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(Includes adopted rules filed through July 29, 1991)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JUNE 17, 1991
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JULY 15, 1991

RULEMAKING IN THIS ISSUE

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **September 18, 1991.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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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Filing Deadlines

September 16 issue:
- **Adoptions ..... August 23**

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- **Proposals ..... September 20**
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November 4 issue:
- **Proposals ..... October 4**
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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 ORDER

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 37(1991)
Limited State of Emergency in Ocean County

Issued: July 19, 1991.
Effective: July 19, 1991.
Expiration: Indefinite.

WHEREAS, severe weather conditions of July 13, 1991, including heavy rains, have caused flooding which resulted in the destruction of a traffic bridge on Route 9, a State highway in Lacey Township, County of Ocean; and

WHEREAS, this condition causes a continued impediment to the use of Route 9, a heavily trafficked State highway particularly during the summer and on weekends, and other major transportation routes and facilities in the area; and

WHEREAS, the management and control of the traffic emergency caused by the destruction of the bridge on this crucial portion of Route 9 is beyond the capability of local authorities; and

WHEREAS, the expeditious correction of this traffic emergency may require the assistance and resources of the State government and of each and every political subdivision of this State, whether of men, properties or instrumentalities, and may require the commandeering and utilization of any personal services and any privately owned property; and

WHEREAS, the Constitution and Statutes of the State of New Jersey, particularly the provisions of the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-34, A:9-51) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers.

THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a limited State of Emergency has and presently exists in Ocean County.

NOW, THEREFORE, in accordance with the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4), I hereby authorize the Adjutant General of the New Jersey National Guard to order to active duty such members of the New Jersey National Guard, that, in his judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare. He may authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

FURTHERMORE, in accordance with the Laws of 1942, Chapter 251 as supplemented and amended, I hereby empower the Superintendent of the Division of State Police, who is the State's Director of Emergency Management, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any area that he, in his discretion, deems necessary for the protection of the health, safety and welfare of the public.

FURTHERMORE, in accordance with the Laws of 1942, Chapter 251, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of men, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

This order shall take effect immediately and it shall remain in effect until such time as it is determined by me that an emergency no longer exists.

RULE PROPOSALS

BANKING

(a)

OFFICE OF REGULATORY AFFAIRS

Mortgage Bankers and Brokers; Net Worth, Insolvency; Examination; Methods and Accounting

Reproposed Amendment: N.J.A.C. 3:38-1.2
Reproposed New Rule: N.J.A.C. 3:38-1.9
Proposed Amendment: N.J.A.C. 3:38-2.1
Proposed Repeal and New Rule: N.J.A.C. 3:38-1.4

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:11B-13(a).

Proposal Number: PRN 1991-429.

Submit comments by September 18, 1991 to:

Robert M. Jaworski
Assistant Commissioner
Division of Legislative and Regulatory Affairs
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Banking proposes the following new rules and amendments which would establish minimum net worth requirements for applicants for licenses pursuant to the Mortgage Bankers and Brokers Act ("MBBA"), N.J.S.A. 17:11B-1 et seq. This proposal supersedes and replaces a similar proposal (PRN 1991-106) at 23 N.J.R. 643(a) in the March 4, 1991 issue of the New Jersey Register. The requirements would apply, over time, to existing licensees. The requirements do not apply to individual licensees or applicants for individual licenses who conduct business through a corporation or a partnership, but they do apply to those corporations and partnerships and to those who conduct business as sole proprietors.

The proposed new rules and amendments require applicants for mortgage bankers licenses to demonstrate that they have tangible net worth of $250,000 or more. Applicants for mortgage brokers licenses are required to demonstrate a tangible net worth of at least $50,000. Tangible net worth is fully defined in proposed new rule N.J.A.C. 3:38-1.9 and excludes goodwill and organizational costs, among other assets. It must be computed on an accrual basis of accounting as reflected in the proposed amendment to N.J.A.C. 3:38-2.1.

The proposed new rule also contains a limited grandfathering provision for those currently licensed under the MBBA as mortgage bankers and mortgage brokers. Mortgage bankers are required to demonstrate a tangible net worth of (1) $50,000 by December 31, 1991, (2) $100,000 by December 31, 1992, (3) $175,000 by December 31, 1993, and (4) $250,000 by December 31, 1994. Brokers are required to demonstrate a tangible net worth of $50,000 by December 31, 1992.

The proposed new rule requires that mortgage bankers and brokers file semi-annual reports of their tangible net worth, computed on an accrual basis, so that the Department can monitor compliance with the rule. The reports will be filed on Departmental forms, accompanied by a $50.00 filing fee to defray the Department's administrative expenses.

The MBBA specifies insolvency as a ground for suspension of a license. The proposed new rule provides that an institution is considered to be "insolvent" for the purposes of the statute when it has negative tangible net worth, or is unable to pay its debts when due.

The Department also proposes to amend N.J.A.C. 3:38-1.2, which prescribes the information applicants must provide to the Department to qualify for a license, to add a requirement that an unqualified certified financial statement be submitted which demonstrates that the applicant possesses the required net worth.

The MBBA was enacted to regulate the primary market in first mortgages in New Jersey. It provides that a license is available only to those whose "financial responsibility ... and general fitness ... justify the belief that the business will be operated honestly, fairly, and efficiently within the purposes of this act." (N.J.S.A. 17:11B-4c.) The protection of consumers was a primary purpose of the act in general, and of the financial responsibility provision in particular. To fulfill these legislative purposes, the Department deems it necessary to establish these requirements for net worth.

The Department believes that imposition of net worth requirements will achieve several desirable results consistent with the goals of the Act. It will improve the viability of businesses engaged in mortgage banking by ensuring that they operate with sufficient capital to allow them to survive difficult times, like many are now experiencing. This, in turn, will result in a more stable industry. The fact that a mortgage banker or broker meets these net worth requirements, moreover, will increase consumers' confidence in dealing with that mortgage banker or broker. It sends a signal that the mortgage banker or broker is confident enough of its ability, expertise and business acumen to invest those funds in itself. This, in turn, will help consumers invest their trust in the mortgage banker or broker.

The danger to consumers of mortgage bankers or brokers operating with little or no capital is great. If an end investor reneges on its promise to produce funds at closing, a mortgage banker operating with no capital "cushion" of its own, could find it difficult or impossible to follow through on its commitment. A failure to close, in turn, could result not only in lost fees but also in the loss of sales deposits, attorneys fees, and other consequential damages not covered by the mortgage banker's surety bond, and could set in motion a chain reaction of failed home purchases, each being contingent on the sale of the prospective buyer's existing home. It is therefore viewed by the Department as imperative that mortgage bankers operate with sufficient capital to close loans on their own, or at least be able to go to the market and obtain new investor commitments when neccesary.

Minimum net worth requirements for mortgage bankers and brokers will also have the beneficial result of providing the Department with the opportunity and authority to more closely monitor and regulate failing companies. When a company's capital falls below the Department's minimum levels, the Department could, for example, move to step up examination schedules, direct that a plan be put into place to raise additional capital, enter into a memorandum of understanding with the board of a corporate mortgage banker or broker to cease paying dividends or to reduce expenses, order a company to cease taking new applications, or take other measures designed to prevent harm to the mortgage banker or broker's customers. The Department's goal would be to work with the company in an attempt to return it to a firm financial footing, or, failing that, to at least ensure an orderly cessation of the company's operations, without the attendant hardship, financial loss and general inconvenience so often experienced by consumers in the past when a mortgage banker or broker was forced to close its doors.

In proposing this rule, the Department also takes cognizance of the fact that when a company's fortunes are on a severe decline and its capital depleted the temptation to misuse funds belonging to others necessarily increases. The proposed minimum net worth requirements, it is thought, will result in increased scrutiny of companies at the time it is needed most to prevent abuse or inappropriate or even fraudulent activity.

The Department notes that New York and Pennsylvania currently have minimum net worth requirements for mortgage bankers equivalent to those proposed herein. The Department thinks it important to bring its standards at least in line with those of neighboring states to prevent New Jersey from becoming a haven for undercapitalized companies.

Many companies in New Jersey, typically ones having little or no capital of their own, operate essentially as mortgage brokers but under mortgage banking licenses, that is, they issue commitments in their own names but which they have no ability to themselves fund, either through the use of a warehouse line with a bank or their own capital. Instead, they rely solely upon end investors, who are often unlicensed, to supply the funds to close the loans, simultaneously assigning the loans to these end investors at the closing.

To the extent that the higher net worth requirements applicable to mortgage bankers pursuant to this rule will serve to encourage marginal companies to change their form of license to that of a mortgage broker, it will have the beneficial effect of making the license which they hold more accurately reflect the nature of their operations. Since Departmental regulations prohibit mortgage brokers from issuing commitments in

their own name, this license change will in turn effectively halt the above-described practice of companies issuing commitments backed only by the promises of other, often unlicensed, persons or entities to fund the loans. Moreover, it would force these unlicensed persons or entities, should they continue to desire to fund these loans, to become licensed. These companies would no longer be allowed to operate without a license under the subterfuge that they are merely buying loans made by licensed mortgage banking entities. The end result should be that industry practice will more closely conform to borrowers' expectations, namely, that licensed mortgage bankers are entities that make loans, using their own funds, for sale to the secondary market, and that licensed mortgage brokers are entities that bring borrowers and lenders together, but do not themselves make or commit to make loans. At present, there are more than 10 times as many entities licensed in New Jersey as mortgage bankers than as mortgage brokers. In Pennsylvania, however, there are almost twice as many licensed brokers as bankers, while in New York, the ratio is approximately 10 mortgage brokers for every mortgage banker. Implementation of the subject rule should help to bring New Jersey's ratio more in line with the reality of the marketplace as reflected in neighboring states.

Lastly, it is anticipated that imposition of the proposed net worth standards will decrease the incidence of a particularly troublesome category of consumer complaint filed with the Department against mortgage banking and brokering entities. A review of the 835 complaints received against such companies last year reveals that more than 200 were from consumers who lost opportunities to obtain mortgage loans because of insolvent or near insolvent mortgage bankers or brokers failing to close loans after they were arranged. While the suggestion has been made that the Department deal with problems by enforcing existing rules, enforcement is by its nature after the fact, and does little to assist consumers whose injury has already occurred.

In proposing these amendments and new rules, the Department is cognizant of the large number of comments which it received regarding an earlier form of this proposal which appeared at 23 N.J.R. 643(d) (March 4, 1991). The commenters raised several substantial objections to that proposal. The Department takes this opportunity to respond generally to those comments.

First, the commenters argued that the rule would drive many reputable bankers and brokers out of business and would thereby decrease competition. The Department has been careful to design the net worth requirements to minimize the adverse effects on licensees. As a consequence, the Department lowered the amount of net worth which is required from $300,000 to $250,000 for mortgage bankers, and has extended the period that grandfathered bankers have to meet the new requirements from two years to about three and one-half years. These new provisions should greatly lessen the adverse effects on the industry while achieving the goals of the Department in establishing the requirements, as expressed above.

Existing mortgage bankers who are unable to meet the net worth requirements will not necessarily be driven out of business. They will have the opportunity to change their licenses to mortgage broker licenses provided only they are able to meet the much lower minimum net worth requirement applicable to brokers. The proposed rule provides for such a license conversion at any time by the filing of acceptable proof of a minimum $50,000 net worth accompanied by a conversion fee of $250.00. Moreover, failure to attain minimum net worth levels by the expiration of the phase-in periods does not necessarily result in license revocation. As stated above, there exists a variety of remedial actions the Department may take in the event of non-compliance. The Department's aim, first and foremost, will be to work with companies to help them to establish or rebuild a solid financial foundation. Revocation is intended as a last resort only.

Second, the commenters argued that there is no correlation between the net worth of licensees and their integrity and the level of service they provide to the public. The Department did not intend to imply such a correlation. Rather, the concern of the Department is with the ability of licensees having low net worth to remain in business and provide continuity of service to their customers. This concern stems from a comparison of mortgage banking and mortgage brokering businesses having a low net worth to those which have a high net worth. In this same vein, the turnover of businesses operating pursuant to the MBBA, which currently has no net worth requirements, is significantly higher than the turnover of businesses operating pursuant to the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq., which has a net worth requirement. Thus, there is a positive correlation between low net worth and a high rate of turnover among mortgage lenders. High turnover is of concern to the Department because when a business is unable to continue, the consumer is placed at risk.

Third, many commenters suggested that the Department direct its attention to cracking down on specific wrongdoers and enforcing existing statutes in lieu of imposing net worth requirements. The Department is deeply committed to enforcing existing laws against wrongdoers under its jurisdiction and has expanded its activities in this area in recent years, for example, by establishing a separate enforcement unit. The Department will continue these enforcement activities but thinks that the net worth requirements will serve a beneficial purpose which cannot be achieved through enforcement.

In addition to the provisions having to do with net worth, the proposal would repeal those parts of N.J.A.C. 3:38-1.4 which govern the Department's waiving of examination for licensure based upon expertise in the industry prior to passage of the MBBA in 1981. Such expertise, the Department concludes, is now so remote as to be no longer indicative of a competency to engage presently in the mortgage banking or brokering business. The proposed repeal and new rule explicitly provides that no waivers from the examination will be granted in the future.

Social Impact

The proposed new rules and amendments will have a beneficial social impact of increasing the continuity of businesses engaged in mortgage lending. During times of adverse economic conditions and rising interest rates, bankers and brokers will have sufficient resources to stay in business, thus protecting consumers against losing fees they have paid to lenders prior to closing, for example lock-in fees. They will also protect consumers against undercapitalized companies. As indicated above, some smaller mortgage bankers will not be able to meet the net worth requirements, but the vast majority of those will be able to remain in business by changing their licenses from banking to brokering.

Economic Impact

The proposed new rules and amendments will have no economic impact on the majority of mortgage bankers and brokers, since most licensed entities satisfy these net worth requirements. The minority of mortgage bankers now licensed which do not have sufficient net worth to satisfy the requirements of this rule are given approximately three and one half years to obtain the required net worth or, failing that, can remain in business by converting their licenses from banking to brokering. As indicated above, a reduced fee for converting is made available.

Should any current banker or broker prove unable to satisfy the net worth requirements, the Department is authorized not only to revoke the company's license, but, also, in lieu thereof, to impose a variety of enforcement measures aimed at achieving capital compliance, including to require the licensee to operate under a Memorandum of Understanding to bring its capital level up to the required amount, to direct it to submit and comply with a capital plan, and to suspend its license to transact new business in appropriate circumstances.

To the extent some mortgage bankers may be forced to terminate operations or to convert their licenses to mortgage brokers licenses, proposed new rule N.J.A.C. 3:38-1.9 will tend to reduce the participants in the mortgage banking field. However, the number will not be reduced enough to have an appreciable negative impact on competition in the mortgage banking field. In the mortgage brokering field, the number of participants may actually increase because of conversions of bankers licenses. In addition, it is not to be forgotten that mortgage bankers and brokers compete in the home lending business with State and Federally chartered banks, savings and loans, and savings banks. These institutions constitute significant additional categories of competitors for licensees. In sum, the Department concludes that there will be vigorous competition in mortgage lending in this State after the adoption of this proposal.

The proposed $50.00 filing fee for the biannual report will have a negligible impact on licensees.

Regulatory Flexibility Analysis

The overwhelming majority of licensed mortgage bankers and brokers are small businesses for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules and amendments will increase the financial soundness of the mortgage lending businesses operating in this State and will thereby protect consumers. Because of the importance of these objectives, no differentiations based upon business size are proposed. However, the Department was keenly aware that

the proposal would impact on many small businesses and therefore constructed the requirements to comport with their needs.

The proposed new rule N.J.A.C. 3:38-1.9 imposes reporting requirements on mortgage bankers and brokers. In particular, licensees are required to file semi-annual financial reports with the Department. Much of the information in the reports is readily available to licensees, so the cost of compliance will be minimal, although professional assistance may be needed by some licensees in compiling the information.

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

3:38-1.2 Applications

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

(e) All applications [for a corporate license, and all applications for an individual license for a sole proprietor or partner or officer in an unincorporated entity,] **on behalf of a corporation, partnership, association or other entity and all applications on behalf of an individual sole proprietor** shall include [a] **an unqualified certified** financial statement [for] **of** the applicant **as of the close of its most recent fiscal year, financial statements for the previous two years** and such additional information as shall be required by the Commissioner for a newly organized corporation. [An individual applicant who will not operate as a sole proprietor or partner or officer in an unincorporated entity] **All other applications** shall not be required to [submit] **include** a financial statement [with his application].

(f) (No change.)

3:38-1.4 [Waiver] **No waiver** of examination

[(a) An individual applicant shall notify the Department of Banking whether he requests a waiver of the examination requirement. The request for a waiver shall be made at the time of making application and shall be made in a manner prescribed by the Commissioner.] **The Department shall not grant a waiver of the examination for licensure pursuant to N.J.S.A. 17:11B-4(e).**

[(b) If an applicant seeks a waiver based upon a claim that he has been principally engaged in the business of mortgage banker or mortgage broker for five years prior to the effective date of the statute, he shall provide with his application a list of all employers and places of employment during that period including addresses, names of immediate supervisors, and a description of the duties of the employment.

(c) If an applicant seeks a waiver based upon a claim that he has been principally engaged in the business of mortgage banker or mortgage broker for more than two years but less than five years and is otherwise qualified, he shall provide with his application a list of employers and places of employment for the preceding 10 years including addresses, names of immediate supervisors, and a detailed basis of the qualifications on which the request is based.

(d) All requests for waivers from the examination requirement shall be acted upon by the Commissioner within 60 days of receipt of the application by the Department of Banking or such additional information as may be requested by the Department.]

3:38-1.9 Net Worth/Insolvency

(a) Tangible net worth means net worth less the following assets:

1. That portion of any assets pledged to secure obligations of any person or entity other than that of the applicant;

2. Any asset (except construction loans receivables secured by first mortgages from related companies) due from officers or stockholders of the applicant or related companies in which the applicant's officers and/or stockholders have an interest;

3. That portion of the value of any marketable security (listed or unlisted) not shown at lower of cost or market, except for any shares of FNMA stock required to be held under a servicing agreement, which should be carried at cost;

4. Any amount in excess of the lower of the cost or market value of mortgages in foreclosures, construction loans, or foreclosed property acquired by the applicant through foreclosure;

5. Any investment shown on the balance sheet in the applicant's joint ventures, subsidiaries, affiliates and/or related companies which is greater than the value of said assets at equity;

6. Goodwill;

7. The value placed on insurance renewals or property management contract renewals or other similar intangibles of the applicant;

8. Organization costs of the applicant;

9. The value of any servicing contracts held by the applicant not determined in accordance with AICPA Statement of Position 76-2, dated August 25, 1976, or subsequent revision thereto;

10. Any real estate held for investment where development will not start within two years from the date of its initial acquisition;

11. Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease; and

12. Any commitment fees paid/collected which are not recoverable through the closing or selling of loans.

(b) Tangible net worth shall be computed on the accrual basis of accounting.

1. "Accrual basis of accounting" means the accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether received or not received.

(c) "Insolvent" means negative tangible net worth, or the inability to pay debts when due.

(d) Each applicant for a license as a mortgage banker must demonstrate that it has tangible net worth of at least $250,000. Each applicant for a license as a mortgage broker must demonstrate that it has tangible net worth of at least $50,000.

(e) Each licensed mortgage banker shall maintain at all times tangible net worth of at least $250,000, and each licensed mortgage broker shall maintain at all times tangible net worth of at least $50,000.

(f) Each mortgage banker and mortgage broker shall file a report semi-annually on forms provided by the Department indicating the tangible net worth of the licensee, the warehousing lines available and outstanding, and any other relevant information the Department may require. The reports are due within 60 days following the end of the period. The licensee shall remit with each such report a $50.00 filing fee. The Department shall assess a $50.00 penalty against any licensee for each semi-annual report the licensee files late.

(h) The requirements of this section shall apply to each applicant or licensee which is a corporation, partnership, association or other entity and each individual applicant or licensee seeking to operate or operating as a sole proprietor. The requirements shall not apply to other applicants or licensees.

(i) If the net worth of a mortgage banker or broker falls below the required amount or the mortgage banker or broker is insolvent, the Department may take such action as it deems appropriate and necessary to protect the public including, but not limited to, requiring the licensee to operate pursuant to a Memorandum of Understanding, directing the licensee to submit and comply with a capital plan, or suspending the licensee from transacting new business until the net worth level is attained.

(j) Mortgage bankers licensed on the effective date of this rule shall be exempt from the net worth requirements in (e) above until December 31, 1994. Prior to that date, each licensed mortgage banker shall maintain a tangible net worth equal to or greater than $50,000 on or after December 31, 1991, $100,000 on or after December 31, 1992, and $175,000 on or after December 31, 1993. Mortgage brokers licensed on the effective date of this rule shall be exempt from the net worth requirements in (e) above until December 31, 1992.

3:38-2.1 Methods and accounting

(a) All licensees shall maintain books and records in accordance with recognized accounting principles. **If a licensee maintains books and records on a basis other than the accrual method of accounting, the licensee shall also maintain books and records on the accrual basis of accounting which states the net worth of the licensee.**

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

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction and Extension of Comment Period

Uniform Fire Code
Fire Code Enforcement
Fees

Proposed Amendment: N.J.A.C. 5:18-2.8(a)33

Take notice that the Department of Community Affairs has discovered an error in the proposed amendment to N.J.A.C. 5:18-2.8(a)33, as published in the August 5, 1991 New Jersey Register at 23 N.J.R. 2234(a). The incorrect published proposed annual registration fee for life hazard use Type Ch was $1,300.00; the correct proposed fee is $2,080.00. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Due to the substantive nature of the proposal error corrected by this notice, the Department **is extending the period for public comment** on this proposed amendment to N.J.A.C. 5:18-2.8(a)33 to September 18, 1991. Submit comments by that date to:

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

Full text of corrected proposed amendment follows (additions to proposed text indicated in boldface **thus**; deletions from proposed text indicated in brackets [thus]):

5:18-2.8 Fees, registration and permit

(a) The annual registration fee for life hazard uses shall be as follows:

1.-32. (No change from proposal.)

33. Type Ch—[$1,300.00]**$2,080.00** per year;

34.-37. (No change from proposal.)

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

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Waste Management Rules
Hazardous Waste from Non-Specific Sources; Severability; Existing Facilities

Proposed Amendments: N.J.A.C. 7:26-1.2, 1.4, 8.2, 8.13, 8.14, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9 and 17.4

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 029-91-07

Proposal Number: PRN 1991-420

Submit comments, identified by the Docket Number given above, by October 18, 1991 to:

Samuel A. Wolfe
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to amend several provisions of its hazardous waste management rules. The amendments are minor corrections and clarifications to existing requirements, except for the amendment to the description of hazardous waste number F003 at N.J.A.C. 7:26-8.13. Many of these amendments are required in order for the State to demonstrate equivalence with Federal regulations promulgated by the United States Environmental Protection Agency (USEPA) pursuant to the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq. The amendments which are required under the Federal program will be as least as stringent as the corresponding Federal regulations; this will enable the State to maintain Federal authorization to implement the RCRA hazardous waste management program for this State.

The amendments at N.J.A.C. 7:26-8.14, 9.4(g), 9.5, 9.7, 9.10, 10.4, 10.8, 11.5, 12.2 and 12.5 are minor corrections and clarifications only and are not expected to have an impact on the regulated community. These administrative corrections do not affect the Department's interpretation of these provisions and are not intended to impose new or different requirements on the regulated community. The amendment of the definition of "impermeable lines" at N.J.A.C. 7:26-1.4 conforms to the published rule text to that adopted by the Department (see R.1981 d.281).

The amendment at N.J.A.C. 7:26-1.2 provides for the severability of the Department's rules for this chapter. This will clarify that if any provision of a rule is invalidated in any judicial or administrative proceeding, all other provisions of the rule remain in effect.

The amendment at N.J.A.C. 7:26-8.2(b) clarifies the exclusion for in-process products or materials to include an exemption from regulation under N.J.A.C. 7:26-12, 13, 13A, 16, 16A and 17. These products and materials are not only exempt from operational standards, but also from permit, siting, licensing and other requirements. The amendment makes this clear.

The amendment at N.J.A.C. 7:26-8.13(a) conforms the wording of the hazardous waste listing of F003 solvents to the Federal listing at 40 C.F.R. 261.31. Under the amendment, spent solvent mixtures or blends that, before use, consist entirely of the solvents listed with waste code number F003 under N.J.A.C. 7:26-8.13(a) will be considered a hazardous waste. Under the current listing, spent solvent mixtures containing 10 percent or more solvents with waste code number F003 are considered hazardous waste. F003 wastes are listed because they are ignitable, unlike other F-Solvent wastes. Mixtures containing less than 100 percent solvent before use may not display the ignitable characteristic and do not meet the listing description. Mixtures of these solvents which do not meet the listing description, but which do display the ignitability characteristic, are regulated as hazardous waste.

The amendment at N.J.A.C. 7:26-9.1(c)9 clarifies the requirement that containers holding hazardous waste to be burned in an industrial boiler or furnace be labelled with the words "Hazardous Waste" and clarifies the requirement that such waste placed in above ground tanks must be managed in accordance with N.J.A.C. 7:26-9.3(b)1 through 5, 7, 8 and 9. This amendment adds no new obligations, and is added for clarity.

The amendments at N.J.A.C. 7:26-9.1(c)10 clarify that only the generator of a hazardous waste is eligible for the on-site recycling exemption, add a cross-reference to the requirements for the use of on-site recycled hazardous waste as a fuel found at N.J.A.C. 7:26-9.1(c)9 and a clarification of the requirement for generators who recycle on-site to submit an annual report to the Department. These amendments do not alter the Department's interpretation of these provisions.

The amendment at N.J.A.C. 7:26-9.1(c)10iv clarifies the subparagraph that requires that hazardous waste recycled on-site be recycled no later than 90 days after it is generated and clarifies standards for the management of the hazardous waste before it is recycled.

The amendment at N.J.A.C. 7:26-9.1(c)12 is a correction to clarify the exemption from permitting requirements for owners or operators of industrial waste management facilities (IWMF's) that are constructed and operated in accordance with standards for wastewater treatment units.

The amendment at N.J.A.C. 7:26-9.4(c) specifies the office within the Department to contact to report an unauthorized shipment of hazardous waste, and changes the telephone number to be used for reporting.

The amendments at N.J.A.C. 7:26-9.5(g)6iv corrects a typographical error and assists facility personnel in locating pertinent existing requirements.

The amendment at N.J.A.C. 7:26-10.7(d)1iii corrects the formula for destruction removal efficiency (DRE) at hazardous waste incinerators. The formula as it currently appears is mathematically incorrect. The amendment will also make the State's formula different from the Federal

formula, but consistent with both the Federal and State regulatory language. At present, the Federal formula does not correctly solve for DRE as described by the Federal regulatory language at 40 CFR 264.343(a)(1). This amendment also corrects a typographical error in the formula for calculating the stack emission of total hydrogen halides for the performance standards of hazardous waste incinerators.

The amendment at N.J.A.C. 7:26-12.1(b)3 clarifies the cross-reference for operating requirements for industrial waste management facilities. The amendment at N.J.A.C. 7:26-12.1(b)7viii(2) clarifies the requirement that hazardous waste containers must be appropriately marked. The amendment at N.J.A.C. 7:26-12.1(b)7viii(4)(B) clarifies a cross-reference to requirements for accumulation in above-ground tanks. These cross-references impose no new requirements.

The amendment at N.J.A.C. 7:26-12.4 adds a cross-reference to the existing rule requiring facility owners or operators to submit annual waste activity reports. It is added for the convenience of the regulated community and imposes no new requirements.

The amendment at N.J.A.C. 7:26-12.9(b)6 corrects a citation and clarifies the timeframe for applicant to submittal of a certification that a hazardous waste incinerator trial burn has been carried out in accordance with the approved trial burn plan.

The amendment at N.J.A.C. 7:26-17.4 adds an address for submission of requests for information.

Social Impact

These amendments will have a positive social impact by clarifying the Department's position on several matters. There will be no question regarding the severability of State rules. These amendments will correct minor inequivalencies between State and Federal regulations, although the State's hazardous waste management program remains broader in scope and more stringent than the Federal program. Maintaining equivalency with Federal regulations and maintaining Federal authorization of the State's hazardous waste management program pursuant to RCRA will avoid dual State and Federal regulation of the hazardous waste industry.

Economic Impact

There will be a slight economic benefit to generators resulting from the amendment to the description of F003 waste because fewer materials will meet the listing description. There will be no harm to the environment, however, because F003 waste is listed due to its ignitability and mixtures containing lower concentrations of F003 solvents are not necessarily ignitable. If a particular mixture is ignitable, it would meet the definition of a hazardous waste because of its exhibiting of this characteristic pursuant to N.J.A.C. 7:26-8.9.

The Department anticipates no significant economic impact from the remaining amendments since they are administrative corrections and clarifications of existing requirements.

Environmental Impact

These amendments will have a positive environmental impact. The severability clause will make it clear that even in the event that one or more of the provisions of the State's hazardous waste management rules are held to be invalid, the rest of the regulatory structure remains in effect. Many other changes are not substantive and will have no environmental impact. Other amendments will have a positive environmental impact because they will keep the wording of the State rules consistent with the Federal regulations which will enable the State to maintain authorization of its hazardous waste management program pursuant to RCRA.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments would not impose additional reporting, recordkeeping or other compliance requirements on small businesses because the amendments are either administrative corrections or minor clarifications enabling the regulated community to comply with existing requirements. The Department anticipates there will be no economic burden placed on the regulated community as a result of these amendments. Therefore, a regulatory flexibility analysis is not required.

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

7:26-1.2 Construction **and severability**

(a) These rules shall be liberally construed to permit the Department to discharge its statutory function.

(b) If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid in any judicial or administrative proceeding, such decision shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered, and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

7:26-1.4 Definitions

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

...

"Impermeable liner" means a layer of natural and/or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for water of [10 cm/sec] $\mathbf{1 \times 10^{-7}}$ **cm/sec** at the maximum anticipated hydrostatic pressure.

...

7:26-8.2 Exclusions

(a) (No change.)

(b) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, [or in] a manufacturing process unit, or **an** associated non-waste-treatment-manufacturing unit[,] is not subject to regulation under N.J.A.C. 7:26-7 through [11] **13A, 16, 16A and 17** until it exits the unit in which it was generated, unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing[,] or for storage or transportation of product or raw materials.

7:26-8.13 Hazardous waste from non-specific sources

(a) Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
...			
	F003	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, [a total of 10 percent or more (by volume) of one or more of] **only** the non-halogenated solvents listed above [or]; **and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of 10 percent or more (by volume) of one or more of** those solvents listed in F001, F002, F004, and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I*)
...			

7:26-8.14 [Hazardous Waste from Specific Sources] **Hazardous waste from specific sources**

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
...			
	K023	Distillation [bottoms] **light ends** from the production of phthalic anhydride from napthalene...	(T)

7:26-9.1 Scope and applicability

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

(c) The standards and requirements of this subchapter do not apply to:

1.-8. (No change.)

9. The owner or operator of an industrial boiler or industrial furnace burning a hazardous waste, provided the following conditions are met:

i.-vi. (No change.)

vii. The device is located in an area zoned for industrial use[,] and [shall not be] **is not** located in a [residental] **residential** building.

viii. The hazardous waste [shall be] **is** burned no more than 90 days after it is generated and the following conditions [shall be] **are** met:

(1) (No change.)

(2) The date on which each period of accumulation begins [is] **and the words "Hazardous Waste" are** clearly marked and visible for inspection on each container;

(3) (No change.)

(4) For waste which is placed in above ground tanks, the following requirements [must] **shall** be met:

(A) (No change.)

(B) The waste [must] **shall** be managed in conformance with N.J.A.C. 7:26-9.3(b)1[-]**through** 5 [and]**, 7, 8, and 9,** as well as N.J.A.C. 7:26-9.1(c)9viii(2) and (3); and

ix.-x. (No change.)

10. [Persons] **Generators** who recycle hazardous waste on the site where such wastes are generated (see definitions of "recycling" and "on-site" at N.J.A.C. 7:26-1.4) provided:

i. Where the recycled hazardous waste is used as a fuel:

(1)-(3) (No change.)

(4) The burning of the material is accomplished in accordance with N.J.A.C. **7:26-9.1(c)9 and** N.J.A.C. 7:27[.] (Rules of the Bureau of Air Pollution Control) and, specifically, a "Permit to Construct, Install or Alter Control Apparatus or Equipment" has been issued that explicitly includes the recycled material to be burned; and

[(5) The generator shall comply with the annual reporting requirements of N.J.A.C. 7:26-7.4(g).]

[(6)](**5**) (No change in text.)

ii. The generator [shall comply with the reporting requirements of N.J.A.C. 7:26-7.4(g) where the recycled or reclaimed hazardous waste is not a fuel under (c)10i, above; and] **submits an annual report by March 1 covering the recycling activities for the previous calendar year. The report shall be submitted on forms approved by the Department and shall include the following information:**

(1) The generator's name, address, and EPA identification number;

(2) For each hazardous waste recycled, a description of the waste, DOT hazard class, EPA or State hazardous waste number, total annual amount, and unit of measure;

(3) The calendar year covered by the report;

(4) Waste minimization information, which shall include the following:

(A) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated;

(B) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years, and to the extent such information is available for years, prior to 1984; and

(5) The New Jersey Department of Environmental Protection Hazardous Waste Generator Annual Report certification signed by the generator or authorized representative;

iii. (No change.)

iv. [The accumulation of hazardous waste prior to recycling shall comply with (c)9viii above.] **The hazardous waste is recycled no later than 90 days after it is generated and the following conditions are met:**

(1) The hazardous waste is placed in containers which meet the standards of N.J.A.C. 7:26-7.2 and which are managed in accordance with N.J.A.C. 7:26-9.4(d);

(2) For each container, the date on which the period of accumulation begins and the words "Hazardous Waste" are clearly marked and visible for inspection;

(3) The generator complies with the requirements for owners and operators at N.J.A.C. 7:26-9.4(g), 9.6, and 9.7 concerning preparedness and prevention, contingency plans, emergency procedures, and personnel training.

