the driver in pre race preparedness. But this can be accomplished outside the staging lanes. While in the staging lanes the participants should be ready to drive their respective vehicles to the starting lines not preparing to race.

10. COMMENT: The commenter would like to change the verbiage to N.J.A.C. 13:62-5.7. The commenter would like to add that the shoulder harness shall not come over the roll bar more than the shoulders height, and not less than four inches below the shoulder. (28)

RESPONSE: The Division disagrees with the commenter. N.J.A.C. 13:62-5.7 sets the requirements for vehicle equipment in drag racing events. The commenter does not provide documentation supporting the requested change. The Division reserves the right to address this issue as required by N.J.S.A. 5:7-1 et seq.

11. COMMENT: The commenter would like to change the verbiage to N.J.A.C. 13:62-5:10. The commenter would like to add that metal seats should be installed to the floor of the car, in the same manner as molded or fiberglass seats. (28)

RESPONSE: The Division disagrees with the commenter. N.J.A.C. 13:62-5.10 sets the requirements for molded metal or fiberglass seats. The Division believes that the commenter would like to change N.J.A.C. 13:62-5.10(b) which states that metal seats are not required to have a metal strap connected to each bolt as stated in N.J.A.C. 13:62-5.10(a) for molded or fiberglass seats. The Division believes that metal seats should not have a metal strap connected to each bolt but instead have a larger washer to each bolt. The Division further believes that this would provide the metal seat with maximum stability and safety for the participant. The commenter did not provide the Division with any information concerning why this change would be beneficial. The Division reserves the right to address this issue at a later date as required by N.J.S.A. 5:7-1 et seq. and take new information into consideration for possible amendment to the rule.

12. COMMENT: The commenter questions why in N.J.A.C. 13:62-5.13 is it required to have steel braided material on the fuel lines when no fuel lines are permitted in the driver's compartment in drag racing. (28)

RESPONSE: The Division believes that the use of steel braided material for fuel lines better protects the participant, spectators and officials from injury if the vehicle was involved in an accident. The braided fuel lines would have greater resistance to breakage than the existing non braided fuel lines. The Division further believes that N.J.A.C. 13:62-5.13 should remain in the event that industry standards change (that is, sanctioning bodies allow fuel lines in driver's compartments).

13. COMMENT: The commenter made a comment that fuel cells in drag racing type events have a one inch wide strap and they are ⅛ inch thick. Also that two straps per tank are required. (28)

RESPONSE: The commenter has misinterpreted what N.J.A.C. 13:62-5.14 states. N.J.A.C. 13:62-5.14 sets the standards for the fuel tanks in drag racing events. The commenter has not requested any change to the rule and has not provided any supporting facts. The Division reserves the right to address this issue at a later date as required by N.J.S.A. 5:7-1 et seq. and take new information into consideration for possible amendment to the rule.

14. COMMENT: The commenter stated that no wet cell batteries are allowed in the driver's compartment in all sanctioned drag racing organizations. (28)

RESPONSE: The Division believes that N.J.A.C. 13:62-5.16(a), which is the provision that addresses batteries in the drivers compartment, is necessary for those events that are not sanctioned or are sanctioned but allow batteries to be placed in the driver's compartment.

15. COMMENT: The commenter would like to change the verbiage in N.J.A.C. 13:62-5.21(e). The commenter would like to add that motorcycles exceeding 120 m.p.h. are required to wear full leather suit or S.F.I. spec 40½ suit and also leather boots/shoes and leather gloves. (28)

RESPONSE: The Division disagrees wtih the commenter. N.J.A.C. 13:62-5.21(e) sets the minimum standard for clothing for participants in motorcycles. The commenter does not provide the Division any statistical or factual information as to why a full leather suit or S.F.I. spec 40½ suit clothing is best for this type of event and why only motorcycles exceeding 120 m.p.h. should have this type of clothing. The Division reserves the right to address this issue at a later date as required by N.J.S.A. 5:7-1 et seq. and take new information into consideration for possible amendment to the rule.

16. COMMENT: The commenter stated that N.J.A.C. 13:62-5.28 should address vehicles utilizing parachutes in drag racing should mandatorily have two separate release cables. (28)

RESPONSE: The Division disagrees with the commenter. The Division does not have sufficient supporting information to make the requested change (that is, type of cables and type of release mechanism). The Division reserves the right to address this issue at a later date as required by N.J.S.A. 5:7-1 et seq.

17. COMMENT: The commenter would like to change the verbiage in N.J.A.C. 13:62-5.29(a). The commenter would like to add that all convertibles that go faster than 13.99 elapsed time need a roll bar. Also all cars going quicker than 11.99 elapsed time must mandatorily have a roll bar. (28)

RESPONSE: The Division disagrees with the commenter. N.J.A.C. 13:62-5.29(a) provides exceptions for vehicles which do not require rollover bars if there has been no modification to either body or engine. The commenter does not provide the Division any statistical or factual information as to why only certain elapsed time vehicles are required to have roll bars and why should it be added to this rule. The Division reserves the right to address this issue at a later date as required by N.J.S.A. 5:7-1et seq. and take new information into consideration for possible amendment to the rule.

18. COMMENT: The commenter believes that N.J.A.C. 13:62 would not apply to the over one mile track in which his corporation intends to build. The commenter further believes that the standards set by international sanctioning bodies exceed the administrative code requirements. (35)

RESPONSE: The Division disagrees with the commenter. N.J.A.C. 13:62 is not intended to set such high standards that would preclude the racing industry in any way and especially in the construction of a new track. Though this type of track has not been addressed specifically it has been mentioned in the administrative code in general (that is track construction, fees, enforcement, etc.). The Division reserves the right to address the construction of any race tracks within the State of New Jersey as required by N.J.S.A. 5:7-1 et seq.

19. COMMENT: The commenter would like N.J.A.C. 13:62-4.13 to mandate that vehicles involved in oval racing shall have double nerfing bar construction. (37)

RESPONSE: The Division disagrees with the commenter. N.J.A.C. 13:62-4.13 mandates the standard in which vehicles involved in oval racing must have nerfing bars. The Division has no supporting documentation stating that the addition of a second nerfing bar would make vehicles involved in oval racing safer. The Division reserves the right to evaluate any proposals in the future as required in N.J.S.A. 5:7-1 et seq.

20. COMMENT: The commenter would like to change the verbiage in N.J.A.C. 13:62-4.14. The commenter would like to add to this rule that vehicles involved in oval racing should have a muffler designed of the diffuser type or other effecting racing muffler. The commenter believes that by doing this it would decrease the noise level emitting from the participating vehicles. By decreasing this noise level of safety would be improved because drivers and officials would be able to communicate and noise pollution would be decreased. (37)

RESPONSE: The Division disagrees with the commenter. N.J.S.A. 13:62-4.14 is intended for vehicles participating in oval racing to have an exhaust system so that exhaust is in a specific location and the exhaust is directed away from the participant. The Division has no statutory authorization to regulate noise at these events. The Division believes that this comment would be better directed to another agency (that is, the Department of Environmental Protection).

21. COMMENT: The commenter believes that the starter's stand utilized in all types of oval racing should be constructed so that it be elevated as to minimize the chance of airborne race car hitting same. (37)

RESPONSE: The Division disagrees with the commenter. The Division believes that the rules addressing starter stands (N.J.A.C. 13:62-4.5(a) and 6A.5) should not reflect the elevation of the starter stands. Based on the information provided to the Division, it does not appear that a single standard can be made applicable for all tracks. The Division has not received any supporting documentation by the commenter as to what height the stands should be elevated. The Division reserves the right to evaluate any future proposals at a later date as required by N.J.S.A. 5:7-1 et seq.

22. COMMENT: The commenter would like the age limits lowered for go-kart events from ages between 10 and 18 to ages between five and 18. The commenter would set up different racing classes for specific age groups and make modifications to the go-kart vehicles. (17)(26)

RESPONSE: The Division disagrees with the commenter. N.J.A.C. 13:62-14.1 sets the age requirements for participants in go-kart, snowmobile and motocross events. Changing the age limits for go-kart racing events will require modifications to the go-kart vehicle. These modifications and possibly other factors still have to be determined by the Division. The Division reserves the decision to lower the age limits for go-kart racing events at a later date as required by N.J.S.A. 5:7-1 et seq.

23. COMMENT: The commenter would like N.J.A.C. 13:62 to allow Legend car racing events to be held on tracks ⅓ of a mile. (38)

RESPONSE: The Division disagrees with the commenter. N.J.A.C. 13:62 does not address Legend car racing events. N.J.A.C. 13:62 also does not address the size of track for Legend car racing events. The Division will evaluate any proposals for allowing Legend car racing events.

24. COMMENT: The commenter believes that S.C.C.A. racing events are governed by N.J.A.C. 13:62-8 and this would cause an adverse effect on S.C.C.A. racing and mini Grand Prix events which the S.C.C.A. sponsors. (39)

RESPONSE: The Division disagrees with the commenter. S.C.C.A. racing events are governed by N.J.A.C. 13:62-2.4 procedures for approval of unspecified racing events and N.J.A.C. 13:62-12.1 gymkhanas. These rule would not adversely effect S.C.C.A. racing in the State of New Jersey.

Executive Order No. 27 Statement

The readopted rules, amendments and new rules do not exceed standards or requirements imposed by Federal law.

Summary of Agency-Initiated Changes:

Subchapter 3 is repealed on adoption as redundant. The requirements for cockpit racing appear in both N.J.A.C. 13:62-3 and 4.

N.J.A.C. 13:62-6A.2 and 6B.2 have been revised upon adoption to delete the uniformly mandatory nature of the track safety features, to permit safety features appropriate to particular track terrain to be required instead. This change, while potentially easing the requirements on track owners, will not adversely affect participant or spectator safety.

The deletion of the last sentence in N.J.A.C. 13:62-6B.3(b) does not require reproposal because its appearance is clearly an error which, if left in, would confuse the interpretation of the subsection.

The requirement for all quarter midget vehicles to be equipped with an additional external engine shut off switch on top of the roll bar has been changed to only require such additional switch on novice class quarter midget vehicles. The omission of this limitation in the proposal was not intended by the Division, as to require the additional shut off switch in all classes would place New Jersey alone among the 50 states in having this requirement. The other states conform to the Quarter Midget Association rules and specifications which only require the additional switch in the novice class. As imposing this requirement would have a significant detrimental effect on quarter midget racing in New Jersey, by limiting out-of-State based vehicles that would qualify, and the limitation of the additional switch requirement to the novice class has not been demonstrated to adversely affect participant or spectator safety, the Division is limiting the requirement on adoption.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:62.

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

13:62-1.1 Words and phrases defined

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

. . .

"Junior dragster" means a competition vehicle that is scaled down to half the size and is a near replica of a professional dragster utilizing a lawn mower engine. The competitor will utilize ⅛ of the track surface and driven by children between the ages of 8-17.

. . .

"Quarter midgets" means a competition vehicle scaled down to one-fourth the size of midget racers powered by a lawn mower engine and driven by children ages 5-16.

. . .

"Staging area" means that portion of a racing location where vehicles are lined up in preparation for entering the acceleration and performance test area.

"Street legal car" means a car intended for the use on public roadways and highways of this State and able to pass all of the requirements for motor vehicle inspection as described under Title 39 of the New Jersey Motor Vehicle and Traffic Laws.

. . .

SUBCHAPTER 2. MOTOR VEHICLE RACE TRACK LICENSE REQUIREMENTS AND LICENSEE RESPONSIBILITIES: (ALL RACING EVENTS)

13:62-2.1 License application procedure

(a) A license shall be required for any operation or conduct of motor vehicle races and exhibitions of motor vehicle driving and the tracks or places at which the same are operated and conducted. The application for a motor vehicle race track license must be submitted at least 90 days prior to the first day of racing or exhibition. An application for renewal of a license shall be submitted within 60 days of the expiration date of the license and is to be accompanied by:

1. An insurance certificate;

i. N.J.S.A. 5:7-13 states that no license shall be issued for the holding of any motor vehicle race or exhibition of motor vehicle driving skill until the person applying for the license shall have filed with the Department evidence satisfactory to it of the issuance of an insurance policy approved by the department and conditioned, in the case of a race or exhibition at a track or other place accommodating less than one thousand people, for the payment of less than $25,000 to any one person obtaining judgment, and not less than $50,000 on all judgments recovered, and for the payment of not less than $50,000 to any one person obtaining judgment, and not less than $100,000 on all judgments recovered, in the case of all other races or exhibitions, upon a claim or claims arising out of the same transaction, connected with the same subject of action (to be apportioned ratably among judgment creditors according to the amount of their respective judgments) for damages because of bodily injury, including death at any time resulting therefrom, caused to any person or persons, other than the driver, and all pit area personnel as the result of an accident occurring as a result of the conduct of any motor vehicle race or exhibition of motor vehicle driving skill, for which the license is granted, under which policy the liability of the company shall become absolute when loss or damage covered by the policy occurs, and satisfaction by the insured of a final judgment for the loss or damage shall not be a condition precedent to the right or duty of said company to make payment on account of the loss or damage and which policy shall not be cancelable or annulled as to any loss or damage by an agreement between the carrier and the insured after the insured has become responsible for the loss or damage or in any other event, except on 10 days prior notice to the Department;

2.-5. (No change.)

13:62-2.7 Pit credentials

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

(g) No one under the age of 18 is to be permitted in the pit area, staging lanes or track surface.

(h) Flagmen and starters at all racing events shall be at least 18 years of age.

(i) Mechanics must wear pants while working on their respective vehicles.

(j) Drivers are not permitted to wear shorts while competing.

(k) Track staff will wear pants, at all times, while working in a race event.

13:62-2.17 Ambulances; first aid attendant

(a) The licensee shall not permit any race or exhibition of driving skill unless there is available for immediate use at the licensed location at least one vehicle suitable for ambulance purposes, together with two trained first aid attendants.

(b) The licensee shall ensure that a driver of any racing event involved in an accident which results in considerable damage to the vehicle or any noticeable injury to the driver is checked by the first aid attendant(s) on duty and cleared to participate before he/she returns to the racing event.

1. If the driver refuses medical attention, he or she must sign a waiver stating so.

2. The licensee shall not allow the driver to re-enter the race event if the driver refuses to sign the medical waiver or medical attention is recommended.

SUBCHAPTER 3. *[CONSTRUCTION REQUIREMENTS]* ***(RESERVED)***

*[13:62-3.1 Hubrails

(a) Hubrail construction shall comply in all respects with the requirements of this chapter, or in the alternative, the owner or operator must have written authority for any changes from the Superintendent.

(b) Hubrails must be provided and maintained on the outer circumference of the track and around the entire circumference thereof and where spectators are allowed in the infield or within the inner circumference of the track, a hubrail, as described in this section, will be required around the inner circumference of the track.

(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.

(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.

(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.

(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a three-quarter inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.

(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.

(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent will be required.

(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.

(j) At locations using methods other than gates between the pit area and the track, a guard will be required to prevent unauthorized persons from entering the track area.

(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specially prohibited.

13:62-3.2 Fences

All fences installed for the purpose of limiting spectator area shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motocross events the fence shall be of the same construction but at least five feet in height.

13:62-3.3 Red and amber lights

(a) Each track used for automotive racing, except those used for acceleration and performance tets, must be equipped with a system of at least four red lights and four amber lights so arranged that at least one light of each color will be visible to the drivers as they enter each turn.

(b) Strips used for acceleratioin and performance tests need be equipped with only one red light on the starting tree.

(c) The lights shall be so arranged as to be controlled by a single switch and responsible person must be assigned to be on duty, and to operate such switch during the entire time of each race.

(d) When the red lights are illuminated, all racing vehicles on the track will be required to stop as soon as possible and to remain stopped until such time as the red lights are turned out.

(e) When the amber lights are illuminated, all racing vehicles on the track will be required to slow down and maintain their position unless otherwise directed to charge position by a track official.

13:62-3.4 Flagmen

(a) Tracks over one mile in length may use flagmen in lieu of the red and amber lights, provided the assistant flagmen in the starter's stand is in constant two-way radio or telephone communication with all flagmen.

(b) Where flags are used, the display of the red flag will cause all racing vehicles to stop as soon as possible and to remain stopped until such time as the red flag is removed from display.

(c) Where flags are used, the display of the amber flag will cause all racing vehicles to slow down and maintain their position.

13:62-3.5 Starters

(a) Starter(s) shall be located within a starter's stand with an unobscured view of the entire racing surface from which to control the racing event.

(b) All circular or oval tracks, road courses and other locations utilizing the services of flagmen to control the event shall also have an assistant flagmen in the starter's stand. The assistant flagmen used to control or start a race shall be in the starter's stand when starting and during the race.

13:62-3.6 Maximum protection

(a) All hubrails, fences, stands and buildings must be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, must be located at least 25 feet from the hubrail.

13:62-3.7 Safety belts, shoulder harness and crotch belt

(a) A quick release type safety belt, shoulder harness and crotch belt in good condition shall be compulsory on all vehicles.

(b) Both ends of the safety belt, shoulder harness and crotch belt shall be fastened to the frame of the vehicle.

(c) All fittings and connections of the safety belt, shoulder harness and crotch belt shall be metal.

(d) All safety belts and shoulder harnesses shall be worn properly the entire time the vehicle is being driven in a race.

(e) All safety belts and shoulder harnesses shall bear the date of manufacture and shall be used for more than five years from the date.

(f) The shoulder harness shall be secured to the frame of the vehicle and come over a round bar at the driver's shoulder height.

(g) No alterations shall be allowed to any manufactured design of seat belts.

13:62-3.8 Inspection of vehicles

(a) The licensee shall arrange for the inspection of each participating vehicle prior to the event, to determine that it meets the requirements of this chapter. The licensee shall prohibit vehicles not meeting the requirements of this chapter from participation or practice.

(b) Vehicles which are to be used in automobile races or exhibitions of driving skill are subject to unannounced inspection and approval at any time by the Superintendent or designee.

13:62-3.9 Number of persons in vehicle

No vehicle shall carry more than one person at any time during a race or warm-up, except that during a bona fide training period an instructor may accompany the trainee.

13:62-3.10 Seats

(a) A molded metal or fiberglass seat with openings which allow a seat belt bolted to the frame to come through shall be attached to the frame with at least four three line $^{5}/_{16}$ inch bolts. Two bolts shall be installed at the bottom of the seat not more than three inches from the outside edge and two bolts shall be installed at the two most practical widely spaced points at the top of the seat back. A metal strap at least two inches in width and at least ⅛ inch thick shall connect each set of bolts.

(b) Vehicles equipped with a metal seat are not required to have a metal strap connected to each set of bolts. These vehicles are required to have a larger washer on each bolt.

13:62-3.11 Bumpers

(a) All vehicles shall be equipped with bumpers on the rear.

(b) The bumper shall be fastened to the frame or structural component of the car.

(c) The height of the bumper shall be as high as the center of the wheel and at least two inches in height.

13:62-3.12 Rollover bars

(a) All vehicles shall be equipped with a rollover bar of a design, construction and quality recognized by industry standard and maintained with a view toward affording the driver maximum protection against injury.

(b) Rollover bars must be a minimum of three inches above the driver's head.

(c) Rollover bars must be bolted or welded to the frame of the vehicle.

13:62-3.13 Nerfing bars

(a) All vehicles shall be equipped with auxiliary bumpers, also known as nerfing bars, of a construction and design to afford the driver maximum protection against injury.

(b) Nerfing bars shall extend within two inches of, but not beyond, the outside edge of the tire.

13:62-3.14 Exhaust system

(a) The outlet for the exhaust system shall be outside of the vehicle and extend at least to the rear of the front of the firewall.

(b) The exhaust system shall be designed and constructed so as to direct the exhaust flow out and away from the driver.

13:62-3.15 Fire wall and flooring

(a) All vehicles shall have suitable metal flooring from the front firewall to the center of the driver's seat.

(b) All vehicles shall have a permanent fire wall between the fuel supply and the driver, unless the fuel tank consists of a shell with an inner rubber bladder in which case the fire wall is not required.

13:62-3.16 Fuel lines and fuel pumps

(a) A fuel line or fuel pump is prohibited in the driver's compartment unless shielded properly to prevent leakage in the event the line or pump is damaged or broken.

1. This shielding shall consist of steel braided material.

(b) Fuel lines shall be more than three inches from the headers unless shielded by metal.

13:62-3.17 Fuel tanks

(a) Except as set forth in (b) below, vehicles using a self-contained fuel cell with an inner rubber bladder shall bolt the self-contained fuel cell to the frame of the vehicle utilizing an "x" type frame work

under the cell. At least three one inch metal straps quarter inch thick bolted to the frame of the vehicle by at least two ⅜ inch three line bolts and angled so that it goes around the cell, except for the bottom, so as to apply maximum pressure against the tank to the frame.

(b) Units not bolted to the frame shall have four one inch metal straps, ¼ inch thick, bolted to the frame of the vehicle by at least two ⅜ inch three line bolts and angled to go entirely around the cell to apply maximum pressure against the tank to the frame.

(c) A conventional type tank shall be bolted within the frame of the vehicle.

(d) A reinforcing member of the same kind and size material as that used in the roll cage of the chassis shall be installed to the rear of the fuel tank joining the rearmost portion of the chassis.

(e) A vehicle utilizing a fuel tank mounted to the front of the front fire wall shall have a reinforcing member of the same kind of material as that used in the roll cage or chassis, installed to afford maximum protection to the tank.

(f) All open cockpit vehicles shall be equipped with a fuel cell bladder.

13:62-3.18 Fuel supply shutoff valve

(a) All vehicles shall be equipped with a fuel shutoff valve or switch which is easily accessible to the driver.

(b) The fuel shutoff valve or switch shall be conspicuously marked with a brightly colored paint.

13:62-3.19 Refueling

(a) In all instances where refueling is permitted with the engine running, a member of the pit crew, equipped with a 10 BC or greater fire extinguisher, shall be in close proximity to the fill pipe of the fuel tank.

(b) Smoking shall not be permitted in any area where fuel is being transferred or stored.

(c) The driver compartment shall not be occupied when the vehicle is being refueled if the fill pipe is located within 24 inches of the cockpit, except that the driver compartment may be occupied when the vehicle is being refueled from gravity fed fuel containers.

(d) The use of welding and acetylene torches is not permitted in any area where fuel is being transferred or stored unless a fully charged fire extinguisher is in close proximity.

13:62-3.20 Batteries

(a) Batteries, located in the driver compartment, shall be secured and shielded to prevent leakage in the event of damage or turnover.

(b) Batteries located adjacent to the fuel supply of the vehicle must be secured in a metal box bolted to the frame of the vehicle by at least four ⅜ inch three line bolts to apply maximum pressure against the metal box to the frame. The battery shall also have a marine box cover secured to the top of the metal box as to not allow any movement of the battery.

(c) Batteries located in any other area not specified in (a) and (b) above shall be secured and shielded to prevent leakage in the event of damage or turnover.

13:62-3.21 Braking system and pedal reserve

(a) The licensee or designee shall test and approve each race car for break pedal reserve before the car leaves the pit area to enter the track.

(b) The licensee or designee shall prohibit any vehicle from participating in any event or exhibition if the braking system includes the direct application of pressure to any of the tires or with apparent deficiencies.

13:62-3.22 Tires

(a) No vehicle shall be permitted to participate in any race if the tires are equipped or fitted with any studs, hobs, or other projections.

(b) This section is not intended to prohibit the use of rubber knobbed tires normally used on dirt race tracks.

(c) No vehicle shall be permitted to participate in any race if the tires are in an unsafe condition.

13:62-3.23 Ignition switch

All vehicles shall have an ignition switch which is easily accessible within the driver compartment and conspicuously marked.

13:62-3.24 Repairs

No repairs shall be made on any vehicle during the course of a race unless the vehicle is removed to the pit area.

13:62-3.25 Drivers

(a) All drivers shall be at least 18 years of age.

(b) All drivers are required to wear fire resistant underwear and one piece fire resistant clothing covering their body, legs, and arms.

(c) All drivers are required to wear fire resistant gloves.

(d) All drivers are required to wear fire resistant shoes and it is recommended that fire resistant socks be worn.

13:62-3.26 Helmets and head cushions

(a) All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

(b) All vehicles shall be equipped with a head cushion attached to the roll-on bar or to the back portion of a one-piece seat. The cushion shall be mounted so that it shall be at the approximate height of the center of the driver's helmet.

(c) The head cushion shall be a minimum of 16 square inches in area with at least two inch padding. The minimum length of any side of the head cushion shall be four inches.

(d) A support cushion shall be located behind the rear portion of the seat, attached to the roll cage and at least one eighth of an inch thick.

13:62-3.27 Goggles or face shield

The driver of all vehicles not equipped with windshields shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

13:62-3.28 Arm restraints; window nets

All drivers shall use arm restraints or window nets.

13:62-3.29 Transmission safety mats

(a) Any vehicle equipped with an automatic transmission shall have a steel mat, plate, or blanket installed over the transmission to protect the driver from injury caused by fragmentation of the automatic transmission upon explosion.

(b) All cooling devices within the driver's compartment shall be shielded from the driver to protect against injuries.

13:62-3.30 Enclosed drive shaft

The drive shaft of a vehicle shall be enclosed or secure, front and rear, by a steel strap ¼ inch thick by one inch wide, a ½ inch steel rod, or one inch steel tubing with .06 wall thickness.

13:62-3.31 Water overflow tank

Water overflow reservoirs shall not be installed inside the driver compartment. Tanks or reservoirs mounted in the roll cage must be fully shielded to protect the driver.

13:62-3.32 Speed limits

(a) All vehicles traveling in the pit area or staging area must obey a five miles per hour speed limit.

(b) Vehicles utilizing a return road will be limited to a 15 miles per hour speed limit.

13:62-3.33 Licensed facilities

Open cockpit racing events shall only take place in licensed facilities.]*

SUBCHAPTER 4. SAFETY REQUIREMENTS FOR VEHICLES AND PERSONNEL: OVAL RACING

13:62-4.1 Construction requirements

(a) Hubrail construction shall comply in all respects with the requirements of this chapter.

(b) The licensee shall provide and maintain hubrails on the outer circumference of the track and around the entire circumference thereof. Where spectators are allowed in the infield or within the inner circumference of the track, the licensee shall provide and ensure a hubrail, as described in this section, around the inner circumference of the track.

(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.

(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.

(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.

(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a ¾ inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.

(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.

(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent is required.

(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.

(j) At locations using methods other than gates between the pit area and the track, the licensee shall provide a guard to prevent unauthorized persons from entering the track area.

(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specifically prohibited.

13:62-4.2 Fences

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motocross events the fence shall be of the same construction but at least five feet in height.

13:62-4.3 Red and amber lights

(a) Each track used for automotive racing, except those used for acceleration and performance tests, shall be equipped with a system of at least four red lights and four amber lights so arranged that at least one light of each color will be visible to the drivers as they enter each turn.

(b) The lights shall be so arranged as to be controlled by a single switch. The licensee shall provide a responsible person to operate such switch during the entire time of each race.

(c) When the red lights are illuminated, all racing vehicles on the track shall stop as soon as possible and remain stopped until such time as the red lights are turned out.

(d) When the amber lights are illuminated, all racing vehicles on the track shall slow down and maintain their position, unless otherwise directed to change position by a track official.

13:62-4.4 Flagmen

(a) Tracks over one mile in length may use flagmen in lieu of the red and amber lights, provided the assistant flagman in the starter's stand is in constant two-way radio or telephone communication with all flagmen.

(b) On display of the red flag all racing vehicles shall stop as soon as possible and remain stopped until such time as the red flag is removed from display.

(c) On display of the amber flag all racing vehicles shall slow down and maintain their position, unless otherwise directed to change position by a track official.

13:62-4.5 Starters

(a) The licensee shall provide a starter(s) located within a starter's stand with an unobscured view of the entire racing surface from which to control the racing event.

(b) The licensee shall provide an assistant flagman in the starter's stand at all circular or oval tracks, road courses and other locations utilizing the services of flagmen to control the event. The assistant flagmen used to control or start a race shall be in the starter's stand when starting and during the race.

13:62-4.6 Maximum protection

(a) All hubrails, fences, stands and buildings must be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, must be located at least 25 feet from the hubrail.

13:62-4.7 Safety belts, shoulder harness and crotch belt

(a) A quick release type safety belt, shoulder harness and crotch belt in good condition shall be compulsory on all vehicles.

(b) Both ends of the safety belt, shoulder harness and crotch belt must be fastened to the frame of the vehicle.

(c) All fittings and connections of the safety belt, shoulder harness and crotch belt shall be metal.

(d) All safety belts and shoulder harnesses shall be worn properly the entire time the vehicle is being driven in a race.

(e) All safety belts and shoulder harnesses shall bear the date of manufacture and shall not be used for more than five years from the date.

(f) The shoulder harness shall be secured to the frame of the vehicle and come over a round bar at the driver's shoulder height.

(g) No alterations shall be allowed to any manufactured design of seat belts.

13:62-4.8 Inspection of vehicles

(a) The licensee shall arrange for the inspection of each participating vehicle prior to the event, to determine that it meets the requirements of this chapter. The licensee shall prohibit vehicles not meeting the requirements of this chapter from participation or practice.

(b) Vehicles which are to be used in automobile races or exhibitions of driving skill are subject to unannounced inspection and approval at any time by the Superintendent or designee.

13:62-4.9 Number of persons in vehicle

No vehicle shall carry more than one person at any time during a race or warm-up, except that during a bona fide training period an instructor may accompany the trainee.

13:62-4.10 Seats

(a) A molded metal or fiberglass seat with openings which allow a seat belt bolted to the frame to come through, shall be attached to the frame with at least four three line $^5/_{16}$ inch bolts. Two bolts shall be installed at the bottom of the seat not more than three inches from the outside edge and two bolts shall be installed at the two most practical widely spaced points at the top of the seat back. A metal strap at least two inches in width and at least ⅛ inch thick shall connect each set of bolts.

(b) Vehicles equipped with a metal seat are not required to have a metal strap connected to each set of bolts. These vehicles are required to have a larger washer on each bolt.

(c) Factory installed seats may be utilized provided it is equipped with a head rest.

13:62-4.11 Bumpers

(a) All vehicles shall be equipped with bumpers on the rear.

(b) The bumper shall be fastened to the frame or structural component of the car.

(c) The height of the bumper shall be as high as the center of the wheel and at least two inches in height.

13:62-4.12 Rollover bars

(a) All vehicles shall be equipped with a rollover bar of a design, construction and quality recognized by industry standard and maintained with a view toward affording the driver maximum protection against injury.

(b) Rollover bars shall be a minimum of three inches above the driver's head.

(c) Rollover bars shall be bolted or welded to the frame of the vehicle.

13:62-4.13 Nerfing bars

(a) All vehicles shall be equipped with auxiliary bumpers, also known as nerfing bars, of a construction and design to afford the driver maximum protection against injury.

(b) Nerfing bars shall extend within two inches of, but not beyond, the outside edge of the tire.

13:62-4.14 Exhaust system

(a) The outlet for the exhaust system shall be outside of the vehicle and extend at least to the rear of the front firewall.

(b) The exhaust system shall be designed and constructed so as to direct the exhaust flow out and away from the driver.

13:62-4.15 Fire wall and flooring

(a) All vehicles shall have suitable metal flooring from the front firewall to the center of the driver's seat.

(b) All vehicles shall have a permanent fire wall between the fuel supply and the driver, unless the fuel tank consists of a shell with an inner rubber bladder in which case the fire wall is not required.

13:62-4.16 Fuel lines and fuel pumps

(a) A fuel line or fuel pump is prohibited in the driver's compartment unless properly shielded to prevent leakage in the event the line or pump is damaged or broken. This shielding shall consist of the steel braided material.

(b) Fuel lines shall be more than three inches from the headers, unless shielded by metal.

13:62-4.17 Fuel tanks

(a) Except as set forth in (b) below, vehicles using a self-contained fuel cell with an inner rubber bladder shall bolt the self-contained fuel cell to the frame of the vehicle utilizing an "x" type frame work under the cell. At least three one inch metal straps quarter inch thick bolted to the frame of the vehicle by at least two ⅜ inch three line bolts and angled so that it goes around the cell, except for the bottom, so as to apply maximum pressure against the tank to the frame.

(b) Units not utilizing a "x" type frame shall have four one inch metal straps, ¼ inch thick, bolted to the frame of the vehicle by at least two ⅜ inch three line bolts and angled to go entirely around the cell to apply maximum pressure against the tank to the frame.

(c) All vehicles shall be equipped with a fuel cell bladder.

(d) A reinforcing member of the same kind and size material as that used in the roll cage of the chassis shall be installed to the rear of the fuel tank joining the rearmost portion of the chassis.

(e) A vehicle utilizing a fuel tank mounted to the front of the front fire wall shall have a reinforcing member of the same kind of material as that used in the roll cage or chassis installed to afford maximum protection to the tank.

13:62-4.18 Fuel supply shutoff valve

(a) All vehicles shall be equipped with a fuel shutoff valve or switch which is easily accessible to the driver.

(b) The fuel shutoff valve or switch shall be conspicuously marked with a brightly colored paint.

13:62-4.19 Refueling

(a) In all instances where refueling is permitted with the engine running, a member of the pit crew, equipped with a 10 BC or greater fire extinguisher, shall be in close proximity to the fill pipe of the fuel tank.

(b) Smoking shall be prohibited in any area where fuel is being transferred or stored.

(c) The driver compartment shall not be occupied when the vehicle is being refueled if the fill pipe is located within 24 inches of the cockpit, except that the driver compartment may be occupied when the vehicle is being refueled from gravity fed fuel containers.

(d) The use of welding and acetylene torches is not permitted in any area where fuel is being transferred or stored unless a fully charged fire extinguisher is in close proximity.

13:62-4.20 Batteries

(a) Batteries, located in the driver compartment, shall be secured and shielded to prevent leakage in the event of damage or turnover.

(b) Batteries located adjacent to the fuel supply of the vehicle it shall be secured in a metal box bolted to the frame of the vehicle by at least four ⅜ inch three line bolts and in such a manner to apply maximum pressure against the metal box to the frame. The battery shall also have a marine box cover secured to the top of the metal box as to not allow any movement of the battery.

(c) Batteries located in any other area not specified in (a) and (b) above shall be secured and shielded to prevent leakage in the event of damage or turnover.

13:62-4.21 Braking system and pedal reserve

(a) The licensee or designee shall test and approve each race car for brake pedal reserve before the car leaves the pit area to enter the track.

(b) The licensee or designee shall prohibit any vehicle from participating in any event or exhibition if the braking system includes the direct application of pressure to any of the tires or with apparent deficiencies.

13:62-4.22 Tires

(a) No vehicle shall be permitted to participate in any race if the tires are equipped or fitted with any studs, hobs, or other projections.

(b) This section is not intended to prohibit the use of rubber knobbed tires normally used on dirt race tracks.

(c) No vehicle shall be permitted to participate in any race if the tires are in an unsafe condition.

13:62-4.23 Ignition switch

All vehicles shall have an ignition switch which is easily accessible within the driver compartment and conspicuously marked.

13:62-4.24 Repairs

No repairs shall be made on any vehicle during the course of a race unless the vehicle is removed to the pit area.

13:62-4.25 Drivers

(a) All drivers shall be at least 18 years of age.

(b) All drivers are required to wear fire resistant underwear and one piece fire resistant clothing covering their body, legs, and arms.

(c) All drivers are required to wear fire resistant gloves.

(d) All drivers are required to wear fire resistant shoes and it is recommended that fire resistant socks be worn.

13:62-4.26 Helmets and head cushions

(a) All drivers must wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

(b) All vehicles shall be equipped with a head cushion attached to the roll-on bar or to the back portion of a one-piece seat. The cushion shall be mounted so that it shall be at the approximate height of the center of the driver's helmet.

(c) The head cushion shall be a minimum of 16 square inches in area with at least two inch padding. The minimum length of any side of the head cushion shall be four inches.

(d) A support cushion shall be located behind the rear portion of the seat, attached to the roll cage and at least ⅛ of an inch thick.

13:62-4.27 Goggles or face shield

The driver of all vehicles not equipped with windshields shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

13:62-4.28 Arm restraints; window nets

All drivers shall use arm restraints or window nets.

13:62-4.29 Transmission safety mats

(a) Any vehicle equipped with an automatic transmission shall have a steel mat, plate, or blanket installed over the transmission so as to protect the driver from injury caused by fragmentation of the automatic transmission upon explosion.

(b) All cooling devices within the driver's compartment shall be shielded from the driver to protect against injuries.

13:62-4.30 Enclosed drive shaft

The drive shaft of a vehicle shall be enclosed or secure, front and rear, by a steel strap ¼ inch thick by one inch wide, a ½ inch steel rod, or one inch steel tubing with .06 wall thickness.

13:62-4.31 Water overflow tank

Water overflow reservoirs shall not be installed inside the driver compartment. Tanks or reservoirs mounted in the roll cage must be fully shielded to protect the driver.

13:62-4.32 Speed limits

(a) Vehicles traveling in the pit area or staging area must obey a five miles per hour speed limit.

(b) Vehicles utilizing a return road will be limited to a 15 miles per hour speed limit.

13:62-4.33 Licensed facilities

Oval racing events shall only take place in licensed facilities.

SUBCHAPTER 5. SAFETY REQUIREMENTS FOR VEHICLES AND PERSONNEL: DRAG RACING

13:62-5.1 Construction requirements

(a) Hubrail construction shall comply in all respects with the requirements of this chapter.

(b) The licensee shall provide and maintain hubrails on the outer area of the track and around the entire area thereof. Where spectators are allowed in the return road or within the inner area of the track, the licensee shall provide and maintain a hubrail, as described in this section, around the inner area of the track.

(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.

(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.

(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.

(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a ¾ inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.

(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.

(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent is required.

(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.

(j) At locations using methods other than gates between the pit area and the track, the licensee shall provide a guard to prevent unauthorized persons from entering the track area.

(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specifically prohibited.

13:62-5.2 Fences

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside.

13:62-5.3 Starting tree lights

(a) Strips used for acceleration and performance tests need be equipped with only one red light on the starting tree.

(b) The lights shall be controlled by a single switch. The licensee shall provide a responsible person to operate such switch during the entire time of each race.

(c) When the red lights are illuminated, all racing vehicles on the track shall stop as soon as possible and remain stopped until such time as the red lights are turned out.

13:62-5.4 Starters

The licensee shall provide a Starter(s) located within a starter's area with an unobscured view of the entire racing surface from which to control the racing event.

13:62-5.5 Maximum protection

(a) All hubrails, fences, stands and buildings shall be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, shall be located at least 25 feet from the hubrail.

13:62-5.6 Location

(a) A location approved for acceleration and performance tests shall provide for a stopping distance at least equal to the acceleration and timing distance.

(b) The acceleration area shall not exceed 1,386 feet.

(c) The entire racing strip, including the deceleration area, shall be paved.

(d) The end of the acceleration area may be marked by an overhead banner, provided the supports are of such construction that they will not present a hazard to the vehicles. The height of the banner shall be at least 14 feet above the surface of the strip.

13:62-5.7 Vehicle equipment

(a) Safety belts, shoulder harness and crotch belt shall be provided.

1. A quick release type safety belt, shoulder harness and crotch belt in good condition shall be compulsory on all vehicles.

2. Both ends of the safety belt, shoulder harness and crotch belt shall be fastened to the frame of the vehicle.

3. All fittings and connections of the safety belt, shoulder harness and crotch belt shall be metal.

4. All safety belts and shoulder harnesses shall be worn properly the entire time the vehicle is being driven in a race.

5. All safety belts and shoulder harnesses shall bear the date of manufacture and shall not be used for more than five years from the date.

6. The shoulder harness shall be secured to the frame of the vehicle and come over a round bar at the driver's shoulder height.

7. No alterations shall be allowed to any manufactured design of seat belts.

8. The exception to this section is for street legal cars. These vehicles shall be equipped with the safety belt(s) that was provided by the manufacturer.

13:62-5.8 Inspection of vehicles

(a) The licensee shall arrange for the inspection of each participating vehicle prior to the event, to determine that it meets the requirements of this chapter. The licensee shall prohibit vehicles not meeting the requirements of this chapter shall be barred by the licensee from participation or practice.

(b) Vehicles which are to be used in automobile races or exhibitions of driving skill are subject to unannounced inspection and approval at any time by the Superintendent or designee.

13:62-5.9 Number of persons in vehicle

No vehicle shall carry more than one person at any time during a race or warm-up, except during a bona fide training period an instructor may accompany the trainee.

13:62-5.10 Seats

(a) A molded metal or fiberglass seat with openings which allow a seat belt bolted to the frame to come through, shall be attached to the frame with at least four three line $^{5}/_{16}$ inch bolts. Two bolts shall be installed at the bottom of the seat not more than three inches from the outside edge and two bolts shall be installed at the two most practical widely spaced points at the top of the seat back.

A metal strap at least two inches in width and at least ⅛ inch thick shall connect each set of bolts.

(b) Vehicles equipped with a metal seat are not required to have a metal strap connected to each set of bolts. These vehicles are required to have a larger washer on each bolt.

13:62-5.11 Exhaust system

The exhaust system shall be designed and constructed so as to direct the exhaust flow out and away from the driver.

13:62-5.12 Fire wall and flooring

(a) All vehicles shall have suitable metal flooring from the front firewall to the center of the driver's seat.

(b) All vehicles shall have a permanent fire wall between the fuel supply and the driver, unless the fuel supply consists of a shell with an inner rubber bladder in which case the fire wall is not required.

13:62-5.13 Fuel lines and fuel pumps

(a) A fuel line or fuel pump is prohibited in the driver's compartment unless properly shielded to prevent leakage in the event the line or pump is damaged or broken. Shielding shall consist of the steel braided material.

(b) Fuel lines shall be more than three inches from the headers, unless shielded by metal.

13:62-5.14 Fuel tanks

(a) Except as set forth in (b) below, vehicles using a self-contained fuel cell with an inner rubber bladder shall bolt the self-contained fuel cell to the frame of the vehicle utilizing an "x" type frame work under the cell. At least three one inch metal straps quarter inch thick bolted to the frame of the vehicle by at least two ⅜ inch three line bolts and angled so that it goes around the cell, except for the bottom, so as to apply maximum pressure against the tank to the frame.

(b) Units not utilizing a "x" type frame shall have a four one inch metal straps, ¼ inch thick, bolted to the frame of the vehicle by at least two ⅜ inch three line bolts and angled to go entirely around the cell to apply maximum pressure against the tank to the frame.

(c) A reinforcing member of the same kind and size material as that used in the roll cage of the chassis shall be installed to the rear of the fuel tank joining the rearmost portion of the chassis.

(d) A vehicle utilizing a fuel tank mounted to the front of the front fire wall shall have a reinforcing member of the same kind of material as that used in the roll cage or chassis, installed to afford maximum protection to the tank.

13:62-5.15 Refueling

(a) In all instances where refueling is permitted with the engine running, a member of the pit crew, equipped with a 10 BC or greater fire extinguisher, shall be in close proximity to the fill pipe of the fuel tank.

(b) Smoking shall be prohibited in any area where fuel is being transferred or stored.

(c) The driver compartment shall not be occupied when the vehicle is being refueled if the fill pipe is located within 24 inches of the cockpit, except that the driver compartment may be occupied when the vehicle is being refueled from gravity fed fuel containers.

(d) The use of welding and acetylene torches is not permitted in any area where fuel is being transferred or stored unless a fully charged fire extinguisher is in close proximity.

13:62-5.16 Batteries

(a) Batteries, located in the driver compartment, shall be secured and shielded to prevent leakage in the event of damage or turnover.

(b) Batteries located adjacent to the fuel supply of the vehicle it shall be secured in a metal box bolted to the frame of the vehicle by at least four ⅜ inch three line bolts and in such a manner to apply maximum pressure against the metal box to the frame. The battery shall also have a marine box cover secured to the top of the metal box as to not allow any movement of the battery.

(c) Batteries located in any other area not specified in (a) and (b) above shall be secured and shielded to prevent leakage in the event of damage or turnover.

13:62-5.17 Braking system and pedal reserve

(a) The licensee or designee shall test and approve each race car for brake pedal reserve before the car leaves the pit area to enter the track.

(b) The licensee or designee shall prohibit any vehicle from participating in any event or exhibition if the braking system includes the direct application of pressure to any of the tires or with apparent deficiencies.

13:62-5.18 Tires

(a) No vehicle shall be permitted to participate in any race if the tires are equipped or fitted with any studs, hobs, or other projections.

(b) No vehicle shall be permitted to participate in any race if the tires are in an unsafe condition.

13:62-5.19 Ignition switch

(a) All vehicles shall have an ignition switch which is easily accessible within the driver compartment and conspicuously marked.

(b) All motorcycles shall be equipped with a functional tether mechanical kill device so that the ignition is shut off if the rider separates from the vehicle.

13:62-5.20 Repairs

No repairs shall be made on any vehicle during the course of a race unless the vehicle is removed to the pit area.

13:62-5.21 Drivers

(a) All drivers shall be at least 18 years of age.

(b) It is recommended that all drivers wear fire resistant underwear and one piece fire resistant clothing covering their body, legs, and arms.

(c) It is recommended that all drivers wear fire resistant gloves.

(d) It is recommended that all drivers wear fire resistant shoes and it is recommended that fire resistant socks be worn.

(e) Drivers of motorcycles and street legal cars are not required to wear fire resistant clothing, but it is recommended.

13:62-5.22 Helmets and head cushions

All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

13:62-5.23 Goggles or face shield

The driver of all vehicles not equipped with windshields shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

13:62-5.24 Transmission safety mats

[(a) Any vehicle equipped with an automatic transmission shall have a steel mat, plate, or blanket installed over the transmission so as to protect the driver from injury caused by fragmentation of the automatic transmission upon explosion.]

(a) Any vehicle equipped with an automatic transmission that runs quicker than 9.99 elapsed time or faster than 135 m.p.h. in the quarter mile shall have a steel mat, plate or blanket installed over the transmission so as to protect the driver from any injury caused by fragmentation of the automatic transmission upon explosion.

(b) All cooling devices within the driver's compartment shall be shielded from the driver to protect against injuries.

(c) Street legal cars are exempt from this section provided that no modifications have been done to the vehicle.

13:62-5.25 Enclosed drive shaft

[The drive shaft of a vehicle shall be enclosed or secure, front and rear, by a steel strap ¼ inch thick by one inch wide, a ½ inch steel rod, or one inch steel tubing with .06 wall thickness.]

The drive shaft of a vehicle running 13.99 or quicker elapsed time shall be enclosed or secured in the front by a steel strap ¼ inch thick by one inch wide, a one-half inch steel rod or one one inch steel tubing with .06 wall thickness. This is not required for vehicles with an elapsed time of 14.00 and slower equipped with street tires.

13:62-5.26 Water overflow tank
Water overflow reservoirs shall not be installed inside the driver compartment. Tanks or reservoirs mounted in the roll cage must be fully shielded to protect the driver.

13:62-5.27 Vehicle lighting
All vehicles shall be equipped with a functioning taillight so that the starter is able to see the competing vehicles during night racing.

13:62-5.28 Vehicles equipped with parachutes
(a) All vehicles equipped with parachutes shall have a red streamer attached to the safety pin. The safety pin shall be removed from the parachutes before the starting lights are activated.
(b) All vehicles utilizing two or more parachutes shall have at least two anchoring points for each parachute, each separate from the other.

13:62-5.29 Exceptions
(a) Cars need not have rollover bars or door fastening, provided there has been no modification of either body or engine.
(b) Street legal cars are exempt from having an enclosed drive shaft provided that no modifications have been done to the vehicle.

13:62-5.30 Spectator protection
The licensee shall provide spectator protection by a standard hubrail and six-foot high welded wire fabric or chain link fence so constructed as not to be easily lifted, climbed over or moved aside.

13:62-5.31 Pit area fences
The pit area, if located behind the starting line, shall be separated from the track by a six-foot high welded fabric or chain link fence so constructed as not to be easily lifted, climbed over or moved aside.

13:62-5.32 Vehicle positioning
Racing vehicles may line up behind the starting line. Only drivers and officials are permitted in this area.

13:62-5.33 "Burnouts"
No "burnouts" shall be made unless the driver is secured in the vehicle and the doors are firmly closed.

13:62-5.34 Speed limits
(a) All vehicles returning after a race event, using the return road, either under their own power or being towed shall obey a 15 miles per hour speed limit until the vehicle has been returned to the staging lanes or pits.
(b) All vehicles traveling in the pit area or staging area shall obey a five miles per hour speed limit.

13:62-5.35 Minimum age requirement for a street legal car racing events
No persons will be permitted to participate in a street legal car racing event unless that person is 17 years of age and possesses a valid driver's license from his/her state of residence.

13:62-5.36 Persons permitted in the pit area
(a) All persons with pit credentials are to be permitted in the pit area. Persons under the age of 17 are to be permitted in the pit area as long as the individual has the proper pit credentials and is accompanied by an adult.
(b) No one under the age of 17 will be permitted in the staging area under any circumstance unless otherwise specified.

13:62-5.37 Vehicles allowed in return road
(a) Only official vehicles are permitted to travel the return road while a racing event is in progress. An official vehicle means a vehicle displaying the competitor's vehicle number and shall be limited to one official vehicle per competition vehicle.
(b) All official vehicles shall obey the following speed limits:
1. All vehicles returning after a race event, using the return road, either under their own power or being towed shall obey a 15 miles per hour speed limit until the vehicle has been returned to the staging lanes or pits.
2. All vehicles traveling in the pit area or staging area shall obey a five miles per hour speed limit.
(c) All official vehicles shall wait outside the return road until the competition vehicle has entered the burn out area and is preparing to compete.

13:62-5.38 Licensed facilities
Drag racing events shall only take place in licensed facilities.

SUBCHAPTER 6. MOTORCYCLE AND QUAD VEHICLES RACING EVENTS (OVAL RACING)

13:62-6.1 Licensed facilities
Motorcycle and quad vehicle oval racing events shall only take place in licensed facilities.

13:62-6.2 Hubrail construction
(a) Hubrail construction shall comply in all respects with the requirements of this chapter.
(b) The licensee shall provide and maintain hubrails on the outer circumference of the track and around the entire circumference thereof. Where spectators are allowed in the infield or within the inner circumference of the track, the licensee shall provide and maintain a hubrail, as described in this section, around the inner circumference of the track.
(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.
(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.
(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.
(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a ¾ inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.
(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.
(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent is required.
(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.
(j) At locations using methods other than gates between the pit area and the track, the licensee shall provide a guard to prevent unauthorized persons from entering the track area.
(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specifically prohibited.

13:62-6.3 Exceptions
(a) Hubrail posts constructed for use on motorcycle tracks shall be no higher than the hubrail planking.
(b) Hubrails constructed for use on motorcycle tracks shall consist of safety rails two feet high, constructed of two two-inch by 12-inch planks, on four-inch by four-inch stanchions spaced not more than six feet apart, and so embedded in the ground that they will not pull out if struck.
(c) As an alternative to the two-inch by 12-planks, two planks made of marine plywood, ¾ inches thick and 12 inches wide may be used on motorcycle tracks. These rails shall be backed up either by a wire cable similar to the wire cable used on automobile hubrails, except that it need not exceed ½ inch in diameter, or in the alternative, a mound of packed earth shall be constructed in the back of the safety rail at least 18 inches high, and tapering to the ground level between the rail and the spectators.

13:62-6.4 Fences

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motocross events the fence shall be of the same construction but at least five feet in height.

13:62-6.5 Red and amber lights

(a) Each track used for motorcycle racing, except those used for acceleration and performance tests, shall be equipped with a system of at least four red lights and four amber lights so arranged that at least one light of each color will be visible to the drivers as they enter each turn.

(b) The lights shall be controlled by a single switch. The licensee shall provide responsible person to operate such switch during the entire time of each race.

(c) When the red lights are illuminated, all racing vehicles on the track shall stop as soon as possible and remain stopped until such time as the red lights are turned out.

(d) When the amber lights are illuminated, all racing vehicles on the track shall slow down and maintain their position unless otherwise directed to change position by a track official.

13:62-6.6 Flagmen

(a) Tracks over one mile in length may use flagmen in lieu of the red and amber lights, provided the assistant flagman in the starter's stand is in constant two-way radio or telephone communication with all flagmen.

(b) Flagmen shall be positioned so as to be visible to drivers entering each turn on the track or course.

(c) On display of the red flag all racing vehicles shall stop as soon as possible and remain stopped until such time as the red flag is removed from display.

(d) On display of the amber flag all racing vehicles shall slow down and maintain their position unless directed to change position by a track official.

13:62-6.7 Starters

(a) The licensee shall provide starter(s) located within a starter's stand with an unobscured view of the entire racing surface from which to control the racing event.

(b) All circular or oval tracks utilizing the services of flagmen to control the event shall also have an assistant flagman in the starter's stand. The assistant flagmen used to control or start a race shall be in the starter's stand when starting and during the race.

13:62-6.8 Maximum protection

(a) All hubrails, fences, stands and buildings must be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, must be located at least 25 feet from the hubrail.

13:62-6.9 Eye protection

All drivers shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

13:62-6.10 Helmets

All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

13:62-6.11 Braking system

(a) A representative of the track licensee will be required to test front and rear brake application before the vehicle leaves the area to enter the track.

(b) This section is not to be construed to require brakes on racing motorcycles with a compression ratio higher than 10 to one or with a compression ratio which, in the opinion of the Superintendent, is sufficiently high to bring the motorcycle to a stop when the ignition is cut off.

13:62-6.12 Shutoff device

(a) A "shutoff" device shall be affixed to the handlebars on all competing motorcycles.

(b) A "shutoff" device shall be of a type which is designed, constructed and maintained to stop the motor of the motorcycle immediately upon releasing or pressing the said device.

13:62-6.13 Minimum age requirements of motorcycle racing events

(a) All persons, including officials, persons and participants, are permitted to participate in a motorcycle race or enter the pit area provided they have reached the age of 18.

(b) All participants shall possess and display, upon request, a valid motorcycle license or endorsement.

(c) All persons participating in an event shall have proper documentary evidence to substantiate proof of age.

13:62-6.14 Quad vehicle requirements

(a) Quad vehicles shall be equipped with a functional tether type mechanical kill device, so that the ignition is shut off upon the driver's separation from the vehicle.

(b) Quad vehicle engines shall be fitted with a guard completely enclosing the primary drive.

(c) Rear chain guards, roll bars and seat belts are not required.

13:62-6.15 Clothing requirements

Drivers shall wear safety clothing to afford maximum protection to the driver according to industry standards. It is recommended that this clothing be of a fire retardant material.

13:62-6.16 Batteries

Batteries shall be secured and shielded to prevent leakage in the event of damage or turnover.

13:62-6.17 Speed limits

All vehicles traveling in the pit area or staging area shall obey a five miles per hour speed limit.

SUBCHAPTER 6A. MOTOCROSS AND QUAD VEHICLE RACING EVENTS (SERPENTINE RACING)

13:62-6A.1 Licensed facilities

Motocross and quad vehicle serpentine racing events shall only take place in licensed facilities.

13:62-6A.2 Construction requirements

[(a) Construction of hubrails, fences and other safety devices for motocross and quad vehicles, serpentine racing events, must comply with the provisions of this subchapter.]

*[(b)]***(a)*** Design and construction of motocross and quad vehicle race courses must be approved by the Superintendent or his or her designee prior to the racing event.

*[(c)]***(b)*** A sketch or sketches of the track and associated areas shall be provided as near to scale as practicable indicating the location of required safety features.

*[(d)]***(c)*** *[Required safety]* ***Safety*** features *[are]* ***such as*** hub rails, fences, crash protection for participants, light or flagmen positions, spectator seating, entrances and exits, pit facility locations and other physical factors affecting the safety of spectators and participants ***may be required for approval depending on the terrain and location of the race course***. This requirement shall not apply to locations licensed prior to January 1, 1963, unless alterations are made to the track and associated areas on or after January 1, 1963.

13:62-6A.3 Fences

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motocross events the fence shall be of the same construction but at least five feet in height.

13:62-6A.4 Flagmen

(a) Licensees may use flagmen provided an assistant flagman is in the starter's area and is in constant two-way radio or telephone communication with all flagmen.

(b) Flagmen shall be positioned so as to be visible to drivers entering each turn on the track or course.

(c) All working personnel and officials having access to the pit area or racing surface shall be at least 16 years of age.

1. The exception to (c) above is that the minimal age for flagmen must be 18 years of age when utilizing a flat track.

(d) On display of the red flag, all racing vehicles shall stop as soon as possible and remain stopped until such time as the red flag is removed from display.

(e) On display of the amber flag all racing vehicles are to slow down and maintain their position.

13:62-6A.5 Starters

Starter(s) shall be located within a starter's area with an unobscured view of the entire racing surface from which to control the racing event.

13:62-6A.6 Additional guidelines for motocross events

(a) The following guidelines shall be utilized for motocross events:

1. Participants ages 10 to 15 may compete provided the vehicle does not exceed 85 cc.

2. Participants ages 12 to 15 may compete in any additional class not exceeding 125cc, provided the driver possesses one year racing experience and can demonstrate racing ability to the satisfaction of track officials.

3. Participants ages 14 to 18 may compete in a separate class.

4. A person competing in any one of the above classes shall not participate in any other class.

5. The designation "cc" shall be conspicuously marked on the racing vehicle.

6. Hubrail construction does not pertain to motocross events that utilize jumps and serpentine type racing during competition.

13:62-6A.7 Clothing requirements

Drivers shall wear safety clothing to afford maximum protection to the driver according to industry standards. It is recommended that this clothing be of a fire retardant material.

13:62-6A.8 Helmets

All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

13:62-6A.9 Goggles or face shield

All drivers shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

13:62-6A.10 Batteries

Batteries shall be secured and shielded to prevent leakage in the event of damage or turnover.

13:62-6A.11 Quad vehicle requirements

(a) Quad vehicles shall be equipped with a functional tether type mechanical kill device, so that the ignition is shut off upon the driver's separation from the vehicle.

(b) Quad vehicle engines shall be fitted with a guard completely enclosing the primary drive.

(c) Rear chain guards, roll bars and seat belts are not required.

(d) Quad vehicles shall be equipped with additional nerfing bars to the front of the rear wheels in order to prevent injury to the driver.

(e) Quad vehicle flagmen shall be 16 years of age.

13:62-6A.12 Pit area driving prohibition

No motorcycle or quad vehicle is to be driven, under power, in the pit area.

SUBCHAPTER 6B. MOTOCROSS ENDURO RACING EVENTS

13:62-6B.1 Licensed facilities

Motocross enduro racing events shall only take place in licensed facilities.

13:62-6B.2 Construction requirements

[(a) Construction of hubrails, fences and other safety devices for motocross enduro racing events must comply with the provisions of this subchapter.]

*[(b)]**(a)* Design and construction of motocross and quad vehicle race courses must be approved by the Superintendent or his or her designee prior to the racing event.

*[(c)]**(b)* A sketch or sketches of the track and associated areas shall be provided as near to scale as practicable indicating the location of required safety features.

*[(d)]**(c)* *[Required safety]* ***Safety*** features *[are]* ***such as*** hubrails, fences, crash protection for participants, light or flagmen positions, spectator seating, entrances and exits, pit facility locations and other physical factors affecting the safety of spectators and participants ***may be required for approval depending on the terrain and location of the race course***. This requirement shall not apply to locations licensed prior to January 1, 1963, unless alterations are made to the track and associated areas on or after January 1, 1963.

13:62-6B.3 Areas designated as spectator areas and fences

(a) The licensee shall designate spectator areas throughout the race course and provide security to prevent spectators from entering the race course.

(b) Fences used to prevent spectators from entering the race course shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside. *[The fence shall be of the same construction but at least five feet in height.]*

13:62-6B.4 Flagmen

(a) Licensees may use flagmen provided an assistant flagman is in the starter's area and is in constant two-way radio or telephone communication with all flagmen.

(b) Flagmen shall be positioned so as to be visible to drivers entering each turn on the track or course.

(c) All working personnel and officials having access to the pit area or racing surface shall be at least 18 years of age.

(d) On display of the red flag, all racing vehicles shall stop as soon as possible and remain stopped until such time as the red flag is removed from display.

(e) On display of the amber flag, all racing vehicles shall slow down and maintain their position.

13:62-6B.5 Starters

The licensee shall provide a starter(s) located within a starter's area with an unobscured view of the starting line from which to control the start of the racing event.

13:62-6B.6 Additional guidelines for motocross racing enduro events

(a) All participants shall be 18 years of age and be in possession of a valid motorcycle driver's license from his or her state of residence.

(b) All participating motorcycles must be able to pass all of the motor vehicle regulations governing motorcycles under Title 39 of the New Jersey Motor Vehicle Laws.

(c) In the event that the race course includes local roadway or highways, the participants shall adhere to all of the motor vehicle regulations for that roadway.

13:62-6B.7 Clothing requirements

Drivers shall wear safety clothing to afford maximum protection to the driver according to industry standards. It is recommended that this clothing be of a fire retardant material.

13:62-6B.8 Helmets

All drivers shall wear a helmet in safe condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

13:62-6B.9 Goggles or face shield

All drivers shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifica-

tions for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

13:62-6B.10 Batteries

Batteries shall be secured and shielded to prevent leakage in the event of damage or turnover.

13:62-6B.11 Pit area driving prohibition

No motorcycle is to be driven under power in the pit area.

SUBCHAPTER 7. SNOWMOBILE EVENTS

13:62-7.1 Track construction

(a) Construction of hubrails, fences and other safety devices for snowmobile events must comply with the provisions of this subchapter.

(b) The licensee shall provide and maintain hubrails on the outer circumference of the track and around the entire circumference thereof. Where spectators are allowed in the infield or within the inner circumference of the track, the licensee shall provide a hubrail, as described in this section, around the inner circumference of the track.

(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.

(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.

(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.

(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a ¾ inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.

(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.

(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent is required.

(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.

(j) At locations using methods other than gates between the pit area and the track, the licensee shall provide a guard to prevent unauthorized persons from entering the track area.

(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specifically prohibited.

13:62-7.2 Fences

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motocross events the fence shall be of the same construction but at least five feet in height.

13:62-7.3 Red and amber lights

(a) Each track used for snowmobile racing shall be equipped with a system of at least four red lights and four amber lights so arranged that at least one light of each color will be visible to the drivers as they enter each turn.

(b) The lights shall be controlled by a single switch, the licensee shall provide a responsible person must be assigned to be on duty, and to operate such switch during the entire time of each race.

(c) When the red lights are illuminated, all racing vehicles on the track shall stop as soon as possible and remain stopped until such time as the red lights are turned out.

(d) When the amber lights are illuminated, all racing vehicles on the track shall slow down and maintain their position unless otherwise directed to change position by a track official.

13:62-7.4 Flagmen

(a) Licensees may use flagmen in lieu of the red and amber lights provided the assistant flagman in the starter's stand is in constant two-way radio or telephone communication with all flagmen.

(b) On display of the red flag, all racing vehicles shall stop as soon as possible and remain stopped until such time as the red flag is removed from display.

(c) On display of the amber flag, all racing vehicles shall slow down and maintain their position unless directed to change position by a track official.

13:62-7.5 Starters

(a) The licensee shall provide a starter(s) located within a starter's area with an unobscured view of the entire racing surface from which to control the racing event.

(b) All circular or oval tracks, road courses and other locations utilizing the services of flagmen to control the event shall also have an assistant flagman in the starter's area. The assistant flagman used to control or start a race shall be in the starter's stand when starting and during the race.

13:62-7.6 Maximum protection

(a) All hubrails, fences, stands and buildings shall be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, must be located at least 25 feet from the hubrail.

13:62-7.7 Safety requirements; vehicles and personnel

(a) All participants in a snowmobile race shall wear a safety helmet which meets or exceeds the American National Standard Institute (ANSI) Z-90.1 testing standard.

(b) All participants in a snowmobile race shall wear windproof goggles or face shields which meet or exceed U.S.A. Standard Specifications for Head, Eye, and Respiratory Protection Z2.1-1959 testing standard.

(c) All participants shall wear safety clothing to afford maximum protection to the driver according to industry standards. It is recommended that this clothing be of a fire retardant material.

13:62-7.8 Exhaust system

All exhaust systems shall be directed out of the cowl area and away from the operator.

13:62-7.9 Snow flaps

All snowmobiles shall be equipped with a rear snow flap designed and maintained to contain snow, water, mud and the like at all speeds.

13:62-7.10 Shutoff device

A "shutoff" device shall be affixed to the handlebars near the hand position. This device shall be of the type which is designed, constructed, and maintained to stop the motor immediately upon releasing or pressing of said device.

13:62-7.11 Engine and transmission shielding

All snowmobiles shall have engine and transmission shields designed and constructed to protect the driver or bystander from fragments in the event of disintegration.

13:62-7.12 Batteries

Batteries shall be secured and shielded to prevent leakage in the event of damage or turnover.

13:62-7.13 Speed limits

All vehicles traveling in the pit area or staging area shall obey a five miles per hour speed limit.

13:62-7.14 Licensed facilities

Snowmobile racing events shall only take place in licensed facilities.

SUBCHAPTER 8. GO-KART EVENTS

13:62-8.1 Licensed facilities

Go-kart events shall only take place in licensed facilities.

13:62-8.2 Track construction

(a) Construction of hubrails, fences and other safety devices for go-kart events must comply in all respects with provisions of this subchapter unless the licensee has written approval for any changes from the Superintendent or his designee.

(b) The hubrail construction for go-kart events may be the same as the hubrail construction used for motorcycle events in that planks made of marine plywood three-quarters inches thick and 12 inches wide may be used.

(c) (No change.)

13:62-8.3 Safety requirements

(a) Go-karts and personnel participating in races or exhibitions of driving skill on any track or facility licensed by the Superintendent shall comply with the following requirements except as provided by N.J.A.C. 13:62-8.4.

1. No person under 18 years of age may operate a go-kart in any race or exhibition of driving skill, nor shall any such person be permitted in the pit area during such race or exhibition of driving skill.

2. Go-karts participating in races or exhibitions of driving skill shall have a wheel base of not less than 40 inches nor greater than 50 inches measured from the center of the axle.

3. Go-karts participating in races or exhibitions of driving skill shall be of length not exceeding 72 inches.

4. Go-karts participating in races or exhibitions of driving skill shall be of a width at least ⅔ of the wheelbase as measured from the center of the tread of the front tires.

5. Go-karts participating in races or exhibitions of driving skill shall be of a height not exceeding 26 inches as measured from the top of the driver's seat.

6. The frame of all go-karts shall be of metal construction.

7. All go-karts shall contain a metal fire wall between the driver and engine with no openings between engine and driver. The fire wall shall be constructed as to not present any sharp edges.

8. All go-karts shall contain a floor of metal construction with no openings between the driver and the ground.

9. Steering must be directed with all linkage bolts and nuts cotterkeyed or safety-wired. All rod ends must have universal type swivel joints.

10. No go-kart will be permitted to participate in any race or exhibition of driving skill unless it is equipped with a braking system operated by a foot pedal. No go-kart will be permitted to participate if the braking system includes direct application of pressure to any of the tires or with apparent deficiencies.

11. The exhaust system must be designed and constructed so that exhaust gases are carried away from and to the rear of the driver.

12. All go-karts shall be equipped with a foot-operated throttle.

13. The fuel and lubrication system on all go-karts must be designed so as to prevent leakage or spillage during competition.

14. No go-kart shall be equipped with a transmission, gear-box or other device which permits a change of gear or sprocket ratios while the vehicle is in motion.

15. All go-karts must be equipped with a suitable chain guard or guards.

16. The driver's compartment shall be equipped with side rails, side plates or other device to afford the driver lateral support and protection.

17. Every go-kart must be equipped with a quick release type seat belt in good condition. The seat must be fastened to the frame of the cart at both ends. The seat belt must be in use during the entire time the vehicle is being driven in a race. All fittings and connections on the safety belt must be metal. Safety belts with cloth or plastic fittings on connections may not be used. All safety belts must bear the date of manufacture and may not be in use for more than five years.

18. Every go-kart shall be equipped with a rollover bar mounted a minimum of three inches above and six inches behind the driver's head designed and constructed so as to provide maximum protection for the driver.

19. Every go-kart must be equipped with auxiliary bumpers, sometimes known as "nerfing bars," of a construction and design to afford a participant maximum protection against injury.

20. All drivers must wear windproof, shatterproof goggles in any race or exhibition of driving skill. Such goggles shall meet or exceed U.S.A. Standard Specifications for Head, Eye, and Respiratory Protection Z2.1-1959 testing standards.

21. No repairs may be made on any go-kart during the course of a race unless the vehicle is removed to the pit area.

22. A starting apron shall be provided where the go-karts are to be started. Persons shall not enter the race course to push a go-kart. A go-kart which has not been started on the starting apron may not be pushed on to the track proper but must be returned to the pit area or to the rear of the starting apron. No person may enter the race course for the purpose of starting a stalled car while any race or exhibition is in progress.

23. All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

13:62-8.4 Serpentine go-kart road course

(a) When a go-kart race course has been designed with winding or serpentine roadway, for the purpose of reducing the overall speed of the go-karts, the following rules apply:

1.-6. (No change.)

13:62-8.5 Track construction

(a) Construction of hubrails, fences and other safety devices for go-kart events must comply in all respects with provisions of this subchapter.

(b) The hubrail construction for go-kart events shall be the same as the hubrail construction used for motorcycle events in that planks made of marine plywood three-quarters inches thick and 12 inches wide made be used.

(c) The licensee shall erect along any part of the track where spectators are permitted, whether outside of the track or in the infield, in addition to the hubrail, a fence six feet in height and located not less than four feet from the edge of the track.

13:62-8.6 Clothing requirements for all go-kart events

Drivers shall wear safety clothing to afford maximum protection to the driver according to industry standards. It is recommended that this clothing be of a fire retardant material.

13:62-8.7 Pit area operation prohibition

No go-karts shall be operated under power in the pit area.

SUBCHAPTER 9. DEMOLITION DERBY AND TRACTOR PULLS

13:62-9.2 Demolition derby participants

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

(c) All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

13:62-9.3 Goggles or face shield

The driver of all vehicles not equipped with windshields shall wear windproof, of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

13:62-9.4 Clothing requirements

Drivers shall wear safety clothing to afford maximum protection to the driver according to industry standards. It is recommended that this clothing be of a fire retardant material.

13:62-9.5 Demolition derby exhibition area

(a) The demolition derby exhibition area shall be no more than 250 feet and of 100 feet deep.

(b) The outer edge of the exhibition area shall be marked with poles or similar devices so as to contain the participating vehicles.

(c) No one shall be allowed within this area except track officials and participants.

(d) If mechanics or members of the press are allowed in the infield portion, a suitable fence shall be erected 50 feet from the outer edge of the exhibition area.

(e) Spectators are prohibited within infield portions of the exhibition area unless protected by a fence of at least six feet in height erected no closer than 50 feet from the outer edge of the exhibition area.

13:62-9.6 Demolition derby tow vehicles

(a) Tow vehicles shall be permitted to enter the demolition derby exhibition area for vehicle removal.

(b) There shall be no more than two persons per tow vehicle.

(c) No riders shall be permitted on the outside of the tow vehicle.

13:62-9.7 Tractor pull age requirement

All competitors, working personnel and officials of a tractor pull event having access to the pit area or racing surface shall be at least 18 years of age.

13:62-9.8 Tractor pull kill switch requirement

All vehicles competing in a tractor pull event shall be equipped with a kill switch in operating order.

13:62-9.9 Speed limits

All vehicles traveling in the pit area or staging area shall obey a five miles per hour speed limit.

13:62-9.10 Licensed facilities

Demolition derby and tractor pull events shall only take place in licensed facilities.

SUBCHAPTER 10. AUTOMOBILE ENDURO EVENTS

13:62-10.1 Construction requirements

(a) Hubrail construction shall comply in all respects with the requirements of this chapter.

(b) The licensee shall provide and maintain hubrails on the outer circumference of the track and around the entire circumference thereof. Where spectators are allowed in the infield or within the inner circumference of the track, the licensee shall provide and maintain a hubrail, as described in this section, around the inner circumference of the track.

(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.

(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.

(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.

(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a ¾ inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.

(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.

(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent is required.

(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.

(j) At locations using methods other than gates between the pit area and the track, the licensee shall provide a guard to prevent unauthorized persons from entering the track area.

(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specifically prohibited.

13:62-10.2 Fences

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motocross events the fence shall be of the same construction but at least five feet in height.

13:62-10.3 Red and amber lights

(a) Each track used for automotive racing, except those used for acceleration and performance tests, shall be equipped with a system of at least four red lights and four amber lights so arranged that at least one light of each color will be visible to the drivers as they enter each turn.

(b) The lights shall be controlled by a single switch. The licensee shall provide a responsible person to operate such switch during the entire time of each race.

(c) When the red lights are illuminated, all racing vehicles on the track shall stop as soon as possible and remain stopped until such time as the red lights are turned out.

(d) When the amber lights are illuminated, all racing vehicles on the track shall slow down and maintain their position unless otherwise directed to change position by a track official.

13:62-10.4 Flagmen

(a) On tracks over one mile in length, licensees may use flagmen in lieu of the red and amber lights, provided the assistant flagman in the starter's stand is in constant two-way radio or telephone communication with all flagmen.

(b) On display of the red flag, all racing vehicles shall stop as soon as possible and remain stopped until such time as the red flag is removed from display.

(c) On display of the amber flag, all racing vehicles shall slow down and maintain their position unless directed to change their position by a track official.

13:62-10.5 Starters

(a) The licensee shall provide starter(s) located within a starter's stand with an unobscured view of the entire racing surface from which to control the racing event.

(b) All circular or oval tracks, road courses and other locations utilizing the services of flagmen to control the event shall also have an assistant flagman in the starter's stand. The assistant flagman used to control or start a race shall be in the starter's stand when starting and during the race.

13:62-10.6 Maximum protection

(a) All hubrails, fences, stands and buildings shall be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, must be located at least 25 feet from the hubrail.

13:62-10.7 Driver and vehicle requirements

(a) All drivers in enduro events shall be at least 18 years of age and possess a driver's license. The licensee shall check the license for validity.

(b) All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

(c) The driver of all vehicles shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

(d) All drivers in enduro events shall wear fire retardant suits. Fire retardant underwear is recommended.

(e) All drivers are required to wear fire resistant gloves.

(f) All drivers are required to wear fire resistant shoes and it is recommended that fire resistant socks be worn.

(g) No driver shall compete with head or arm extended outside of the doors or windows.

(h) A driver shall remain with the vehicle if it is disabled during the race, except that:

1. During a red light or red flag, the driver may exit the vehicle and return to the pit area at direction of track personnel.

2. Racing should be stopped (red flagged) at 15-minute intervals to allow drivers to exit to pit area. The time intervals may be extended if no disabled vehicles are located on the track.

(i) Each vehicle shall have a minimum 104-inch wheelbase.

(j) Convertibles, pickup trucks, station wagons, or vans are prohibited in enduro events.

13:62-10.8 Windshield

(a) The originally installed windshield may remain but all other glass must be completely removed from a participating vehicle.

(b) Window net or screen shall be securely installed on the driver's side.

13:62-10.9 Mirrors

Inside rear view mirrors are permitted. Outside view mirrors are prohibited.

13:62-10.10 Vehicle interior and exterior requirements

(a) Chrome and nonmetallic trim shall be removed from sides of the vehicle.

(b) Passenger seats shall be removed from the interior of the vehicle.

(c) A safety hub or reinforced wheel is required on the vehicle's right front wheel.

(d) All doors shall be bolted, chained or welded closed. Any door opening during an event shall constitute automatic disqualification.

(e) The exterior of the driver's side door shall have at least one metal brace at bumper height.

(f) All vehicles shall retain stock appearance with no alterations to fenders or wheel wells.

13:62-10.11 Tires

(a) Passenger tires with United States Department of Transportation numbers shall be allowed with a maximum tread width of seven inches.

(b) Studs or "cheater-slicks" are prohibited.

(c) Wheel rim width shall not exceed seven inches.

13:62-10.12 Fuel tanks

(a) Except as set forth in (b) below, vehicles using a self-contained fuel cell with an inner rubber bladder shall bolt the self-contained fuel cell to the frame of the vehicle utilizing an "x" type frame work under the cell. At least three one inch metal straps ¼ inch thick shall be bolted to the frame of the vehicle by at least two ⅜ inch three line bolts and angled to go around the cell, except for the bottom, to apply maximum pressure against the tank to the frame.

(b) Vehicles with limited space shall have the fuel cell secured by four one inch metal straps, ¼ inch thick, bolted to the frame of the vehicle by at least two ⅜ inch three line bolts and angled to go entirely around the cell to apply maximum pressure against the fuel tank.

(c) A conventional type fuel tank shall be bolted within the frame of the vehicle.

(d) A reinforcing member of the same kind and size material as that used in the roll cage of the chassis shall be installed to the rear of the fuel tank joining the rearmost portion of the chassis.

(e) A vehicle utilizing a fuel tank mounted to the front of the front fire wall shall have a reinforcing member of the same kind of material as that used in the roll cage or chassis, installed in such a manner as to afford maximum protection to the tank.

(f) A metal fire wall shall be installed between the fuel tank and driver's compartment to afford the driver maximum protection.

13:62-10.13 Fuel lines

Fuel lines shall not pass through the passenger compartment of the vehicle.

13:62-10.14 Engine and suspension requirements

(a) The engine shall remain stock with a factory installed carburetor and manifold.

(b) Altering of suspension or torching of springs is prohibited.

13:62-10.15 Seat belts

(a) A shoulder harness and four point racing lap belt in good working condition shall be installed and properly worn during the event.

(b) A lap belt and shoulder harness installed in a position other than manufacturer's shall be affixed to the outer floor utilizing four inch by four inch steel plate and bolts of adequate tempered steel strength.

13:62-10.16 Bumpers

All vehicles shall be equipped with stock bumpers securely fastened on the front and rear. Outside bracing of bumpers is prohibited.

13:62-10.17 Batteries

(a) Batteries shall be properly secured as follows:

1. Batteries located in the driver compartment shall be shielded to prevent leakage in the event of damage or turnover.

2. Batteries located adjacent to the fuel supply of the vehicle shall be secured in a metal box bolted to the frame of the vehicle by at least four ⅜ inch three line bolts and in such a manner to apply maximum pressure against the metal box to the frame. The battery shall also have a marine box cover secured to the top of the metal box as to not allow any movement of the battery.

3. Batteries located in any other area not specified in (a)1 and 2 above shall be shielded to prevent leakage in the event of damage or turnover.

13:62-10.18 Seats

(a) A factory installed front seat shall be utilized provided it is equipped with a headrest.

(b) Seats shall be attached to the main frame of the vehicle, the frame of the roll cage or to a substantial metal plate utilizing a minimum of six, three line, $^5/_{16}$ inch bolts.

(c) The base of the seat shall be installed with four $^5/_{16}$ inch bolts not more than three inches from the outer edge at the four most practical points.

(d) Two bolts shall be installed at the two most practical points at the top of the back of the seat and a metal strap of at least two inches in width and ⅛ inch thick shall connect every two bolts.

13:62-10.19 Rollover cage

(a) All race cars shall be equipped with a rollover cage surrounding the driver of a design, construction and quality affording the driver maximum protection against injury.

(b) Rollover bars installed in vehicle shall be a minimum of three inches above and six inches behind the driver's head.

(c) The outside diameter of the rollover bars shall be a minimum of one and three-quarters inch and wall thickness a minimum of .09 inch.

(d) Rollover bars welded, bolted or fastened to the flooring shall utilize a six inch by six inch by one-quarter inch base plate.

(e) Vehicles having uni-body construction may install a rollover bar welded to the frame of the vehicle utilizing six inch by six inch by one-quarter inch base plate affixed to outer flooring.

(f) Rollover bars shall be plainly visible with the exception of built-in or integral rollover bars.

(g) Vehicles with built-in or integral rollover bars shall maintain and provide upon request by the Superintendent or designee the manufacturer's detailed drawing establishing the dimensions and material utilized.

13:62-10.20 Miscellaneous equipment requirements

(a) The drive shaft loop shall be installed not more than 24 inches from the front and rear yokes of the vehicle.

(b) All vehicles shall have an opening in the hood to properly expose the carburetor.

(c) The radiator shall remain in the manufacturer's position. Any movement of the radiator is prohibited.

(d) The front and rear trunk lid shall remain securely fastened with cable or chain throughout the entire event. Any incidental opening shall disqualify the vehicle from the event.

(e) Outer decorations on the vehicle utilizing poles, flags, staffs or other hazardous protuberances are prohibited.

(f) Transmission and radiator cooling cores located inside the vehicle are prohibited.

13:62-10.21 Additional track responsibilities

(a) The licensee shall maintain safe conditions during all pit stops.

(b) The licensee shall insure that disabled vehicles are left at the point of disablement.

(c) The licensee shall maintain adequate fire apparatus on location during the event, including:

1. A fire vehicle with a minimum of 300 pounds of dry chemical then meets the National Fire Protection Association standards of a mini pumper;

2. Twenty-pound fire extinguishers, at a minimum, with a minimum of 10 B.C. rating shall be maintained on location during an event; and

3. A minimum of two sets of protective turn-out gear shall be available to track personnel.

13:62-10.22 Speed limits

All vehicles traveling in the pit area or staging area must obey a five miles per hour speed limit.

13:62-10.23 Licensed facilities

Automobile enduro events shall only take place in licensed facilities.

SUBCHAPTER 11. MUD HOP

13:62-11.1 Construction requirements

(a) Hubrail construction shall comply in all respects with the requirements of this chapter.

(b) The licensee shall provide and maintain hubrails on the outer circumference of the track and around the entire circumference thereof. Where spectators are allowed in the infield or within the inner circumference of the track, the licensee shall provide and maintain a hubrail, as described in this section, around the inner circumference of the track.

(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.

(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.

(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.

(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a ¾ inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.

(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.

(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent is required.

(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.

(j) At locations using methods other than gates between the pit area and the track, the licensee shall provide a guard to prevent unauthorized persons from entering the track area.

(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specifically prohibited.

13:62-11.2 Fences

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motocross events the fence shall be of the same construction but at least five feet in height.

13:62-11.3 Red and amber lights

(a) Each track used for automotive racing, except those used for acceleration and performance tests, shall be equipped with a system of at least four red lights and four amber lights so arranged that at least one light of each color will be visible to the drivers as they enter each turn.

(b) The lights shall be controlled by a single switch. The licensee shall provide a responsible person to operate such switch during the entire time of each race.

(c) When the red lights are illuminated, all racing vehicles on the track shall stop as soon as possible and remain stopped until such time as the red lights are turned out.

(d) When the amber lights are illuminated, all racing vehicles on the track shall slow down and maintain their position unless otherwise directed to change position by a track official.

13:62-11.4 Flagmen

(a) Licensees of tracks over one mile in length may use flagmen in lieu of the red and amber lights, provided the assistant flagman in the starter's stand is in constant two-way radio or telephone communication with all flagmen.

(b) On display of the red flag, all racing vehicles shall stop as soon as possible and remain stopped until such time as the red flag is removed from display.

(c) On display of the amber flag all racing vehicles shall slow down and maintain their position unless directed to change position by a track official.

13:62-11.5 Starters

(a) The licensee shall provide a starter(s) located within a starter's stand with an unobscured view of the entire racing surface from which to control the racing event.

(b) At all circular or oval tracks, road courses and other locations utilizing the services of flagmen to control the event, the licensee shall also have an assistant flagman in the starter's stand. The assistant flagman used to control or start a race shall be in the starter's stand when starting and during the race.

13:62-11.6 Maximum protection

(a) All hubrails, fences, stands and buildings shall be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, must be located at least 25 feet from the hubrail.

13:62-11.7 Licensed facilities

Mud hop events shall only be conducted at licensed facilities.

13:62-11.8 Alcohol/controlled dangerous substances prohibited

No alcohol or controlled dangerous substances shall be permitted within the pit area. Anyone departing the pit area shall be prohibited from returning during the duration of the event if the individual has consumed alcohol or a controlled dangerous substance.

13:62-11.9 Driver requirements

(a) Mud hop drivers shall be a minimum 18 years of age and in possess a valid driver's license from the driver's state of residence.

(b) The driver's license number shall be recorded on an entry form and checked by the licensee for validity.

(c) The driver shall remain with a disabled vehicle until properly escorted from the racing track.

13:62-11.10 Equipment requirements

(a) All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

(b) The driver of all vehicles shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

(c) Drivers shall be attired in a shirt, long pants and shoes, at a minimum. It is recommended that this clothing be of a fire retardant material.

(d) The extension of the driver's head or arm outside the vehicle is prohibited.

13:62-11.11 Windows

(a) The windshield of the participating vehicle may remain as originally installed.

(b) Heavy mesh screening with a metal post covering the entire opening or plexiglass with a center post shall be utilized where the original windshield is removed.

13:62-11.12 Vehicle interior and exterior requirements

(a) Sharp edges created by accidental vehicle contact shall be folded over to render the vehicle safe.

(b) Alterations to the fenders or wheel wells are prohibited on stock vehicles.

(c) All doors of participating vehicles shall remain closed during an event. Any opening shall constitute automatic disqualification.

13:62-11.13 Seat belts

(a) Seat belts are required and shall be properly worn during the event.

(b) A racing lap belt and shoulder harness shall be installed and utilized on any modified vehicle, provided it is:

1. Approved through the licensee's technical inspection and found to be in good condition; and

2. Securely affixed to the outer flooring and reinforced by a four inch by four inch steel plate and bolts of adequate tempered steel strength.

(c) Cable, chain or straps securing devices for seat belts are prohibited.

13:62-11.14 Rollover cage

(a) Open cab vehicles shall be equipped with rollover cage surrounding the driver of a design, construction and quality affording the driver maximum protection against injury.

(b) Rollover bars installed in vehicle shall be a minimum of three inches above and six inches behind the driver's head.

(c) Rollover bars shall be a minimum of 1¾ inch outside diameter with a wall thickness of a minimum of .09 inch.

(d) Rollover bars welded, bolted or fastened to the flooring shall utilize a six inch by six inch by ¼ inch base plate.

(e) Vehicles having uni-body construction may have a rollover bar welded to the frame of the vehicle utilizing six inch by six inch by ¼ inch base plate affixed to the outer flooring.

(f) Rollover bars shall be plainly visible with the exception of built-in or integral rollover bars.

(g) Owners of vehicles with built-in or integral rollover bars shall maintain and provide upon request by the Superintendent or designee the manufacturer's detail drawing establishing the dimensions and material utilized.

13:62-11.15 Bumpers

All vehicles shall be equipped with bumpers securely fastened on the front and rear. Outside bracing of bumpers shall be prohibited.

13:62-11.16 Batteries

(a) Batteries shall be properly secured as follows:

1. Batteries located in the driver compartment shall be shielded to prevent leakage in the event of damage or turnover.

2. Batteries located adjacent to the fuel supply of the vehicle must be secured in a metal box bolted to the frame of the vehicle by at least four ⅜ inch three line bolts to apply maximum pressure against the metal box to the frame. The battery shall also have a marine box cover secured to the top of the metal box as to not allow any movement of the battery.

3. Batteries shall not be located within the driver's compartment.

4. Batteries located in any other area not specified in (a)1 and 2 above shall be shielded to prevent leakage in the event of damage or turnover.

13:62-11.17 Miscellaneous equipment requirements

(a) The drive shaft loop shall be installed not more than 24 inches from the front and rear yokes of modified vehicles.

(b) The radiator, if moved from the manufacturer's position, shall be shielded from the driver by a firewall.

(c) The front and rear trunk lid shall remain securely fastened with cable or chain throughout the entire event. Any incidental opening shall disqualify the vehicle from the event.

(d) Outer decorations on the vehicle utilizing poles, flags, staffs or other hazardous protuberances are prohibited.

(e) Transmission and radiator cooling lines or cooling cores shall be equipped with a metal fire wall separating the driver for maximum security.

(f) Tow hooks or tow bars shall be installed and secured to the frame of the vehicle.

(g) No vehicle shall transport more than one person at any time during an event or warm-up.

13:62-11.18 Braking system and pedal reserve

(a) The licensee shall test and approve each vehicle for break pedal reserve prior to the vehicle departing the pit area.

(b) No vehicle shall be permitted to participate in any event if the braking system includes a direct application of pressure to any of the tires or any apparent deficiencies.

13:62-11.19 Automatic transmission safety mats

Any modified vehicle with an automatic transmission shall have a steel mat, plate, or blanket installed over the transmission so as to protect the driver from injury caused by the fragmentation of the automatic transmission upon explosion.

13:62-11.20 Seats

(a) A factory installed front seat may be utilized provided it is equipped with a headrest.

(b) Seats shall be attached to the main frame of the vehicle, the frame of the roll cage or to a substantial metal plate utilizing a minimum of six, three line, five-sixteenths inch bolts.

(c) The base of the seat shall be installed with four five-sixteenths inch bolts not more than three inches from the outside edge of the four most practical points.

(d) Two bolts shall be installed at the two most practical points at the top of the back of the seat and a metal strap of at least two inches in width and one-eighth inch in thickness shall connect every two bolts.

13:62-11.21 Additional track responsibilities

(a) The licensee shall maintain safe conditions during all pit stops.

(b) The licensee shall maintain adequate fire apparatus on location during the event, including:

1. A fire vehicle that meets the National Fire Protection Associations standards of a mini pumper;

2. Twenty-pound fire extinguishers, at a minimum, with a minimum of 10 B.C. rating on location during an event; and

3. A minimum of two protective turn out gear shall be available to track personnel.

13:62-11.22 Speed limits

All vehicles traveling in the pit area or staging area must obey a five miles per hour speed limit.

13:62-11.23 Licensed facilities

Mud hop events shall only take place in licensed facilities.

SUBCHAPTER 12A. QUARTER MIDGETS EVENTS

13:62-12A.1 Licensed facilities

Quarter midget events shall only take place in licensed facilities.

13:62-12A.2 Track construction

(a) Construction of hubrails, fences and other safety devices for quarter midget events shall comply in all respects with provisions of this subchapter.

(b) The hubrail construction for quarter midget events shall be the same as the hubrail construction used for go-kart and motorcycle events in that planks made of marine plywood three-quarter inches thick and 12 inches wide may be used.

(c) The licensee shall erect along any part of the track where spectators are permitted, in addition to the hubrail, a fence six feet in height and located not less than four feet from the edge of the track.

13:62-12A.3 Safety requirements

(a) Quarter midgets and persons participating in races or exhibitions of driving skill on any track or facility licensed by the Superintendent shall comply with the following requirements.

1. No person under the age of five years of age may operate a quarter midget in any race or exhibition of driving skills.

2. All quarter midget vehicles shall adhere to the rules and regulations governing quarter midget vehicles in the "Quarter Midgets of America" 1990-1991 racing rules and specifications directory which are incorporated herein by reference. A copy of these rules can be obtained by contacting the Quarter Midgets of America, 6118 E. 19th Street, Tulsa, OK 74112.

i. On written request of a licensee, the Superintendent may approve any revisions or amendments by the Quarter Midgets of America. Approval of such request shall be reflected in a proposed amendment to this chapter.

3. No repairs shall be made on any quarter midget during the course of a race unless the vehicle is removed to the pit area.

4. A starting apron shall be provided where the quarter midgets are to be started. Persons shall not enter the race course to push a quarter midget. A quarter midget which has not been started on the starting apron shall not be pushed on to the track proper but shall return to the pit area or to the rear of the starting apron. No person shall enter the race course for the purpose of starting a stalled quarter midget while any race or exhibition is in progress.

5. All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

6. The driver of all vehicles shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

7. All participants shall remain inside the cockpit of the quarter midgets while the vehicle's engine is running. The participant shall not be permitted to race (black flagged) if the participant leans outside of the quarter midgets for any reason whatsoever.

8. All ***novice class*** quarter midget vehicles shall be equipped with an additional external engine shut off switch placed on the top of the roll bar to shut off the vehicles engine in case of emergency.

13:62-12A.4 Speed limits for all quarter midget events; pit area operation prohibition

(a) No quarter midget vehicle shall exceed the speed of 30 miles per hour during a race, exhibition, or performance test of any kind.

(b) No quarter midget shall be operated under power in the pit area.

SUBCHAPTER 12B. JUNIOR DRAG RACING EVENTS

13:62-12B.1 Licensed facilities

Junior drag racing events shall only take place in licensed facilities.

13:62-12B.2 Construction requirements

(a) Hubrail construction shall comply in all respects with the requirements of this subchapter.

(b) The licensee shall provide and maintain hubrails on the outer area of the track and around the entire area thereof. Where spectators are allowed in the return road or within the inner area of the track, the licensee shall provide and maintain a hubrail, as described in this section, around the inner area of the track.

(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.

(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.

(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.

(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a ¾ inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.

(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.

(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent is required.

(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.

(j) At locations using methods other than gates between the pit area and the track, the licensee shall provide a guard to prevent unauthorized persons from entering the track area.

(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specifically prohibited.

13:62-12B.3 Fences

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motocross events the fence shall be of the same construction but at least five feet in height.

13:62-12B.4 Starting tree lights

(a) Strips used for acceleration and performance tests need be equipped with only one red light on the starting tree.

(b) The lights shall be controlled by a single switch. The licensee shall provide a responsible person to operate such switch during the entire time of each race.

13:62-12B.5 Starters

(a) The licensee shall provide starter(s) located within a starter's area with an unobscured view of the entire racing surface from which to control the racing event.

13:62-12B.6 Maximum protection

(a) All hubrails, fences, stands and buildings shall be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, must be located at least 25 feet from the hubrail.

13:62-12B.7 Location

(a) A location approved for acceleration and performance tests shall provide for a stopping distance at least equal to the acceleration and timing distance.

(b) The acceleration area shall not exceed 660 feet.

(c) The entire racing strip, including the deceleration area, shall be paved.

(d) The end of the acceleration area may be marked by an overhead banner, provided the supports are of such construction that they will not present a hazard to the vehicles. The height of the banner shall be at least 14 feet above the surface of the strip.

(e) All junior dragsters shall only compete utilizing the ⅛ of a mile track surface.

13:62-12B.8 Vehicle equipment and driver requirements

(a) Junior drag racers and personnel participating in races or exhibitions of driving skill on any track or facility licensed by the Superintendent shall comply with the following requirements:

1. No person under the age of eight years of age may operate a junior dragster in any race or exhibition of driving skill.

2. All junior dragster vehicles shall adhere to the rules and regulations governing junior drag racing vehicles as written in the "The NHRA Junior Dragracing League" 1993 Supplemental Program (Technical & Competition Guidelines) racing rules and specifications which are incorporated herein by reference. A copy of these rules can be obtained by contacting the N.H.R.A. Technical Department, 2035 Financial Way, Glendora, CA 91740.

i. On written request of a licensee the Superintendent may approve any revisions or amendments by the NHRA Junior Dragracing league. Approval of such request shall be reflected in a proposed amendment to this chapter.

3. No repairs shall be made on any junior drag racer during the course of a race unless the vehicle is removed to the pit area.

4. Persons shall not enter the race course to push a junior drag vehicle. A junior drag vehicle which has not been started on the starting area shall not be pushed on to the track proper but must return to the pit area or to the rear of the starting line. No person shall enter the race course for the purpose of starting a stalled junior drag vehicle while any race or exhibition is in progress.

5. All drivers shall wear a helmet in condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

6. The driver of all vehicles shall wear windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

7. All participants shall remain inside the cockpit of the junior dragster while the vehicle's engine is running.

8. All junior dragster vehicles shall be equipped with an additional external engine shut off switch on top of the roll bar to shut off the vehicles engine in case of emergency.

13:62-12B.9 Speed limits for all junior dragster events; pit area operation prohibition

(a) No junior dragster vehicle shall exceed the speed of 60 miles per hour during a race, exhibition, or performance test of any kind.

(b) No junior dragster shall be operated under power in the pit area.

SUBCHAPTER 13. ADVISORY COMMITTEE

13:62-13.1 Appointment of advisory committee

(a) The Superintendent may appoint a civilian advisory committee in order to assist the Superintendent or his or her designee with questions that may arise pertaining to the auto racing field.

(b) These civilian advisors will have knowledge of the racing industry and will be appointed in a voluntary capacity.

(c) All members being considered for the position as an advisory committee member shall complete an application and be required to undergo a background investigation as a prerequisite for appointment.

SUBCHAPTER 14. SPECIAL AGE PROVISION

13:62-14.1 Participant requirements

(a) Notwithstanding any other provision of this chapter to the contrary, a person between the ages of 10 and 18 years of age shall be permitted to participate in go-kart, snowmobile, and motocross events providing the following conditions are met:

1. The participant between the ages 10 and 18 is covered by accidental death and dismemberment insurance in an amount not less than $10,000 for accidental death and $3,000 for dismemberment; and

2. The participant between the ages of 10 and 18 shall be required to furnish proof of successful completion of an operational and safety course for the particular vehicle which the participant desires to operate.

13:62-14.2 Licensee responsibilities

(a) The licensee shall ensure that all conditions set forth in this chapter are met prior to permitting an individual to participate in any event.

(b) The licensee shall ensure that the operation of vehicles covered by this subchapter by persons between the ages of 14 and 18 shall be restricted to the confines of an approved race or exhibition area and adjoining pit area.

SUBCHAPTER 15. ACTIONS FOR VIOLATION(S)

13:62-15.1 Actions for violations

(a) The Superintendent or designee may stop a racing event if any portion of this chapter is violated and participants, spectators or track employees are at unreasonable risk for their safety.

(b) The race event shall be permitted to resume if the violation is corrected within a responsible amount of time.

SUBCHAPTER 16. APPEALS OF ADMINISTRATIVE ACTION

13:62-16.1 Hearings

(a) In the case of the suspension, denial or refusal to renew a license, the Superintendent shall notify the applicant or licensee in writing of such action and the reasons for the action.

(b) A licensee or applicant may request a hearing to appeal the action of the Superintendent. A request for a hearing of the Superintendent's action shall be made in writing to the Superintendent within 15 days from the receipt of the notice.

(c) If a request for a hearing is timely received, the Superintendent shall take the appropriate action in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Daily Triple

Adopted Amendment: N.J.A.C. 13:70-29.50

Proposed: January 17, 1995 at 27 N.J.R. 306(a).

Adopted: March 17, 1995 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: March 24, 1995 as R.1995 d.211, **without change.**

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

Effective Date: April 17, 1995.

Expiration Date: January 25, 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 rules of racing are dictated by statute, N.J.S.A. 5:5-22 et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rule subject of the instant amendment is not addressed or affected by any analogous Federal requirements or standards.

Full text of the adoption follows:

13:70-29.50 Daily Triple

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

(j) If for any reason one or two of the races comprising the Daily Triple are cancelled, the net amount of the pari-mutuel pool shall be distributed as provided in (g), (h), and (i) above.

Recodify existing (l)-(n) as (k)-(m) (No change in text.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules
Daily Triple
Adopted Amendment: N.J.A.C. 13:71-27.54

Proposed: January 17, 1995 at 27 N.J.R. 306(b).
Adopted: March 17, 1995 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: March 24, 1995 as R.1995 d.212, **without change.**

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

Effective Date: April 17, 1995.
Expiration Date: January 25, 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 rules of racing are dictated by statute, N.J.S.A. 5:5-22 et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rule subject of the instant amendment is not addressed or affected by any analogous Federal requirements or standards.

Full text of the adoption follows:

13:71-27.54 Daily Triple
(a)-(i) (No change.)
(j) If for any reason one or two of the races comprising the Daily Triple are cancelled, the net amount of the pari-mutuel pool shall be distributed as provided in (g), (h), and (i) above.
Recodify existing (l)-(n) as (k)-(m) (No change in text.)

(b)

VIOLENT CRIMES COMPENSATION BOARD

Counseling Fees
Adopted Amendment: N.J.A.C. 13:75-1.27

Proposed: February 6, 1995 at 27 N.J.R. 467(a).
Adopted: March 8, 1995 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: March 23, 1995 as R.1995 d.210, **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. 52:4B-9.

Effective Date: April 17, 1995.
Expiration Date: July 5, 1999.

Summary of Public Comments and Agency Response:
No comments received.

Executive Order No. 27 Statement

There are no Federal requirements applicable to the subject matter of this adopted amendment.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

13:75-1.27 Counseling Fees
(a)-(c) (No change.)
(d) The Board shall award no compensation for out-of-pocket unreimbursed or unreimbursable psychological counseling expenses related to the incident for a period greater than 50 sessions for any victim or claimant 18 years of age or older, and for no more than 100 sessions for any victim under the age of 18 (on October 7, 1991) notwithstanding the date upon which the application for compensation was filed.
1. (No change.)
2. In those instances where it has been shown by a preponderance of the evidence that the direct victim/minor has no psychological, emotional, mental, drug or alcohol-related problems which pre-date the crime on which a claim is based, the Board as of *[(the effective date of this amendment)]* ***April 17, 1995*** may, in its discretion, award such additional psychological counseling sessions for the direct victim/minor as it deems appropriate.
(e) (No change.)

OTHER AGENCIES

(c)

ELECTION LAW ENFORCEMENT COMMISSION

Contribution Reporting; Contribution Limits
Adopted New Rules: N.J.A.C. 19:25-10
Adopted Amendments: N.J.A.C. 19:25-1.7, 9.2 and 9.3
Adopted Repeal and New Rules: N.J.A.C. 19:25-11

Proposed: January 17, 1995 at 27 N.J.R. 312(a) (see also 27 N.J.R. 480(a)).
Adopted: March 22, 1995, by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Filed: March 23, 1995 as R.1995 d.209, **without change.**

Authority: N.J.S.A. 19:44A-6.

Effective Date: April 17, 1995.
Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:
A public hearing was conducted before the sitting Commission on February 14, 1995 at the Somerset County Administration Building, Freeholders' Meeting Room, 20 Grove Street, Somerville, New Jersey. Although the hearing was initially announced for February 7, 1995, notice of the change of hearing date was included in mail notices (secondary notice) sent on January 13, 1995, in a press advisory issued on February 7, 1995, and in a public notice appearing in the February 6, 1995 edition of the New Jersey Register at 27 N.J.R. 480(a). No witnesses appeared to testify, and **no comments have been received.** The hearing record may be reviewed by contacting Gregory E. Nagy, Esq., Legal Director, Election Law Enforcement Commission, CN 185, Trenton, NJ 08625-0185.

Executive Order No. 27 (1994) Statement

The adopted new rules, amendments and repeal 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:

19:25-1.7 Definitions
The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.
. . .
"Public solicitation" means a solicitation as described in N.J.A.C. 19:25-10.7(a).

19:25-9.2 Certified statement (Form A-3)
(a)-(b) (No change.)
(c) If a continuing political committee, political party committee, or legislative leadership committee, which has filed a certified statement for a calendar year pursuant to (a) above, receives during any calendar year quarter a contribution, or aggregate contributions from a contributor, that exceeds the sum of $200.00, that committee shall file on the dates provided in N.J.A.C. 19:25-9.1 a report containing the following information:
1.-2. (No change.)
3. The amount of the contribution, or if the contribution was other than money, a description of the contribution and its value as determined pursuant to N.J.A.C. 19:25-10.4; and
4. (No change.)

19:25-9.3 Contributions received immediately before an election

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

(c) The report or written notice described in (a) above shall contain the following information:

1.-2. (No change.)

3. The amount of the contribution, or if the contribution was other than money, a description of the contribution and its value as determined pursuant to N.J.A.C. 19:25-10.4;

4.-5. (No change.)

SUBCHAPTER 10. CONTRIBUTION REPORTING

19:25-10.1 General provisions

Each contribution received by a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee must be reported at the time and in the manner provided in the act and this subchapter.

19:25-10.2 Contributions of more than $200.00

(a) A contribution received by a candidate committee, joint candidates committee, or political committee during an election fund report period established in N.J.A.C. 19:25-8 in an amount of more than $200.00, or aggregate contributions received by such a committee in an election from a contributor totalling more than $200.00 during such a report period, must be reported by providing the following information:

1. The date the contribution was received or, if more than one contribution was received in the reporting period, the dates the aggregate contributions were received;

2. The name and mailing address of the contributor;

3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;

4. The amount of the contribution, or amount of aggregate contributions in the reporting period; and

5. The total amount of all contributions received from the contributor in the election to date.

(b) A contribution received by a continuing political committee, a political party committee, or a legislative leadership committee during a calendar year of more than $200.00 from a contributor, or aggregate contributions received by such a committee during a calendar year from a contributor totalling more than $200.00, must be reported by providing the following information:

1. The date the contribution was received or, if more than one contribution was received in the reporting period, the dates the aggregate contributions were received;

2. The name and mailing address of the contributor;

3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;

4. The amount of the contribution, or amount of aggregate contributions in the reporting period; and

5. The total amount of all contributions received from the contributor in the calendar year to date.

(c) A candidate committee or joint candidates committee which has filed a certified statement (that is, Form A-1 or A-2) in an election and which receives a contribution in that election of more than $200.00, or aggregate contributions from a contributor of more than $200.00, shall file the report provided in N.J.A.C. 19:25-8.4(c).

(d) A continuing political committee, political party committee, or legislative leadership committee which has filed a certified statement (Form A-3) in a calendar year and which receives in that calendar year a contribution of more than $200.00, or aggregate contributions from a contributor of more than $200.00, shall file the report provided in N.J.A.C. 19:25-9.2(c).

19:25-10.3 Contributions of $200.00 or less

(a) A contribution received by a candidate, candidate committee, joint candidates committee or political committee in an amount of $200.00 or less in an election must be reported on the election fund report required by N.J.A.C. 19:25-8.2 or 8.3 for the time period in which the contribution was received by including the amount of the contribution in the total sum reported in the report for all contributions received in the amount of $200.00 or less, but the name and mailing address of the contributor or the occupation of a contributor who is an individual and the name and mailing address of the individual's employer is not required to be reported.

(b) At any time during an election pursuant to (a) above, if the aggregate amount received from a contributor by a candidate, candidate committee, joint candidates committee, or political committee exceeds the sum of $200.00, the contribution resulting in aggregate contributions totalling more than $200.00 and each subsequent contribution (regardless of amount) received from the contributor during the election must be reported on the pertinent election fund report in the same manner as a contribution of more than $200.00 pursuant to N.J.A.C. 19:25-10.2(a).

(c) A contribution received by a continuing political committee, a political party committee or a legislative leadership committee in an amount of $200.00 or less in a calendar year must be reported on the quarterly report required by N.J.A.C. 19:25-9.1 for the calendar year quarter in which the contribution was received by including the amount of the contribution in the total sum reported for the quarterly reporting period of all contributions received in the amount of $200.00 or less, but the name and mailing address of the contributor or the occupation of a contributor who is an individual and name and mailing address of the individual's employer is not required to be reported.

(d) At any time during a calendar year pursuant to (c) above, if the aggregate amount received from a contributor by a continuing political committee, political party committee, or legislative leadership committee exceeds the sum of $200.00, the contribution resulting in aggregate contributions totalling more than $200.00 and each subsequent contribution (regardless of amount) received from the contributor during the remainder of the calendar year must be reported on the pertinent quarterly report in the same manner as a contribution of more than $200.00 pursuant to N.J.A.C. 19:25-10.2(b).

19:25-10.4 Computation of contribution amounts

(a) A contribution received in the form of goods shall be reported in an amount equal to the fair market value of the goods to the candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee receiving such goods.

(b) A contribution in the form of "paid personal services" as defined in N.J.A.C. 19:25-1.7, Definitions, shall be reported in an amount equal to the amount of salary, compensation or consideration for said services paid by the contributor to the individual performing said services.

(c) Personal services performed by an individual on a voluntary, non-compensated basis do not constitute a reportable contribution.

1. Example 1: E is a certified public accountant, who, in aid of the candidacy of candidate A has undertaken to set up the necessary books and records to reflect the financial operations of the campaign of candidate A. E employs in his office several accountants, bookkeepers and clerical personnel who perform some of the work required to maintain the financial records for the campaign of candidate A. The services of E do not constitute a contribution to candidate A since they are voluntary and uncompensated personal services. The value of the services of the accountants and other employees of E, estimated as described in (b) above, are a contribution to candidate A.

19:25-10.5 Contributions of paid personal services

(a) The treasurer or organizational treasurer of a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee shall upon receipt of a contribution in the form of paid personal services pursuant to N.J.A.C. 19:25-10.4(b) obtain from the person contributing the paid personal services a written statement setting forth the amount of compensation paid by the contributor to the individual performing the services.

(b) In any written statement required pursuant to (a) above, if the individual performing the services for the candidate committee,

joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, also performed other services during the same period for the contributor, and the manner of payment was such that payment for the contributed services cannot readily be segregated from contemporary payment for the other services, the contributor shall so state in the written statement and shall either:

1. Set forth the contributor's best estimate of the dollar amount of payment to each such individual which is attributable to the contribution of the paid personal services, and shall certify the substantial accuracy of the same; or

2. If unable to determine such amount with sufficient accuracy, set forth the total compensation paid by the contributor to each such individual for the period of time during which the paid personal services were performed.