(4) For hazardous waste placed in above ground tanks, the following requirements shall be met:

(A) Prior to placing the hazardous waste in the tank, written approval shall be obtained from the Department; and

(B) The hazardous waste shall be managed in conformance with N.J.A.C. 7:26-9.3(b)1 through 5, 8 and 9.

11. (No change.)

12. The owner or operator of an industrial waste management facility (IWMF) constructed and operated in accordance with N.J.A.C. 7:14A-[4]**4.6.**

13.-16. (No change.)

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

7:26-9.4 General facility standards

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

(c) The owner or operator shall comply with the requirements of this subsection for unauthorized waste shipments.

1. (No change.)
2. An owner or operator, if offered hazardous waste of a type which the facility is not authorized to handle, shall:
i.-iv. (No change.)
v. [Telephone] **Contact** the [Department] **Hazardous Waste Enforcement Regional Field Office or Hazardous Waste Enforcement Element,** at [609-292-8341] **telephone number 609-633-0700,** and report the unauthorized waste shipment; and
vi. (No change.)
(d)-(f) (No change.)
(g) [Facility] **Hazardous waste facility** personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the **hazardous waste** facility's compliance with the requirements of this subchapter.
1.-5. (No change.)
6. The owner or operator shall maintain the following documents and records at the facility;
i.-iii. (No change.)
iv. Records that document that the training [or job experiences] required [under paragraphs 9.4(a)1 through 5] **by (g)1 through 5 above** has been given to, and completed by, facility personnel.
7.-8. (No change.)
(h)-(o) (No change.)

7:26-9.5 Groundwater monitoring system
[(a)] By [the effective date of this rule amendment] **December 6, 1982,** the owner or operator shall [have designed, constructed and implemented] **design, construct, and implement** a groundwater monitoring system in accordance with N.J.A.C. [7:124A-6 (Rules of the Division of Water Resources)] **7:14A-6** unless the owner or operator can demonstrate to the Department that all or part of the groundwater monitoring requirements may be waived, pursuant to 40 [CFR] **C.F.R.** 265.90(c). The Department may, in its discretion, only grant waivers which satisfy the requirements of 40 [CFR] **C.F.R.** 265.90(c). **Modification of groundwater monitoring requirements under** N.J.A.C. 7:14A-6.1(a)3 [shall not be] **is not** available to owners and operators of hazardous waste facilities to narrow or limit any requirement found in N.J.A.C. 7:14A-6. In no case shall all of the groundwater monitoring requirements for a hazardous waste management facility or an industrial waste management facility be waived.

7:26-9.7 Contingency [Plan and Emergency Procedures] **plan and emergency procedures**
(a)-(i) (No change.)
(j) The contingency plan shall be reviewed[,] and immediately amended, if necessary, whenever:
1.-4. (No change.)
5. The list of emergency **equipment** changes.
(k)-(l) (No change.)

7:26-9.10 Financial requirements for facility closure
(a)-(e) (No change.)
(f) The owner or operator of each **hazardous waste** facility shall establish financial assurance for closure of the hazardous waste facility. The owner or operator shall choose from the options specified in (f)1 through 5 below, except that the option in (f)3 is not available to owners or operators of existing facilities until they have received a permit.
1.-3. (No change.)
4. Closure letter of credit requirements are as follows:
i. (No change.)
ii. The wording of the letter of credit [must] **shall** be identical to the wording specified in N.J.A.C. 7:26-9 [(Appendix A)] **Appendix A, incorporated herein by reference.**
iii.-x. (No change.)
5.-8. (No change.)

7:26-10.4 Use and management of containers
(a) (No change.)
(b) Rules on containment in container storage areas include the following:
1.-3. (No change.)
4. Spilled or leaked waste shall be removed from the sump or collection area daily.
i. (No change.)
ii. If the collected material is discharged through a point source to [water] **waters** of the State, [it] **the material** is subject to the requirements of NJPDES in N.J.A.C. 7:26 and 7:14A (Regulations concerning the New Jersey [Public] Pollutant Discharge Elimination System).
(c) (No change.)

7:26-10.7 Hazardous waste incinerators
(a)-(c) (No change.)
(d) Performance standards for hazardous waste incinerators include the following:
1. Any person responsible for an incinerator burning hazardous waste shall ensure that it is designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under [N.J.A.C. 7:26-10.7] (f) and (g) below, it [will] **shall** meet the following performance standards:
i. $\frac{[DRE = (W_{in} - W_{out}) \times 100\%}{W_{in}]}$

$$\frac{\mathbf{DRE = (W_{in} - W_{out}) \times 100}}{\mathbf{W_{in}}}$$

Where:
W_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream [feed] **feeding** the incinerator, and
W_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.
ii. (No change.)
iii. The stack emissions of total hydrogen halides from any hazardous waste incinerator shall not exceed 50 parts per million (ppm) by volume adjusted to [7] **seven** percent oxygen by volume in the wet flue gas using the formula:

$[PPM_7 = PPM_8 \times (12/41\text{-}\%0_2))]$ $\mathbf{PPM_7 = PPM_8(14/(21\text{-}\%0_2))}$

Where:
PPM_7 is the parts per million adjusted to [7% Oxygen] **seven percent oxygen,**
PPM_8 is the ppm by volume determined to be in **the wet** flue gas, and
$\%\ 0_2$ is the percentage of oxygen determined to be in the wet flue gas.
iv. New hazardous waste incinerators shall not emit particulate matter exceeding 0.03 grains per dry standard cubic foot when corrected to [7] **seven** percent oxygen using the procedures presented in the Clean Air Act regulations, "Standards of Performance for Incinerators[",]," 40 [CFR] **C.F.R.** 60.50, Subpart E, except that the percent oxygen obtained from stack gas analysis is to be used to correct particulate matter emissions to [7] **seven** percent oxygen (0_2) using the following formula:

$$C_7 = C \times 14/(21 - \%\ 0_2)$$

Where:
C_7 is the concentration of particulate matter corrected to [7] **seven** percent oxygen (0_2),
C is the concentration of particulate matter as measured by EPA Method 5, and
$\%\ 0_2$ is the percentage of oxygen (0_2) in the dry flue gas as measured by EPA Method 3.
v.-vi. (No change.)
2. (No change.)
(e)-(m) (No change.)

7:26-10.8 Hazardous waste landfills
(a)-(c) (No change.)
(d) Landfills that are used for the disposal of hazardous wastes shall have the following systems:
1. A leachate collection and removal system, which shall include a system for either the treatment or the disposal, or both, of collected

leachate, to handle all leachate generated within the landfill and which [must] **shall** be:

i. Designed to ensure that the leachate depth over the primary liner does not exceed one foot ([30] **30.5** cm);

ii.-v. (No change.)

2.-6. (No change.)

(e)-(h) (No change.)

(i) Closure and post-closure requirements for hazardous waste landfills include the following:

1. (No change.)

2. The final cover shall function with minimum maintenance and shall consist of the following:

i. (No change.)

ii. A drainage layer which will promote drainage and minimize erosion or abrasion of the cover, and which has the following design characteristics:

(1) (No change.)

(2) Be designed to allow for an effective drainage path for flow through the vegetative top cover to minimize head on the [linear] **liner** system;

iii.-iv. (No change.)

3.-5. (No change.)

(j) (No change.)

7:26-11.5 Hazardous waste incinerators

(a) (No change.)

(b) An owner or operator shall comply with the general operating requirements of this subsection.

1.-4. (No change.)

5. The stack emissions of hydrogen halides shall not exceed 50 parts per million by volume adjusted to [7] **seven** percent oxygen by volume in the wet flue gas. An incinerator burning hazardous waste containing more than 0.5 percent chlorine by weight shall be controlled to remove at least 99 percent of the hydrogen chloride from the exhaust gas.

6. (No change.)

(c)-(g) (No change.)

7:26-12.1 Scope and applicability

(a) (No change.)

(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities:

1.-2. (No change.)

3. The owner or operator of an industrial waste management facility (IWMF) constructed and operated in accordance with N.J.A.C. [7:14A-4 (Rules of the Division of Water Resources)] **7:14A-4.6;** and

4.-6. (No change.)

7. The owner or operator of an industrial boiler or industrial furnace burning hazardous waste provided the following conditions, as well as those set forth at N.J.A.C. 7:26-9.1(c)9, are met:

i.-vii. (No change.)

viii. The hazardous waste [shall be] **is** burned no more than 90 days after it is generated and the following conditions [shall be] **are** met:

(1) (No change.)

(2) The date on which each period of accumulation begins [is] **and the words "Hazardous Waste" are** clearly marked and visible for inspection on each container;

(3) (No change.)

(4) For waste which is placed in above ground tanks, the following requirements shall be met:

(A) (No change.)

(B) The waste [must] **shall** be managed in conformance with N.J.A.C. 7:26-9.3(b)1[-]**through** 5 [and], **7 and 8** as well as N.J.A.C. 7:26-9.1(c)9viii(2) and (3);

ix.-x. (No change.)

8. (No change.)

9. [Persons] **Generators** who recycle hazardous waste on the site where such wastes are generated (see definitions of "recycling" and "on-site" at N.J.A.C. 7:26-1.4) provided:

i. Where the recycled waste is used as a fuel:

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

(5) [The generator shall comply with the annual reporting requirements of N.J.A.C. 7:26-7.4(g)].

[(6)](**5**) (No change in text.)

ii. The generator [shall comply] **complies** with the annual reporting requirements of N.J.A.C. 7:26-[7.4(g)] **9.1(c)10ii** [where the recycled or reclaimed hazardous waste is not a fuel under (b)9i above].

iii.-iv. (No change.)

10.-12. (No change.)

(c)-(g) (No change.)

7:26-12.2 Permit application

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

(e) All applicants shall provide the following information in Part B of the permit application:

1.-16. (No change.)

17. For existing facilities, documentation that a notice has been placed in the deed or appropriate alternative instrument as required by N.J.A.C. 7:26-[9.9(m)] **9.9(n);**

18. The most recent closure cost estimate for the facility prepared in accordance with N.J.A.C. [7:28-9.20(d)] **7:26-9.10(e)** plus a copy of the financial assurance mechanism adopted in compliance with N.J.A.C. 7:26-[9.10(e)] **9.10(f);**

19.-23. (No change.)

(f)-(k) (No change.)

7:26-12.4 Standards applicable to all permits

(a) The conditions in this section shall apply to all permits issued pursuant to this chapter. All conditions applicable to all permits shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to this subchapter shall be given in the permit.

1.-16. (No change.)

17. The following reports required by N.J.A.C. 7:26-7, 9 and 10 shall be submitted in addition to those required by (a)12 above:

i.-iii. (No change.)

iv. (Reserved.)

(AGENCY NOTE: See "Permit Applications" rule proposal at 22 N.J.R. 3186(a), October 15, 1990 New Jersey Register.)

v. An annual report covering facility activities during the previous calendar year shall be submitted as required at N.J.A.C. 7:26-7.6(f)2.

(b)-(h) (No change.)

(i) **(Reserved.)**

(AGENCY NOTE: See "Permit Applications" rule proposal at 22 N.J.R. 3186(a), October 15, 1990 New Jersey Register.)

7:26-12.5 Transfer of ownership or operational control

(a) (No change.)

(b) The permittee shall notify the Department at least 180 days in advance of any proposed change of ownership or operational control of a facility (90 days in the case of a prospective new permittee exempt from the requirement of a disclosure statement under N.J.A.C. 7:26-16.3(d)). The notice shall include:

1. A disclosure statement or alternative information statement prepared by the prospective new permittee meeting the requirements of N.J.A.C. [7:26-12.2(g)]**7:26-12.2(h);**

2.-3. (No change.)

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

7:26-12.9 Short term permits

(a) (No change.)

(b) For the purpose of determining feasibility of compliance with the incinerator performance standard of N.J.A.C. 7:26-10.7(d) and of determining adequate incinerator operating conditions under N.J.A.C. 7:26-10.7(f), the Department may issue a trial burn permit to a facility to allow short term operation of a hazardous waste incinerator subject to (b)1 through [5]**8** below.

1.-5. (No change.)

6. The applicant shall submit to the Department a certification that the trial burn has been carried out in accordance with the approved trial burn plan[,] and the results of all the determinations required in N.J.A.C. 7:26-[12.10(a)5i] **12.9(b)5.** To the extent

possible, this submission shall be made within 30 days [of] **after** the completion of the trial burn or sooner if the Department so requests.

7.-8. (No change.)

7:26-17.4 Administrative procedures and appeals for requests for information

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

(k) Requests for information should be addressed to:

Information Officer
Division of Hazardous Waste Management
401 East State Street
CN 028
Trenton, New Jersey 08625.

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Notice of Availability of Regulatory Proposal; Request for Comment

Small Scale Solid Waste Facility Permit Application and Review Procedures, N.J.A.C. 7:26-2.4(c)

DEP Docket Number: 032-91-07.

Take notice, that the Department of Environmental Protection, pursuant to N.J.S.A. 13:1E-1 et seq. (the Solid Waste Management Act), and the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), is developing modifications to current small scale solid waste facility permit application submission requirements and Department review procedures as set forth at N.J.A.C. 7:26-2.4(c). The requirements address the preparation and review procedures for engineering design reports, environmental and health impact statements, and permit application requirements applicable to small scale transfer stations and material recovery facilities.

It is the intention of the Department to develop more effective and efficient small scale solid waste facility permit application submission and review procedures. The modifications contemplated address application submission requirements, review procedures and the Department approval mechanism by which to authorize operations for small scale transfer stations and/or material recovery facilities.

The Department wishes to solicit the broadest possible input into this rulemaking process. Interested parties are hereby notified that a draft proposal is available for review and comment. Based upon the level of interest expressed in response to this notice, the Department will also consider establishing an informal workshop(s) to examine technical issues and the concerns of commenters.

Interested parties may receive a copy of the draft proposal by written request to the below address. Commenters are requested to submit comments concerning effectiveness and efficiency of existing small scale solid waste facility permit application requirements and review procedures found at N.J.A.C. 7:26-2.4(c), recommendations for revision, as well as any other small scale facility permit related comments by September 18, 1991 to:

Michael Winka
NJDEP, DSWM
CN 414
Small Scale Facilities Proposal
Trenton, NJ 08625

Interested parties are specifically requested to comment on technical criteria to classify and evaluate potential environmental and public health impacts associated with small scale solid waste facilities. Criteria shoud be based upon the nature, scale and location of operations. Comments should also address permit application content requirements, processing capacity thresholds and review procedures that are appropriate to the technical criteria proposed. Comments should include data, analyses or recommendations regarding appropriate environmental and health impact statement, engineering design, technical performance standards and/or review procedures for particular facilities. Current requirements for these elements of the permit process are set forth at N.J.A.C. 7:26-2.4(c) and N.J.A.C. 7:26-2.9(d)1 through 3.

The Department will consider relevant comments in structuring a regulatory proposal to modify current permit application and review requirements. Based upon comments, any subsequent regulatory proposal will be published for comment in the New Jersey Register in acccordance with N.J.A.C. 1:30-3.1.

(b)

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Proposed Amendments: N.J.A.C. 7:50-2.11, 4.61, 4.67, 4.68, 4.69, 4.70, 5.27, 5.28, 5.32 and 6.13.

Proposed Repeals and New Rule: N.J.A.C. 7:50-5.30.

Proposed New Rules: N.J.A.C. 7:50-4.62 through 4.65.

Proposed Repeal: N.J.A.C. 7:50-4.66.

Authorized By: New Jersey Pinelands Commission, Terrence D. Moore, Executive Director.
Authority: N.J.S.A. 13:18A-6j.
Proposal Number: PRN 1991-432.

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

Thursday, September 19, 1991
7:00 P.M.
Pemberton Township Municipal Building
500 Pemberton-Browns Mills Road
Pemberton, New Jersey

Submit written comments by September 30, 1991 to:

John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, New Jersey 08064

The agency proposal follows:

Summary

I. INTRODUCTION

A. Goals

On November 19, 1990, the New Jersey Pinelands Commission published a pre-proposal at 22 N.J.R. 3432(a) to solicit comments on possible changes to the rules which govern waivers of strict compliance (deviations or exemptions) from the Pinelands Comprehensive Management Plan. A public meeting to discuss the pre-proposal was held on December 4, 1990 before the Pinelands Commission.

A total of 31 people offered comments, either orally at the public meeting or in writing. As a result of the comments, the Commission's Plan Review Committee undertook a re-evaluation of the pre-proposal.

The regulatory changes now being proposed seek, as the pre-proposal did, to reduce the number of waivers which are granted but through a variety of different approaches which are designed to:

- Provide applicants and property owners with greater opportunities to fashion development proposals that do not need waivers, that is, which are consistent with the goals and objectives of the Comprehensive Management Plan;
- Better account for land use implications when requests for waivers are considered;
- Recognize that some deviations from the Comprehensive Management Plan's standards, and the impacts which are attendant to those deviations, may be offset;
- Enhance the ability of municipalities to determine local community character by providing decision making control before the Pinelands Commission considers certain waiver requests; and
- Simplify the waiver application process where possible.

B. Background

The Pinelands Comprehensive Management Plan (CMP) has been guiding land use and development activities in the Pinelands since January 14, 1981. The CMP relies upon land use standards which control the type and amount of development in the Pinelands and a series of management programs (or performance standards) which are designed to minimize environmental harm when development activities do take place. These latter standards prohibit incompatible development in and around wetlands, regulate the type and location of septic systems, control stormwater runoff, and protect a number of important natural resources.

The CMP relies upon municipal and county governments to incorporate these land use and development standards into their local ordinances and to follow them when considering subdivision and site plans, zoning and building permits, and other types of local permits. The Pinelands Commission exercises oversight responsibility of these local permitting activities. In addition, the Commission is also responsible for

deciding when a development project may be exempted from these regional standards.

These exemptions, required by the 1979 Pinelands Protection Act, are called "waivers of strict compliance." Waivers are somewhat similar, although not identical, to zoning variances which municipalities are authorized to grant. Unlike variances, however, waivers of strict compliance are exemptions from CMP standards and can only be granted by the Pinelands Commission.

The Pinelands Protection Act requires that the Commission make two affirmative findings before it approves a waiver.

The first finding is whether or not an extraordinary hardship or compelling public need exists. Since the Commission is infrequently asked to consider waivers because of compelling public needs, primary attention has been focused on the issue of extraordinary hardship.

The second finding is that the waiver, if granted, will not substantially impair the resources of the Pinelands and will be consistent with the purposes and provisions of the Federal Act and the Pinelands Protection Act. This test only comes into play **after** extraordinary hardship or compelling public need is established. In other words, the Commission must decide whether a waiver should be denied because of environmental concerns even though an applicant has already demonstrated that an extraordinary hardship or a compelling public need exists. If such a denial becomes necessary, some other form of relief for the hardship may then be necessary.

Through December 31, 1990, the Commission has approved 966 applications for waivers of strict compliance and denied another 666 applications. The ratio of approvals to denials is somewhat misleading because many people fail to complete their waiver applications after it becomes apparent that the applications will not be approved.

The 966 approved waivers permit 13,645 homes to be built.

When the CMP was first adopted, many extraordinary hardship waivers were granted for larger residential projects because they had already received most of the local approvals needed to build. These projects were approved under a CMP provision which no longer exists, yet they involved 12,744 of the total 13,645 residential units approved via the waiver process.

The Commission's concern at this time is focused on the remaining type of extraordinary hardship waiver which the Commission continues to consider.

In a three year period from July 1, 1987 to June 30, 1990, for example, 232 waiver applications involving 334 homes were approved. Although the average number of waivers granted each year is not exorbitant, there is concern that the **cumulative** effect over the next several decades may be significant. The vast majority of waivers involve exemptions from Comprehensive Management Plan density and lot area requirements, wetlands protection standards and water quality standards. If unchecked or, at a minimum not offset in some manner, these incremental impacts may significantly affect the quality of the Pinelands environment over time.

Although development which meets Pinelands land use and development standards can and should continue to be approved (over 15,000 homes which meet these standards have been approved since 1980), the Commission must consider how much development which **deviates** from these standards should be approved. There will always be a need to grant some waivers (the Commission is required by law to consider them); however, the Commission has decided that steps must be taken to reduce their long term impacts.

II. PROPOSAL SUMMARY

A. Achieving Greater Consistency with Comprehensive Management Plan Goals and Policies

Several revisions to the rules are being proposed to reduce the number of development applications which require waivers of strict compliance.

N.J.A.C. 7:50-4.63(a)4, which sets forth land use standards for development in Pinelands Village and Towns, will now require that variances from minimum lot area requirements be obtained from municipalities before the Commission considers requests for such waivers. In the past, once the Pinelands Commission approved a waiver request, a municipality often felt compelled to approve a variance request, even when the municipality believed that circumstances existed pursuant to the Municipal Land Use Law which argued against granting of the variance. This change will give municipalities the opportunity to consider variance requests **before** the Pinelands Commission considers waiver requests. It preserves local municipal decision-making prerogatives while still allowing the Commission its independent authority to evaluate waiver requests, pursuant to the Pinelands Protection Act, once a municipal variance is approved.

As is the case now in Regional Growth Areas, it is proposed that Pinelands Development Credits (transferable development rights that currently permanently preserve an average of 8 to 9 acres of important ecologically sensitive or agriculturally important land for each one-quarter of a credit) be redeemed in Pinelands Villages and Towns when the amount of development exceeds that which is normally permitted under the CMP. The existing standard for Regional Growth Areas (N.J.A.C. 7:50-5.28(a)4) is being revised to make the language consistent with that proposed in N.J.A.C. 7:50-5.27(c). In addition, N.J.A.C. 7:50-5.28(a)6 which governs Pinelands Development Credit use for non-residential development in Regional Growth Areas is being clarified consistent with the Commission's intention when this provision was originally adopted.

A new development transfer program (N.J.A.C. 7:50-5.30) is being proposed for Pinelands Forest and Rural Development Areas. This new program, which replaces standards which have proven to be ineffective, requires municipalities to implement development transfer programs in these two management areas which permit property owners to develop lots which, under normal circumstances, would be smaller than permitted by municipalities' zoning ordinances. These undersized lots will only be able to be developed if the property owner acquires other land in the zone to equal the total acreage required by the ordinance. The rule has been deliberately drafted to afford municipalities with flexibility in the design of the program because land ownership, subdivision patterns and environmental resources vary throughout the region. If implemented, this program will substantially reduce the number of waivers from CMP density requirements (in the three year period from July 1, 1987 to June 30, 1990, 55 waivers from density standards were granted and it is projected that this number would have been reduced to six with this program) and afford some property owners with greater development options. Most importantly, however, the elimination of density waivers will reduce the total amount of development which will occur within these management areas, since density waivers result in additional development beyond what is envisioned under the CMP's normal standards. Consequently, the program also helps to better maintain the overall development levels sought by the CMP.

Special provisions for cultural housing (N.J.A.C. 7:50-5.32) exist to permit people with long-standing ties to the Pinelands to continue these traditions. Under normal circumstances, a 3.2 acre lot is required for the homesite but a new subsection (b) is proposed that would permit pre-existing lots as small as one acre to qualify without the need to obtain a waiver. Although this would normally be viewed as a relaxation of CMP standards which results in more development in (and less protection of) the Pinelands the proposed amendments require that a municipal lot area variance first be approved and that one-quarter of a Pinelands Development Credit be redeemed. The first provision ensures consistency with local character. The second (Pinelands Development Credit redemption) results in the permanent protection of other land in the Preservation Area District, Special Agricultural Production Areas, or Agricultural Production Areas and will achieve overall a level of protection at least equal to that which would occur if all cultural housing lots were 3.2 acres in size.

B. Reducing the Impact of Waivers

Waivers of strict compliance represent exemptions from normal CMP land use and development standards and, as such, impact the Pinelands to a greater extent than does other development which is consistent with the standards. N.J.A.C. 7:50-4.62(c)1iii proposes to require that one-quarter of a Pinelands Development Credit (PDC) be redeemed whenever a waiver of CMP development standards (for example water quality) is granted. As stated earlier, the redemption of PDCs results in the permanent protection of important forested or agricultural land and represents an easily administered means of helping to reduce the overall impact of each waiver on the resources of the Pinelands. This requirement is in addition to the retained development right deduction (N.J.A.C. 7:50-4.62(c)1i) and undersized lot redemption (N.J.A.C. 7:50-4.62(c)1ii) of PDCs which may apply to development in some situations, even when waivers are not required.

N.J.A.C. 7:50-4.62(c)1iii also requires that an additional one-quarter of a Pinelands Development Credit be purchased and redeemed in the event that the applicant proposes to offset environmental impacts which are inconsistent with the Commission's wetlands and wetlands buffers standards. The situation which permits these offsetting measures is limited to those in which (1) development on "impaired" wetlands cannot be avoided or (2) a reduction in the protective buffer around wetlands is unavoidable. In either case, the offsetting measure will be the purchase

of one-quarter of a Pinelands Development Credit and the resultant protection of other forested or agricultural land in perpetuity. As is further explained in Section II.E. of this Summary, the tests for substantial impairment place further limits on the type and extent to which wetlands buffer requirements can be relaxed.

In summary, one-quarter of a Pinelands Development Credit would be required for any environmental waiver except a wetlands standard, one-half of a Pinelands Development Credit for any standard plus a wetlands standard waiver, and one-half of a Pinelands Development Credit for a waiver of only a wetlands standards.

C. Evaluating Extraordinary Hardships

As currently structured, the CMP requires that each applicant for a hardship waiver establish that hardship by demonstrating that the property in question may not have a beneficial use if used or developed in accordance with the CMP. Beneficial use has been and continues to be viewed as a reasonable economic use and not the highest and most profitable use to which a property could be put. In addition, the ability of the property in question to be combined with vacant, contiguous land in order to allow a reasonable economic use or to alleviate the need for a waiver is considered in evaluating hardships. This hardship evaluation does not consider the degree to which the property conforms to the CMP's land use or development policies.

The regulatory changes proposed in N.J.A.C. 7:50-4.63 seek to make a distinction in the types of hardships which might qualify for relief from CMP requirements.

The first class represents certain uses (11 are referenced in N.J.A.C. 7:50-4.63(a)1) which are consistent with the permitted use, density and lot area requirements of subchapter 5 of the CMP but involve relief from one or more of the development standards of subchapter 6. These properties have an extraordinary hardship if, according to N.J.A.C. 7:50-4.63(a)2 through 5, they are combined with contiguous properties owned by the same person, are not already developed, receive any necessary municipal variances, and can be developed without violating the standards for determining substantial impairment of Pinlands resources. This will simplify the waiver process for these cases.

The second class covers all situations where there must be a specific demonstration that the property in question may not have a beneficial use if developed or used in accordance with the Comprehensive Management Plan. N.J.A.C. 7:50-4.63(b) sets forth three primary tests, the first of which requires that the parcel be combined with contiguous properties owned by the same person; the second of which requires that undeveloped, contiguous lands which are available for purchase at fair market value be combined with the property in question; and the third of which is used to evaluate whether a beneficial use may exist. In large part, these tests are similar to those now in effect. However, it should be noted that in municipalities with Forest and Rural Development Areas, property owners in these areas will not normally qualify for waivers of lot size requirements because they will be required to participate in the development transfer programs.

It should also be noted that one definition proposed for revision and one definition proposed to be added (N.J.A.C. 7:50-2.11) have a significant bearing on the hardship evaluation.

The definition of "contiguous lands" is being revised to limit the type of roads which will render land discontiguous and to specify that barriers must be substantial in nature before contiguity will be affected. These changes slightly broaden current policies governing contiguous land. The effect will be that applicants for a waiver will have to demonstrate that more land is unavailable for purchase before the property in question is determined to qualify for a waiver.

The newly proposed definition for "fair market value" is intended to establish an objective and equitable way of determining a price at which it is reasonable to assume properties are available for sale or purchase. The proposed definition relies on the value of a parcel absent the granting of a waiver and, as such, is not fully consistent with case law involving isolated lots under the Municipal Land Use Law. However, the standards for variances pursuant to the Municipal Land Use Law and for waivers pursuant to the Pinelands Protection Act are significantly different and justify, for the purpose of evaluating extraordinary hardships and waivers of strict compliance, a fair market value definition which recognizes that the value of properties should be based upon their use and development in accordance with the Pinelands Comprehensive Management Plan.

D. Evaluating Compelling Public Needs

Although the standards for evaluating compelling public needs have been reorganized and recodified in N.J.A.C. 7:50-4.64, no substantive changes in the standards are being proposed.

E. Determining Substantial Impairment and Consistency with State and Federal Pinelands Laws

Even after an extraordinary hardship or compelling public need is demonstrated, the Commission must still determine that the approval of a waiver (1) will not substantially impair (harm) the resources of the Pinelands and (2) will be consistent with the purposes and provisions of the Pinelands Protection Act and the Federal Pinelands legislation. These two statutory requirements together are referred to as substantial impairment.

At the present time, CMP rules do not expressly define substantial impairment. The Commission not only proposes to spell out these standards in the rules but also proposes to make them more stringent than past practice.

The proposed tests for substantial impairment are presented in N.J.A.C. 7:50-4.65(b) and consist of 10 separate standards. If any one of these circumstances will exist as a result of the granting of a waiver (whether to satisfy a compelling public need or to alleviate an extraordinary hardship) and is not offset for compelling public need situations in accordance with N.J.A.C. 7:50-4.65(c), the Commission will not be able to approve the waiver request. The following table highlights the proposed and current practices so that comparisons can be made.

Proposed Rules Define Substantial Impairment To Exist When:	Current Practice Is To Determine Substantial Impairment When:
1. A non-permitted use is proposed in the agricultural and more conservation oriented management (land use) areas within the Pinelands	No comparable standard currently exists
2. A residential use which does not meet the CMP's density and lot area requirements is proposed in the agricultural and most conservation oriented management (land use) areas	No comparable stnadard currently exists
3. A residential use which is to be served by a septic system is located on a lot smaller than one-half an acre in size. (This standard means that overall pollution from residential septic systems will be no greater than five mg/l nitrate-nitrogen)	Nitrate-nitrogen levels at the boundary of residential lots exceed 10 mg/l nitrate-nitrogen
4. Any non-residential use which is to be served by a septic system where nitrate-nitrogen levels at the property boundary exceed five mg/l	Nitrate-nitrogen levels at the boundary of non-residential lots exceed 10 mg/l nitrate-nitrogen
5. Development is to be located on any wetland other than those which are "impaired"	Development is to be located on any wetland other than those which are "disturbed"
6. Development is to be located closer than 50 feet to wetlands other than those wetlands which are "impaired" or which are located within Regional Growth Areas, Pinelands Towns or Pinelands Villages.	No comparable standard currently exists
7. Development would impact critical habitat of threatened or endangered plant or animal populations	Development would impact the critical habitat of threatened or endangered plant or animal populations

8a. Development would require the placement of a septic system's disposal field in an area where seasonal high (ground) water tables are within two feet of the ground surface	No comparable standard currently exists; however, disposal fields are generally prohibited in wetlands, where groundwater levels are typically within 1½ feet of the ground surface
8b. Development would require the placement of a septic system's disposal field within 50 feet of a lake, stream or other water body	No comparable standard currently exists.
9. Any direct discharge of stormwater into wetlands other than those which are "impaired"	Any direct discharge of stormwater into wetlands
10. Unusual circumstances result in significant impacts	Unusual circumstances result in significant impacts

As is noted in the table, one of the standards would allow protective buffers around wetlands to be reduced if maintenance of the normally required buffer (up to 300 feet in some cases) is not possible. The new rule does, however, place limits on this buffer reduction. In the more conservation oriented management areas of the Pinelands, no buffer less than 50 feet will be permitted unless the wetland is "impaired." N.J.A.C. 7:50-2.11 contains a definition for "impaired wetlands" which has been narrowly drafted so as to include only those which have been substantially altered or impacted. Moreover, N.J.A.C. 7:50-4.62 specifies that waivers are to provide minimum relief; in terms of wetlands buffers this means that the extent to which any buffer will be reduced is limited to that which is minimally needed to alleviate the hardship or satisfy the public need.

It is important to note that these substantial impairment tests allow for some relaxation of the normal policies which govern development in the Pinelands. Since the Pinelands Protection Act requires that some relaxation of CMP standards be allowed when a compelling public need or an extraordinary hardship exists, these tests recognize that environmental policies designed to apply in normal situations (and which on the whole serve to protect the Pinelands) must be relaxed in these abnormal (that is, waiver) situations.

F. Measures to Offset Certain Limited Environmental Impacts for Applications Demonstrating Compelling Public Need

Unlike extraordinary hardships which might be alleviated without permitting the land in question to be developed, compelling public needs (once demonstrated) can only be satisfied if development of the property is allowed. In these cases where a compelling public need is demonstrated, the Commission is proposing an additional standard for evaluating substantial impairment.