19:25-10.6 Currency contributions

(a) A candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, or the treasurer or organizational treasurer of such committee, may accept a contribution in the form of currency provided that it is received in an aggregate amount not to exceed $200.00 in an election, or a calendar year, whichever is applicable to the recipient candidate or committee, and provided the contributor simultaneously submits a written record to the committee or treasurer containing the following:

1. The date the contribution was made;

2. The name and mailing address of the contributor;

3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;

4. The amount of the contribution; and

5. The signature of the contributor.

(b) A contributor may make a contribution in the form of currency provided that the contribution in an aggregate amount does not exceed $200.00 in an election to a candidate, candidate committee, joint candidates committee, or political committee, or does not exceed $200.00 in a calendar year to a continuing political committee, political party committee or legislative leadership committee, and provided such contributor shall simultaneously submit to the committee or its treasurer a written record containing the following:

1. The date the contribution was made;

2. The name and mailing address of the contributor;

3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;

4. The amount of the contribution; and

5. The signature of the contributor.

(c) Nothing in this section shall prohibit the making of, or receipt of, currency contributions not to exceed $20.00 per contributor made or received under the public solicitation provisions at N.J.A.C. 19:25-10.7.

19:25-10.7 Public solicitations

(a) The term "public solicitation" means any activity by or on behalf of any candidate, political committee, continuing political committee, candidate committee, joint candidates committee, legislative leadership committee or political party committee whereby either:

1. Members of the general public are personally solicited for on-the-spot cash contributions not to exceed $20.00 per person; or

2. Members of the general public are personally solicited for on-the-spot purchase of items having tangible value as merchandise, at a price not to exceed $20.00 per item.

(b) Proceeds of a public solicitation must be reported as contributions, however there shall be no obligation to make or maintain records of or report the identity of any contributor, and such proceeds shall not be deemed as anonymous contributions.

(c) In the event contributions are received as the result of a public solicitation, the date and location of each such public solicitation must be identified in any report showing receipt of proceeds from the public solicitation.

19:25-10.8 Anonymous contributions

(a) No contribution shall be made by a person or received by a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee on an anonymous basis, that is without making known, or knowing, the identity of the person making the contribution, or in a fictitious name, or by one person or group in the name of another, and no person shall contribute or purport to contribute to any candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, any funds or property not actually belonging to him or her and in his or her full custody and control, or which have been given or furnished to him or her by any other person or group for the purpose of making a contribution thereof.

(b) A contribution shall not be deemed anonymous if the identity of the contributor was known to the candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, or to the treasurer or organizational treasurer of such committee, at the time when the contribution was received, even though the committee or treasurer may later be unable to identify the contributor because of loss or destruction of records. Nothing in this subsection shall be construed to prevent the Commission from imposing a penalty pursuant to the act or these regulations for failure to keep proper records.

(c) A group contribution, that is a contribution made collectively by persons who are members of the contributing group, shall not be deemed an anonymous contribution by any individual member of the group.

19:25-10.9 Contributions for pre-candidacy activity

In the event that an individual who has been receiving funds or other benefits pursuant to N.J.A.C. 19:25-3.1 solely for the purpose of determining whether or not to become a candidate, actually becomes a candidate in an election, all funds or benefits received in connection with his or her pre-candidacy activity shall be considered contributions under the act and shall be reported in accordance with the applicable reporting requirements in the initial report filed by such candidate's candidate committee, or joint candidates committee.

19:25-10.10 Political communication contributions

(a) The term "political communication" means any written statement, pamphlet, advertisement or other printed or broadcast matter containing an explicit appeal for the election or defeat of a candidate which is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the appeal is directed. Words such as "Vote for (name of candidate)," "Vote against (name of opposing candidate)," "Elect (name of candidate)," "Support (name of candidate)," "Defeat (name of opposing candidate)," "Reject (name of opposing candidate)," and other similar explicit political directives constitute examples of appeals for the election or defeat of a candidate.

(b) A written statement, pamphlet, advertisement or other printed or broadcast matter that does not contain an explicit appeal pursuant to (a) above for the nomination for election or for the election or defeat of a candidate shall be deemed to be a political communication if it meets the following conditions:

1. The communication is circulated or broadcast within 90 days of the date of any election in which the candidate on whose behalf the communication is made is seeking nomination for election or elected office; except that in the case of a candidate for nomination for the office of Governor in a primary election, the period of time that a communication shall be deemed political shall be on or after January 1st in a year in which a primary election for Governor is being conducted, and in the case of a candidate for election to the office of Governor in a general election, the period of time that a communication shall be deemed political shall begin on the day following the date of the gubernatorial primary election;

2. The communication is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the communication was made;

3. The communication contains a statement or reference concerning the governmental or political objectives or achievements of the candidate; and

4. The production, circulation or broadcast of the communication, or any cost associated with the production, circulation or broadcast of the communication, has been made in whole or in part with the cooperation of, prior consent of, in consultation with, or at the request or suggestion of the candidate.

(c) Nothing contained in (b) above shall be construed to require reporting of a communication by an incumbent officeholder seeking reelection if the communication is in writing and is made to a constituent in direct response to a prior communication received from that constituent, if it is circulated or broadcast for the sole and limited purpose of communicating governmental events requiring constituents to make applications or take other actions before the date of the upcoming election, or if it is circulated or broadcast to constituents for the sole and limited purpose of communicating facts relevant to a bona fide public emergency.

(d) Nothing contained in (b) above shall be construed to require reporting of a communication by a candidate seeking nomination for election in a primary election if that candidate is not opposed by another candidate seeking nomination for election in that primary election.

19:25-10.11 Reporting of political communication costs

(a) If any political communication as defined in N.J.A.C. 19:25-10.10 is incurred or paid for by any candidate committee or joint candidates committee, the committee shall report such expenditure in accordance with N.J.A.C. 19:25-12.

(b) Any political communication as defined by N.J.A.C. 19:25-10.10 incurred or paid for by any person or entity other than the candidate's candidate committee or joint candidates committee, which political communication is prepared, made or circulated with the consent or cooperation of the candidate, shall be reported by that candidate as a campaign contribution of goods and/or services in accordance with N.J.A.C. 19:25-10.4(a).

(c) Any political communication not prepared, made or circulated with the consent or cooperation of a candidate and incurred or paid for by any other person or entity shall be reported in accordance with N.J.A.C. 19:25-12.

19:25-10.12 Interest income

Any payment received as interest income for funds on deposit in a campaign or organizational depository account established pursuant to N.J.A.C. 19:25-5.2 is not subject to contributor identification requirements, provided that such interest payment amount is included in amounts reported as received and deposited.

19:25-10.13 Loans as contributions

(a) A loan received by a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, or by the treasurer of such committee, shall be reported as a contribution by the person or entity making the loan.

(b) Notwithstanding (a) above, if a loan is made to a candidate, committee or treasurer by a banking or lending institution, and if the candidate as an individual using personal assets, or some third party person or entity, in the ordinary course of business, has guaranteed, co-signed or otherwise assured repayment of the loan to the banking or lending institution, the contributor of the loan shall be reported as the person or entity guaranteeing, co-signing or otherwise assuring the repayment of the loan, and the banking or lending institution shall not be deemed to be the contributor.

(c) A loan made by a banking or lending institution to a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee which loan is not secured pursuant to (b) above is a contribution to the candidate or committee by that banking or lending institution.

SUBCHAPTER 11. CONTRIBUTION LIMITS

19:25-11.1 Candidates subject to contribution limits

(a) All candidates, candidate committees, and joint candidates committees, and all treasurers of such committees, shall observe the contribution limits set forth in this subchapter and shall not knowingly accept any contribution in excess of such contribution limits, except that candidates for nomination for election to the office of Governor shall be subject to the contribution limits set forth in N.J.A.C. 19:25-16, Public Financing of Primary Election for Governor, and candidates for election to the office of Governor shall be subject to the contribution limits set forth in N.J.A.C. 19:25-15, Public Financing: General Elections for the Office of Governor.

(b) All political committees, continuing political committees, legislative leadership committees, political party committees, and all treasurers or organizational treasurers of such committees, shall observe the contribution limits set forth in this subchapter and shall not knowingly accept any contribution in violation of such contribution limits.

19:25-11.2 Contribution limit chart

(a) The following chart sets forth the contribution limits applicable to persons or entities making contributions to candidates, candidate committees, political committees, continuing political committees, legislative leadership committees, and State, county or municipal political party committees:

Entities Making Contributions	Entities Receiving Contributions						
	Candidate Committee (see N.J.A.C. 19:25-11.3)	Political Committee (see N.J.A.C. 19:25-11.6)	Continuing Political Committee	Legislative Leadership Committee	State Political Party Committee	County Political Party Committee	Municipal Political Party Committee
Individual to:	$1,500 per election	No Limit	No Limit	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Corporation or Union to:	$1,500 per election	No Limit	No Limit	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Association or Group to:	$1,500 per election	No Limit	No Limit	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Candidate Committee to: (see N.J.A.C. 19:25-11.3)	$5,000 per election	$5,000 per election	$5,000 per year	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Political Committee to:	$5,000 per election	$5,000 per election	$5,000 per year	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year

Continuing Political Committee to:	$5,000 per election	$5,000 per election	$5,000 per year	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Legislative Leadership Committee to:							
State Political Party Committee to:							
County Political Party Committee to: (see N.J.A.C. 19:25-11.7)	NO LIMITS, except those set forth in N.J.A.C. 19:25-11.7 for a county political party committee.						
Municipal Political Party Committee to:							
National Political Party Committee to:	$5,000 per election	$5,000 per election	$5,000 per year	$25,000 per year	$50,000 per year	$25,000 per year	$5,000 per year

(b) No contributing person or entity listed in (a) above shall make a contribution, or aggregate contributions, in excess of the contribution limits set forth in (a) above.

(c) No candidate, candidate committee, political committee, continuing political committee, legislative leadership committee, political party committee, or treasurer or organizational treasurer of any of such committee, shall knowingly accept a contribution, or aggregate contributions, in excess of the contribution limits set forth in (a) above.

19:25-11.3 Candidate contributions

(a) A candidate may make a contribution as an individual and subject to the limits set forth in this subchapter notwithstanding any contribution made by the candidate's candidate committee or joint candidates committee, provided that the contribution made by the candidate as an individual is not derived from funds controlled by the candidate committee or joint candidates committee.

(b) Notwithstanding the contribution limits set forth in N.J.A.C. 19:25-11.2 above, a candidate, or a corporation one hundred percent of the stock of which is owned by the candidate, or by the candidate's spouse, child, parent, or sibling residing in the candidate's household, may make contributions without limit to a candidate committee established by that candidate, or to a joint candidates committee established by that candidate.

(c) Notwithstanding the contribution limits set forth in N.J.A.C. 19:25-11.2 above, a candidate committee can make contributions in an election without limit to another candidate committee if both the contributing and recipient candidate committees are established by candidates who are seeking nomination for election, or election to, legislative offices within the same legislative district, or to the same offices within the same political subdivision of this State.

19:25-11.4 Joint candidates committee contribution limits

(a) A joint candidates committee established by candidates who have not established any candidate committees in an election may accept a contribution from a contributor in an amount equal to but not in excess of the sum of the number of candidates participating in the joint candidates committee multiplied by the contribution limit applicable to a contribution made by the contributing entity to a candidate committee of a single candidate.

1. Example. A joint candidates committee in which three candidates are participating, none of whom have established candidate committees, may receive from an individual a contribution not to exceed $4,500 in an election, that is three multiplied by the $1,500 contribution limit applicable to a contribution from an individual to a candidate committee.

(b) A joint candidates committee established by candidates who have not established any candidate committees in an election may make a contribution to a political committee not to exceed $5,000 per candidate in the election, and may make a contribution to a continuing political committee not to exceed $5,000 per candidate in a calendar year.

(c) In the event any of the candidates participating in a joint candidates committee also has established a candidate committee in an election, the amount of a contribution that the joint candidates committee may accept from a contributor without violating the contribution limit will be determined by application of the equal attribution requirement set forth in N.J.A.C. 19:25-11.5, Equal attribution requirements.

(d) A joint candidates committee may receive a contribution in an election from another joint candidates committee in an amount equal to $5,000 multiplied by the number of candidates participating in the contributing joint candidates committee, and that sum may be further multiplied by the number of the candidates participating in the recipient joint candidates committee, provided that the contributing joint candidates committee, and any candidate committee established by any of the participating candidates, have not made any other contributions to the recipient joint candidates committee, or to any candidate committee established by any of the candidates participating in the recipient joint candidates committee.

1. Example. Joint candidates committee ABC has three candidates participating in it (candidates A, B and C) and wishes to make a contribution to a joint candidates committee DEFG with four candidates participating in it (candidates D, E, F and G). Neither the joint candidates committee ABC, nor any individual candidate committee established by candidates A, B or C, has made any contributions in the election to the joint candidates committee DEFG, or to any individual candidate committee established or maintained by candidates D, E, F or G. Joint candidates committee ABC may contribute the sum of $60,000 in the election to joint candidates committee DEFG, that is $5,000 multiplied by three (that is, the three candidates participating in ABC), for a total of $15,000, further multiplied by four (that is, the four candidates participating in DEFG) for a total maximum permissible contribution in the election of $60,000.

(e) In the event that a joint candidates committee makes a contribution to another joint candidates committee as described in (c) above, but there have been one or more contributions by the contributing joint candidates committee, or by a candidate committee established by one of the joint candidates committee's candidates, to one or more candidate committees of a candidate or candidates participating in the recipient joint candidates committee, or to the recipient joint candidates committee, the amount of a contribution that the recipient joint candidates committee may receive cannot,

after application of the equal attribution requirement set forth in N.J.A.C. 19:25-11.5, exceed $5,000 per candidate in the election.

19:25-11.5 Equal attribution requirements

(a) A candidate who has established a candidate committee in an election and is also participating in a joint candidates committee in that election may not receive contributions to those committees from a contributor that in the aggregate exceed the applicable contribution limit set forth in N.J.A.C. 19:25-11.2.

(b) Each contribution received in an election by the joint candidates committee of a candidate who has also established a candidate committee in that election must be equally attributed to each of the candidates participating in the joint candidates committee, and the contribution limits in this subchapter must be applied to those participating candidates and to any candidate committee established by any of the participating candidates.

1. Example. The ABC joint candidates committee, consisting of Candidates A, B, and C, receives a contribution from an individual in the amount of $4,500 in an election. For purposes of applying the contribution limits to the participating candidates and their individual candidate committees, the contribution must be equally attributed to each of the three participating candidates so that each is deemed to have received a contribution in the amount of $1,500 in the election from the contributor. The sum of $1,500 is the maximum amount an individual can contribute to a candidate in an election. Therefore, no further contributions can be made by the contributor in the election to the ABC joint candidates committee, or to any candidate committee established in the election by candidates A, B or C.

2. Example. The ABC joint candidates committee receives a contribution of $300 in an election from a contributor who has contributed $1,500 in that election to an individual candidate committee established or maintained by candidate A. The sum of $1,500 is the maximum amount an individual can contribute to a candidate committee in an election. Application of the equal attribution requirement set forth in (a) above would result in the attribution of $100.00 to Candidate A of the total $300.00 contribution to joint candidates committee ABC. Since the sum of the amount contributed to the candidate committee of A ($1,500), plus the attribution of $100.00 of the $300.00 contribution made to the ABC joint candidates committee, results in a total contribution from the contributor in the election of $1,600 to Candidate A, the ABC joint candidates committee must refund the $300.00 contribution to avoid receipt of an excessive contribution, or alternatively the candidate committee of A must refund $100.00 in order that the total contribution from the contributor in the election does not exceed the $1,500 per election contribution limit of candidate A.

19:25-11.6 Public question political committees

(a) A political committee which is organized to, or does, aid or promote the passage or defeat of a public question in an election, may accept a contribution from a contributor without limit, notwithstanding the contribution limits set forth in N.J.A.C. 19:25-11.2.

(b) A political committee which is organized to, or does, aid or promote the passage or defeat of a public question in an election, may make contributions without limit to another political committee, or to a continuing political committee.

19:25-11.7 County political party contribution limits

(a) In addition to the limits set forth in N.J.A.C. 19:25-11.2, a county political party committee shall not make a contribution, or aggregate contributions, in excess of $5,000 in an election to a candidate committee established by a candidate seeking election for an office in another county.

(b) In addition to the limits set forth in N.J.A.C. 19:25-11.2, a county political party committee shall not make a contribution, or aggregate contributions, in excess of $5,000 in a calendar year to a municipal political party committee in another county.

(c) In addition to the limits set forth in N.J.A.C. 19:25-11.2, a county political party committee may make contributions, or aggregate contributions, subject to the following limits:

1. To a candidate for State legislature in a legislative district in which less than 20 percent of the legislative district's population resides in the county of the contributing county political party committee, a contribution not to exceed $5,000 in the election; and

2. To a candidate for State legislature in a legislative district in which at least 20 percent but less than 40 percent of the legislative district's population resides in the county of the contributing county political party committee, a contribution not to exceed $25,000 in the election.

19:25-11.8 Return of excessive contributions

(a) A candidate, candidate committee, joint candidates committee, political committee, continuing political committee, legislative leadership committee, or political party committee, or a treasurer or organizational treasurer of such a committee, who receives a contribution in an amount exceeding any contribution limit set forth in this subchapter, shall return that portion of the contribution which exceeds the contribution limit to the contributor within 48 hours of such receipt, and shall make and maintain a written record of the contribution containing the following:

1. The date the contribution was received;

2. The name and mailing address of the contributor;

3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;

4. The amount of the contribution;

5. The amount of the contribution that exceeds the applicable contribution limit;

6. A photocopy of the check or written instrument received as a contribution; and

7. A photocopy of the refund check issued by the committee.

(b) A candidate, committee or treasurer who makes a refund pursuant to (a) above, shall report the refund transaction on the election fund or quarterly report required for the reporting period in which the refund was made.

(c) Failure to make a refund pursuant to (a) and (b) above may result in a finding of a knowing violation of the contribution limits set forth in this subchapter or the act.

HUMAN SERVICES

(a)

THE COMMISSIONER

Child Placement Rights

Adopted New Rules: N.J.A.C. 10:17

Proposed: April 18, 1994 at 26 N.J.R. 1563(a).

Adopted: March 6, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: March 6, 1995 as R.1995 d.187, **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. 9:6B-6; 30:1-12.

Effective Date: April 17, 1995.

Expiration Date: April 17, 2000.

Summary of Public Comments and Agency Responses:

The Department received comments from three sources: The Association for Retarded Citizens of Monmouth County; The Eden Family of Services of Princeton; and The Office of The Public Defender Law Guardian.

The Association for Retarded Citizens of Monmouth County had three comments.

COMMENT: Where the word sibling is used it should be changed to sibling(s).

RESPONSE: The Department agrees and has made the recommended change.

COMMENT: The reference to placement plan should be clarified. Is the term meant to coincide with case plan and individual habilitation plan?

RESPONSE: The Department had intended for the term placement plan to be encompassed within either the case plan or the individual habilitation plan. A definition for placement plan has been added.

COMMENT: Where the child's mental and physical well-being are mentioned it was suggested that emotional well-being be added.

RESPONSE: The Department agrees and has made the suggested change, at N.J.A.C. 10:17-2.1(b), and (c)11 and 12, since emotional factors were intended to be included in mental factors.

The Eden Family of Services of Princeton had one comment.

COMMENT: After commending the Division of Developmental Disabilities for establishing policies and procedures for children placed outside their home, it was suggested that a statement be added to the effect that the right of children placed outside the home to effective behavioral treatment is paramount.

RESPONSE: The Department understands the concern raised but does not agree that such a statement should be added to the rule, since many important rights exist when children are placed outside the home and that no one right is paramount.

The Office of The Public Defender Law Guardian had the following comments.

COMMENT: The Department of Human Services' Divisions of Mental Health and Hospitals and Juvenile Services should be included within the scope of this rule.

RESPONSE: The Department is not in agreement with this position. (1) The Division of Mental Health and Hospitals and its contract agencies do not have the legal authority to place children outside their home, and no such placements are made. Psychiatric hospitalizations were not intended to be included within the scope of the Child Placement Bill of Rights Act. (2) The Division of Juvenile Services was also not envisioned as being included within the scope of the statute. The Division was in the Department of Corrections when the Child Placement Bill of Rights Act was enacted and all placements in this setting are court ordered/involuntary in nature.

COMMENT: The definition of case plan is questioned as being confusing.

RESPONSE: The Department disagrees with this comment and no change has been made. Case plan is defined at N.J.A.C. 10:133D-2, and these rules utilize that definition.

COMMENT: At N.J.A.C. 10:17-1.3, the term "every reasonable effort" should be used instead of only the term "reasonable efforts" which is defined and used in the rule since the statute uses this term.

RESPONSE: The Department agrees with this comment and has made the recommended change. The definition of the term "reasonable efforts" has been changed to "every reasonable effort" for clarification. The term is intended to encompass the term "best efforts" which is also used in the statute.

COMMENT: The subchapter entitled Policies and Procedures is criticized for not appropriately describing with any specificity the procedures that are to be employed beyond the provisions of the statute.

RESPONSE: The Department disagrees with this comment. The rules, however, have been amended to clarify that the Divisions have rules regarding placement and appeal rights and procedures which supplement these rules.

COMMENT: The provision at N.J.A.C. 10:17-2.1(a) is questioned as being inappropriate.

RESPONSE: The Department disagrees with this comment. The provision is appropriate and has been used in the Division of Developmental Disabilities rules on Placement, at N.J.A.C. 10:46B-3.1. If the commenter can offer the Department more information regarding the reason the provision is believed inappropriate, the Department could respond in more detail.

COMMENT: It is suggested that N.J.A.C. 10:17-2.1(b) is confusing and should be amended to clarify that it is not the rights that must be consistent, but that the rights require a placement which is consistent with the remainder of the provision.

RESPONSE: The Department agrees with this comment and has made the recommended change.

COMMENT: The reference to family contact at N.J.A.C. 10:17-2.1(b) is questioned as being unclear.

RESPONSE: The Department disagrees with this comment and no change has been made. The intent of the revision is to clarify that family contact with the child in placement may be limited, consistent with what is in the best interests of the child. An example would be a Division of Youth and Family Services placement of a child for protection from abuse or neglect by a family member. In such a situation, the best interests of the child might require limitation of family contact.

COMMENT: It is recommended that the reference to "except in emergencies" at N.J.A.C. 10:17-2.1(c)1 be deleted as being superfluous.

RESPONSE: The Department disagrees with this comment and no change has been made. The provision regarding every reasonable effort does not clearly address emergency situations; accordingly, a reference to emergency situations is appropriate.

COMMENT: It is recommended that the reference to "division" be changed to the Department at N.J.A.C. 10:17-2.1(c)2.

RESPONSE: The Department agrees with this comment and has made the recommended change, since the Department, not the Division, is the responsible agency in this context.

COMMENT: The provision at N.J.A.C. 10:17-2.1(c)4 is questioned, since the mere fact that the siblings do not also suffer from a disability is not sufficient to justify the separation of siblings. It is suggested that children should not be separated from siblings regardless of the disability.

RESPONSE: The Department understands and appreciates the nature of this concern but it has determined that a change is not in order. Moreover, to follow through with the comment would, in the Department's view, mean that the least restrictive setting appropriate to the child with the greatest special needs would drive the choice of settings for both children. For example, if one child required institutional placement while the other required only home-based, it would not be appropriate to place both children together in either the institutional or the community setting. It should be noted with regard to the Division of Developmental Disabilities that it would violate licensure standards to place children without disabilities in facilities which are expressly licensed to serve persons with developmental disabilities.

COMMENT: The provision at N.J.A.C. 10:17-2.1(c)5 is questioned in that it allows the parental visits to children to occur as much as 30 days after placement. It also allows the limiting of visitation on the basis of clinical contraindications.

RESPONSE: The Department understands and appreciates the nature of the comment but it has determined that no change is in order. The rules make reference at N.J.A.C. 10:17-2.1 to the fact that the Division of Developmental Disabilities and Division of Youth and Family Services have rules regarding placement and appeal rights and procedures which supplement these rules. It is recognized that the 30 day time period is only a maximum and not a minimum. For example, the Division of Youth and Family Services rule at N.J.A.C. 10:122D-1.5 requires that the visitation plan for ongoing visits shall be completed within five working days of the initial date of placement. The Division of Youth and Family Services rules at N.J.A.C. 10:122D-15 also clarify the reasons to limit visits.

COMMENT: It is recommended that N.J.A.C. 10:17-2.1(c)7 be amended to provide that the IHP/CP should state with specificity why a less restrictive setting is not appropriate and detail what steps or information is relied upon to support the restrictiveness of the placement.

RESPONSE: The Department is in agreement with this recommendation and the change has been made. An IHP/CP should specify the least restrictive placement which is appropriate, and this, recommendation, as any other recommendation, should be based on the information relied upon to reach that conclusion.

COMMENT: It is recommended that the provision at N.J.A.C. 10:17-2.1(c)8 should state that children have the right to be free from all forms of child abuse or neglect and should indicate how a child can invoke this protection.

RESPONSE: The Department is in agreement with this recommendation and the change has been made. Protection can be, and is, invoked in accordance with N.J.S.A. 9:6. The rule now includes a reference to N.J.S.A. 9:6-1 et seq. regarding abuse, abandonment, cruelty and neglect of children and the reporting requirement thereunder.

COMMENT: The provision at N.J.A.C. 10:17-2.1(c)13 is questioned for being silent as to how a child may assert the right to be represented in the IHP/CP process and how a child may obtain the services of an advocate. Additionally, it is asserted that a copy of the child placement rights should be given to all children, parents, legal guardians or other family members; and if the child is eligible for services from the Division of Developmental Disabilities, the notice should include information about the protection and advocacy system.

RESPONSE: The Department is in partial agreement with this comment and the rule has been changed to include notice concerning a child's placement rights to the parents or legal guardian. The Department believes that the representation and advocacy issues raised by this commenter are more appropriately addressed in the Division rules which supplement this chapter, regarding the IHP/PC process and the placement and appeal procedures. These issues have been addressed in the

rules of the DYFS and the DDD. Additionally, text has been added at N.J.A.C. 10:17-2.1(c)13 which clarifies that the child's representative may be a division caseworker or court-appointed person, and allows for notice of rights.

COMMENT: The provision at N.J.A.C. 10:17-2.1(c)14 is questioned in that it does not articulate a standard to determine how each child's potential will be maximized, and also it does not indicate how that agency will obtain an appropriate education for the child.

RESPONSE: The Department is not in agreement with this comment. It is not appropriate to establish a standard to measure the maximization of potential in this rule; instead, the specific goals and objectives should be contained in the IHP/CP. The divisions shall be responsible to advocate on behalf of the child with the local education agency (LEA) shall be responsible to provide the child's education. As part of this advocacy role, the divisions should participate in the development of the Individual Education Plan (IEP). The reference here to the IHP/CP has been changed to the IEP and the provision added that the IEP may be incorporated in the IHP/CP as appropriate.

COMMENT: The provision at N.J.A.C. 10:17-2.1(c)17 defines isolation too narrowly. For example, confinement in an unlocked room or social isolation might constitute isolation.

RESPONSE: The Department is not in agreement with this comment and no change has been made. Isolation is the use of a locked room, while other techniques as described could be appropriate behavior strategies as part of the IHP/CP.

COMMENT: It is suggested that the reporting requirements of N.J.A.C. 10:17-2.2 should provide for maintenance of a mailing list so that interested persons or agencies may receive regular updates at the six month intervals specified in the statute. Also, it is requested that the Department identify projected publication dates for the data, and that the data be automatically sent to the protection and advocacy system.

RESPONSE: The Department is not in agreement with this comment and no change has been made. In accord with the statute, the rule requires that the information shall be made available to the public upon request. Dissemination of information beyond that required by the controlling statute, and/or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., is considered neither necessary or practical. The rule provides that each person who requests one shall receive a copy of the report. Action beyond this would present an administrative and fiscal burden.

Summary of Agency-Initiated Changes:

The Department has added text at N.J.A.C. 10:17-2.1(c)14, 15 and 16 to clearly state the actions undertaken on behalf of a child by State agencies, in accordance with the specific rules regarding the processes, for example, the placement of children in licensed facilities and the provision of educational services.

Executive Order No. 27 Statement

These rules are not subject to any Federal requirements or standards; therefore, 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]*):

CHAPTER 17
CHILD PLACEMENT RIGHTS

SUBCHAPTER 1. GENERAL PROVISIONS

10:17-1.1 Purpose

This chapter establishes and describes the Department of Human Services' policies and procedures regarding the rights of children placed outside their home in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-1 et seq.) which concerns the rights of children placed outside their home by the Department of Human Services, the Department of Health or a board of education, or an agency or organization with which the applicable department contracts to provide certain services.

10:17-1.2 Scope

The scope of this chapter applies to the Department of Human Services' Division of Developmental Disabilities and Division of Youth and Family Services which place children outside their home.

10:17-1.3 Definitions

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

"Case Plan" (CP) means a Division of Youth and Family Services written plan developed for a child in placement outside of the home in accord with N.J.A.C. 10:133D-2. It is a single plan which includes the case goals for the child, the progress towards its achievement and any obstacles to reaching it, as well as the services or actions intended to meet the identified needs and who is responsible to provide the services and complete the activities, with projected time frames.

"Child" means a person under 18 years of age, except that persons under the age of 21 may retain the right to services, education and training in accord with N.J.S.A. 30:4-24.1 and 9:17B-2(f).

"Department" means the Department of Human Services.

"Division(s)" means the Division of Developmental Disabilities and the Division of Youth and Family Services.

"Every reasonable effort" means actions to maintain or reunite families rather than placing or maintaining children in out of home placement which include: identifying family problems; arranging and funding services to help families stay together; assessing extended family and friends as supports to the family or as alternatives to placement; arranging visitation with parents and siblings; ensuring that the child is in a stable placement which is appropriate to meet his or her needs; and periodic review of the child's continued need for an out of home placement and the possibility of return home, if appropriate.

"Individual Habilitation Plan" (IHP) means a Division of Developmental Disabilities written plan of intervention and action that is developed by the interdisciplinary team for each person to be provided services in accord with N.J.S.A. 30:6D-10 et seq. The IHP specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It is a single plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan which may identify a continuum of skill development that outlines progressive steps and the anticipated outcomes of services.

"Placement Plan" means the plan regarding the child's placement which is encompassed in the case plan (CP) in the case of the Division of Youth and Family Services and the Individual Habilitation Plan (IHP) in the case of the Division of Developmental Disabilities.

["Reasonable efforts" means actions to maintain or reunite families rather than placing or maintaining children in out of home placement which include: identifying family problems; arranging and funding services to help families stay together; assessing extended family and friends as supports to the family or as alternatives to placement; arranging visitation with parents and siblings; ensuring that the child is in a stable placement which is appropriate to meet his needs; and periodic review of the child's continued need for an out of home placement and the possibility of return home, if appropriate.]

SUBCHAPTER 2. POLICIES AND PROCEDURES

10:17-2.1 Rights of child placed outside his or her home

(a) All placements of children outside the home by a division shall be in accord with all applicable Federal and State statutes and regulations, including the State Code of Criminal Justice provision at N.J.S.A. 2C:30-4 by which the disbursement of public *[moneys]* ***monies*** or incurrence of obligations in excess of appropriation and limit of expenditure is prohibited as criminal activity. In an effort to provide for all clients fairly, it is recognized that division appropriations and allocations need to be applied across the State and across the entire fiscal year, and that planning and judgment are necessary and appropriate on a case by case basis as well to ensure that appropriations are not dissipated in an effort to meet extraordinary needs of one client to the detriment of the rest of the population who require and could benefit from services needed to be funded from the same finite source. ***The divisions have rules***

regarding placement and appeal rights and procedures which supplement this rule.*

(b) *[The rights of children placed outside their home by a division shall be]* ***When placement is deemed appropriate, a Division shall place a child in a placement*** consistent with the health, safety and physical and psychological welfare of the child ***and*** as appropriate to the individual *[circumstances of the]* child's physical***, emotional*** or mental development. *[The]* ***A*** division*[s]* may place *[children]* ***a child*** for treatment purposes to address *[their]* physical, emotional or developmental needs, while the Division of Youth and Family Services may additionally place a child for protection from abuse or neglect. Regardless, although the amount of contact the child will continue to have with his or her family while in placement will *[of course]* vary according to a number of factors, in all situations the best interest of the child is the driving force in any IHP/CP that is developed for that child. *[Additionally, the]* ***The*** Division of Youth and Family *[Services has regulations]* ***Services' rules*** regarding placement outside of the home at N.J.A.C. 10:122A, 10:122B, 10:122C, 10:122D and 10:122E.

(c) The specific rights of children placed out of home are clarified in this subsection in accord with applicable law and *[regulations]* ***rule*** and as set forth in the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-4):

1. A child has the right to placement outside his or her home only after the *[division]* ***Department*** has made *[a]* ***every*** reasonable effort to enable the child to remain in his or her home. Except in emergencies, those efforts shall be identified in his or her IHP/CP, including the provision or arrangement of financial ***(as prescribed in Division of Family Development Assistance Standards Handbook at N.J.A.C. 10:82)*** or other assistance and services ***available through other divisions of the Department and community agencies and*** subject to the division's appropriation***,*** *[and]* consideration of the needs of other eligible persons***, and specific division rules which supplement this chapter***.

i. In the instance of an emergency, the division shall develop an IHP/CP as soon as possible, but no less than 30 days after the emergency placement.

2. A child being placed outside of his or her home has the right to the best effort*[s]* of the division, including the provision or arrangement of financial ***(as prescribed in Division of Family Development Assistance Standards Handbook at N.J.A.C. 10:82)*** or other assistance and services ***available through other divisions of the Department and community agencies*** as necessary, to attempt to place the child with a relative. The efforts of the division shall be subject to the limit of the division's appropriation ***and specific division rules which supplement this rule,*** and shall reflect a reasonable allocation of *[those]* ***the division's*** resources.

3. A child being placed outside of his or her home has the right to the best effort*[s]* of the division, including the provision or arrangement of financial ***(as prescribed in Division of Family Development Assistance Standards Handbook at N.J.A.C. 10:82)*** or other assistance and services ***available through other divisions of the Department and community agencies*** as necessary, to place the child in an appropriate setting in his or her own community. ***The efforts of the division shall be subject to the limit of the division's appropriation and specific division rules which supplement this rule, and shall reflect a reasonable allocation of the division's resources.***

4. A child being placed outside of his or her home has the right to the best effort*[s]* of the division to place the child in the same setting with his or her sibling***(s)*** if the sibling***(s)*** is also being placed outside his or her home, except where such placement is determined to be clinically inappropriate. A child's placement in a setting not with his or her sibling***(s)*** may be effectuated if the child has a specific medical condition or disability which is not shared by the sibling***(s)***, or such placement is not clinically appropriate. Where the above conditions are present the child may be placed in a situation licensed to accept only persons with such a medical condition or disability.

5. A child in placement outside of his or her home has the right to visit with his or her parents or legal guardian as soon as possible after placement, but no more than 30 days after the placement, and to visit with his or her parents or legal guardian, on a regular basis thereafter as indicated in the IHP/CP, and to otherwise maintain contact with his or her parents or legal guardian.

i. Visitation may be limited when clinically contraindicated or restricted by court order, and any limitation of visitation shall be reflected in the IHP/CP. ***In Division of Youth and Family Services cases, visits may be further limited pursuant to N.J.A.C. 10:122D-1.5.***

ii. The division shall arrange a follow-up visit with the parents or legal guardian and the child as soon as possible after the placement, but no more than 30 days after the placement, to develop an IHP/CP which shall establish the frequency of follow-up visits.

iii. The division, in accord with the IHP/CP, shall facilitate contact and provide or arrange for transportation as necessary. Families shall be encouraged to provide transportation wherever possible. Where the family requires assistance, the division shall coordinate the provision of transportation using existing and generic resources. The division's ability to provide direct transportation assistance shall be subject to the limitation of the division's financial and other resources.

6. A child in placement outside of his or her home has the right to visit with his or her sibling***(s)*** on a regular basis and to otherwise maintain contact with his or her sibling***(s)*** if the child was separated from his or her sibling***(s)*** upon placement outside his or her home.

i. Visitation may be limited when clinically contraindicated or restricted by court order, and any limitation of visitation shall be reflected in the IHP/CP.

ii. The division, in accord with the child's IHP/CP, shall facilitate visits between the child and his or her siblings or otherwise maintain contact between the child and his or her siblings where such contact is determined in the IHP/CP to be clinically appropriate.

iii. The division shall provide or arrange for transportation as necessary. Families shall be encouraged to provide transportation wherever possible. Where the family requires assistance, the division shall coordinate the provision of transportation using existing and generic resources. The division's ability to provide direct transportation assistance shall be subject to the limitation of the division's financial and other resources. ***In Division of Youth and Family Services cases, visits may be further limited pursuant to N.J.A.C. 10:122D-1.5.***

7. A child being placed or in placement outside of his or her home has the right to placement in the least restrictive setting appropriate to his or her needs and conducive to his or her health and safety. ***The IHP/CP shall document with specificity why a less restrictive setting is not appropriate and detail the information relied upon to support the placement.***

8. A child being placed or in placement outside of his or her home has the right to be free from ***all forms of*** physical or psychological abuse ***including the use of corporal punishment, in accord with N.J.S.A. 9:6-1 et seq. which imposes a reporting requirement with regard to the abuse, abandonment, cruelty and neglect of children***.

9. A child being placed or in placement outside of his or her home has the right to be free from repeated changes in placement before his or her permanent placement or return home. Every effort shall be made to provide a stable placement until the child can return to his or her home and, except in emergencies, any change in placement shall be made in accordance with the child's IHP/CP.

10. A child in placement outside of his or her home has the right to have regular contact as indicated in the IHP/CP with any caseworker assigned to his or her case who is employed by the division or any agency or organization with which the division contracts to provide services and the opportunity, as appropriate to his or her age and ability, to participate in the planning and regular review of his or her placement plan, and to be informed on a timely basis of changes in any placement plan which is prepared pursuant to law or regulation and the reasons therefor in terms and language appropriate to his or her ability to understand. ***The Division of***

Youth and Family Services has rules regarding "In-person Visits with Clients and Substitute Care Providers" at N.J.A.C. 10:133D-4.*

11. A child being placed or in placement outside of his or her home has the right to have a placement plan, as required by law or regulation, that reflects his or her best interests and is designed to facilitate his or her placement or return home in a timely manner that is appropriate to his or her needs, and to services of a high quality that are designed to maintain and advance his or her mental*, **emotional*** and physical well-being.

i. In the case of placements by the Division of Developmental Disabilities, the interdisciplinary team shall consider the continued need for an out of home placement, the appropriateness of the present placement and the possibility of return home at the time of the annual IHP. Additionally, a review of the IHP may be requested at any time by the parent or legal guardian.

ii. In the case of placements by Division of Youth and Family Services, the placement shall be in accord with the case plan as set forth at N.J.A.C. 10:133D-2.

12. A child being placed or in placement outside of his or her home has the right in that placement to services of a high quality that are designed to maintain and advance the child's mental*, **emotional*** and physical well-being in accordance with the child's IHP/CP. Except where the child lives in his or her own home or with a relative, the division shall place the child in an appropriately licensed or approved facility or in an otherwise approved placement.

13. A child being placed or in placement outside of his or her home has the right in that placement to be represented in the planning and regular review of his IHP/CP and the provision of services to him or her, his or her parents or legal guardian and temoporary caretaker. ***This representative may be the child's division caseworker or a person appointed by the court for this purpose. The division shall provide notice concerning a child's placement rights to the parents or legal guardian.*** The child may be represented by a person other than his or her parents or legal guardian and temporary caretaker who will advocate for his or her best interests and the enforcement of his or her rights. The parent, legal guardian, temporary caretaker, advocate or other interested party shall be invited to attend the annual IHP/CP meeting.

14. A child being placed or in placement outside of his or her home has the right in that placement to receive an educational program which will maximize his or her potential. Responsibility for the provision of the child's education shall remain with the local education authority (LEA). The division shall advocate for the provision of a free and appropriate education for the child and *[shall]* ***may*** attend any meeting with the LEA to develop *[an IHP or CP]* ***the individualized education plan. The educational plan may be incorporated in the IHP or CP, as appropriate*.**

15. A child in placement outside of his or her home shall have the right to receive adequate, safe and appropriate food, clothing and housing. This may be provided through the use of division specific or generic resources. ***This right shall be assured by placing children only with appropriately licensed or approved facilities and providers.***

16. A child in placement outside of his or her home shall have the right to receive adequate and appropriate medical care***; as authorized by and described in the State's Title XIX Medicaid State Plan***. This may be provided through the use of division specific or generic resources.

17. A child in placement outside of his or her home shall have the right in that placement to be free from unwarranted physical restraint. Isolation, which is the use of a locked room, shall be prohibited.

i. The Division of Developmental Disabilities' use of any mechanical restraints shall comply with the provision of N.J.A.C. 10:42.

ii. The Division of Youth and Family Services prohibits the use of mechanical restraints in division-operated facilities. The Division of Youth and Family Services Manual of Requirements for Residential Child Care Facilities at N.J.A.C. 10:127 permits the use of certain types of mechanical restraints in privately-operated facilities, although stringent controls are imposed on the uses of such restraints.

10:17-2.2 Data on children placed in out-of-home settings

(a) The divisions shall prepare and update at least every six months aggregate non-identifying data about children under their care, custody or supervision who are placed in out-of-home settings in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-5). *[This data shall be submitted to the Department for compilation as a Department semi-annual report which shall be made available to the public upon request.]* ***The reports of the divisions shall be compiled semi-annually and provided by the Department to the public upon request.***

(b) The data to be prepared and updated by the Department/divisions shall include the following in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-5):

1. The number of children placed outside their homes during the six-month period and the cumulative number of children residing in out-of-home settings;
2. The age, sex and race of the children residing in out-of-home settings;
3. The reasons for placement of these children;
4. The types of settings in which these children reside;
5. The length of time that these children have resided in these settings;
6. The number of placements for those children who have been placed in more than one setting;
7. The number of children who have been placed in the same county in which their parents or legal guardians reside and the number who have been placed outside of the State;
8. With regard to the Division of Youth and Family Services only, the number of children who have been permanently placed or returned to their homes during the six-month period, and a projection of the number of children who will be permanently placed or returned to their homes during the following six-month period; and
9. With regard to the Division of Youth and Family Services only, the number of children who have been permanently placed or returned to their homes who are subsequently returned to an out-of-home setting during the six-month period.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Administration; Eligibility for Services; Waiting Lists

Adopted New Rules: N.J.A.C. 10:46C

Proposed: May 2, 1994 at 26 N.J.R. 1752(a); see also 26 N.J.R. 2756(a).

Adopted: March 6, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: March 13, 1995 as R.1995 d.197, **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. 30:4-25.6.

Effective Date: April 17, 1995.
Expiration Date: April 17, 1996.

Summary of Public Comments and Agency Responses:

The Division received 19 sets of comments in response to the proposal at 26 N.J.R. 1752(a) (May 2, 1994.) Comments were submitted by New Jersey Protection and Advocacy, Inc., (formerly the Public Advocate), The Eden Family of Programs, The Council for Outreach and Services for Autistic Citizens (COSAC), Assemblyman Dalton, Assemblywoman Vandervalk, Thomas Ott, Richard and Astrid Acito, Joanne Miller, Association for Retarded Citizens of (ARCNJ), Spectrum for Living, Inc., Linda Ambroziak, University of Medicine and Dentistry of New Jersey, (UMDNJ), the Bancroft School, Miranda Black, Kathleen Wigfield, the Developmental Disabilities Council, the Association for Retarded Citizens of Union County, the Association for Retarded Citizens of Monmouth County, and Mr. and Mrs. Donald Woods.

In addition, in response to several written requests, the Division held a public hearing at the Labor Education Center at the State University of New Jersey, Rutgers on July 27, 1994. (see 26 N.J.R. 2756(a).) At that time, 11 individuals and representatives of several organizations

presented comments. Presenting comments were Larry Quinlan, Marshall Bord of Community Access Unlimited, Inc, Patricia Russo of the Community Health Law Project, William Testa of the New Jersey Association of Community Providers (NJACP), Nancy Delaney, President of the Association for Retarded Citizens, Morris County, Suzanne Potter, Director of Psychology and Social Services Department at the Matheny School and Hospital in Peapack, NJ, Cheryl Chapel, Tony Santia, Charmar Huggins, and Bill Byrnes. The comments supported various changes in the rules, which are reflected in the following comments. After considering all of the comments, the hearing officer, James M. Evanochko, recommended that the proposal be adopted with the amendments contained in this adoption. The agency concurred. The hearing record may be reviewed by contacting James M. Evanochko, Administrative Practice Officer, Division of Developmental Disabilities, CN 726, Trenton, N.J. 08625.

As a result of the comments received, the Division has established a work group to make recommendations for change in the way the Division manages its waiting list. The initial report of this group is expected in early 1995. Consequently, the Division is adopting these rules for one year, that is, until April 17, 1996.

1. COMMENT: Waiting lists for services are unlawful. Only a portion of the Division's clients will receive services. N.J.S.A. 30:6D-9 requires that every service shall be designed to maximize individual potential in a manner least restrictive of personal liberty. Delete the language in N.J.A.C. 10:48-4.1(b) which says "services shall be limited to the Division's funding in a given fiscal year."

RESPONSE: The Division would like nothing more than to provide services to every individual who requests those services. However, N.J.S.A. 30:4-25.6 states:

In the event that the functional service (of the Division) which has been specified as the most appropriate from time to time is not immediately available, the Commissioner (of Human Services) shall provide an alternate service and, at the request of the applicant, shall also place the person with a developmental disability on a waiting list for the preferred service pending its availability.

There is no entitlement to services of the Division under New Jersey law. Furthermore, the New Jersey Supreme Court has established unequivocally that even where the Legislature mandates a particular program, it is subject to the legislative appropriation process. *Karcher v. Kean,* 97 *N.J.* 483 (1984); *City of Camden v. Byrne,* 82 *N.J.,* 133, 154-55 (1980).

Finally, the Director of the Division of Developmental Disabilities is forbidden to make expenditures that "exceed in any year the sums appropriated by the legislature" by law (N.J.S.A. 30:2.2).

2. COMMENT: Delete N.J.A.C. 10:48-4.1(c). Maintaining an incomplete list of names which is separated into four gross categories will do nothing to aid in efficiently filling vacancies or to ensure the best match between client and provider. It also does not allow the waiting list to be used as an effective planning tool.

RESPONSE: The four categories were originally established in the agreement with the Public Advocate signed in 1985.

If the Division was to recommend a specific type of residence or day program it would not take into account the fact that many individuals can have their needs met in a variety of settings. To limit them to only one type of service might prevent them from being considered for another type of vacancy which may become available and can meet the individual's needs.

The waiting list is not the Division's sole planning document. Planning is usually driven by the funding available for services. The waiting list alone is not the only method by which a match between provider and individual is made. That is done on the basis of a review of information contained in the client record, evaluations by staff and visits by the individual and his legal guardian to possible program sites. Division policy requires that the person's Individual Habilitation Plan be the controlling document for the provision of services to the individual.

3. COMMENT: The language in N.J.A.C. 10:48-4.2 is misleading. It suggests that all adults waiting for service will appear on the waiting list. In fact, the Division excludes people in developmental centers and other types of institutions, such as psychiatric hospitals and nursing homes.

RESPONSE: The Division does not feel it is appropriate to include these groups in the present rules. The Division is provided, at times, appropriations for placements which are targeted to specific populations. The budget language may identify the persons eligible for consideration for placement. The target populations of the specific appropriation may include, but not be limited to, developmental centers or psychiatric hospitals. Except for such situations, people residing developmental centers and other types of institutions are already receiving services and are considered transfers.

4. COMMENT: The rules should apply to children. As drafted, they only apply to categories I and II. The waiting list will not be an effective planning tool. It will also not serve individuals who age out of their local educational authorities.

RESPONSE: The Division disagrees. It is the philosophy of the Division that children should be maintained at home whenever that is possible. This sentiment is also reflected in New Jersey law, the Child Placement Bill of Rights (N.J.S.A. 9:6B-1 et seq.) and the Bring Our Children Home Act (N.J.S.A. 30:4C-67 et seq.).

The local education authority will usually fund a residential placement for an individual through age 21. At the time the person will require residential services from the Division, he or she will be an adult.

5. COMMENT: The definition of "Community Services" should be revised to clarify that the Division operates through geographic regions.

RESPONSE: The Division agrees and appropriate wording has been added.

6. COMMENT: The definition of "Individual Habilitation Plan" (IHP) should be revised to conform to the statute.

RESPONSE: This is the Division's interpretation of the law. The Division believes that it incorporates the requirement of N.J.S.A. 30:6D-11.

7. COMMENT: The rules narrow the definition of Individual Habilitation Plan described in the law by permitting an IHP which addresses only the specific service(s) requested by the individual.

RESPONSE: The rules do not seek to narrow the definition of the IHP. The rules merely provide an option for the person with developmental disabilities. Furthermore, the rules address only the term "IHP" and do not distinguish between persons with a full IHP and those who request only specific services.

In some instances, an individual may only want a specific service from the Division. N.J.A.C. 10:46-2.3(b), for example, permits an individual to apply for support services to avoid the need for more comprehensive services at a future point.

In such instances, the individual with a developmental disability may not wish to have a plan developed to address all areas of his or her life. This wording allows the individual to choose a less intrusive planning process. If the individual wishes a full IHP, they are entitled to request one at any time.

8. COMMENT: The definitions of "Interdisciplinary Team" (IDT) and "Placement Review Team" (PRT) should be clarified. Specifically the IDT, not the PRT, should have the responsibility to: assess relevant information in order to determine the most appropriate and least restrictive alternative living arrangement requested by the individual or his or her legal guardian.

RESPONSE: The Division agrees to the proposed change, since the distinct responsibilities of each team should be described. Wording has also been added at N.J.A.C. 10:48-4.5(a) (adopted as N.J.A.C. 10:46C-1.5(a)) to indicate that the Intake Team makes the initial determination at the time of eligibility if residential services are requested. This clarification of roles of Division staff is not viewed as substantive, since all interaction with the client and the family remains the same. A definition of Intake Team has been included in the adoption. The PRT will make the initial assignment for a person admitted to services who did not request residential services but later makes such a request. Additionally, the definition of the PRT has been amended to clarify responsibilities.

9. COMMENT: Greater specificity regarding the "professionals within Community Services" who serve on the team should be provided. The composition should be in keeping with the administrative function of the PRT. The authority of the PRT should be limited to establishing some order within each category and to approve actual placements.

RESPONSE: The definition of the PRT has been revised to indicate that the team shall consist of professionals working directly with persons served or responsible to develop programs as well as other professional staff, as appropriate.

10. COMMENT: Reference in the definition of PRT to the PRT considering the availability of placements within developmental centers should be deleted.

RESPONSE: The Division agrees that this is not a proper function of the PRT. It has been deleted, since this function is handled by Division Central Office staff.

11. COMMENT: The PRT should not have the authority to overrule the IDT assignment of a waiting list category.

RESPONSE: Any change is reviewed and recommended by the IDT. IDTs, however, are subject to influence by the families that they serve. The PRT provides an objective review of the IDT's recommendation and can evaluate the needs of the individual against the needs of others similarly situated.

12. COMMENT: While there should be some form of rank ordering of clients within each category, the definition of PRT should be amended where it is indicated that the PRT "will prioritize the waiting list assignment of the individual in consideration of others already awaiting placement."

RESPONSE: The Division agrees that this language should be deleted from the rule. The sentence has been deleted from the definition, since ranking is provided for at N.J.A.C. 10:48-4.1(c) (adopted as N.J.A.C. 10:46C-1.1(c)).

13. COMMENT: The PRT should assume responsibility for informing clients and their guardians and advocates of its decisions.

RESPONSE: The Division agrees. The definition has been amended to indicate that the chairperson of the PRT notifies the individual, his or her legal guardian and the IDT of the decision of the PRT. This section now agrees with the requirement for such notification at N.J.A.C. 10:48-4.6(d) (adopted as N.J.A.C. 10:46C-1.6(d)).

14. COMMENT: While the Division can permissibly maintain a waiting list for "most appropriate services" it cannot do so for "appropriate alternate services."

RESPONSE: The comment is unclear. The present wording does not authorize the Division to maintain a waiting list for appropriate alternate services nor does the Division have any intention to do so.

15. COMMENT: The term "roster" in the definition implies a rank ordering. It should be deleted.

RESPONSE: The American Heritage Dictionary defines "roster" as "a list of names." No rank ordering is indicated. This accurately characterizes the Division's waiting list.

16. COMMENT: N.J.A.C. 10:48-4.4(a) should be revised to state that all individuals for whom "the most appropriate community residential or day program is not immediately available shall be assigned to the waiting list."

RESPONSE: The Division agrees that the language is unclear and the wording has been amended to incorporate the suggested text. The Division does not view this change as substantive, since the provision for individual request has been added to N.J.A.C. 10:48-4.5(a) (adopted as N.J.A.C. 10:46C-1.5(a)).

17. COMMENT: N.J.A.C. 10:48-4.4(b)3 should be revised to better reflect the needs of families in crisis due to aging or illness of the primary caretaker. Individuals should routinely be assigned to Category I when the primary caretaker reaches the age of 65.

RESPONSE: The Division agrees that age and health are important considerations, but do not automatically place an individual in a particular category. N.J.A.C. 10:48-4.4(b)4 has been added to take into account the age and health of the caregiver, and N.J.A.C. 10:48-4.4(d)1 has been deleted, to allow these factors to be considered.

18. COMMENT: N.J.A.C. 10:48-4.4(c) should be revised to incorporate wording from the original agreement between the Public Advocate and the Division concerning the management of waiting lists. The criterion is "or will significantly fail to achieve the goals in the IHP."

RESPONSE: The Division disagrees. There is no realistic way to determine the impact of the lack of a placement on the goals of the IHP. The Division did not include this language in the rules because the effect cannot be readily determined.

19. COMMENT: N.J.A.C. 10:48-4.4(d) should be expanded to include children in Category III.

RESPONSE: The Division disagrees. As previously noted, children should remain with their families whenever possible.

20. COMMENT: N.J.A.C. 10:48-4.4(e), which deals with the registry for services, should be revised to eliminate the limitation to adults and the word "needed" should be changed to "requested."

RESPONSE: This subsection does not deal with the registry nor any category in the 1985 agreement between the Public Advocate and the Division. This category, "Willing to accept non-residential services as an alternative," appears in the Division Circular 8, which was jointly developed by the Public Advocate and the Division in 1986, and became the text of the proposed rules. N.J.A.C. 10:48-4.2 (adopted as N.J.A.C. 10:46C-1.2) clearly states that the rules apply to children only if the criteria in Category I or II. (See response to comment 4, above.) The provision for requests is already included in subsection (e).

21. COMMENT: Revise N.J.A.C. 10:48-4.4(f) to allow persons other than the individual or his or her legal guardian to request changes in category. This should include family members or advocates.

RESPONSE: The Division disagrees. The family may have different priorities than the wishes of the competent individual or legal guardian. To allow requests for changes in those situations would result in questions as to whose interests should prevail. With respect to advocates, the Division expects that they will always represent the interests of the competent individual. If an advocate or other person disagrees with the interests of a legal guardian or competent individual legal procedures can be followed to ensure the guardian acts in the best interest of the individual.

22. COMMENT: N.J.A.C. 10:48-4.5(a) should be amended to include notification to the individual as well as the family.

RESPONSE: Wording has been added to notify the individual, if competent, or his or her legal guardian.

23. COMMENT: N.J.A.C. 10:48-4.5(b) should be amended to include both the category and the type of services requested on the cover sheet.

RESPONSE: The Division agrees. The waiting list category is already indicated in the IHP cover sheet. The type of service requested shall be added.

24. COMMENT: N.J.A.C. 10:48-4.6(a) should be amended to clarify that the phrase "where appropriate" refers to situations where circumstances have changed. It does not mean that there is discretion on the part of the Division about when to discuss changed situations.

RESPONSE: The phrase means that there will be a discussion with a legal guardian, if one has been appointed. The phrase "where appropriate" has been deleted as unnecessary.

25. COMMENT: N.J.A.C. 10:48-4.6(b) should include a time frame for the review, such as 14 days.

RESPONSE: The Division agrees to invite parents to meet with the PRT. Since families will need to schedule according to their availability, no time frame is appropriate.

26. COMMENT: N.J.A.C. 10:48-4.6(c) should be amended to allow the client, parent, guardian or advocate to attend the PRT.

RESPONSE: N.J.A.C. 10:48-4.6(c) (adopted as N.J.A.C. 10:46C-1.6(c)) has been amended to require that the individual or guardian be invited to attend the meeting to present his or her views. The individual or legal guardian shall leave the meeting once their views have been presented. (see comment 21.) Parents or others may attend the meaning if invited by the competent individual or legal guardian.

27. COMMENT: The Public Advocate recommends that language regarding resources be eliminated from the proposal and that the Division document the means by which statewide searches will occur.

RESPONSE: The Division disagrees. As previously stated, the resources of the Division are limited to the funding provided during a given fiscal year. Documentation concerning a State-wide search would be contained in the client record, to which the individual or guardian has access in accordance with N.J.A.C. 10:41.

28. COMMENT: In N.J.A.C. 10:48-4.6, Paragraphs 2 and 4 of subsection (d) should be eliminated. The PRT should not be permitted to change the urgency status of the individual. This is the responsibility of the IDT.

RESPONSE: N.J.A.C. 10:48-4.5 (adopted as N.J.A.C. 10:46C-1.5) has been amended to clarify that the initial waiting list assignment is made by the Intake Team or the PRT. Changes in the waiting list assignment and the accompanying need for services are addressed by the PRT, as shown in the proposed rule, with input from the IDT.

29. COMMENT: N.J.A.C. 10:48-4.6(d)6 should have a time frame for notification of the individual and other interested parties. It should also ensure that notice will occur in a manner which "ensures effective communication" under the Americans with Disabilities Act. Not all individuals will achieve effective communication through a written notice. Provision should be made to convey the information in the individual's primary language. Finally, minutes of the PRT meetings should be recorded and the record maintained in the files.

RESPONSE: The Division agrees to add time frames requiring notification of changes within 30 days. That notification should be made in writing but a requirement has been added to provide alternate forms of communication as needed. Minutes are not appropriate since the PRT may review the needs of many different individuals for a specific vacancy.

30. COMMENT: N.J.A.C. 10:48-4.7 should be eliminated. As an alternative, subsections (a) and (b) should be reworded to reflect the language of the controlling statute.

RESPONSE: The Division disagrees that this section should be deleted. The wording in subsections (a) and (b) are adequate as written. The purpose of these rules is to provide the specific procedure to be followed, which is derived from the controlling statute.

31. COMMENT: N.J.A.C. 10:48-4.7(c) should be eliminated.

RESPONSE: As previously indicated, the Division cannot remove wording which indicates that services are subject to the limitation of available funding.

32. COMMENT: N.J.A.C. 10:48-4.7(e) should be revised to allow offers of placement to occur in person and in a manner most accessible to the individual, his or her guardian and family. This should include alternate means of communication and consideration for individuals whose primary language is not English. The section should also allow notification of acceptance or declination of a proposed placement within a fixed time period.

RESPONSE: Language has been added to indicate that offers may be made in person when appropriate or by telephone; however, they are to be confirmed in writing. Text has also been added to assure that the Division shall make reasonable efforts to ensure effective communication with the individual. A time period of 14 days is already included in subsection (e).

33. COMMENT: N.J.A.C. 10:48-4.7(e)2 should be amended to reflect the rigorous efforts which must be made by Division staff to contact individuals to elicit a response. The Public Advocate is concerned that families without telephones who are not English literate, those who are on vacation or others may lose the opportunity for placement.

RESPONSE: Wording has been added to require an in-person contact where appropriate. Two attempts at such contact should be made.

34. COMMENT: N.J.A.C. 10:48-4.7(f) and (g) penalize clients for refusing an offer by automatically lowering the waiting list category to less than "urgent." This should be eliminated.

RESPONSE: Persons who are assigned to Category I are presumed to be most urgently in need. The Division extends considerable effort in trying to locate an appropriate service. Once an offer of a reasonable service is refused, the Division must reconsider if the person is still appropriate for Category I.

In recognition of the difficulty of these situations, the wording in subsection (f) has been amended to indicate that when an offer of placement is refused, the Division shall review the reasons for rejecting the offer with the individual or his or her legal guardian to identify what needs were not met by the offered placement. Subsection (g) has been deleted. The right to appeal any Division action is preserved at N.J.A.C. 10:48-4.8 (adopted N.J.A.C. 10:46C-1.8).

35. COMMENT: The appeals section should be expanded to provide that clients receive information about the protection and advocacy system together with the notice of the right to appeal and a description of the appeals procedure.

RESPONSE: The Division will provide a summary of the appeals process to all clients. The Division expects the protection and advocacy agency to advise individuals of the availability of their specific services.

36. COMMENT: The IHP should include specific regression and deterioration limits if appropriate placement is not immediately available resulting in the individual being placed on a waiting list for services. As written, the IHP only specifies what skills are to be developed, what goals are to be met and the prioritizing of these goals and their outcomes. It is important to remember that certain individuals, when not able to continue in a specific training program or education atmosphere, lose skills at a significantly faster rate, resulting in the need to reassign an individual to a higher category.

RESPONSE: The Division recognizes that there are many variables in determining the services needed for any individual. The limits mentioned by the commenter are not appropriate to include in these rules. Some individuals may deteriorate, while waiting for placement, others may not. The Division case manager should be advised by the family of any change in circumstances. At that point, the IHP can be reviewed and a change in waiting list category can be requested.

37. COMMENT: Under N.J.A.C. 10:48-4.4, the wording is vague and often can be interpreted differently, not only by the individual and the family members but even by members within the IDT and PRT. The terms, "seriously regressing" and "extended waiting will be detrimental," can be construed several different ways. These terms should be clearly explained and regression levels and waiting times need to be spelled out within the IHP. Specifically as to the phrase "Extended waiting will be detrimental" a specific time frame needs to be set so that the "extended waiting" will not be detrimental.

RESPONSE: The criteria for "Extended Waiting will be Detrimental" is included under N.J.A.C. 10:46C-1.4(c). Time frames cannot be assigned since there presently is a waiting list for approximately 4,000 people. Any time frame included would not be viable. With regard to the term "seriously regressing," this will have to be determined individually based on specific circumstances. No definition could address all possible circumstances; therefore, the Division believes that it would not be appropriate to specify criteria further at this time. The Division is in the process of evaluating and developing criteria for future use.

38. COMMENT: N.J.A.C. 10:48-4.6 does not allow for the individual or the family to make suggestions regarding changes in the individual's category. We feel strongly that the individual or the family should have the right to petition for a review of the category of placement. Included in this is the need for immediate relief if some significant change occurs. As written, it appears that only the case manager can recommend review of category placement.

RESPONSE: Wording has been added to subsection (a) to indicate that the competent individual or his or her legal guardian may request a review of the waiting list status at any time.

39. COMMENT: N.J.A.C. 10:48-4.7(b) indicates that the individual may be offered an alternate site placement. We are concerned that if an individual accepts the alternate site, when the most appropriate site is not available, the individual may be "locked" into the alternate site. We would like to see additions to this provision that would ensure the Division's continued search for the most appropriate site and a yearly review of the individual's needs.

RESPONSE: In this case, alternate service does not usually mean an "alternate site placement." Most often the alternate placement is not a residential service. The individual remains on the waiting list in accordance with their needs. Any service provided or recommended would be reviewed at the time of the annual IHP meeting.

40. COMMENT: Under N.J.A.C. 10:48-4.1(c), waiting list will only indicate the urgency of need for day program or residential placement. The rule states that no specific number will be contained in any category. This rule places a great deal of discretion on the individual who will determine the "urgency of need" as well as the specific type of services needed. Based upon present budget constraints, it is inconceivable how DHS employees will be able to determine the appropriate level of urgency on a case-by-case basis. The Division should adopt a numerical system to ensure some level of fairness in this process.

RESPONSE: There is a de facto ordering system within the category. Individuals assigned to each waiting list category will have the date that they were placed in that category recorded, in accordance with an amendment to N.J.A.C. 10:48-4.1(c) (adopted as N.J.A.C. 10:46C-1.1(c)) which has been added on adoption. In the event that two individuals with identical needs were being considered for the same placement, the length of time on the waiting list could be used as the deciding factor, as required by N.J.A.C. 10:46B.

41. COMMENT: In N.J.A.C. 10:48-4.6(d)6 with respect to the procedure for adding to or changing the waiting list category, the case manager and chairperson of the PRT are given discretion as to notifying the individual and the legal guardian regarding the waiting list status. If an agency decision is going to impact when an individual may receive services, it should be required that the individual and or legal guardian be notified in writing within seven days of said decision. Further, the procedure should provide a remedy to the individual if they do not agree with the proposed change.

RESPONSE: The Division agrees that a notification to the individual or family should have a time frame. N.J.A.C. 10:48-4.6(d)6 (adopted as N.J.A.C. 10:46C-1.6(d)6) has been amended to require this notification within 30 days of a decision. Due to staff shortages, a seven day time frame is not workable.

Concerning a remedy if the individual does not agree with the decision, N.J.A.C. 10:48-4.8 (adopted as N.J.A.C. 10:46C-1.8) indicates that the Division appeal procedure (N.J.A.C. 10:48-1) should be used.

42. COMMENT: Many of the provisions contained in the proposed rules are inconsistent with the intent of the Appellate Division which ordered the adoption of DDD parity and placement standards, in *S.I., by way of G. and S.I. v. New Jersey Division of Developmental Disabilities.* 26 *N.J. Super.* 251 (App. Div. 1993.)

RESPONSE: In order to respond to the Appellate Division order in the case of *S.I.* as soon as possible, the present proposal reflects the

current system. The Division has assembled a group of consumers of services, representatives of families and provider agencies to make recommendations for change in the system. The Division is adopting the proposed rules for a one year period only.

43. COMMENT: Most appropriate services can be by-passed in favor of an alternate service, which by current practices are often inappropriate. We should be striving for appropriate services rather than offering ill defined alternatives.

RESPONSE: Unfortunately, the Division's funding does not allow it to offer the most appropriate service to all individuals who request services. In such instances, N.J.S.A. 30:4-25.6 requires the Division to offer an alternate service which, by definition, is something less than the appropriate service.

44. COMMENT: There is no language linking its (Division's) statutory mandate to funding and/or resources. Further, in our minds, the statute applies equally to all developmentally disabled, not just those whom the "Interdisciplinary Team" determine require "active services."

Perhaps your agency ought to provide its "clients," that is, the developmentally disabled, with a detailed analysis of its budget, for example, how much money is there? Where does it come from? How is it used? Such information might then allow us to begin to understand the basis on which the proposed rule was formulated.

RESPONSE: The Division's budget is a matter of public record. It is available for review by any member of the public. Furthermore, the Division is prepared to explain to any person making a request as to how monies are spent. The Division's budget is established by the Legislature. Its funds are not unlimited. For a public official to knowingly overspend his or her budget is a criminal offense.

45. COMMENT: By definition, a "developmentally disabled person" is one with a severe chronic disability likely to continue indefinitely. Accordingly, it is incomprehensible that anyone, let alone an Interdisciplinary Team, could determine that some, and not all, developmentally disabled require active services. Does that mean that there are some developmentally disabled who require "inactive service"? If so, please identify your criteria for "inactive services"? If so, please identify your criteria for "inactive services" and explain how "inactive services" are written into an IHP.

RESPONSE: Not everyone on the waiting list is seeking immediate placement. In many instances, individuals are willing to wait for a preferred service or have indicated that they do not want placement now, but may require it at some future point. Among the range of services offered by the Division, all of which are active services, is placement. This chapter deals only with the waiting list for placements.

46. COMMENT: We are not happy with the proposed rules' apparent goal of amending the definition of an IHP contained in N.J.S.A. 30:6D-11. Much of the definition of Individualized Habilitation Plan contained in the proposed new rules is meaningless. Further, it is simply not correct to suggest that an IHP may only address specific requests.

RESPONSE: Not everyone who applies to the Division for services wants the Division to develop a plan to address all facets of his or her life. In some instances, the individual may wish assistance in only one or two areas.

The service plan concept of an IHP was developed to allow the individual or legal guardian to have greater control over the planning process. N.J.A.C. 10:46C-1.5 has been added to clarify that it is the individual who determines when a service plan may be appropriate. Wording has also been added to clarify that a comprehensive IHP shall be developed whenever the individual or legal guardian requests one.

47. COMMENT: The proposed rules should not be adopted. If a disabled person is placed in a less than appropriate placement or does not receive the support they desperately need, they may fail to develop to their potential.

RESPONSE: The Division does not have the resources to serve all persons who request services. The rules are an attempt to treat fairly those people who are awaiting services.

48. COMMENT: The proposed rules codify the Division's current procedure for assigning persons to the waiting list. The Court seems to be telling the Division to scrutinize its curent procedure with significant public input. Instead, the Division has simply codified "business as usual" with no attempt to analyze this procedure in conjunction with the public to determine whether it is appropriate.

The Division should withdraw this proposal and draw together a meeting of Division staff, advocacy organizations and persons directly affected by this waiting list to review the current procedure and decide if there are any ways in which it can be improved.

RESPONSE: The Division appreciates the comment but feels compelled by the Appellate Court decision in *S.I.* to adopt at this time, rules which reflect current practices. The Division has been using these procedures since 1985 and they do reflect current practices.

The Division has put together a work group to review the waiting list procedures and make recommendations for change. The Division is adopting these rules for one year. It will propose new wording or amendments once the work group has completed its review. The Division received an initial report from this group in March, 1995.

49. COMMENT: Define "alternate services" including the appropriateness and duration of the alternative and the involvement and responsibility of the IHP and IDT.

RESPONSE: A definition of "alternate services" will be proposed. Alternate services are less than the most appropriate services. The duration cannot be stipulated, since the availability of the most appropriate service will be contingent upon resources.

50. COMMENT: The waiting list assignment must include a specific type of service need. If the list is generic, how can it be properly maintained and utilized? For example, an opening becomes available in a group home. The first three people on the list can be served in a supervised apartment or less structured environment. A generic list would potentially have people with fewer needs going to more costly environments or those with greater needs going to less costly services purely to save funds. This fails to recognize the person's dignity of risk; he or she should be offered services as close to the most appropriate service required. This can only be done if the service is identified on the list rather than being kept a secret through the use of a generic list. If the Division intends to use generic lists, will they be maintaining a separate more specific list. If so, where will this list be maintained, for what purpose and what means of access will people have to this separate list?

RESPONSE: The waiting list indicates a generic service need because many people can be served in more than one type of placement. Specific needs of the individual are reflected in the IHP. Furthermore, in planning for the transition of an individual to a placement when a specific placement is identified, the Division is required by law to develop an IHP which addresses the needs of the individual in order to make the transition, and the placement, successful. Any services needed by an individual are identified in that person's IHP, which is available to that competent individual or his or her parent/guardian.

51. COMMENT: "Active Treatment" is used in the definition of Individual Habilitation Plan (IHP). Given the fact that it relates to a determination made by the Interdisciplinary Team, it must be defined.

RESPONSE: The wording in the definition is not intended to connote a specific level of service. Regulations for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) have specific requirement for "Active Treatment," but the definition does not utilize the ICF/MR meaning. It uses these words in the commonly accepted manner, which is to connote the actual services needed or recommended, as reflected in the IHP.

52. COMMENT: In the definition of "Placement Review Team" the wording does not match the practice in the field. Families are informed of services provided by the Division and they are told to choose from these services.

RESPONSE: The wording which refers to the PRT's ability to determine the most appropriate and least restrictive alternate living arrangement requested by the family has been deleted, since this is already provided for in the definition of IDT.

53. COMMENT: An IHP cover sheet needs to be completed for people on the waiting list, but they are only receiving case management or social supervision, which does not normally involve an IHP process.

RESPONSE: The Division agrees. However, persons receiving case management or social supervision should have an IHP and the waiting list status should be indicated on the cover sheet. Therefore, no amendment to the rule is necessary.

54. COMMENT: All members of an IDT need to be notified of the individual's placement/waiting list status. If a determination or changes occur within 30 days prior to an IHP meeting, the team may be notified verbally and given copies of the written determination or changes at the IHP meeting. Any other time team members will be notified along with the family under the same provision contained in N.J.A.C. 10:48-4.5(a).

RESPONSE: The nature of the comment is unclear. The comment appears to suggest a method of notification to team members but does not require an amendment to the rule. An IHP meeting includes discussion of all significant events, such as placement or waiting list status.

55. COMMENT: N.J.A.C. 10:48-4.6(d)3 should be changed from "other services" to read "alternate services."

RESPONSE: The Division agrees. The wording of this section will be changed to reflect the terms used elsewhere in these rules.

56. COMMENT: Any recommendation for "other" services shall include statements regarding the duration (for example, interim—less than one year) and how a permanent resolution can be made, when and by whom.

RESPONSE: The Division disagrees. Such an addition would be essentially meaningless. The resolution usually requires the placement of the individual. Placements are currently limited by existing resources. The availability of those resources would depend upon the receipt of additional funding or a vacancy caused by a person leaving his or her present placement.

57. COMMENT: Delete N.J.A.C. 10:48-4.6(d)4, as it is completely contrary to the IDT intent and process. Furthermore, this compromises the Division's own recently adopted principles.

RESPONSE: The Division disagrees. The IDT does identify the most appropriate service. It can recommend changes in the category. Those recommended changes are reviewed by the PRT which serves as an administrative checkpoint. The PRT is also in a position to know available resources and to decide how resources should be used when more than one person is considered for the same resource.

58. COMMENT: Revise N.J.A.C. 10:48-4.6(d)5 to provide a clear understanding. At present, this suggests that people referred from out of the region would go through two separate PRT reviews which may have conflicting findings. This complicates and compromises the individual/family appeal process.

RESPONSE: The Division agrees. This section has been amended to clarify that the sending PRT is responsible for this process.

59. COMMENT: Delete or revise N.J.A.C. 10:48-4.7(b). This requires that anyone who cannot be admitted to the most appropriate services shall be offered an alternative service. With over 4,000 people on the waiting list, the funding required to attempt to offer service to all 4,000 people would preclude a number of appropriate placements from being funded for the most involved and the most needy.

RESPONSE: A definition of alternate services will be added in a future proposal. That definition will clarify that the alternate service is something less than the most appropriate service. N.J.S.A. 30:4-25.6 requires an alternate service, when the most appropriate service is not immediately available.

60. COMMENT: Change N.J.A.C. 10:48-4.7(d) from "an effort" to "every effort."

RESPONSE: The Division disagrees. The present wording is sufficient. With so many persons competing for available resources, the Division cannot reasonably commit to language which requires every effort.

61. COMMENT: Insert a sentence in N.J.A.C. 10:48-4.7(e)3 requiring that a telephone or face to face contact effort be made, including going to the last known residence and the person's last known day program.

RESPONSE: The Division agrees. N.J.A.C. 10:48-4.7(e)2 (adopted as N.J.A.C. 10:46C-1.7(e)2) has been amended to require follow-up in person, where appropriate.

62. COMMENT: It is stated that the availability of services is limited to the amount of DDD funding in a given year. Considering that there has not been adequate funding to reduce the waiting list in the past, this is not encouraging for future services unless there is also legislation that would provide more appropriate funding.

RESPONSE: The Division asks each year for additional funding to serve people awaiting placement. The Division is limited in its ability to provide services by the funding allocated in its budget.

63. COMMENT: Is there any consumer representation on the PRT?

RESPONSE: The competent individual is invited to provide input to the PRT.

64. COMMENT: The principles which require the Division to meet individual needs, provide service choices, and permit independence and personal choice appear to be forgotten in a procedure that allows an independent team (the PRT) to override decisions made by the individual and the people who know and work with him or her. The authority and role of this PRT team is confusing. If it is the role of the team to only determine the urgency of the situation, this needs to be explicitly stated.

RESPONSE: The role of the PRT has been amended significantly in this adoption, at N.J.A.C. 10:46C-1.6. Its ability to recommend changes has been limited and the individual or his legal guardian now provide input to the PRT.

65. COMMENT: The phrase in N.J.A.C. 10:48-4.6(d)3, ". . . the individual is not appropriate for community placement . . ." should be deleted.

RESPONSE: The Division agrees, since the Division has determined that this is not the role of the PRT. This wording has been removed.

66. COMMENT: While the intent of the rule is not to identify the specific services to be provided, the consumer/family preference and the specific request for services should be documented.

RESPONSE: This information should be kept in the IHP.

67. COMMENT: IDT recommendations should be a significant part of any decision made by the PRT.

RESPONSE: The Division agrees. N.J.A.C. 10:48-4.6(a) has been amended to clarify that the recommendation for change is made by the IDT.

68. COMMENT: A person on Category I of the waiting list should be placed immediately.

RESPONSE: The Division does not have funding to serve all persons currently awaiting placement in Category I.

69. COMMENT: The individual or his or her legal guardian may request a revision of any category at any time.

RESPONSE: The Division agrees. This wording is included at N.J.A.C. 10:48-4.6(a).

70. COMMENT: We disagree that the IDT recommendation regarding change of an individual's waiting list status must be approved by the PRT. The IDT should make the final decision.

RESPONSE: The IDT makes the initial determination. Subsequent changes are recommended by the IDT. The PRT reviews these as an administrative check as well as reviews available resources when more than one person is competing for the available resource.

71. COMMENT: N.J.A.C. 10:48-4.7(b) needs clarification as to why an individual cannot be admitted to the most appropriate service.

RESPONSE: N.J.A.C. 10:48-4.1(b) (adopted as N.J.A.C. 10:46C-1.1(b)) clearly states that the availability of funding shall be limited to the Division's funding in a given fiscal year. Sometimes funding limitations limit availability of service. A definition of "alternate services" will be added in a future proposal.

72. COMMENT: In N.J.A.C. 10:48-4.7(f) what other category could be considered appropriate if the individual meets the criteria for category I?

RESPONSE: N.J.A.C. 10:48-4.7(f) (adopted as N.J.A.C. 10:46C-1.7(f)) has been amended to eliminate the automatic reduction in the waiting list category if services are refused, since the Division agrees that the individual would still meet the criteria for Category I.

73. COMMENT: Revise N.J.A.C. 10:48-4.4(d) by eliminating the word "residential," since the waiting list applies to both residential and day placements.

RESPONSE: The Division agrees and the word has been deleted.

74. COMMENT: Under N.J.A.C. 10:48-4.5(a), notification should be made in writing. It should also be clarified who will provide the notification.

RESPONSE: The wording has been revised to indicate that this section has been renamed "Initial notification." It has been clarified that the initial waiting list assignment is made by the person's Intake Team when the person is first made eligible and requests residential services. A member of that team is responsible to provide the notification.

75. COMMENT: Clarify that the presentation described under N.J.A.C. 10:48-4.6(c) is to the PRT.

RESPONSE: The Division agrees. This wording has been added.

76. COMMENT: Clarify who is responsible for what actions under N.J.A.C. 10:48-4.6(d). Change "urgency status" to "waiting list status."

RESPONSE: The Division agrees. The section has been revised to provide greater clarity. N.J.A.C. 10:48-4.6(d) has been changed to subsections (e.) N.J.A.C. 10:48-4.6(d)4, 5 and 6 have been changed to (d), (f) and (g) respectively. The former N.J.A.C. 10:48-4.6(d)1 has been deleted and a new sentence added to the new N.J.A.C. 10:46C-1.6(d)1 to clarify that immediate placement may be recommended. Finally, "urgency status" has been changed to "waiting list status." Primary responsibility has been delegated to the PRT. The IDT makes the initial recommendation for review.

77. COMMENT: Should N.J.A.C. 10:48-4.6(d)6 be added to the notification section?

RESPONSE: As previously noted, that section has been renamed "Initial Notification." Therefore, this section should remain with the reorganization noted above.

78. COMMENT: Who is responsible for the notification in N.J.A.C. 10:48-4.7(a)?

RESPONSE: The second sentence of this section indicates it is the IDT's responsibility.

79. COMMENT: Delete the first sentence in N.J.A.C. 10:48-4.7(d), since it is confusing.

RESPONSE: The Division disagrees. The rule should clarify that placements are not always limited to a geographical region.

80. COMMENT: Add "placement" under N.J.A.C. 10:48-4.8(a).

RESPONSE: The term "services" includes placements, but can also indicate other assistance provided by the Division beyond placement.

81. COMMENT: Under N.J.A.C. 10:48-4.8(b), information in writing may not be sufficient for some persons.

RESPONSE: This subsection requires that the person be informed in writing of their right of appeal. Such offers must be made in writing. Wording was added, "Alternate forms of communication shall be provided as appropriate."

82. COMMENT: Throughout the document, there is a total omission of the word "parent."

RESPONSE: The rules refer to the competent individual and the legal guardian, since these are the persons who have the authority to make decisions. Parents are included, if they are the legal guardians.

83. COMMENT: Developmental centers should not be targeted for closing while there is an existing waiting list. Many times developmental centers are offered as an alternate placement until the most appropriate community placement is located.

RESPONSE: The Division recognizes that developmental center placements are sometimes offered as an alternative to the appropriate placement. As the Division looks to deinstitutionalization in the future, individuals will be placed in settings which are designed to meet their needs. The Division recently completed three public hearings regarding the closure of developmental centers and will take this comment into consideration in its deliberations.

84. COMMENT: The availability of placements would depend upon the funds available to the Division. If funds are not available, then a written statement should be given to the parent or guardian.

RESPONSE: It is necessary to clearly establish that the Division's ability to provide services is limited to the available funding. Thus the rules clearly state this limitation. Concerning notification to the family, parents and guardians are notified by regional staff that services may not be available due to funding.

85. COMMENT: The Division should maintain a list at the central office of all those on the waiting list and all those in alternate placements awaiting other more appropriate services.

RESPONSE: The Division does maintain both types of lists at the Central Office.

86. COMMENT: Regarding inter-regional placements, if the clients have developed supports in the community where they have been living for a period of time, every effort should be made to keep them in that environment.

RESPONSE: The Division agrees and efforts are made to maintain the individual near family and loved ones. There are times, especially in crisis situations, where this is not possible. No change in the rules is required.

87. COMMENT: Concern was expressed about the individuals who have been waiting in developmental centers who are not being placed in the community.

RESPONSE: The Division is currently developing plans for the closure of all its developmental centers. Many individuals currently residing in the centers will be placed in the community.

88. COMMENT: N.J.A.C. 10:48-4.7 states that an offer of placement must be responded to by 14 calendar days. It is unreasonable to expect an individual or family to assess the appropriateness of a service being offered within two weeks. It further hampers individuals who are socially or economically disadvantaged by mandating written or telephonic communication within 14 days.

RESPONSE: The Division will not cut off any family who expresses an interest in a placement due to an arbitrary time period. It is necessary, however, to ask the individual or guardian to give some indication of their interest. If the individual or guardian is not interested the service can be offered to another person waiting for services.

Language has been added to indicate that offers may be made in person when appropriate or by telephone, however, they are to be confirmed in writing. "Alternate means of communication shall be provided as needed" has been added to assure that the Division shall make reasonable efforts to ensure effective communication with the individual or guardian.

Summary of Agency-Initiated Change:

Upon adoption, the proposed new subchapter is being recodified as N.J.A.C. 10:46C.

Executive Order No. 27 Statement

The proposed rules do not exceed analogous Federal counterparts.

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

***CHAPTER 46C**
WAITING LIST PROCEDURES*

SUBCHAPTER *[4.]***1.*** ***[ELIGIBILITY FOR SERVICES]***
GENERAL PROVISIONS

*[10:48-4.1]***10:46C-1.1*** Purpose

(a) The purpose of this subchapter is to establish criteria and procedures for allocating limited residential and day program resources based on the relative needs of the individuals waiting for community services. In accordance with the Developmentally Disabled Rights Act (N.J.S.A. 30:6B-1 et seq.), such services shall be designed to maximize the developmental potential of the individual in a manner least restrictive of personal liberty.

(b) The availability of such services shall be limited to the Division's funding in a given fiscal year. The basis of this subchapter is to establish a means to prioritize placement needs when there are insufficient funds to provide the most appropriate residential or day program. The rules represent an administrative process for the allocation of scarce resources among many individuals with similar needs and circumstances.

(c) The waiting list assignment shall indicate only the urgency of need for day program or residential placement. The assignment shall not reflect the specific type of service needed. The person's need for placement changes over the course of a person's life. The intent of the subchapter is not to establish specific services to be provided but to reflect only a general service need. Waiting list categories are general groupings based upon the level of urgency. No specific numbered order is contained in any category. ***The date that the individual is assigned to a waiting list category shall be recorded.***

*[10:48-4.2]***10:46C-1.2*** Scope

This subchapter applies to all adult individuals who are currently waiting for residential and day placement in community-based settings or who may request such services in the future. The rules shall apply to children only if the requirements for Category I or II as set forth in N.J.A.C. 10:48-4.4(b) and (c) are met.

*[10:48-4.3]***10:46C-1.3*** Definitions

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

"Community based alternate living arrangement" means a community residence as defined in N.J.A.C. 10:44A or a community care home as defined in N.J.A.C. 10:44B.

"Department" means the Department of Human Services.

"Community Services" means that component of the Division which provides intake, referral and an array of community-based day and residential services. ***Community Services regional offices serve four geographical areas of the State which are: northern, upper central, lower central and southern.***

"Division" means the Division of Developmental Disabilities.

"Individual Habilitation Plan (IHP)" means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It may identify a continuum of skill development that outline progressive steps and the anticipated outcomes of services. The IHP is a single plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan. The complexity of the IHP will vary according to the needs, capabilities and desires of the person. For an individual who has been determined by an Interdisciplinary Team to require active treatment, the IHP shall address all needs identified. For an individual who makes only specific service requests,

the IHP shall be a service plan which addresses only those specific requests.

"Intake team" means at least two staff, one of whom is an intake worker, who are responsible to determine if the eligibility criteria contained in N.J.A.C. 10:46 have been met.

"Interdisciplinary Team (IDT)" means an individually constituted group responsible for the development of a single, integrated IHP. The team shall consist of the individual receiving services, the individual's parent or family member (if the adult desires that the parent or family member be present), legal guardian, those persons who work most directly with the individual served and professionals and representatives of service areas relevant to the identification of the individual's needs and the design and evaluation of programs to meet those needs.

"Placement Review Team (PRT)" means a team of professionals ***working directly with persons served or responsible to develop programs as well as other professional staff, as appropriate,*** within Community Services, other than the IDT*[, which assesses relevant information in order to determine the most appropriate and least restrictive alternate living arrangement requested by the individual or his or her legal guardian]*. The PRT is an administrative function of the Division and is responsible to allocate scarce resources among many individuals with similar needs and circumstances. The PRT reviews changes in the waiting list category recommended by the intake team or determines the waiting list category when residential placement is requested by the legal guardian after admission to services. The PRT reviews the request to determine if the basis for the recommended change is appropriate. If the change is deemed to be appropriate, the PRT reviews the availability of an appropriate placement within the region, ***or*** in other regions *[or within developmental centers. The PRT will prioritize the waiting list assignment of the individual in consideration of others already awaiting placement]*. The PRT will advise the IDT*[, through the case manager,]* ***and the individual of his or her legal guardian*** of the results of their review.

"Waiting list" means a roster of eligible developmentally disabled individuals waiting for community based services who are not currently receiving residential services, awaiting residential or day services while in placement from another funding source, or currently in a community placement and awaiting transfer to another community placement.

*[10:48-4.4]***10:46C-1.4*** Waiting list assignment

(a) An individual eligible for functional services, *[who has requested or been determined to be in need of a]* ***for whom the most appropriate*** community residential or day program *[which]* is not yet available, shall be assigned to one of the categories in (b) through (e) below.

(b) ***In assessing the criteria in (b)1 through 3 below, the age and health of the caregiver should be considered.*** Category I, Urgently in Need, shall be assigned if:

1. The individual poses a present risk of physical harm to self or others;
2. The individual is seriously regressing; or
3. The individual is at serious risk because of the imminent loss of the *[caretaker]* ***caregiver*** or ***because*** he or she is homeless, abused, or neglected.

(c) Category II, Can Benefit from Placement: Extended Waiting Will be Detrimental, shall be assigned if it appears likely that without services:

1. The individual will deteriorate to the point of becoming a danger to self or others; or
2. The individual will regress significantly.

(d) Category III, Can Benefit from Placement: Waiting is not Detrimental, shall be assigned when the individual can benefit from *[residential placement]* but none of the factors described in (b) or (c) above are present.

[1. Individuals with a caregiver 65 years of age or older shall be assigned to this category unless the criteria for Categories I or II are met.]

(e) Category IV, Residential Only, shall be assigned if:

1. The individual is an adult; and
2. The individual or his or her legal guardian has requested residential placement but it is not needed at this time.

(f) The individual or his or her legal guardian may request a revision of the category at any time.

*[10:48-4.5]***10:46C-1.5*** *[Notification]* ***Initial notification***

(a) ***The initial waiting list assignment will be made by the person's Intake Team if the individual is requesting placement at the time of initial application.*** When an individual is assigned to a category or when a person is reviewed for a change in the category, the results of the review will be forwarded to the *[family]* ***individual, if competent, or his or her legal guardian*** within 14 days of the determination.

(b) The category ***and type of service requested*** shall be included in the cover sheet of the person's IHP.

(c) The IHP may consist of a service plan when it is requested by the individual or his or her legal guardian. Instances where a service plan may be appropriate include, but are not limited to, instances where the individual requests only family support, supported employment, personal care and home adaptations. A comprehensive IHP shall be developed, if requested by the individual or legal guardian.

*[(c)]***(d)*** The category shall be reviewed ***by the IDT*** no less than annually at the time of the IHP.

*[10:48-4.6]***10:46C-1.6*** Procedure for adding to or changing the waiting list category

(a) The case manager shall discuss with the individual and his or her legal guardian, *[where appropriate,]* any changes in the circumstances of the individual. ***Any changes shall be recommended by the IDT. The competent individual or the legal guardian of an incompetent individual may request a review of the waiting list assignment by the IDT at any time.***

(b) The case manager or his or her supervisor shall schedule a review with the PRT.

(c) At the scheduled time, the case manager or his or her supervisor shall make a presentation, verbal or written, regarding the individual and his or her particular situation. The case manager shall document and present prior interventions implemented to stabilize the individual in his or her current situation.

***1. The individual or his or her legal guardian shall be invited, in writing, to present their views.**

2. The individual or his or her legal guardian shall leave the meeting once they have presented their views.

(d) All recommendations made by an IDT regarding changes of an individual's waiting list status must be reviewed and approved by the PRT.*

*[(d)]***(e)*** A variety of options may be explored, depending upon the urgency of the situation.

[1. The team may refer the individual for an alternate living arrangement immediately, if resources permit, in which case, the individual shall be assigned to urgency Category I.]

*[2.]***1.*** The PRT may recommend a change in the *[urgency]* ***waiting list*** status even if no placement is immediately available. ***Based on the urgency of the situation, immediate placement may be recommended.***

*[3.]***2.*** Should the *[team]* ***PRT*** decide that *[the individual is not appropriate for community placement or]* appropriate services are not available in the community, a recommendation for other services or placement may be made.

[4. All recommendations made by an IDT regarding changes of an individual's waiting list status must be reviewed and approved by the PRT.]

*[5.]***(f)*** Individuals referred from out-of-region are reviewed by the ***sending*** PRT and prioritized for placement. ***The receiving PRT will notify the sending PRT of any available placements.***

*[6.]***(g)*** The chairperson of the PRT is responsible for notifying the ***IDT and the*** individual *[and]* ***or his or her*** legal guardian, *[where appropriate,]* in writing ***within 30 days of a decision*** regarding the Waiting List status.

(h) Alternate means of communication shall be provided as needed.

*[10:48-4.7]***10:46C-1.7*** Offers of services

(a) When an individual is found eligible for functional services in accordance with the provisions of N.J.A.C. 10:46, the most appropriate service shall be identified. The IDT shall evaluate the needs and abilities of the individual at the time that a specific service is recommended.

(b) If an eligible individual cannot be admitted to the most appropriate service, he or she shall be offered an alternate service.

(c) The availability of a service shall be subject to the limits of the Division's funding resources for that Fiscal Year.

(d) The proximity of the individual to interested family or friends shall not be limited to the person's assigned region. An effort shall be made to find a placement close to the individual's interested family or friends.

(e) All offers of placement shall be made by telephone and followed up in writing with a request that the Division be notified within 14 calendar days if the placement is accepted. ***Alternate forms of communication shall be provided as appropriate.***

1. The individual served or her or his legal guardian shall be asked to give a written response to the offer.

2. If no response is received, Division staff shall contact the individual or his or her legal guardian ***in person***, where appropriate, ***or*** by telephone to elicit a response. That response shall be confirmed by the Division in writing. ***Two attempts at such contact should be made.***

3. If there is no response to the written offer and the individual or legal guardian cannot be reached by telephone, the offer shall be deemed to be declined. The Division staff shall write to the individual or legal guardian, confirming the Division's efforts to obtain a response and shall indicate that the offer is deemed to have been declined.

(f) If the individual is assigned to Category I and an offer of placement is made and refused, *[the individual shall be immediately reassigned to the appropriate category other than Category I]* ***Division shall review the reasons for rejecting the offer with the individual or legal guardian to identify what needs were not met by the offered placement and to determine if the individual is assigned to the appropriate category***.

[(g) If the individual assigned to Category I or his or her legal guardian, where appropriate, has good and valid reasons for refusing the placement, the individual or his or her legal guardian, where appropriate, may appeal the assignment to another category.]

*[10:48-4.8]***10:46C-1.8*** Appeals

(a) If an individual or legal guardian disagrees with the categorization or the service offered, that decision may be appealed in accordance with N.J.A.C. 10:48-1.

(b) Upon the initial determination and each determination made thereafter, the individual or legal guardian shall be informed in writing that they have the right to appeal the categorization or the appropriateness of the services to be provided. With each notification, the individual or his or her legal guardian shall be provided with a description of the appeals procedure. ***Alternate forms of communication shall be provided, as appropriate.***

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospital Services

Readoption: N.J.A.C. 10:52

Adopted Repeal and New Rules: N.J.A.C. 10:52-1 through 4

Adopted New Rules: N.J.A.C. 10:52-10

Proposed: November 21, 1994 at 26 N.J.R. 4551(a).

Adopted: February 3, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: February 3, 1995 as R.1995 d.123, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b, c, and e; 30:4D-12, P.L. 1992, c.160; 1902(a)(13) of the Social Security Act; 42 U.S.C. 1396a; 42 447.251, 253.

Agency Control Number: 94-A-43.

Effective Date: February 3, 1995, Readoption;
April 17, 1995, Amendments, Repeal and New Rules.

Expiration Date: February 3, 2000.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Between Proposal and Adoption:
The following are the numerous technical changes that occurred between the proposal and adoption. The agency does not consider these changes to be substantive enough to require republication.

N.J.A.C. 10:52-1.3 Eligibility; claims procedures

In paragraph (a)2, the language was changed to reflect that the entire group (each of the categories) of the aged, blind and disabled individuals, and pregnant women and certain children should be included in the rule, as it applies to each of them. This was a technical oversight on the part of the Division. This change does not affect the regulated public, because it represents an existing administrative process whereby hospitals can refer patients to county welfare agency (CWA) for an eligibility determination. The PA-1C does not establish eligibility, which is a function of the CWA.

N.J.A.C. 10:52-1.4 Eligibility of recipient for hospital services

In subsection (a), an error was made in the meaning of the language, so the language was clarified because the Medicaid recipients are actually eligible for services and not for direct reimbursement for the services provided by hospitals. Reimbursement is paid to the hospital for providing services to eligible Medicaid recipients. The deletion of the phrase "A recipient shall be ineligible for Medicaid reimbursement for hospital services" was changed to "Hospital services shall not be reimbursed by Medicaid when . . ."

N.J.A.C. 10:52-1.5 Covered services (Inpatient and Outpatient)

In paragraph (a)3, when the rules were recodified during OAL's review, the internal references were not corrected to correspond with the recodification. They are being corrected on adoption to be consistent with the recodification of the sections of the proposal.

Consistently, throughout the Manual, the designation of "chapter" has been deleted from the titles of each of the Chapters. This is consistent with the gradual revision taking place in each of the titles of the chapters as they are readopted. In subsection (i), the phrase "in the manual" has been replaced with only the relevant New Jersey Administrative Code citation.

N.J.A.C. 10:52-1.6 Non-Covered Services (Inpatient and Outpatient)

In paragraph (a)2, and subparagraphs (a)3iii and (a)6ii, when the rules were recodified, the internal references were not corrected to correspond with the recodification. They are being corrected on adoption to be consistent with the recodification of the sections of the proposal.

In subparagraph (a)1vii, "Chapter" was removed to correspond to the new title of the chapter called "Administration."

In paragraph (a)9, the language is corrected on adoption to combine subparagraphs (a)9i and ii to correspond to the previous adoption language of the adoption of "infertility" in 26 N.J.R. 4762(a).

N.J.A.C. 10:52-1.7 Administrative Days

There are some codification corrections in this rule.

N.J.A.C. 10:52-1.8 Prior authorization

Consistently, the designation of "chapter" has been deleted from the titles of each of the chapters. This is consistent with the gradual revision taking place in each of the titles of the chapters as they are readopted. This change occurs in subsections (a), (b), (d), paragraph (d)1 and subsection (f).

In subsection (c), the word "however" was appropriately added for further clarification in the transition of the phasing of the concepts.

In subsection (d), the abbreviation MDO has been added so that the abbreviation can be included later in the text of the rule.

N.J.A.C. 10:52-1.9 Pre-admission screening for nursing facility (NF) placement

The word "mean" was changed to "means" in the Specialized Services for MI and MR definitions because the proper word refers to the meaning of a title in the singular form, not in reference to the services in plural form.

In paragraph (c)3, the words Medicaid "certified nursing" facility was added as a more specific clarification to the rule. Previously, the specification of the certification was made, so that this change is consistent to the previous notation.

In subparagraph (c)3i, the language of the rule was revised in light of new revisions in the Federal definitions of who are "Persons with related conditions" that PASARR Level II Specialized Service Screens apply.

In paragraphs (c)5 and (d)4, and subparagraph (e)2iii, capitalization was made consistent throughout the text of the Specialized Service Screens.

In paragraph (e)2, the Board should be capitalized to refer to the official names of the specialists' Boards of Certification.

In subparagraph (e)2ii the form is set aside in quotation marks as are all forms with official names.

N.J.A.C. 10:52-1.11 Second opinion program for elective surgical procedures

The section heading contains the proper name of the program, so, unlike a normal section heading, which is not capitalized, this title is capitalized, as Second Opinion Program for Elective Surgical Procedures. In subsection (a), language was added to ensure that the provider understands that the outcome of the opinion has no bearing on payment. This is an essential concept in the rule. This additional language on adoption does not enlarge or curtail the scope of the rule. The procedures that require a second opinion have not changed.

N.J.A.C. 10:52-1.12 Social Necessity Days

As headed, "Social Necessity Days" refers to a particular title given to days set aside for particular handling of reimbursement. As such, the heading needs to be capitalized.

N.J.A.C. 10:52-1.13 Utilization control

In subsection (a), the phrase "of this manual" was deleted as it is redundant to the citation N.J.A.C. 10:52-1.13.

In N.J.A.C. 10:52-1.14(a), as stated before, in each case, the phrase "in this manual" is being removed, as the New Jersey Medicaid program has decided not to use the word "manual" in regulatory language.

In each of subsection (e), and paragraph (e)3, specific relevant Federal citations were replaced in the text, so that the Medicaid provider can easily refer to the basic reference. In N.J.A.C. 10:52-1.14(g), the word "must" was changed to "shall" for consistency.

In N.J.A.C. 10:52-2.1(b)1 and 2.3, the word "Chapter" was deleted for the same reason previously stated.

In N.J.A.C. 10:52-2.4, the language related to components of screening services is being added to clarify the distinction between EPSDT services and the components of EPSDT screening services.

In N.J.A.C. 10:52-2.4(h), the addition of "years of age" and "in addition to what is" were words added for clarification and completeness of language. The changes made in N.J.A.C. 10:52-2.4 do not enlarge or curtail the scope of the EPSDT program. The services, components of the screening services, and age limits are not being changed.

In N.J.A.C. 10:52-2.5 and 2.6, the word "Chapter" was deleted in deference to the new title of the Chapter.

In N.J.A.C. 10:52-2.8(e), the word "Chapter" was deleted in deference to the new title of the Chapter. The phrase "out-of-state" was capitalized to read "out-of-State." The cite in N.J.A.C. 10:52-2.8(g) was corrected from N.J.A.C. 10:52-4.6 to read N.J.A.C. 10:52-4.4. The policy for organ procurement and transplantation was modified on adoption to clarify that the prior authorization is required for all New Jersey Medicaid recipients, not just for those EPSDT recipients, and for anatomical sites not explicitly stated in (a) above. Procedures listed in (a) do not require prior authorization when performed in-State. Procedures which are not included in (a) because they were previously considered experimental, may be reimbursed if they are no longer experimental.

The original proposal was in error and this change clarifies existing policy to state that prior authorization is applicable to all in-State organ requests outside of those specifically mentioned. It also allows for a mechanism, in the prior authorization process, for considering the changing medical environment as those procedures once considered "experimental" move into the mainstream of acceptable medically necessary procedures.

In N.J.A.C. 10:52-2.10, reference to the word "federal" was capitalized as "Federal" as is Division policy for usage in this circumstance. The phrase "They" was changed to "These services" which reflect parallel language with other regulations.

In N.J.A.C. 10:52-2.11, the phrase "have been" has been deleted and the word "be" has been inserted to reflect the present tense of the verb form.

In N.J.A.C. 10:52-2.13, the verb form of "requires" has been deleted and replaced by the proper verb form "require." The correct notation of the total name of the FD-189 reflects the number of the form and the initial print date. The total name has been included on this adoption.

In N.J.A.C. 10:52-2.14, the common usage of the Medicaid program does not capitalize "Program," thus "Program has been deleted and the uncapitalized "program" has been added, and the sentence was separated into two sentences, in order to differentiate the two separate sets of requirements, those of the Medicaid Program, and those of the Board of Medical Examiners.

In N.J.A.C. 10:52-2.15, the word "Chapter" has been deleted as the title of the chapters have been changed. In subparagraph (b)3ii, the word "Hospital" has been changed to lower case.

In N.J.A.C. 10:52-3.3, the word "program" replaces the capitalized "Program" as per Division usage.

In N.J.A.C. 10:52-3.5, the words of the title of the certificate is capitalized as appropriate, as it refers to a titled document.

In N.J.A.C. 10:52-3.8, the words "HealthStart" and "Maternity" were added to the heading and subsection (a), respectively, to specify that these services are specifically for HealthStart Maternity patients.

In N.J.A.C. 10:52-3.9, "Health Support" services are capitalized as they refer to a particular group of services within the HealthStart program, not all generic health support services. In N.J.A.C. 10:52-3.9 and 3.15, the title of the guidelines are set apart with quotation marks as this document has a title called "New Jersey Department of Health Guidelines for HealthStart Maternity Care Providers." With these corrections, there is consistency of usage within the document.

In N.J.A.C. 10:52-3.11, 3.12, 3.13, 3.14, 3.15 and 3.17, the title of the program parts of "HealthStart" are capitalized or not capitalized, as appropriate. These are as follows: "HealthStart Pediatric Care Certificate," "HealthStart Comprehensive Maternity Care providers," and "HealthStart Pediatric Care providers." In N.J.A.C. 10:52-3.11, the words "in accordance with" was changed to "as described in the" to be consistent throughout the document.

In N.J.A.C. 10:52-3.16(b), the HCFA reference has been deleted, as this is not the form that the Medicaid program uses. The proper reference to this for is the 1500 N.J., referring to the State version, not the Federal version. In N.J.A.C. 10:52-3.17(b), the "HCFA" reference is added to refer to the proper title of the HCPCS. The form 1500 N.J. is being used by HealthStart Providers to bill the New Jersey Medicaid Program. The correct identification of the claim form does not change the administrative requirement that a provider must submit a claim form that is both acceptable and timely in order to be reimbursed by Medicaid. A unique method has been set up for hospital outpatient billing for HealthStart services and the rule has been modified to take into account the unique billing parameters. (See N.J.A.C. 10:49-7.)

In N.J.A.C. 10:52-4.4(a), "in this manual" was removed and the proper citation remains as an adequate reference for rule-making purposes. In N.J.A.C. 10:52-4.4(c)1 and (d), the reference to "out-of-state" was capitalized and made consistent throughout the document as "out-of-State."

In N.J.A.C. 10:52-4.6(c), the Medicaid "Program" was deleted and replaced with the uncapitalized version of "program."

N.J.A.C. 10:52-10 was recodified to N.J.A.C. 10:52-11 upon adoption. Then, 10:52-10 is being reserved on adoption for the charity care eligibility rules.

In N.J.A.C. 10:52-11.1, the phrase "for hospital outpatient laboratory services" is added to delineate that these HCPCS only relate to laboratory services.

Executive Order No. 27 Statement

Since hospital facilities provide a broad range of inpatient and outpatient hospital services, the Hospital Chapter covers many topics, either directly or indirectly. These include such issues as eligibility, claims processing, provider certification, medical necessity, utilization control and utilization review which are covered in 42 CFR 435 through 42 CFR 488.

In addition, since Federal regulations require that Medicaid enrolled hospital facilities meet Medicare conditions of participation (although they do not have to enroll in Medicare), by reference, Federal regulations that govern Medicaid hospital services include 42 CFR 400 through 424 and 42 CFR 489 through 494.

Also, by reference, hospital facilities are required to meet all other applicable Federal regulations regarding provision of medical care, including Food and Drug Administration requirements under 21 CFR.

In many instances, the Federal regulations are broad and general, and these State regulations provide guidelines and interpretations of Federal requirements. As far as the agency can determine, the regulations do not exceed Federal requirements.

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

CHAPTER 52
HOSPITAL SERVICES MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS

10:52-1.1 Purpose and scope

This chapter of the Hospital Services Manual outlines the policies and procedures of the Division for the provision of inpatient and outpatient (including emergency room) hospital services to Medicaid recipients. The hospitals that are included in these policies and procedures are general hospitals, special hospitals, rehabilitation hospitals and private psychiatric hospitals, unless specifically indicated otherwise.

10:52-1.2 Definitions

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

"Adjusted admissions" means inpatient admissions increased to reflect outpatient activity, which is calculated by admissions multiplied by total gross revenue divided by inpatient gross revenue.

"Base year" means the year from which historical cost data are utilized to establish prospective reimbursement in the rate year.

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost of the drug, the drug product and ancillary services, such as, but not limited to, case management and laboratory services.

"Current Cost Base" means the actual costs and revenue of the hospital as identified in the Financial Elements in the base reporting period for the purposes of rate setting.

"Diagnosis Related Groups (DRGs)" means a patient classification system in which cases are grouped by shared characteristics of principal diagnosis, secondary diagnosis, age, surgical procedure, and other complications, and consumption of a similar amount of resources.

"Division" means the New Jersey Division of Medical Assistance and Health Services within the New Jersey Department of Human Services.

"Equalization Factor" means the factor that is calculated based on defined Labor Market Areas and multiplied by hospital costs to permit comparability between differing regional salary costs in setting Statewide standard costs per case.

"Early and Periodic Screening, Diagnosis and Treatment (EPSDT)" means a preventive and comprehensive health program for Medicaid recipients under 21 years of age for the purpose of assessing a recipient's health needs through initial and periodic examinations, health education and guidance, and identification, diagnosis, and treatment of health problems.

"Financial Elements" means the reasonable cost of items approved as reimbursable under Medicaid (see N.J.A.C. 10:52-5.10).

"Grouper" means the logic that assigns cases into the appropriate Diagnosis Related Groups in accordance with the clinical and statistical information supplied.

"Hospital" means an institution which is primarily engaged in providing the following services to inpatients, by or under the supervision of physicians:

1. Diagnostic services and therapeutic services for the prevention, medical diagnosis, treatment, and care of injured, disabled or sick persons, including obstetrical services and services to the normal newborn; or,
2. Rehabilitative services for the rehabilitation of injured, disabled, or sick persons; and that
3. Maintains clinical records on all patients;
4. Has by-laws in effect with respect to its staff of physicians;
5. Requires every patient to be under the care of a physician;
6. Provides 24-hour nursing services rendered or supervised by a registered professional nurse, and has a registered professional nurse or licensed practical nurse on duty at all times;
7. Has in effect a hospital utilization review plan that meets the requirement of the law (Sec. 1861(K) of the Social Security Act); and has in place a discharge planning process that meets the requirements of the law (Sec. 1861(ee)) of the Social Security Act;
8. Is licensed as a hospital in the State of New Jersey, or licensed as a hospital by the appropriate agency under the laws of the respective state in which the hospital is located, or approved by the agency of the state or locality responsible for licensing hospitals meeting the standards established for such licensing; and
9. Meets any other requirements that the U.S. Secretary of Health and Human Services finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

"Hospital (Approved General)" means an institution which is approved to participate as a provider in the Division if it:

1. Is licensed as a general hospital by the State of New Jersey, or licensed as a hospital by the appropriate agency under the laws of the respective state in which the hospital is located; (NOTE: When only a specific identifiable part of a multi-service institution is licensed, only the section licensed is considered a Medicaid provider);
2. Meets the requirements for participation and certification under Medicare (Title XVIII of the Social Security Act);
3. Has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under Medicaid (Title XIX); and,
4. Has signed a provider agreement to participate in and abide by the rules of the Division and applicable Federal regulations.