This proposed standard is presented in N.J.A.C. 7:50-4.65(c). It recognizes that, because of their multi-faceted nature, these public oriented projects might violate any of the specific tests for measuring substantial impairment but propose other measures which, on the whole, actually benefit Pinelands resources. As an example, a hazardous waste site clean up might require that a wetland area be disturbed but the overall effect of the project would be to improve Pinelands resources. It should be noted that these measures are beyond and in addition to the one-quarter to one-half Pinelands Development Credits required for any waiver of the CMP's environmental standards.

A similar standard for extraordinary hardship proposals is not proposed. Two reasons for this difference exist: there are many more of these types of waiver applications and, unlike compelling public need proposals where all feasible alternatives have, by regulation, been exhausted, extraordinary hardships can many times be alleviated in other ways.

G. Alternative Form of Relief

The Commission recognizes that development of certain properties for which an extraordinary hardship has been established will result in unacceptable environmental effects (substantial impairment) and must be precluded.

As an alternative form of relief to development of these properties, the Commission proposes (at N.J.A.C. 7:50-4.62(b)2) to allocate Pinelands Development Credits to them. These additional rights are part of the properties' bundle of rights and can be sold or transferred for use on other eligible properties. Consequently, the Pinelands Development Credits have value and contribute to a property's beneficial use.

The allocation of PDCs will be based on the fair market value of the property in question and the market value of the PDCs at the time of allocation. For example, a property which has established a hardship but cannot be developed may be determined to have a fair market value of $16,000. If each one-quarter of a PDC (one transferable right) has a market value at that time of $4,000, the property will receive an allocation of one PDC (four transferable rights).

Recognizing that applicants may not always agree with the Pinelands Development Credit allocations made by the Commission's Executive Director in these situations, the reconsideration provisions of N.J.A.C. 7:50-4.68 will be amended to expressly grant applicants an opportunity to seek reconsideration in these cases. The reconsideration process involves an administrative hearing conducted by the Office of Administrative Law, the issuance of a hearing report and recommendation by an administrative law judge and a final decision by the full membership of the Pinelands Commission.

H. Expiration of Waiver

The Commission also proposes to establish an expiration period for waivers granted to alleviate extraordinary hardships. Although certain waivers granted in the early to mid 1980's in recognition of prior municipal subdivision and other development approvals have already expired (see N.J.A.C. 7:50-4.70(b)), most extraordinary hardship waivers are not currently subject to expiration.

However, the Commission believes it is necessary to periodically re-evaluate the conditions under which waivers are granted to ensure that changing environmental conditions and any subsequent amendments to the CMP are considered. Therefore, a five year expiration period is proposed to be established at N.J.A.C. 7:50-4.70(c) for waivers granted to alleviate extraordinary hardships. The proposed amendments also clarify the status of previously expired waivers in N.J.A.C. 7:50-4.70(b)2 to fully reflect the intention of the Commission when this provision was adopted.

I. Linear Improvements

The Commission is considering changes both to clarify existing development standards for linear improvements and to indicate that the construction of such facilities should not be automatically subject to the previously described tests for substantial impairment. Because of the extensive nature of wetlands in the Pinelands, linear improvements (for example, roads, utilities, etc.) often involve some effect on wetlands. Since the standards for linear improvements require that, among other things, alternatives be evaulated and mitigation measures be employed, linear projects should not be subjected to the same types of substantial impairment tests as are other projects. Substantial impairment could, however, still be found in special or unusual circumstances.

J. Effect of the Proposed Amendments and New Rules

An analysis of waiver decisions made during a three year period (July 1, 1987 to June 30, 1990) has been conducted to evaluate both the current waiver regulations and the changes now being proposed by the Commission.

As the following table indicates, a total of 232 waivers were approved by the Pinelands Commission during this period. Ninety-eight of these (or 42 percent) were for properties located in the more development oriented management areas (Villages, Towns and Regional Growth Areas) of the Pinelands.

Waivers Approved From July 1, 1987 To June 30, 1990

	Current Regulations	**Proposed Regulations**
Pinelands Management Area	Number of Actual Waiver Approvals	Projected Number of Waiver Approvals
Preservation Area District	4	5
Special Agricultural Production Areas	0	0
Forest Areas	50	7
Agricultural Production Areas	19	10
Rural Development Areas	61	20
Village Areas	28	28
Town Areas	8	6
Regional Growth Areas	62	50
TOTAL	232	126

Had the regulatory changes now being proposed been in effect during this period, it is projected that only 126 approvals would have been granted. This reduction reflects 58 actual approvals which would likely have been denied, 59 actual approvals for undersized lots which would have been required to participate in the internal development transfer programs within the Forest and Rural Development Areas (and would therefore not have been eligible for waivers) and 11 actual denials which might have qualified for waivers because of the changes being proposed to automatically qualify some properties as hardship situations.

The projected number of waivers which would have been granted in the more development oriented management areas would have decreased by 14 percent while, in the more conservation oriented areas, waiver approvals would have decreased by 69 percent.

Because of the proposed changes mandating Pinelands Development Credit use, the number of PDCs which would need to be redeemed is projected to total 64.25. Since each Pinelands Development Credit serves to permanently protect an average of 39.5 acres of land, 2,538 acres of land would have been conserved. Added to the additional land in the Forest and Rural Development Areas which would have been protected through the internal development transfer program, the total amount of land which might have been conserved could reach almost 3,100 acres. It should be noted that the proposed amendments will also allocate new PDCs for waiver applicants who, due to substantial impairment, are allocated PDCs as an alternative form of relief. However, this number is projected to be smaller than the number which would need to be purchased.

In summary, the goals described in Section I.A. of this Summary for the regulatory changes have been met: many former development situations that needed waivers will have alternative means of achieving consistency with the CMP; waivers in the more conservation oriented areas will be reduced; flexibility will be established for certain development applicants to enable them to proceed by offsetting environmental impacts; local community control will be enhanced by giving municipalities the right to evaluate variance requests before waivers are requested; and the process will be simplified by eliminating steps for some applicants and by providing clearer alternatives to others.

Social Impact

These proposed amendments and new rules, if adopted, will have the greatest effect on municipal governing bodies and planning boards, current residents of the Pinelands Area, owners of vacant property within the Pinelands Area and applicants who propose development projects to serve compelling public needs.

Municipal governing bodies and planning boards will be required to revise existing zoning ordinances and master plans to implement many of the regulatory changes, most notably the development transfer program within Forest Areas and Rural Development Areas. These requirements have been broadly structured so that municipalities will have some flexibility in balancing environmental goals with those relating to community development and character. The proposed regulatory change which requires that applicants for a Pinelands waiver of strict compliance must first obtain a variance of municipal zoning requirements also enables municipal planning boards and boards of adjustment to play a greater role in evaluating municipal land use goals and objectives before deciding whether variances should be approved.

Residents within the Pinelands Area should also have a greater opportunity to participate in development decisions because of the expanded role established for these municipal boards.

There will be mixed effects on the owners of vacant property within the Pinelands. Those whose properties qualify for the presumptive hardship determinations will not be required to address individual hardship tests and will be relieved of a regulatory burden. Those whose properties qualify for the Forest Area or Rural Development Area transfer program may view participation in this program positively if their properties would otherwise have extremely limited development potential; however, others may view the transfer program negatively because their opportunity to receive waivers without purchasing additional land will be limited. Finally, those whose properties are found to have hardships but who can not develop the properties in question due to substantial impairment may find the method of allocating Pinelands Development Credits to be more advantageous than the current practice. Others, however, will view the more stringent tests for substantial impairment as a further constraint on the development options of their properties.

Projects which are intended to satisfy compelling public needs are often designed to address social objectives. Such projects which result in environmental impacts will now have a greater likelihood of being approved. This is, of course, predicated upon measures being taken to offset those impacts.

Economic Impact

The most significant economic impacts arise from the proposed amendments and new rules relative to the Pinelands Development Credit (PDC) program, the internal development transfer program in the Forest Areas and Rural Development areas, and the elimination of the need to demonstrate a hardship for a specific set of situations.

The PDC regulatory revisions will affect property owners in two ways.

The first is the cost of purchasing PDCs when waivers are granted. Depending upon the particular circumstances of a waiver request, approval may require that one-quarter to three-quarter of PDC (one to three transferable development rights) be purchased. Each of these rights may cost between $3,500 and $5,500 based upon recent sales prices. Counterbalancing this cost is the approval to develop a property, and the attendant increase in property value which might not otherwise have been possible.

The second effect is the allocation of PDCs to properties which demonstrate a hardship but which can not be approved for on-site development due to truly significant environmental impacts. These allocations will be based on the properties' fair market value but will not reflect the added value which might result if the properties could be developed without the need for a waiver.

Finally, the net impact of all the PDC purchases and allocations may be to increase demand for PDCs to a minor extent. This would benefit the holders (property owners) of PDCs.

All of these effects will also have implications on the assessed values of properties for purposes of local property taxes. However, the cumulative effect on a municipality's total assessed valuation of properties will be minimal. The Commission's preproposed amendments might have further limited development opportunities in certain municipalities. The proposed amendments and new rules mitigate this impact to a greater extent, primarily through the transfer program outlined below.

The Forest Area and Rural Development Area transfer program is the second major provision which will also affect property owners. The most significant effect will be the cost of purchasing additional property to meet the zoning requirements of municipal ordinances. As is the case with PDC purchases, these costs may be offset to some degree by the added value which might accrue to those properties which would not have been developable otherwise. This would be true for both the "receiving" site and the "sending site." Although this will also affect local property assessments, the cumulative effects should not be significant.

The third major impact is the elimination of the need to buy or sell property to demonstrate that a hardship exists in certain cases. Eleven specific situations are delineated in the rules that are now defined as having a hardship. This will save the time and cost of buying adjacent land for those properties that qualify.

Finally, other less significant impacts will occur because municipal governments will need to revise their master plans and zoning ordinances and some applicants who demonstrate that a project is needed to satisfy a compelling public need may be required to expend funds to offset environmental impacts. In this latter instance, however, it should be noted that the expenditure of funds may enable projects to proceed which cannot be approved under current requirements.

Environmental Impact

The net effect of the proposed amendments and new rules will be to benefit the resources of the Pinelands.

In comparison with existing requirements, these amendments and new rules will:

- Reduce, in the long run, the number of waivers granted from the Comprehensive Management Plan and thus reduce the impacts associated with development which does not conform with environmental protection standards;
- Reduce the extent to which these standards will be relaxed when waivers are granted;
- Result in a greater proportion of development in the Pinelands occurring at the densities envisioned under the Comprehensive Management Plan;
- Serve to permanently protect more forested and agricultural land in the Preservation Area District, the Special Agricultural Production Areas and Agricultural Production Areas; and

• Discourage or avoid development in particularly sensitive portions of Forest and Rural Development Areas and encourage permanent protection of land in those areas.

It could be argued that since the Commission will continue to grant waivers, undesirable impacts to Pinelands natural resources will also continue. However, it must be recognized that the Commission is legally constrained from considering alternatives that would have the effect of eliminating the Commission's ability to grant waivers entirely. The amendments and new rules could be crafted to further reduce the number of waivers granted. However, such a reduction would also decrease the amount of permanent protection afforded to important forest and agricultural resources and increase the economic costs to local governments and property owners. The environmental benefits gained from such a reduction would be minimal and would not balance the environmental and social costs that would result.

Regulatory Flexibility Statement

The implications of these proposed amendments and new rules on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., must be viewed within the context of the requirements currently in place.

The amendments and rules should reduce reporting and recordkeeping requirements on small businesses (for example, land developers and other businesses that own vacant property in the Pinelands) because some will now qualify for automatic hardship status. As a result, detailed reporting and professional consulting services necessary to establish hardships on a case by case basis will be reduced. No ongoing compliance or reporting requirements are envisioned since these rules generally apply to one time events (for example, construction), rather than to regulatory requirements which apply to businesses on an ongoing or continuing basis.

No differing requirements have been established for small businesses (as distinguished from individual property owners or large businesses) because of the nature of the amendments. The amendments and new rules are expressly designed to deal with abnormal situations for all types of development which may warrant exemptions from the normal land use and development requirements which apply throughout the Pinelands. As such, the amendments and rules generically address situations which differ from the norm and which raise important, regionwide environmental issues. Granting further exemptions (for example, to assist small businesses) to a program expressly structured to address exemptions may further endanger public health, safety and welfare.

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.

...

"Contiguous lands" means land which is connected or adjacent to other land so as to permit the land to be used as a functional unit; provided that separation by lot line, streams, **dedicated public** roads **which are not paved**, rights-of-way, and easements shall not affect the contiguity of land **unless a substantial physical barrier is created which prevents the land from being used as a functional unit.**

...

"Fair market value" means the value of a parcel based on what a willing buyer will pay a willing seller in an arms length transaction for the parcel if no Waiver of Strict Compliance is approved. The determination of fair market value shall include consideration of the extent to which the parcel would contribute to the value of a developable parcel if combined with one or more other parcels.

...

"Wetlands, impaired" means any wetland that meets each of the following three tests:

1. The wetland meets at least one of the following two criteria:

i. The entire wetland is less than one acre; or

ii. The overall wetland area is larger than one acre but the portion of the wetland that is to be directly impacted is less than one acre and the impacted area is separated from the remainder of the wetland by a substantial hydrologic barrier; and

2. The wetland meets at least one of the following three criteria:

i. The wetland is within an area that is predominantly developed, has direct access to a paved public road and is serviced by a municipal wastewater treatment system; or

ii. The wetland was filled prior to February 8, 1979, the fill is at least one foot in depth, and the seasonal high water table is not within one foot of the altered land surface; or

iii. The wetland is an actively cultivated non-berry agricultural field which was cleared and in production prior to February 8, 1979; and

3. The wetland is not:

i. An Atlantic white cedar swamp;

ii. A wetland which is frequently ponded or flooded for a period of at least seven days during the growing season;

iii. A herbaceous or shrub dominated wetland type found in naturally occurring circular or nearly circular depressions within upland or wetland complexes;

iv. Located within 300 feet of a lake, pond, river or permanent stream; or

v. A wetland supporting plant species which are designated as endangered pursuant to N.J.S.A. 13:1B-15.151 et seq. or supporting plant or wildlife species designated as threatened or endangered pursuant to N.J.A.C. 7:50-6.24 and N.J.A.C. 7:50-6.33.

7:50-4.61 Purpose

This Part establishes procedures and standards pursuant to which the Commission may waive strict compliance with the Plan. **Waivers from the standards of N.J.A.C. 7:50-5 or 6 may be granted in limited circumstances.** Waivers granted pursuant to this Part are intended to provide relief where strict compliance with this Plan will create an extraordinary hardship or where the waiver is necessary to serve a compelling public need. **The relief provided will be consistent with the protection of the resources of the Pinelands. The relief granted will only be the minimum necessary to alleviate the extraordinary hardship or the compelling public need. For some extraordinary hardship cases, the minimum relief granted will allow the development of the property in question; in others the minimum relief will include an allocation of Pinelands Development Credits. These provisions are designed to provide all property owners with at least a minimum beneficial use of their property consistent with constitutional requirements. For some compelling public need cases, special measures may need to be taken so there will be an overall improvement to the resources of the Pinelands.**

7:50-4.62 General standards

(a) Waivers may only be granted when either:

1. An extraordinary hardship has been established pursuant to N.J.A.C. 7:50-4.63(a) or (b); or

2. A compelling public need has been established pursuant to N.J.A.C. 7:50-4.64.

(b) Notwithstanding (a) above, the requested relief may not be granted if it will either result in a substantial impairment of the resources of the Pinelands Area or be inconsistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act or this Plan pursuant to the criteria set forth in N.J.A.C. 7:50-4.65.

(c) When approved, the waiver may only grant the minimum relief necessary to relieve the extraordinary hardship or satisfy the compelling public need.

1. Any waiver which grants relief from the standards of this Plan to permit development of the property in question shall require:

i. The reduction as set forth in N.J.A.C. 7:50-5.43(b)3 of any Pinelands Development Credits which are allocated to the property pursuant to N.J.A.C. 7:50-5.43(b);

ii. The acquisition and redemption of any Pinelands Development Credits that are otherwise required pursuant to N.J.A.C. 7:50-5.27, 5.28 or 5.32;

iii. The acquisition and redemption of 0.25 Pinelands Development Credits whenever the waiver provides relief from one or more of the standards of N.J.A.C. 7:50-6 and the acquisition and redemption of an additional 0.25 Pinelands Development Credits whenever the waiver provides relief from one or more of the wetlands protection standards contained in N.J.A.C. 7:50-6; and

iv. The development meets the criteria set forth in N.J.A.C. 7:50-4.65(c) if the waiver is based on compelling public need pursuant to N.J.A.C. 7:50-4.64 and involves one or more of the criteria set forth in N.J.A.C. 7:50-4.65(b).

2. Any parcel for which an extraordinary hardship exists pursuant to N.J.A.C. 7:50-4.63 but which is precluded from on-site development pursuant to N.J.A.C. 7:50-4.65(b) shall receive an additional use right of an allocation of Pinelands Development Credits based on the fair market value of the parcel. The allocation shall be based on the market value of the Pinelands Development Credits at the time the application for a waiver is completed, provided that the applicant shall be entitled to a minimum allocation of 0.25 Pinelands Development Credits. Unless severed from the parcel pursuant to N.J.A.C. 7:50-5.47, any conveyance, sale or transfer of the parcel shall include the Pinelands Development Credits allocated herein. The applicant shall be entitled to demonstrate that the allocation of Pinelands Development Credits based on fair market value in conjunction with the permitted uses on the parcel does not give the parcel a beneficial use. If the applicant believes that even considering this allocation of Credits the parcel does not have a beneficial use, the applicant is entitled to request reconsideration pursuant to N.J.A.C. 7:50-4.64.

7:5-4.63 Standards for establishing extraordinary hardship

(a) An extraordinary hardship is deemed to exist when the applicant demonstrates based on specific facts and the Pinelands Commission verifies that all of the following conditions exist:

1. The only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for one of the following:

i. Cultural housing pursuant to N.J.A.C. 7:50-5.32 on a parcel at least 1.0 acres in size;

ii. A single family dwelling or a permitted commercial use within an infill area designated pursuant to N.J.A.C. 7:50-5.22(b)7 and located on a parcel at least 1.0 acres in size;

iii. A single family dwelling on a substandard parcel containing at least 1.0 acres pursuant to N.J.A.C. 7:50-5.31;

iv. A single family dwelling on a parcel within a Regional Growth Area, Pinelands Town or Pinelands Village which will be served by a centralized waste water treatment system;

v. A single family dwelling on a parcel within a Regional Growth Area, Pinelands Town or Pinelands Village which is at least 0.5 acres in size and is not served by a centralized waste water treatment system;

vi. A single family dwelling on a parcel within a Forest Area that complies with the density and lot area standards set forth in N.J.A.C. 7:50-5.23(a)2 and (c);

vii. A single family dwelling on a parcel within a Rural Development Area that complies with the density and lot area standards set forth in N.J.A.C. 7:50-5.26(a) and (c);

viii. A single family dwelling on combined properties in either the Forest Area or Rural Development Area which meets the density transfer standards of N.J.A.C. 7:50-5.30;

ix. A single family dwelling accessory to an active agricultural operation in an Agricultural Production Area pursuant to the criteria contained in N.J.A.C. 7:50-5.24(a)2;

x. A single family dwelling accessory to an active agricultural operation in a Special Agricultural Production Area pursuant to the criteria contained in N.J.A.C. 7:50-5.25(b)1; or

xi. An agricultural commercial establishment with a gross floor area no greater than 500 square feet which is located on a property which otherwise qualifies for a single family dwelling accessory to an active agricultural operation pursuant to either N.J.A.C. 7:50-5.24(a)2 or 5.25(b)1;

2. The parcel includes all contiguous land in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands;

3. The proposed use will be the sole principal use on the entire contiguous parcel, except as expressly provided in N.J.A.C. 7:50-5.1(c);

4. All necessary municipal lot area and density variances have been obtained if the property is located in a municipality whose master plan and land use ordinances have been fully certified by the Pinelands Commission pursuant to N.J.A.C. 7:50-3; and

5. The development of the property will not violate any of the standards contained in N.J.A.C. 7:50-4.65(b).

(b) In addition to (a) above, an extraordinary hardship as distinguished from a mere inconvenience exists when the applicant demonstrates and the Pinelands Commission verifies that all of the following conditions exist:

1. The parcel includes all contiguous lands in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands;

2. The parcel includes all contiguous land with no substantial improvements which is available in whole or in part for purchase at fair market value, including lands which become contiguous as a result of the acquisition of other contiguous lands;

3. The parcel, including all contiguous lands which are available pursuant to (b)1 and 2 above, may not have a beneficial use considering the following factors:

i. The value of any existing development or use of the parcel, including any allocation of Pinelands Development Credits to the parcel pursuant to N.J.A.C. 7:50-5.43(b);

ii. The value of any use or development of the parcel that is authorized by the provisions of this Plan;

iii. The ability of the property owner to sell the subject parcel to the owner of a contiguous parcel, any governmental agency or to a nonprofit conservation group for its fair market value;

iv. The ability of the property owner to either buy non-contiguous land or sell the subject property to a non-contiguous property owner under a transfer of density provision contained in a certified municipal land use ordinance or pursuant to N.J.A.C. 7:50-5.30 in an uncertified municipality; and

v. Any inability to have a beneficial use relates to or arises out of the characteristics of subject parcel and results from unique circumstances peculiar to the subject property which:

(1) Are not the result of any personal situation of the applicant including the necessity of purchasing additional land to attempt to either meet the minimum lot size, density or management standards of the Plan or to increase the parcel size so it is capable of having a beneficial use; and

(2) Are not the result of any action or inaction by the applicant or the owner of any predecessor in title including any transfer of any contiguous lands which were in common ownership on or after January 14, 1981 or the refusal of the applicant, the owner or any predecessor-in-title to either sell the subject parcel for its fair market value or to buy a reasonably available contiguous parcel on or after January 14, 1981.

7:50-4.64 Standards for establishing compelling public need

(a) An applicant shall be deemed to have established compelling public need if the applicant demonstrates based on specific facts and the Pinelands Commission verifies that one of the following conditions exist:

1. The proposed development will serve an essential health or safety need of the municipality or, in the case of an application serving more than one Pinelands municipality, the county in which the proposed development is located, and:

i. The public health and safety require the requested waiver;

ii. The public benefits from the proposed use are of a character that override the importance of the protection of the Pinelands as established in the Pinelands Protection Act or the Federal Act;

iii. The proposed use is required to serve existing needs of the residents of the Pinelands; and

iv. No feasible alternatives exist outside the Pinelands Area to meet the established public need and that no better alternatives exist within the Pinelands Area; or

2. The proposed development constitutes an adaptive reuse of a historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154, and:

i. The reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource; and

ii. The designated historic resource's integrity and continued protection cannot be maintained without the granting of a Waiver of Strict Compliance.

7:50-4.65 Substantial impairment and consistency

(a) No Waiver of Strict Compliance which permits a parcel to be developed shall be approved unless such development will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and this Plan and will not result in a substantial impairment of the resources of the Pinelands Area.

(b) Unless alleviating measures are taken pursuant to (c) below for waivers based on compelling public need, the following circumstances do not comply with (a) above:

1. Development of any non-permitted use in the Preservation Area District, any Special Agricultural Production Area, any Forest Area or any Agricultural Production Area;

2. Any residential use in the Preservation Area District, any Special Agricultural Production Area or any Agricultural Production Area which does not meet the requirements set forth in N.J.A.C. 7:50-5.22(b)7, 5.24(a)2, (a)3 or (c), 5.25(b)1 or (c), 5.31 or 5.32;

3. Any residential use to be served by an on-site sewage disposal system where the overall density is greater than one dwelling unit per 0.5 acres or where any dwelling will be located on a lot smaller than 0.5 acres;

4. Any non-residential used to be served by an on-site sewage disposal system where the nitrate-nitrogen level exceeds five mg/l at the property line;

5. Any development, except for development permitted in wetlands pursuant to N.J.A.C. 7:50-6, which will be located on any wetland unless that wetland is an impaired wetland;

6. Any development, except for development permitted in wetlands buffers pursuant to N.J.A.C. 7:50-6, which will be located within 50 feet of any wetland unless the wetland is either an impaired wetland or located in a Regional Growth Area, Pinelands Town or Pinelands Village;

7. Any development which will violate the threatened and endangered species protection requirements contained in N.J.A.C. 7:50-6.24 and 6.33;

8. Any development which will require the location of a waste water disposal field in an area where the seasonal high water table is within two feet of the natural ground surface or within 50 feet of any surface water body;

9. Any development which will result in a new direct discharge of storm water into any fresh water wetlands which are not impaired wetlands; or

10. In addition to the criteria specified above, the existence of special or unusual circumstances will be evaluated in determining whether a particular development complies with (a) above.

(c) If an application meets the criteria for establishing a compelling public need pursuant to N.J.A.C. 7:50-4.64, but one or more of the circumstances in (b) above exist, then the application does not meet the criteria of (a) above unless the applicant demonstrates, based on particular facts, that the development, when evaluated in its entirety, including any special measures that are part of the development proposal, will result in an overall improvement of the resources of the Pinelands Area.

Recodify existing 7:50-4.62 and 4.63 as **4.66 and 4.67** (No change in text.)

7:50-[4.64]**4.68** Reconsideration rights

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days seek reconsideration by the Commission by the Executive Director's determination as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by requesting a hearing pursuant to N.J.A.C. 7:50-4.91. **If the reconsideration is based on an allegation that the parcel does not have a beneficial use even considering the allocation of Pinelands Development Credits pursuant to N.J.A.C. 7:50-4.62(c)2, the applicant must include specific documentation concerning the economic value of each of the permitted uses of the parcel once the Pinelands Development Credits are transferred and documentation of the value necessary to give the property a beneficial use as part of the reconsideration process. If the applicant demonstrates that the allocation of Pinelands Development Credits based on fair market value along with the other permitted uses of the parcel does not result in the parcel having a beneficial use, the allocation of Pinelands Development Credits shall be increased to the number necessary to provide the parcel with a beneficial use.**

7:50-[4.65]**4.69** (No change in text.)

[7:50-4.66 Standards

(a) An application for a waiver shall be approved only if the applicant satisfies (b) below and an extraordinary hardship or compelling public need is determined to have been established under the following standards:

1. The particular physical surroundings, shape or topographic conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this Plan are literally enforced. The necessity of acquiring additional land to meet the minimum lot size requirements or management standards of this Plan shall not be considered an extraordinary hardship, unless the applicant can demonstrate that there is no contiguous land which is reasonably available. Any contiguous lands in common ownership at any time on or after January 14, 1981, shall be considered to be reasonably available. An applicant shall be deemed to have established the existence of extraordinary hardship only if he demonstrates, based on specific facts, that the subject property, along with any contiguous lands which are either in common ownership or are reasonably available, does not have any beneficial use if used for its present use or developed as authorized by the provisions of this Plan, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the immediate vicinity;

ii. Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and

iii. Are not the result of any action or inaction by the applicant or the owner or his predecessors in title including any transfer of contiguous lands which were in common ownership on or after January 14, 1981.

2. An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, one of the following:

i. The proposed development will serve an essential health or safety need of the municipality or, in the case of an application serving more than one Pinelands municipality, the county in which the proposed development is located, that the public health and safety require the requested waiver, that the public benefits from the proposed use are of a character that override the importance of the protection of the Pinelands as established in the Pinelands Protection Act or the Federal Act, that the proposed use is required to serve existing needs of the residents of the Pinelands, and that no feasible alternatives exist outside the Pinelands Area to meet the established public need and that no better alternatives exist within the Pinelands Area; or

ii. The proposed development constitutes an adaptive reuse of a historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154 and said reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource and further that the designated historic resource's integrity and continued protection cannot be maintained without the granting of a Waiver of Strict Compliance.

(b) An application for a waiver shall be approved only if it is determined that the following additional standards also are met:

1. The granting of the waiver will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the Pinelands Area;

2. The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the Pinelands Protection Act, the Federal Act or this Plan; and

3. The waiver is the minimum relief necessary to: relieve the extraordinary hardship, which may include the granting of a residen-

tial development right to other lands in the Protection Area that may be transferred or clustered to those lands in accordance with N.J.A.C. 7:50-5.30, or to satisfy the compelling public need.

(c) 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 2, 1985, shall expire as follows:

1. Any waiver previously approved under the final subdivision standard contained in the now repealed N.J.A.C. 7:50-4.55(a)1iii above shall continue to be subject to the condition that the waiver shall expire after two years if substantial construction of improvements is not commenced, or if fewer than 10 percent of the total number of lots in the subdivision are sold or built upon within any succeeding 12 month period; and

2. Any waiver previously approved under the prior municipal development approval standard contained in the now repealed N.J.A.C. 7:50-4.66(a)1ii above shall expire, without exception, as of January 14, 1991 unless all necessary approvals for the proposed development have been obtained from the municipal planning board and board of adjustment or, where no such approval is required, construction permits have been issued prior to that date and no such approval is subsequently allowed to expire or lapse.]

7:50-[4.67]**4.70** Effect of grant of waiver; **expiration**

(a) Any waiver granted under the provisions of this Part shall only be considered a waiver of the particular standard of this Plan which the Commission waived. It shall not constitute an approval of the entire development proposal. Nor shall it constitute a waiver from any requirements contained within any certified local ordinance.

(b) Waivers approved under former N.J.A.C. 7:50-4.66(a)1ii, repealed effective November 2, 1987, and former N.J.A.C. 7:50-4.55(a)1iii, repealed effective September 12, 1985, shall expire as follows:

1. Any waiver previously approved under the final subdivision standard contained in the now repealed N.J.A.C. 7:50-4.55(a)1iii shall continue to be subject to the condition that the waiver shall expire after two years if substantial construction of improvements is not commenced, or if fewer than 10 percent of the total number of lots in the subdivision are sold or built upon within any succeeding 12 month period; and

2. Any waiver previously approved under the prior municipal development approval standard contained in the now repealed N.J.A.C. 7:50-4.66(a)1ii expired, without exception, as of January 14, 1991 unless all necessary approvals for the proposed development were obtained by that date from the municipal planning board and board of adjustment or, where no such approval was required, all necessary construction permits have been issued prior to that date and no such permit or approval is subsequently allowed to expire, lapse, or needs to be renewed or extended after that date.

(c) Any waiver approved pursuant to N.J.A.C. 7:50-4.63 which authorizes development of the parcel shall expire five years after the Waiver is approved unless all necessary construction permits have been issued within said five year period. The waiver shall expire if any such permit is allowed to expire or lapse after the end of the five year period or if any renewal or extension of any such permit or issuance of a new construction permit is necessary after the five year period.

[7:50-4.68 through 7:50-4.70 (Reserved)]

7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas

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

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, **except as provided in N.J.A.C. 7:50-5.30.**

(d) (No change.)

7:50-5.27 Minimum standards governing the distribution and intensity of development and land use in Pinelands Villages and Towns

(a) (No change.)

(b) No residential dwelling units **or nonresidential use** shall be located in a parcel of less than one acre unless served by a centralized waste water treatment plant.

(c) Any municipal variance approval which grants relief from density or lot area requirements shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance.

7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

(a) Any use may be permitted in a Regional Growth Area, provided that:

1.-3. (No change.)

4. Any [local] **municipal** variance [for an approval of residential development approved at a] **approval which grants relief from** density **or lot area requirements** [which exceeds the maximum permitted in that zone] shall require that Pinelands Development Credits be used for all dwelling units [which exceed the maximum otherwise] **or lots in excess of that** permitted **without the variance.**

5. (No change.)

6. Any [local] **municipal** variance for an aproval of nonresidential development in a zone in which **the approved** nonresidential development is not otherwise permitted, and in which density may be increased through the use of Pinelands Development Credits pursuant to (a)3ii above shall require that Pinelands Development Credits be used at the maximum rate permitted for the zone in which the development is located.

7. (No change.)

(b) No residential dwelling unit **or nonresidential use** shall be located on a parcel less than one acre unless served by a centralized waste water treatment plant.

[7:50-5.30 Minimum Standards for Transferring and Clustering Residential Development Rights in Protection Area Municipalities

(a) Each municipality with land in the Protection Area shall establish within said area a mechanism to transfer or cluster development rights granted pursuant to N.J.A.C. 7:50-4.66 provided, however, that Forest Areas and Agricultural Production Areas shall not be designated to receive rights transferred from other management areas. No municipality shall be required to plan for or accept such rights emanating from beyond its jurisdiction. If a municipality elects to institute a clustering program, the areas in which clustering is to occur must contain at least 500 acres of contiguous land which is accessible to areas of existing growth and development and which does not exhibit any of the following characteristics:

1. Wetlands as defined in N.J.A.C. 7:50-6, Part I;

2. Somewhat excessively and excessively drained soils as delineated on Plate 9;

3. Lands which recharge to ground water aquifers as identified by a depth of the unsaturated zone of 20-30 and 30-40 feet on Plate 4, except as underlain by clay aquiclude;

4. Extreme fire hazard as depicted on Plate 11;

5. Active agricultural use with a preferential tax assessment under the provisions of the Farmland Assessment Act of 1964;

6. Depth to seasonal high water table of less than five feet as delineated on Plate 7;

7. Drainage basins of first order streams as identified on USGS 7½ foot maps;

8. Basins of streams entering public lands which are managed for resource protection of recreation;

9. Active cranberry bogs and areas which drain to active cranberry bogs;

10. Unique plant communities or the minimum forest corridor area as delineated on the Special Areas Map (Figure 7.1); and

11. Flood-prone areas designated under the federal flood insurance programs.]

7:50-5.30 Development transfer programs in Forest Areas and Rural Development Areas

(a) Each municipality with land in either a Forest Area or a Rural Development Area shall establish within said area or areas a pro-

gram which permits residential development on otherwise undersized lots if other land, equivalent to that needed to meet the assigned density, is protected through a permanent deed restriction.