"Hospital (Approved Private Psychiatric)" means an institution which is approved to participate as a provider in the Division and:

1. Is licensed by the State of New Jersey as a psychiatric (mental-non-governmental) hospital or licensed as a private psychiatric hospital (non-governmental) by the appropriate agency under the laws of the respective state in which the hospital is located;
2. Meets the requirements for participation and certification under Medicare (Title XVIII of the Social Security Act) as a psychiatric hospital;
3. Has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under Medicaid (Title XIX);
4. Meets the special Medicare standards relative to staffing requirements and clinical medical records; and,
5. Has signed a provider agreement to participate in and abide by the rules of the Division and applicable Federal regulations.

"Hospital (Approved Private Psychiatric) facility that provides inpatient services to children under 21 years of age" means an institution that shall meet the requirements of 1., 2., 3., 4. and 5. above, listed in the definition of "Hospital (Approved Private Psychiatric): or in addition to 1. and 5. above, has facility accreditation by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO).

"Hospital (Approved Special)" means an institution which is approved by the New Jersey State Department of Health as a special hospital (for definition of special hospital, see N.J.A.C. 8:43G-1.3(b)2) and which includes any hospital which assures the provision of comprehensive specialized diagnosis, care, treatment and rehabilitation, where applicable, on an inpatient basis for one or more specific categories of patients; and approved to participate as a provider in the Division if it meets the appropriate standards of participation for one of the following classifications:

(a) Special (Acute care or short term) or Comprehensive Rehabilitation Hospital:

1. Licensed as a special or comprehensive rehabilitation hospital by the New Jersey Department of Health;

2. Accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) or the Commission on Accreditation as a hospital or rehabilitation facility; and/or

3. Meets the requirements for participation and certification under Medicare (Title XVIII of the Social Security Act) as a hospital;

4. Has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under Medicaid (Title XIX); and,

5. Has signed a provider agreement to participate in and abide by the rules of the Division and all applicable Federal regulations.

"Informed Consent" means the voluntary knowing assent from the individual on whom any sterilization is to be performed after he or she has been given (as evidenced by a document executed by such individual) and has been given:

1. A fair explanation of procedures to be followed;

2. A description of attendant discomforts and risks;

3. A description of benefits to be expected;

4. An explanation concerning appropriate alternative methods of family planning and the effect and impact of the proposed sterilization including the fact that it must be considered to be an irreversible procedure;

5. An offer to answer any inquiries concerning the procedures; and

6. An instruction that the individual is free to withhold or withdraw his or her consent to the procedure at any time prior to the sterilization without prejudicing his or her future care without loss of other project or program benefits to which the patient might otherwise be entitled;

7. The documentation referred to in this subsection must meet all applicable State and Federal requirements, and should be bilingual as necessary. (See N.J.A.C. 10:52-2.12 Sterilization).

"Inliers" means inpatient cases who display common or typical patterns of resource use that are assigned to DRGs and have a length of stay within the high and low trim points.

"Inpatient" means a patient who has been admitted to an approved hospital as an inpatient on the recommendation of a physician or dentist and receives room, board, and professional services in the hospital for a 24 hour period or longer, even though it later develops that the patient dies, is discharged or is transferred to another facility and does not actually stay in the hospital for 24 hours.

"Inpatient Hospital Services" means services that:

1. Are ordinarily furnished in a hospital for the care and treatment of inpatients;

2. Are furnished under the direction of a physician or dentist, except, as specified in 42 CFR 440.165 of the Social Security Act, for services provided by a certified nurse midwife;

3. Are furnished in an institution that:

i. Is maintained primarily for the care and treatment of patients with disorders including obstetrical services and services to the normal newborn;

ii. Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting;

iii. Except in the case of medical supervision of nurse-midwife services, as specified in 42 CFR 440.165 of the Social Security Act, or private inpatient psychiatric facilities for children under 21 years of age, meets the requirements for participation in Medicare as a hospital; and,

iv. Has in effect a utilization review plan, applicable to all Medicaid patients, that meets the requirements of 42 CFR 482.30 of the Social Security Act, unless a waiver has been granted by the U.S. Secretary of Health and Human Services.

"Labor Market Area" means counties and municipalities in the State that are grouped in accordance with similar labor costs.

"Neonate" means a newborn less than 29 days of age.

"Nontherapeutic sterilization" means any procedure or operation, the purpose of which is to render an individual permanently incapable of reproducing and which is not either a necessary part of the treatment of an existing illness or injury, or medically indicated as an accompaniment of an operation on the female genitourinary tract. For the purpose of this definition, mental incapacity is not considered an illness or injury.

"Outliers" means patients who display atypical characteristics relative to other patients in a DRG and have lengths of stay either above or below the established trim points.

"Outpatient" means a patient registered in the outpatient department of a hospital or in a distinct part of that hospital who is expected to receive and who does receive professional services for less than a 24 hour period, regardless of the hour of admission; or whether or not a bed is used; or whether or not the patient remains in the hospital past midnight.

"Outpatient hospital services" means medically necessary items or services (preventive, diagnostic, rehabilitative, therapeutic, or palliative) provided to an outpatient by or under the direction of a physician or dentist, except for the medical supervision of nurse midwife services, or private inpatient psychiatric facility under 21 years of age, by an institution that is licensed or formally approved as a hospital by the New Jersey State Department of Health or by the officially designated authority in the state in which the hospital is located and meets the requirements for participation in Medicare (Title XVIII) as a hospital.

"Patient" means an individual who is receiving needed professional services that are directed by a licensed practitioner of the healing arts toward the maintenance, improvement, or protection of health, or lessening of illness, disability, or pain.

"Physician" means a doctor of medicine (M.D.) or osteopathy (D.O.) licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners, or similarly licensed by comparable agencies of the state in which he or she practices.

"Physician services" means those services provided within the scope of practice of a doctor of medicine (M.D.) or osteopathy (D.O.) as defined by the laws of New Jersey, or if in practice in another state by the laws of that state, and which services are performed by or under the direction and/or personal supervision of the physician. (See also N.J.A.C. 10:54-1.2.)

"Preliminary Cost Base (PCB)" means the estimated revenue a hospital may collect based on an approved schedule of rates which includes DRG rate amounts and indirect costs not included in the all-inclusive rate. Those indirect costs will either be the dollar amount specified or the estimated amount determined by a specific percentage adjustment to the rate.

"Rate year" means the year in which current reimbursement takes place.

"Trim points" means the high and low length of stay cutoff points assigned to each DRG.

"Uniform Bill—Patient Summary (UB-PS or UB-92)" means the common billing and reporting form used by the hospital for each Medicaid inpatient.

10:52-1.3 Eligibility; claim procedures

(a) A hospital shall adhere to the following procedure for completing the form, the "Public Assistance Inquiry (PA-1C)" to inform the appropriate agency that an individual intends to file a Medicaid application:

1. For those aged, blind or disabled persons with limited income and resources who appear to be eligible for Supplemental Security Income (SSI)/Medicaid, a hospital shall complete the form PA-1C and send it to the Social Security Administration (SSA) District Office serving their locale to initiate the eligibility process. The date of the inquiry shall protect the application date provided that the individual follows through with filing of an application.

2. For the aged, blind and/or disabled individuals, *[or]* ***and/or*** pregnant women *[and]* ***and/or*** certain children who do not qualify for or ***who*** do not want an SSI money payment from the Social Security Administration and/or do want to be a Medicaid recipient through "Medicaid Only" or New Jersey Care ... Special Medicaid Programs, a hospital shall complete the form PA-1C and send it to the appropriate county welfare agency (CWA).

3. A hospital shall submit the form PA-1C to the County Welfare Agency (CWA) immediately after the birth of a newborn of a mother who is or may become eligible for Medicaid. (Information on the newborn shall be included in item 1, 2, 4, 11a and 15 only. The mother's signature shall be included in Item 23.)

i. There shall be no requirement for joint hospitalization of a mother and newborn as the sole condition for which claims for services to the newborn may be submitted using the mother's Person Number.

ii. A mother who is a Medicaid recipient and her newborn shall have the same HSP (Medicaid) Case Number when they are a part of the same household, but each shall be assigned his or her own Person Number.

iii. A hospital shall be permitted to submit a claim for services to a newborn for 60 days from the date of the birth through the end of the month in which the 60th day occurs or until the newborn is assigned his or her own Person Number, whichever happens first.

iv. After the extended time frame of 60 days from the date of birth through the end of the month in which the 60th day occurs or upon the assignment of the newborn's Person Number, the newborn's personal data shall be used on the claim form as soon as it is available to the hospital. The mother's personal data shall not be used on the claim form after this time frame or after the newborn's Person Number is available to the hospital.

4. Previously submitted PA-1C forms shall be updated by the hospital if subsequent facts emerge that alter the original referral.

i. When it is determined that the original referral to the Social Security Administration was incorrect, the hospital shall forward a copy of the original PA-1C to the CWA with a note of explanation (see also N.J.A.C. ***10:49-2*** in Administration *[Chapter]* for further information on Medicaid eligibility).

10:52-1.4 Eligibility of recipient for hospital services

(a) *[A recipient shall be ineligible for Medicaid reimbursement for hospital services under the following circumstances:

1.]* ***Hospital services shall not be reimbursed by Medicaid when**** hospital services were rendered prior to and after period of recipient eligibility, as determined in accordance with N.J.A.C. 10:49-2.5; except that, when a Medicaid recipient in an acute care general hospital loses eligibility during an inpatient hospital stay, but was eligible on the date of admission, eligibility shall continue for hospital inpatient services for the entire length of that hospital stay*[;]*****.***

*[2.]*****(b)**** When a patient is admitted to a hospital and is determined Medicaid eligible subsequent to the date of admission, charges incurred during the ineligible period of the hospital stay shall not be reimbursable, unless coverage is pursued and approved under retroactive eligibility.

*[3.]*****(c)**** For coverage of services rendered prior to date of application for Medicaid, the recipient shall apply for retroactive eligibility, in accordance with N.J.A.C. 10:49-1.1.

10:52-1.5 Covered Services (Inpatient and Outpatient)

(a) Inpatient services which shall be covered by the Division are those services ordinarily furnished by an approved hospital maintained for the treatment and care of patients and provided to any Medicaid recipient for whom professionally developed criteria and standards of care were used to determine that the recipient warranted an appropriate hospital level of care for a given diagnosis and/or problem.

1. Inpatient psychiatric services in approved beds in a general hospital for patients of any age shall be covered services.

2. Inpatient room and board service shall be provided in a semi-private accommodation. Accommodations other than semi-private require certification of medical necessity or lack of availability of semi-private accommodations.

3. Inpatient services in an acute general hospital rendered the day after acute care is no longer medically necessary shall be covered only under specified conditions. (See Social Necessity Days in N.J.A.C. 10:52-1.11 and Administrative Days in N.J.A.C. 10:52-1.6.)

4. Non-physician services, supplies and equipment supplied by an outside vendor to Medicaid recipients who are receiving inpatient acute care hospital services shall be covered directly under the hospital reimbursement system. Vendor claims for these services are the responsibility of the acute care hospital where the recipient is a patient and shall not be billed directly to the Medicaid fiscal agent.

5. For recipients in the Medically Needy Program, inpatient hospital services shall be available only to pregnant women. For information on how to identify a Medicaid recipient in the Medically Needy Program, refer to N.J.A.C. 10:49-2.3(b)4, Administration *[Chapter]*.

(b) The Division shall pay for eligible ancillary services provided during a non-covered period in an acute care hospital in the following situations:

1. When the Utilization Review Organization (URO) denies the entire admission for acute level of care; and,

2. When the URO certifies the admission as acute but "carves out" days from the approved continued stay. For eligible ancillary services that were provided during days that were "carved out" or "non-covered" and occurring in an inlier stay, no additional reimbursement by Medicaid shall be made, since the services are already included in the DRG reimbursement rate; and

3. When the URO certifies that only part of the stay is acute.

(c) Medically necessary inpatient psychiatric services provided in an approved private psychiatric hospital shall be covered by the Division for any Medicaid recipient age 65 or older; or for any other Medicaid recipient before attaining the age of 21, except that a recipient receiving the services immediately before attaining age 21 may continue to receive the services until they are no longer needed or until the recipient reaches age 22, whichever occurs first.

(d) Outpatient services that shall be covered by the Division are those medically necessary items or services (preventive, diagnostic, therapeutic, rehabilitative, or palliative) provided to an outpatient, by or under the direction of a physician or dentist, except for the supervision of the certified nurse midwife services, pursuant to the rules of the Division and applicable Federal regulations, including those services listed below:

1. Outpatient psychiatric services in general hospitals and private psychiatric hospitals for patients of all ages;

2. Same Day Surgery shall be covered by the Division when the Medicaid recipient:

i. Is identified on the UB-92 claim form as a 131 or 136 bill type in accordance with N.J.A.C. 8:31B-2.1; and,

ii. Is discharged before midnight of the day of admission so the admission date and discharge date are the same; and,

iii. Had surgery performed in a fully equipped operating room, for example, one routinely equipped and capable of providing general anesthesia, and identified by an operating room charge on the claim; and,

iv. Had a normal discharge, for example was not transferred, did not leave "against medical advice", and was not discharged dead. (See N.J.A.C. 8:31B-3.11 and 8:31G-32—Same day surgery.)

3. Physician services in hospitals (outpatient) (that is, specifically unbundled physicians): A physician practicing in a hospital outpatient department whose reimbursement is not part of the hospital's cost may bill fee-for service if the arrangement with the hospital permits it.

4. Family planning services including medical history and physical examination (including pelvis and breast), diagnostic and laboratory tests, drugs and biologicals, medical supplies and devices, counseling, continuing medical supervision, continuity of care and genetic counseling.

5. The Norplant System (NPS) shall be a Medicaid covered service when provided as follows:

i. The NPS is used only in reproductive age women with established regular menstrual cycles;

ii. The Food and Drug Administration (FDA)-approved physician prescribing information is followed; and

iii. Patient education and counseling are provided relating to the NPS, including pre and post insertion instructions, indications, contraindications, benefits, risks, side effects, and other contraceptive modalities.

iv. The visit relating only to the insertion and removal of the Norplant System (NPS) is not reimbursable on the day of insertion or removal.

v. Only two insertions and two removals of the NPS per recipients are permitted during a five year continuous period.

vi. The hospital shall not be reimbursed for the NPS in conjunction with other forms of contraception, for example, intra-uterine device.

(e) Transfer from one outpatient facility to another outpatient facility, or a change from an outpatient facility to a private practitioner's care is allowable; however, effort shall be made to avoid duplication of diagnostic tests or services.

(f) For policies and procedures for Ambulatory Surgical Centers, see N.J.A.C. 10:52-2.1 and N.J.A.C. 10:66-5**,*** *[in the]* Independent Clinic Services *[Chapter]*.

(g) For policies and procedures for hospital-affiliated home health agencies, see N.J.A.C. 10:52-2.5 and N.J.A.C. 10:60**,*** *[in the]* Home Care Services *[Chapter]*.

(h) For policies and procedures for Medical Day Care Centers (Hospital Affiliated), see N.J.A.C. 10:52-2.6 and N.J.A.C. 10:65**,*** *[in the]* Medical Day Care Services *[Chapter]*.

(i) For policies and procedures for HealthStart (Comprehensive Maternity and Pediatric Care Services), see N.J.A.C. 10:52-3 *[in this manual]*. For policies and procedures for Early and Periodic Screening Diagnostic and Treatment, see N.J.A.C. 10:52-2.5.

(j) For other policies and procedures related to specific services, both inpatient and outpatient, see N.J.A.C. 10:52-2.

10:52-1.6 Non-Covered Services (Inpatient and Outpatient)

(a) Non-covered services (inpatient and outpatient) that shall not be eligible for payment by the Division are as follows:

1. Hospital admissions of the following description:

i. Admission for any condition for which hospitalization is not medically necessary;

ii. Admission primarily for rest cure, custodial care, convalescent care, or diet therapy for exogenous obesity;

iii. Admission for illnesses which, according to generally accepted professional standards, are not amenable to favorable modification. However, psychiatric services in a general hospital shall be covered for the purpose of determining that such disorders or illness (such as senility) are not amenable to favorable modification;

iv. Admission for diagnostic procedures which may be done on out-of-hospital basis, including but not limited to laboratory tests, electrocardiograms, and diagnostic radiological services;

v. Admission or extension of hospital stay solely for research or teaching studies;

vi. Admission for inpatient services provided in an approved private psychiatric hospital unless:

(1) The Medicaid recipient is age 65 or over; or,

(2) The Medicaid recipient has not attained age 21, except that an individual receiving such services immediately preceding the date on which he or she attained age 21 will continue to be covered until the date the individual no longer requires such services or the date the individual reaches age 22, whichever occurs first; and,

vii. Admission of recipients in the Medically Needy Program, except for pregnant women. For information on how to identify a Medically Needy recipient, see N.J.A.C. 10:49-2.3(b), Administration *[Chapter]*.

2. Any service or item requiring prior authorization (see N.J.A.C. 10:52-1.7, Prior authorization) which has been performed without prior authorization.

3. Medically unnecessary items and services, as follows:

i. Any service or item which is not medically necessary for the prevention, diagnosis, palliation, rehabilitation, or treatment of a disease, injury or condition;

ii. Inpatient hospital services rendered prior to the day it is medically necessary for the diagnostic services and/or surgical or medical treatment for which the patient is admitted.

iii. Inpatient hospital services rendered after the day it is medically necessary in a general hospital, except when special circumstances, that is, "social necessity", to prevent the discharge or transfer of the patient or when an inpatient is eligible for "administrative days" (see N.J.A.C. 10:52-*[1.11]***1.12,*** Social Necessity and N.J.A.C. 10:52-*[1.6]***1.7,*** Administrative Days).

iv. Inpatient hospital services denied for lack of medical necessity shall not be covered.

4. Private duty nursing services in the hospital inpatient setting;

5. Research or Teaching Studies;

6. Surgery (Elective), as follows:

i. Cosmetic Surgery, except that the Division shall consider authorization of a request from the patient's physician for elective cosmetic surgery, if a significant redeeming medical necessity can be demonstrated; and,

ii. Second Opinion Elective Procedures without meeting the Second Opinion requirement (see N.J.A.C. 10:52-*[1.10]***1.11***—Second Opinion Program);

7. Transportation, except as in N.J.A.C. 10:52-2.15—Transportation Services (Hospital-based);

8. Fee-for-service billed by a hospital-based physician who is salaried and whose services are reimbursed as part of the hospital's cost*[.]***;***

9. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related medical visits, drugs, laboratory, radiological and diagnostic services and surgical procedures:

i. Exception: When a service is provided that is ordinarily considered an infertility service, but is provided for another purpose then*[.

ii. The]* ***the*** hospital shall submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, Mail Code #14, Trenton, New Jersey 08625-0712;

10. Other services and items not directly related to the care of the patient, such as:

i. Inpatient items and services including guest meals and accommodations, television, telephone, and similar items and services. Personal items shall be billed to the patient directly, provided the patient is informed and agrees to accept responsibility for personal items; and,

ii. Outpatient items and services which are not usually part of the outpatient service; for example, eyeglasses, custom-made limbs and braces, or surgical supplies.

11. Services and items that are billed by, and payable to, another vendor;

12. Services and items furnished by the hospital, for which the hospital does not normally charge;

13. Services and items not medically required for the diagnosis or treatment of a disease, injury or condition; and,

14. Services provided to a patient during the same period for the same condition by both private practitioner and outpatient facility, or by two different facilities, shall not be covered. Payment shall be made for only one service, except in an emergency. (For definition of an emergency, see N.J.A.C. 10:49-6.1, Administration *[Chapter]*.)

10:52-1.7 Administrative Days (Nursing Facility Level of Care)—General, Special (Classification A & B) and Private Psychiatric Hospitals

(a) For a patient who is no longer in need of inpatient acute level of care and who is awaiting placement in a nursing facility, payment shall be made for "administrative days" if the general, special, rehabilitation, or the private psychiatric hospital demonstrates that:

1. All other possible health insurance benefits have been utilized;

2. Discharge planning was initiated upon admission of the patient to the hospital, reviewed, and updated regularly. Within one working day of identifying a Medicaid recipient as being at risk for nursing facility placement, the hospital notified the Medicaid District Office and the county welfare agency (CWA). See N.J.A.C. 10:52-*[1.8]* ***1.9*** in this chapter—Pre-Admission Screening for Nursing Facility Placement;

3. The care and services provided are medically necessary, that is, the attending physician wrote a discharge order from acute care or made a written entry in the medical record that the patient could

be transferred to a nursing facility (NF); and a Pre-Admission Screening Evaluation (PAS) confirmed the necessity for nursing facility services; and

4. Placement could not be made in an NF, as substantiated by documentation of timely and continuous contact (at a minimum, twice a week) with family members, nursing facilities (NFs), and placement agencies.

(b) Upon satisfaction of all the conditions listed under (a)1 through 4 above, payment will be made at the statewide weighted average per diem rate paid to Medicaid participating NFs, as determined on January 1 of each year;

(c) *[The]* N.J.S.A. *[30D:4D-6.7 and 6.8]* ***30:4D-6.7 and 6.8*** requires every nursing facility in the State to reserve a Medicaid recipient's bed up to *[ten]* ***10*** days when the recipient is transferred from the nursing facility to a general or private psychiatric hospital. If the discharged Medicaid recipient is unable to return to the nursing facility before the end of the 10 day period, the discharged recipient shall have priority for the next available Medicaid bed in the facility. When the recipient is admitted to the hospital under the bed reserve policy, the hospital shall:

1. Involve the NF in the preparation of the hospital's discharge planning; and,

2. Advise the NF of an anticipated discharge date; and,

3. Keep the NF informed of the patient's progress, particularly if something unexpected happens which causes a revision to the discharge plan; and,

4. Give the NF as much advanced notice as possible to prepare for the return of the patient; and,

5. When the 10 day bed reserve is exceeded and no bed is available in the NF from which the recipient was transferred, the hospital must provide the level of NF care determined by the Medicaid Regional Staff Nurse during the Pre-Admission Screening Evaluation until such time as a bed is available to the Medicaid recipient. (See N.J.A.C. 10:52-*[1.8]***1.9***.)

(d) For the information of hospital staff assisting in the discharge of a patient to an NF, N.J.S.A. 30:4D-17.3, prohibits, in general, an NF from requiring private pay contracts or donations under certain conditions on behalf of Medicaid recipients. To enforce this prohibition, the law establishes both criminal and civil penalties. (See also N.J.A.C. 10:49-9.7, Administration.)

(e) N.J.S.A. 10:5-12.2 of the New Jersey Civil Rights Act prohibits an NF from discriminating against Medicaid eligible persons and recipients of municipal general assistance by denying them admission when the NF's Medicaid occupancy level is below the Statewide occupancy level.

(f) Provisions for reimbursement of administrative days (nursing facility level of care) do not apply to special hospitals (Classifications A and B).

10:52-1.8 Prior authorization

(a) Prior authorization shall be required for certain dental procedures (see N.J.A.C. 10:56***,*** *[of the]* Dental Services *[Manual]*) and partial hospitalization provided in the outpatient department of an acute care hospital beyond exempt time frames (see N.J.A.C. 10:52-2.9(c).)

(b) Other services require adherence to special procedures, such as the requirements of the Second Opinion Program, before certain elective surgical procedures are performed. Specific services are described in the "Policies and Procedures for Providing Specific Services", in N.J.A.C. 10:52-2. Hospital entitlement to Medicaid payment is subject to providing these services in accordance with the policies and procedures as outlined. For general information about prior and retroactive authorization, see N.J.A.C. 10:49-6.1, Administration *[Chapter]*.

(c) For out-of-State services, see 42 CFR 431.52. Prior authorization as outlined in (d) below shall be required for inpatient and outpatient hospital services provided to a recipient outside the State of New Jersey, except as provided in (e) below. Hospital covered services for a recipient with an HSP (Medicaid) Case Number with the 1st and 2nd digits of 90 or the 3rd and 4th digits of 60, residing out-of-State at the discretion of the New Jersey Department of Human Services, shall not require prior authorization. *[Any]* ***However, any*** covered service that requires prior authorization as a prerequisite for payment to New Jersey Medicaid providers also requires prior authorization if it is to be reimbursed by the Division in any other State, except that prior authorization is not required for emergency and interstate transfers.

(d) A request for authorization for reimbursement for out-of-State services shall be directed to the Medicaid District Office ***(MDO)*** in the area where the recipient resides except as listed in (d)1 below. For a listing of MDOs, see the Directory at the end of the N.J.A.C. 10:49, Administration *[Chapter]*.

1. ***Exception:*** Prior authorization of out-of-State psychiatric services shall be directed to the psychiatric consultant in the Office of Medical Affairs and Provider Relations of the Division of Medical Assistance and Health Services, in accordance with N.J.A.C. 10:54, Physician Services *[Chapter]*.

2. For a recipient who resides in New Jersey in other than a hospital and who is to be admitted or referred to an out-of-State hospital for elective inpatient or outpatient services, the physician planning such action shall sign a statement that the medically necessary service is not available at a reasonable distance within the State of New Jersey; and

3. For a recipient who is traveling outside New Jersey and who is to be admitted to an out-of-State hospital for elective surgery, the attending physician shall justify by a signed statement that an attempt to return to a New Jersey hospital would create a significant risk to life or health or would create the need for an unreasonable amount of travel for the recipient.

4. The Division shall notify, in writing, the physician making the request.

i. If authorized, the authorization letter of the Medical Consultant of the Division shall be forwarded to the requesting physician. When arranging for hospital admission, the physician shall forward a copy of the authorization letter to the hospital. When submitting the claim for services to the fiscal agent, the hospital shall attach the authorization letter, or a copy of the letter, to the claim.

(e) Prior authorization shall not be required for emergencies nor for interstate hospital transfers. However, in these instances, the hospital shall attach the attending physician's signed statement to the claim, attesting to the nature of the emergency or, for a hospital interstate transfer, attesting to the unavailability of the medically necessary service within a reasonable distance within the State of New Jersey.

(f) For Medicaid recipients who have the diagnosis of Head Injury, for whom it is medically necessary to discharge from a hospital or special hospital to a special program in an NF, or to home care through the Traumatic Brain Injury Waiver Program, the hospital discharge planner and/or social worker shall obtain prior authorization for the placement (for either in-State or out-of-State patients) from the Medicaid District Office in the county where the recipient is residing. For information on the Traumatic Brain Injury Waiver program, see N.J.A.C. 10:60-5.2 and 5.3 and N.J.A.C. 10:49-17.5, Administration *[Chapter]*.

10:52-1.9 Pre-Admission screening for nursing facility (NF) placement

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

"Pre-Admission screening" (PAS) means that process by which all Medicaid eligible recipients seeking admission to a Medicaid certified NF and individuals who may become Medicaid eligible within six months following admission to a Medicaid certified NF, receive a comprehensive needs assessment by the Regional Staff Nurse to determine their long term care needs and the most appropriate setting for those needs to be met, pursuant to N.J.S.A. 30:4D-17.10. (P.L. 1988, c.97.)

"Pre-Admission screening and annual resident review (PASARR)" means that process by which all individuals with mental illness (MI) or mental retardation (MR), regardless of payment source, are screened prior to admission to a NF and annually thereafter in order to determine the individual's appropriateness for

NF services, and whether the individual requires specialized services for his or her condition.

"PASARR Level I" means the process of identification of individuals diagnosed with a serious mental illness (MI) or mental retardation (MR).

"PASARR Level II" is the process of evaluating and determining whether NF services and specialized services are needed.

"Specialized Services for Mental Illness (MI)" *[mean]* ***means*** those services offered when an individual is experiencing an acute episode of serious mental illness and psychiatric hospitalization is recommended, based on a Psychiatric Evaluation. Specialized Services entail implementation of a continuous, aggressive, and individualized treatment plan by an interdisciplinary team of qualified and trained mental health personnel. During a period of 24-hour supervision for the individual, specific therapies and activities are prescribed, with the following objectives: a) to diagnose and reduce behavioral symptoms; b) to improve independent functioning; and c) as early as possible, to permit functioning at a level where less than Specialized Services are appropriate. Specialized Services go beyond the range of services which a NF is required to provide.

"Specialized Services for Mental Retardation (MR)" *[mean]* ***means*** those services required when an individual is determined to have skill deficits or other specialized training needs that necessitate the availability of trained MR personnel, 24-hours per day, to teach the individual functional skills. Specialized Services are those services needed to address such skill deficits or specialized training needs. Specialized services may be provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR) or in a community-based setting which meets ICF/MR standards. Specialized services go beyond the range of services which a NF is required to provide.

"Health Services Delivery Plan (HSDP)" means an initial plan of care prepared by the Medicaid Regional Staff Nurse (RSN) during the Pre-Admission Screening (PAS) assessment process. The HSDP reflects the individual's current or potential problems, required care needs, and the Track of Care, and shall be forwarded to the authorized care setting.

"Nursing Facility (NF)" means an institution (or distinct part of an institution) certified for participation in Title XIX Medicaid and primarily engaged in providing health-related care and services on a 24-hour basis to Medicaid recipients (children and adults) who, due to medical disorders, developmental disabilities, and/or related cognitive and behavioral impairments, exhibit the need for medical, nursing, rehabilitative, and psychosocial management above the level of room and board. However, the nursing facility is not primarily for the care and treatment of mental diseases which require continuous 24-hour supervision by qualified mental health professionals or the provision of parenting needs related to growth and development.

"Regional Staff Nurse (RSN)" means a registered professional nurse employed by the Division who performs health needs assessments as required by this section.

"Track of Care" means designation of the setting and scope of Medicaid services as determined by the PAS process conducted by the RSN following assessment of the Medicaid recipient or potential Medicaid recipient, as follows:

1. "Track I" means long-term NF care;
2. "Track II" means short-term NF care; and,
3. "Track III" means long-term care services in a community setting.

(b) Pre-admission Screening (PAS) authorization shall be required prior to admission to a Medicaid certified NF of a Medicaid recipient, or an individual who may become a Medicaid recipient within six months following placement in a Medicaid certified NF. The Medicaid Regional Staff Nurse (RSN) will assess each individual's care needs and determine the appropriate setting for the delivery of needed services. The RSN will authorize or deny NF placement based on service requirements at N.J.A.C. 10:63-2 and the feasibility of alternative placement and will designate the track of care, in accordance with N.J.A.C. 10:63-1.11.

(c) PAS authorization is also required for individuals identified as having MI or MR regardless of the payment source. The PASARR assessment and authorization process shall be subsumed within the State's PAS protocols, as required by (d) below.

1. PASARR Level I Identification Screens shall be required for individuals diagnosed as MI, MR, or related conditions.

2. An individual is considered to have mental illness (MI) if he or she has a serious mental illness, such as schizophrenia, mood disorder, paranoia, panic or severe anxiety disorder, or similar condition, diagnosable in the Diagnostic and Statistical Manual of Mental Disorders (DSMIII-R; 1987 edition) (available from the American Psychiatric Association, 1400 K St. NW, Washington, DC 20005), which leads to a chronic disability and which meets the PASARR requirements for diagnosis, level of impairment, and duration of illness.

i. An individual is considered to have dementia if he or she has a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders (DSMIII-R; 1987 edition) and does not have a serious mental illness.

3. An individual is considered to have mental retardation if he or she has a level of retardation (mild, moderate, severe or profound) described in the "American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983)" or a related condition, as defined by, and pursuant to, Section 1905(d) of the Social Security Act (Omnibus Budget Reconciliation Act of 1987—P.L. 100-203); 42 U.S.C. 1396(d), and i below. An individual with a diagnosis of MR or a related condition and a diagnosis of dementia must have the PASARR Level II ***Specialized Service*** Screen, prior to admission to a Medicaid ***certified nursing*** facility.

i. "Persons with related conditions" means individuals who have severe, chronic disability that meet all of the following conditions:

*[(1) It is attributable to cerebral palsy or epilepsy; or any other condition (other than mental illness) found to be closely related to mental retardation (developmental disability) because this condition (the mental and/or physical impairment) results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons;

(2) It is manifested before the person reaches the age 22; and

(3) It is likely to continue indefinitely;]*

(1) Persons who have diagnosis of mental retardation (MR) or other developmental disability, such as cerebral palsy, epilepsy, autism, spinal bifida, or other neurological impairment;

(2) Persons who have a history or past records that show that the onset of the mental retardation or related conditions occurred prior to age 22; and

(3) The disability is severe and chronic in nature.*

4. PASARR Level II Specialized Services Screens shall be conducted for mentally ill or mentally retarded individuals only if the Medicaid RSN's assessment results in authorization of NF placement.

i. Level II Specialized Services Screens require that a psychiatric examination be performed by a Board eligible/certified psychiatrist to determine the need for specialized services, in accordance with (e) below.

ii. Level II Specialized Services Screens for MR individuals will be performed by the Division of Developmental Disabilities (DDD) to determine the need for specialized services, in accordance with (d) below.

5. After an initial PASARR assessment has been completed, the individual transferred from a nursing facility to an acute care general hospital or to a psychiatric hospital with an admitting diagnosis of MI, shall not require a Level II *[specialized services screen]* ***Specialized Services Screen*** or a PAS nursing facility assessment prior to readmission to a nursing facility. If the individual is transferred to a different facility, the hospital discharge planner shall advise the admitting NF of the individual's former NF placement.

6. For individuals diagnosed with Alzheimer's or related dementias, documentation to support the diagnosis, including ***the*** history, physical examination and diagnostic workup shall be provided to the admitting Medicaid certified nursing facility for the individual's clinical record.

7. Hospitals shall not transfer individuals to Medicaid certified NFs until Level II Specialized Service Screens have been conducted and the hospital has received MDO notification that specialized services are not required.

(d) The determination of the necessity for NF services shall be performed through Pre-admission Screening (PAS), as mandated by N.J.S.A. 30:4D-17.10. The Medicaid Regional Staff Nurse (RSN) shall determine the necessity for nursing facility services for Medicaid recipients, for individuals who may become Medicaid recipients within six months following admission to a Medicaid certified facility, and for individuals identified as meeting PASARR Level I criteria. The MDO having jurisdiction for the area where an acute care hospital is located has the responsibility for completing the PAS assessment, regardless of the recipient's county of residence or anticipated county of discharge.

1. The Medicaid RSN shall:

i. Review the medical, nursing, and social information obtained at the time of assessment, as well as any other supporting data;

ii. Assess the individual's care needs;

iii. Determine the appropriate setting for the delivery of needed services;

iv. Authorize or deny NF placement based on service requirements at N.J.A.C. 10:63-2 and the feasibility of alternative care;

v. Designate the track of care; and

vi. Advise the discharger planner and/or social worker of the appropriate setting for the delivery of needed services and, if appropriate, for the need for the PASARR Level II specialized services screen.

2. The Medicaid RSN shall schedule and perform the assessment process within three working days of the hospital discharge planner and/or social worker's initial contact with the MDO. Individuals who exhibit unstable, severe medical conditions, such as a patient in the Intensive Care or Coronary Care Unit, shall not be referred for PAS until that condition has stabilized.

3. A signed "Release of Information form (MCNH-69 Rev. 11/89)" shall be obtained from the patient. If the patient refuses NF placement, home care services, or participation in the PAS assessment process, the Medicaid RSN shall make every effort to obtain a signed participation declination statement, which shall be included in the patient's MDO case record.

4. NF placement approval: The Medicaid RSN shall verbally advise the hospital discharge planner and/or social worker and patient and/or family of the assessment decision.

i. For a Track I or II determination, the Medicaid RSN shall leave a copy of the HSDP and signed approval letter with the discharge planner/social worker. For individuals requiring Level II *[specialized service screens]* ***Specialized Service Screens***, the signed approval letter shall be forwarded only after the determination has been made that no specialized services are required.

ii. For a Track III determination, the Medicaid RSN shall leave a copy of the HSDP and signed approval letter with the discharge planner and/or social worker to forward to the home care provider. The discharge planner and/or social worker shall arrange needed home health services and forward a copy of the HSDP and signed approval letter to the home care agency. A Track III determination shall not be an authorization for NF services.

iii. The original approval letter signed by the Medicaid RSN shall be sent by the MDO to the patient and/or family with copies to the county welfare agency (CWA).

iv. A copy of the HSDP that was left with the hospital discharge planner and/or social worker by the Medicaid RSN, shall be attached to the hospital discharge material and forwarded with the patient to the admitting NF.

(1) If the patient being transferred will be eligible for Medicare benefits, the transfer shall be made to a Medicare participating NF.

5. NF placement denial: The Medicaid RSN shall verbally advise the hospital discharge planner and/or social worker and patient and/or family of the assessment decision. The Medicaid RSN shall leave a signed copy of the NF placement denial letter with the discharge planner/social worker. The original denial letter, signed by the Medicaid RSN, shall be sent to the patient and/or family by the MDO, with copies to the CWA.

(e) The hospital discharge planner and/or social work staff shall be responsible for identifying a Medicaid recipient inpatient or a Medicaid applicant inpatient who may be at risk of NF placement.

1. The identification process shall also include any inpatient in need of NF care who may become a Medicaid recipient within six months after NF admission and individuals meeting PASARR Level I criteria. (See N.J.A.C. 10:52-1.8(c).) These patients shall be referred by the hospital to the MDO and the CWA or the basis of the "At-Risk Criteria for Nursing Facility Placement and Referral to the Medicaid Office for PAS Evaluation" in (f) below. Medicaid recipients already residing in Medicaid participating facilities who are transferred to an acute care hospital and who are returning to either the same or a different NF, shall not require PAS authorization.

i. Within one working day of identifying an inpatient as being at risk for NF placement, the Hospital Discharge Planner and/or Social Worker shall:

(1) Make a telephone or FAX referral to the MDO and the CWA; and,

(2) If not already a Medicaid recipient, generate a Public Assistance Inquiry (PA-1C) to initiate the application process for Medicaid.

(3) Within two working days of the telephone referral to the MDO and CWA, the Hospital Discharge Planning Office shall forward the completed "Hospital Pre-Admission Screening Referral (PAS-5, 2/90)" to the MDO, unless it was "faxed" on the day of the referral.

2. The PASARR Level II Specialized Service Screens shall be performed by a Board eligible or Board certified psychiatrist for final determination, as follows:

i. The hospital discharge planning unit and/or social services department shall immediately arrange through the individual's attending physician, a consultation by a *[board]* ***Board*** eligible or *[board]* ***Board*** certified psychiatrist to complete the "Psychiatric Evaluation***"** *[DMHH (1994)"]* ***(DMH&H, 1994)*** form. (The "Psychiatric Evaluation" form shall not be completed until such time as the Medicaid RSN has approved Medicaid-certified NF placement.)

ii. Within 48 hours of the psychiatrist's review of the recipient or potential Medicaid recipient, the completed ***"**Psychiatric Evaluation***"** form shall be sent to the Division of Mental Health and Hospitals, CN-727, Trenton, New Jersey 08625-0727, Attention: PASARR Coordinator.

(1) A supply of the "Psychiatric Evaluation" form may be ordered from the PASARR Coordinator in the Division of Mental Health and Hospitals.

iii. The MDO shall contact the appropriate Regional Office of the Division of Developmental Disabilities (DDD) agency to advise them of the need for a MR Level II ***Specialized Service*** Screen. The MR Level II Specialized Service Screen will be completed by the DDD staff within three working days of the MDO contact.

iv. The final determination of the specialized services review by the DMH&H and/or DDD agencies shall be communicated to the Medicaid District Office who, in turn, shall provide the hospital discharge planning unit and/or social services department with the approval or denial decision for placement in a Medicaid NF.

(f) The "At-Risk Criteria for Nursing Facility Placement and Referral to the Medicaid Office for PAS" shall be utilized by the hospital in determining if a referral for long term care services, either in an NF or in the community, is indicated, as follows:

i. The medical criteria are as follows. Has the patient experienced any of the following:

(1) Catastrophic illness requiring major changes in lifestyle and/or living conditions, that is, multiple sclerosis, stroke, multiple trauma, AIDS, amputation, neurological disease, cancer, birth defect(s), and end stage renal disease.

(2) Debilitation and/or chronic illness causing progressive deterioration of self-care skills, that is, severe chronic disease, spina bifida, progressive pulmonary disease or diabetes.

(3) Multiple hospital admissions within the past six months. (Do not refer patients admitted directly from NFs.)

(4) Previous NFs admissions within the past two years.

(5) Major health needs, that is, tube feedings, special equipment or treatments, rehabilitation-/restorative services.

ii. The social criteria are as follows: In addition to the medical criteria, does the patient meet any of the following social situations:

(1) Homeless;

(2) Lives alone and/or has no immediate support system;

(3) Primary caregiver is not able to provide required care services; or

(4) Lack of adequate support systems.

iii. The financial criteria are as follows. Does the patient meet any of the income and asset tests:

(1) Currently eligible for Medicaid;

(2) Monthly income at/or below the current institutional specified at N.J.A.C. 10:71-5.6.

(A) Has no spouse in the community and resources no greater than those specified at N.J.A.C. 10:71-4.4 and 4.5;

(B) Has no spouse in the community and resources at/or below $26,000. (This is an indication that the patient may become Medicaid eligible within the next six months by spending down assets in an NF as private pay); or

(C) Has a spouse in the community with combined countable resources at or below $52,000. (This allows for calculation of the community spouse's resources under Medicare Catastrophic Coverage Act of 1988.)

(3) Monthly income at/or below the current New Jersey Care Special Medicaid programs maximum monthly income limit specified at N.J.A.C. 10:72-4.1 and:

(A) Has no spouse in the community and resources no greater than those specified at N.J.A.C. 10:71-4.4 and 4.5.;

(B) Has no spouse in the community and resources at/or below $28,000. (This is an indication that the patient may become Medicaid eligible within the next six months by spending down assets in an NF as private pay; or

(C) Has a spouse in the community with combined countable resources and/or below $56,000. (This allows for calculation of community spouse's resources under the Medicare Catastrophic Coverage Act of 1988.)

(g) The hospital discharge planner and/or social worker shall be responsible for the discharge or placement arrangements of the patient.

1. For each hospital patient referred for PAS, the hospital shall complete and send to the MDO a "Hospital Pre-Admission Screening Discharge form (PAS-6, 2/90)".

i. For any patient discharged to a NF, a Discharge Package (HSDP, discharge paper work, MDO approval letter, hospital transfer sheet, and PASARR documentation including the documentation which supports a diagnosis of Alzheimer's disease or related organic dementia) shall be compiled to accompany the patient to the NF.

(1) If the patient being transferred to a NF is eligible for Medicare benefits, the transfer shall be made to a Medicare participating NF.

ii. For those recipients discharged to community locations, the hospital social worker and/or discharge planner shall be responsible for the implementation of the HSDP by securing home care services.

10:52-1.10 Recordkeeping

Hospitals shall be required to keep legible individual records as are necessary to fully disclose the kind and extent of services provided, as well as the medical necessity for those services. This information shall be available upon the request of the Division or its agents.

10:52-1.11 Second *[opinion program for elective surgical procedures]* ***Opinion Program for Elective Surgical Procedures***

(a) A second opinion shall be obtained for any elective surgical procedures ***listed under (b) below. The outcome of the second opinion shall have no bearing on payment. Once the second opinion is rendered, the*** *[The]* recipient shall retain the right to decide whether or not to proceed with the surgery; however, failure to obtain a second opinion for these procedures shall result in a denial of the hospital claim.

1. If the operating physician determines that the need for surgery is urgent or is an emergency, no second opinion shall be required. "Urgent" or "emergency" includes any situation in which a delay in performing surgery in order to meet the second opinion requirement could result in a significant threat to the patient's health or life.

i. Reimbursement for urgent or emergency surgery shall be made only if a specific statement is attached to the claim form by the operating physician certifying that the second opinion requirement was not met and substantiating the urgent or emergent nature of the surgery.

2. If a Medicaid recipient is covered by another health insurance carrier (except Medicare) which makes only partial payment on the claim, the fiscal agent shall not make supplementary payment unless the second opinion requirement has been met. However, the fiscal agent shall make payment on the claim if the hospital receives documentation that a second opinion was arranged for and paid for by another health insurance carrier. A copy of this documentation must be attached to the Medicaid claim form.

(b) The following elective surgical procedures fall under the Second Opinion Program:

1. Hernia Repair (Unilateral or bilateral including common abdominal wall type) for any herniorrhaphy involving an adult (over 18 years of age).

2. Hysterectomy (See also N.J.A.C. 10:52-2.13(e));

3. Laminectomy;

4. Spinal fusion;

i. A second opinion shall not be required for spinal fusion for scoliosis in a child or young adult 18 years of age or under.

5. Tonsillectomy/Adenoidectomy;

i. A second opinion is required for all tonsillectomy/adenoidectomy procedures except for primary adenoidectomy for children under 12 years of age.

(c) A second opinion shall be arranged through the Medicaid Second Opinion Referral Services of the Provider Services Unit at the fiscal agent.

1. A consultation ordered by a physician shall not meet the Program's definition of a second opinion and no "Authorization for Payment" shall be granted based on such a consultation. The only exception to this policy involves second opinions arranged and paid for by other health insurance carriers. (See (a)2 above.)

2. In order to prevent claim denial as a result of a situation in which one of the elective surgical procedures is scheduled and performed before the second opinion requirement is met, it is suggested that the elective surgery not be scheduled until after the second opinion has been rendered.

(d) Neither the physician claim nor hospital claim associated with one of the second opinion procedures shall be paid unless attached to the hard copy claim is an "Authorization for Payment", or documentation of a second opinion arranged through another health insurance carrier, or a specific statement from the operating physician certifying that the second opinion requirement was not met and substantiating the urgent or emergency nature of the surgery.

1. Reimbursement shall not be made for a second opinion rendered to an individual who is not a Medicaid recipient. The issuance of a "Medicaid Second Opinion Referral Form" to the recipient by the Medicaid Second Opinion Referral Services of the Provider Services Unit shall not guarantee the individual's eligibility on the date of the second opinion or subsequent surgery. The individual's Medicaid eligibility shall be verified by checking the individual's current New Jersey Medicaid Validation Form before rendering any service (See N.J.A.C. 10:49-2.3, Administration *[Chapter]*—How to Identify a Medicaid Recipient).

(e) For physician requirements regarding Second Opinion procedures, see N.J.A.C. 10:54, Physician Services *[Chapter]*.

10:52-1.12 *[Social necessity days]* ***Social Necessity Days***

(a) Payment for *[Social necessity days]* ***"Social Necessity Days"*** shall be made to hospitals for a maximum of 12 calendar days per hospitalization for a Medicaid recipient child admitted with the diagnosis of child abuse or suspected child abuse, if special circumstances (social necessity) prevent the discharge or transfer of the patient and the hospital has taken effective action to initiate discharge or transfer of the patient.

1. For these cases, it is not necessary for the day of admission to be at the acute level of care.

2. Effective action is defined as telephone notification to the County Welfare Agency (CWA), or Division of Youth and Family Services (DYFS) district office, or other responsible officials as may be designated, within 48 hours of the time that the stay is determined to be no longer medically necessary. This telephone contact shall then be confirmed in writing within three working days. A copy of the written notification shall be submitted with all claims for which reimbursement is claimed for special circumstances (social necessity).

3. Medicaid reimbursement for social necessity shall be made to hospitals paid in accordance with the DRG rate setting methodology in N.J.A.C. 10:52-5 through 9.

10:52-1.13 Utilization control (inpatient services)

(a) This section provides information on the requirements for utilization control for inpatient services for approved acute general hospitals, special hospitals, and private psychiatric hospitals. EXCEPTION: For inpatient psychiatric hospital services for individuals under the age of 21, refer to N.J.A.C. 10:52-*[1.13 of this manual]* ***1.14***.

(b) For the purposes of this rule, the following words and terms shall have the following meanings:

"Utilization Control" means an approved program instituted, implemented and operated by or under the authorization of a utilization review organization (URO) which effectively safeguards against unnecessary or inappropriate Medicaid services and assesses the quality of those services to Medicaid recipients.

"Utilization Review Organization (URO)" means an organization designated and certified by the New Jersey State Department of Health, that has review authority over hospitals for specific functions for utilization review and quality assurance for all admissions to and continued lengths of stay at general hospitals in New Jersey. The review may be delegated or non-delegated and billed to the hospital under N.J.A.C. 8:31B-3.81.

(c) Under the Social Security Act, Section 1903(g) and (h), the Division is responsible for an effective program to control the utilization of services in hospitals. (See 42 CFR Part 456, Utilization Control, Subchapters B, C, and D). Included under utilization control are: Certification and recertification of the need for inpatient care; medical, psychiatric and social evaluations; a PoC established and periodically reviewed and evaluated by a physician; and a continuous program of utilization review under which the admission of each recipient is reviewed or screened. Hospital entitlement to Medicaid payment for services rendered to a Medicaid recipient for each period of hospitalization is subject to the following requirements:

1. A physician shall certify, for each recipient or applicant, that inpatient services in the acute care or in the private psychiatric hospital are or were needed.

i. The certification shall be made at the time of admission or, if an individual applies for assistance while in a hospital, before the Medicaid *[Program]* ***program*** authorizes payment.

ii. The certification shall be in writing and signed, or initialed, by a physician. The signature or initials are not acceptable if they are rubber stamped unless the physician has initialed the stamped signature. The physician shall date the certification on the date he or she signs it.

iii. The certification for any Medicaid patient shall be maintained in the recipient's medical record.

iv. Acceptable documentation for certification or recertification may be any of the following:

(1) A statement, signed and dated, by the attending physician, staff physician, and/or consultant physician who has knowledge of the case, attesting that the recipient is in need of hospital care.

(2) Physician's orders which are signed and dated on admission and clearly attest to the need for hospital care.

(3) A medical evaluation which designates the services and which is signed and dated by a physician who has knowledge of the case.

(4) An admission review form signed and dated by an attending or staff physician who has knowledge of the case.

2. A physician shall recertify for each Medicaid recipient or applicant that inpatient services in a hospital are needed.

i. Recertification shall be made at least every 60 days after certification.

ii. The recertification shall be in writing, shall attest to the need for inpatient services, and shall be signed or initialed by a physician who has knowledge of the case.

iii. The physician shall date the recertification on the date that he or she signs it.

iv. The recertification shall demonstrate the need for the level and type of care that the recipient is receiving.

v. The recertification for any Medicaid recipient *[must]* ***shall*** be maintained in the recipient's medical record.

vi. Acceptable documentation for recertification shall include any one of the following:

(1) A signed and dated statement by the physician who has knowledge of the case, attesting that continued care of a particular level or type is needed; or,

(2) Signed and dated orders by the physician who has knowledge of the case that clearly indicated that continued care is needed; or,

(3) Signed and dated progress notes by the physician who has knowledge of the case that clearly indicate that continued care is needed; or,

(4) Signed and dated reports that a physician might use in caring for the recipient that clearly indicate that continued care is needed; or,

(5) An admission certification or recertification form signed and dated by a physician who has knowledge of the case; or

(6) Utilization Review Committee (URC) minutes or form which indicate that the recipient's care was reviewed by a physician who had knowledge of the case and that continued care was needed. The physician's signature, with the date, shall be attached to the URC minutes or forms.

3. Any days billed by the hospital that are not in compliance with the certification/recertification requirements in (b)1 and 2 above shall be considered non-certified days and shall not be reimbursed by the Division.

i. Claims submitted that include non-certified days, (that is, "carved out" days or continued stay denials) as determined by the Division or its agents to affect billing, shall be billed "hard copy" and be accompanied by a certification of stay form.

(d) Before admission of an applicant or recipient to a private psychiatric hospital or before authorization for payment, the attending or staff physician shall make a medical evaluation of each applicant's or recipient's need for care in the hospital; and appropriate personnel shall make a psychiatric and social evaluation.

1. Each medical evaluation shall include the following:

i. Diagnoses;

ii. Summary of present medical findings;

iii. Medical history;

iv. Mental and physical functional capacity;

v. Prognoses; and,

vi. A recommendation by a physician concerning admission to the mental hospital, or continued care in the hospital for individuals who apply for Medicaid while in the private psychiatric hospital.

(e) Plan of Care (PoC): Before the admission of an applicant/recipient to an acute care general, special hospital, or private psychiatric hospital or before authorization for payment, a physician and other personnel in an acute care general and special hospital and the attending or staff physician in a private psychiatric hospital involved in the care of the individual shall establish a written PoC for each Medicaid recipient or applicant.

1. The PoC shall include:

i. Diagnoses, symptoms, complaints, and complications, indicating the need for admission;

ii. A description of the functional level of the individual;

iii. Objectives of the care (in private psychiatric hospitals only);

iv. Any order for diagnostic procedures; medications; treatments; consultations; restorative and rehabilitative services; patient activities; therapies; social services; diet; and, for private psychiatric hospitals only, special procedures for the health and safety of the patient;

v. Plans for continuing care, as appropriate; and, in a private psychiatric hospital, the review and modification of the plan of care; and,

vi. Plans for discharge, as appropriate.

2. Orders and activities shall be developed in accordance with the physician's instructions, (only for acute care general and/or special hospitals).

3. Orders and activities shall be reviewed and revised as appropriate by all personnel involved in the care of an individual (only for acute care general and/or special hospitals).

4. In acute care general and/or special hospitals, a physician and other personnel involved in the Medicaid recipient's case shall review each PoC at least every 60 days.

5. In private psychiatric hospitals, for recipients age 65 or over, the attending or staff physician and other personnel involved in the recipient's care shall review each PoC at least every 90 days; or,

6. Reports of evaluations and PoCs: A written report of each evaluation and plan of care shall be entered in the applicant's or recipient's record, as follows:

i. At the time of admission; or

ii. If the individual is already in the facility, immediately upon completion of the evaluation or plan.

(f) For the Utilization Review (UR) Plan, each hospital shall evaluate the necessity, appropriateness, and efficiency of the use of medical services, procedures, and facilities. The UR includes review of the appropriateness of admissions, services ordered and provided, length of stay, and discharge practices. (See 42 CFR 456.10 through 456.145, incorporated herein by reference.)

1. Upon admission of the patient to the hospital, a discharge plan shall be initiated and thereafter reviewed and updated regularly.

2. Any Medicaid recipient or potential Medicaid recipient who is considered for admission to an NF shall receive a pre-admission screening in accordance with N.J.A.C. 10:52-1.9.

3. When an inpatient is to be discharged from the hospital and continuing medical care is required, either in another medical facility (such as an NF, special hospital) or by a community health agency (such as a home health agency), the hospital shall provide the facility or agency with a legible abstract or summary of the patient's care while hospitalized and recommendations for further medical care.

i. This information shall be provided at the time of hospital discharge and shall be signed by the attending physician. The patient information transfer form (adopted by the New Jersey Hospital Association and the New Jersey Nursing Home Association) for a transfer from a hospital to an NF, or an equivalent transfer form, shall be used.

10:52-1.14 Utilization control: inpatient psychiatric services for recipients under 21 years of age in private psychiatric hospitals

(a) This section specifies the unique requirements for certification of the need for inpatient psychiatric services provided to recipients under 21 years of age in private psychiatric hospitals. In accordance with Section 1905(a)16 and (h) of the Social Security Act, a team, consisting of physicians and other qualified personnel, shall determine that inpatient services are necessary and can reasonably be expected to improve the recipient's condition. This section also includes general requirements; certification of the need for services, which involves "active treatment" as defined in (c) below; requirements for the team certifying the need for services; and, requirements for an individual plan of care. These requirements do not apply to an admission to a psychiatric unit of a general hospital. See N.J.A.C. 10:52-1.12 *[in this manual]* for requirements on utilization control in an acute care general hospital.

(b) This rule applies only to inpatient psychiatric services in an approved private psychiatric hospitals for the treatment of children and youths, before the recipient reaches age 21, or, if the recipient was receiving the services immediately before he reached age 21, before the earlier of the following:

1. The date the recipient no longer requires the services; or,

2. The date the recipient reaches age 22. (See 42 CFR 441.151).

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

1. "Active treatment" means implementation of a professionally developed and supervised PoC, as described in (f) below, that is:

i. Developed and implemented no later than 14 days after admission; and,

ii. Designed to achieve the recipient's discharged from inpatient status at the earliest possible time.

2. "Independent team" means a team that is not associated with the facility; for example, none of the members of the team has an employment or consultant relationship with the admitting facility. The independent team shall include a physician who has competence in diagnosis and treatment of mental illness, preferably child psychiatry and who has knowledge of the individual's clinical condition and situation.

3. "Interdisciplinary team", as described in federal regulations in 42 CFR 441.156, is comprised of those employed by, or those who provide services to Medicaid recipients in the facility or program, and include, as a minimum either a Board eligible or Board certified psychiatrist; or a physician and a clinical psychologist who has a doctoral degree; or a physician with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a Master's degree in clinical psychology or who has been certified by the State psychological association; and one of the following:

i. A psychiatric social worker;

ii. A registered nurse with specialized training or one year's experience in treating mentally ill individuals;

iii. A psychologist who has a Master's degree in clinical psychology or who has been certified by the State or by the State psychological association; or,

iv. An occupational therapist who is licensed by the State in which the individual is practicing, if applicable, and who has specialized training or one year experience in treating mentally ill individuals.

4. "Plan of care (PoC)" means a written plan developed for each recipient to improve the recipient's condition to the extent that inpatient care is no longer necessary.

(d) Certification of the need for services (see 42 CFR 441.152) shall be made by a team, either independent or interdisciplinary, as specified in (e) below*[, and shall include the following statements:]**. **The team shall certify that:***

1. Ambulatory care resources available in the community do not meet the treatment needs of the recipients;

2. Proper treatment of the recipient's psychiatric condition, requires services on an inpatient basis under the direction of a physician are needed; and,

3. Services can reasonably be expected to improve the recipient's condition, or prevent further regression, so that inpatient services would no longer be needed.

(e) *[Team certifying the need for services is as follows.]* ***The certification of the need for services, as stated under (d) above, shall be made by teams, in accordance with Federal regulations, 42 CFR 441.153 and specified as follows:***

1. Certification for the admission of a recipient: For an individual who is a recipient when admitted to a facility or program, certification must be made by an independent team, as described under (c) above.

2. Certification for inpatient applying for Medicaid: For an individual who applies for Medicaid while in the facility or program, the certification must be made by an interdisciplinary team responsible for the plan of care, as described under (c) above.

3. Certification—Emergency Admission: For emergency admission of a recipient, the certification must be made by the interdisciplinary team responsible for the plan of care, ***in accordance with Federal regulation, 42 CFR 441.156, and*** as described under (f)1 below.

(f) The individual PoC is as follows. Within 14 days of admission to a Private psychiatric hospital, or before authorization for payment, the attending physician or staff physician must establish a written PoC for each applicant or recipient to improve the recipient's con-

dition to the extent that inpatient care no longer is necessary, in accordance with (e) above. (See 42 CFR 456.180 and 456.181.)

1. The Plan of Care (PoC) shall:

i. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral and developmental aspects of the recipient's clinical condition and situation, and reflects the need for inpatient psychiatric care;

ii. Be developed by a team of professionals as described in (g) below in consultation with the recipient, the recipient's parents, legal guardians, or others in whose care he or she will be released after discharge;

iii. State treatment objectives;

iv. Prescribe an integrated program of therapies, activities, and experiences designed to meet the objectives; and,

v. Include, at an appropriate time, post discharge plans and coordination of inpatient services with partial discharge plan and related community services to ensure continuity of care with the recipient's family, school, and community, upon discharge.

2. The plan shall be reviewed every 30 days by the team to:

i. Determine that services being provided are or were required on an inpatient basis; and,

ii. Recommend changes in the plan as indicated by the recipient's overall adjustments as an inpatient.

(g) Functions of the interdisciplinary team developing the individual PoC are as follows:

1. The individual PoC as described under 42 CFR 441.156, *[must]* ***shall*** be developed by an interdisciplinary team of physicians and other personnel who are employed by, or provide services to, patients in the psychiatric hospital.

2. Based on education and experience, preferably including competence in child psychiatry, the team shall be capable of the following:

i. Assessing the recipient's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;

ii. Assessing the potential resources of the recipient's family;

iii. Setting treatment objectives; and,

iv. Prescribing therapeutic modalities to achieve the plan's objectives.

10:52-1.15 Utilization control; outpatient psychiatric services

(a) The following policies and procedures in this rule were developed to help ensure the appropriate utilization of outpatient psychiatric services. These include the role of the evaluation team in relation to the patient's treatment regimen, with emphasis placed on intake evaluation, development of a PoC, performance of periodic reviews for evaluation purposes, and supportive documentation for services rendered. Outpatient psychiatric services include ***the*** initial evaluation; individual psychotherapy; group psychotherapy; family therapy; family conference; partial hospitalization (see N.J.A.C. 10:52-2.9); psychological testing; and medication management.

(b) The policy for intake evaluation shall be as follows:

1. An intake evaluation shall be performed within 14 days or by the third outpatient visit, whichever is later, for each Medicaid recipient being considered for continued treatment, and shall consist of a written assessment that:

i. Evaluates the recipient's mental condition; and,

ii. Determines whether treatment in the program is appropriate, based on the patient's diagnosis; and,

iii. Includes certification (signed statement) by the evaluation team that the program is appropriate to meet the patient's treatment needs; and,

iv. Is made part of the patient's records.

(c) The policy for the evaluation team shall be as *[follow]* ***follows***:

1. The evaluation team for the intake process shall include, at a minimum, a physician and an individual experienced in diagnosis and treatment of mental illness (both criteria can be satisfied by the same individual, if appropriately qualified, in accordance with 42 CFR 153).

(d) The policy for the Plan of Care (PoC) shall be as follows:

1. A written individualized PoC shall be developed by the evaluation team for each patient who receives continued treatment. The PoC shall be included in the patient's records and shall be designed to improve the patient's condition to the point where continued participation in the program (beyond occasional maintenance visits) is no longer necessary. The PoC shall consist of the following:

i. A written description of the treatment objectives which include the treatment regimen, the specific medical and remedial services, therapies, and activities that will be used to meet the objectives;

ii. A projected schedule for service delivery which includes the frequency and duration of each type of planned therapeutic session or encounter;

iii. A description designation of the type of personnel that will be furnishing the services; and,

iv. A projected schedule for completing reevaluations of the patient's condition and updating the PoC.

(e) Documentation for outpatient psychiatric services shall be as follows:

1. For psychiatric services, the outpatient department shall develop and maintain written documentation to support each medical or remedial therapy, service, activity, or session for which billing is made. Such documentation shall include, at a minimum, the following:

i. The specific services rendered, such as individual psychotherapy or family therapy;

ii. The date and the actual time services were rendered;

iii. The duration of services provided, such as 1 hour or 1/2 hour;

iv. The signature of the practitioner who rendered the services;

v. The setting in which services were rendered; and,

vi. A notation of unusual occurrences or significant deviations from the treatment described in the PoC.

2. Clinical progress, complications, and treatment which affect prognosis and/or progress shall be documented in the patient's medical record at least once a week for partial hospitalization, and at each patient contact or visit for other psychiatric services. Any other information important to the clinical picture, therapy, and prognosis shall also be documented.

i. The individual services *[rendered]* ***provided*** under partial hospitalization shall be documented on a daily basis. More substantive documentation, including progress notes, and any other information important to the clinical picture shall be made at least once a week.

3. For services requiring prior authorization, such as partial hospitalization (see N.J.A.C. 10:52-2.10), a departure from the PoC requires a new request for prior authorization when a change in the patient's clinical condition necessitates an increase in the frequency and intensity of services, or change in the type of services which will exceed the services authorized.

(f) The policy for periodic *[Review]* ***reviews*** shall be as follows:

1. The evaluation team should periodically review the patient's PoC on a regular basis (at least every 90 days) to determine:

i. The patient's progress toward the treatment objectives;

ii. The appropriateness of the services being furnished; and

iii. The need for the patient's continued participation in the program.

2. The periodic reviews should be documented in detail in the patient's records and made available upon request of the Division and/or its agents.

SUBCHAPTER 2. POLICIES AND PROCEDURES RELATED TO SPECIFIC SERVICES

10:52-2.1 Ambulatory Surgical Center (ASC)

(a) An Ambulatory Surgical Center (ASC) shall be defined as follows:

1. Any distinct entity that operates for the purpose of providing surgical services to patients not requiring hospitalization; and,

2. Has an agreement with the Health Care Financing Administration (HCFA) to participate in the Medicare program; and,

3. Meets specific conditions for coverage set forth in Federal regulations in 42 CFR 416.2, Part B.

(b) An ASC may be operated by a hospital, that is under common ownership or control of a hospital.

1. An ASC operated by a hospital shall be a separately identifiable entity physically, administratively, and financially independent and distinct from other operations of the hospital. For policies and procedures concerning an ASC, see N.J.A.C. 10:66-2, Independent Clinic Services *[Chapter]*.

i. To apply as a provider of ASC services, contact the Chief, Provider Enrollment, Division of Medical Assistance and Health Services, CN-712, Mail Code #9, Trenton, New Jersey 08625-0712.

10:52-2.2 Blood and blood products

(a) Blood may be provided to an inpatient or an outpatient of an approved hospital when prescribed and supervised by a licensed physician.

(b) Whole blood and derivatives, and necessary processing and administration thereof, are allowed with the following limitations:

1. Efforts should be made to arrange for the replacement of blood. This can be done by contribution of a blood donor or by using a blood replacement plan that includes the Medicaid recipient as a beneficiary (if available).

2. The cost of donated blood or blood products (including autologous donation) received through a replacement plan is not reimbursable. However, the charge for phlebotomy, cross-matching, indexing, storage and transfusing is reimbursable.

3. The hospital shall obtain a certification that a voluntary blood donation cannot be obtained, in order to be reimbursed.

i. When arrangements for payment for the replacement of blood are not accomplished, reimbursement to the hospital shall be 100 per cent of the "add-on" charge.

10:52-2.3 Dental services

(a) Dental services in the outpatient department shall follow the policies and procedures outlined in N.J.A.C. 10:56, Dental Services *[Chapter]*. The outpatient dental department shall be subject to the same policies and procedures that apply to the Medicaid provider of dental services in the community, except for emergency dental care provided under special circumstances in a hospital emergency room.

1. A hospital with an outpatient dental department serving Medicaid recipients is given a unique provider number for that department. A hospital that starts an outpatient dental department shall request a provider number for that department from the fiscal agent.

(b) Reimbursement for a dental service is determined by the Commissioner of the Department of Human Services in accordance with N.J.A.C. 10:56, and is based on the same fee, conditions and definitions for the corresponding service, utilized for the payment of individual Medicaid dental practitioners and providers in the community. In no event shall the charge to the Division exceed the charge by the provider for identical services to other groups or individuals in the community.

1. If a dental procedure code is assigned both a specialist an non-specialist "Maximum Fee Allowance Schedule", the amount of the payment will be based upon the status (specialist or non-specialist) of the individual practitioner who actually provided the billed service.

i. If the dentist providing the services is a resident, intern, or house staff member, the status of the supervising dentist, specialist or non-specialist, determines the amount of the payment.

2. Covered emergency dental care performed in the hospital emergency room care shall not be reimbursed if the services were provided in the emergency room and the dental clinic was available at the same time.

10:52-2.4 Early and Periodic Screening, Diagnosis and Treatment (EPSDT)

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program is a comprehensive health program for Medicaid recipients from birth through 20 years of age. The goal of the program is to assess the recipient's health needs through initial and periodic examinations (screenings); to provide health education and guidance; and to assure that health problems are prevented, diagnosed, and treated at the earliest possible time.

1. As a condition of participation in Medicaid, all ambulatory care facilities (including hospital outpatient departments) providing primary care to children and adolescent from birth through 20 years of age, shall participate in the EPSDT program and shall provide, at a minimum, the required EPSDT screening services. The required EPSDT services include the following:

2. HealthStart is a program of enhanced maternity care and preventive health care for children under 2 years of age. Certified Pediatric HealthStart providers agree to assure continuity of care by following up on referrals and missed appointments, making available 24 hour telephone access and sick care, either directly or by formal arrangement with another pediatric provider. EPSDT providers may apply to the New Jersey Department of Health for certification as Pediatric HealthStart providers.

i. Pediatric HealthStart providers shall be approved for a higher reimbursement for preventive child health for preventive child health examinations (screening) than other EPSDT providers, in accordance with N.J.A.C. 10:52-3.

ii. For policies and procedures for HealthStart, see also N.J.A.C. 10:52-3.

(b) EPSDT/HealthStart screening services shall be billed on the Report and Claim for EPSDT/HealthStart Screening and Related Procedure Form using EPSDT/HealthStart specific procedure codes as listed in N.J.A.C. 10:66-6.3(a) in Independent Clinic Services. Claims shall be submitted within 30 days of the date of service for EPSDT services.

(c) The required EPSDT services shall include the following:

1. *[Screening services, as described in (e) below;]* ***Screening services, the components of which are described in (e)1 below:***

2. Vision services;

3. Dental services;

4. Hearing services; and,

5. Other medically necessary health care, diagnostic services and treatment and other measures to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services.

i. For the policy related to prior authorization of organ procurement and transplantation for Medicaid recipients receiving EPSDT services, see N.J.A.C. 10:52-2.8(e) under organ procurement and transplantation services.

ii. For the policy related to private duty nursing services in the home care setting for EPSDT recipients, see N.J.A.C. 10:60.

6. The parameters used in assessing the recipient's developmental level and behavior shall be appropriate for the age. While no specific test instrument is endorsed, it is expected that an evaluation of a young child shall, at a minimum, address the gross and fine motor coordination, language/vocabulary and adaptive behavior. An assessment of a school age child should include school performance; peer relationships; social activity and/or behavior; physical and/or athletic aptitude; and sexual maturation.

(d) EPSDT screening, vision services, dental services, and hearing services shall be provided at defined intervals as recommended by the appropriate professional organizations.

(e) EPSDT Screening Services shall be provided as follows:

1. The components of EPSDT Screening Services are as follows:

i. A comprehensive health and developmental history including an assessment of both physical and mental health development;

ii. A comprehensive unclothed physical examination including vision and hearing screening, dental inspection and nutritional assessment;

iii. Appropriate immunizations according to age and health history;

iv. Appropriate laboratory tests, including:

(1) Hemoglobin or hematocrit;

(2) Urinalysis;

(3) Tuberculin skin test, intradermal, administered annually and when medically indicated;

(4) Lead screening using blood lead level determinations between 6 and 12 months, at 2 years of age, and annually up to 6 years of age. At all other visits, screening shall consist of verbal risk assessment and blood lead level testing, as indicated.

(5) Additional laboratory tests which may be appropriate and medically indicated (e.g. for oval and parasites) shall be obtained, as necessary.

v. Health education including anticipatory guidance.

vi. Referral for further diagnosis and treatment or follow-up of all correctable abnormalities, uncovered or suspected. Referral may be made to the provider conducting the screening examination or to another provider, as appropriate.

vii. Referral to the Special Supplemental Food program for Women. Infants and Children (WIC) is required for children under 5 years of age and for pregnant or lactating women.

2. EPSDT screening services shall be provided periodically according to the following schedule which reflects the age of the child:

i. Under six weeks; two months; four months; six months; nine months; 12 months; 15 months; 18 months; 24 months; and, annually through age 20.

(f) Vision services shall include the following:

1. A newborn examination including general inspection of the eyes, visualization of the red reflex, and evaluation of ocular motility;

2. An appropriate medical and family history;

3. An evaluation, by age six months, of eye fixation preference, muscle imbalance, and pupillary light reflex; and

4. A third examination with visual acuity testing by age three or four years.

5. Periodicity of testing for school aged children shall be as follows:

i. Kindergarten or first grade (five or six years);

ii. Second grade (seven years);

iii. Fifth grade (10/11 years);

iv. Eighth grade (13/14 years); and

v. Tenth or eleventh grades (15/17 years)

6. Children should be referred if they:

i. Cannot read the majority of the 20/40 line before their fifth birthday;

ii. Have a two-line difference of visual acuity between the eyes;

iii. Have suspected strabismus; or

iv. Have an abnormal light or red reflex.

(g) Dental services shall include the following:

1. An intraoral examination which is an integral part of a general physical examination, including observation of tooth eruption, occlusion pattern, and presence of caries or oral infection;

2. A formal referral to a dentist is recommended at one year of age; it is mandatory for children three years of age and older; and

3. Dental inspection and prophylaxis that should be carried out every six months until 17 years of age, then annually.

(h) Hearing services shall include the following:

1. Hearing screening, which includes, at a minimum, an observation of an infant's response to auditory stimuli. Speech and hearing assessment shall be part of each preventive visit for an older child. An objective audiometric test, such as a pure tone screening test, if performed as part of an EPSDT screening examination, is eligible for separate reimbursement;

2. An individual hearing screening which should be administered annually to all children through age eight and to all children at risk of hearing impairment; and

3. After *[age]* eight ***years of age***, children shall be screened every other year*[except as]* ***in addition to what is*** required in ***(h)***2 above.

10:52-2.5 Home health agencies; hospital-based

(a) A home health agency (hospital-based) shall be licensed by the New Jersey State Department of Health; certified as a home health agency under Title XVIII (Medicare); possesses a valid and current provider agreement from the Division; and be an identifiable part of a hospital.

(b) The provision of home health care services can range from a complex concentrated professional program (for acute care cases) which would require the services of a public health nurse, registered professional nurse, a licensed practical nurse, physical therapist, occupational therapist, speech-language pathologist, social worker, and homemaker/home health aide to a less complex program (as in chronic care cases) involving a homemaker/home health aide, personal care assistant and/or therapist and minimal visits by a registered nurse. The types of services provided, the frequency and the duration of these services are determined by the needs of each recipient. Only medically necessary home health services are reimbursed by the Division.

(c) Policies and procedures related to Home Health Agencies (Hospital-based) are located in N.J.A.C. 10:60, Home Care Services *[Chapter]*. A hospital wishing to become a provider of home health services should contact the Chief, Provider Enrollment Unit, Division of Medical Assistance and Health Services, CN-712, Mail Code #9, Trenton, New Jersey 08625-0712.

10:52-2.6 Medical day care centers; hospital affiliated

(a) A Medical Day Care Center shall be affiliated and identified as part of a hospital which is licensed by the New Jersey State Department of Health, in accordance with its Manual of Standards for Licensure of Adult Day Health Care Facilities and which possesses a valid and current provider agreement from the Division.

(b) Medical Day Care is a program of medically supervised, health related services provided in a hospital affiliated ambulatory care setting to persons who are non-residents of the facility, who do not require 24 hour inpatient institutional care and yet, due to their physical and/or mental impairment, need health maintenance and restorative services supportive to their community living.

(c) A hospital affiliated Medical Day Care Center shall be paid a negotiated per diem rate which shall not exceed the maximum medical day care per diem rate paid to a Medical Day Care Center based in a nursing facility.

1. The per diem rate shall include all required services except for physical therapy and speech-language pathology services, which shall be billed separately.

2. Occupational therapy and transportation services shall be included in the per diem rate paid for medical day care services. Medical day care transportation services shall not be reimbursed by the fiscal agent as a separate service.

3. All direct and indirect costs associated with hospital affiliated Medical Day Care Centers shall be reported separately on New Jersey State Department of Health cost filings for payment purposes and shall not be considered an allowable cost under the DRG reimbursement system.

(d) The Division shall not reimburse for medical day care services and partial hospitalization services provided to the same recipient on the same day.

(e) Policies and procedures related to medical day care are found in N.J.A.C. 10:65, Medical Day Care Services *[Chapter]*. A hospital wishing to become a provider of medical day care services should contact the Chief, Provider Enrollment Unit, Division of Medical Assistance and Health Services, CN-712, Mail Code #9, Trenton, New Jersey 08625-0712.

10:52-2.7 Narcotic and drug abuse treatment centers; free-standing

(a) Services provided by a free standing hospital affiliated narcotic and drug abuse treatment center shall be covered only if those services are eligible for Federal Financial Participation under the Medicaid Program (Title XIX of the Social Security Act) and the following conditions are met:

1. The treatment is prescribed by a physician; and,

2. The treatment is provided in a narcotic and drug abuse treatment center licensed or approved by the New Jersey State Department of Health pursuant to N.J.S.A. 26:2G-21 et seq.; and,

3. The staff of the treatment center includes a medical director.

(b) Payment for outpatient services provided in a free-standing narcotic and drug abuse treatment center shall be made on a fee-for-service basis. The services include mental health services, methadone maintenance, and other related health services. The Division's payment shall be accepted as payment in full.

(c) Approved centers shall submit claims only for those procedure codes which correspond to the allowable services included in their New Jersey Medicaid provider approval letter. Room, board and other residential services shall not be covered. Claims for reimbursement shall be submitted to the fiscal agent on the claim form used by independent clinics (1500 N.J.-Health Insurance Claim Form).

10:52-2.8 Organ procurement and transplantation services

(a) The Division covers services rendered and items dispensed or furnished in connection with organ procurement and transplantation services of kidney, heart, heart-lung, liver, bone marrow, cornea and other selected medically necessary organ transplants except for those transplants categorized as experimental. (See *[(d) below for EPSDT and out-of-State]* ***(e) below for*** organ procurement and transplantation.)

(b) Hospitals that perform organ transplants (with the exception of bone marrow transplants and corneas) must meet the following requirements for participation in the Medicare and Medicaid programs.

1. Payment for transplant services and organ procurement services rendered to or items dispensed or furnished a donor will be considered a charge on behalf of the Medicaid recipient.

(c) Federal organ procurement service requirements are listed in the Social Security Act, Section 1138 as amended by Section 9318(a) of the Omnibus Budget Reconciliation Act of 1986.

1. Organ procurement services, with the exception of bone marrow transplant and cornea procurement services, are covered only when the Organ Procurement Organization (OPO) meets the requirements as outlined in the Section 1138 of the Social Security Act (42 U.S.C. 1320 (b)-8 Note) and when the OPO is designated and certified by the Secretary of the Department of Health and Human Services as the OPO for that geographical area in which the hospital is located.

(d) The covered organ transplantation procedures shall be performed in an organ transplant center approved or certified by a nationally recognized certifying or approving body, or one designated by the Federal government. In the absence of such a certification or approval of a nationally recognized body, the approval or certification, whichever applies, shall have been obtained from the appropriate body so charged in the State in which the organ transplant center is located.

(e) The candidate for transplantation shall have been accepted for the procedure by the transplant center. Such acceptance shall precede a request for prior authorization from the medical staff in the Office of Medical Affairs and Provider Relations, if applicable. All *[out-of-state]* ***out-of-State*** hospitalizations for transplantations shall require prior authorization from the MDO of the recipient's county of residence (see N.J.A.C. 10:49-6.2, Administration *[Chapter]*.) Prior authorization shall also be required for hospitalizations for procurement and transplantation services for Medicaid recipients *[of EPSDT services]* for anatomical sites not explicitly listed in (a) above***, or previously considered experimental***.

(f) Organ transplantations shall be medically necessary. Transplantations, with the exception of cornea transplantations, shall be performed only to avert a potentially life-threatening situation for the patient.

1. If all factors pertinent to decision-making concerning the site of performance of a transplant procedure are essentially equal, preference shall be given to a New Jersey transplant center. However, Medicaid policy of equitable access also applies (see 42 CFR 431.52 (c)).

(g) Hospital inpatient services for an out-of-State organ procurement and transplantation shall require approval by the Medicaid District Office and shall be reimbursed according to the policies in the section on the Basis of Payment—Out-of-State Hospital Services in N.J.A.C. 10:52-*[4.6]****4.4***.)

10:52-2.9 Psychiatric *[service]* ***services***; partial hospitalization

(a) Partial Hospitalization (PH) means a psychiatric service whose primary purpose is to maximize the client's independence and community living skills in order to reduce unnecessary hospitalization. It is directed toward the acute and chronically disabled individual. A PH program shall provide, as listed below, a full system of services necessary to meet the comprehensive needs of the individual Medicaid recipient. These services shall include:

1. Assessment and evaluation;
2. Service procurement;
3. Therapy;
4. Information and referral;
5. Counseling;
6. Daily living education;
7. Community organization;
8. Pre-vocational therapy;
9. Recreational therapy; and,
10. Health-related services.

(b) Pre-vocational therapy*[;]****,*** recreational therapy, and health related services, as required in (a) above, may be provided directly or arranged by partial hospitalization staff through other programs' elements or agencies. To avoid duplication of payment, these services shall not be billed separately from the claim submitted for partial hospitalization reimbursement.

(c) The requirements of the PH program ***shall*** include the following:

1. PH shall serve ambulatory, non-residential patients who spend only a part of a 24-hour period (a minimum of three hours of participation in active programming for a half day program exclusive of meals and a minimum of five hours of active participation in active programming for a full day program exclusive of meals) in the hospital.

i. Day, evening, or night care (night care shall include overnight stay) shall not require prior authorization from the Division for the first 90 calendar days from the first date of treatment.

2. A PH program shall be available daily for five days a week, with additional planned activities each week, during evening and/or weekend hours, as needed. Individual clients need not attend every day but as needed.

3. The staff of the PH program shall include a director who shall be a qualified professional from the specialties of psychiatry, psychology, social work, psychiatric nursing, vocational rehabilitation, or a related field, with training and/or experience in direct service provision and administration. A qualified psychiatrist shall be available to the PH program, on a regularly scheduled basis. Other staff deemed necessary to implement a PH program shall include include qualified mental health professionals, para-professionals, and volunteers.

(c) Prior authorization for PH from the Division shall be required after the first 90 calendar days from the date of the initial treatment. Each prior authorization for PH shall be granted for a maximum period of six months. Additional authorizations may be requested.

1. A detailed explanation and a new prior authorization request for PH is required when a departure from the PoC is made because a change in the patient's clinical condition necessitates an increase in the frequency, duration, and intensity of services, or a change in the type of services which will exceed the services authorized.

2. When prior authorization is required, the request shall be submitted on the form, "Request for Authorization of Mental Health Services (FD-07)" to the Psychiatric Consultant, Mental Health Services, Office of the Medical Affairs and Provider Services, Division of Medical Assistance and Health Services, CN-712, Mail Code #18, Trenton, New Jersey 08625-0712.

3. The request shall include the diagnosis, as set forth in the "(Annotated) International Classification of Diseases, 9th Revision, Clinical Modifications, (ICD-9-CM)", a brief clinical history; present clinical status; and the treatment plan. A request for retroactive authorization will be considered only when the request has been delayed by circumstances beyond the control of the outpatient department.

4. The notification of the disposition (approved, modified, denied, or suspended) of the prior authorization request will be made by the Medicaid fiscal agent. When submitting a claim for reimbursement, the prior authorization number shall be provided on the UB-92 hospital claim form, in order for the claim to be paid by Medicaid.

5. The Division shall not reimburse a hospital for partial hospitalization and medical day care center services provided to the same recipient on the same day.

6. The Division also shall not reimburse a hospital for any mental health service (including medication management) in addition to partial hospitalization services provided to the same recipient on the same day.

10:52-2.10 Rehabilitative services; hospital outpatient department

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

1. "Rehabilitative services" means physical therapy, occupational therapy, speech-language pathology and audiology services, and the use of such supplies and equipment as are necessary in the provision of such services.

2. "Occupational therapy" means services prescribed by a physician and provided to a Medicaid recipient by or under the direction of a qualified occupational therapist. They services necessary supplies and equipment.

3. "Occupational therapist" means an individual who is:

i. Registered by the American Occupational Therapy Association (AOTA); or,

ii. A graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association. If treatment *[and or]* ***and/or*** services are provided in a state other than New Jersey, the occupational therapist shall meet the requirements of that state, including licensure, if applicable, and shall also meet all applicable *[federal]* ***Federal*** requirements.

4. "Physical therapy" means services prescribed by a physician and provided to a Medicaid recipient by or under the direction of a qualified physical therapist. *[They]* ***These services*** include necessary supplies and equipment.

5. "Physical therapist" means an individual who is:

i. A graduate of a program of physical therapy approved by both the Council on Medical Association of the American Medical Association and the American Physical Therapy Association or its equivalent; and,

ii. Meet all applicable Federal requirements; be licensed by the State of New Jersey; or, if treatment and/or services are provided in a state other than New Jersey, meet the requirements of that state, including licensure, if licensure is required by that state.

6. "Speech-language pathology" and "audiology services" means diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech-language pathologist or audiologist. The services include necessary supplies and equipment.

7. "Speech-language pathologist" or "audiologist" means an individual who:

i. Has a certificate of clinical competence from the American Speech-Language-Hearing Association; or,

ii. Has completed the equivalent educational requirements and work experience necessary for the certificate; or,

iii. Has completed the academic program and is acquiring supervised work experience to qualify for the certificate; and,

iv. If practicing in the State of New Jersey, is licensed by the State of New Jersey as a speech-language pathologist or audiologist; or, if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable, and meets all applicable federal requirements.

(b) All treatment services shall be prescribed by a physician (M.D.) or doctor of osteopathy (D.O.) and provided by or under the direction and/or personal supervision of the appropriate qualified practitioner.

(c) When rehabilitative treatment services are prescribed, a plan of treatment shall be kept on file and completed during the Medicaid recipient's initial evaluation visit. The plan of treatment shall be definitive as to type, amount, frequency, and duration, of the rehabilitative services that are to be furnished and shall include the diagnosis and anticipated goals. For example, an order for "treatment three times a week as needed" is not acceptable.

10:52-2.11 Renal dialysis services for end-stage renal disease (ESRD)

(a) A hospital outpatient renal dialysis center shall *[have been]* ***be*** approved by the New Jersey State Department of Health to provide renal dialysis treatment for ESRD.

(b) At the beginning of a maintenance course of renal dialysis treatment for ESRD, renal dialysis centers should direct their Medicaid recipient/patient to the Social Security Administration District Office to file an application for Medicare benefits, if applicable.

(c) Renal dialysis services for ESRD and Medicare approved "add-on" costs shall be reimbursable by Medicaid only when the individual is a Medicaid recipient and not a Medicare recipient, or during the time frame when ESRD benefits are not Medicare reimbursable.

1. Medicare coverage usually begins with the first day of the third month after the month in which a maintenance course of renal dialysis services begins. Claims from that date on shall be submitted to Medicare, unless the Medicaid recipient has been denied eligibility for Medicare.

i. Exception: Medicare coverage may begin earlier than the time frame stated above if the individual receives renal transplantation services or participates in a self-dialysis training program.

(d) Reimbursement for hospital inpatient renal dialysis services for ESRD are included in the DRG rate methodology determinations.

10:52-2.12 Sterilization

(a) The Division covers sterilization procedures performed on Medicaid recipients based on 42 CFR 441.250 through 42 CFR 441.258 and related requirements outlined in this section and in the billing instructions contained in the Fiscal Agent Billing Supplement. For sterilization policy and procedures, see (b) through (e) below.

(b) "Sterilization" means any surgical procedure, treatment, or operation, performed for the purpose of rendering an individual permanently incapable of reproducing. Surgical sterilization procedures are considered to be those whose primary purpose is to render an individual incapable of reproducing. Such procedures require the completion of the Federal "Consent Form" for sterilization.

(c) "Consent Form"—(Pursuant to 42 CFR 441.258—Appendix to Subpart F—Specific Requirements for Use) requirements, including time frames to be met and/or documented on the "Consent Form" prior to the sterilization of an individual, follow:

1. The individual shall be at least 21 years of age at the time the consent is obtained;

2. The individual shall not be mentally incompetent. A "mentally incompetent individual" means an individual who has been declared mentally incompetent by a Federal, state, or local court of competent jurisdiction for any purpose, unless the individual has been declared competent for purposes which include the ability to consent to sterilization;

3. The individual shall not be institutionalized. An "institutionalized individual" means an individual who is:

i. Involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness; or,

ii. Confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness;

4. The individual shall have voluntarily given informed consent;

5. At least 30 days, but not more than 180 days, shall have passed between the date of informed consent and the date of sterilization, except in the case of emergency abdominal surgery or premature delivery;

i. In the case of emergency abdominal surgery, at least 72 hours shall have passed between the date he or she gave informed consent and date of sterilization;

ii. In the case of premature delivery, informed consent shall have been given at least 30 days before the expected date of delivery and at least 72 hours have passed between the date of informed consent and the date of premature delivery.

6. In the case where a patient desires to be sterilized at the time of delivery, the "Consent Form" shall be signed by the patient no earlier than the 5th month of pregnancy to minimize the possibility of exceeding the 180 day limit.

(d) An individual shall be considered to have given informed consent only if:

1. The person who obtained consent for the sterilization procedure offered to answer any questions the individual to be

sterilized may have had or has concerning the procedure, provided a copy of the "Consent Form", and provided orally all of the following information or advice to the individual to be sterilized; and,

i. Advice that the individual is free to withhold or withdraw consent to the procedure at any time before sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled; and,

ii. A description of available alternative methods of family planning birth control; and,

iii. Advice that the sterilization procedure is considered to be irreversible; and,

iv. A thorough explanation of the specific sterilization procedure to be performed; and,

v. A full description of the discomfort and risks that may accompany or follow the performing of the procedure, including an explanation of type and possible effects of any anesthetic to be used; and,

vi. A full description of the benefits or advantages that may be expected as a result of the sterilization; and,

vii. Advice that the sterilization will not be performed for at least 30 days except for emergency abdominal surgery or premature delivery.

2. Suitable arrangements were made to insure that the information specified above under "Informed Consent" was effectively communicated to any individual who is blind, deaf, or otherwise handicapped; and,

3. An interpreter was provided if the individual to be sterilized did not understand the language used on the "Consent Form" or the language used by the person obtaining consent; and,

4. The individual to be sterilized was permitted to have a witness of his or her own choice present when consent was obtained; and,

5. The requirements of the "Consent Form" were met, that is, its contents, certification, and signatures (see (e) below). The consent form currently in use by the Division is a replica of the form contained in the Federal regulations and shall be utilized by providers when submitting claims. No other consent form shall be permitted, unless approved by the Secretary, United States Department of Health and Human Services. The form is available from the Division's fiscal agent.

(e) Required consent form information, signatures, certification, and dates: In addition to completing all information (name of doctor or clinic the patient received information from, name of the operation to be performed, the patient's birth date, name of the patient, name of the physician who will perform the sterilization, the method, the language used by an interpreter, name and address of the facility the person obtaining consent is associated with, the date of the sterilization and the specific type of operation) in the appropriate spaces provided, the form shall be signed and dated by hand by the person indicated below:

1. "Consent to Sterilization," by the individual to be sterilized, prior to the sterilization operation (in accordance with the time frames specified in (c)5. above.

2. "Interpreter's Statement," by the interpreter, if one was provided prior to the sterilization operation. The interpreter must certify by signing and dating the "Consent Form" that:

i. He or she translated the information presented orally and read the "Consent Form" and explained its contents to the individual to be sterilized; and,

ii. To the best of the interpreter's knowledge and belief, the individual understood what the interpreter told him or her.

3. "Statement of Person Obtaining Consent," by the person who obtained the consent prior to the sterilization operation. The person securing the consent must certify, by signing and dating the "Consent Form" that:

i. Before the individual signed the "Consent Form", he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized; and,

ii. He or she explained orally the requirements for informed consent as set forth on the "Consent Form"; and

iii. To the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized. The name and address of the facility or physician's office with which the person obtaining consent is associated must be completed in the space provided on the form.

4. "Physician's Statement," by the physician who performed the sterilization operation after the surgery had been performed. (A date prior to surgery is not acceptable.) The physician performing the sterilization shall certify, by signing and dating the "Consent Form," that within 24 hours before the performance of the sterilization operation:

i. The physician advised the individual to be sterilized that no Federal benefits may be withdrawn from the patient because of the decision not to be sterilized; and,

ii. The physician explained orally the requirements for informed consent as set forth on the "Consent Form"; and,

iii. To the best of the physician's knowledge and belief, the individual appeared mentally competent and knowingly and voluntarily consented to be sterilized; and,

iv. That at least 30 days have passed between the date of the individual's signature on the "Consent Form" and certified that the date upon which the sterilization was performed, except in the case of emergency abdominal surgery or premature delivery; and,

v. In the case of emergency abdominal surgery or premature delivery performed within 30 days of consent, the physician shall certify that the sterilization was performed less than 30 days, but not less than 72 hours after informed consent was obtained, and in the case of abdominal surgery must describe the emergency, or in the case of premature delivery, must state the expected date of delivery.

5. Any additional requirement of State or local law for obtaining consent, except a requirement for spousal consent, was followed.

6. Informed consent shall not be obtained while the individual to be sterilized is:

i. In labor or childbirth; or,

ii. Seeking to obtain or obtaining an abortion; or,

iii. Under the influence of alcohol or other substances that affect the individual's state of awareness.

(f) Any New Jersey hospital with electronic billing capabilities shall submit a "hard copy" of the UB-92 claim form (including inpatient or outpatient) for all sterilization claims with the "Consent Form" attached to the UB-92 claim form and not submit the claim through the EMC claim processing system.

10:52-2.13 Hysterectomy

(a) The Division covers hysterectomy procedures performed on Medicaid recipients based on Federal regulations (42 CFR 441.250 through 42 CFR 441.258) and related requirements outlined in this section and in the billing instructions. For hysterectomy policies and procedures, see (b) through (d) below. Also, for the requirements for a Second Surgical Opinion for performing a hysterectomy, see N.J.A.C. 10:52-1.11.

(b) "Hysterectomy" means an operation for the purpose of removing the uterus.

1. A hysterectomy shall not be performed solely for the purpose of rendering an individual permanently incapable of reproducing. A hysterectomy shall be covered as a surgical procedure if performed primarily for the purpose of removing a pathological organ.

(c) Surgical hysterectomy procedures claim processing and reporting require*[s]* the completion of the "Hysterectomy Receipt of Information Form (FD-189, Rev. 7/83)" or, under certain conditions (see (d)1.iii. below), a physician certification.

(d) The specific requirements to be met and/or documented on the "Hysterectomy Receipt of Information," ***(*FD-189*, Rev. 7/83)*** form, or, under certain conditions, a physician certification, shall be as follows:

1. A hysterectomy on a female of any age may be performed when medically necessary for a pathological indication, provided the person who secured authorization to perform the hysterectomy has:

i. Informed the individual and her representative (if any), both orally and in writing, that the hysterectomy will render the individual permanently incapable of reproducing; and,

ii. Ensures that the FD-189 form is completed and the individual or her representative has signed and dated a written acknowledgement of receipt of that information utilizing the FD-189 form; or,

iii. The physician who performed the hysterectomy certifies, in writing, that the individual:

(1) Was sterile before the hysterectomy (include cause of sterility); or,

(2) Required a hysterectomy because of a life-threatening emergency in which the physician determined that prior acknowledgement was not possible (include a description of the nature of the emergency); or,

(3) Was operated on during a period of the person's retroactive Medicaid eligibility and the individual was informed, before the operation, that the hysterectomy would make her permanently incapable of reproducing or one of the conditions described in (1) or (2) above was applicable. (Include a statement that the individual was informed or describe which condition was applicable). "Retroactive Medicaid eligibility" means the consideration of unpaid medical bills incurred during a three month period prior to the month the person applied for assistance. (See N.J.A.C. 10:49-2.7, Administration *[Chapter]*.) Although a physician certification is acceptable for situations described in (d)1iii above, the Division recommends that the FD-189 form be used whenever possible. There is no 30 day waiting period required before a medically necessary hysterectomy may be performed. The standard procedure for a surgical informed consent form within the hospital will prevail.

(e) Any New Jersey hospital with electronic billing capabilities shall submit a "hard copy" of the UB-92 claim form for all hysterectomy claims with the FD-189 form attached to the claim form and must not submit the claim through the EMC claim processing system.

10:52-2.14 Termination of pregnancy

(a) The Division shall reimburse for medically necessary termination of pregnancy procedures on Medicaid recipients when performed by a physician in accordance with N.J.A.C. 13:35-4.2.

(b) A physician may take the following factors into consideration in determining whether a termination of pregnancy is medically necessary:

1. Physical, emotional, and psychological factors;
2. Family reasons; and,
3. Age.

(c) The determination of medical necessity is subject to review by Medicaid in accordance with the rules of the Medicaid *[Program]* ***program. In addition, the procedure must be performed*** *[and]* consistent with N.J.A.C. 13:35-4.2.

(d) A "Physician Certification (Form FD-179)" shall be attached to the hospital's Medicaid claim form, either for inpatient or outpatient services, if any of the procedures on the claim relate to a voluntary elective abortion.

i. A copy of the completed FD-179 shall also be attached to:

(1) The physician's Medicaid claim form; and,

(2) The anesthesiologist's Medicaid claim form.

(e) Any New Jersey hospital with electronic billing capabilities shall submit a "hard copy" of the UB-92 claim form (inpatient or outpatient) for all termination of pregnancy claims with the "Physician Certification (Form FD-179)" attached to the UB-92 claim form and must not submit the claim through the electronic billing system.

10:52-2.15 Transportation services; hospital-based

(a) Transportation shall be recognized by the Division as a covered outpatient hospital service under the following conditions:

1. Hospital-based emergency ambulance service for inpatient admission or outpatient services. For the definition of "emergency conditions", see N.J.A.C. 10:49-6.1, Administration *[Chapter]*, Prior and Retroactive Authorization.

2. Non-emergency ambulance service, only when it is ordered by a physician and is medically necessary. A physician's written order stating that any other method of transportation is medically contraindicated shall accompany the claim.

3. When a hospital is under contract with a municipality, county, or other government unit, to provide "911" or rescue squad ambulance service, reimbursement shall only be permitted on a fee-for-service basis under the policies and procedures as defined in N.J.A.C. 10:50-1.2, Transportation Services *[Chapter]*.

4. Each hospital providing ambulance service to Medicaid recipients shall possess all of the following:

i. An approved certificate of need for ambulance service from the New Jersey State Department of Health; and,

ii. A provider license and vehicle license(s) for ambulance service from the New Jersey State Department of Health.

(b) Mobile Intensive Care Unit/Advanced Life Support (MICU/ALS) service and associated Ambulance/Basic Life Support (Ambulance/BLS) service shall be considered covered services under the following conditions of participation:

1. A hospital shall possess a "Certificate of Need" from the New Jersey State Department of Health to provide MICU/ALS service;

2. A hospital shall complete a "Memorandum of Understanding", issued by the Division of Medical Assistance and Health Services, before reimbursement can be made to the hospital for this service. The "Memorandum of Understanding" may be obtained from and, when completed, shall be returned to the Division of Medical Assistance and Health Services, Provider Enrollment Unit, CN-712, Mail Code #9, Trenton, New Jersey 08625-0712;

3. A hospital providing MICU/ALS service without its own associated Ambulance/BLS service or MICU/ALS transport vehicle, may utilize the service of a volunteer ambulance organization or shall enter into an agreement(s) with a proprietary/nonproprietary Ambulance/BLS company for the purpose of defining the responsibility for service. No reimbursement shall be made when the Ambulance/BLS Service is provided by a volunteer ambulance organization.

i. A copy of the agreement(s) shall be sent to the Division of Medical Assistance and Health Services, CN-712, Provider Enrollment Unit, Mail Code #9, Trenton, New Jersey 08625-0712.

ii. The *[Hospital]* ***hospital*** shall bill for the Ambulance/BLS service only upon completion of an agreement.

iii. In the absence of an agreement(s) between the hospital providing the MICU/ALS service and a proprietary/nonproprietary Ambulance/BLS company, the hospital shall bill the Division's fiscal agent for the MICU/ALS service only.

iv. Transportation companies providing Ambulance/BLS associated with, and/or in conjunction with a MICU/ALS service, shall bill charges to the hospital providing the MICU/ALS service.

(c) Medicaid reimbursement of MICU/ALS services shall be based on Medicare principles of reimbursement, using standard cost reporting procedures, and reasonable cost and charge guidelines.

(d) Reimbursement for transportation services to and from hospital affiliated medical day care centers are included in the medical day care per diem rate.

SUBCHAPTER 3. HEALTHSTART—MATERNITY AND PEDIATRIC CARE SERVICES

10:52-3.1 Purpose

The purpose of HealthStart shall be to provide comprehensive maternity and child health care services for all pregnant women (including those determined to be presumptively eligible) and for children (under two years of age) in the State of New Jersey who are eligible for Medicaid benefits.

10:52-3.2 Scope of services

(a) HealthStart maternity care services shall include all medical services recommended by the American College of Obstetricians and Gynecologists, as well as a program of health support services. HealthStart pediatric care services shall include the nine preventive visits recommended by the American Academy of Pediatrics and all of the necessary immunizations. This subchapter includes provisions for provider participation, standards for service delivery, procedure codes from the HCFA Common Procedure Coding System (HCPCS), and directions for submitting claims.

(b) HealthStart Comprehensive Maternity Care includes two components; Medical Maternity Care Services and Health Support Services, as follows:

1. Medical Maternity Care Services include, but are not limited to:
i. Ambulatory prenatal services;
ii. Admission arrangements for delivery;
iii. Obstetrical delivery services; and
iv. Postpartum medical services.
2. Health Support Services include, but are not limited to:
i. Case coordination services;
ii. Health education assessment and counseling services;
iii. Nutrition assessment and counseling services;
iv. Social-psychological assessment and counseling services.
v. Home visitation; and
vi. Outreach, referral and follow-up services.

(c) HealthStart Comprehensive Pediatric Care includes nine preventive child health visits, all the recommended immunizations, case coordination and continuity of care, including, but not limited to, the provision or arrangement for sick care, 24-hour telephone access, and referral and follow-up for complex or extensive medical, social, psychological, and nutritional needs.

10:52-3.3 HealthStart provider participation criteria

(a) Providers that are eligible to participate as HealthStart providers shall be: independent clinics (including local health departments meeting the New Jersey Department of Health Improved Pregnancy Outcome and/or Child Health Conference criteria); hospital outpatient departments; physicians and physician groups; and nurse midwives approved as providers in the New Jersey Medicaid program, in accordance with N.J.A.C. 10:58 and 10:49.

(b) In addition to New Jersey Medicaid *[Program]* ***program*** rules applicable to provider participation, HealthStart providers shall:

1. Sign an Addendum to the New Jersey Medicaid Program Provider Agreement;

2. Have a valid HealthStart Maternity Care Certificate and/or a Pediatric Care Certificate; and

3. Provide maternity care and/or pediatric care services in accordance with the requirements for issuance of a "HealthStart Maternity Care Certificate", and/or a "HealthStart Pediatric Care Certificate", and in accordance with the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers and HealthStart Pediatric Care Providers.

(c) In addition to (a) and (b) above, HealthStart Maternity Care Providers with more than one care site or more than one maternity clinic at the same site that uses different staff, shall apply for a separate HealthStart Maternity Care Certificate for each separate clinic. Within an agency, only those sites which hold a certificate shall be reimbursed for HealthStart services; and

1. Shall participate in program evaluation and training activities, including but not limited to, site monitoring, agency and patient record review, and submission of required summary information on each patient according to the New Jersey Department of Health Guidelines for HealthStart Providers; and

2. May determine presumptive eligibility for New Jersey Medicaid if approved by the Division of Medical Assistance and Health Services.

(d) In addition to (a) and (b) above, HealthStart Pediatric Care Providers shall participate in program evaluation and training activities, including, but not limited to, documentation of outreach and follow-up activities in the patient's record.

(e) Site reviews may be required to ascertain applicant's ability to meet the Standards for HealthStart Certificates in appropriate areas and to provide services in accordance with the New Jersey State Department of Health Guidelines for HealthStart Providers in appropriate areas.

(f) HealthStart Provider Certificates shall be reviewed at least every eighteen months from the date of issuance.

(g) Applications for HealthStart Provider Certificates are available from:

HealthStart Project
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

(h) Applications for New Jersey Medicaid Provider agreements are available from:

Unisys Corporation
Provider Enrollment
P.O. Box 4804
Trenton, New Jersey 08650-4804

10:52-3.4 Termination of HealthStart certificate

(a) The New Jersey State Department of Health shall be responsible for enforcement of its requirements for HealthStart provider Certificates and for evaluation and enforcement of its requirements within the Standards and Guidelines for HealthStart providers.

(b) Failure to comply with HealthStart Certificate Standards shall be cause for termination of the HealthStart provider certificate. Providers who are terminated shall have the right to request a hearing pursuant to the procedures in N.J.A.C. 10:49-10.10.

10:52-3.5 Standards for a HealthStart *[comprehensive maternity care provider certificate]* ***Comprehensive Maternity Care Provider Certificate***

(a) Comprehensive maternity care services shall be integrated and coordinated.

(b) HealthStart Maternity Care providers, excluding physicians and nurse midwives who are in private practice, shall be required to provide for comprehensive maternity care services within the following organizational requirements.

1. Providers shall provide directly or through approved agreements, at one contiguous site, the following services: ambulatory prenatal and postpartum care; case coordination services; nutrition assessment; guidance and counseling services; health education assessment and instruction; social-psychological assessment, guidance and counseling;

2. Providers shall provide or arrange for the admission of patients to the appropriate level of care facility for obstetrical care delivery services;

3. Providers shall provide or arrange for all necessary laboratory services;

4. Providers shall provide one or more prenatal home visits for each high risk patient;

5. Providers shall provide at least one postpartum home visit for each high risk patient;

6. Providers shall provide referral and follow-up services, which shall include but not be limited to: referral for specialized evaluation; and counseling and treatment for extensive social, psychological, nutrition and medical needs.

(c) Providers shall adopt procedures and policies which assure the delivery of coordinated, integrated and comprehensive care; and

(d) Providers shall be responsible for linking the mother and newborn infant to a pediatric care provider; if feasible, the linkage shall be with a HealthStart Pediatric Care provider.

(e) Independent clinics, hospital outpatient departments, and local health departments may provide just the HealthStart Health Support Services Component only when they have entered into a written agreement with a private practitioner(s) who will provide the HealthStart Medical Care Services component. This agreement shall delineate which party shall take primary responsibility for provision of all HealthStart services.

10:52-3.6 Access to services

(a) All HealthStart services shall be accessible to patients.

(b) HealthStart Maternity Care providers shall facilitate patient access to services by scheduling an initial appointment within two weeks of the patient's first request for services.

(c) HealthStart Maternity Care providers shall provide or arrange for 24 hour access to case coordination and medical services for emergency situations.

(d) HealthStart Maternity Care providers shall arrange for language translation and/or interpretation services.

(e) HealthStart Maternity Care providers may implement presumptive eligibility determinations if approved by the Division of Medical Assistance and Health Services to institute this process.

(f) HealthStart Maternity Care providers shall undertake community outreach activities to encourage women to seek early prenatal care and increase awareness of the availability of maternity care services.

10:52-3.7 Plan of Care (PoC)

(a) A PoC shall be developed and maintained by the case coordinator for each patient.

(b) A PoC shall be based on the medical, nutritional, social-psychological and health education assessments.

(c) A PoC shall include but not be limited to: identification of risk conditions and/or problems, prioritization of needs, outcome objectives, planned interventions, time frames, referrals and follow-up activities, and identification of staff persons responsible for the services.

(d) The PoC shall be developed and revised in consultation with the patient and staff providing services to the patient.

(e) The initial PoC shall be completed after a case conference and no later than one month after the initial registration visit.

10:52-3.8 Maternity *[medical care]* ***Medical Care*** services

(a) ***Maternity*** Medical Care services shall include antepartum, intra-partum and post-partum care provided by the obstetrical care practitioner(s) in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.

(b) Prenatal services are as follows:

1. Frequency of prenatal visits for an uncomplicated pregnancy shall be every four weeks during the first twenty-eight weeks; then every two weeks until thirty-six weeks; and weekly thereafter. Prenatal visits for complications should be scheduled as needed.

2. Initial prenatal visit content shall include, but not be limited to, the following:

i. History;

ii. Review of systems;

iii. Comprehensive physical examination;

iv. Risk assessment;

v. Patient counseling;

vi. Routine laboratory tests;

vii. Development of the PoC; and

viii. Special tests and/or procedures as medically indicated.

3. Subsequent prenatal visit content shall include, but not be limited to the:

i. Review and revision of the patient PoC;

ii. Interim history;

iii. Physical examination;

iv. Patient counseling and treatment;

v. Laboratory tests;

vi. Special tests and/or procedures which are medically indicated;

vii. Identification of new or developing problems; and

viii. Management of any new or persistent problems including transfers.

4. Transfer of prenatal records to the hospital of delivery no later than thirty-four (34) weeks gestation.

(c) Obstetrical delivery services shall include, but not be limited to, the following:

1. Determination of, and arrangements for, delivery site;

2. Attendance at or provision for obstetrical delivery by a qualified physician or certified nurse midwife; and

3. Medical treatment during the postpartum stay.

(d) A postpartum visit shall be provided by the 60th day after delivery, and shall include, but not be limited to, the following:

1. History;

2. Review of the prenatal, labor and delivery record;

3. Physical examination;

4. Patient counseling and treatment;

5. Parent/infant assessment;

6. Referral/consultation, as indicated; and

7. Procedures/tests, as indicated.

(e) All HealthStart Maternity Care providers shall have policies and protocols consistent with national standards regarding consultation, and/or transfer of medically high risk patients to tertiary level maternity care facilities or specialists, and to genetic counseling and testing facilities.

10:52-3.9 HealthStart *[health support]* ***Health Support*** services

(a) Case coordination services shall facilitate the delivery of continuous, coordinated and comprehensive services for each patient in accordance with *"*New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers*"*, as follows:

1. A permanent case coordinator shall be assigned to each patient no later than two weeks after the HealthStart enrollment visit.