(b) The density transfer programs shall adhere to the following minimum standards:

1. No lot less than one acre can be developed;

2. All parcels involved in the density transfer shall be located within the same Pinelands management area and within the same municipal zoning district;

3. The total acreage of the parcels involved in the density transfer shall at least equal the density required for that zoning district; and

4. Any parcel whose acreage is being utilized to meet the density requirement but which will not be developed shall be permanently dedicated as open space through recordation of a restriction on the deed to the property with no further development permitted except agriculture, forestry and low intensity recreational use.

(c) A municipality may adapt the program to its particular circumstances by either identifying specific areas to receive the development transfers or excluding certain areas from the program considering:

1. Land ownership and subdivision patterns;

2. Infrastructure availability;

3. Environmental constraints; and

4. Protection of important natural resources.

(d) The Pinelands Commission shall not approve any transfer program which:

1. Has extremely limited applicability because of ownership and subdivision patterns or environmental constraints; or

2. Negatively impacts important natural resources including critical subbasins or publicly managed conservation lands.

7:50-5.32 Special provisions for cultural housing

(a) (No change.)

(b) Residential dwelling units on a lot smaller than 3.2 acres existing as of February 8, 1979 or created as a result of an approval granted by the Pinelands Development Review Board or by the Pinelands Commission pursuant to the Interim Rules and Regulations prior to January 14, 1981 which otherwise meets the standards of (a) above provided that:

1. The lot contains at least 1.0 acres;

2. The applicant qualifies for and receives a variance from the 3.2 acre lot size requirement from the municipality in which the lot is located;

3. The applicant acquires and redeems 0.25 Pinelands Development Credits in addition to the reduction in the Pinelands Development Credit allocation that will result from the development of the dwelling unit pursuant to N.J.A.C. 7:50-5.43(b)3; and

4. Any Pinelands Development Credits allocated to the lot are reduced pursuant to N.J.A.C. 7:50-5.43(b)3.

7:50-6.13 [Public] **Linear** improvements

(a) Bridges, roads, trails and utility transmission and distribution facilities **and other similar linear facilities** shall be permitted in wetlands provided that:

1. There is no feasible alternative route [or site] for the facility that does not involve development in a wetland or, if none, that another feasible route [or site] which results in less significant adverse impacts on wetlands does not exist;

2. The need **for the proposed linear improvement** cannot be met by existing facilities or modification thereof;

3. The use represents a need which overrides the importance of protecting the wetland;

4. Development of the facility will include all practical measures to mitigate the adverse impact on the wetland; and

5. The resources of the Pinelands will not be substantially impaired as a result of the facility and its development **as determined exclusively based on the existence of special and unusual circumstances.**

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Policies and Procedures Pertaining Strictly to County Community Colleges

Regulations for New Jersey Community Colleges

Proposed Readoption With Amendments: N.J.A.C. 9:4

Authorized By: Board of Higher Education,
Edward D. Goldberg, Chancellor and Secretary.

Authority: N.J.S.A. 18A:64A-7.

Proposal Number: PRN 1991-431.

Submit comments by September 18, 1991 to:

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

The agency proposal follows:

Summary

In accordance with the provisions of Executive Order No. 66(1978), the policies and procedures pertaining strictly to county community colleges, N.J.A.C. 9:4, will expire on October 30, 1991.

The Board of Higher Education, on May 17, 1991, approved noticing the readoption, with proposed amendments, in the New Jersey Register for comment in accordance with the requirements of the Administrative Procedures Act. The Board has reviewed N.J.A.C. 9:4 and has determined that the rules are necessary, reasonable and proper for the purpose for which they were originally promulgated.

Subchapter 1 regulates the general policy, governance and administration of the county colleges and includes organization and administration, chargeback, educational programs, Curriculum Coordinating Committee, evaluation, personnel, standards for presidential searches, physical facilities, admissions and sessions. The rules in N.J.A.C. 9:4-1 are being proposed for readoption with one amendment, as discussed below.

N.J.A.C. 9:4-1.12(g) states that any construction project that involves the renovation, rehabilitation, or alteration of existing facilities, the total project cost of which does not exceed one percent of the net investment of the college's physical plant or $500,000, whichever is less, and is not being funded in whole or in part with State funds, may proceed with the approval of the board of trustees of the college. The proposed amendment will enable county college boards of trustees to proceed when the total cost of the project does not exceed $1,000,000. Increased costs of typical facilities renovations and improvements justify the proposed amendment. The statute governing county community colleges does not stipulate the dollar threshold for approval of construction projects, therefore enabling the proposed amendment.

Subchapter 2 establishes general and specific standards for the conduct of trustees of the county community colleges and commissions in a code of ethics. Subchapter 2 is being proposed for readoption without amendments.

Subchapter 3 establishes auditing and accounting standards for the county community colleges. The subchapter is being proposed for readoption with amendments, as discussed below.

N.J.A.C. 9:4-3.1(a) requires the accounting system and reports of a county college to be maintained in accordance with Chapter 5 of College and University Business Administration (1982) published by the National Association of College and University Business Officers. The proposed amendment deletes reference to a specific year of publication, requiring instead that the colleges follow the most recent edition. The revision will eliminate the need to seek a regulatory change every time a new edition is published.

N.J.A.C. 9:4-3.1(c) requires each county college to file its annual audit of the previous fiscal year by October 1. The proposed amendment will change the due date of annual audits to November 1. Under the current rule, auditors conduct their activities during last August and early September, the busiest time of the year for the financial staffs of the

colleges. The proposed amendment will have no impact on the Department of Higher Education or its activities.

Subchapter 4 is reserved, while subchapter 5 governs the procedures to be used by the county colleges in the event it becomes necessary to reduce the number of tenured faculty or multi-year contract employees of a college due to a fiscal crisis, a natural diminution in the number of students in a program or a reduction in programs at the institution. Subchapter 5 is being proposed for readoption without amendment.

Subchapter 6 establishes tenure policies for county community college faculty. It is being proposed for readoption without amendment.

Subchapter 7 regulates policy for professional employees of the county community colleges including academic rank for non-teaching personnel, non-faculty contracts, and career development. Subchapter 7 is being proposed for readoption without amendment.

Subchapter 8 establishes rules governing the county college contracts law and is being proposed for readoption without amendment.

Social Impact

N.J.A.C. 9:4 has enabled the Department of Higher Education to ensure uniformity in the county colleges' compliance with ethical standards for boards of trustees, accounting procedures, employment policies and contract law. The proposed readoption will assure that the Department of Higher Education may continue its statutory mandate.

The proposed amendments will benefit the colleges by permitting them the flexibility to respond to their clients' needs.

Economic Impact

The rules proposed for readoption largely represent qualitative standards which do not result in costs to the county colleges or the general public. Some of the rule requirements will cause county colleges to incur administrative costs in the preparation and/or submission of documents. County colleges are required to submit certain documents to the Board of Higher Education, including trustee meeting minutes, a statement of philosophy, a continuous evaluation plan, an annual report of the president to the Board of Trustees, a long-range building plan, an annual budget and audit, and a tuition schedule. Written policies on personnel and interfund expenditures and transfers must be established by the Board of Trustees.

The rules also impose a mandatory accounting system, provide personnel records maintenance standards and establish guidelines for chargebacks and faculty and non-faculty employment. While the precise economic impact of the requirements is not readily determinable, their purpose is to promote an efficient and effective system of county college education.

The proposed amendment to N.J.A.C. 9:4-1.12(g) may result in a savings in administrative costs to the college because there would be no need to develop planning documents for construction proposals whose costs are no less than $500,000 nor more than $1 million.

The proposed amendment to N.J.A.C. 9:4-3.1(c) may result in a reduction in costs which are associated with the colleges auditing process because the filing of a completed audit report is being extended by one month.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed readoption with amendments does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendments specifies the policies and procedures pertaining strictly to county community colleges.

Full text of the proposed adoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:4.

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

9:4-1.12 Physical facilities

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

(g) Any construction project that involves the renovation, rehabilitation, or alteration of existing facilities, the total project cost of which does not exceed one percent of the net investment of the college's physical plant as reported in the college's current audited financial statements or [$500,000] **$1,000,000**, whichever is less, and which is not financed in whole or in part by State funds may proceed with the approval of the college board of trustees.

9:4-3.1 Accounting **and** finances

(a) The accounting system and reports of a county college shall be maintained in accordance with Chapter 5 of **the most recent edition of** College and University Business Administration [(1982)] published by the National Association of College and University Business Officers, One Dupont Circle, Washington, D.C. 20036 and any subsequent revisions thereof except where otherwise specifically required by the regulations. Each college shall adopt a system of accounts consistent with the standards and guidelines of the American Institute of Certified Public Accountants. Costs borne by the State and county on behalf of the college shall not be reflected on the financial statements and related reports of the college.

(b) (No change.)

(c) Not later than [October 1] **November 1**, each county college shall file with the Chancellor of Higher Education an audit of the college's accounts and financial transactions for the previous fiscal year, together with a copy of the auditor's management letter as soon as it is available. The management letter shall include, but not be limited to, all material comments, findings, and recommendations resulting from the audit engagement, including those concerning internal controls, administrative controls, and other financial matters. Each college shall also file an audit of student enrollment by such date as the Chancellor shall establish. These audits shall be conducted by a certified public accountant of New Jersey. The audits shall be in accordance with AICPA standards and must include compliance with all county college regulations. A college shall every five years either change certified public accounting firms or within the same firm change account partners and complete auditing staff. For funds allocated under P.L. 1981, c.329 and designated as categorical funding, the auditor shall separately certify that at least a corresponding level of expenditures have been made out of the current operating fund for one or more of the designated purposes outlined in the annual funding formula approved by the Board of Higher Education.

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

CORRECTIONS

(a)

THE COMMISSIONER

Mail, Visits and Telephone
Identification of Sender of Outgoing Correspondence
Proposed Amendment: N.J.A.C. 10A:18-2.9

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1991-423.

Submit comments by September 18, 1991 to:

Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:18-2.9 to add a new subsection (d) which will require all outgoing correspondence to be plainly marked with the name of the correctional facility. This amendment is being proposed in order to caution merchants or other persons who might accept orders for merchandise or requests for funds, that the correspondence has come from a prison inmate.

Social Impact

A number of merchants and other persons have been victimized by inmates who write to them to solicit funds or to order merchandise for which no payment is made. This has occurred because the recipient of the correspondence order has been unaware that the sender is a correctional facility inmate. By marking each envelope with the name of the

correctional facility, it is hoped that such fraudulent activities will be deterred.

Economic Impact

The proposed amendment will assist merchants and other members of the general public to avoid economic loss caused by inmates who solicit funds or order merchandize for which they do not pay. It may also assist the New Jersey Department of Corrections in reducing litigation which involves such losses. Implementation of this amendment will not result in any direct cost, other than a hand-stamping tool or the cost of adding printing of the correctional facility name to the envelopes.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment impacts on inmates and the New Jersey Department of Corrections and has no effect on small businesses.

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

10A:18-2.9 Identification of sender of outgoing correspondence

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

(d) The full name of the correctional facility shall be clearly stamped or printed in the upper left corner of all outgoing envelopes from inmates.

LAW AND PUBLIC SAFETY

(a)

BOARD OF PHARMACY

Prescriptions and Medication Orders Transmitted by Technological Devices

Proposed New Rule: N.J.A.C. 13:39-5.8

Authorized By: Board of Pharmacy, H. Lee Gladstein, Executive Director.

Authority: N.J.S.A. 45:14-26.2 and 45:14-36.1.

Proposal Number: PRN 1991-426.

Submit written comments by September 18, 1991 to:

H. Lee Gladstein, Executive Director
Board of Pharmacy
P.O. Box 45013
Newark, New Jersey 07101

The agency proposal follows:

Summary

Major advances in communications technology, offering the potential for improved efficiency of health care services, require that the Board of Pharmacy address the use of technological devices such as the facsimile (FAX) machine for the transmittal of prescriptions and medication orders. The Board is therefore proposing a new rule, N.J.A.C. 13:39-5.8, entitled "Prescriptions and medication orders transmitted by technological devices."

Under subsection (b), retail pharmacies and institutional pharmacies dispensing prescriptions as permitted by N.J.S.A. 45:14-32 may, subject to certain conditions, accept prescriptions transmitted by technological device for any medications other than schedule II controlled dangerous substances. The conditions under which these prescriptions may be filled include the requirement that an original signed prescription be presented to a pharmacist before any prescriptions for schedules III, IV, and V substances may be released to a patient. This requirement will ensure that all prescriptions for controlled dangerous substances are properly documented and verified. The requirement that all other prescriptions must be reduced to hard copy within 24 hours and placed in the permanent prescription file assures proper documentation and protects against the fading of the paper used to receive the prescription. The Board is specifically prohibiting the filling of prescriptions for schedule II substances transmitted by technological device consistent with its responsibility to maintain strict control over the dispensing of controlled dangerous substances.

Under subsection (c), a registered pharmacist who is authorized to fill in-patient medication orders in an institutional pharmacy may accepy all in-patient medication orders, including orders for schedule II substances, which have been transmitted by technological device.

Subsections (d) and (e) set forth the standards of practice to be followed by the pharmacist in his or her use of a technological device. Finally, in order to protect a patient's freedom of choice in selecting a pharmacy, subsection (f) prohibits a pharmacy from providing a technological device to, or accepting a technological device from, a medical practitioner and subsection (g) requires a pharmacist to ensure that the transmission of prescriptions by technological device occurs only at the option of the patient to a pharmacy of the patient's choice.

Social Impact

Because the Board is permitting a registered pharmacist to accept for dispensing certain prescriptions and medication orders transmitted by technological device, patients may find it possible to receive more prompt and efficient service. This rule will also impact favorably on prescribers as it will allow greater flexibility and speed in the filling of medication orders and prescriptions. Since the rule contains many safeguards regarding the use of technological devices, it will enable the Board of Pharmacy to fulfill its statutory obligation to protect the public health and welfare.

Economic Impact

The economic impact of this proposed rule will be felt only by those licensees who choose to purchase technological devices for the receipt of prescriptions. The cost of equipment will be the only major expense involved and that cost is optional to the licensee.

Regulatory Flexibility Analysis

The New Jersey Regulatory Flexibility Act defines a small business as "any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full time employees." (N.J.S.A. 52:14B-17). On the assumption that this Act is applicable to all 9,827 licensees of the Board of Pharmacy and to all 1,940 currently licensed pharmacies, the following statement is relevant:

This proposed new rule does not place any undue recordkeeping or reporting requirements upon small businesses. It does not require purchase of any device; however, if a licensee chooses to use a technological device for the receipt of certain prescriptions, the licensee will be responsible for maintaining a hard copy of the prescription in the permanent prescription file. The cost is minimal. No additional professional service will be required to comply with the proposed rule. Compliance requirements are in keeping with the standards of the practice of pharmacy; for this reason, no exemption for any small business is possible.

Full text of the proposal follows:

13:39-5.8 Prescriptions and medication orders transmitted by technological devices

(a) A pharmacist may, subject to the conditions set forth in this section, accept for dispensing a prescription or a medication order transmitted by a facsimile (FAX) machine or other technological device as approved by the Board.

(b) A registered pharmacist at a retail pharmacy and a registered pharmacist filling prescriptions under an institutional permit for employees of the institution and their dependents and for outpatients who are treated by staff members of the institution in their respective clinics, as permitted pursuant to N.J.S.A. 45:14-32, may accept for dispensing prescriptions for all substances other than Schedule II controlled dangerous substances which have been transmitted by technological device, under the following conditions only:

1. Before releasing to the patient any prescription medication for a controlled dangerous substance listed in schedules III, IV or V, the pharmacist shall obtain and file the original signed prescription.

2. The pharmacist shall, within 24 hours, reduce to hard copy, that is, record in his or her handwriting or enter into a computer, all prescriptions received by technological device other than prescriptions for schedules III, IV and V controlled dangerous substances and shall place the copy in the permanent prescription file records.

(c) A registered pharmacist who is authorized to fill in-patient medication orders, as defined in N.J.A.C. 13:39-9.1, in an institutional pharmacy may accept all in-patient medication orders, includ-

ing orders for schedule II substances, which have been transmitted by technological device.

(d) Whenever a pharmacist has reason to question the accuracy or authenticity of a prescription or medication order transmitted by technological device, the pharmacist shall verify the transmission directly with the prescribing practitioner.

(e) It shall be deemed professional misconduct for a pharmacist to use a technological device in order to circumvent his or her responsibilities with regard to documenting, authenticating and verifying medication orders and prescriptions or in order to circumvent other standards of pharmacy practice.

(f) No licensee or permit holder registered under N.J.S.A. 45:14-1 et seq. shall under any circumstances provide a technological device to, or accept a technological device from, any practitioner licensed to write prescriptions.

(g) No licensee or permit holder shall enter into any agreement with an authorized practitioner which denies the patient the right to have his or her prescription transmitted by technological device to a pharmacy of the patient's choice.

(a)

DIVISION OF CONSUMER AFFAIRS BUREAU OF EMPLOYMENT AND PERSONNEL SERVICES

Personnel Services

Proposed New Rules: N.J.A.C. 13:45B

Authorized By: Jan Gavzy, Acting Director, Division of Consumer Affairs.

Authority: N.J.S.A. 34:8-43 et seq. and 56:8-1.1.

Proposal Number: PRN 1991-425.

A **public hearing** concerning the proposal will be held on Monday, September 16, 1991, at 9:00 A.M. at:

Richard J. Hughes Justice Complex
4th Floor, Conference Center
Trenton, New Jersey

Persons wishing to speak at this hearing should provide written notice to the Bureau, at the address set forth above, no later than September 13, 1991. So that the Bureau may determine the sequence and identity of speakers who will provide it with relevant, non-cumulative comments and data, the notice must include a synopsis of the proposed statement and must specify the numerical section of the regulation to which the statement relates.

Submit written comments by September 18, 1991 to:

Charles Tantum, Chief
Bureau of Employment and Personnel Services
P.O. Box 45028
Newark, New Jersey 07101

The agency proposal follows:

Summary

In order to implement both P.L.1989, c.331 and the Supreme Court of New Jersey's decision in the case of *Accountemps Division of Robert Half of Philadelphia, Inc., v. Birch Tree Group Ltd.*, 115 N.J. 614 (1989), the Division of Consumer Affairs is proposing to repeal N.J.A.C. 13:45B-1 through 5 and to substitute new subchapters 1 through 13. This proposed new chapter updates and reorganizes the entire body of rules dealing with employment agencies and other entities offering various types of personnel services in order to conform with present law.

First, since the Supreme Court has ruled in the *Accountemps* case that out-of-State agencies conducting business in New Jersey must comply with State licensing requirements, the proposed rules will now apply to all private entities offering employment and personnel services in this State, wherever located. Also, the new rules reflect the fact that P.L.1989, c.331 mandates registration of many formerly unregulated suppliers of personnel services, such as consulting firms and job listing services.

Subchapter 1 of the proposed new rules defines essential terms such as "employer" and "job seeker," as well as the various categories of suppliers of employment and personnel services. Most definitions incorporate statutory wording.

Subchapter 2 sets forth all requirements for an employment agency owner's and an employment agent's license. The subchapter makes clear that both an agency license and an agent's license are required if the owner of an agency personally offers help or employment services or personally manages the business. License qualifications, license-holder obligations, bonding, recording, contract and posting requirements are detailed as is the filing of a fee schedule with the Bureau of Employment and Personnel Services (BEPS) in the Division of Consumer Affairs. (The Bureau was formerly called the Private Employment and Temporary Help Services Section.)

Subchapter 3 is entitled "Business Locations" and provides employment agencies with rules as to primary and secondary locations. A special permit for a secondary location must be issued by the Bureau.

Subchapter 4 sets forth examination subjects and specific rules for various special classifications, such as employment agents or agencies offering nursing or health care services, and agents who offer certain types of career counseling.

Subchapter 5 covers the operation of temporary help service firms. These rules are proposed pursuant to N.J.S.A. 56:8-1 et seq. (the Consumer Fraud Act) for independent firms as well as firms operated by a registered entity, or pursuant to N.J.S.A. 34:8-43 et seq. in the case of temporary help services integrated with licensed employment agencies.

Subchapter 6, Entertainment Agencies, substantially repeats the present subchapter 5 but has been recodified.

Subchapter 7 contains the fee schedule that presently appears in the Administrative Code as subchapter 6, with three additions: a $25.00 examination fee, a $25.00 late fee for renewals, and a $10.00 special permit fee.

Subchapter 8 concerns out-of-State agencies; it directs each out-of-State enterprise offering employment and personnel services in New Jersey to comply with the provisions of this chapter. Also, each out-of-State holder of a New Jersey employment agency license or out-of-State registrant must file the name and address of a New Jersey agent for service of process.

Consulting firms, career consulting or outplacement organizations, and prepaid computer job matching or job listing services are required under the new law, P.L.1989, c.331, to be registered in New Jersey rather than licensed. These entities are listed in subchapters 9, 10 and 11, respectively, and information regarding application for registration is set forth, as well as bonding requirements.

Subchapter 12, Advertising and Solicitations, provides rules that relate to those activities.

Subchapter 13, Violations, sets forth the powers of the Director to enforce the Act and this chapter, penalties, and standards for the issuance and renewal of licenses and registrations.

Social Impact

Since the proposed new rules clarify, reorganize and update the requirements for licensure of personnel and the conduct of employment agencies, and also set forth requirements for other enterprises offering employment and personnel services, all persons using the services of such firms should benefit. The rules are intended to achieve orderly and proper procedures and to assure the competence of personnel working in employment services, thus providing increased safeguards for both jobseekers and potential employers. The regulatory structure has been designed to protect all parties in the job search process. For example, a copy of the basic law and these rules must be made available to jobseekers by an employment agency, if requested, and contracts must be in writing and include certain basic terms. Confusion as to legal rights and contract terms will be thereby lessened for all concerned.

The fact that in-State activities of out-of-State firms will now be uniformly regulated should result in greater accountability to New Jersey consumers. Also, detailed rules for those firms offering specialized services, such as nursing personnel, have been designed to reflect high standards. Maintenance of these standards will impact positively upon users of specialized personnel services.

The Division believes that the rules will be effective in addressing the several goals of greater protection of consumers, compliance with the Supreme Court decision bringing out-of-State firms within the regulatory framework, and efficient administration by the Division's Bureau of Employment and Personnel Services.

Economic Impact

These rules are being proposed in order to provide a stronger, modernized, more protective regulatory scheme pursuant to P.L.1989,

c.331 as well as to implement the Supreme Court of New Jersey's *Accountemps* decision.

As a result of the proposed new rules, increased economic impact may be felt by employment agencies that supply nursing and health care personnel because the minimum standards now require specific acts, not merely the employment of a registered nurse as supervisor. Those acts, such as developing a procedural manual and maintaining written job descriptions, will necessitate considerable administrative time. Also, certain expenses are entailed in the posting and record requirements for employment agencies. Furthermore, legal assistance may be necessary to redraft contracts for compliance with the new rule on agreements. The greatest impact will be experienced by out-of-State agencies which must now be licensed by New Jersey and bonded if they intend to offer employment or personnel services in this State. The fees remain the same as listed in the present subchapter 6 (which was adopted effective June 18, 1990), with the addition of three fees for BEPS services: an examination fee of $25.00, a late fee for renewals of $25.00, and a $10.00 special permit fee.

Eventually, increased expenses for entities supplying employment and personnel services will undoubtedly be reflected in higher charges to their clients, but their expenses created by these rules are unavoidable if the statutory mandate and the Court ruling in *Accountemps* are to be carried out.

Regulatory Flexibility Analysis

The Bureau of Employment and Personnel Services now licenses 1,728 in-State employment agencies. Potential registered entities are estimated to number 759. Expansion of coverage of rules to out-of-State firms pursuant to the Supreme Court decision in *Accountemps v. Birch Tree Group Ltd.*, will add further hundreds of licensees and registrants, the majority of them small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, since the Regulatory Flexibility Act applies only to businesses resident in New Jersey, analysis of the impact of these rules upon out-of-State entities is not required.

The proposed rules add few compliance requirements not already mandated by the statute or by rules presently in place, and one major requirement—submission of monthly statistical reports—is eliminated by this proposal. An agency or agent must, however, report significant changes in information related to licensure, such as change of address or conviction of a crime. The Division believes that this is not a burdensome reporting requirement, and that the three additional fees (for examination, late renewal, and special permit) are not excessive.

There is also a posting requirement: A certified abstract of the Act and these rules will have to be posted in a prominent place, along with the employment agency's fee schedule; full copies must be made available to clients, if requested. The records requirement is substantially unchanged from the present rules, and generally comports with standard business practices. However, N.J.A.C. 13:45B-2.5 specifies certain terms which must be included in every written agreement between the job seeker and the agency. While none of these inclusions is complex, many agency owners may want a lawyer to review their contract or to draft required provisions. The Division believes that expenditure for such professional services is balanced by the urgent need for complete understanding of the agreement and contractual protection for all parties concerned.

No initial capital costs are imposed by the proposed rules, and continuing costs—beyond the statutorily-created bonding, licensing and registration expenses—are confined to photocopying expenses for full copies of the statute and regulations to be supplied to clients upon request. In the case of agencies offering nursing services and/or health care services, additional administrative time to perform specific supervisory tasks will be needed. Finally, all enterprises offering employment and personnel services must retain copies of advertisements and solicitations for possible inspection by the Bureau. Such retention is within the norms of standard business practice and imposes no unusual burden.

Since the new rules are intended to safeguard the welfare of all consumers and providers of employment and personnel services, the Division believes any additional expenses to be well-justified. No exemption based on the size of the licensed or registered enterprise is possible, since it would defeat the purpose of the legislation to exert reasonable control over this industry for the protection of the public.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:45B.

Full text of the proposed new rules follows:

CHAPTER 45B
PERSONNEL SERVICES

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:45B-1.1 Purpose and scope

(a) The rules contained in this chapter implement N.J.S.A. 34:8-43 et seq. and N.J.S.A. 56:8-1.1, and regulate the operation in the State of New Jersey of persons offering, promising, attempting to procure and/or supplying, procuring, obtaining or assisting in procuring or obtaining employment or personnel services or products.

(b) This chapter shall apply to any person engaging in any of the activities regulated by N.J.S.A. 34:8-43 et seq., including persons whose residence or principal place of business is located outside of this State.

13:45B-1.2 Definitions

The following words and terms, when used in this chapter and in license application forms and licenses, shall have the following meanings unless the context clearly indicates otherwise:

"Accepting employment" means that a job seeker has entered into an agreement with an employer which includes:

1. The terms and conditions of employment;
2. The salary or wages and any benefits to be paid to the job seeker as compensation for employment; and
3. The date, time and place employment will commence.

"Act" means P.L. 1989, c.331, (N.J.S.A. 34:8-43 et seq.), an Act regulating certain employment agencies, services and firms, supplementing Title 52 of the Revised Statutes and repealing P.L. 1951, c.337 and Section 6 of P.L. 1981, c.500.

"Advertisement" means any advertisement as defined by N.J.S.A. 56:8-1(a) of any service or product, including any statement appearing in a newspaper, periodical, pamphlet, circular, or other publication, in direct mail literature, on a display or any exterior or interior sign, or radio or television broadcast, or transmitted by telecopier, telex, or telephone, that offers a service or product for sale, whether or not the statement includes a price.

"Agent" means any individual who performs any function or activity for or on behalf of any person, the purpose of which is to provide services or products to individuals seeking employment, career guidance or counseling, or employment-related services or products.

"Agent-registrant" means a person authorized and empowered by the owner of a service registered pursuant to N.J.S.A. 34:8-43 et seq. to solicit business or otherwise act as an agent of the registered service.

"Applicant" means any person applying for licensing or registration under the Act.

"Bona fide job order" means an accurate written or recorded description of a job or jobs to be filled, with an address or location where the job is to be performed, the range of salary, the conditions of employment offered, the date of order, the name of the individual placing the order, and the name of the interviewer to be contacted by the job seeker.

"Booking agency" means any person who procures, offers, promises, or attempts to procure employment for performing artists, or athletes, not under the jurisdiction of the Athletic Control Board, and who collects a fee for providing those services. Under N.J.S.A. 34:8-43 et seq., a booking agency is licensed as an employment agency.

"Bureau" means the Bureau of Employment and Personnel Services, a component of the Division of Consumer Affairs within the Department of Law and Public Safety.

"Career consulting or outplacement organization" means any person required to be registered under N.J.S.A. 34:8-65, providing or rendering services, with or without related products, in connection with advice, instruction, analysis, recommendation or assistance concerning past, present, or future employment or compensation for an individual's time, labor or effort where the products or services are paid for by the job seeker.

"Career counseling service" means any person who, through its agents or otherwise, procures or represents itself as procuring employment or employment assistance or advertises in any manner the following services for a fee paid by the job seeker: career counseling; vocational guidance; aptitude, achievement or vocational testing; executive consulting; personnel consulting; career management, evaluation, or planning; the development of resumes and other promotional materials relating to the preparation for employment; or referral services relating to employment or employment qualifications. Pursuant to N.J.S.A. 34:8-43 et seq., a career counseling service is licensed as an employment agency.

"Chief" means the Chief of the Bureau of Employment and Personnel Services.

"Integrated" means sharing a common business structure as well as any one or more of the following: the same trade name, office space, management, personnel, advertising, business and personnel records, office systems and/or equipment, such as telephone and/or telecopier.

"Consulting firm" means any person required to be registered under N.J.S.A. 34:8-64 who: identifies, appraises, refers or recommends individuals to be considered for employment by the employer; and is compensated for services solely by payments from the employer and is not in any instance, compensated, directly or indirectly, by an individual who is identified, appraised, referred or recommended. (Consulting firms are commonly known as "executive search firms" or "headhunters.")

"Director" means the Director of the Division of Consumer Affairs or his or her designee.

"Division" means the Division of Consumer Affairs, Department of Law and Public Safety, 1207 Raymond Boulevard, Newark, New Jersey 07102.

"Employer" means a person seeking to obtain individuals to perform services, tasks, or labor for which a salary, wage, or other compensation or benefits are to be paid. For purposes of the Act alone, an employment agency is not an "employer," except of its own agents.

"Employment" means hiring or engaging the services of a person.

"Employment agency" means any person who, through its agents or otherwise, for a fee, charge or commission:

1. Procures, or obtains, or offers, promises or attempts to procure, obtain, or assist in procuring or obtaining employment for a job seeker or employees for an employer;
2. Supplies job seekers to employers seeking employees on a part-time or temporary assignment basis who has not filed as a temporary help service pursuant to the provisions of N.JS.A. 56:8-1.1;
3. Procures, obtains, offers, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models;
4. Acts as a placement firm, career counseling service, or resume service;
5. Acts as a nurses' registry, as defined hereinafter;
6. Places health care personnel in private homes or on private duty; or
7. Places household workers in domestic positions, including salaried "nannies" or "au pairs."

"Fee, charge or commission" means any payment of money, or promise to pay money to a person in consideration for performance of any service for which licensure or registration is required by the Act, or the excess of money received by a person furnishing employment or job seekers over what he has paid for transportation, transfer of baggage or lodging for a job seeker. "Fee, charge or commission" shall also include the difference between the amount of money received by any person who either furnishes job seekers or performers for any entertainment, exhibition or performance, or who furnishes baby sitters for any occasion, and the amount paid by the person to the job seekers, performers or baby sitters.

"Job listing service" means any person required to be registered under N.J.S.A. 34:8-66 who, by advertisement or other means, offers to provide job seekers with a list of employers, a list of job openings or a similar publication, or prepares resumes or lists of applicants for distribution to potential employers, where a fee or other valuable consideration is exacted or attempted to be collected, either directly or indirectly.

"Job order" is a request received from a client for job seekers and is recorded by the employment and personnel service in written form. The following minimum information is required to be recorded:

1. The name of the company;
2. The address of the company;
3. The name of the person placing the order;
4. The job title;
5. The salary; and
6. A brief description of the job.

"Job seeker" means any individual seeking employment, career guidance or counseling or employment-related services or products.

"License" means a license issued by the Director to any person:

1. To carry on the business of an employment agency, career counseling service, or booking agency; and/or
2. To perform, as an agent of the agency, any of the functions related to the operation of these agencies.

"Nurses' registry" means any person who operates a business which directly or indirectly procures, assigns, or supplies, or offers, arranges or attempts to procure, assign or supply temporary or permanent personnel service(s) classified as nursing and/or homemaker-home health services, and directly or indirectly receives or attempts to receive a payment, fee, charge or commission for such service(s). Under N.J.S.A. 34:8-43 et seq., a nurses' registry is licensed as an employment agency.

"Performing artists" means musical, theatrical, vaudeville, film, television, or radio performers, as well as models, whether employed or engaged individually or as a group, and athletes not under the jurisdiction of the Athletic Control Board.

"Person" means any natural person or legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof.

"Prepaid computer job matching service" means any person required to be registered under N.J.S.A. 34:8-66 who is engaged in the business of matching job seekers with employment opportunities, pursuant to an arrangement under which the job seeker is required to pay a fee in advance of, or contemporaneously with, the supplying of the matching, but which does not otherwise involve services for the procurement of employment by the person conducting the service.

"Primary location" means an address used for 90 or more calendar days by a person for the conduct of an activity regulated under the Act.