2. Prenatal case coordination activities shall include but not be limited to:

i. Orienting the patient to all services;

ii. Developing, maintaining and coordinating the PoC in consultation with the patient;

iii. Coordinating and monitoring the delivery of all services and referrals;

iv. Monitoring and facilitating the patient entry into and continuation with maternity services;

v. Facilitating and providing advocacy for obtaining referral services;

vi. Reinforcing health teachings and providing support;

vii. Providing vigorous follow-up for missed appointments and referrals;

viii. Arranging home visits;

ix. Meeting with the patient and coordinating patient care conferences; and

x. Reviewing, monitoring and updating the patient's complete record.

3. Postpartum case coordination activities shall include, but not be limited to, the following:

i. Arranging and coordinating the postpartum visit and any home visit;

ii. Arranging with the obstetrical care provider to obtain the labor, delivery and postpartum hospital summary record no later than two weeks after delivery;

iii. Linking the patient to appropriate service agencies including: Women, Infants and Children Program (WIC), pediatric care (preferably with a HealthStart Pediatric Care provider), future family planning, Special Child Health Services County Case Management Unit and other health and social agencies, if needed:

iv. Arranging for the transfer of pertinent information or records to the pediatric care and/or future family planning service providers;

v. Coordinating referrals and following up on missed appointments and referrals;

vi. Reinforcing health instruction for mother and baby.

(b) Nutrition assessment and basic guidance services shall be provided to orient and educate patients to nutritional needs during pregnancy and to educate patients to good dietary practices in accordance with *"*New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers*"*. Specialized nutrition assessment and counseling must be provided to women with additional needs. Services shall be provided as follows:

1. Initial assessment services, which shall include but are not limited to, the following:

i. Review of the patient's chart;

ii. Identification of dental problems which may interfere with nutrition;

iii. Nutrition history;

iv. Current nutritional status;

v. Determination of participation in WIC or other food supplement programs; and

vi. Identification of need for specialized nutrition counseling;

2. Subsequent nutrition assessment, which shall include but not be limited to, the following:

i. Monitoring of weight gain/loss;

ii. Identification of special dietary needs; and

iii. Identification of need for specialized nutrition counseling services;

3. Prenatal nutrition basic guidance, which shall include but not be limited to, the following:

i. Basic instruction on nutritional needs during pregnancy including balanced diet, vitamins and recommended daily allowances;

ii. Review and reinforcement of other nutrition and dietary counseling services the patient may be receiving;

iii. Instruction on food purchase, storage and preparation;
iv. Instruction on food substitutions, as indicated;
v. Discussion of infant feeding and nutritional needs; and
vi. Referral to food supplementation programs through the case coordinator;

4. Specialized nutrition assessment and counseling, which shall be provided to those women with additional needs;

5. Referral for extensive specialized nutrition services, which shall be initiated by the medical care provider or the nutritionist under the supervision of the medical care provider, in coordination with the case coordinator; and

6. Postpartum nutrition assessment and basic guidance services, which shall include, but not be limited to, the following:
i. Review and reinforcement of good dietary practices;
ii. Review of instruction on dietary requirement changes; and
iii. Instruction on breast feeding and/or formula preparation and feeding.

(c) Social-psychological assessment and basic guidance services shall be provided to all patients to assist each patient in resolving social-psychological needs, as described in the "New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers." Specialized social-psychological assessment and short-term counseling shall be provided to those women with additional needs. Services shall be provided as follows:

1. Initial social-psychological assessment services, which shall include, but not be limited to, the following:
i. Determining financial resources and living conditions;
ii. Determining the patient's personal support system;
iii. Determining the patient's attitudes and concerns regarding the pregnancy;
iv. Ascertaining present and prior involvement by the patient with other social programs or agencies and current social service needs;
v. Ascertaining educational and/or employment status and needs; and
vi. Identifying the need for specialized social-psychological and/or mental health evaluation and counseling services;

2. Subsequent social-psychological assessment services, which shall include, but not be limited to, the following:
i. Determining patient's reaction to pregnancy;
ii. Ascertaining the reaction of family, friends and the actual support person to the pregnancy;
iii. Identifying the need for social service interventions and advocacy; and
iv. Identifying the need for specialized social-psychological and/or mental health evaluation and counseling;

3. Basic social-psychological guidance, which shall include, but not be limited to, the following:
i. Orientation and information on available community resources;
ii. Orientation regarding stress and stress reduction during pregnancy; and
iii. Assistance with arrangements for transportation, child care and financial needs;

4. Specialized, short-term social-psychological counseling, which shall be provided to women who are identified through assessment or basic counseling as having need for more intense service.

5. Referral for extensive specialized social-psychological services, which shall be initiated by the medical care provider, or by the social worker under the supervision of the medical care provider and in coordination with the case coordinator; and

6. Postpartum social-psychological assessment and guidance, which shall include, but not be limited to, the following:
i. Review of prenatal, labor, delivery and postpartum course;
ii. Assessment of patient's current social-psychological status, including mother and infant bonding and father/family acceptance of the infant, as applicable;
iii. Identification of the need for additional social-psychological services;
iv. Review of available community resources for mother and infant, as applicable;
v. Counseling regarding fetal loss or infant death, if applicable; and
vi. Counseling regarding school/employment planning.

(d) Health education assessment and instruction shall be provided to all patients at intervals throughout the pregnancy, based on the patient's needs and as described in the "New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers." Services shall be provided as follows:

1. Initial assessment of health educational needs, which shall include but not be limited to:
i. Identification of general educational background;
ii. Identification of patient's health education needs; and
iii. Identification of previous education and experience concerning pregnancy, birth and infant care.

2. Health education instruction, which shall be provided for all patients based on their identified health education needs shall include at least the following:
i. Normal course of pregnancy;
ii. Fetal growth and development;
iii. Warning signs, such as signs of pre-term labor, and identification of emergency situations;
iv. Personal hygiene;
v. Exercise and activity;
vi. Child birth preparation, including management of labor and delivery;
vii. Preparation for hospital admission;
viii. Substance/occupational/environmental hazards;
ix. Need for continuing medical and dental care;
x. Future family planning;
xi. Parenting, basic infant care and development;
xii. Availability of pediatric and family medical care in the community; and
xiii. Normal postpartum physical and emotional changes.

3. Health education services, which shall include guidance in decision making and in the implementation of decisions concerning pregnancy, birth and infant care.

4. Postpartum assessment of health education needs shall be conducted.

(e) The provider shall provide, or arrange for, one or more home visits for each high risk patient, as described in the "New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers."

(f) One face to face encounter shall be provided or arranged for during the time after hospital discharge and prior to the required medical postpartum visit as described in the "New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers," as follows:

1. This contact shall include but not be limited to:
i. Review of the mother's health status;
ii. Review of the infant's health status;
iii. Review of mother/infant interaction;
iv. Revision of the PoC; and
v. Provision of additional services, as indicated.

(g) HealthStart Maternity Care Providers shall utilize existing community services to enhance the maternity care services.

(h) HealthStart Maternity Care Providers shall have written procedures which identify specific agencies or practitioners and criteria for referral of patients requiring services which are extensive, complex or expected to extend beyond the pregnancy. These shall include but are not limited to: nutrition and food supplementation services, substance abuse treatment facilities, mental health services, county/local social and welfare agencies, parenting and child care educational programs, future family planning services, fetal alcohol syndrome and AIDS counseling services.

10:52-3.10 Professional staff requirements for HealthStart *[maternity comprehensive]* ***Comprehensive Maternity Care*** services

(a) All HealthStart Maternity Care services shall be delivered through a team approach by qualified professionals.

(b) Physicians and/or certified nurse midwives shall be Medicaid providers and have obstetrical admitting privileges at a licensed maternity care facility.

(c) Case coordinators shall have, as a minimum, a license as a registered professional nurse; or a Bachelor's degree in social work, health, or a behavioral science, if other than a nurse.

(d) Health professionals shall have a valid license to practice their professions, as required by the State.

(e) All other professionals, for whom no license to practice is required, shall meet generally accepted professional standards for qualification.

(f) Paraprofessionals shall be familiar with the local community, have knowledge and/or skill in maternal and child health services and be supervised by a health professional.

(g) Prenatal, delivery, and postpartum medical services shall be delivered by physicians and/or certified nurse midwives.

(h) Nutrition, social-psychological and health education assessments and development of PoC shall be provided by appropriate professionals in each of the specialty areas, or by case coordinators or medical care professionals. If the nutrition or social-psychological assessment portions of the PoCs are provided by case coordinators or medical care professionals, then these portions shall be reviewed by nutritionists or social workers, respectively.

(i) Nutrition and social-psychological basic counseling shall be provided by case coordinators with at least one year experience providing services to maternity patients or by appropriate specialists in each of the areas or by registered nurses or obstetrical care providers.

(j) Short term specialized social-psychological and nutrition counseling services shall be provided by social workers and nutritionists respectively. Social workers and nutritionists shall be available on site during patient visits.

(k) There shall be adequate professional, paraprofessional and clerical staff to provide, in a timely manner, maternity care services as described herein which meet the needs of the patients.

10:52-3.11 Records; documentation, confidentiality and informed consent requirements for HealthStart Comprehensive Maternity Care *[Providers]* ***providers***

(a) HealthStart Maternity Care *[Providers]* ***providers*** shall have policies which protect patient confidentiality, provide for informed consent and document prenatal, labor, delivery and postpartum services *[in accordance with]* ***as described in the "*** New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.***"***

(b) An individual record shall be maintained for each patient throughout the pregnancy.

(c) Each record shall be confidential and shall include at least the following: history and physical examination findings assessment, a Care Plan, treatment services, laboratory reports, counseling and health instruction provided and documentation of referral and follow up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart services.

10:52-3.12 Standards for HealthStart *[pediatric care certificate]* ***Pediatric Care Certificate***

(a) Pediatric care services shall be comprehensive, integrated and coordinated.

(b) HealthStart Pediatric Care providers shall be Medicaid providers and shall:

1. Directly provide preventive, well-child care, maintenance of complete patient history, outreach for preventive care, initiation of referrals for appropriate medical, educational, social, psychological and nutrition services, and follow-up of referrals and sick care.

2. Directly provide or arrange for non-emergency room based, 24-hour physician telephone access to patients.

3. Directly provide or arrange for sick care and emergency care.

10:52-3.13 Professional requirements for HealthStart *[pediatric care]* ***Pediatric Care*** providers

All HealthStart Pediatric Care *[Providers]* ***providers*** shall be physicians or have a physician on staff who possesses a knowledge of pediatrics. This may be demonstrated by eligibility for board certification by the American Academy of Pediatrics and/or by hospital admitting privileges in pediatrics.

10:52-3.14 Preventive care services provided by HealthStart *[pediatric care]* ***Pediatric Care*** providers

(a) HealthStart Pediatric Care *[Providers]* ***providers*** shall provide preventive health visits in accordance with the recommended guidelines of the American Academy of Pediatrics and *[in accordance with]* ***as described in the "*** New Jersey State Department of Health Guidelines for HealthStart Pediatric Care.***"*** The schedule shall include a *[2-4]* ***two to four*** week visit, *[2]* ***two*** month visit, *[4]* ***four*** month visit, *[6]* ***six*** month visit, *[9]* ***nine*** month visit, 12 month visit, 15 month visit, 18 month visit and 23*[-]* ***to*** 24 month visit. Each visit shall include, at a minimum, medical, family and social history, unclothed physical examination, developmental and nutritional assessment, vision and hearing screening, dental assessment, assessment of behavior and social environment, anticipatory guidance, age appropriate laboratory examinations, and immunizations. Referrals shall be made as appropriate. The EPSDT/HealthStart Child Health Preventive Visit form (MC-19) shall be completed for each HealthStart preventive visit and submitted within *[thirty (]*30*[)]* days.

(b) Each provider shall provide or arrange for sick care and twenty-four hour telephone physician access during non-office hours. If not directly provided by the HealthStart provider, sick care and twenty-four hour telephone access shall be provided for each child by a single designated provider via a documented agreement. Information on care given shall be communicated to the primary HealthStart pediatric care provider. Telephone access provided exclusively via emergency room staff shall not be permitted. Referral to the emergency room shall occur only for emergency medical care or urgent care as recommended by the physician responsible for sick care.

(c) Case coordination outreach and follow-up services shall include letter and/or telephone call reminders to the child's parent or guardian for preventive well-child visits and letters and/or telephone follow-up of missed appointments. Referrals for home visit services for follow-up shall be made when appropriate. For all referrals and follow-up visits, the provider shall document the completion of such referrals and/or visits. If the referral is not completed, a letter or phone call to the child's parent or guardian and/or to the referred agency shall be sent or made, encouraging the follow through of the referral. All of the activity shall be recorded on the patient's chart.

(d) All HealthStart Pediatric Care providers shall make provision for consultation for specialized health and other pediatric services. Services shall include medical services, as well as social, psychological, educational and nutrition services. This may include, but is not limited to: the Women, Infants and Children Program (WIC), the Division of Youth and Family Services, Special Child Health Services Case Management Units and Child Evaluation Centers, the early intervention programs, County Welfare Agencies/ Board of Social Services, certified home health agencies, community mental health centers, local and county health departments.

10:52-3.15 Records; documentation, confidentiality and informed consent for HealthStart *[pediatric care providers]* ***Pediatric Care Providers***

(a) HealthStart Pediatric Care providers shall have polices which protect patient confidentiality, provide for informed consent and document comprehensive care services *[in accordance with]* ***as described in the "*** New Jersey State Department of Health Guidelines for HealthStart Pediatric Care Providers.***"***

(b) An individual record shall be maintained for each patient.

(c) Each record shall be confidential and shall include at least the following: history and physical examination, results of required assessments, Care Plan, treatment services, laboratory reports, counseling and health instruction provided and documentation of referral and follow-up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart Pediatric services.

10:52-3.16 Policy for reimbursement for HealthStart providers

(a) The HealthStart HCPCS procedure codes listed in this subchapter are governed by the same policies and rules that appear in the HCPCS subchapter of each non-insitutional provider services

manual (Independent Clinic, Physician and the Nurse Midwifery Services Chapters). The maximum fee allowance schedule and reimbursement requirements for HCPCS HealthStart Maternity Codes (Medical Care and Health Support Services) and HCPCS HealthStart Pediatric Codes are listed under N.J.A.C. 10:66-3(a).

(b) A hospital outpatient department (OPD) which is a HealthStart Provider shall use *[the UB-92 claim form]* ***the present procedure for OPD billing (UB-92 claim form)***; except for:

1. HealthStart ***Health*** Support Services (W9040 through W9043), which shall be billed on the *[HCFA-]*1500 N.J. claim form, using the Independent Clinic billing number, and

2. HealthStart pediatric continuity of care services (W9070), which shall be billed on the MC-19 form, Report and Claim for EPSDT/HealthStart Screening and Related Procedures.

10:52-3.17 HealthStart *[maternity care]* ***Maternity Care*** billing code requirements

(a) HealthStart *[maternity care]* ***Maternity Care*** billing code requirements shall be as follows:

1. Separate reimbursement shall be available for Maternity Medical Care Services and Maternity Health Support Services.

2. Maternity Medical Care Services shall be billed as a total obstetrical package, when feasible, but may be billed as separate procedures.

3. The enhanced reimbursement for the delivery and postpartum care may be claimed only for a patient who had received at least one antepartum HealthStart Maternity Medical or Health Support Service.

4. The modifier "WM" in the HCPCS lists of codes (W9025 through W9030) refers to those services provided by certified nurse midwives who shall include the modifier at the end of each code. HCPCS codes for Health Support Services do not require the "WM" modifier on HCPCS codes W9040 and W9043.

5. Laboratory and other diagnostic procedures and all necessary medical consultations shall be eligible for separate reimbursement.

(b) HealthStart Maternity Medical Care Procedure codes are provided in ***N.J.A.C.*** 10:66-3(a) Health Care Financing Administration ***(HCFA)*** Common Procedure Coding System (HCPCS), Independent Clinic Services.

SUBCHAPTER 4. BASIS OF PAYMENT FOR HOSPITAL SERVICES

10:52-4.1 Basis of payment; acute general hospitals reimbursed under the Diagnosis Related Groups (DRG) system—inpatient services

The Division will reimburse acute care general hospitals for inpatient services based upon rates determined under N.J.A.C. 10:52-5 through 9, except for distinct units of acute care general hospitals. For reimbursement methodology for distinct units of acute care general hospitals, see N.J.A.C. 10:52-4.2(c).

10:52-4.2 Basis of payment; special hospitals (Classification A and B), private psychiatric hospitals and distinct (excluded units) of acute general hospitals—inpatient services

(a) The Division will reimburse special hospitals (Classification A) (acute and short term special hospitals) and Classification B (Rehabilitation hospitals) for inpatient services (including the interim and final settlement), in accordance with Medicare principles: reimbursement (see 42 CFR 413).

(b) The Division will reimburse special hospitals (Classification C) according to the rules and reimbursement methodology of Chapter 63, long Term Care Services (N.J.A.C. 10:63).

(c) The Division will reimburse private psychiatric hospitals and distinct units of acute general hospitals for inpatient services (including the interim and final settlement) in accordance with Medicare principles of reimbursement. Distinct units of acute general hospitals are not reimbursed through the Diagnosis Related Groups (DRG) reimbursement system (N.J.A.C. 8:31B) for inpatient services in acute care general hospitals.

(d) Therapeutic leave days (days spent outside the facility) are not reimbursed to hospitals by the Division.

10:52-4.3 Basis of payment; all general and special (Classification A), rehabilitation (Classification B), and private psychiatric hospitals—outpatient services

(a) The Division reimburses providers for covered services in the outpatient department of general hospitals, special hospitals (Classification A), rehabilitation hospitals (Classification B) and private psychiatric hospitals consistent with the following conditions and reimbursement methodology:

1. Establishment of a final rate of reimbursement: The final rate of reimbursement is based on the lower of cost or charges as defined by Medicare principles of reimbursement at 42 CFR 447.321; and,

2. Establishment of an interim rate of reimbursement: The charge for an outpatient service is subject to a reduction based on the application of a cost-to-charge ratio determined for each individual hospital by the Division, in accordance with Medicare principles of reimbursement at 42 CFR 447.321. This cost-to-charge ratio is used to assure that reimbursement for outpatient services does not exceed the rate based on Medicare principles of reimbursement.

3. Effective for services rendered on or after July 1, 1991, and until further notice, the Division is reducing the interim reimbursement rates for covered outpatient services subject to the cost-to-charge ratio in general, special (Classification A), rehabilitation (Classification B) and private psychiatric hospitals by 4.4 percent. The final settlement for covered outpatient services subject to the cost-to-charge ratio is the lower of costs or charges minus 4.4 percent.

(b) Certain outpatient services, that is, most laboratory services, all renal dialysis services, all dental services, some HealthStart services, and the Medicare deductible and coinsurance amounts, are excluded from a reduction based on the cost-to-charge reimbursement methodology and have their own reimbursement methodology as follows:

1. Most outpatient laboratory services are reimbursed on the basis of a fee-for-service using the Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS) procedure codes and the fee schedule contained in *[the]* N.J.A.C. 10:52-9.3 through 9.5. If the hospital charge is less than the amount on the fee allowance, reimbursement is based upon the actual billed charge. In addition, there are situations which have unique billing arrangements, as follows:

i. Specimen collection, that is a routine venipuncture for collection of specimen(s) or a catheterization for collection of urine specimen(s) are reimbursed at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per patient encounter, regardless of the number of patient encounters per day. (See HCPCS G0001, P9610, P9615 in N.J.A.C. 10:52-10.3); and,

ii. Profiles and panels shall be reimbursed as follows:

(1) Profiles are comprised of those components of a test or series of tests performed as groups or combinations (profiles) which are performed on automated multichannel equipment and are finished identifiable laboratory study(ies). Examples are: The components of an SMA (Sequential Multichannel Automated Analysis) 12/60 or other automated laboratory study. Complete blood counts (CBC) with inclusion of Hemaglobin, Hematocrit, Red Blood Cell (RBC) Counts, Red Blood Cell (RBC) indices, White Blood Cell (WBC) Counts, and Differentials, MCHs, MCVs and MCHCs, are calculations, and not billable services. If the components of a profile or panel are billed separately, reimbursement for the components of the profile shall not exceed the Medicaid fee schedule for the profile itself.

(2) Panels are laboratory tests that are associated with other organ or disease oriented areas, such as organ "panels". Examples are hepatic function panels and lipid panels. The tests listed with each panel identifies the defined components of that panel. (See also (b)2iii below.)

2. Some outpatient laboratory services which use laboratory HCPCS procedure codes that are reimbursed based on actual billed charges, are subject to the cost-to-charge ratio. These include procedure codes such as:

i. Those valid for Medicaid reimbursement but not listed on the Medicare Laboratory HCPCS Procedure Code File (see 42 U.S.C.

§1395L). They are designated as "subject to cost-to-charge" or S.C.C. in N.J.A.C. 10:52-9.2;

ii. For those HCPCS codes submitted for payment on the same claim with charges for blood products (if no blood product is provided and/or billed on the same claim, the codes are reimbursed according to the fee allowance schedule); and

iii. For some codes associated with other laboratory services such as for organ or disease oriented panels; clinical pathology consultations; unlisted chemistry or toxicology procedures; certain bone marrow testing; certain specific or unlisted hematology procedures; certain immunology testing; unlisted microbiology procedures; and certain procedures under anatomic pathology.

3. All renal dialysis services for end-stage renal disease (ESRD) are reimbursed at 100 percent of the composite rate and includes any add-on charge to the composite rate approved by Medicare.

i. Renal dialysis services provided on an emergency basis in a hospital center not approved to provide renal dialysis services for ESRD are reimbursed actual billed charges, subject to the cost-to-charge ratio.

4. All dental services are reimbursed in accordance with the Division Dental Fee Schedule. This fee-for-service schedule is consistent with the Division's fees paid to the private practitioners and independent dental clinics. For information about dental services in the Outpatient Department, see N.J.A.C. 10:52-2.3.

5. All HealthStart Maternity Health Support Services and HealthStart Pediatric Continuity of Care services are reimbursed on a fee-for-service basis in the hospital outpatient department. All other HealthStart Maternity and Pediatric Care Services are reimbursed based on the cost-to-charge ratio. (For policies and procedures for HealthStart Services, see N.J.A.C. 10:52-3.10.)

6. Early Periodic Screening, Diagnosis, and Treatment services are reimbursed in the hospital outpatient department according to the specific reimbursement methodology. (See also N.J.A.C. 10:52-2.4.)

i. The physician who is allowed by the hospital to bill Medicaid separately from the hospital costs (unbundled) for EPSDT services, shall bill on the EPSDT form.

7. All deductible and coinsurance amounts for Medicare crossover claims are not subject to the cost-to-charge ratio and are reimbursed are 100 percent of the amounts.

(c) Emergency room visits for Medicaid recipients not admitted as inpatients are coded by the hospital as needing primary care or non-primary care. (See N.J.A.C. 8:31B-3.23(e)).

1. Primary care is defined as those categories described in the Physicians' Current Procedural Terminology (CPT) as either minimal, brief, or limited service.

2. Non-primary care shall be defined as those categories described in the Physicians' Current Procedural Terminology (CPT), 1994, as amended and supplemented, as either intermediate, extended, or comprehensive service.

3. Hospitals shall not refuse to provide emergency room services to any Medicaid recipient for the reason that such recipient does not require services on an emergency basis.

NOTE: The cost of emergency room services for a Medicaid recipient admitted as an inpatient is allocated to the inpatient rates and is not reimbursed through the outpatient hospital reimbursement methodology, as stated above.

10:52-4.4 Basis of payment; out-of-State hospital services

(a) The Division will reimburse an out-of-State approved hospital (see N.J.A.C. 10:52-1.2—Definitions) for providing inpatient and outpatient hospital services to New Jersey Medicaid recipients if the hospital meets the requirements of the Division and the services are prior authorized pursuant to N.J.A.C. 10:52-1.6(b) *[in this manual]*. Reimbursement of inpatient hospital services is outlined in (b) through (d) below; and for outpatient services, is outlined in (e) below.

(b) Reimbursement of inpatient hospital services for hospitals participating in the Medicaid program is based on the following criteria:

1. All rates in effect at the time the service is rendered shall be considered final rates by the State.

i. In Diagnosis Related Group (DRG) hospitals, interim reimbursement is 100 percent of the DRG rate approved for the provider by the State Medicaid Agency in the state in which the hospital is located and in effect at the time the service is rendered.

ii. In non-Diagnosis Related Group (DRG) hospitals, reimbursement is 95 percent of the any reimbursement methodology (per diem, charges or case rate) approved by the State Medicaid agency of the state in which the hospital is located.

3. An out-of-State hospital should provide official documentation of the Medicaid rate that has been established by the State Medicaid agency in the state in which the hospital is located.

i. An example of acceptable documentation is a copy of the letter sent by the State Medicaid Agency to the hospital specifying the Medicaid rate. The purpose of this information is to facilitate claims processing.

(c) In the event an out-of-State hospital does not participate in the Medicaid *[Program]* ***program*** in the state where the hospital is located or has not established a rate with the State Medicaid agency, the hospital must enter into a negotiated rate with the Division at the time of *[enrollemnt]* ***enrollment*** for inpatient hospital services. The rate that is established between the hospital and the Division may be reviewed periodically thereafter.

1. Reimbursement for *[out-of-state]* ***out-of-State*** inpatient hospital services for organ transplantation and procurement provided to a Medicaid recipient who has been determined to be in need of, and approved for, a kidney, heart, ***heart-lung,*** liver, *[or]* bone marrow transplant, ***or other selected medically necessary organ transplants, except for those transplants categorized as experimental*** because of a life-threatening situation *[is]**, ***shall be at*** a rate negotiated between the New Jersey Medicaid program and the hospital performing the organ transplant. ***Cornea transplants, although not life-threatening, shall be reimbursed as any other out-of-State transplant service.***

(d) Reimbursement for outpatient hospital services in an *[out-of-state]* ***out-of-State*** approved hospital is based on the rate of reasonable covered charges (subject to a percentage reduction based upon the cost-to-charge ratio) approved by the State Medicaid Agency in the state in which the hospital is located if the hospital participates in the State's Medicaid program, or if the hospital does not participate in the State's Medicaid program, the rate negotiated by the Division with the hospital.

10:52-4.5 Medicaid reimbursement for third-party claims

On claims for hospital services rendered to Medicaid recipients who are also covered by another form of health insurance, the Division shall pay the difference between the insurer's payment amount and that of Medicaid for covered services. (See N.J.A.C. 10:49-7.3, *[Administrative chapter]* ***Administration***.)

10:52-4.6 Medicare/Medicaid claims

(a) Some patients may be covered under both Medicare and Medicaid. When the Medicaid recipient is covered under both programs, Item 57 on the hospital claim form shall be completed showing the Medicaid Program Case and Person Number.

(b) Reimbursement of the deductible and coinsurance for inpatient and outpatient services for Medicaid recipients having both Medicare and Medicaid coverage shall be limited to the unsatisfied deductible and coinsurance.

(c) Where benefits have been exhausted under Medicare, the charges to be billed to the Medicaid *[Program]* ***program*** must be itemized for the Medicare non-covered services and the HSP (Medicaid) Case Number, including Person Number, must be shown on the hospital claim form.

(d) Where prior authorization is required for Medicaid program purposes, it shall be obtained and shall be submitted with the UB-92 claim form.

10:52-4.7 Medicaid settlement

(a) In the capacity of the New Jersey Medicaid Settlement Agent for hospital for all New Jersey acute care general (excluding inpatient services), special, rehabilitation, private psychiatric and county governmental psychiatric hospitals and all hospital-based home health agencies, Blue Cross and Blue Shield of New Jersey, Inc. (BCBSNJ)

shall determine their amount of disbursements, recoupments, and/or changes in per diem amounts and outpatient percentages, as applicable. BCBSNJ shall inform the hospital and the Division of Medical Assistance and Health Services (Division) of the results of their review. If the BCBSNJ's review is accepted, DMAHS, through its fiscal agent for claims processing, shall perform the following processes:

1. For disbursements, payment shall be made to the hospital for the full amount due within 20 working days from the date of BCBSNJ's letter.
2. The fiscal agent shall begin recoupment for the full amount of the overpayment 30 days after the date the Division receives BCBSNJ's overpayment notification by withholding the Medicaid payments to the hospital.
3. If the withholding of the New Jersey Medicaid payment is not acceptable to the hospital, the hospital must submit, prior to the end of the 30-day period, a proposed repayment schedule to the Division. For a repayment schedule in excess of three months, documentation (as specified in Medicare Bulletin No. 0452) shall be submitted. If an approvable repayment schedule is not received by the Division, the withholding of Medicaid payments shall be implemented to begin recoupment.
4. The proposed repayment plans should be submitted directly to the following address:

Bureau of Institutional and Provider Reimbursement
Division of Medical Assistance and Health Services
CN 712, Mail Code #25
Trenton, New Jersey 08625-0712
Attention: Health Care Facilities Analyst

5. Interest shall be charged at the maximum legal rate as of the date of the repayment agreement or 30 days from the date of the BCBSNJ letter to the Division, whichever is sooner.

SUBCHAPTER 10. (RESERVED)

1.* HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS) *FOR HOSPITAL OUTPATIENT LABORATORY SERVICES*

10:52-*[10.1]***11.1*** Introduction

(a) The New Jersey Medicaid program utilizes the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). HCPCS follows the American Medical Association's Physician's Current Procedural Terminology—4th Edition (CPT-4) architecture, employing a five-position code and as many as two 2-position modifiers. Unlike the CPT-4 numeric design, the HCFA assigned codes and modifiers contain alphabetic characters. HCPCS was developed as a three-level coding system.

1. LEVEL I CODES (Narratives found in CPT-4)

These codes are adapted from CPT-4 for utilization primarily by Physicians, Podiatrists, Optometrists, Certified Nurse-Midwives, Independent Clinics and Independent Laboratories. CPT-4 is a listing of descriptive terms and numeric identifying codes and modifiers for reporting medical services and procedures performed by physicians.

Copyright restrictions make it impossible to print excerpts from CPT-4 procedure narratives for Level I codes. Thus, in order to determine those narratives it is necessary to refer to CPT-4, which is incorporated herein by reference, as amended and supplemented.

2. LEVEL II CODES (Narratives found at N.J.A.C. 10:52-10.3)

These codes are assigned by HCFA for physicians and non-physician services which are not in CPT-4.

3. LEVEL III CODES (Narratives found at N.J.A.C. 10:52-4.3)

These codes are assigned by the Division to be used for those services not identified by CPT-4 codes or HCFA assigned codes. Level III codes identify services unique to New Jersey.

(b) The responsibility of the provider when rendering specific services and requesting reimbursement is listed in both Subchapter 1 and Subchapter 2 of *[the Hospital Services Manual,]* N.J.A.C. 10:52***, Hospital Services***.

(c) Regarding specific elements of HCPCS codes which requires attention of provider, the lists of HCPCS code numbers for Pathology and Laboratory are arranged in tabular form with specific information for a code identified under columns with titles such as: "IND", "HCPCS CODE", "MOD", "DESCRIPTION", and "MAXIMUM FEE ALLOWANCE". The information identified under each column is summarized below:

Column Title	Description
IND	(Indicator-Qualifier) Lists alphabetic symbols used to refer provider to information concerning the New Jersey Medicaid program's qualifications and requirements when a procedure or service code is used. Explanation of indicators and qualifiers used in this column are identified below: "A" preceding any procedure code indicates that these tests can be and are frequently done as groups and combinations (profiles) on automated equipment. "F" preceding any procedure code indicates that this code, when used primarily for the diagnosis and treatment of infertility, is not covered by the New Jersey Medicaid program. "L" preceding any procedure code indicates that the complete narrative for the code is located at N.J.A.C. 10:52-10.3. "N" preceding any procedure code indicates that qualifiers are applicable to that code. These qualifiers are listed by procedure code number at N.J.A.C. 10:52-10.4.
HCPCS CODE	Lists the HCPCS procedure code numbers.
MOD	Lists alphabetic and numeric symbols. Services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance should be identified by the addition of alphabetic and/or numeric characters at the end of the code. The New Jersey Medicaid program's recognized modifier codes are listed at N.J.A.C. 10:52-10.5.
DESCRIPTION	Lists the code narrative. (Narratives for Level I codes are found in CPT-4. Narratives for Level II and Level III codes are found at N.J.A.C. 10:52-10.3.)
MAXIMUM FEE ALLOWANCE	Lists New Jersey Medicaid program's maximum reimbursement schedule for Pathology and Laboratory services. If the symbols "S.C.C." (Subject Cost-to-Charge) are listed instead of a dollar amount, it means that service is subject to the cost-to-charge ratio. If the symbols "N.A." (Not Applicable) are listed instead of a dollar amount, it means that service is not reimbursable. 1. The fee listed under "Office Total Fee(s)" represents the combined technical and professional component of the reimbursement for the procedure code notwithstanding any statement to the contrary in the narrative. It will be paid only to one provider and will not be broken down into its component parts. 2. The fee schedule for all diagnostic Medical, Radiology and Pathology services performed in a hospital setting is indicated in the "Prof. Comp" and represents the professional component for those hospital based physicians whose contract is based on fee-for-service.

(d) Regarding alphabetic and numeric symbols under "IND" and "MOD", these symbols when listed under the "IND" and "MOD"

columns are elements of the HCPCS coding system used as qualifiers or indicators (as in the "IND" column) and as modifiers (as in the "MOD" column). They assist the physician in determining the appropriate procedure codes to be used, the area to be covered, the minimum requirements needed, and any additional parameters required for reimbursement purposes.

1. These symbols and/or letters must not be ignored because in certain instances requirements are created in addition to the narrative which accompanies the CPT/HCPCS procedure code as written in CPT-4. The provider will then be liable for the additional requirements and not just the CPT/HCPCS procedure code narrative. These requirements must be fulfilled in order to receive reimbursement.

2. If there is no identifying symbol listed, the CPT/HCPCS code narrative prevails.

10:52-*[10.2]***11.2*** HCPCS Procedure Codes and Maximum Fee Allowance Schedule for Pathology/Laboratory

			Maximum Fee Allowance	
Ind	HCPCS Code	Mod	Office Total Fee	$ Prof. Comp
N	36415		1.80	
N	80002		5.00	
N	80003		5.90	
N	80004		5.90	
N	80005		5.90	
N	80006		5.90	
N	80007		7.10	
N	80008		7.10	
N	80009		7.10	
N	80010		7.50	
N	80011		7.50	
N	80012		7.50	
N	80016		7.50	
N	80018		11.00	
N	80019		11.00	
N	80050		36.00	
N	80055		15.00	
N	80058		5.90	
N	80059		30.00	
N	80061		15.00	
N	80072		12.00	
N	80090		28.80	
N	80091		12.00	
	80092		37.00	
	80100		5.20	
	80101		5.20	
	80102		15.00	
	80150		15.00	
	80152		15.00	
	80154		21.50	
	80156		20.00	
	80158		20.00	
	80160		15.00	
	80162		15.00	
	80164		10.00	
	80166		15.00	
	80168		24.50	
	80170		12.60	
	80172		1.80	
	80174		15.00	
	80176		18.00	
	80178		9.00	
	80182		12.00	
	80184		12.80	
	80185		19.00	
	80186		19.00	
	80188		20.00	
	80190		15.00	
	80192		15.00	
	80194		15.00	
	80196		7.00	
	80198		15.00	
	80200		12.60	
	80202		12.00	
	80299		10.80	
	80400		34.00	
	80402		96.00	
	80406		98.00	
	80408		130.00	
	80410		127.00	
	80412		S.C.C.	
	80414		61.00	
	80415		50.00	
	80418		S.C.C.	
	80420		74.00	
	80422		45.00	
	80424		33.00	
	80426		130.00	
	80428		60.00	
	80430		73.00	
	80432		125.00	
	80434		100.00	
	80435		95.00	
	80436		75.00	
	80438		50.00	
	80439		100.00	
	80440		60.00	
	80500		9.00	
	80502		13.00	
	81000		1.20	
	81002		1.00	
	81003		1.50	
	81005		1.00	
	81007		3.82	
	81015		.40	
	81025		3.00	
	81050		3.40	
	82000		15.00	
	82003		26.00	
	82009		5.00	
	82010		10.00	
	82013		14.00	
	82024		30.00	
	82030		34.00	
A	82040		1.80	
	82042		4.30	
	82043		4.30	
	82044		1.00	
	82055		4.50	
	82075		8.80	
	82085		13.75	
	82088		40.00	
	82101		16.30	
	82103		7.80	
	82104		7.80	
	82105		10.20	
	82106		10.20	
	82108		38.00	
	82128		12.90	
	82130		25.00	
	82131		24.00	
	82135		20.00	
	82140		6.00	
	82143		4.20	
	82145		12.00	
A	82150		4.50	
	82154		40.00	
	82157		29.00	
	82160		38.00	
	82163		21.00	
	82164		20.00	
	82172		20.00	
	82175		7.20	
	82180		3.60	
	82190		S.C.C.	
	82205		12.00	
	82232		24.50	
	82239		20.00	
	82240		5.69	

A	82250	3.00
A	82251	4.50
	82252	2.50
	82270	1.20
	82273	3.70
	82286	7.60
	82300	30.00
	82306	30.00
	82307	25.00
	82308	34.00
A	82310	3.00
	82330	14.70
	82331	7.50
	82340	3.60
	82355	9.00
	82360	12.00
	82365	9.00
	82370	9.00
A	82374	3.30
	82375	6.00
	82376	3.00
	82378	22.40
	82380	6.00
	82382	12.00
	82383	12.00
	82384	18.00
	82387	24.00
	82390	6.00
	82397	21.00
	82415	18.50
A	82435	3.00
	82436	3.00
	82438	3.00
	82441	8.92
A	82465	3.00
	82480	4.50
	82482	11.27
	82485	30.00
	82486	4.40
N	82487	4.00
N	82488	15.00
N	82489	15.00
	82491	21.50
	82495	30.00
	82507	40.00
	82520	17.00
	82525	9.00
	82528	19.70
	82530	17.00
	82533	17.00
	82540	3.00
A	82550	4.80
	82552	7.80
	82553	7.50
	82554	16.00
A	82565	3.00
	82570	3.00
	82575	4.50
	82585	6.30
	82595	1.50
	82600	27.50
	82607	15.00
	82608	15.00
	82615	11.50
	82626	37.00
	82627	33.00
	82633	43.50
	82634	39.00
	82638	18.00
	82646	25.30
	82649	31.00
	82651	33.00
	82652	55.00
	82654	13.60
	82664	13.60
	82666	22.00
	82668	17.50
	82670	25.00
	82671	41.00
	82672	25.00
	82677	28.00
	82679	25.00
	82690	25.00
	82693	12.50
	82696	22.00
	82705	.60
	82710	7.80
	82715	7.80
	82725	15.50
N	82728	16.00
	82735	24.00
	82742	29.50
	82746	10.50
	82747	18.00
	82757	25.00
	82759	11.50
	82760	15.00
	82775	30.00
	82776	8.90
	82784	11.30
	82785	16.00
	82787	49.00
	82800	5.20
	82803	16.50
	82805	8.00
	82810	10.00
	82820	14.92
	82926	6.00
	82928	6.00
	82938	26.00
	82941	16.00
	82943	20.00
	82946	13.00
A	82947	3.00
	82948	1.50
	82950	3.00
	82951	5.00
	82952	1.00
	82953	10.00
	82955	6.00
	82960	7.00
	82962	2.60
	82963	26.50
	82965	6.30
	82975	22.00
A	82977	4.80
	82978	12.00
	82979	10.00
	82980	20.00
	82985	6.60
	83001	17.00
	83002	17.00
	83003	16.00
	83008	24.00
	83010	12.00
	83012	12.00
	83015	10.20
	83018	25.00
	83020	6.00
	83026	2.00
	83030	12.00
	83033	7.00
	83036	6.60
	83045	1.50
	83050	3.00
	83051	1.20
	83055	1.50
	83060	3.00
	83065	3.00
	83068	3.00
	83069	3.00

	83070	6.00
	83071	10.00
	83088	40.00
	83150	12.00
	83491	12.60
	83497	6.00
	83498	30.50
	83499	30.50
	83500	34.00
	83505	40.00
	83518	8.00
	83519	15.00
	83520	S.C.C.
	83525	12.00
	83527	22.00
	83528	20.00
A	83540	4.50
A	83550	7.20
	83570	6.00
	83582	6.00
	83586	7.50
	83593	6.00
	83605	15.00
A	83615	4.20
	83625	9.00
	83632	16.00
	83633	6.30
	83634	14.00
N	83655	9.00
	83661	10.50
	83662	5.00
	83670	2.10
	83690	4.50
	83715	7.50
	83717	22.00
A	83718	8.00
	83719	17.00
	83721	10.00
	83727	17.00
A	83735	4.50
	83775	5.90
	83785	35.00
	83805	26.00
	83825	8.40
	83835	10.20
	83840	4.50
	83857	12.00
	83858	22.00
	83864	13.00
	83866	15.00
	83872	3.20
	83873	25.00
	83874	12.00
	83883	S.C.C.
	83885	19.00
	83887	20.00
	83890	5.71
	83892	5.71
	83894	5.71
	83896	5.71
	83898	30.00
	83912	31.39
	83915	6.00
	83916	20.00
	83918	19.00
	83925	22.00
	83930	9.50
	83935	9.90
	83957	65.00
	83945	17.00
	83970	54.00
	83986	4.30
	83992	18.00
	84022	20.00
	84030	6.00
	84035	4.90
	84060	3.60
	84061	3.60
	84066	14.00
A	84075	3.60
	84078	3.60
	84080	3.60
N	84081	24.00
	84085	7.90
	84087	15.00
A	84100	3.00
	84105	3.00
	84106	1.80
	84110	7.50
	84119	3.00
	84120	7.50
	84126	37.00
	84127	15.00
A	84132	3.90
	84133	3.90
	84134	20.00
	84135	12.00
	84138	12.00
	84140	50.00
	84143	60.00
	84144	20.00
	84146	20.00
	84150	30.00
	84153	26.00
A	84155	1.80
	84160	1.80
	84165	6.00
	84181	25.00
	84182	26.00
N	84202	10.40
N	84203	3.00
	84206	19.00
	84207	40.00
	84210	16.00
	84220	13.00
	84228	17.00
	84233	16.00
	84234	20.00
	84235	63.20
	84238	43.00
	84244	25.00
	84252	30.00
	84255	37.00
	84260	44.00
	84270	25.00
	84275	16.00
	84285	28.80
A	84295	3.90
	84300	3.90
	84305	16.00
	84307	16.00
	84311	7.50
	84315	3.00
	84375	29.00
	84392	7.00
	84402	38.00
	84403	32.00
	84425	32.00
	84430	3.60
	84432	13.00
	84436	6.00
	84437	6.00
	84439	10.00
	84442	12.00
	84443	24.00
	84445	27.80
	84446	19.00
	84449	30.00
A	84450	3.00
A	84460	3.00

	84466	19.00
A	84478	8.30
	84479	6.00
	84480	15.00
	84481	15.00
	84482	15.00
	84485	3.30
	84488	3.30
	84490	3.30
	84510	12.70
A	84520	3.00
	84525	3.00
	84540	3.00
	84545	6.00
A	84550	3.00
	84560	3.00
	84577	6.00
	84578	.40
	84580	2.10
	84583	2.10
	84585	12.00
	84586	50.00
	84588	49.50
	84590	6.00
	84597	20.00
	84600	18.00
N	84620	16.00
	84630	16.00
	84681	22.00
	84702	11.39
	84703	3.00
	84830	3.00
	84999	S.C.C.
	85002	1.20
N	85007	2.40
	85008	1.20
	85009	1.20
	85013	1.50
N	85014	1.50
N	85018	1.20
N	85021	1.80
N	85022	3.00
N	85023	S.C.C.
N	85024	4.80
N	85025	S.C.C.
N	85027	4.80
	85029	2.75
	85030	3.25
	85031	3.00
N	85041	1.20
N	85044	3.00
	85045	4.00
N	85048	1.20
	85060	S.C.C.
	85095	S.C.C.
	85097	S.C.C.
	85102	S.C.C.
	85130	S.C.C.
	85170	.60
	85175	3.90
	85210	3.00
	85220	25.00
	85230	25.00
	85240	25.00
	85244	29.00
	85246	10.00
	85247	10.00
	85250	27.00
	85260	26.00
	85270	26.00
	85280	26.00
	85290	8.00
	85291	7.00
	85292	28.00
	85293	28.00
	85300	15.00
	85301	16.00
	85302	17.00
	85303	18.00
	85305	17.00
	85306	18.00
	85335	10.00
	85337	10.00
	85345	1.80
	85347	3.00
	85348	1.20
	85360	12.00
	85362	3.00
	85366	8.00
	85370	5.00
	85378	5.00
	85379	5.00
	85384	9.60
	85385	9.60
	85390	7.00
	85400	9.00
	85410	9.00
	85415	10.00
	85420	9.00
	85421	15.00
	85441	6.00
	85445	5.00
	85460	9.40
	85475	10.00
	85520	19.00
	85525	17.00
	85530	16.00
	85535	3.00
	85540	8.90
	85547	10.50
	85549	28.00
	85555	4.80
	85557	4.80
	85576	10.00
	85585	1.00
N	85590	3.00
N	85595	3.00
	85597	20.00
	85610	3.00
	85611	4.50
	85612	13.00
	85613	10.00
	85635	8.40
	85651	1.50
	85660	3.00
	85670	6.60
	85675	6.42
	85705	7.90
	85730	3.00
	85732	3.00
	85810	15.00
	85999	S.C.C.
	86000	.90
	86003	20.00
	86005	5.00
	86021	9.00
	86022	9.00
	86023	15.00
	86038	7.80
	86039	15.00
	86060	3.60
	86063	1.20
	86077	S.C.C.
	86078	S.C.C.
	86079	S.C.C.
	86140	3.00
	86147	38.00
	86155	14.00
	86156	3.00
	86157	9.00

86160	9.00		86632	15.00
86161	9.00		86635	10.00
86162	15.60		86638	12.50
86171	4.50		86641	12.50
86185	7.90		86644	23.00
86215	18.50		86645	12.00
86225	13.00		86648	18.00
86226	15.00		86651	12.00
86235	25.00		86652	12.00
86243	15.90		86653	12.00
86255	7.80		86654	12.00
86256	12.50		86658	12.00
86277	16.00		86663	12.00
86280	5.40		86664	23.00
86287	10.00		86665	25.00
86289	15.00		86668	12.00
86290	18.00		86671	15.00
86291	15.00		86674	S.C.C.
86293	12.00		86677	12.00
86295	12.00		86682	12.00
86296	10.00		86684	15.00
86299	12.60		86687	12.00
86302	19.00		86688	13.00
86306	20.00		86689	21.20
86308	3.00		86692	20.00
86309	5.00		86694	12.80
86310	4.50		86695	12.80
86311	26.00		86698	15.00
86316	30.00		86701	13.00
86317	8.00		86702	13.00
86318	7.00		86703	21.00
86320	10.50		86710	12.00
86325	25.00		86713	20.00
86327	25.00		86717	S.C.C.
86329	20.00		86720	15.00
86331	4.50		86723	15.00
86332	33.00		86727	15.00
86334	31.20		86729	12.00
86337	13.71		86732	15.00
86340	20.00		86735	15.00
86341	25.00		86738	12.00
86343	6.00		86741	12.00
86344	10.86		86744	12.00
86353	32.00	EACH MITOGEN	86747	12.00
86359	40.00		86750	12.00
86360	55.00		86753	12.00
86376	6.60		86756	12.00
86378	26.00		86759	12.00
86382	20.00		86762	12.00
86384	10.86		86765	10.00
86403	8.00		86768	12.00
86430	1.80		86771	12.00
86431	4.50		86774	5.40
86485	S.C.C.		86777	12.00
86490	S.C.C.		86778	15.00
86510	S.C.C.		86781	12.00
86580	S.C.C.		86784	8.00
86585	S.C.C.		86787	12.60
86586	S.C.C.		86790	S.C.C.
86588	13.20		86793	8.00
86590	8.00		86800	13.00
86592	1.50		86805	22.00
86593	3.00		86806	22.00
86602	10.00		86807	55.00
86603	10.00		86808	39.00
86606	10.00		86812	12.60
86609	10.00		86813	19.00
86612	10.00		86816	19.00
86615	10.00		86817	19.00
86618	25.00		86821	68.00
86619	10.00		86822	50.00
86622	8.00		86849	S.C.C.
86625	10.00		86850	4.20
86628	10.00		86860	4.20
86631	10.00		86870	9.00

	86880	5.00
	86885	6.80
	86886	5.00
	86890	75.00
	86891	75.00
	86900	2.00
	86901	2.00
	86903	11.70
	86904	11.70
	86905	3.00
	86906	2.00
	86910	12.60
	86911	5.00
	86915	67.50
	86920	12.00
	86921	12.00
	86922	12.00
	86940	9.50
	86941	12.50
	86945	S.C.C.
	86950	S.C.C.
	86965	S.C.C.
	86970	S.C.C.
	86971	S.C.C.
	86972	S.C.C.
	86975	S.C.C.
	86976	S.C.C.
	86977	S.C.C.
	86978	S.C.C.
	86985	S.C.C.
	86999	S.C.C.
	87001	9.00
	87003	15.00
	87015	5.10
N	87040	9.00
N	87045	9.00
N	87060	9.00
N	87070	9.00
	87072	6.00
	87075	9.00
	87076	6.00
	87081	9.00
	87082	4.00
	87083	4.00
	87084	3.00
	87085	4.00
	87086	6.00
	87087	2.70
	87088	2.70
	87101	8.00
	87102	8.00
	87103	8.00
	87106	8.00
	87109	14.00
	87110	15.00
	87116	6.00
	87117	9.00
	87118	12.00
	87140	3.00
	87143	3.00
	87145	3.00
	87147	3.00
	87151	3.00
	87155	3.00
	87158	3.00
	87163	12.00
	87164	6.00
	87166	6.00
	87174	10.00
	87175	15.00
	87176	6.40
	87177	5.10
	87178	24.00
	87179	24.00
	87181	5.80
N	87184	9.00
	87186	13.00
	87187	13.00
	87188	6.00
	87190	.60
	87192	.60
	87197	15.00
	87205	4.20
	87206	4.20
	87207	3.00
	87208	5.10
	87210	2.40
	87211	5.10
	87220	2.40
	87230	27.00
	87250	28.00
	87252	29.50
	87253	6.00
	87999	S.C.C.
	88104	S.C.C. 7.00
	88106	S.C.C. 7.00
	88107	S.C.C. 7.00
	88108	S.C.C. 7.00
	88125	S.C.C.
	88130	9.65 7.00
	88140	4.20 3.00
	88150	6.00
	88151	6.00
N	88155	6.00
	88156	6.00
	88157	6.00
	88160	S.C.C.
	88161	S.C.C. 7.00
	88162	S.C.C.
	88170	S.C.C.
	88171	S.C.C.
	88172	S.C.C.
	88173	S.C.C.
	88180	S.C.C.
	88182	300.00
	88199	S.C.C.
	88230	90.00
	88233	90.00
	88235	90.00
	88237	90.00
	88239	90.00
	88245	184.00
	88248	230.00
	88250	184.00
	88262	184.00
	88263	184.00
	88267	230.00
	88280	37.00
	88283	46.00
	88285	2.00
	88289	40.00
	88300	S.C.C. 7.00
	88302	S.C.C. 15.00
	88304	S.C.C. 19.00
	88305	S.C.C. 30.00
	88307	S.C.C. 44.00
	88309	S.C.C. 66.00
	88311	S.C.C.
	88312	S.C.C. 8.00
	88313	S.C.C. 5.00
	88314	S.C.C. 7.00
	88318	S.C.C.
	88319	S.C.C.
	88321	S.C.C.
	88323	S.C.C.
	88325	S.C.C.
	88329	S.C.C.
	88331	S.C.C. 41.00
	88332	S.C.C.
	88342	S.C.C. 7.00

	88346	40.00	7.00
	88347	45.00	7.00
N	88348	184.00	151.00
N	88349	S.C.C.	151.00
	88355	S.C.C.	31.50
	88356	S.C.C.	31.50
	88358	S.C.C.	31.50
	88362	S.C.C.	31.50
	88365	47.25	15.75
	88371	S.C.C.	
	88372	S.C.C.	
	88399	S.C.C.	
	89050	0.90	
	89051	0.90	
	89060	8.50	
	89100	S.C.C.	
	89105	S.C.C.	
	89125	0.60	
	89130	S.C.C.	
	89132	S.C.C.	
	89135	S.C.C.	
	89136	S.C.C.	
	89140	S.C.C.	
	89141	S.C.C.	
	89160	2.10	
	89190	2.20	
	89300	2.40	
	89310	4.80	
	89320	3.00	
	89325	13.00	
F	89329	31.00	
F	89330	8.00	
	89350	S.C.C.	
	89355	S.C.C.	
N	89360	S.C.C.	
	89399	S.C.C.	
L	G0001	1.80	
L	P9610	1.80	
L	P9615	1.80	
L	Q0111	2.40	
L	Q0112	2.40	
L	Q0113	5.10	
L	Q0114	9.60	
L	Q0115	12.33	
L	Q0116	2.00	
L N	W8200	2.00	
L	W8260	33.00	
L	W8265	33.00	
L	W8730	11.00	
L	W8900	10.00	
L	W8920	1.80	
L	W8925	.60	

10:52-*[10.3]***11.3*** HCPCS Code Numbers, Procedure Description and Maximum Fee Schedule; Pathology/Laboratory (Codes and Narratives Not Found in CPT-4)

PATHOLOGY/LABORATORY

HCPCS Ind	Code	Mod	Procedure Description	Maximum Fee Allowance
	G0001		Routine Venipuncture	$ 1.80
			QUALIFIER: This service is reimbursable at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per patient encounter, regardless of the number of patient encounters per day.	
	P9610		Catheterization for collection of (urine) specimen(s), single home bound, nursing home, or SNF patient	1.80
			QUALIFIER: This service is reimbursable at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per patient encounter, regardless of the number of patient encounters per day.	
	P9615		Catheterization for collection of (urine) specimen(s), (multiple) patients	1.80
			QUALIFIER: This service is reimbursable at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per patient encounter, regardless of the number of patient encounters per day.	
	Q0111		Wet mount, including preparations of vaginal, cervical or skin specimens	2.40
	Q0112		All potassium hydroxide (KOH) preparations	2.40
	Q0113		Pinworm examination	5.10
	Q0114		Fern test	9.60
	Q0115		Post-coital direct, qualitative examinations of vaginal or cervical mucous	12.33
	Q0116		Hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurements and read-out	2.00
N	W8200		Glucose, serum (separate tube, grey top)	2.00
			QUALIFIER: Submitted on same claim, and performed on same date as chemistry profiles	
	W8260		Haldol (haloperidol) serum, confirmation test	33.00
	W8265		Serentil, serum mesoridazine, quantitative, confirmation test	33.00
	W8730		Gonozyme, Gonococcal antigen	11.00
	W8900		House call to home bound patient in home or sheltered boarding home for purpose of obtaining blood by venous or arterial puncture	10.00
			QUALIFIER: Reimbursement limited to once per trip regardless of number of patients	
	W8920		Visit to obtain blood specimens by venous or arterial puncture "first person in nursing home"	1.80
	W8925		Each additional person in nursing home	.60

10:52-*[10.4]***11.4*** Pathology and Laboratory HCPCS Codes—Qualifiers

(a) Qualifiers for pathology and laboratory services are summarized below:

1. Chemistry Automated, Multichannel Tests

Applies to CPT Codes: 80002, 80003, 80004, 80005, 80006, 80007, 80008, 80009, 80010, 80011, 80012, 80016, 80018, and 80019. The following list contains those tests which can be and are frequently performed as groups and combinations (profiles) on automated multichannel equipment: Apply this methodology to the above CPT Codes. For reporting one test, regardless of method of testing, use appropriate single test code number. For any combination of tests among those listed below use the appropriate number 80002-80019. Groups of the tests listed here are distinguished from multiple tests performed individually for immediate or "stat" reporting. Laboratory chemistry tests performed on your automated equipment in addition

to laboratory chemistry tests listed must be billed as 80002-80019 as part of the automated multichannel test listing.