"Principal owner" means any person who, directly or indirectly, holds a beneficial interest or ownership in an applicant or who has the ability to control an applicant.

"Product" means any tangible thing that is the result of labor or effort, thus any merchandise, object, wares, goods, commodity or item offered, directly or indirectly, for sale to the public or a job seeker.

"Service" means any act offered or rendered by a person supplying employment or personnel services or products, in order to implement the provisions of an agreement between that person and a job seeker or employer.

"Temporary employment" means employment in which the duration is fixed as some definite agreed period of time or by the occurrence of some specified event, where the jobseeker is employed by a client.

"Temporary help service firm" means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in the handling of the customers' temporary, excess or special work loads, and who, in addition to the payment of wages or salaries to the employed individuals, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance; carries or is required to carry worker's compensation insurance as required by State law; and sustains

responsibility for the actions of the employed individuals while they render services to the firm's customers. This definition applies to "temporary help service firm" as the term is used in both N.J.S.A. 34:8-43 et seq. and N.J.S.A. 56:8-1.1.

SUBCHAPTER 2. EMPLOYMENT AGENCIES

13:45B-2.1 Employment agency license requirements

(a) In order to open, conduct, or maintain an employment agency, the owner shall obtain an employment agency license by application to the Director and fulfillment of all requirments for such license. In addition to any other information the Director may require, an applicant for an employment agency license shall provide:

1. The complete name, business address, and telephone number of the owner(s); if a corporation, the name, address and telephone number of its officers and directors;

2. The business structure of the agency, that is, whether it is a sole proprietorship, a partnership, or a corporation; if a corporation, the state where it is incorporated;

3. The name, address, and telephone number of the person who is to be contacted on any matter related to the Act or these rules;

4. The type of services to be provided to the public;

5. Affidavits of at least two New Jersey citizens who have known the applicant (or the chief executive officer of a corporate applicant) for at least five years, attesting to the applicant's good moral character. If an applicant finds it impossible to submit affidavits from two New Jersey citizens, the applicant may substitute affidavits of two citizens of any state who have known the applicant for at least five years. In that case, however, the applicant shall also submit an affidavit substantiating why it is impossible for him or her to obtain the character affidavits from the required number of New Jersey citizens. All affidavits shall contain the address and the telephone number of the person signing the affidavit; and

6. A disclosure statement as to whether the applicant (if a corporation, every officer and director) has ever been convicted of any crime as defined in N.J.S.A. 34:8-44a(1), (2), (3) and the nature of that crime or the equivalent under the laws of any jurisdiction.

(b) Every person, including an owner of a licensed employment agency, who places or refers jobseekers or furnishes information as to where the help or employment may be obtained, or who personally manages, operates, or carries on the business of an employment agency, shall obtain an employment agent's license by application to the Bureau and fulfill all requirements for such license.

(c) The holder of an employment agency license shall be under a continuing obligation to inform the Chief of any change in information contained in a license or license application, such as change of address, change of ownership, change of contact person, conviction of a crime, etc.

(d) An employment agency license may not be transferred by the licensee to another person or amended without the written consent of the Director, and payment of the total statutory annual fee by the new holder shall be required in order to effect the transfer, regardless of the date of original issuance or renewal.

13:45B-2.2 Posting

(a) Each employment agency shall display its license in a prominent place where it may be easily seen and read by all persons visiting the agency.

(b) Each person required to have an employment agent's license shall display such license in such place and manner as to make it easily seen and read by persons doing business with such licensee.

(c) There shall be posted in each employment agency the agency's schedule of fees, as well as a certified abstract of the Act and these rules. Such posting shall be in a manner and place as to be readily seen and readable by persons doing business with the employment agency. The employment agency shall also have full copies of the Act and these rules available for any job seeker's or employer's review. The certified abstract shall be available from the Bureau for a fee of $5.00.

13:45B-2.3 Bond required

(a) Before an Employment Agency License is issued, the applicant shall deposit with the Director an original bond in the sum of $10,000, with a duly authorized surety company as surety, to be approved by the Director.

(b) The bond shall be payable to the State of New Jersey with the condition that the person applying for the license will comply with the Act and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed person, agents, or employees, while acting within the scope of their employment, made, committed, or omitted in the business conducted under the license or caused by any violation of the Act and this chapter in carrying on the business for which the license is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in his or her name for the recovery of damages sustained by the breach.

(c) If at any time, in the opinion of the Director, the surety on any bond shall become financially irresponsible, the person holding the license shall, upon notice by registered mail, return receipt requested from the Director, provide a new bond, subject to the provisions of this section. Failure to provide a new bond within 10 days after such notice shall operate at the direction of the Director automatically as revocation of the registration. The 10 days shall begin to run on the day following the surety's receipt of the notice. However, revocation may be stayed at the discretion of the Director.

(d) If the surety contemplates cancellation of the bond, the surety shall be withdrawn upon 60 days advance written notice by registered mail to the Director, the 60 days shall begin to run on the day following the Director's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.

(e) The bond shall be retained by the Bureau until 90 days after either the expiration or revocation of the license.

13:45B-2.4 Records

(a) To effectuate the purposes of the Act, every holder of an employment agency license, as well as every representative authorized by the owner to supervise or conduct the operation of the employment agency, shall keep and maintain, readily available for inspection by the Director or the Director's duly authorized representative for a period of at least two years, the following:

1. All requests for job seekers (job orders) or applications for employment which shall include the name and address of the applicant, the date of application and the following additional information:

i. When the application is for employment, a reasonably accurate description of the types or classes of employment and such other facts as the applicant may wish to record;

ii. On the job order, the information shall include a reasonably accurate description of the job or jobs to be filled, whether the job(s) is temporary or permanent, the address or location at which the work is to be performed, the range of salary and the conditions of employment offered;

iii. Memorializations of applications for employment and/or job orders made by telephone or other oral communication, which shall be kept in writing on standard forms. Copies of these forms shall be filed with the Chief prior to their use by the employment agency. However, the written records of oral job orders may be kept in a book or binder used exclusively for such purpose; and

iv. For the purpose of convenience, there may be recorded on the application forms such additional information as is not in violation of any law of the State of New Jersey;

2. For all advertisements published or disseminated by the employment agency:

i. A record containing complete information as to the date and manner of publication, with the name of the paper, periodical or other media in or through which the advertisement was published or disseminated;

ii. Copies of advertisements published through all media, including such items as letterheads and programs; and

iii. The text of any telemarketed message, the date disseminated, and the approximate number of recipients;

3. A record of fees charged, collected, and refunded, and such accounting record as may be necessary to enable the Bureau to readily verify the record of fees charged, fees collected, and refunds made;

4. All correspondence concerning references of job seekers including written records of information secured by telephone or other oral communication. In cases where employers waive references, written records of such waivers shall be kept available for inspection by the Bureau; and

5. Copies of all contracts between job seekers or employers and the employment agency.

13:45B-2.5 Agreements; fee schedules

(a) Agreements between an employment agency and an employer or between an employment agency and a job seeker shall be in writing and shall include, but not be limited to:

i. The employment agency's fee schedule;

ii. The time at which a fee becomes due and owing to the employment agency;

iii. The manner in which the fee is to be paid, by whom, and at what intervals, if not paid in a lump sum; and

iv. The conditions under which a refund or adjustment in fee will be made, and the amount of the refund or adjustment, which may be expressed as a percentage.

(b) All agreements and writings required to complete any transaction between an employment agency and a job seeker shall comply with the Plain Language Act, N.J.S.A. 56:12-1 et seq.

(c) The employment agency shall provide each job seeker with an exact copy of every writing the job seeker has signed, and every document incorporated by reference in the written agreement between the employment agency and the job seeker. The employment agency shall also provide each job seeker with a receipt stating the name of the job seeker, the name and address of the employment agency and its agent, the date and amount of the fee and the purpose for which it was paid.

(d) Upon application for licensure, an employment agency shall file with the Bureau a copy of the form(s) of contract used or to be used for all agreements between the employment agency and job seekers.

(e) Every employment agency shall file with the Bureau, for the Chief's approval, the employment agency's proposed schedule of fees to be charged for any service rendered or product sold to job seekers. The Chief shall not approve the fee schedule unless he or she is satisfied that the fee schedule is in a form which makes the schedule reasonably understandable by job seekers, and that the fee schedule is in compliance with all applicable provisions of the Act. The schedule of fees may thereafter be changed or supplemented by filing an amended or supplemental schedule with the Bureau. The changes shall not become effective until approval has been granted by the Chief and the amended or supplemental fee schedule has been posted on agency premises pursuant to N.J.A.C. 13:45B-2.2(c). The agency shall adhere to the schedule in charging for these services or products.

(f) An employment agency shall:

1. Compute fees paid by a job seeker seeking employment on the basis of permanent employment, unless the employment is temporary employment. Where temporary employment merges into permanent employment, or where a job seeker accepts permanent employment within 30 days after the termination of temporary employment, the permanent employment may be considered the result of the references to the temporary position and the fee may be based on the permanent employment with due credit given for the payment made for the temporary employment; and

2. Not accept payment of a fee or attempt to collect any fee from a job seeker for a service rendered or product sold where employment has not been accepted except:

i. That these requirements shall not apply to any career counseling service if that service receives no prepayment for services or products and provides services or products strictly on an hourly basis, with no financial obligation required of the job seeker beyond the hourly fee for the services or products rendered. However, a career counseling service shall be licensed as an Employment Agency and shall comply with all other requirements applicable to employment agencies;

ii. Entertainment agencies which offer placement, directly or indirectly, to a performing artist may accept a fee if they adhere to the provisions of N.J.A.C. 13:45B-6. However, these agencies shall be licensed as an employment agency and shall comply with all other requirements applicable to employment agencies; and

iii. Employment agencies which offer resume services or products to a job seeker may accept a fee for these services or products if the fee for such a service or product is included on the fee schedule filed with the Bureau and the fee is not collected prior to the delivery of the product or service;

3. Not charge to a job seeker who obtains employment and who is discharged without cause or who voluntarily terminates employment for just cause more than one percent of the scheduled fee for each day worked. For purposes of this subsection, the employment agency shall repay to any job seeker so discharged or terminated any excess of the maximum fee in accordance with the fee schedule, allowing three days' time to determine that the termination was not due to any fault on the part of the job seeker. The employment agency may, however, by separate written agreement beween the employment agency and the job seeker, retain the fee or any part of the fee which has been paid for the job from which the job seeker has been discharged without cause or terminated, if the employment agency furnishes the job seeker with another job and allows due credit for the retained payment;

4. Not charge more than 30 percent of the scheduled fee to a job seeker who either fails to report for duty after accepting employment or voluntarily terminates employment without just cause within 30 days of commencement of employment; and

5. Obtain a bona fide order for employment prior to collecting any fee from a job seeker or sending out a job seeker to any place of employment. Except as may be otherwise provided in this chapter, no advance fee or monetary assessment of any kind shall be charged, demanded, collected, or received by the employment agency from a job seeker seeking employment until employment has been obtained by or through the efforts of the employment agency.

13:45B-2.6 Employment agent's license qualifications

(a) Every applicant for an employment agent's license, before being permitted to sit for the written examination as required by the Act and by this chapter, shall, by means of affidavit of the applicant and the affidavit of the holder of the employment agency license by whom the applicant is to be employed and by such other evidence as the Director may require, reasonably satisfy the Director that the applicant has, for a period of at least one year, been engaged actively, lawfully and reputably in business in the capacity of owner or employee, or in a licensed profession or occupation. The affidavits shall also show that the applicant, for a period of at least six months, has been employed in the handling of personnel problems including the securing of help for employers and jobs for employees in the types or classes of occupations for which application is made. The applicant shall also submit to the Bureau:

1. Evidence of graduation from a duly recognized high school or a graduate equivalency diploma; and

2. Affidavits attesting to the applicant's good moral character from two New Jersey citizens who have known the applicant for at least a year; if an applicant finds it impossible to submit such affidavits from two New Jersey citizens, the applicant may substitute affidavits from two citizens of any state who have known the applicant for at least a year. In that case, however, the applicant shall also submit an affidavit substantiating why it is impossible for him or her to obtain the character affidavits from the required number of New Jersey citizens. All affidavits shall include the addresses and telephone numbers of the affiants.

(b) Whenever the application is for an employment agent's license which includes "nursing" or "nursing and/or health care services" as a type or class of services which is to be provided, the applicant

shall, before the license is approved, submit to the Chief evidence establishing that at least one agent on premises possesses a current, valid license to practice as a registered nurse in the State of New Jersey.

(c) If the holder of an employment agent's license has his or her employment terminated, the licensed agency's owner shall notify the Chief within five business days of such termination. Upon such notification, the Chief shall cancel the employment agent's license held by that person; the person is nevertheless entitled to a new license for the unexpired term of the old license, upon payment of the transfer fee, if employed elsewhere by a properly-licensed employment agency owner. However, the Director may refuse to issue the new license for good cause consistent with the provisions of the Act.

(d) The holder of an employment agent's license shall be under a continuing obligation to inform the Chief of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.

13:45B-2.7 Employment agent's conditional license qualifications

(a) For the purpose of enabling individuals to secure experience and knowledge to qualify them as an agent, the Director may issue a conditional license authorizing the holder to perform functions requiring a license, when acting under the direct supervision of a duly qualified licensed agent.

(b) Before being granted an agent's conditional license, an applicant for such license shall, by means of affidavit of the applicant and upon such other evidence as the Director may reasonably require, establish that the applicant has at least one year of business experience or equivalent education. The applicant shall also submit to the Bureau:

1. Evidence of graduation from a duly recognized high school or a Graduate Equivalency Diploma;

2. Two affidavits attesting to the applicant's good moral character from two New Jersey citizens who have known the applicant for at least a year; if an applicant finds it impossible to obtain affidavits from two New Jersey citizens, the applicant may substitute affidavits of two citizens of any state who have known the applicant for at least five years. In that case, however, the applicant shall also submit an affidavit substantiating why it is impossible for him or her to obtain the character affidavits from the required number of New Jersey citizens. All affidavits shall include the addresses and telephone numbers of the affiants;

3. The name, business address, and employment agency license number of the licensee who will be supervising the applicant; and

4. The name and license number of the duly licensed agent on premise who will supervise the conditional agent.

(c) The holder of an agent's conditional license shall be under a continuing obligation to inform the Chief of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.

(d) Whenever the application is for an agent's conditional license which includes "nursing" and/or "health care services" as a type or class of services which is to be provided, the applicant shall, before such license is issued, submit to the Director evidence establishing that at least one agent on premises possesses a current, valid license to practice as a registered nurse in the State of New Jersey.

(e) A conditional license remains effective for one year only; the examination for unrestricted licensure shall be taken within the final six months of that year.

13:45B-2.8 Identification and introductory card

(a) The employment agency shall furnish to each job seeker who is sent to a prospective employer for an interview for future employment in a job for which no order has been given to the agency, a card or paper containing the name and address of the agency, the names of the job seeker and prospective employer, the address of the prospective employer and the statement, "This will introduce _____ (name of job seeker), who is referred to you as per your order for _____ (job description)." The employment agency may add any other particulars the agency may determine are necessary, but on every card or paper, there shall be printed in bold-faced type the following:

"This card of introduction is given to _____ (name of job seeker) with the understanding that there is no obligation to this employment agency for any fee until, as a result of the services rendered by the agency, _____ (name of job seeker) is employed in a job with respect to which the agency received a bona fide order from an employer.
(name of job seeker) has agreed to pay the fee under the foregoing conditions if the fee is not paid by an employer."

(b) The employment agency shall require all job seekers applying for positions of trust or work with private families to furnish the agency with names and addresses of individuals available as character references, and shall communicate, orally or in writing, with at least one of the individuals given by the job seeker as a character reference.

1. If the job seeker has not furnished the name of any individuals available as character references, or if no favorable statement has been received from a character reference, the employment agency shall so advise the prospective employer to whom the job seeker is referred. This information shall be written upon the referral slip given by the employment agency to the job seeker to present to the prospective employer. The written result of the verification to determine the character and responsibility of any job seeker shall be kept on file in the employment agency subject to examination by the chief.

2. If the employer voluntarily waives, in writing, a verification of references, the licensed employment agency shall not be required to make the verification.

SUBCHAPTER 3. BUSINESS LOCATIONS

13:45B-3.1 Business locations; special permits

(a) Any building or part thereof in which an employment agency is conducted or operated shall be maintained with due regard to reasonably safeguarding such confidential information as may properly be given to the agency.

(b) An employment agency license, or registration under N.J.S.A. 34:8-65 or 66, shall not authorize activities at any place other than the place designated in the license or registration except upon issuance of a special permit by the Director, as follows:

1. Where an activity is to take place away from the premises designated in the license, application for a special permit shall be made on a form supplied by the Bureau, which must be received by the Bureau no later than seven business days before the event.

2. Each separate location shall require a separate special permit.

3. The fee for each special permit shall be $10.00. A check or money order for that sum shall accompany the application.

4. The special permit shall be prominently displayed in the entrance to the event in a location where it is clearly visible to all patrons.

(c) An employment agency, or any licensed or registered person, shall not conduct business or any phase thereof, in any room or place where:

1. An individual sleeps or conducts his or her household affairs, unless the business premises have separate ingress and egress from the residential premises; this provision shall not apply to persons who do not have any personal contact with clients on their business premises; or

2. Premises which are rented or leased on an hourly, daily, weekly, or other transient basis unless approved by special permit, as set forth in (b) above; this provision shall not apply to consulting firms.

(d) The following shall apply to entertainment showcases:

1. A special permit is required when the services of any performing artist are offered to the public at a specific time and location, such being known as an entertainment showcase, if the services are being offered by a person who will be accepting a fee, commission or charge when the performer books an engagement with an employer. (Only licensed booking agencies may offer this service). The permit is required whether performers appear in person or their services are offered by electronic means.

2. If services are offered by electronic means for a prospective employer in the home of the prospective employer, a special permit is not required. However, at the beginning of any electronic presentation, the name, address, and license number of the entertainment agency and the name and address of this Bureau shall be displayed on an electronic screen for a minimum period of twenty seconds or, if any other type of electronic presentation is given, the above information shall be supplied in written form.

SUBCHAPTER 4. EXAMINATIONS AND VARIOUS CLASSIFICATIONS OF EMPLOYMENT AND PERSONNEL SERVICES

13:45B-4.1 Examination subjects

(a) Each applicant for an employment agent's license shall, in the manner and at the time and place designated by the chief, answer written questions concerning the following:

1. The provisions of the Act;
2. This chapter; and
3. The applicant's knowledge of and experience in the fields of employment specified in the application.

13:45B-4.2 "Aeronautical" classification

Applicants for an employment agent's license who include "aeronautical" in the type or class of occupation in which they intend to furnish help or employment shall furnish to the Chief a written statement from the Division of Aeronautics in the State Department of Transportation certifying to the Chief that, in the opinion of the Division of Aeronautics, the applicant has sufficient knowledge of the types of licenses required by persons to be legally engaged in the operation, maintenance or repair of aircraft.

13:45B-4.3 "Nursing registry" and "nursing" occupation

Applicants for an employment agent's license who include "nursing" or "nursing and/or health care services" as a type or class of services which they intend to provide shall, before being granted a license, establish to the satisfaction of the Director that the applicant is a registered nurse with a current, unsuspended license to practice nursing in the State of New Jersey.

13:45B-4.4 "Nursing" standards

(a) Every holder of an employment agency license which includes "nursing" or "nursing and/or health care services" as a type or class of services which they intend to provide shall comply with the minimum standards set forth in (b) below as a condition of continued licensure.

(b) A registered nurse shall be appointed to serve as supervisor with responsibility for the direction, provision and quality of nursing services. In addition, he or she shall oversee:

1. Developing and maintaining written philosophy, objectives, policies, a procedural manual, an organizational plan and a quality assurance program for the nursing services;
2. Hiring and discharging personnel based on inquiries into the employee's current licensure/registration status, employment qualifications and history, and good moral character;
3. Monitoring the performance of personnel;
4. Making assignments and coordinating and integrating the nursing services with other health care services to provide a continuum of care for the patient;
5. Developing and maintaining written job descriptions for all personnel;
6. Ensuring that services are provided to the patient as specified in a nursing care plan developed by a registered nurse;
7. Ensuring that all nurses possess a current unrestricted license to practice nursing in the State of New Jersey;
8. Ensuring that all health care services are provided to the patient only by persons who have been duly certified by the New Jersey State Board of Nursing; and
9. Ensuring that nursing supervision is provided in accordance with N.J.S.A. 45:11-23 et seq. and N.J.A.C. 13:37-6.2.

13:45B-4.5 "Career counseling" classification

(a) An applicant for an employment agent's license who designates their field of employment as "career counseling" as a type or class of services which they intend to provide are persons other than those required to be registered pursuant to N.J.A.C. 13:45B-9.1 (that is, consulting firms, career consulting or outplacement organizations, and prepaid computer job matching or job listing services) and who provides or offers to provide the following services for a fee charged to the job seeker shall be classified as a career counseling agent:

1. Vocational guidance;
2. Aptitude, achievement or vocational testing beyond measurement of single skills, such as typing;
3. Career counseling, management, evaluation or planning;
4. Development of resumes and other promotional materials relating to the preparation for employment;
5. Referral services relating to employment or employment qualifications; or
6. Executive or personnel consulting.

(b) To be classified as a career counseling agent, an applicant shall:

1. Hold a graduate degree in counseling or in a related professional field which will ensure adequate and efficient service to clients;
2. Have at least one year of career counseling experience under the supervision of a certified or licensed career counselor; and
3. Pass the career counseling examination administered by the Bureau, which shall include:
   i. Testing of career counseling knowledge; and
   ii. Testing of knowledge of the Act and this chapter.

(c) A career counseling agent shall comply with all requirements applicable to holders of an employment agent's license.

13:45B-4.6 Temporary placement operation (functioning in conjunction with an employment agency and integrated)

(a) For purposes of this section, "temporary placement operation" means an operation integrated with a licensed employment agency that assigns job seekers to assist the agency's customers in handling temporary, excess, or special work loads, for a fee paid by the job seeker or the customer. A "temporary placement operation" differs from a temporary help service firm in that neither the temporary placement operation nor the employment agency with which it is integrated does any of the following things:

1. Pays a wage or salary to the employed individual;
2. Pays or is required to pay Federal social security taxes and State and Federal unemployment insurance;
3. Is required to carry workers' compensation insurance covering the employed individual; or
4. Sustains responsibility for the actions of the employed individuals while they render services to the agency's customers.

(b) If a licensed employment agency provides temporary placement services as described in (a) above, the temporary placement operation function shall be subject to the requirements of N.J.S.A. 34:8-43 et seq. and N.J.A.C. 13:45B-1 through 4 and 7, 8, 12 and 13, as well as this section.

(c) Employment agencies may integrate the permanent placement and temporary placement operations, provided that:

1. In addition to the fee schedule for permanent placements, employment agencies shall submit a fee schedule for temporary placements;
2. An employment agency shall charge the employer or the job seeker a fee based on the fee schedule the agency has submitted to the Bureau;
3. All personnel acting as representatives for an employment agency, who are soliciting business, furnishing help or employment, or furnishing information as to where help or employment may be obtained, or who manage, operate or carry on the business of an employment agency are required to be licensed;
4. An employment agency is not permitted to conduct business at an unlicensed location, unless the agency holds a special permit for an activity, pursuant to N.J.A.C. 13:45B-3.1(b) and pays a fee of $10.00 as set forth in N.J.A.C. 13:45B-7.1; and
5. Job seekers are clearly informed in writing that a particular position is temporary or permanent.

13:45B-4.7 Temporary help service firm (operated in conjunction with an Employment Agency and integrated)

A temporary help service firm integrated with an employment agency functions under the employment agency license and shall comply with all requirements in this chapter that apply to employment agencies. All personnel acting as representatives for an employment agency, who are soliciting business, furnishing help or employment, or furnishing information as to where help or employment may be obtained, or who manage, operate or carry on the business of an employment agency are required to be licensed.

SUBCHAPTER 5. PROVIDERS OF TEMPORARY HELP EXEMPT FROM N.J.S.A. 34:8-43 et seq.

13:45B-5.1 Purpose and scope

The rules contained in this subchapter implement N.J.S.A. 56:8-1.1 and N.J.S.A. 34:8-43 et seq. and apply to all persons operating a temporary help service firm, as well as persons providing temporary placement services in New Jersey, including persons whose residence or principal place of business is located outside of this State.

13:45B-5.2 Definitions

For purposes of this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"In conjunction with" means bound in close association.

"Integrated" means sharing a common business structure as well as any one of the following: the same trade name, office space, management, personnel, advertising, business and personnel records, office systems and/or equipment, such as telephone and/or telecopier.

"Liquidation fee" means any fee charged by a temporary help service firm to a client when an individual employed by the temporary help service firm is hired as permanent employee by the client. This fee covers the initial payroll, advertising, and recruiting costs, as well as the replacement costs incurred by the temporary help service firm with regard to its employee.

"Primary location" means an address used for 90 or more calendar days by a person for the conduct of an activity regulated under the Act.

"Recruitment" means the process of procuring or obtaining, or offering promising or attempting to procure or obtain, employers or job seekers.

"Employment" means the hiring or engaging of services of a person.

"Temporary help service firm" means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in handling of the customers' temporary, excess or special work loads, and who, in addition to the payment of wages or salaries to the employed individuals, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance; is required to carry workers' compensation insurance by State law; and sustains responsibility for the actions of the employed individuals while they render services to the firm's customers.

13:45B-5.3 Temporary help service firm (operated in conjunction with an employment agency but not integrated)

(a) "Temporary help service firm" as used in N.J.S.A. 56:8-1.1 and this section means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in handling the customers' temporary, excess or special work loads, and who:

1. In addition to the payment of wages or salaries to the employed individuals, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance;

2. Is required to carry workers' compensation insurance by State law;

3. Sustains responsibility for the actions of the employed individuals while they render services to the firm's customers;

4. Does not charge a fee or liquidated charge to any individual employed by the firm or in connection with the employment by the firm; and

5. Does not prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person.

(b) A temporary help service firm operated in conjunction with an employment agency is excluded from the Bureau of Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq., if:

1. It operates as a temporary help service firm as defined in N.J.A.C. 13:45B-5.2; and

2. It is independently operated and not integrated with the employment agency, as follows:

i. The business office of the temporary help service firm is physically separated from the business office space of the employment agency;

ii. If adjoining office space is utilized to conduct the business operation of a temporary help service and a licensed employment agency, the respective spaces are clearly designated by conspicuous placement of signs;

iii. All business and personnel records of the temporary help service firm are maintained separately from the records of the licensed employment agency;

iv. The telephone numbers used by a temporary help service firm are not the same as the telephone numbers utilized by the licensed employment agency; and

v. Any recruiting and business advertising by a temporary help service firm are not contained in the same advertising utilized by the licensed employment agency unless identified as set forth in N.J.A.C. 13:45B-12.1(g).

(c) A temporary help service firm, operated in conjunction with a licensed Employment Agency but not integrated, that is excluded from the Bureau of Employment and Personnel Services Act is nevertheless subject to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and shall comply with the requirements set forth in N.J.A.C. 13:45B-5.4 through 5.7.

13:45B-5.4 Temporary help service firm (operated separately, independently, or in conjunction with a consulting firm or other registered organization)

(a) "Temporary help service firm" as used in N.J.S.A. 56:8-1.1 and this section means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in handling the customers' temporary, excess or special work loads, and who:

1. In addition to the payment of wages or salaries to the employed individuals, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance;

2. Is required to carry workers' compensation insurance by State law;

3. Sustains responsibility for the actions of the employed individuals while they render services to the firm's customers;

4. Does not charge a fee or liquidated charge to any individual employed by the firm or in connection with the employment by the firm; and

5. Does not prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person.

(b) A temporary help service firm operated separately, independently or in conjunction with a consulting firm or other registered organization shall:

1. Prior to commencement of operation and each July 1 thereafter, notify the Bureau of its true name; any trade name of its operation; its complete business address, including street and street number of the building(s) and place(s) where its business is to be conducted; and the names and all residence addresses of its officers, directors, principals, and owners. Any changes shall be reported to the Bureau within two weeks of such change;

2. Provide an affidavit to the Bureau setting forth whether any of its officers, directors, principals or owners has ever been convicted of a crime. If any of its officers, directors, principals or owners is convicted of a crime as set forth in N.J.S.A. 56:8-1.1(a) subsequent to providing such affidavit, a new affidavit setting forth the circum-

stances of the conviction shall be provided to the Bureau. The firm shall also provide a similar affidavit to the Bureau when any new officer, director, principal, or owner is added to the firm;

3. Notify the Bureau in writing, which must be received at least seven days in advance, when the firm wishes to use a location other than or in addition to any of its primary locations for the recruiting of applicants. If the notification is made by telephone, it shall be subsequently confirmed in a writing directed to the Bureau's Temporary Help Service Section, which writing must be received at least seven days prior to the use of such facility;

4. At the time of its initial notification to the Attorney General and on each July 1 thereafter, post a bond of $1,000 with the Attorney General to secure compliance with N.J.S.A. 56:8-1 et seq., the Consumer Fraud Act. The Director may waive such bond for any corporation or entity having a net worth of $100,000 or greater. In order to obtain such a waiver, the firm must provide a copy of a certified financial report prepared by a certified public accountant or licensed accountant establishing that the firm has a net worth of $100,000 or greater;

5. Ensure that all parties, at the time of referral to the temporary employment, have been informed either that the duration of employment is fixed, such as "one day" or "two weeks," or that a temporary job will terminate upon occurrence of some specified event, such as a management decision that temporary assistance or a particular temporary employee's services are no longer wanted;

6. Not charge any fees to its employees who, as a result of a temporary assignment, are hired as permanent employees of the client. The temporary help service firm may, however, charge its client a liquidation fee, provided the terms of such liquidation fee were fully disclosed to the client when the temporary help assignment was secured;

7. State in all advertising the trade name of the temporary help service firm and the words "A Temporary Help Service Firm" or "Temp-No Fee" immediately under the name of the firm unless the words "temporary service" are included in the name of the firm;

8. Maintain copies of all temporary help service advertisements in a form suitable for inspection by the Bureau, and made available for inspection by representatives of the Bureau for two years; and

9. Designate on its application whether or not it is operated separately or in conjunction with a licensed employment agency.

(c) A temporary help service firm shall not:

1. Charge a fee or liquidated charge to any individual employed by the firm or in connection with employment by the firm. If a fee or liquidation charge is imposed, the firm shall register as an employment agency pursuant to N.J.A.C. 13:45B-2;

2. Prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person unless it files a copy of the contract with the Bureau and gives the individual a copy of all papers signed by the individual. If the individual is charged a fee by the temporary help service firm when the individual becomes employed by any other person, the temporary help service firm shall register as an Employment Agency pursuant to N.J.A.C. 13:45B-2; or

3. Knowingly send individuals it employs to, or knowingly continue to render services to, any plant or office not under the jurisdiction of the National Labor Relations Board where a strike or lockout is in progress, for the purpose of replacing individuals who are striking or who are locked out.

(d) Any consulting firm which also operates a temporary help service firm and which registered the temporary help service firm effective January 1, 1991, and paid $250.00 as a registration fee, will have a reduced fee of $125.00 for the period July 1, 1991 to June 30, 1992 for the temporary help service firm only. Fees for subsequent years will be assessed pursuant to N.J.A.C. 13:45B-7 and this subchapter.

13:45B-5.5 Information required

Information required by this subchapter shall be provided to the Bureau on July 1 of each year. Where the temporary help service firm begins operations after July 1, the information required by N.J.S.A. 56:8-1.1 and this subchapter shall be provided with the firm's application. Application forms shall be supplied by the Bureau. Upon submission, completed forms shall be accompanied by the affidavit required by N.J.A.C. 13:45B-5.4(b)2 and the bond or report required by N.J.A.C. 13:45B-5.4(a)4.

13:45B-5.6 Fees

A temporary help service firm shall annually pay a fee of $250.00 for each primary location and a fee of $10.00 for operation of any location other than a primary location.

13:45B-5.7 Temporary help service firm offering nursing or health care services

(a) Every operator of a temporary help service firm which includes "nursing" or "nursing and/or health care services" as a type or class of services which they provide shall comply with the minimum standards set forth in (b) below.

(b) A registered nurse shall be appointed to serve as supervisor, with responsibility for the direction, provision and quality of nursing and health care services. In addition, he or she shall be responsible for:

1. Developing and maintaining written philosophy, objectives, policies, a procedural manual, an organizational plan and a quality assurance program for the nursing services;

2. Hiring and discharging personnel based on inquiries into the employee's current licensure/registration status, employment qualifications and history, and good moral character;

3. Monitoring the performance of personnel;

4. Making assignments and coordinating and integrating the nursing services with other health care services to provide a continuum of care for the patient;

5. Developing and maintaining written job descriptions for all personnel;

6. Ensuring that services are provided to the patient as specified in a nursing care plan developed by a registered nurse;

7. Ensuring that all nurses possess a current unrestricted license to practice nursing in the State of New Jersey;

8. Ensuring that all health care services are provided to the patient only by persons who have been duly certified by the New Jersey State Board of Nursing; and

9. Ensuring that nursing supervision is provided in accordance with N.J.S.A. 45:11-23 et seq. and N.J.A.C. 13:37-6.2.

SUBCHAPTER 6. ENTERTAINMENT AGENCIES

13:45B-6.1 Purpose and scope

(a) The rules contained in this subchapter implement the Bureau of Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq., and supplement rules in this chapter that govern the operation of entertainment agencies and agents, under which booking agencies and employment agencies and agents who procure, obtain, offer, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models in this State.

(b) This subchapter shall apply to all persons, as defined in N.J.A.C. 13:45B-1.2, operating entertainment agencies located in New Jersey, or agencies wherever located that place performing artists in temporary or permanent positions located in New Jersey, or that engage in single or repeated acts of solicitation to employees or job seekers resident in New Jersey, whether by mail, newspaper, magazine, telephone, sales/TV, radio/TV, poster, billboard, or any other media, or in person.

13:45B-6.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Booking agency" means any person which procures, offers, promises or attempts to procure employment for performing artists or athletes not under the jurisdiction of the Athletic Control Board and which collects a fee for providing such employment; a booking agency is licensed as an employment agency.

"Booking agent" means any person, as defined in N.J.S.A. 56:8-1(d), who performs any solicitation or recruiting function for or on behalf of any booking agency; a booking agent is licensed as an employment agent.

"Entertainment" agency means a booking agency or an employment agency which procures, obtains, offers, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models.

"Performing artists" means musical, theatrical, vaudeville, film, television, or radio performers, as well as models, whether employed or engaged individually or as a group, and athletes not under the jurisdiction of the Athletic Control Board.

13:45B-6.3 Entertainment agency licenses; posting

(a) In every entertainment agency operated and conducted under the Act and this chapter, the license under which the entertainment agency is conducted and operated shall be displayed in a prominent place where it may be easily seen and read by all persons visiting the entertainment agency.

(b) Each person required to have an agent's license shall display such license in such place and manner as to make it readily visible and legible by persons doing business with such licensee.

(c) There shall be posted in each entertainment agency the agency's schedule of fees, as well as a certified abstract of the Act and this chapter. Such posting shall be in a manner and place as to be readily visible and legible by persons doing business with the agency. The entertainment agency shall also have full copies of the Act and this chapter available for any job seeker's or employer's review. The certified abstract shall be available from the Bureau for a fee of $5.00.

13:45B-6.4 Entertainment agency contracts

(a) Each performing artist shall be supplied with a copy of any contract with the entertainment agency signed by the artist.

(b) Each entertainment agency shall file a copy of the form(s) of any contract used or to be used by the agency with the Bureau of Employment and Personnel Services, 1207 Raymond Boulevard, P.O. Box 45028, Newark, New Jersey 07102.

(c) Copies of all executed contracts between the entertainment agency and performing artists shall be maintained by the agency in a form suitable for inspection by the Bureau. These copies shall be made available for inspection by representatives of the Bureau.

(d) If the entertainment agent's contract with the performing artist includes products, such as, but not limited to, photographs or a photographic publication, the contract shall state the extact quantity, quality, and cost of the item(s) to be supplied, and the date of delivery or publication.

(e) If date of delivery or publication is more than 60 days following the date of the contract, no more than one-third of any fee, charge or commission shall be collected by the licensed entertainment agency for its products prior to delivery.

(f) If the entertainment agency fails to deliver products or services by the date of delivery as specified in the contract, the job seeker is entitled to a full refund of monies paid for the promised service and/or product. The job seeker may waive the right to a refund by acknowledging and waiving the right in writing.

13:45B-6.5 Entertainment agency advertising

(a) All advertisements shall contain the name, address as it appears on the license, and license number of the entertainment agency.

(b) Copies of all entertainment agency advertisements shall be maintained by the agency for two years following publication or dissemination in a form suitable for inspection by the Division, and made available for inspection by representative of the Division.

(c) While performing the functions of an entertainment agent, a booking agent shall carry and provide to job seekers and employers a business card containing his or her license number.

13:45B-6.6 Information required

(a) Information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided to the Bureau of Employment and Personnel Services, 124 Halsey Street, Newark, New Jersey 07102 (Mailing address: P.O. Box 45028, Newark, New Jersey 07102) on January 1 of each year. Where the entertainment agency begins operation after January 1, the information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided with the agency's application. Application forms shall be supplied by the Bureau.

(b) Completed forms shall be accompanied by the fee required under N.J.S.A. 34:8-50 and the bond required pursuant to N.J.S.A. 34:8-49.

SUBCHAPTER 7. FEES AND EXPIRATION DATES

13:45B-7.1 Fee schedule

The following fees shall be charged by the Bureau of Employment and Personnel Services:

Employment agency annual license	$250.00
Consulting firm annual registration	$250.00
Career consulting or outplacement firm annual registration	$250.00
Job listing service and registration	$250.00
Prepaid computer job matching service annual registration	$250.00
Temporary help service firm annual registration, primary location	$250.00
Temporary help service firm, permit for operation of each other location	$10.00
Agent's annual license	$25.00
Agent's conditional license	$25.00
Transfer of agent's license	$10.00
Agent-registrants	$25.00
Fee for abstract of law	$5.00
Examination fee	$25.00
Late fee for renewals	$25.00
Special (off-premises) permit	$10.00

13:45B-7.2 License and registration expiration

(a) All licenses shall expire on January 1 of the year following their issuance.

(b) All registrations shall expire on July 1 of each year.

SUBCHAPTER 8. OUT-OF-STATE BUSINESSES

13:45B-8.1 Application

All provisions of N.J.A.C. 13:45B-1 through N.J.A.C. 13:45B-13 shall apply to any person engaging in any of the activities regulated by N.J.S.A. 34:8-43 et seq. in New Jersey including persons whose residence or principal place of business is located outside of this State.

13:45B-8.2 Registered agent

Each out-of-State holder of a New Jersey employment agency license, or out-of-State entity required to be registered under the Act, shall register with the Chief the name and address of a New Jersey agent for service of process and other matters.

SUBCHAPTER 9. REGISTRATION FOR CONSULTING FIRMS

13:45B-9.1 Registration process

(a) The following entities are required to be registered with the Bureau of Employment and Personnel Services in order to operate within New Jersey:

1. Consulting firms, as defined in N.J.A.C. 13:45B-1.2.

(b) An application for registration and an abstract of the law, covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Bureau upon request.

(c) The application form shall include, but not be limited to:

1. The name and business address of each primary location of the registered service and any fictitious or trade name used;

2. The category of registered service and the types of products and employment and personnel services it will offer;

3. The names and home addresses of the principal owners or officers of the service;

4. A disclosure statement covering conviction of crime as set forth in N.J.S.A. 34:8-44, if any, of any principal owner or officer or any agent of the service; and

5. Federal and state tax identification numbers.

(d) Upon application for registration, a prospective registrant shall file with the Bureau a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the Bureau of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) The registration fee as set forth in N.J.A.C. 13:45B-7.1 shall be due on July 1, 1991, and annually thereafter.

(g) All firms which are required to be registered and which place persons with private families must require all job seekers to furnish the firm with names and addresses of individuals available as character references and shall communicate orally or in writing with at least one of the individuals given by the job seeker as a character reference. If the job seeker has not furnished the name of any individuals available as character references, or if no favorable statement has been received from a character reference, the agency shall so advise the prospective employer to whom the job seeker is referred. This information shall be given to the prospective employer at the time referral is made. If the employer voluntarily waives, in writing a verification of references, the registered firm shall not be required to make the verification.

SUBCHAPTER 10. REGISTRATION FOR CONSULTING OR OUTPLACEMENT ORGANIZATIONS

13:45B-10.1 Registration process

(a) The following entities are required to be registered with the Bureau of Employment and Personnel Services in order to operate within New Jersey:

1. Career consulting or outplacement organizations, as defined in N.J.A.C. 13:45B-1.2, and every agent authorized and empowered by the owner of the registered organization to solicit business or otherwise act as an agent of the organization.

(b) An application for registration and an abstract of the law, covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Bureau upon request.

(c) The application form shall include, but not be limited to:

1. The name and business address of each primary location of the registered service and any fictitious or trade name used;

2. The category of registered service and the types of products and employment and personnel services it will offer;

3. The names and home addresses of the principal owners or officers of the service;

4. A disclosure statement covering conviction of crime as set forth in N.J.S.A. 34:8-44, if any, of any principal owner or officer or any agent of the service; and

5. Federal and state tax identification numbers.

(d) Upon application for registration, a prospective registrant shall file with the Bureau a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the Bureau of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) The registration fee as set forth in N.J.A.C. 13:45B-7.1 shall be due on July 1, 1991, and annually thereafter.

(g) Upon initial registration with the Bureau of Employment and Personnel Services and annually thereafter, every career consultant or outplacement organization and every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of $10,000 with a duly authorized surety company as surety, to be approved by the Director. The bond shall be payable to the State of New Jersey and shall provide that the person applying for registration will comply with the Act and this chapter and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed or registered person, agents, or employees, while acting within the scope of their employment, made, committed, or omitted in the business conducted under the license or registration or caused by any violation of this act in carrying on the business for which the license or registration is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in their name for the recovery of damages sustained by the breach.

1. If at any time, in the opinion of the Director, the surety on any bond shall become fiscally irresponsible, the person holding the license or registration shall, upon notice from the Director, by registered mail, return receipt requested, provide a new bond, subject to the provisions of this section. The failure to provide a new bond within 10 days after such notice shall, at the direction of the Director, operate as revocation of the registration. The 10 days shall begin to run on the day following the surety's receipt of the notice. However, revocation may be stayed at the discretion of the Director.

2. If the surety contemplates cancellation of the bond, the surety shall be withdrawn upon 60 days advance written notice by registered mail to the Director. The 60 days shall begin to run from the day following the Director's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.

3. The bond shall be retained by the Bureau until 90 days after either the expiration or revocation of the registration, as appropriate.

(h) The requirements of this section shall not apply to any person that receives no prepayment for services or products from a job seeker and that:

1. Provides services or products strictly on an hourly basis, with no financial obligation required of the job seeker beyond the hourly fee for services or products rendered; or

2. Provides outplacement services exclusively as part of a job seeker's benefit or severance package with a current or former employer.

SUBCHAPTER 11. PREPAID COMPUTER JOB MATCHING OR JOB LISTING SERVICES

13:45B-11.1 Registration process

(a) The following entities are required to be registered with the Bureau of Employment and Personnel Services in order to operate within New Jersey:

1. Prepaid computer job matching or job listing services, as defined in N.J.A.C. 13:45B-1.2, and every agent authorized and empowered by the owner of the registered organization to solicit business or otherwise act as an agent of the organization.

(b) An application for registration and an abstract of the law, covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Bureau upon request.

(c) The application form shall include, but not be limited to:

1. The name and business address of each primary location of the registered service and any fictitious or trade name used;

2. The category of registered service and the types of products and employment and personnel services it will offer;

3. The names and home addresses of the principal owners or officers of the service;

4. A disclosure statement covering conviction of crime as set forth in N.J.S.A. 34:8-44, if any, of any principal owner or officer or any agent of the service; and

5. Federal and state tax identification numbers.

(d) Upon application for registration, a prospective registrant shall file with the Bureau a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the Bureau of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) The registration fee as set forth in N.J.A.C. 13:45B-7.1 shall be due on July 1, 1991, and annually thereafter.

(g) Upon initial registration with the Bureau of Employment and Personnel Services and annually thereafter, every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of $10,000 with a duly authorized surety

company as surety, to be approved by the Director. The bond shall be payable to the State of New Jersey and shall provide that the person applying for registration will comply with the Act and this chapter and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed or registered person, agents, or employees, while acting within the scope of their employment, made, committed, or omitted in the business conducted under the license or registration or caused by any violation of this act in carrying on the business for which the license or registration is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in their name for the recovery of damages sustained by the breach.

1. If at any time, in the opinion of the Director, the surety on any bond shall become fiscally irresponsible, the person holding the license or registration shall, upon notice from the Director, by registered mail, return receipt requested, provide a new bond, subject to the provisions of this section. The failure to provide a bond within 10 days after such notice shall, at the discretion of the Director, operate as revocation of the registration. The 10 days shall begin to run on the day following the surety's receipt of the notice. However, revocation may be stayed at the discretion of the Director.

2. If the surety contemplates cancellation of the bond, the surety shall be withdrawn upon 60 days advance written notice by registered mail to the Director. The 60 days shall begin to run from the day following the Director's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.

3. The bond shall be retained by the Bureau until 90 days after either the expiration or revocation of the registration, as appropriate.

SUBCHAPTER 12. ADVERTISING AND SOLICITATIONS

13:45B-12.1 Advertisements and solicitations

(a) All advertisements offering employment or personnel services or products shall include the advertiser's business name and address as they appear on the license or registration form of the licensed or registered firm. Advertisements for positions within the licensed or registered firm shall also include the advertiser's business name and address as they appear on the license or registration form of the firm.

(b) No person shall misrepresent the identity of an individual or the identity of a company in an advertisement or in a personal, telephoned, telecopied, or mailed solicitation. All advertising and solicitations by any person must disclose the name of the company offering the services or products.

(c) Newspaper advertising pertaining to services offered or provided in this State by career consulting or outplacement organizations appearing within or adjacent to help-wanted advertising shall contain the phrase "not an employment agency" in a clear, conspicuous, prominent manner, and in no less than 10-point bold-face type.

(d) Any advertising or solicitation for a booking agency shall contain the name, address, and license number of the booking agency.

(e) Copies of all advertisements and solicitations shall be maintained by the licensed or registered firm or entertainment agency in a form suitable for inspection by the Bureau and shall be made available for inspection by the Bureau for two years following publication or dissemination.

(f) A record of all advertisements and solicitations with date and place of publication or dissemination, including identification of media used, shall be maintained in a form suitable for inspection and made available upon request of representatives of the Bureau for two years following publication or dissemination.

(g) In addition to complying with (a) through (e) above, a temporary help service firm shall state its trade name in all advertisements and the words "A Temporary Help Service Firm" or "Temp-No Fee" immediately under or following the name, unless the words "temporary help" are included in the name of the firm.

SUBCHAPTER 13. VIOLATIONS

13:45B-13.1 Violations

(a) A violation of any applicable provision of this chapter by a licensee shall be deemed to be a violation of the Bureau of Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq. and, if applicable, the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and shall be subject to the penalties and sanctions provided for thereunder.

(b) A violation of any applicable provision of this chapter by a registrant or its agent shall be deemed to be a violation of the Bureau of Employment and Personnel Service Act, N.J.S.A. 34:8-43 et seq. and if applicable, the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and shall be subject to the penalties and sanctions provided for thereunder.

(c) Nothing in this chapter shall be interpreted to prohibit prosecution of any practices by a licensee or registrant which may be unlawful under any other State or Federal law.

(d) N.J.S.A. 34:8-52f is applicable to those firms which charge fees to job seekers.

(e) Nothing in the Employment and Personnel Services Act or this chapter shall be construed to prevent qualified members of other professional groups such as members of the clergy, authorized practitioners, school guidance counselors, or psychologists from providing career counseling services consistent with the accepted standards of their respective professions, provided, however, that they do not hold themselves out to the public by any title or description stating or implying that they are career counselors or are licensed to practice career counseling.

(f) The Director may refuse to issue, and may revoke, any license or registration for failure to comply with, or violation of, the provisions of the Act and this chapter or for any other good cause shown, within the meaning and purpose of the Act and this chapter. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by the applicant or licensee or registrant. The Director may, if he or she finds it to be in the public interest, suspend a license or registration for any period of time that he or she determines to be proper or assess a penalty in lieu of suspension, or both, and may issue a new license or registration, notwithstanding the revocation of a prior license or registration, provided that he or she finds the application to have become entitled to the new license or registration.

(g) To accomplish the objectives and carry out the duties prescribed by the Act, and this chapter the Director may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of investigation or inquiry, promulgate rules and regulations, and prescribe forms as may be necessary.

(h) Whenever it appears to the Director that a person has engaged in, is engaging in, or is about to engage in, any practice declared to be unlawful by the Act and this chapter, or whenever the Director believes it to be in the public interest that an investigation should be made to ascertain whether a person has engaged in, is engaging in, or is about to engage in, any unlawful practice, the Director may:

1. Require the person to file, on forms prescribed by the Director, a written statement or report, under oath or otherwise, concerning the facts and circumstances regarding the practice which is under investigation;

2. Examine under oath any person in connection with the practice under investigation;

3. Examine any record, book, document, account, contract, or paper as he or she deems necessary; and

4. Pursuant to an order of the Superior Court, impound any record, book, document, account, contract, or paper that is produced in accordance with the Act and this chapter, and retain it until the completion of all proceedings in connection with the materials produced.

(i) Service by the Director of any notice requiring a person to file a statement or report, or of any subpoena upon the person, shall be made personally within this State, but if this cannot be done, substituted service may be made in the following manner;

1. Personal service outside this State;

2. The mailing by registered or certified mail to the last known place of business or residence inside or outside the State of the person;

3. As to any person other than an individual, in accordance with the Rules Governing the Courts of the State of New Jersey pertaining to service of process, provided, however, that service shall be made by the Director; or

4. Any service as the Superior Court may direct in lieu of personal service within the State.

(j) If a person fails or refuses to file any statement or report requested by the Director, or obey any subpoena issued by the Director, the Director may seek and obtain an order from the Superior Court:

1. Adjudging the person in contempt of court;

2. Granting injunctive relief, without notice, restraining any and all acts and practices for which a license is required in the provisions of the Act and this chapter;

3. Directing the payment of reasonable attorneys' fees and costs of the investigation and suit; and

4. Granting any other relief as may be required, until the person files the statement or report, or obeys the subpoena.

(k) Whenever it appears to the Director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the provisions of the Act and this chapter, the Director may seek and obtain in a summary action in the Superior Court an injunction prohibiting the person from continuing the practices or engaging therein or doing any acts in furtherance thereof.

1. In addition to any other remedy, the court may: enjoin an individual from managing or owning any business organization within this State, and from serving as an officer, director, trustee, member of any executive board of similar governing body, principal, manager, stockholder owning 10 percent or more of the aggregate outstanding capital stock of all classes of any corporation doing business in this State; vacate or annual the character of a corporation created by or under the laws of this State; revoke the certificate of authority to do business in this State of a foreign corporation; and revoke any licenses issued pursuant to law to the person of any unlawful practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any practices declared to be unlawful.

(l) Whenever it appears to the Director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the Act and this chapter, the Director may hold hearings on the violation and upon finding the violation to have been committed, may enter an order:

1. Directing the person to cease and desist or refrain from committing the practice in the future;

2. Directing the person to restore any person in interest any moneys or property, real or personal, which may have been acquired by means of any unlawful practice;

3. Assessing reasonable attorneys' fees and costs of investigation and suit; and

4. Directing the person to reimburse the job seeker for transportation expenses if no employment of the kind applied for exists at the place to which the job seeker is sent and the person did not have a bona fide order, either oral or written, from the prospective employer.

(m) Whenever it appears to the Director that a person against whom a cease and desist order has been entered has violated the order, the Director may bring a summary proceeding in the Superior Court based upon the violation. A person found to have violated a cease and desist order shall be liable for civil penalties in the amount of not less than $1,000 or more than $25,000 for each violation of the order, together with reasonable attorneys' fees and cost of investigation and suit. If any person fails to pay a civil penalty imposed by the court for violation of a cease and desist order, the court imposing the penalty is authorized, upon application of the Director, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.

(n) In addition to any other penalty provided by law, a person which violates any of the provisions of the Act or this chapter shall be liable for a penalty of not more than $2,000 for the first offense and not more than $5,000 for the second and each subsequent offense.

(o) In any action or proceeding brought under the Act or this chapter the Director may recover reasonable attorneys' fees and costs of investigation and suit.

(p) Upon the failure of a person to comply within 10 days after service of any order of the Director directing payment of penalties, costs, attorneys' fees, reimbursement, or restoration of moneys or property, the Director may issue a certificate to the Clerk of the Superior Court that the person is indebted to the State for these payments. A copy of the certificate shall be served upon the person against whom the order was entered. The clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted, a designation of the statutes under which the payments are imposed, the amount of each payment imposed, and a listing of property ordered restored, and the date of the certification. The entry shall have the same force and effect as the entry to the docketed judgment in the Superior Court. The entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the final order of the Director.

13:45B-13.2 Standards for issuance and renewal of licenses and registrations.

(a) No license or registration required by the provisions of the Act shall be issued until it has been established to the satisfaction of the Director that all of the provisions of the Act and this chapter relative to the issuance of such license or registration have been fully complied with.

(b) Prior to any suspension, revocation or refusal to renew a license or registration, the licensee or registrant shall have the right to request a hearing which shall be conducted pursuant to the Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

VIOLENT CRIMES COMPENSATION BOARD

Transportation Costs

Proposed Amendment: N.J.A.C. 13:75-1.24

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

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

Proposal Number: PRN 1991-427.

Submit comments by September 18, 1991 to:

Cindy R. Merker, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment provides for limiting the payment of necessary and reasonable transportation expenses incurred by victims or claimants and which are a direct result of an incident which forms the basis of their claim with the Board.

Social Impact

The addition of this amendment to the Board's Rules will allow the Board to retain and reserve funds for payment of current and future costs incurred by victims and claimants and put all persons applying for compensation on notice that the Board is limiting payments of transportation costs.

Economic Impact

Since money used to compensate victims and claimants is continually evaporating due to cutbacks in funding, increased medical costs and an

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping N.J. 45 in Gloucester County and U.S. 202 in Morris County

Proposed Amendments: N.J.A.C. 16:28A-1.31 and 1.55

Authorized By: Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Proposal Number: PRN 1991-212.

Submit comments by September 18, 1991 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish "time limit parking" zones along Route N.J. 45 in Harrison Township, Gloucester County, and "no stopping or standing during certain hours" zones along Route U.S. 202 in Morris Plains Borough, Morris County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

The Department's Bureau of Traffic Engineering and Safety Programs, based upon requests from the local governments in the interest of safety, and as part of a review of current conditions, conducted traffic investigations. The investigations proved that the establishment of "time limit parking" zones along Route N.J. 45 in Harrison Township, Gloucester County, and "no stopping or standing during certain hours" along Route U.S. 202 in Morris Plains Borough, Morris County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.31 and 1.55 based upon the requests from the local governments and the traffic investigations.

The Department has further recodified elements of N.J.A.C. 16:28A-1.55 Route U.S. 202 to provide clarity within the rule by indicating all "no stopping or standing during certain hours" zones in subsection (e). The specific area affected by the amendment along Route U.S. 202 in Morris Plains Borough is along the west side of Speedwell Avenue.

Social Impact

The proposed amendments will establish "time limit parking" zones along Route N.J. 45 in Harrison Township, Gloucester County, and "no stopping or standing during certain hours" zones along Route U.S. 202 in Morris Plains Borough, Morris County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for the "time limit parking" and "no stopping or standing during certain hours" zone signs. Motorists who violate the rules will be assessed the appropriate fine in accordance with the State of New Jersey Statewide Bureau Violations Schedule issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28A-1.31 Route 45

(a) The certain parts of State highway Route 45 described in this [section] **subsection** are designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1.-6. (No change.)

(b) (No change.)

(c) The certain parts of State highway Route 45 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified below. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. In Harrison Township, Gloucester County:

i. Along the west side:

(1) South Main Street (Route N.J. 45):

(A) Two hours time limit parking between High Street and Mullica Hill Road (Route N.J. 45) Monday through Friday 6:00 A.M. to 6:00 P.M.

ii. Along the east side:

(1) South Main Street (Route N.J. 45):

(A) Two hours time limit parking Monday through Friday 6:00 A.M. to 6:00 P.M., between a point where the extended southerly side line of High Street would intersect the easterly side line of South Main Street and a point where the extended northwesterly line of Woodstown Road would intersect the easterly line of South Main Street.

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

(a) The certain parts of State highway Route U.S. 202 described in this [section] **subsection** shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1. (No change.)

[2. No stopping or standing—2:00 A.M. to 10:00 A.M. in the Town of Morristown, Morris County:

i. Along the west wide (Speedwell Avenue):

(1) From a point 145 feet south of the southerly curb line of Frederick Street to a point 375 feet south of the southerly curb line of Walker Avenue.

(2) From a point 100 feet south of the southerly curb of Cutler Street to a point 450 feet south of the southerly curb line of Henry Street.

(3) From a point 175 feet south of the southerly curb line of Sussex Avenue to a point 165 feet north of Early Street.

(4) From a point 270 feet south of the southerly curb line of Early Street to Park Place.

ii. Along the east side (Bank Street):

(1) From a point 110 feet south of the southerly curb line of West Park Place to a point 35 feet north of the prolongation of the northerly curb line of Ann Street.

3. No stopping or standing 2:00 A.M. to 7:00 A.M. and 3:30 P.M. to 6:30 P.M. in the Town of Morristown, Morris County:

i. Along the east side (Speedwell Avenue):

(1) From the northerly curb line of Orchard Street to the prolongation of the southerly curb line of Frederick Street.]

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

[5. No parking in Bernardsville, Somerset County:

i. Along both sides of Route U.S. 202 Friday only, 2:00 A.M. to 9:00 A.M.:

(1) From the northerly curb line of Woodland Road to a point 1,420 feet northerly therefrom.]

Recodify existing 6, 7 and 8 as **3, 4** and **5.** (No change in text.)

[9. No stopping or standing: 7:00 A.M.—9:00 A.M. and 4:00 P.M.—6:00 P.M. in Morris Plains Borough, Morris County:

i. Along the northbound side:

(1) From the prolongation of the northerly curb line of Rosedale Avenue to the prolongation of the southerly curb line of Academy Road;

(2) From a point 105 feet north of the prolongation of the northerly curb line of Morris Plains Avenue to the prolongation of the southerly curb line of Allen Place.

ever increasing number of applications, the Board is limiting payment of transportation costs to reserve money for payment of future claims.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes, and their attorneys, may make claims for compensation. The proposed amendment imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:4B-16 et seq., since they establish compensation eligibility criteria for individual victims. Therfore, a regulatory flexibility analysis is not required.

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

13:75-1.24 Transportation costs

(a) Maximum reimbursement for transportation expenses incurred as a direct result of the incident giving rise to the claim shall not exceed $10.00 a day and shall include, but not be limited to, visits to treating physicians, health and care facilities, substitute travel costs other than ambulance or ambulatory mobile care services incurred due to a criminally-induced physical incapacity, and attendance at court proceedings for purposes of prosecuting the alleged offender. However, reimbursement for the purposes of this section does not include costs arising pursuant to N.J.A.C. 13:75-1.13.

1. Necessary and reasonable transportation expenses incurred such as railroad and airline fare which are a direct result of the incident and incidental to treating and caring for the victim, **and for attendance at victim's funeral,** may be reimbursed to claimant or to [claimant's] **victim's** relatives as defined by N.J.S.A. 52:4B-2 **at a maximum of $200.00 per person and not to exceed $1,000 in total.**

STATE

(a)

DIVISION OF COMMERCIAL RECORDING

Designation of Agent to Accept Service of Process

Proposed New Rule: N.J.A.C. 15:2-4

Authorized By: Joan Haberle, Secretary of State, Department of State.

Authority: N.J.S.A. 2A:14-22.

Proposal Number: PRN 1991-419.

Submit written comments by September 18, 1991 to:

Joan Haberle
Secretary of State
Department of State
CN 300—315 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 2A:14-22 provides that the applicable statute of limitations for filing suit in various causes of action tolls while a person is not a resident of this State or while a corporation is not represented in the State by an agent who can accept service of process. The proposed rule would formalize the Department of State's practice of limiting the effect of the designation of an agent for service of process to causes of action where the corporation has sufficient contacts with this State to satisfy due process of law. Corporations filing such designations would not subject themselves to the general jurisdiction of the courts of New Jersey. The proposed new rule responds to concerns expressed in recent judicial opinions refusing to recognize the Department of State's informal practice under the tolling statute. The proposed new rule would allow corporations to appoint a registered agent for the limited purpose of service of process in such causes. Such designation shall be filed in the Office of the Secretary of State, Division of Commercial Recording.

N.J.S.A. 2A:14-22 stops the running of the statute of limitations in court actions against nonresident individuals and out-of-State corporations that do not have an office or other place where they can be served within the State. The statute thus protects New Jersey residents against nonresidents and out-of-State corporations by preserving the right to sue.

In several recent court cases, N.J.S.A. 2A:14-22, as presently drafted, was found to discriminate against interstate commerce and to impose a forced residency requirement on nonresident individuals. *See Juzwin v. Asbestos Corporation, Ltd.,* 900 *F.2d* 686 (3rd Cir. 1990); *DiFalco v. Subaru, et al.,* —— *N.J. Super.* —— App. Div. 1990); *Crespo v. Stapf,* 242 *N.J. Super.* 254 (Law Div. 1990). In *Juzwin* the Court pointed out that the State's legitimate interest in protecting its citizens against out-of-State corporations that were not amenable to service of process within the State could be adequately served by a provision limiting the tolling of the statute of limitations to situations where an out-of-State corporation could not be located and by a provision making clear that designation of an agent for service of process would subject an out-of-State corporation to the jurisdiction of the New Jersey courts only for those causes of action where the corporation has sufficient minimal contacts with the State to satisfy the requirements of the due process clause.

Social Impact

The proposed new rule will have a constructive social impact because it clarifies for out-of-State corporations that effect of filing a designation of a representative to accept service of process.

Economic Impact

The New Jersey statute tolling the statute of limitations as it pertains to certain corporations was declared to be unconstitutional because it interfered with the commerce clause of the U.S. Constitution. The adoption of this proposed new rule would cure that defect and, therefore, it is viewed to have a positive economic impact.

Regulatory Flexibility Analysis

The proposed new rule imposes the requirement on certain out-of-State corporations of filing a designation of a representative to accept service of process, if the corporation chooses to do so. Some of these corporations may be small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While there may be some minimal costs associated with the filing requirement, the burden of doing so would be minor and would not necessitate establishing a differentation in imposing the requirement based on business size.

Full text of the proposal follows:

SUBCHAPTER 4. DESIGNATION OF AGENT TO ACCEPT SERVICE OF PROCESS

15:2-4.1 Effect of designation of agent to accept service of process

(a) A designation by a corporation of an agent to accept service of process purusant to N.J.S.A. 2A:14-22 shall expose such corporation to suit only as to those causes of action as to which such corporation has sufficient contacts with this State to satisfy due process of law. This designation shall be filed in the Office of the Secretary of State, Division of Commercial Recording.

(b) Such designation may be in the following form:

_____ Corporation, domiciled in _____,
with its principal place of business in _____,
hereby designates _____ _____ as
Name Address

its representative in New Jersey to accept service of process in those suits where Corporation is properly subject to suit in New Jersey under R.4:4-4 consistent with due process of law.

This appointment of agent was authorized by resolution of ___ _____ Corporation's board of directors.

By: _____ Title: _____

Date: _____

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ii. Along the southbound side:

(1) From a point 500 feet south of the prolongation of the southerly curb line of Glennbrook Road to a point 120 feet north of the prolongation of the northerly curb line of Hillview Avenue;

(2) From the prolongation of the southerly curb line of Hillview Avenue to the prolongation of the northerly curb line of Rosedale Avenue.]

Recodify existing 10. as **6.** (No change in text.)

(b) [Under the provisions of N.J.S.A. 39:4-138.1, the] **The** certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established LOADING ZONES:

1. (No change.)

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

(e) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "no stopping or standing during certain hours" zones where stopping or standing is prohibited at all times except as specified below. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established "no stopping or standing during certain hours" zones:

1. No stopping or standing during certain hours:

i. In the Town of Morristown, Morris County:

(1) Along the west side of Speedwell Avenue (Route U.S. 202)—2:00 A.M. to 10:00 A.M.

(A) From a point 145 feet south of the southerly curb line of Frederick Street to a point 375 feet south of the southerly curb line of Walker Avenue.

(B) From a point 100 feet south of the southerly curb line of Cutler Street to a point 450 feet south of the southerly curb line of Henry Street.

(C) From a point 175 feet south of the southerly curb line of Sussex Avenue to a point 165 feet north of Early Street.

(D) From a point 270 feet south of the southerly curb line of Early Street to Park Place.

(2) Along the east side of Bank Street (U.S. Route 202):

(A) From a point 110 feet south of the southerly curb line of West Park Place to a point 35 feet north of the prolongation of the northerly curb line of Ann Street.

(3) Along the east side of Speedwell Avenue (U.S. Route 202)—2:00 A.M. to 7:00 A.M. and 3:30 P.M. to 6:30 P.M.:

(A) From the northerly curb line of Orchard Street to the prolongation of the southerly curb line of Frederick Street.

ii. In Bernardsville Township, Somerset County:

(1) Along both sides Friday only, 2:00 A.M. to 9:00 A.M.:

(A) From the northerly curb line of Woodland Road to a point 1,420 feet northerly therefrom.

iii. In Morris Plains Borough, Morris County—7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M.:

(1) Along the northbound side:

(A) From the prolongation of the northerly curb line of Rosedale Avenue to the prolongation of the southerly curb line of Academy Road;

(B) From a point 105 feet north of the prolongation of the northerly curb line of Morris Plains Avenue to the prolongation of the southerly curb line of Allen Place.

(2) Along the southbound side:

(A) From a point 500 feet south of the prolongation of the southerly curb line of Glennbrook Road to a point 120 feet north of the prolongation of the northerly curb line of Hillview Avenue;

(B) From the prolongation of the southerly curb line of Hillview Avenue to the prolongation of the northerly curb line of Rosedale Avenue.

(3) Along the west side of Speedwell Avenue (Route U.S. 202):

(A) From a point 105 feet south of the southerly curb line of Franklin Place to a point 35 feet north of the prolongating curb line of Allen Place.

(B) From a point 359 feet south of the southerly curb line of Franklin Place to a point 428 feet south therefrom.