Acid—Phosphatase
Albumin
Alkaline Phosphatase
(ALT, SGPT) Aspartate Aminotranferase
(AST, SGOT) Aspartate Aminotranferase
Amylase
Bilirubin, Total
Bilirubin, Direct
Blood Urea Nitrogen (BUN)
Calcium
Carbon Dioxide (CO2)
Chlorides (C1)
Cholesterol
Creatine Kinase (CK, CPK)
Creatinine
Gamma Glutamyl Transpeptidase (GGTP)
Glucose (Sugar)
Iron
Iron Binding Capacity
Lactic Dehydrogenase (LD)
Lipoprotein (HDL Cholesterol)
Magnesium
Phosphorus
Potassium (K)
Protein, Total
Sodium (NA)
Triglycerides
Uric Acid

NOTE 1: If any two of the following HCPCS procedure codes are performed on the same day by automated equipment and the total reimbursement of the two chemistry tests would have exceeded $5.00, the maximum reimbursement will not be more than $5.00: 82040, 82150, 82250, 82251, 82310, 82374, 82435, 82465, 82550, 82565, 82947, 82977, 83540, 83550, 83615, 83718, 83735, 84060, 84075, 84100, 84132, 84155, 84295, 84450, 84460, 84478, 84520, 84550.

NOTE 2: The following calculations and ratios are not eligible for separate or additional reimbursement. Mathematical calculations listed below are not reimbursable:

A/G Ratio	Globulin
BUN/Creatinine Ratio	FTI (T7)
Free Calcium	Free Thyroxine

NOTE 3: Any additional automated multichannel chemistry tests performed on same date as Codes 80002, 80003, 80004, 80005, 80006, 80007, 80008, 80009, 80010, 80011, 80012, 80016, 80018, and 80019 will not be reimbursed at the current allowable fee for each added test when performed on automated multichannel equipment.

NOTE 4: Code (W8200)—Glucose (separate tube, gray top) performed on the same date as the following chemistry profiles 80002, 80003, 80004, 80005, 80006, 80007, 80008, 80009, 80010, 80011, 80012, 80016, 80018 and 80019 will be paid an additional $2.00.

2. Codes 80050, 80055, 80058, 80059, 80061, 80072, 80090, 80091, 80092—The panels listed must include the laboratory tests assigned by the CPT-4 as the components of the panel. The tests listed with each of the panels identify the defined components of that panel. If any laboratory tests included in the panel are billed a la carte, the tests must be billed as the panel. The laboratory provider may not charge Medicaid more than the lowest charge level offered to another provider. The lowest charges for the laboratory test comprising the panel must aggregate as equivalent to or greater than the listed panel fee.

NOTE 1: Code 80091—Thyroid panel

Reimbursement not eligible for 84439 when billed in conjunction with 80091 on same day.

NOTE 2: Code 80092—Thyroid panel with TSH

Code 8443—TSH will not be paid a separate reimbursement when performed in conjunction with 80091 or 80092.

3. Codes 82487, 82488, and 82489—Chromatography—must list substance (compound) tested for in block 34 (REMARKS) of the claim form.

4. Code 82728—Ferritin

When the procedure for ferritin is performed in combination with Vitamin B12 or Folate or any of the chemistry analytes listed on codes 80002-80019 the maximum reimbursable fee for code 82728 is $5.00.

5. Code 84081—Phosphatidylglycerol—test done on newborn or amniotic fluid to determine fetal lung maturity.

6. Code 84202—Protoporphyrin, RBC; quantitative—Utilize only for testing of anemia. Utilize code 84203—Protoporphyrin, RBC; screen when testing for anemia. Code 84203 will no longer be reimbursed when billed in conjunction with code 83655—Blood lead determination (quantitative).

7. Code 84620—Xylose absorption tests, blood and/or urine (D-xylose tolerance test), includes serum & urine levels, up to 5 hourly specimens.

8. Codes 85023 and 85025—Hematology

NOTE: For purpose of reimbursement based on this schedule, a complete blood count (CBC) includes a hematocrit, hemoglobin determination, RBC count, RBC indices, WBC count and differential WBC count (See codes 85021 and 85022), for a platelet count with a CBC (see codes 85023-85025).

Hematology codes 85014, 85018, 85041 and 85048 may not be billed in conjunction with codes for blood count with hemogram (85021, 85022, 85023, 85024, 85025, and 85027).

The code for manual differential WBC count (85007) may not be billed in conjunction with codes 85021, 85022, 85023, 85024, 85025, and 85027.

Codes for platelet count (85590 and 85595) may not be billed in conjunction with codes 985023-85027.

Code 85044 may be billed in conjunction with codes 85023 and 85025, when a complete hemogram is ordered.

9. Codes 87040, 87045, 87060, 87070, 87184—Cultures

NOTE: These codes may only be billed when a pathogenic microorganism is reported. A culture that indicates no growth or normal flora must be billed as a presumptive culture; (87081 and 87082).

10. Code 88155—pap smear

NOTE: Obtaining specimen not a separate eligible service.

11. Code 88348 and 89349—Electron microscopy; diagnostic and scanning are not reimbursable when used as a research tool.

NOTE: For reimbursement purposes, Medicaid will pay for the above diagnostic scanning procedure when it pertains to x-ray microanalysis for identification of asbestos particles and heavy metals, i.e., gold, mercury, etc. and also when examining tissue specimens in occasional cases of malabsorption.

12. Code 89360—Sweat (without iontophoresis) test

NOTE: Reimbursement not eligible for qualitative tests. For reimbursement purposes, 84295 will not be reimbursed at any additional charge. Do not bill 84295 in conjunction 89360.

13. Code 36415—Utilize this code only for finger/heel/ear stick for collection of specimen(s). This service is reimbursable in the physician office laboratory (POL) when the specimen is referred out to an independent clinical laboratory for testing. Finger/heel/ear stick is not reimbursable when billed by the independent clinical laboratory.

NOTE: This service is reimbursable at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per patient encounter, regardless of the number of patient encounters per day.

10:52-*[10.5]***11.5*** Pathology and Laboratory HCPCS Codes—Modifiers

(a) Services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance should be identified by the addition of alphabetic and/or numeric characters at the end of the code. The New Jersey Medicaid program's recognized modifier codes are:

Modifier Code	Description
22	Unusual Procedural Services: When the service(s) provided is greater than that usually required for the listed procedure, it may be identified by adding modifier '22' to the usual procedure number. A report may also be appropriate.
26	Professional Component: Certain procedures are a combination of a physician component and a technical component. When the physician component is reported separately, the service may be identified by adding the modifier '26' to the usual procedure number.
52	Reduced Services: Under certain circumstances a service or procedure is partially reduced or eliminated at the physician's election. Under these circumstances the service provided can be identified by its usual procedure number and the addition of the modifier '52', signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service.
90	Reference (Outside) Laboratory: When laboratory procedures are performed by a party other than the treating or reporting physician, the procedure may be identified by adding the modifier '90' to the usual procedure number.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL REGULATION

Notice Of Adoption of 1995 New Jersey Pollutant Discharge Elimination System (NJPDES) Statewide Stormwater Permitting Program Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection (Department) has adopted the fiscal year 1995 Annual Fee Report and Fee Schedule for the NJPDES Stormwater Permitting Program administered by the Department's Bureau of Stormwater Permitting. In accordance with N.J.A.C. 7:14A-1.8, this adoption marked the completion of the fiscal year 1995 budgeting process for the NJPDES Stormwater Permitting Program.

The Department held a public hearing on February 21, 1995 at the Department's Public Hearing Room, in Trenton, New Jersey. No member of the public attended the public hearing. Two persons submitted written comments during the public comment period. Barry Chalofsky, Manager of the Department's Bureau of Stormwater Permitting, reviewed those comments, and recommended that the Department adopt the 1995 Annual Fee Report and Fee Schedule as proposed.

Summary of Public Comments and Agency Response:

COMMENT: We request reconsideration of the blanket $500.00 fee which does not take into consideration the size of the facility or its ability to absorb this annual cost which represents only one of many fees imposed. Collectively, these fees, along with compliance costs of each program to which businesses are subjected, use up a disproportionate percentage of available income in businesses grossing under $10,000,000. In our case, we gross just over $1,000,000 and the $500.00 annual "fee" for already complying is a burden. (Marilyn Dilks, All Seasons Marina)

RESPONSE: The NJPDES Stormwater Permitting Program has been implemented as a result of mandates within the Federal Clean Water Act and United States Environmental Protection Agency (USEPA) rules. New Jersey is one of 39 states approved by the USEPA to issue National Pollutant Discharge Elimination System (NJPDES) permits for discharges to surface water, including discharges of stormwater. In 1990, as one of the USEPA's first steps in establishing its current stormwater permit requirements, the USEPA adopted rules defining the term "storm water discharge associated with industrial activity" (40 CFR 122.26(b)(14)). New Jersey has over 27,000 industries that are potentially affected by these federal requirements, although the vast majority will not need to receive permits.

In order to effectively and efficiently regulate the industrial facilities that do need permits, the Department followed the USEPA lead, and issued in 1992, a general NJPDES permit (NJPDES Permit No. NJ0088315; N.J.A.C. 7:14A-3 Appendix A) which would cover most of the industrial facilities requiring permits. This Industrial Stormwater General Permit encourages industry to prevent pollutants from entering stormwater by using pollution prevention techniques, rather than costly treatment and end-of-pipe methods. This permit does not impose numerical effluent limitations, nor does it have on-site stormwater sampling requirements. Instead, this permit requires the facilities to complete and implement a simple Stormwater Pollution Prevention Plan.

The commenter's facility is one of the approximately 1,500 industries covered by this Industrial Stormwater General Permit. This fee is established by current regulation at N.J.A.C. 7:14A-1.8(i), and cannot be changed for the Fiscal Year 1995 (FY95) budget. (This fee is also equivalent to the minimum annual fee of $500 established by current regulation at N.J.A.C. 7:14A-1.8(h) for most other NJPDES Discharge to Surface Water permits.)

While the Department is strongly in favor of strengthening Legislative financial support for the Department, the Department does not anticipate a time when there will be no fees for permittees. The $500.00 annual fee is consistent with fees charged by other states for stormwater permits, and is significantly lower than most of the other permit fees of the Department. Given the nature of the USEPA rules, the NJPDES Stormwater Permitting Program is required to regulate many industries which in the past have never obtained a Department permit. For this reason, the imposition of any permit fee is negatively perceived by some of these industries. As indicated in the 1995 Annual Fee Report and Fee Schedule for the NJPDES Stormwater Permitting Program, the $500.00 annual fee is only used to support the costs of that Program. However, these fees do not cover the entire costs of that Program at this time. Therefore, the Department has been reducing the staff associated with that Program. Within Fiscal Year 1995, staff was reduced by 10 percent. The Department has worked very hard with the affected industries to make that Program as industry-friendly as possible. The Department will continue to make every effort to provide environmental protection in a manner that does not inhibit economic progress.

2. COMMENT: Listed below are some industries that should also be required to pay stormwater permits fees. If these industries are forced to pay their fair share, the permit fees would be much lower and more of the public would be aware of sources for ground water pollution.

1. Autobody shops might have permits for their spray booths that are vented to the atmosphere, but when they wetsand vehicles, the residue gets washed down the drain or driveway.

2. Transmission shops might have permits for their parts cleaning apparatus, but transmissions leak, cases crack and seals leak. Outdoor parking areas that hold cars, waiting for repair are always covered with transmission fluid.

3. Garden shops store chemicals, fertilizers, and landscape materials that include chemically treated wood and lawn ornaments that are covered with chemical release agents and element preservatives. Chemicals leach out of the chemically treated wood. The good wood preservatives are carcinogens.

4. New Jersey has thousands of owner-operators (people who own their own tractors and other commercial vans and cars). These people bring their vehicles home with them, and in some cases do routine maintenance on their vehicles. Basically, if someone commercial uses their driveway to repair vehicles, they should be classified as a maintenance facility. These vehicles are parked in driveways and shopping centers.

5. The Turnpike and Parkway Authority store thousands of tons of salt and other chemical deicers. Even with the best storage procedures this material is exposed to rainwater in storage and when it is applied to road surfaces.

6. All auto dealers wash cars on a daily basis. Many car lots do not have water separators. Many car dealers steam motors as do businesses that detail cars. This material goes down the drain or is washed down the street.

7. Muffler shops—outdoor storage of worn out parts.

8. Auto salvage yards—outdoor storage of damaged leaking vehicles.

9. Boat yards, boat repair facilities, and boat brokerage yards cause water contamination when the rain leaches the antifouling paints.

10. Towers—companies that tow vehicles involved in accidents and store these vehicles outdoors cause contamination with leaking fluids.

Listed above are various industries that are causes of ground water pollution and these industries are not required to pay for stormwater permits. If these industries were required to register and pay for stormwater permits the fees would be much lower. The burden for cleaner surface water would be more equable. (Edward Levine)

RESPONSE: The ground water and surface water aspects of stormwater permits must be distinguished. This comment includes two references to "ground water pollution" and one reference to "cleaner surface water". From its inception and at present, the New Jersey Stormwater Permitting Program administered by the Bureau of Stormwater Permitting has been limited to discharges of stormwater to surface water. Industries with stormwater discharges to ground water must check with the Department's Bureau of Operational Ground Water Permits to determine if they must apply for a NJPDES Discharge to Ground Water (DGW) permit. Requirements and fees for DGW permits are outside the scope of the Stormwater Permitting Program that is the subject of this public notice. However, stormwater from activities listed in the comment can add pollutants to surface water as well as ground water.

As noted above in the response to Comment 1, the USEPA adopted rules in 1990 defining the term "storm water discharge associated with industrial activity" (40 CFR 122.26(b)(14)). This definition, which the Department adopted by reference at N.J.A.C. 7:14A-1.9, identifies eleven

categories of facilities considered to be engaging in "industrial activity". Several of the activities listed in the comment fall under this definition, and are required to obtain NJPDES permits if they discharge stormwater to surface water. As one example, many of the owner-operators mentioned in the comment have "transportation facilities" classified as Standard Industrial Classification (SIC) codes listed in category (viii) of the definition, such as taxicabs (SIC 412) and trucking and courier services (SIC 421). Such facilities require a NJPDES permit (and must pay a NJPDES permit fee) if they have vehicle maintenance shops or equipment cleaning operations, and if they discharge stormwater to surface water.

As another example, the auto salvage yards mentioned in the comment generally are facilities listed in category (vi) of the definition: "facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093". These facilities also require a NJPDES permit (and must pay a NJPDES permit fee) if they discharge stormwater to surface water. On February 1, 1995, the Department issued a general permit for discharges to surface water of stormwater from scrap metal processing and recycling facilities and facilities engaged in the dismantling of motor vehicles (NJPDES Permit No. NJ0107671).

As a final example, many of the boat yards and boat repair facilities mentioned in the comment fall either under category (ii) of the definition, which includes facilities classified as SIC 373 (ship and boat building and repairing), or under category (viii) of the definition, which includes marinas (SIC 4493) and some other "transportation facilities" that have vehicle maintenance shops or equipment cleaning operations. Such boat yards and boat repair facilities require a NJPDES permit (and must pay a NJPDES permit fee) if they discharge stormwater to surface water.

Conversely, however, many of the other activities listed in the comment generally have SIC codes that are not listed in the USEPA definition of "storm water discharge associated with industrial activity". Such activities include automotive repair shops including body shops, muffler shops, and transmission shops (SIC 753); garden supply stores (SIC 5261); toll roads (SIC 4785); automobile dealers (SIC 5511 and 5521); boat dealers (SIC 5551); and towing services (SIC 7549). USEPA did not consider these activities to be sufficiently "industrial" to warrant inclusion in the definition.

The Department acknowledges that at least some of these other activities represent a potentially significant source of stormwater pollutants. However, since this first phase of the Department's evolving stormwater program is designed essentially to comply with USEPA requirements for "storm water discharges associated with industrial activity", these activities are generally not being regulated at this time in that program. (Indeed, the Department is still in the process of contacting thousands of businesses whose SIC codes are listed in the EPA definition.) Nevertheless, the Department is considering proposing rules extending this program in the future to cover activities such as those described in the comment.

(a)

OFFICE OF ENVIRONMENTAL PLANNING

Notice of Public Hearings
Draft Coastal Nonpoint Pollution Control Program

Take notice that, in satisfaction of Federal requirements pursuant to the Coastal Zone Act Reauthorization Amendments of 1990, the New Jersey Department of Environmental Protection (NJDEP) has prepared a draft Coastal Nonpoint Pollution Control Program (CNPCP) Plan. That document, when finalized, will contain New Jersey's plan for satisfying management measure requirements pertaining to: agriculture sources; urban areas; marinas and recreational boating; hydromodification; and wetlands, riparian areas, and vegetated treatment systems. An exclusion for the management measure category of forestry is being requested, due to the small amount of silvicultural activity which occurs in the State.

This notice is being given to inform the public that hearings, in the form of informal workshops, will be held by the NJDEP to discuss the draft CNPCP Plan. The workshops will be held on the following days: Tuesday, May 9, 1995, at 7:30 P.M. at the Ocean County Agricultural Center Auditorium, 1623 Whitesville Road, Toms River, New Jersey; Thursday, May 11, 1995, at 1:00 P.M. at the Department of Environmental Protection Public Hearing Room, 401 East State Street, Trenton, New Jersey; and on Tuesday, May 16, 1995, at 7:30 P.M. at the Haggerty Education Center Auditorium, 53 East Hanover Road, Morris Township, New Jersey.

The draft CNPCP Plan as well as the Federal CNPCP development guidance, may be reviewed at the offices of the NJDEP, Coastal Land Planning Group, 401 East State Street, 4th floor, CN 423, Trenton, New Jersey 08625. They are 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 Coastal Land Planning Group at (609) 292-2113. Copies of the draft CNPCP Plan and directions to the public hearing locations may also be obtained by calling that number.

Interested persons may submit written comments on the draft CNPCP Plan to Mr. Barry Miller at the NJDEP address cited above. All comments must be submitted by June 16, 1995. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP in preparation of the final CNPCP Plan.

(b)

LAND USE REGULATION PROGRAM

Notice of Action on Petition for Rulemaking
Definition of Similar Structure
N.J.A.C. 7:7-2.1(c)5

Take notice that on January 17, 1995, the Department of Environmental Protection received a petition for rulemaking from the law office of Picco, Mack, Herbert, on behalf of Stephen and Linda Gertler, requesting an amendment of N.J.A.C. 7:7-2.1(c)5 which lists activities which are considered "similar structures" and may be constructed at residential developments without the requirement of obtaining a Coastal Area Facility Review (CAFRA) permit. The petitioners requested that retaining walls be included within this provision and, as a result, be exempted from the regulatory requirements of CAFRA.

The Department filed a notice of receipt of this petition with the Office of Administrative Law on January 20, 1995. This notice was subsequently published in the New Jersey Register on February 21, 1995 at 27 N.J.R. 769(a). Pursuant to the Administrative Procedures Act, the Department is required to respond to this rulemaking petition by February 16, 1995. For the reasons contained herein, the Department has decided not to include retaining walls within the definition of "similar structures" located at N.J.A.C. 7:7-2.1(c)5i. The Department, however, will be proposing amended language in a forthcoming rule proposal which will include "landscaping walls" as an activity at a residential development that does not require CAFRA approval.

In 1993, the Legislature amended CAFRA. Included within these amendments was an express exemption from the permitting requirements of the Act for the construction of patios, decks, or similar structures constructed at a residential development. The legislation, however, does not define the term "similar structure." As a result, the Department was required to identify structures which are similar to patios or decks and promulgate a regulation defining this term. N.J.A.C. 7:7-2.1(c)5i defines "similar structures" as porches, balconies and verandas. The regulations also include a definition at N.J.A.C. 7:7-2.1(c)5iv of structures which are not considered "similar structures." Such structures include swimming pools, garages, retaining walls, bulkheads, revetments, driveways and associated parking areas, paved yard areas or outbuildings. Retaining walls are designed and constructed to retain soil, whereas, patios and decks are recreation areas which adjoin a dwelling. Clearly patios and decks are not similar to retaining walls.

Retaining walls were excluded from the definition of "similar structures" due to the diversity in scope, materials and construction techniques used to construct them. Further, construction of retaining walls may often impact stormwater runoff and drainage of a property or adjacent properties. Construction of retaining walls in areas subject to storm surges and storm waves has the potential to result in adverse impacts to environmentally sensitive beaches, dunes, wetlands and intertidal subtidal shallows as well as to developed properties. Since similar structures are exempt from CAFRA review, including retaining walls within this definition would preclude the Department review of the construction of retaining walls in high hazard areas such as V-zones, which require specific designs and construction techniques, and adjacent to wetlands, to ensure that impacts to wetlands and associated buffer areas are minimized.

The Department recognizes, however, that decorative "landscape walls" (that is, railroad ties) are frequently used at residential developments and, provided they are of minimal size, have minor impacts to stormwater runoff and drainage. Therefore, the Department will be proposing in a forthcoming rule proposal, as an amendment to N.J.A.C. 7:7-2.1(c)5ii, to include "landscape walls no more than one foot in height or a series of walls not exceeding a cumulative height of one foot" as "similar structures" at residential developments which are exempt from CAFRA, provided such structures are not located on a beach, dune or wetland.

Pursuant to N.J.A.C. 1:30-3.6, the Department has mailed a copy of this notice of action on the petition to the petitioners.

(a)

DAM SAFETY SECTION

Notice of Availability of Loan Funds and Application Deadline
Dam Restoration and Inland Waters Projects Loans

Take notice that, in compliance with P.L. 1987, c.7 (N.J.S.A. 52:14-34.4 et seq.) the Department of Environmental Protection hereby announces the availability of the following State loan funds:

Name of the loan program: The Dam Restoration and Inland Waters Projects Loan Program.

Purpose for which the loan program fund shall be used: The purpose of the Dam Restoration and Inland Waters Projects Loan Program is to provide loans to assist local government units, private lake associations or similar organizations, and owners of private dams for dam restoration or inland waters projects.

Amount of money in the program: Approximately $5,000,000 is available for loans. The interest rate for loans shall not exceed two percent per year and the maturity period shall be for a period not to exceed 20 years.

Groups or entities which may apply for the loan program: Any local government unit (municipal or county or instrumentality thereof) may apply to the program. Any private lake association or similar organization or private dam owner may apply as a co-applicant with a local government unit.

Qualifications of an applicant to be considered for the program: To be eligible for a loan under this program, the applicant must meet the eligibility criteria set forth in the Dam Restoration and Inland Waters Projects Loan Rules at N.J.A.C. 7:24A-1.3.

Procedures for eligible entities to apply for loan funds: The procedure for applying for a loan is governed by the Dam Restoration and Inland Waters Projects Loan Rules at N.J.A.C. 7:24A, specifically N.J.A.C. 7:24A-2.2. Pre-application conferences must be requested by contacting the Dam Safety Section at the address or phone number below.

Address of the division, office or official receiving the application:

John H. Moyle, Section Chief
Department of Environmental Protection
Dam Safety Section
CN 419
Trenton, NJ 08625
(609) 984-0859

Deadline by which applications must be submitted to the office: Applications must be submitted by the close of business on August 18, 1995.

Date by which applicants shall be notified of preliminary approval or disapproval: Generally, the Department will notify an applicant of preliminary approval or disapproval within 90 days from the application deadline. However, this time frame may change based on the number of applications and whether the applications are complete when received by the Department. The Department will, in any case, notify all applicants of preliminary approval or disapproval no later than February 16, 1996.

HUMAN SERVICES

(b)

DIVISION OF FAMILY DEVELOPMENT

1995 Federal Poverty Guidelines
Public Notice

Take notice that, in accordance with N.J.A.C. 10:15B-1.2(b)1, the Department of Human Services announces the following 1995 Federal Poverty Guidelines as published in the Federal Register, Vol. 60, No. 27, dated February 9, 1995, page 7722.

1995 Federal Poverty Guidelines

Size of family unit	Poverty Guideline
1	$ 7,470
2	10,030
3	12,590
4	15,150
5	17,710
6	20,270
7	22,830
8	25,390

For family units with more than 8 members, add $2,560 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

(c)

DIVISION OF MENTAL HEALTH SERVICES

Notice of Availability of Grant Funds
Community Care Allocation

Take notice that, in compliance with N.J.A.C. 52:14-34.4, 34.5 and 34.6, the Division of Mental Health Services hereby announces the availability of the following grant program funds:

Name of Program: Outpatient Mental Health Services.

Purpose: Funds are being made available to provide mental health outpatient services beginning July 1, 1995 to seriously and persistently mentally ill residents (adults and children) of Clifton and the surrounding Passaic County municipalities. Services should include, but not be limited to, individual, group and family therapy; psychiatric evaluation and assessment; and medication monitoring.

Amount of available funding for the program: Annualized $179,115; additional money from Passaic County may be available to support this service.

Organizations which may apply for funding under this program: Any non-profit agency which meets the qualifications of the Department of Human Services, as specified in the Contract Policy and Information Manual, N.J.A.C. 10:3. If needed, this manual may be obtained from the Division of Mental Health Services Regional Office at the time the application is requested.

Qualifications needed by an applicant to be considered for funding: Applicants must have the capacity to provide outpatient services necessary to assist adults and children with severe mental illness to maintain or enhance their level of functioning in the community. Services must be consistent with DMHS and Medicaid regulations at N.J.A.C. 10:37-5.28 through 5.34 and N.J.A.C. 10:49. Applicants must demonstrate a strong commitment to involve individuals in all aspects of the treatment planning and service delivery process.

Procedure for eligible organizations to apply: Interested applicants may obtain a Request For Proposal application by contacting the Division of Mental Health Services, Northern Region Office, 100 Hamilton Plaza, 8th Floor, Box 4, Paterson, NJ (201) 977-4397. Address to which applications must be submitted:

Michelle Vedus-Deeney, Regional Coordinator
Division of Mental Health Services—Northern Region Office
100 Hamilton Plaza—8th Floor—Suite 800—Rear
Paterson, New Jersey 07505

Deadline by which applications must be submitted: By close of business (5:00 P.M.) on Wednesday, May 17, 1995.

Date the applicant is to be notified of acceptance or rejection: June 1, 1995.

TRANSPORTATION

(a)

DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITY AND RAILROAD ENGINEERING

Notice of Designation of At-grade Crossings as "Exempt Crossings"

N.J. Route 169 at Pulaski Street and N.J. Route 169 near the entrance into the Military Ocean Terminal, in the City of Bayonne in Hudson County

Take notice that, in accordance with N.J.S.A. 39:4-128, the Commissioner of Transportation hereby designates two at-grade railroad crossings in the City of Bayonne, Hudson County as "exempt crossings." The at-grade crossings are CONRAIL at-grade crossings located on N.J. Route 169, one at Pulaski Street and the second is located near the entrance into the Military Ocean Terminal.

The "exempt crossing" designations exempt the driver of any omnibus, designed for carrying more than six passengers, or of any school bus carrying any school child or children, or of any vehicle carrying explosive substance or flammable liquids as a cargo or part of a cargo, from stopping before crossing at the tracks of a railroad. Normally the above such vehicles must come to a complete stop before proceeding across the crossing.

Appropriate signs shall be erected informing the motoring public.

Notification of these "exempt crossing" designations and notification of the Public Hearing for this matter was published in the New Jersey Register (26 N.J.R. 1401(b)) on Monday, March 21, 1994, and the Newark Star Ledger on Monday, March 28, 1994 and April 4, 1994.

There were no objectional comments received.

Therefore, under the provisions of N.J.S.A. 39:4-128, the Commissioner of Transportation hereby designates the railroad at-grade crossing at the intersection of N.J. Route 169 and Pulaski Street and the railroad at-grade crossing on N.J. Route 169 near the entrance into the Military Ocean Terminal as "exempt crossings." Appropriate signs shall be erected informing the motoring public.

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 March 6, 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 FEBRUARY 21, 1995

NEXT UPDATE: SUPPLEMENT MARCH 20, 1995

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
26 N.J.R. 1417 and 1554	April 4, 1994	26 N.J.R. 4121 and 4244	October 17, 1994
26 N.J.R. 1555 and 1738	April 18, 1994	26 N.J.R. 4245 and 4470	November 7, 1994
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

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)		
1:6A	Special Education Program	27 N.J.R. 4(a)	R.1995 d.176	27 N.J.R. 1179(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 1994-5 (supplement September 19, 1994)				
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)		
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)		
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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)
3:2-1.2, 1.3, 1.4	Disclosures and advertising of accounts	27 N.J.R. 793(a)		
3:3-2, 3	Department of Banking organization: nonpublic records; grievance procedure pursuant to ADA	27 N.J.R. 20(a)	R.1995 d.125	27 N.J.R. 877(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)		
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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)
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Most recent update to Title 3: TRANSMITTAL 1995-1 (supplement January 17, 1995)				
CIVIL SERVICE—TITLE 4				
Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)				

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
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4A:8	Layoffs	27 N.J.R. 612(a)		
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5:2	Organization of the Department	Exempt	R.1995 d.186	27 N.J.R. 1404(a)
5:10-1.10	Maintenance of hotels and multiple dwellings: inspections	27 N.J.R. 1345(a)		
5:16	Local Housing Authority and Municipal Redevelopment Agency Training Program	26 N.J.R. 4867(a)		
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5:18-2.4A	Uniform Fire Code: overnight camps life hazard use category	26 N.J.R. 4254(a)	R.1995 d.57	27 N.J.R. 878(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)		
5:18A	Fire Code Enforcement	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18B	High Level Alarms	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18C	Standards for Fire Service Training and Certification	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18C-2.4	Fire service training facilities	26 N.J.R. 4249(a)	R.1995 d.59	27 N.J.R. 891(a)
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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)		
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5:23-3.4, 3.18	Uniform Construction Code: energy subcode	26 N.J.R. 4872(a)	R.1995 d.143	27 N.J.R. 1179(b)
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5:23-3.15	Uniform Construction Code: abandonment of septic systems	26 N.J.R. 4874(a)	R.1995 d.122	27 N.J.R. 894(a)
5:23-3.20	Uniform Construction Code: mechanical subcode	26 N.J.R. 4874(b)	R.1995 d.120	27 N.J.R. 894(b)
5:23-9.4	Uniform Construction Code: seismic zones	26 N.J.R. 4875(a)	R.1995 d.121	27 N.J.R. 894(c)
5:23-2.20, 4.5	Uniform Construction Code: heating equipment installation	27 N.J.R. 619(a)		
5:27	Rooming and boarding houses	27 N.J.R. 1346(a)		
5:34-7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 4724(a)	R.1995 d.142	27 N.J.R. 1189(a)
5:52	Volunteer Coaches' Safety Orientation and Training Skills Programs	27 N.J.R. 21(a)	R.1995 d.150	27 N.J.R. 1190(a)
5:80	New Jersey Housing and Mortgage Finance Agency rules	27 N.J.R. 265(a)		
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)		
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6:3A	District equivalency and waiver process	27 N.J.R. 1377(a)		
6:5-2.4	Organization of the Department	Exempt	R.1995 d.64	27 N.J.R. 894(d)
6:11-3.2	Certification fees	27 N.J.R. 1380(a)		
6:28-2.10, 4.2	Special Education: least restrictive environment; program options	27 N.J.R. 416(c)		
6:68	State Library assistance programs	27 N.J.R. 620(a)		
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7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
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)		
7:1H	County Environmental Health Act rules: postponement of new rules proposal	27 N.J.R. 22(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)
7:5D	State Trails System	26 N.J.R. 1459(a)	R.1995 d.147	27 N.J.R. 1204(c)
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)		
7:7A-16.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
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)		
7:13	Flood hazard area control	26 N.J.R. 1009(a)	R.1995 d.149	27 N.J.R. 1211(a)
7:14	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14-8.1, 8.3, 8.4, 8.15	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
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)
7:14A-1.8	NJPDES permit fees	27 N.J.R. 1028(a)		
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	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(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)
7:19A	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
7:19B	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
7:20	Dam safety standards	27 N.J.R. 795(a)		
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)	R.1995 d.117	27 N.J.R. 895(a)
7:25-4.18	Endangered and Nongame Species Advisory Committee: term limitations requirement	27 N.J.R. 797(a)		
7:25-24.7, 24.9	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)	R.1995 d.202	27 N.J.R. 1405(a)
7:25A	Oyster management and harvest	27 N.J.R. 798(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)		
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)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.4, 25.8	Oxygenated fuels program	Emergency (expires 4-9-95)	R.1995 d.129	27 N.J.R. 787(a)
7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		

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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)
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:28	Radiation protection	26 N.J.R. 4942(a)		
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)
7:50-6.48	Pinelands Comprehensive Management Plan: administrative correction regarding source discharges	————	————	27 N.J.R. 1410(a)
7:60-1.2, 1.3, 1.4, 1.6	Assessment of generators for cost of siting and developing low-level radiactive waste disposal facility	26 N.J.R. 4946(a)	R.1995 d.130	27 N.J.R. 905(a)
7:62	Landscape irrigation contractors	27 N.J.R. 1098(a)		
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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)
8:33I	Megavoltage radiation oncology services: certificate of need	26 N.J.R. 4875(b)	R.1995 d.146	27 N.J.R. 1287(a)
8:33P	Designation of Level I and II trauma centers: certificate of need requirements	27 N.J.R. 1350(a)		
8:39-2.2, 2.12	Long-term care facilities: application for licensure; add-a-bed	26 N.J.R. 4641(a)	R.1995 d.127	27 N.J.R. 937(b)
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)
8:43F	Adult day health care facilities: standards for licensure	26 N.J.R. 4532(a)	R.1995 d.128	27 N.J.R. 939(a)
8:43G	Hospital licensing standards	26 N.J.R. 4537(a)	R.1995 d.124	27 N.J.R. 1290(a)
8:43G-5.1, 5.2	Hospital licensing standards: administrative change regarding smoke-free policy	————	————	27 N.J.R. 1615(a)
8:44	Operation of clinical laboratories	27 N.J.R. 626(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)		
8:45	Clinical laboratory services	27 N.J.R. 32(a)	R.1995 d.126	27 N.J.R. 941(a)
8:57	Communicable diseases	27 N.J.R. 420(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)
8:57-5	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)		
8:60	Asbestos licenses and permits	27 N.J.R. 71(a)	R.1995 d.193	27 N.J.R. 1465(a)
8:66	Repeal (see 8:66A)	27 N.J.R. 274(a)	R.1995 d.183	27 N.J.R. 1420(a)
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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 (see 26 N.J.R. 3720(a), 4386(a))	26 N.J.R. 2723(a)	R.1995 d.35	27 N.J.R. 359(a)
8:71	Interchangeable drug products (see 26 N.J.R. 4390(a), 27 N.J.R. 357(b))	26 N.J.R. 3583(a)	R.1995 d.179	27 N.J.R. 1302(a)
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)
8:71	Interchangeable drug products (see 27 N.J.R. 351(c))	26 N.J.R. 4294(a)	R.1995 d.180	27 N.J.R. 1303(a)
8:71	Interchangeable drug products	27 N.J.R. 30(a)	R.1995 d.177	27 N.J.R. 1305(a)
8:71	Interchangeable drug products	27 N.J.R. 810(a)		

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9:4-1.7	Curriculum coordinating committee	26 N.J.R. 1751(a)		
9:4-1.9, 5, 6, 7	County community colleges: policies and procedures	27 N.J.R. 1387(a)		
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)		
9:6	State colleges	27 N.J.R. 1392(a)		
9:6	State colleges	27 N.J.R. 1395(a)		
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9:11	EOF Program (recodify as 9A:11)	27 N.J.R. 812(a)		
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9A:11	Educational Opportunity Fund Program	27 N.J.R. 812(a)		
9A:12	Educational Opportunity Fund Program	27 N.J.R. 812(a)		

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10:17	Child placement rights	26 N.J.R. 1563(a)	R.1995 d.187	27 N.J.R. 1648(a)
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)		
10:37F	Adult Partial Care Services for individuals with severe and persistent mental illness	26 N.J.R. 4547(a)		
10:37G	Division of Mental Health and Hospitals: client liaison services	27 N.J.R. 429(a)		
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)
10:49-14.4	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)
10:52-5.1, 5.3, 5.4, 5.6, 5.9, 5.12–5.15, 5.17, 5.18, 5.20, 6.13, 7.2, 9.1	Hospital Services Manual: inpatient reimbursement methodology	27 N.J.R. 34(a)	R.1995 d.141	27 N.J.R. 908(a)
10:52-10	Manual for Hospital Services: charity care eligibility	27 N.J.R. 656(a)		
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)		
10:60-1.1, 1.2, 1.4, 1.13, 4.2	Home Care Services: EPSDT private duty nursing services	27 N.J.R. 279(a)		
10:63-3, 4	Long-Term Care Services: nursing facility reimbursement	27 N.J.R. 281(a)	R.1995 d.174	27 N.J.R. 1307(a)
10:64-1.3	Hearing Aid Services: optional audiological examinations	27 N.J.R. 287(a)		
10:74	Managed health care services for Medicaid eligibles	27 N.J.R. 853(a)		
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)		
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10:88	Families First Program	27 N.J.R. 1110(a)		
10:89	Home Energy Assistance Handbook	26 N.J.R. 4726(a)	R.1995 d.172	27 N.J.R. 1317(a)
10:89-2.3, 3.1	Home Energy Assistance program: income eligibility; automatic payments	Emergency (expires 4-17-95)	R.1995 d.145	27 N.J.R. 942(a)
10:121	Division Youth and Family Services: standards regarding adoptions	27 N.J.R. 1122(a)		
10:121A-1.5, 1.6, 1.7, 1.8, 3.3, 3.5, 3.6, 4.2, 4.4, 5.3, 5.4, 5.6, 5.8, 5.9	Division of Youth and Family Services: Manual of Requirements for Adoption Agencies	27 N.J.R. 661(a)		
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)		
10:126-1.2, 1.3, 2.4, 4.6, 5.3, 5.7, 5.8	Family day care provider registration: child abuse central registry searches; registration denial appeal process	27 N.J.R. 1351(a)		
10:126A	Division of Youth and Family Services: utilization of family day care providers	27 N.J.R. 432(a)		
10:129	Division of Youth and Family Services: child abuse and neglect cases	27 N.J.R. 1125(a)		
10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:130	Shelters for victims of domestic violence: standards	27 N.J.R 1126(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)		
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10A:4-4.1	Inmate prohibited acts: refusal to register as sex offender	27 N.J.R. 436(a)		
10A:12-2	Inmate liaison committees	26 N.J.R. 4881(a)	R.1995 d.115	27 N.J.R. 916(b)
10A:22-2.10	Release of juvenile records	27 N.J.R. 436(b)	R.1995 d.213	27 N.J.R. 1618(a)
10A:32	Manual of Standards for Juvenile Detention Facilities (recodify as 10:19)	27 N.J.R. 1101(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	27 N.J.R. 288(a)		

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11:1-39	Insurer disclosure of material transactions	27 N.J.R. 816(a)		
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11:3-16.7	Private passenger automobile insurance: rating programs for physical damage coverages	27 N.J.R. 1356(a)		
11:3-28.13, 28.16	Unsatisfied Claim and Judgment Fund: insurer's obligation to obtain recovery of paid medical expense benefit claims and paid benefits (UCJ claims)	26 N.J.R. 4595(a)		
11:3-45	Private passenger automobile insurance: annual premium survey	27 N.J.R. 289(a)		
11:4-9	Personal lines insurance: prospective loss costs filing procedures	27 N.J.R. 1356(b)		
11:4-25	Funeral insurance policies	26 N.J.R. 4727(a)		
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11:5-1.7	Real Estate Commission: preproposal concerning mass marketing and brokerage licensure requirement	26 N.J.R. 3110(a)		
11:5-1.43	Real Estate Commission: administrative corrections regarding Consumer Information Statement	_____	_____	27 N.J.R. 1191(a)
11:5-1.43	Real Estate Commission: administration correction regarding Consumer Information Statement	_____	_____	27 N.J.R. 1618(b)
11:13-7.4, 7.5	Commercial lines insurance: exclusions from coverage; refiling of policy forms	26 N.J.R. 3805(b)		
11:15-2	Joint insurance funds for local governmental units	26 N.J.R. 2725(a)		

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11:15-2	Joint insurance funds for local governmental units: extension of comment period	26 N.J.R. 3592(a)		
11:16-5	Insurer's health fraud prevention/detection plan	26 N.J.R. 4882(a)		
11:17A-1.2, 1.7	Private passenger automobile insurance: standard minimum premium quotation	27 N.J.R. 1354(a)		
11:20-2.1, 6.4, 8.2, 9.2, 9.6, 13.3, 17.3, App. Exh. K	Individual Health Coverage Program: administrative changes	_____	_____	**27 N.J.R. 1423(a)**
11:20-3.1	Individual Health Coverage Program: out-network benefits and coinsurance levels	27 N.J.R. 1127(a)		
11:20-4.1, 12.5	Individual Health Coverage Program: administrative corrections	_____	_____	**27 N.J.R. 1424(a)**
11:21-1.2, 7.4, 8.3	Small Employer Health Benefits Program: summary of comments and responses regarding stop loss coverage	_____	_____	**27 N.J.R. 1618(c)**
11:21-2.5	Small Employer Health Benefits Program: public hearing regarding Board membership	26 N.J.R. 4311(a)		
11:21-2.5	Small Employer Health Benefits Program: Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(a)		
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)		
11:21-3.2	Small Employer Health Benefits Program: optional benefit riders	26 N.J.R. 4729(a)	R.1995 d.116	**27 N.J.R. 918(a)**
11:21-4.4, Exh. DD	Small Employer Health Benefits Program: policy forms; compliance and variability rider	27 N.J.R. 439(a)		
11:21-7.4	Small Employer Health Benefits Program: carriers acting as administrators for small employers	26 N.J.R. 3117(a)		
11:21-17.3, Exh. BB, EE	Small Employer Health Benefits Program: certification of promotional and marketing material	27 N.J.R.. 819(a)		
11:21-19, App. Exh. EE	Small Employer Health Benefits Program: Premium Comparison Survey	27 N.J.R. 1127(b)		
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12:16	Unemployment Compensation and Temporary Disability Insurance: contributions, records and reports	27 N.J.R. 61(a)	R.1995 d.138	**27 N.J.R. 919(a)**
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:23-8	Workforce Development Partnership Program: reporting requirements for assessment of employment and training programs	27 N.J.R. 1131(a)		
12:102	Field sanitation for seasonal farm workers	27 N.J.R. 1133(a)		
12:120	Asbestos licenses and permits	27 N.J.R. 71(a)	R.1995 d.193	**27 N.J.R. 1465(a)**
12:195-1.9	Carnival-amusement rides: inspection fees	26 N.J.R. 2520(a)		
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13:4	Housing discrimination	26 N.J.R. 1942(a)		
13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)		
13:13	Housing discrimination	26 N.J.R. 1942(a)		
13:18	Division of Motor Vehicles: implementation of various statutory provisions	27 N.J.R. 637(a)		
13:18-1.5–1.9, 1.12, 1.15	Division of Motor Vehicles: overweight oceanborne containers	26 N.J.R. 2521(a)	R.1995 d.139	**27 N.J.R. 927(a)**
13:25	Division of Motor Vehicles: motorized bicycles	27 N.J.R. 440(a)	R.1995 d.204	**27 N.J.R. 1619(a)**
13:29	Board of Accountancy rules	27 N.J.R. 1134(a)		
13:30	Board of Dentistry rules	27 N.J.R. 293(a)	R.1995 d.191	**27 N.J.R. 1424(b)**
13:33	Board of Ophthalmic Dispensers and Ophthalmic Technicians: professional practice standards	27 N.J.R. 298(a)	R.1995 d.192	**27 N.J.R. 1428(a)**
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		

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13:35-11	Board of Medical Examiners: Alternative Resolution Program	27 N.J.R. 1363(a)		
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1	Board of Pharmacy: pharmacy technicians	26 N.J.R. 2743(a)		
13:39-11.3, 11.16	Board of Pharmacy: sterile admixture services in retail pharmacies	27 N.J.R. 43(a)		
13:40-6.1, 11	Board of Professional Engineers and Land Surveyors: continuing competency requirements for land surveyors	26 N.J.R. 4314(a)		
13:42-1.2, 1.3, 1.5, 2.1, 4.5, 7.1, 7.2A, 7.3, 7.5, 7.6, 9.9, 10.16	Board of Psychological Examiners: unlicensed practitioners	26 N.J.R. 4738(a)		
13:44-5.1	Board of Veterinary Medical Examiners: licensure fees	27 N.J.R. 1137(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	26 N.J.R. 3932(b)		
13:44E-2.2	Board of Chiropractic Examiners: patient records and cessation of practice	26 N.J.R. 2866(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification	26 N.J.R. 4964(a)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:45A-14.4	Office of Weights and Measures: unit pricing of infant formula	27 N.J.R. 302(a)	R.1995 d.181	27 N.J.R. 1192(a)
13:45A-27	Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency	26 N.J.R. 3128(a)		
13:45A-28	Motor vehicle leasing	26 N.J.R. 3243(a)		
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13:45B-15.1	Health care service firms: health care practitioner supervisor	27 N.J.R. 1366(a)		
13:46-1.1, 4.1, 4.16, 4.21, 8.25, 9.12, 10.1	State Athletic Control Board: boxing, wrestling and sparring events	27 N.J.R. 1138(a)		
13:46-4.6, 4.10, 4.25, 4.26, 4.29, 9.6, 9.17, 13.1, 15.2, 15.5, 15.13	State Athletic Control Board: taxes and fees	27 N.J.R. 1139(a)		
13:46-4.14, 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, 22.3	State Athletic Control Board: hearing procedures	27 N.J.R. 1141(a)		
13:46-8.14, 8.19	State Athletic Control Board: boxing three knockdown rule; tie rounds	27 N.J.R. 1144(a)		
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13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: extension of comment period concerning rules of practice	26 N.J.R. 4337(a)		
13:47A-3.1, 3.3, 3.4, 4.3, 12	Bureau of Securities: limited securities offerings	27 N.J.R. 303(a)		
13:47B-1.5	Weighing and measuring devices: type approval	26 N.J.R. 4966(a)	R.1995 d.140	27 N.J.R. 929(a)
13:47F	Weighing and measuring devices: fees for registration, inspection and testing	26 N.J.R. 4966(a)	R.1995 d.140	27 N.J.R. 929(a)
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13:61	Division of State Police: boat safety course	27 N.J.R. 642(a)		
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)
13:70-4.22	Thoroughbred racing: collection and use of Social Security numbers by Racing Commission	27 N.J.R. 44(a)	R.1995 d.163	27 N.J.R. 1192(b)
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)		

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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)
13:71-3.3	Harness racing: State Steward and Board of Judges decisions	26 N.J.R. 4969(a)	R.1995 d.164	27 N.J.R. 1193(a)
13:71-7.37	Harness racing: collection and use of Social Security numbers by Racing Commission	27 N.J.R. 44(b)	R.1995 d.165	27 N.J.R. 1193(b)
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)
13:72-9.1, 9.3–9.6	Casino simulcasting: supervisors of mutuels and verifiers at hub facilities	27 N.J.R. 45(a)	R.1995 d.166	27 N.J.R. 1193(c)
13:75-1.5	Violent Crimes Compensation Board: victim counseling referral	27 N.J.R. 307(a)		
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	27 N.J.R. 307(b)		
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)
13:82-3.18	Boat Regulation Commission: personal flotation devices requirement on Round Valley Reservoir	27 N.J.R. 1144(b)		
13:85	Motorcycle Safety Education Program	27 N.J.R. 1145(a)		
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14:7	Natural gas pipelines	27 N.J.R. 870(a)		
14:11-8	Natural gas (recodify as 14:7-1)	27 N.J.R. 870(a)		
14:17-6.17	Office of Cable Television: scheduling hearings for public comment	27 N.J.R. 46(a)	R.1995 d.173	27 N.J.R. 1194(a)
14:18	Cable television	27 N.J.R. 873(a)		
14:25	Solar energy devices and systems: technical sufficiency standards for sales tax exemption	27 N.J.R. 307(c)	R.1995 d.151	27 N.J.R. 1194(b)
14:33	Energy Facility Review Board	26 N.J.R. 4484(a)		
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16:23	Railroads: track safety and service requirements	27 N.J.R. 1155(a)		
16:28-1.42	Speed limit zones along Route 152 in Somers Point City and Egg Harbor Township	27 N.J.R. 1369(a)		
16:28-1.62	Speed limits along connector roads to U.S. 202, U.S. 206, and Route 28 in Somerset County	27 N.J.R. 46(b)	R.1995 d.157	27 N.J.R. 1195(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)		
16:28-1.65	Speed limit zone along Penn Avenue-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(b)		
16:28-1.69	Speed limit zones along U.S. 130, including parts of I-295, U.S. 30 and U.S. 206, in East Windsor	27 N.J.R. 47(a)	R.1995 d.158	27 N.J.R. 1195(b)
16:28-1.71	Speed limit zone along Park Boulevard-Route 70 connector ramp in Cherry Hill	27 N.J.R. 469(a)		
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28A-1.33	No stopping or standing zone on Route 47 in Millville	27 N.J.R. 309(a)	R.1995 d.153	27 N.J.R. 1196(a)
16:28A-1.38	Parking restrictions along Route 71 in Asbury Park	27 N.J.R. 48(a)	R.1995 d.154	27 N.J.R. 1196(b)
16:28A-1.41	Bus stops along Route 77 in Bridgeton	27 N.J.R. 49(a)	R.1995 d.155	27 N.J.R. 1197(a)

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16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood	27 N.J.R. 823(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-1.58	Parking restrictions along U.S. 206-94 in Newton	27 N.J.R. 49(b)	R.1995 d.156	27 N.J.R. 1197(b)
16:30-1.4	One-way access along U.S. 202 in Bernardsville	27 N.J.R. 50(a)	R.1995 d.159	27 N.J.R. 1198(a)
16:30-3.9	Truck lane-usage restriction along Route I-80 in Morris County	26 N.J.R. 4162(a)	R.1995 d.136	27 N.J.R. 934(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)		
16:30-3.14	Left turn lane along Route 154 in Cherry Hill	27 N.J.R. 51(a)	R.1995 d.160	27 N.J.R. 1198(b)
16:30-3.15	Left turn lane along Route 34 in Old Bridge	27 N.J.R. 51(b)	R.1995 d.161	27 N.J.R. 1198(c)
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)		
16:30-11.3	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(a)		
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)		
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)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	27 N.J.R. 54(a)		
17:25	Collection of debts owed to NJHEAA by public employees	27 N.J.R. 309(b)	R.1995 d.170	26 N.J.R. 1199(a)

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18:1-2.4	Issuance of warrants by Division of Taxation	26 N.J.R. 4975(a)	R.1995 d.132	27 N.J.R. 935(b)
18:7-1.9	Corporation Business Tax: doing business in New Jersey	27 N.J.R. 471(a)	R.1995 d.194	27 N.J.R. 1440(b)
18:7-3.6	Corporation Business Tax rates	27 N.J.R. 57(a)	R.1995 d.134	27 N.J.R. 935(c)
18:7-3.18, 3.20	Corporation Business Tax: priority of tax credits	27 N.J.R. 472(a)		
18:7-3.19	Corporation Business Tax: employer trip reduction program tax credit	26 N.J.R. 4976(a)	R.1995 d.148	27 N.J.R. 1201(a)
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)
18:24-9.13	Sales and Use Tax: student organization purchases	26 N.J.R. 4977(a)	R.1995 d.133	27 N.J.R. 936(a)
18:24-10.6	Sales and Use Tax: sales for resale	27 N.J.R. 474(a)		
18:35-1.14, 1.25	Gross Income Tax: partners and partnerships	27 N.J.R. 475(a)		
18:36	Savings Institution Tax Act rules	27 N.J.R. 479(a)	R.1995 d.196	27 N.J.R. 1442(a)

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19:18	Public Employment Relations Commission: contested employee transfer determinations	27 N.J.R. 847(a)		
19:25-1.7, 9.2, 9.3, 10, 11	ELEC: candidacy contribution reporting and limits	27 N.J.R. 312(a)	R.1995 d.209	27 N.J.R. 1643(c)
19:25-1.7, 9.2, 9.3, 10, 11	Candidacy contribution reporting and limits: change of public hearing date	27 N.J.R. 480(a)		
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)		
19:25-20.19	Annual registration and filing fee of legislative agents	26 N.J.R. 4978(a)	R.1995 d.152	27 N.J.R. 1201(b)
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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19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:40-1.2	Position endorsements; casino key employee and casino employee experience requirements	27 N.J.R. 1162(a)		
19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41	Applications for licensure	27 N.J.R. 647(a)		
19:41-1.1, 1.1A, 1.2, 1.2A, 1.3, 1.6, 1.8	Casino employee licensure and registration	26 N.J.R. 4338(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)		
19:41-1.5, 1.5A, 1.8, 1.9, 4.3, 5.2–5.5, 7.1A, 7.1B, 8.8, 9.15, 9.16	Position endorsements; casino key employee and casino employee experience requirements; casino hotel employee registration	27 N.J.R. 1162(a)		
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)		
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)		
19:41-7.1A, 7.7, 14.3	Federal criminal record checks of casino employees and applicants	27 N.J.R. 319(a)		
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