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF FREIGHT SERVICES

Trucks

102-Inch Standard Trucks; 53-Foot Semitrailers

Proposed Amendments: N.J.A.C. 16:32-3.1 and 3.6

Authorized By: Robert A. Innocenzi, Deputy Commissioner, Department of Transportation (State Transportation Engineer), with the concurrence of the Superintendent, New Jersey State Police, and the Director, Division of Motor Vehicles.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:3-84 and P.L. 1991 c.115 (effective April 19, 1991).

Proposal Number: PRN 1991-424.

Submit oral or written comments by September 18, 1991 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendment will authorize 53-foot semitrailers to be operated in the State of New Jersey, in compliance with Assembly Bill No. 3458(5R), P.L. 1991, c.155, approved and effective April 19, 1991, which amended the provisions of N.J.S.A. 39:3-84, and in accordance with regulations promulgated by the U.S. Department of Transportation and applicable Federal laws. Federal law allows the states to permit 53-foot semitrailers on certain portions of their highways.

The Department of Transportation has determined that 53-foot semitrailers are subject to standards and procedures applicable to trucks found under N.J.A.C. 16:32. These standards and procedures pertain to permitted routes, width restrictions, access to terminals and other facilities and appeal procedures. Additionally, the proposed amendment will broaden the definition of "102-inch standard trucks" to incorporate the equipment length requirements of certain motor-drawn vehicles as set forth in N.J.S.A. 39:3-84.

The Department therefore proposes to amend N.J.A.C. 16:32-3.1 "102-inch standard trucks" to meet the requirements of N.J.S.A. 39:3-84.

Social Impact

The proposed amendments will have no impact beyond addressing safety concerns related to the use of 53-foot semitrailers and suitability of specific highways and streets for wide trucks.

Economic Impact

The proposed amendments will provide substantial economic benefits to New Jersey shippers and motor carriers by permitting them to use 53-foot semitrailers more widely. The Department expects that the amendment will not lead to any increase in highway construction and maintenance costs because existing truck weight limits are not affected and the shippers and motor carriers most likely to use 53-foot semitrailers are those moving "light and bulky," cargo which is normally well within legal weight limits.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; therefore, a regulatory flexibility analysis is not required. Shippers and motor carriers, regardless of business size, benefit from the amendments.

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

16:32-3.1 Definitions

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

....

"102-inch standard truck" means a truck greater than 96 inches but not greater than 102 inches in width, exclusive of mirrors and other safety devices, **and which meets the equipment length requirements as set forth in N.J.S.A. 39:3-84(3) and (4), as amended.**

16:32-3.6 Maps

(a) The Department may from time to time, prepare and distribute maps and graphic depictions of the designated through [track] **truck** network. Any map or graphic depiction so prepared shall not be considered a regulatory description of the designated through truck network superseding or in lieu of the textual descriptions adopted in this chapter.

(b) (No change.)

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Notice of Pre-Proposal

Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments

N.J.A.C. 19:16

Authorized By: James W. Mastriani, Chairman, Public Employment Relations Commision.

Authority: N.J.S.A. 34:13A-5.4(e), 34:13A-6(b), 34:13A-11 and 34:13A-14 et seq.

Pre-Proposal Number: PPR 1991-9.

Take notice that the Public Employment Relations Commission is contemplating amendments to N.J.A.C. 19:16, the rules governing compulsory interest arbitration of labor disputes in public police and fire departments.

During the period for public comment which followed the Commission's proposed readoption of N.J.A.C. 19:16 several commenters advocated changes in the procedures, including those concerning the appointment of arbitrators. The Commission readopted the rules published elsewhere in this issue of the New Jersey Register, to prevent their expiration, but believes it in the best interests of the public and all parties involved in the interest arbitration process to receive additional comment and suggestions on all aspects of the interest arbitration process which can be affected by rulemaking.

Interested persons should submit comments by October 1, 1991 to:

James W. Mastriani, Chairman
Public Employment Relations Commission
CN 429
495 W. State Street
Trenton, NJ 08625-0429

(b)

CASINO CONTROL COMMISSION

Applications
Vendor Registration Form

Proposed Amendment: N.J.A.C. 19:41-11.1

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

Authority: N.J.S.A. 5:12-69 and 5:12-104(b).

Proposal Number: PRN 1991-428.

Submit comments by September 18, 1991 to:

Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Casino Control Commission (Commission) rules prohibit casino licensees or applicants from engaging in business with any enterprise not licensed as a casino service industry unless a vendor registration form (VRF) has been filed with the Commission by any casino licensee or applicant on behalf of that enterprise (see N.J.A.C. 19:41-11.3(g)). Upon filing of the VRF, the name of the enterprise is included on a Master Vendors List maintained and updated by the Commission.

Current rules provide that a VRF must be filed within 10 days following formal offer and acceptance of an agreement between the casino licensee or applicant and the vendor. The proposed amendment to N.J.A.C. 19:41-11.1 extends the time period for filing VRF's from 10 to 20 days. The proposed amendment also provides for a 10-day grace period to correct any minor errors or omissions in a VRF filing which is otherwise timely and substantially complete.

Social Impact

The proposed amendment will benefit casino licensees and applicants by extending the permissible time period for the filing of VRF's. Moreover, the proposed amendment ensures that licensees and applicants will have the opportunity to correct minor deficiencies in VRF filings which are otherwise substantially complete.

Economic Impact

The proposed amendment is not expected to have any significant economic impact, since the amendment affects only the procedural rules for the filing of VRF's.

Regulatory Flexibility Statement

Although many enterprises which transact business with casino licensees and applicants qualify as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the casino licensees and applicants themselves are responsible for the filing of VRF's. The proposed amendment to the Commission's VRF filing procedures thus affects only casino licensees and applicants, none of which qualifies as a small business. Therefore, a regulatory flexibility analysis is not required.

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

19:41-11.1 Presentation of the agreement

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

(c) Each such casino licensee or applicant for a casino license shall file with the Commission no later than [10] **20** calendar days following the formal offer and acceptance of an agreement a completed vendor registration form in a form as specified by the Commission for any enterprise which has not already had such form filed with the Commission on its behalf by any casino licensee or applicant for a casino license. **Notwithstanding the foregoing, an incomplete vendor registration form shall be considered timely filed by the licensee or applicant in accordance with this section if:**

1. The incomplete vendor registration form is substantially complete except for minor errors or omissions and is filed within 20 days following the formal offer and acceptance of the agreement; and

2. A revised vendor registration form, completed in accordance with a deficiency notice provided by the Commission, **is filed within 10 days of service of notice or by the end of the 20 day period, whichever is later.**

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

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Rules of Practice

Proposed New Rules: N.J.A.C. 14:1

Authorized By: Board of Public Utilities, George H. Barbour and Jeremiah F. O'Connor, Commissioners.
Authority: N.J.S.A. 48:2-12.
BPU Docket Number: AX90091001.
Proposal Number: PRN 1991-422.

Submit comments by September 18, 1991 to:
Edward D. Beslow, Esq.
Legal Specialist
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to the provisions of N.J.S.A. 48:2-12, the Board of Public Utilities (Board) is empowered to make all needful rules for its government and other proceedings. Pursuant to Executive Order No. 66(1978), N.J.A.C. 14:1, containing the Rules of Practice of the Board, was to expire on December 16, 1990. Said date was extended to February 14, 1991 (see 23 N.J.R. 24(b)), at which time the rules contained in N.J.A.C. 14:1 did expire. The full text of the expired rule is set forth in the New Jersey Administrative Code at N.J.A.C. 14:1.

The expired rules, which governed practice and procedure before the Board, contained provisions pertaining to the Board's offices, hours of operation, receipt of communications, official records and use of recording equipment at proceedings before it (subchapter 1); the amount and payment of fees required by law (subchapter 2); the rights of parties and their appearance before the Board, including ethical conduct and ex parte communications (subchapter 3); the classification of parties (subchapter 4); the requirements for pleadings filed with the Board, such as petitions, answers, replies and motions, including form and size, number of copies, defective pleadings, amendments, service, withdrawal or dismissal, and verification (subchapter 5); the form and content of petitions for both emergent and specific types of relief, such as approvals for franchises, sales of property, the exercise of power of eminent domain, the authority to issue stocks or bonds and increases in rates to customers (subchapter 6); the form and content of answers, replies and motions and the time for filing same (subchapters 7 and 8); intervention in proceedings before the Board (subchapter 9); the conduct of hearings and settlement conferences before the Board (subchapters 10 and 11); the designation, authority and responsibilities of hearing examiners (subchapter 12); motions for the reopening of hearings or for rehearing, reargument or reconsideration of a proceeding (subchapters 13 and 14); the filing of and specification as to briefs (subchapter 15); and compliance with the orders, decisions and recommendations of the Board and with the Economic Stabilization Act of 1970 (subchapters 16 and 17).

It is now proposed by the Board that N.J.A.C. 14:1 be adopted as new rules with certain amendments and deletions to the rules previously in effect. One such amendment relates to the scope and applicability of the Rules of Practice. The proposed rules relating to pleading requirements will govern filings in both contested and uncontested cases. The remainder of the proposed procedural requirements will apply solely to uncontested matters before the Board. Other than pleading requirements contained in the instant proposed rules, all procedures related to contested cases are governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and rules of special applicability to the Board, N.J.A.C. 1:14.

The Board has reviewed these rules and has found most of them to be necessary, reasonable and proper for readoption for the purpose for which they were originally promulgated. Certain of the rules have been deleted or amended because they refer to autobuses or railroads over which the Board no longer has jurisdiction (see: Reorganization Plan, Laws 1978, p. 995). Other rules have been deleted or amended in light of the advice of the Office of the Attorney General that the Rules of Practice of the Office of Administrative Law (OAL), N.J.A.C. 1:1, govern the conduct of "contested cases" before State agencies, such as the Board, as well as before OAL itself.

Other rules have been deleted or amended to reflect the agency's present name and to delete reference to the Department of Energy (DOE) which has been abolished (N.J.S.A. 52:27F-4.1) and to the Division of Energy Planning and Conservation which was transferred from DOE first to the Department of Commerce, Energy and Development (N.J.S.A. 52:27H-20.1) and then to this Board (Reorganization Plan No. 002-1989).

In addition, the codification of rules has been changed to reflect new chapter revisions related to contested and uncontested case requirements and procedures.

The substantive provisions of the rules proposed to be adopted by the Board are summarized as follows:

N.J.A.C. 14:1-1.1 pertains to the scope of the rules.

N.J.A.C. 14:1-1.2 pertains to the construction of and amendment to the rules.

N.J.A.C. 14:1-1.3 defines certain words and terms utilized in this chapter.

N.J.A.C. 14:1-1.4 designates the Board's official address.

N.J.A.C. 14:1-1.5 designates the hours of the Board.

N.J.A.C. 14:1-1.6 pertains to the transmittal of communications with the Board.

N.J.A.C. 14:1-1.7 pertains to public records maintained by the Board.

N.J.A.C. 14:1-1.8 pertains to the use of cameras and recording devices at proceedings before the Board.

N.J.A.C. 14:1-2.1 notes that the Board has statutory authority to collect fees and charges.

N.J.A.C. 14:1-2.2 requires all fees to be paid prior to the acceptance of any filing or the processing of any request for copies of documents.

N.J.A.C. 14:1-3.1 pertains to evidence of authority to appear before the Board.

N.J.A.C. 14:1-3.2 pertains to ethical conduct before the Board an ex parte communications.

N.J.A.C. 14:1-3.3 pertains to the appearance of former employees before the Board.

N.J.A.C. 14:1-4.1 defines the pleadings before the Board.

N.J.A.C. 14:1-4.2 sets forth the number of copies of pleadings to be filed with the Board.

N.J.A.C. 14:1-4.3 pertains to attachments to pleadings.

N.J.A.C. 14:1-4.4 pertains to defective pleadings.

N.J.A.C. 14:1-4.5 pertains to service and notice of proceedings.

N.J.A.C. 14:1-4.6 pertains to the verification of pleadings.

N.J.A.C. 14:1-4.7 pertains to the amendment of pleadings as a result of changes in fact or circumstances.

N.J.A.C. 14:1-5.1 pertains to the form and content of petitions filed with the Board.

N.J.A.C. 14:1-5.2 pertains to those occasions where the relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body.

N.J.A.C. 14:1-5.3 pertains to the joinder of requests for relief.

N.J.A.C. 14:1-5.4 pertains to the procedures to be employed by the Board upon the filing of a petition.

N.J.A.C. 14:1-5.5 pertains to petitions for the approval of franchises or consents.

N.J.A.C. 14:1-5.6 pertains to petitions for the approval of the sale or lease of property.

N.J.A.C. 14:1-5.7 pertains to petitions for authority to change depreciation rates.

N.J.A.C. 14:1-5.8 pertains to petitions for authority to exercise the power of eminent domain.

N.J.A.C. 14:1-5.9 pertains to petitions for authority to issue stocks, bonds, notes and other evidence of indebtedness or to execute mortgages.

N.J.A.C. 14:1-5.10 pertains to petitions for authority to transfer capital stock.

N.J.A.C. 14:1-5.11 pertains to tariff filings that do not propose increases in charges to customers.

N.J.A.C. 14:1-5.12 pertains to tariff filings which propose increases in charges to customers.

N.J.A.C. 14:1-5.13 pertains to informal complaints in lieu of petitions.

N.J.A.C. 14:1-5.14 pertains to petitions for approval of a merger or consolidation.

N.J.A.C. 14:1-5.15 pertains to petitions for permission to keep books and records outside the State of New Jersey.

N.J.A.C. 14:1-6.1 pertains to the form and content of answers and replies filed in proceedings before the Board.

N.J.A.C. 14:1-6.2 pertains to the time for the filing of answers and replies.

N.J.A.C. 14:1-7.1 sets forth the purposes of conducting pre-transmittal conferences.

N.J.A.C. 14:1-7.2 pertains to the initiation of pre-transmittal conferences.

N.J.A.C. 14:1-7.3 pertains to the stipulation of pre-transmittal conference results.

N.J.A.C. 14:1-7.4 sets forth the authority of Board-designated officers presiding at pre-transmittal conferences.

N.J.A.C. 14:1-8.1 sets forth the procedures to be followed in all contested cases.

N.J.A.C. 14:1-8.2 pertains to oral argument before the Board after receipt of the initial decision and the exceptions and answers thereto.

N.J.A.C. 14:1-8.3 pertains to the review of an initial decision by the Board on its own motion.

N.J.A.C. 14:1-8.4 sets forth the method of reopening a hearing prior to the issuance of a final decision by the Board.

N.J.A.C. 14:1-8.5 pertains to motions to reopen a proceeding after the issuance of a final decision by the Board.

N.J.A.C. 14:1-8.6 pertains to motions for the rehearing, reargument or reconsideration of a proceeding.

N.J.A.C. 14:1-8.7 pertains to motions and answers on rehearing.

N.J.A.C. 14:1-9.1 pertains to uncontested case proceedings before the Board.

N.J.A.C. 14:1-9.2 pertains to the designation by the Board of a person to act as the Board's representative to conduct a hearing in an uncontested matter pending before the Board.

N.J.A.C. 14:1-9.3 pertains to the filing of pleadings, correspondence and other documents regarding an uncontested case.

N.J.A.C. 14:1-9.4 pertains to the use of camera and recording devices in uncontested cases.

N.J.A.C. 14:1-9.5 pertains to appearances before the Board in uncontested cases.

N.J.A.C. 14:1-9.6 requires that three days be added to any prescribed period when service is made by mail.

N.J.A.C. 14:1-9.7 sets forth that all motions shall be deemed denied if not decided within 60 days of filing unless waived by the Board or presiding officer.

N.J.A.C. 14:1-10.1 requires parties to whom an order is directed to notify the Board on or before the date specified in said order whether or not compliance has been made.

N.J.A.C. 14:1-10.2 requires a party to respond within 15 days to any recommendation made to it by the Board.

N.J.A.C. 14:1-10.3 pertains to the extension of time limits for compliance.

N.J.A.C. 14:1-10.4 requires that a utility must submit a report within 15 days of receipt of any letter or telegram from the Board directing an investigation of any matter under its jurisdiction.

Social Impact

The proposed new rule, as well as the recently expired rules, were designed to insure orderly practice and procedure before the Board by establishing both guidelines and specific requirements pertaining to the filing of petitions requesting relief from the Board and to all other submissions related thereto, as well as to the handling of all proceedings before the Board and to the participation and conduct of all affected parties. As they set forth the specific information that must be included in all filings as well as the time frames within which said information must be submitted, the proposed rules are essential if the Board is to process those petitions lawfully before it in an expeditious and just manner. While the majority of matters before the Board are brought by regulated public utilities, petitions are also filed by persons who have grievances against regulated public utilities or who seek other relief that is within the jurisdiction of the Board.

Most of the proposed amendments to the previously existing rules are technical or clarify existing requirements. In addition, sections which pertain to activities no longer subject to Board jurisdiction have been eliminated, for example autobus and railroad operations. Similarly, references to the former Department of Energy have been deleted, as have references to the Economic Stabilization Act of 1970.

Economic Impact

While the proposed rules impose no direct or specific costs, all petitioners and other parties will incur varying levels of expenses in preparing and litigating petitions before the Board. Said expenses will include costs related to legal assistance, accounting work, engineering input, and expert witnesses, as well as to those expenses involved in physically preparing and filing the appropriate submissions. With regard to regulated public utilities, all reasonable levels of expenses incurred in complying with these requirements will be considered to be business expenses to be recovered through customer charges. All fees and charges associated with practice and procedures before the Board are set pursuant to statute, N.J.S.A. 48:2-56. The collection of said fees and charges, however, are inapplicable to public utilities which are subject to assessment pursuant to law, N.J.S.A. 48:2-72.

Regulatory Flexibility Analysis

Many of the public utilities subject to the jurisdiction of the Board, most notably small water utilities and solid waste collection and disposal utilities, as well as non-utility litigants, may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they employ less than 100 full-time employees. The proposed new rules will not impose any additional reporting, recordkeeping or compliance requirements as they continue prior requirements for the filing of petitions for various kinds of relief that require, by statute, the prior approval of the Board and for the submission therewith of certain informational documents.

Said requirements are necessary in order that the Board may carry out its statutory responsibilities and process all applications which are appropriately brought before it. The purpose of the proposed rules is to ensure that all participants in proceedings before the Board are afforded their full due process rights, both procedural and substantive, and that the records made in those proceedings contain sufficient competent evidence to allow the Board to render fair, reasonable and legally sound decisions. To varying degrees, participants may choose to utilize professional services to assist in the preparation, filing or litigation of matters before the Board. These services may include legal, accounting, engineering and economic services. As previously indicated, all reasonable levels of expenses incurred by a public utility will be considered to be business expenses that may be recovered through rates to customers.

Accordingly, as the submissions required by the proposed rules are essential, the Board does not find any reason to distinguish between large and small businesses.

Full text of the proposed new rules follows:

CHAPTER 1
RULES OF PRACTICE

SUBCHAPTER 1. GENERAL PROVISIONS

14:1-1.1 Scope

These rules shall govern practice and procedure before the Board of Public Utilities.

14:1-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the Board to effectively carry out its statutory functions and to secure just and expeditious determination of issues properly presented to the Board.

(b) In special cases and for good cause shown, the Board may relax or permit deviations from these rules.

(c) The rules may be amended by the Board from time to time.

14:1-1.3 Definitions

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

"Board" means the Board of Public Utilities.

"Commissioner" means a member of the Board of Public Utilities.

"Secretary" means the Secretary, Assistant Secretary or any other person duly authorized to act in such capacity by the Board.

"Presiding officer" means any member of the Board or a staff member who is designated as a hearing examiner in an uncontested case.

14:1-1.4 Offices

The statutory office of the Board and the office of the Secretary of the Board are located at Two Gateway Center, Newark, New Jersey 07102.

14:1-1.5 Hours

(a) All offices of the Board are open on weekdays from 9:00 A.M. to 5:00 P.M., unless otherwise authorized by the Board.

(b) The offices are closed on legal holidays, Saturdays and Sundays.

14:1-1.6 Communications

(a) All pleadings, correspondence and other papers should be addressed to the Secretary, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102.

(b) All such pleadings and correspondence shall be deemed to be officially received when delivered at the office of the Board, but a Commissioner or the Secretary or an Assistant Secretary of the Board may in his or her discretion receive papers and correspondence for filing.

14:1-1.7 Official records

(a) The Secretary shall have custody of the Board's seal and its official records, including the minutes of all action taken by the Board.

(b) Copies of rules and orders and decisions of the Board will be furnished by the Secretary upon payment of appropriate fees.

14:1-1.8 Cameras and recording devices

(a) Proceedings before the Board shall be conducted with fitting dignity and decorum.

(b) The use of cameras and recording devices, including still cameras, movie cameras, television cameras, tape recorders and stenotype machines, hereinafter referred to as "equipment", in open meetings or other public proceedings conducted by the Board is permitted.

(c) Any accredited member of a news media desiring to use such equipment shall first contact the Board's Office of Public Information to arrange for the set-up and removal of equipment so as not to interfere with the orderly conduct of the proceedings.

(d) No such equipment shall be placed on the counsel tables, witness stand or on the Board or presiding officer's bench, without the approval of the Board or presiding officer; equipment which would require the user to move about the room during the proceedings is prohibited. Moving about the meeting room in order to more advantageously use such equipment is prohibited, while the meeting is in session.

(e) Except for portable equipment which is used at an individual's seat in the audience, such equipment must be in place and ready for use prior to the start of the meeting or set-up during a recess thereof. Such equipment may be removed only at the conclusion of the meeting or during a recess. A pre-arranged recess for the set-up or removal of such equipment may be requested through the Office of Public Information.

(f) The Board or presiding officer may suspend the operation of all or part of this rule with respect to a particular meeting.

(g) The Board or presiding officer may at any time limit or prohibit the use of any or all such equipment in meetings where in the opinion of the Board or presiding officer use of such equipment may obstruct the conduct of the meeting.

SUBCHAPTER 2. FEES AND CHARGES

14:1-2.1 Amount of fees and charges

The Board has been empowered, authorized and required by law to charge and collect fees and charges more particularly set forth in N.J.S.A. 48:2-56.

14:1-2.2 Payment of fees and charges

(a) No petition, report, notice, document, or other paper will be accepted for filing, and no request for copies of any forms, pamphlets, documents or other papers will be granted, nor action taken by the Board, unless such filings and requests are accompanied by the required fees or charges as provided by law.

(b) All checks for payment of such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Secretary of the Board, Two Gateway Center, Newark, New Jersey 07102.

SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD

14:1-3.1 Appearances

Any person appearing before or transacting business with the Board in a representative capacity may be required by the Board to file evidence of his or her authority to act in such capacity.

14:1-3.2 Ethical conduct and ex parte communications

All attorneys appearing in proceedings before the Board in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the State of New Jersey.

14:1-3.3 Former employees

Except with the written permission of the Board, no former member or employee of the Board or member of the Attorney General's staff assigned to the Board may appear in a representative capacity or as an expert witness on behalf of other parties at any time within six months after severing his or her association with the Board, nor may he or she appear after said six-month period in any proceeding wherein he or she previously took an active part when associated with the Board.

SUBCHAPTER 4. PLEADINGS

14:1-4.1 Pleadings enumerated and defined

(a) Pleadings before the Board shall be petitions, answers, and replies which, for purposes of these rules, are defined as follows:

1. "Petition" means the pleading filed to initiate a proceeding invoking the jurisdiction of the Board;

2. "Answer" means the pleading filed by a respondent or other party against whom a petition is directed or who is affected by the filing of a petition; and

3. "Reply" means the pleading filed by the petitioner or others in response to an answer.

14:1-4.2 Number of copies

(a) Unless otherwise required by the Board, there shall be filed with the Board for its own use, an original and 10 conformed copies of each pleading or other paper and amendment thereof.

(b) Where a pleading originating a proceeding is filed by a party other than a utility subject to the jurisdiction of the Board, one additional conformed copy shall be filed for each respondent named therein for service by the Secretary in accordance with the provisions of N.J.A.C. 14:1-4.5.

14:1-4.3 Attachments to pleadings

All balance sheets, income statements and journal entries submitted with pleadings must conform to the applicable Uniform System of Accounts.

14:1-4.4 Defective pleadings

Pleadings will be liberally construed with the view to effect justice. The Board may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. However, if the defect in a pleading prejudices a substantial right of any party the Board may, on notice, strike the pleading or take such other action as it deems appropriate.

14:1-4.5 Service and notice of proceedings

(a) Unless otherwise provided for by statute or in these rules or unless otherwise ordered or permitted by the Board, the following provisions shall govern:

1. A petition filed on behalf of a public utility shall be served by such utility or its agent or attorney upon each respondent named in such petition;

2. A petition originating a proceeding filed by a party other than a public utility shall be served by the Secretary of the Board upon each respondent named in such petition;

3. Every other pleading, including all answers, replies, notices, briefs and other papers, shall be served by the party filing the same, whether a utility or not, on all other parties of record concurrently with or prior to the filing thereof; and

4. Whenever public notice is required, the same shall be at the expense of the party directed to give such notice.

14:1-4.6 Verification

All pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified except for those matters brought upon the Board's own motion or the motion of the Attorney General of the State of New Jersey.

14:1-4.7 Changes in facts or circumstances

(a) Whenever, subsequent to the date of a pleading, there is any significant change in respect to matter contained in such pleading, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances.

(b) The filing of such amendment shall be considered a new filing as of the date of its filing unless otherwise ordered or permitted by the Board.

SUBCHAPTER 5. PETITIONS

14:1-5.1 Form and content

(a) All petitions shall comply with the provisions of N.J.A.C. 14:1-4 to the extent applicable; shall clearly and concisely state the facts and relief sought; shall cite by appropriate reference the statutory provision or other authority under which the Board's action is sought; and in addition, shall contain such information or statements as are required by provision of the statute and the applicable provision of these rules, or such other rules or orders adopted by the Board pertaining to certain petitions, or as may be required by the Board in a particular proceeding.

(b) Special requirements with respect to certain types of petitions are set forth in N.J.A.C. 14:1-5.5.

(c) Petitions directed to particular respondents shall conclude with a direction that the respondent satisfy the prayer of the petition or file and serve an answer within 20 days in accordance with these rules.

14:1-5.2 Applications to other regulatory bodies

(a) Where the relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body, the petition to the Board shall so state and include the following:

1. The current status of such application;

2. If the application to the other regulatory body or bodies has already been filed, a copy of each such application shall be attached to the petition to the Board, together with a copy of any order or certificate issued relating thereto; and

3. If such an application or amendment thereof is filed with another State or Federal regulatory body subsequent to the date of filing with the Board but prior to its determination, three copies of such application or amendment thereof, together with three copies of any order or certificate issued relating thereto, shall be filed with the Board and served upon other parties of record.

14:1-5.3 Joinder of requests for relief

(a) A petitioner may join in a single petition more than one independent or alternative request for relief subject, however, to the payment of the statutory filing fees applicable to each of the approvals sought.

(b) The Board may in its discretion sever matters so joined for hearing and determination or take such other action as may be in the public interest.

14:1-5.4 Procedures of Board on filing of petition

(a) If in the opinion of the Board the petition complies substantially with these rules and appears on its face to state a matter within this Board's jurisdiction, and necessary copies have been received and fees paid, the Secretary of the Board shall file same.

(b) If after review the Board determines that a petition is deficient, the Board may refuse to file said petition. In the case of a petition proposing increases in charges to customers, the time frame for Board decision set forth in N.J.S.A. 48:2-21(d) shall not begin to run until a complete petition has been filed with the Board.

(c) Unless otherwise directed by the Board, petitions and subsequent pleadings shall be served by the parties as provided for in N.J.A.C. 14:1-5.6 and 5.7.

(d) If within the time allowed for answer, the respondent makes an offer of satisfaction which is accepted by the petitioner, such offer and acceptance signed by the parties or their attorneys shall be filed with the Board and if not disapproved by the Board within 20 days, the petition shall be deemed satisfied and the proceedings closed without further action.

(e) When the respondent has not satisfied the petition, the Board may schedule a hearing thereon and issue such decision or order as the facts and circumstances appear to require.

14:1-5.5 Petitions for approval of franchises or consents

(a) Petitions for approval of a franchise or consent shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable. The following information shall also be supplied in the body of the petition or in attached exhibits:

1. A certified copy of the franchise or consent involved including the terms and conditions relating thereto;

2. Proof that all statutory requirements relating to the obtaining of the franchise or consent have been met; and

3. The reason why petitioner believes that the franchise or consent is necessary and proper for the public convenience and will properly conserve the public interest.

(b) In cases where the petition involves a new water or sewer company, the petition shall, in addition to the requirements of (a) above, also provide the following information:

1. A certified copy of the certificate of incorporation;

2. Details of plant as to type, capacity, cost, status of plant construction, construction schedule and estimated number of customers to be served;

3. A map showing the location and size, in acres or square feet, of the franchise area and the composition, diameter, length and location of pipes to be initially installed; and

4. A statement as to status of petitioner's application to the Division of Water Policy of the Department of Environmental Protection for the diversion of water and to the State Department of Health for its approval of the proposed facilities. If the State Department of Health approval has not yet been given, the petitioner shall obtain and submit with the petition a copy of a letter from said Department expressing intent to approve the operation of the plant as it is proposed to be constructed.

14:1-5.6 Petitions for the approval of the sale or lease of property

(a) Petitions for the approval of the sale, conveyance or lease of real or personal property, or the granting of an easement, or like interest therein as required by law shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4 to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Twenty copies of a separate sheet or sheets designated Schedule "A" containing a description of the property;

i. For real property, the location by municipality and county, a metes and bounds or other adequate description of the property, together with a description of the property and rights, if any, reserved by the utility shall be shown;

ii. For personal property, sufficient information to identify the property adequately shall be included;

2. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights reserved by the transferor or lessor;

3. A copy of the written agreement, if any; if there is no written agreement, it shall be so stated;

4. A certified copy of the resolution of the board of directors or other authority authorizing the transfer or lease;

5. The purpose for which the property was originally acquired, the date of acquisition, the use made of the property for utility purposes, the date when and circumstances under which it ceased to be useful for such purposes, the present use, the possible prospec-

tive use and the identity of the official or officials who determined that the property is not now or prospectively required or useful for utility purposes;

6. The basis of the price or rental: assessed valuation, appraisal, comparable sales, or other basis; whether it is the best price or rental attainable; an appraisal, if any, shall be attached as exhibit;

7. Whether the proposed consideration or rental represent the fair market value of the property to be conveyed or leased;

8. What steps were taken to put this property on the market and accomplish its sale or lease; if bids were solicited, the names of bidders and the consideration or rental offered shall be included;

9. Whether there is any relationship between the parties other than that of transferor and transferee, or lessor and lessee;

10. The actual cost at date of acquisition, and the cost and nature of any improvements;

11. The amount at which the property is now carried on the utility's books;

12. Copies of proposed journal entries to record the transaction when the consideration is more than $20,000;

13. If property is income producing, details, such as carrying charges, taxes, and assessed valuation, shall be included;

14. If the property is encumbered by any mortgage, describe the mortgage, the amount thereof, and the time required to obtain a release, shall be included; and

15. When the property to be sold or leased has a net book cost or fair market value of more than $100,000, the petitioner must attach to the petition copies of the advertisement required by (b) below, and proof of publication.

(b) Where the Board's approval of sale or lease is required by law and the property has a net book cost or fair market value of more than $100,000, the property shall be advertised for sale or lease at least twice, one week apart, in a daily newspaper published or circulated in the country in which the property is located, within 90 days immediately prior to the filing of the petition for the approval of the sale or lease, except that advertising shall not be required for sales or leases of property for public utility purposes to another public utility or other person or company subject to any jurisdiction of this Board. The advertisement shall contain the following:

1. A description of the property to be sold or leased and improvements thereon. In the case of land, this shall include the street address, if any, and a description sufficient to identify the location of the property and its approximate size, which may be a description by metes and bounds or lot and block numbers;

2. The place where the property is located or may be inspected, together with the street address, if any;

3. Conditions of the sale or lease, if any, together with a provision that the utility may reject any or all bids;

4. A statement that the sale or lease is subject to the approval of the Board of Public Utilities;

5. A statement of the place and final date for submitting sealed bids which shall not be less than ten days after publication of the second advertisement together with a statement of the time and place of the opening of said bids, which shall not be more than five days following the final date for submitting bids, at a place in New Jersey; and

6. A sealed bid, in accordance with the requirements of (b)5 above, must be submitted by a prospective purchaser or lessee. However, an offer or agreement to purchase or lease in writing received by the utility or executed before the first date of advertising and still in effect at such date, shall be considered as if it were a sealed bid, provided such offer or agreement in writing meets all other conditions of sale or lease, if any, included within the advertising.

(c) In addition to any other transactions not requiring approval or which on their merits may be deemed to be in the ordinary course of business, any lease, grant or permission by a utility to occupy or use its real property or any interest therein which is terminable at the option of the utility upon notice not to exceed 90 days, and any release, by quit claim deed or otherwise by any utility of any lease, easement, or permission to occupy or use real property, shall be deemed to be in the ordinary cause of its business. Neither notice to the Board nor petition for its approval shall be required with respect thereto.

(d) In addition to any other transactions which on their merits may be deemed to be in the ordinary course of business, the sale, lease, encumbrance or other disposition by any utility of such of its property or an interest therein as is set forth in (d)1 through 3 below, may be consummated without petition to the Board for approval, provided, however, that the utility shall have given written notice thereof to the Board, to be received not less than 15 days prior to the effective date of the proposed sale, lease, encumbrance or other disposition of such property. The transactions which may be completed without petition to the Board are as follows:

1. The sale of personal property having a net book cost and sale price not in excess of $50,000 and which is no longer used by or useful to the utility;

2. Except as provided in this section, the lease or permission to use or occupy real property or any interest therein having a net book cost not in excess of $100,000 and a net rental not in excess of $10,000 per annum; and

3. The sale or release of real property, or any interest therein, not used by or useful to the utility and having a net book cost and sale price not in excess of $100,000.

(e) On expiration of the notice period and on payment of the statutory fee, the Secretary will certify on a true copy of the notice to be furnished to the Board that such sale, lease or release is deemed by the Board to be in the ordinary course of business and within the statutory provision. Such notice shall contain, to the extent applicable, the following:

1. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights, if any, reserved by the transferor or lessor;

2. A copy of the agreement or lease and a map of the real property;

3. A statement that the proposed consideration or rental represents the fair market value of the property to be conveyed, or the fair rental value of the property to be leased, giving the basis for the conclusion reached;

4. A statement of any relationship between the parties other than that of transferor and transferee, or lessor and lessee, or a statement that there is no such other relationship, as the case may be;

5. The amount at which the property is carried on the utility's books;

6. A statement as to whether or not the property is income producing and, if so, details as to whether the petitioner pays all carrying charges, including taxes. In addition, such statement shall include the assessed valuation of the property;

7. A statement, in the case of a proposed sale, that the property is not used by or useful to the utility, and in the case of a proposed lease, grant or permission, that the transaction will not compromise the ability of the utility to render service;

8. A verification by a properly authorized officer, partner or proprietor of the statements contained in the notice; and

9. A blank space of three inches shall be provided at the bottom of the first page of the notice for the Board's certification.

(f) The Board may, within the aforesaid 15-day notice period, or at any time prior to the actual consummation of the transaction, suspend the provisions of this rule and require the filing of a petition for the approval of the sale, lease, encumbrance or other disposition.

14:1-5.7 Petitions for authority to change depreciation rates

(a) Petitions for the approval of change or variation in the rates of depreciation used shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The existing and proposed rates of depreciation;

2. The existing and proposed methods of calculating or determining the rates of depreciation;

3. The calculations or studies supporting the proposed change in depreciation rates;

4. The effect of the proposed changes on operating revenue deductions and operating income; and

5. A statement as to the date when it is proposed to make the changes in depreciation rates effective, which date shall not be earlier than 90 days after the filing of a petition under this rule.

14:1-5.8 Petitions for authority to exercise power of eminent domain

(a) Petitions for authority to exercise the power of eminent domain shall conform to the requirements of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The names, and addresses if known, of the owners of the property to be condemned or of any interest therein, with a specification of the interest of each such owner;

2. The names of such owner or owners whose whereabouts or address is unknown;

3. A map or plot plan. In addition, there shall be filed with the petition 20 copies of a separate sheet, designated Schedule "A", which shall contain a proper metes and bounds description of the property to be acquired;

4. A brief description of the improvements thereon, if any, and the present and potential character and uses of the property;

5. Allegations that the property desired is reasonably necessary for the service, accommodation, convenience and safety of the public, and that the taking of such property is not incompatible with the public interest, and would not unduly injure the owners of private property;

6. A statement of the reasons why the property cannot be purchased by negotiation; and

7. Where the petitioner has, after diligent search, been unable to determine the name and address of the owner of the property to be condemned or of any interest therein, such facts must be stated in an affidavit of inquiry prepared in the manner provided for in the rules of the Superior Court.

(b) Where the petitioner has, after diligent search, been unable to determine the name and address of any respondent, the petitioner shall publish notice of hearing, addressed to such respondent by name, or other appropriate designation if the name is unknown. Such publication shall be made twice in consecutive calendar weeks, once in each week, in a newspaper published in the county where the property is situated, or if none be published therein, then in a newspaper published in this State and circulating in said county, the second such publication to be made not less than 20 days prior to the hearing date. Said publication shall contain a description of the property to be condemned. Sworn proof of publication must be filed at least five days prior to the hearing date.

14:1-5.9 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages

(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, provide the following information:

1. A statement of the amount and terms of the proposed issue including the nature of the security therefor, if any; the purposes for which the proceeds are to be used; and the nature of all rights and limitations applicable to the security;

2. Where one of the purposes is the acquisition of property, a general description of the property, the name of the transferor, and a copy of the contract, if any, for such acquisition. In the case of property to be acquired for right-of-way purposes, a general description of the proposed route and a map or plot plan will be sufficient;

3. Where one of the purposes is the construction, completion, extension or improvement of facilities, a general description of the work proposed to be done, and an estimate of the cost thereof in reasonable detail. Where one of the purposes is the improvement or maintenance of service, there shall be included a description of the existing service as well as of the improvements, or betterments proposed;

4. Where one of the purposes is the refunding of securities, a description of the securities and obligations to be refunded, including the kind, amount, date of issue and date of maturity, together with the terms of refunding and all other material facts affecting the same must be set out;

5. Where one of the purposes is the issuance of capital stock based upon the investment of earnings in plant which might have been distributed in dividends, a complete and reasonably detailed enumeration of petitioner's property, priced at original cost, or estimated if not known. The petitioner shall produce evidence at the hearing in support of such enumeration and pricing;

6. Where one of the purposes is to reimburse the treasury for expenditures not theretofore capitalized by the issuance of securities, the petitioner shall also show the exact period and amount for which reimbursement is desired; comparative financial statements which shall include, as a minimum, balance sheets and utility plant by accounts as at the beginning and end of the period, as well as changes in the period, and, in the case of utility plant, additions and retirements shall be stated separately for each year; a statement indicating the source and application of funds during the period; a statement indicating the manner in which petitioner proposes to use the proceeds from the security issue; and the necessity and reasonableness of the proposed transaction;

7. Where one of the purposes is for the issuance of common capital stock in connection with the organization of a new corporation to operate as a public utility, the petition must contain the following:

i. A copy of the certificate of incorporation;

ii. The names and addresses of the elected or proposed officers, directors and stockholders of the company and the number of shares of capital stock to be held by each;

iii. The required number of stockholders and directors and the state in which they reside pursuant to the statute under which the corporation will be organized;

iv. A corporate resolution or proposed resolution of the directors of the utility authorizing the issuance of the stock;

v. A copy of a *pro forma* balance sheet of the new corporation and copy of a *pro forma* income statement of estimated operating results anticipated for the first two years of its proposed operations, unless a different period is specified by the Board;

vi. The name of the municipality and the street and number therein;

(1) In which the principal office in this State is to be located, and the name of the agent in and in charge of such principal office upon whom process against the corporation may be served;

(2) In which the principal business office is to be located; and

(3) At which the records, books, accounts, documents and other writings referred to in N.J.S.A. 48:3-7.8 are to be kept and the name, place of residence within this State, and place of business of the agent who shall have custody of said corporate records and upon whom process for the production of the same before the Board may be served. The books of account must be kept in conformity with the appropriate Uniform System of Accounts prescribed by the Board. Books and records must be kept within this State unless authority to do otherwise is obtained from the Board;

vii. A detailed list of organization expenditures;

viii. A copy of a *pro forma* balance sheet giving effect to the issuance of the proposed securities;

ix. A copy of a *pro forma* income statement giving effect to the issuance of the proposed securities; and

x. The effective rate of interest or of the cost of money to the petitioner and the reasonableness thereof, if authority is requested to issue stocks, bonds, notes or other evidence of indebtedness by means of private placement and not at a public offering, and the financial sources that the petitioner has contacted in this connection. The petitioner shall submit information as to the computation of the effective rate of interest or of the cost of money as distinguished from the nominal rates wich may be indicated;

8. Where one of the purposes is the issuance of bonds to be secured by an existing mortgage, a statement showing the amount and use made of the proceeds of the bonds, if any, already issued under such mortgage;

9. Information relating to the current financial condition of the petitioner setting forth:

i. As to each class of capital stock of the petitioner, the amount authorized and the amount issued and outstanding;

ii. As to each class of preferred stock of the petitioner, a summary statement of the terms of preference thereof;

iii. As to each issue or series of long-term indebtedness of the petitioner, the principal amount authorized to be issued, date of issue, date of maturity, rate of interest and principal amount outstanding; and as to each such issue secured by a mortgage upon any property of the petitioner, the date of said mortgage, name of trustee, principal amount authorized to be secured, and a brief description of the mortgaged property;

iv. Other indebtedness of all kinds, giving same by classes and describing security, if any;

v. The amount of interest charged to income during previous fiscal year upon each kind of indebtedness and rate thereof; and, if different rates were charged, the amount charged at each rate;

vi. The amount of dividends paid upon each class of stock during previous fiscal year and rate thereof; and

vii. A detailed income statement for previous fiscal year and balance sheet showing condition at the close of that year;

10. A statement whether any franchise or right is proposed to be capitalized directly or indirectly. In case it is proposed to capitalize any franchise as authorized by N.J.S.A. 48:3-5, a copy of such franchise and a statement, together with an affidavit showing the amount actually paid for said franchise shall be attached to the petition;

11. Where any contract, agreement or arrangement, verbal or written, has been made to sell the securities proposed to be issued, a description of such contract, agreement or arrangement and, if in writing, a copy thereof;

12. If no contract, agreement or arrangement has been made for the sale or other disposition of the securities proposed to be issued, the proposed method of sale or other disposition must be set forth together with an affidavit of a competent person showing the amount which can probably be realized from the sale and disposition thereof, and the reasons for the opinion of the affiant;

13. Petitions filed under this rule shall contain a certified copy of the resolution of the Board of Directors or other authority authorizing the proposed issuance of securities and shall be verified. The verification shall include a statement that it is the intention of the petitioner in good faith to use the proceeds of the securities proposed to be issued for the purposes set forth in the petition; and

14. Information which under this rule is required to be set forth in a petition or any exhibit attached thereto and which is contained in any report, document, pleading or other instrument previously filed with the Board pursuant to any requirement of any statute or any rule of the Board, may be incorporated in such petition or exhibit by reference to the official filing thereof with the Board provided that said information is still correct in all respects.

14:1-5.10 Petitions for authority to transfer capital stock

(a) Petitions for authority to transfer upon the books and records of any public utility, pursuant to N.J.S.A. 48:3-10, any share or shares of its capital stock, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The name and address of the proposed transferor and transferee;

2. A description of the proposed transferee including information as to whether the proposed transferee is a public utility, a holding company either separately or by affiliation in a utility holding company system, or a person or other domestic or foreign corporation;

3. A description of the capital stock proposed to be transferred including the class of shares, number of shares and the par or stated value thereof;

4. The percent in interest of the outstanding voting capital stock of the public utility which the proposed transfer, either by itself or in connection with other previous sales or transfers, will vest in the transferee;

5. The reason for the proposed transfer;

6. Details and explanation of any changes expected to be made, if the petition is approved, in:

i. The board of directors;

ii. Officers and active managers; and

iii. Company policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and any other matters affecting the public interest; and

7. The qualifications and the business or technical experience of the proposed officers, directors and stockholders, or other principal management and operating personnel with particular respect to their ability to carry out the utility's obligation to render safe, adequate and proper service.

14:1-5.11 Tariff filings which do not propose increases in charges to customers

(a) Tariff filings for the purpose of making effective initial tariffs or revisions, changes or alterations of existing tariffs and which are not filed because of the need for additional revenue from products or services covered by existing tariffs and which do not propose increases in charges to customers, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Four copies of the proposed tariff or revision, change or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or prior tariff, and the effect, if any, upon revenue;

2. A statement of the reasons why the tariff or change is proposed to be filed;

3. A statement of notices given, if any, together with a copy of the text of each said notices;

4. A statement as to the date on which it is proposed to make the tariff or change effective, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the Board; and

5. In the case of initial tariffs, *pro forma* income statements for each of the first two years of operations and actual or estimated balance sheets as at the beginning and end of each year of said two-year period.

14:1-5.12 Tariff filings or petitions which propose increases in charges to customers

(a) Tariff filings or petitions for the purpose of making effective or making revisions, changes or alterations of existing tariffs which propose to increase any rate, fare, toll, rental or charge or so to alter any classification, practice, rule or regulation as to result in such an increase, other than filings to effectuate the operation of an existing fuel or raw materials adjustment clause, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, contain all applicable information and data set forth in N.J.A.C. 14:1-5.11 and, in addition, shall contain the following information and financial statements which shall be prepared in accordance with the applicable Uniform System of Accounts:

1. A comparative balance sheet for the most recent three-year period (calendar year of fiscal year);

2. A comparative income statement for the most recent three-year period (calendar year or fiscal year);

3. A balance sheet at the most recent date available;

4. A statement of the amount of revenue derived in the calendar year last preceding the institution of the proceedings from the intrastate sales of the product supplied, or intrastate service rendered, the rates, tolls, fares or charges for which are the subject matter of the filing;

5. A *pro forma* income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as a calculation showing the indicated rate of return on the average net investment for the same period as that covered by the *pro forma* income statement, that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities;

6. If the request for rate relief is based upon N.J.S.A. 48:2-21.2, there shall be included, in lieu of the requirements of (a)5 above, a statement showing that the facts of the particular situation meet the statutory requirements;

7. Whenever a telephone company seeks to increase its rates, it shall include in its petition or attachments thereto information demonstrating the principles of rate design employed in the proposed tariff revisions. Such information shall identify the approximate percentage of increased revenue requirement, should the Board determine a lesser additional revenue requirement than that sought by the company, at which it would derive a different proportion of revenue requirement from each of the major classes of service whose prices are sought to be increased, and the revenue requirement by class at each such level. The information shall include a statement of the amount and percentage of increase which would be raised from each such class of service if relief of approximately one-third the request were approved by the Board;

8. In providing the information required by (a)5, 6 and 7 above, a company may also file, in addition to the new rates proposed to become effective, alternative rate changes designed to produce the full revenue request, which alternatives are illustrative of the application of other possible rate designs to the filing;

9. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five percent of the utility's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges; and

10. A copy of the form of notice to customers.

(b) Each utility that makes a filing under (a) above shall, unless otherwise ordered or permitted by the Board, give notice thereof as follows:

1. Serve a notice of the filing and a copy of the proposed tariff or a copy of the petition or a statement of the effect of the proposed filing upon the municipal clerk in each of the municipalities in which there is rendered a service, the charge for which is proposed to be increased;

2. Serve a notice of the filing and two copies of the petition or tariff on the Department of Law and Public Safety, 1207 Raymond Boulevard, Newark, New Jersey 07102 and on the Director, Division of Rate Counsel, Department of the Public Advocate; and

3. Serve a notice of the filing and a statement of the effect on customers of various classes on all current customers who are billed on a recurring basis and who will be affected by said filing. Such notice may be by bill insert or by publication in newspapers published and circulated in the utility's service area.

(c) Each utility that makes a filing under (a) above shall, after being advised by the Board of the time and place fixed for hearing, if any and unless otherwise ordered or permitted by the Board, serve notice at least 20 days prior to such time on those persons specified in (b)1 and 2 above; and shall give such notice to those persons designated in (b)3 above as current customers billed on a recurring basis, by bill insert or by publication 20 days prior to the date set for hearing, in newspapers published and circulated in the utility's service area.

(d) The notices provided for in (b) and (c) above may be given simultaneously.

(e) Where notice is prescribed under this rule, it shall be at the cost and expense of the party obligated to give or serve the notice.

14:1-5.13 Informal complaint in lieu of petition

(a) In lieu of filing a petition, an informal complaint may be made by letter or other writing.

(b) Matters thus presented may be taken up by the Board with the parties affected by correspondence or otherwise, in an endeavor to bring about an adjustment of the subject matter of the complaint without formal hearing order.

(c) While no form of informal complaint is prescribed, to be considered by the Board such informal complaint must be signed and state the name and address of the complainant and the party complained of as well as the essential facts upon which the complaint is based, including the dates of acts or omissions complained of.

(d) Informal complaints are usually assigned to the Division of the Board's staff which deals with the subject matter involved. This Division then brings the matter to the attention of the utility and directs the latter to submit information deemed to be pertinent as well as a statement of its position.

(e) Following a study and review of the complainant's and utility's positions and supporting data and after such informal conferences as may be held, an attempt is made to affect an amicable adjustment of the dispute.

(f) A letter is then forwarded to the complainant with a copy to the utility reflecting the results, if any, of the processing of the informal complaint.

(g) Informal complaints shall be without prejudice to the right of any party to file a petition or of the Board to institute a formal proceeding.

(h) While informal complaints are recommended wherever practicable as a method designed for amicable adjustment of disputes, no mandatory or prohibitory order will be issued on an informal complaint.

(i) A party desiring a decision on order of the Board must file a petition.

14:1-5.14 Petitions for approval of a merger or consolidation

(a) Petitions for approval of a merger or consolidation of one public utility of New Jersey with that of another public utility shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4 and 5.9, as well as N.J.A.C. 14:11-1.7, to the extent applicable, and shall contain in the petition, or as attached exhibits, the following information:

1. A copy of the agreement of merger or consolidation;

2. Copies of corporate resolutions of the stockholders of each of the corporations authorizing the transaction;

3. Copies of recent balance sheets of each company and a *pro forma* balance sheet of the continuing company;

4. Copies of recent income statements of the operation of each of the companies involved and a *pro forma* income statement of the continuing corporation, in sufficient detail;

5. Copies of certificates of incorporation of each corporation to be merged and amendments thereto, if not heretofore filed with the Board;

6. The total number of shares of each of the various classes of capital stock proposed to be issued, if any, by the surviving corporation; the par or stated value per share; and the total amount of new capital stock to be issued;

7. The percentage, and the manner in which, if any, the presently outstanding capital stock of the corporations involved will be exchanged for the new stock of the surviving corporation;

8. Whether any franchise cost is proposed to be capitalized on the books of the surviving corporation, and, if so, the reasons therefor, and in what manner and over what period the items are proposed to be amortized;

9. The names and addresses of the new officers, directors and principal stockholders and the number of shares to be held by each in the surviving corporation;

10. The various benefits to the public and the surviving corporation which will be realized as the result of the merger;

11. Proposed changes, if any, by the surviving corporation, in company policies with respect to finances, operations, accounting, rates, depreciation, operating schedules, maintenance and management affecting the public interest;

12. Proof of service of notice of the proposed merger to the public, the municipalities being served by the companies to be merged, and the public utilities serving in the area, pursuant to N.J.A.C. 14:1-4.5;

13. Proof of compliance with rules, regulations and statutes requiring approval from other State and Federal regulatory agencies having jurisdiction in the matter; and

14. A statement of the fees and expenses to be incurred in connection with the merger and the accounting disposition to be made thereof on the books of the surviving corporation.

14:1-5.15 Petitions for permission to keep books and records outside the State of New Jersey

(a) Petitions for authority to keep books, records, accounts, documents and other writings outside the State of New Jersey, filed with the Board, as required under N.J.S.A. 48:3-7.8, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. A complete description of the specific books, records, accounts, documents and other writings proposed to be kept outside the State of New Jersey;

2. The exact location where the books and records will be kept;

3. If all books and records will not be kept outside the State, what remaining records will be kept at the New Jersey location;

4. The reason for proposing to keep its books and records at a location outside the State;

5. The availability of adequate required space, facilities and experienced personnel at the new location;

6. The cost to the petitioner of maintaining the books and records at the new location as compared with that of maintaining the records at the New Jersey location;

7. The extent of the financial advantage to the customers and other benefits to the public utility which will result from keeping the books and records outside the State;

8. Whether the books and records which will be kept at the location outside the State will be, on notice in writing of the Board, produced at such time and place within this State as the Board may designate;

9. Whether the petitioner will pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination, if the Board grants said permission;

10. The location where the petitioner will continue to maintain an office within the State of New Jersey for the convenience of its customers to pay bills, file complaints and conduct other business with the utility; and

11. The name and address of the petitioner's statutory agent.

SUBCHAPTER 6. ANSWERS AND REPLIES

14:1-6.1 Form and content

(a) Any party against whom a petition is directed and who desires to contest the same or make any representation to the Board in connection therewith shall file an answer in writing thereto with the Board.

(b) The answer shall be so drawn as to apprise the parties and the Board fully and completely of the nature of the defense and shall admit or deny specifically and in detail all material allegations of the petition.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered.

(d) Answers shall not be required in any rate proceeding instituted by a public utility.

14:1-6.2 Time for filing

(a) Unless otherwise provided in these rules or ordered by the Board, an answer, if made, must be filed within 20 days after the service of the pleading against which it is directed. A party desiring to reply to an answer shall file the same with the Board within 10 days after service of the answer.

(b) Whenever the Board believes the public interest requires expedited procedure, it may shorten the time for any answer or reply.

(c) Upon motion on notice to all parties to the proceeding, the Board may, in its discretion, extend or shorten the time to file an answer or reply.

SUBCHAPTER 7. CONFERENCES

14:1-7.1 Purposes

(a) The purpose of this subchapter is to foster early settlement of cases pending before the Board prior to the case being transmitted to the Office of Administrative Law and to provide a vehicle for the parties to file pre-transmittal motions with the Board for retention and disposition of certain issues. Pre-transmittal settlement conferences of parties or their attorneys may be held to provide opportunity for a settlement, subject to approval of the Board, of a proceeding or any of the issues therein, and for the submission and consideration of facts, argument, offers of settlement or proposals of adjustments, as time, the nature of the proceeding and the public interest may permit.

(b) Pre-transmittal conferences of parties or their attorneys may be held to expedite the disposition of any hearing. At such conferences there may be considered, in addition to the matters set forth in (a) above, the following:

1. Identification and simplification of the issues;

2. Admissions or stipulations of facts;

3. Identification of those matters or issues which should either be retained for disposition by the Board or be transmitted to the Office of Administrative Law; and

4. Such other matters as may be properly dealt with to aid in expediting the proceeding.

14:1-7.2 Initiation of conferences

(a) The Board or a Board-designated officer, with or without motion, may direct that a conference be held at any stage prior to transmittal to the Office of Administrative Law or at any time when the Board certifies a case unto itself pursuant to N.J.S.A. 52:14F-8(b).

(b) On motion of a party, the Board-designated officer may direct the parties or their attorneys to appear for a conference to consider the matters set forth in N.J.A.C. 14:1-7.1(b).

14:1-7.3 Stipulation of conference results

(a) Upon conclusion of the pre-transmittal conference, the parties or their attorneys shall reduce the results thereof to the form of a written stipulation reciting the matters agreed upon, and three copies thereof shall be filed with the Board within 10 days of the date of the conference. If no stipulations are reached, the matter shall be immediately transmitted to the Office of Administrative Law.

(b) Such stipulations shall be signed by the parties or their attorneys, may be received in evidence as part of the record and, when so received, shall be binding on the parties with respect to the matters therein stipulated.

(c) Such stipulations are subject to review by the Board at a regularly scheduled agenda meeting.

14:1-7.4 Authority of Board-designated officers

(a) Any Board-designated officer shall have the authority to conduct and preside over pre-transmittal conferences in the interest of fostering resolution of issues.

(b) When appropriate, a Board-designated officer may submit a pre-transmittal order which shall be reviewed by the Board at an agenda meeting, if acceptable, shall be adopted as its own order.

SUBCHAPTER 8. CONTESTED CASE HEARINGS

14:1-8.1 Contested case procedures

The hearing in any matter which is determined by the Board to be a contested case shall be conducted pursuant to the procedures in the Administrative Procedures Act, N.J.S.A. 52:14B-1 and 52:14F-1, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of Public Utilities Rules of Special Applicability, N.J.A.C. 1:14.

14:1-8.2 Argument on exceptions

After receipt of the initial decision, the exceptions and answers thereto, if any, will be disposed of by the Board based on the exceptions, answers and briefs filed unless the Board, in its discre-

tion, requires or permits oral argument, in which case the Board will schedule the matter for argument before it.

14:1-8.3 Review of initial decision by the Board on its own motion

The Board may institute on its own motion a review of any aspect of the initial decision and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

14:1-8.4 Method of reopening

(a) At any time after the conclusion of a hearing in a proceeding or adjournment thereof *sine die,* but before the entering and issuance by the Board of its final decision or order, any party to the proceeding may file with the Board a motion to reopen the hearing for the purpose of taking additional evidence. Such motion shall set forth clearly the reasons for reopening of the hearing, including any material changes of fact or of law alleged to have occurred since the last hearing.

(b) If, after the hearing in a proceeding, the Board shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such hearing, the Board will issue an order for the reopening of same.

14:1-8.5 Motions to reopen

(a) After issuance of the final decision, a party may file for the reopening of the proceeding. Upon filing by any party of a motion for the reopening of a proceeding, appropriate notice thereof shall be given forthwith by the moving party to all other parties, or their attorneys of record, by service of a copy of the motion for reopening.

(b) Within 10 days following the service of a motion to reopen, any party to the proceeding may serve upon the moving party and file with the Board an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such motion.

(c) As soon as practicable after the filing of answers to a motion to reopen or default thereof, as the case may be, the Board will grant or deny such motion. The action by the Board may be conditioned on reasonable terms.

14:1-8.6 Rehearing, reargument or reconsideration

(a) A motion for rehearing, reargument or reconsideration of a proceeding may be filed by any party within 15 days after the issuance of any final decision or order by the Board.

1. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

(b) The Board at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

14:1-8.7 Motions and answers on rehearing

(a) A copy of the motion shall be served by the moving party upon all other parties or their attorneys of record, forthwith upon the filing hereunder. The moving party shall also give such notice, as the Board may direct, of the filing of the motion to all other persons to whom notice of the original hearing had been given.

(b) Any answer to the motion shall be filed within 10 days following the service of the motion. Failure to file an answer shall be deemed to be a waiver of any objection to the granting of the motion.

(c) Any motion hereunder which is not granted or otherwise expressly acted upon by the Board within 60 days after the filing thereof, shall be deemed denied.

(d) The filing or granting of any motion under this rule shall not operate as a stay of the Board's decision or order. A stay will be granted only for good cause shown.

SUBCHAPTER 9. UNCONTESTED CASE PROCEEDINGS

14:1-9.1 Uncontested case proceedings

This subchapter applies only to a matter which the Board determines to constitute an uncontested case. Where the Board determines to hold a hearing in an uncontested case, said hearing shall be conducted pursuant to this subchapter and, in the absence of a specific provision herein, pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of Public Utilities Rules of Special Applicability, N.J.A.C. 1:14.

14:1-9.2 Designation

The Board may by general order in writing designate as a presiding officer such person or persons, as provided by statute, as its representative or representatives in and on its behalf to conduct any hearing in any uncontested proceeding now or hereafter pending before the Board.

14:1-9.3 Filing

Pleadings, correspondence or other documents pertaining to an uncontested case shall be filed pursuant to N.J.A.C. 14:1-6. Copies of such correspondence shall be filed with the presiding officer and with the parties of record.

14:1-9.4 Cameras and recording devices

Cameras or recording devices may be used at uncontested case proceedings in accordance with the standards and procedures of N.J.A.C. 14:1-1.8.

14:1-9.5 Appearances

Any person appearing in a representative capacity in any uncontested case proceeding shall conform to the requirements of N.J.A.C. 14:1-3.

14:1-9.6 Service

Whenever a party has the right or is required to do some act within a prescribed period after the serving of a notice or other paper upon said party, and the notice or paper is served upon said party by mail, three days from the date of mailing shall be added to the prescribed period.

14:1-9.7 Motions

All motions shall be deemed denied if not decided within 60 days after the filing thereof, whether referred to the Board or to be decided by the presiding officer. The Board or presiding officer may waive this rule on their own motion or for good cause shown by a party.

SUBCHAPTER 10. COMPLIANCE WITH ORDERS, DECISIONS AND RECOMMENDATIONS

14:1-10.1 Orders and decisions

Upon issuance of an order or decision of the Board, the party to whom the same is directed must notify the Board on or before the date specified in said order or decision whether or not compliance has been made in conformity therewith.

14:1-10.2 Recommendations

Upon the making of any recommendation by the Board, the party to whom the same is directed must within 15 days after the making of the recommendation, unless otherwise specifically required, notify the Board of the acceptance or rejection thereof. Failure to comply with this rule will be deemed an acceptance of the recommendation.

14:1-10.3 Extension of time limits

In instances where the Board's decision or order contains a specific time or date for compliance, and the petitioner desires extension of such time limit, petition to the Board shall be made in writing at least five days before the expiration of the time limit.

14:1-10.4 Answers to communications

Unless otherwise specified, any letter or telegram from the Board directing investigation of any matter under its jurisdiction must be complied with by the utility and a report received by the Board within 15 days from the date of the letter or telegram. If circumstances

prevent compliance with this rule, the utility must advise the Board, in writing within the above prescribed period, of its inability to comply and the reasons therefor.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Extension of Comment Period
Special Hearing Rules
Council on Affordable Housing Hearings

Proposed Readoption with Amendments: N.J.A.C. 1:5

Take notice that the Office of Administrative Law has extended the comment period until Augus 31, 1991 for the proposed readoption with amendments of the special hearing rules for the Council on Affordable Housing Hearings, published in the July 15, 1991 New Jersey Register at 23 N.J.R. 2082(a).

Submit comments by August 31, 1991 to:

Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Indemnification
Avian Influenza

Adopted New Rules: N.J.A.C. 2:9

Proposed: May 20, 1991 at 23 N.J.R. 1485(a).
Adopted: July 24, 1991 by Arthur R. Brown, Jr., Secretary, Department of Agriculture; and State Board of Agriculture.
Filed: July 25, 1991 as R.1991 d.430, **without change.**

Authority: N.J.S.A. 4:5-1 and 4:5-10.

Effective Date: August 19, 1991.
Expiration Date: August 19, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

On July 7, 1991 the rules at N.J.A.C. 2:9, Avian Influenza, expired pursuant to Executive Order No. 66(1978). The State Board of Agriculture subsequently readopted the rules which became effective as new rules on August 19, 1991, in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the new rules, which were proposed as a readoption, may be found in the New Jersey Administrative Code at N.J.A.C. 2:9.

(b)

DIVISION OF DAIRY INDUSTRY

Milk Prices to Dairy Farmers

Adopted Concurrent New Rules: N.J.A.C. 2:51

Proposed: June 17, 1991 at 23 N.J.R. 1966(b).
Adopted: July 26, 1991 by Mark G. Robson, Ph.D, Acting Director, Division of Dairy Industry, Department of Agriculture.
Filed: July 29, 1991 as R.1991 d.448, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:12A-1 et seq.; specifically 4:12A-22 and 23.

Effective Date: July 29, 1991.
Expiration Date: May 31, 1992.

Summary of Public Comments and Agency Responses:

Two letters of comment were received. One from the attorneys for the New Jersey Milk Industry Association, and one from the attorney for the Atlantic Dairy Cooperative.

COMMENT: Attorneys for the New Jersey Milk Industry Association ("NJMIA"), who had previously filed an appeal of the emergency rule with the Appellate Division of the Superior Court, made no suggestion for changes but took the position that the rules were improper and should be rescinded. The commenter suggests that the premium represented the subsidization of producers at the expense of processors and consumers in order to maintain the agricultural services industry and open space.

RESPONSE: Although the maintenance of the agricultural services industry and taxpaying open space are the by-product of and contribute to a healthy dairy industry, such was not the goal of the rules. The goal of the rules was to retain New Jersey's dairy farmers who, without an increase in income, would be forced out of business. The rules respond to the mandate of N.J.S.A. 4:12A-22, which requires the Director, when fixing prices, to consider the amount necessary to yield a reasonable return to producers.

COMMENT: The NJMIA suggests that because dairy farmers throughout the Northeast produce more milk than is required for fluid use, the Department should consider the supply as being adequate for New Jersey and do nothing to maintain New Jersey's milk production.

RESPONSE: The Milk Control Act has as its purpose the maintenance of New Jersey dairy industry—farmers and processors—and the Director must make an effort to maintain New Jersey's milk production sector. New Jersey's dairy farmers are important as a nearby source of milk for processors in the State. And, because of transportation costs, nearby milk means lower prices to consumers. This concept was highlighted by Mr. Marc Goldman, President, Farmland Dairies and NJMIA member, in a November 1989 article published in *Dairy Foods* magazine. Mr. Goldman states: "It is critical that we maintain local milk production to supply local processors." He later stated: "Unlike cheese and other manufactured products, which can be delivered from most anywhere, fluid milk must be purchased for processing locally."

COMMENT: The NJMIA argues that there is a massive oversupply of milk for fluid purposes in New Jersey.

RESPONSE: Although much of the milk regulated under the two Federal orders covering New Jersey is used for manufactured products, it does not come from New Jersey producers. New Jersey dairy farmers' total production is equal to only about 18 percent of fluid milk consumers in the State. The maintenance of New Jersey dairy production is a legitimate State goal.

COMMENT: The NJMIA suggests that the legislative goal of the Milk Control Act is limited to the protecting of a supply of milk for New Jersey consumers from whatever source.

RESPONSE: The Department disagrees with the NJMIA's interpretation of the statute; the goal of the legislation was to protect dairy farmers, processors and consumers; and thus the economic welfare of the entire State. To suggest, as the NJMIA does, that New Jersey dairy farmers are irrelevant and serve only to add unnecessary milk to the Northeast milk supply is inappropriate.

COMMENT: The NJMIA suggests that New Jersey's dairy farmers need more money for their milk because they are inefficient.

RESPONSE: If this is correct, then all dairy farmers in the Northeast are inefficient since all of the other states in the Northeast have recognized the economic plight of their dairy farmers and have adopted premiums similar to New Jersey's. In all, except Pennsylvania (where the premium is the same as New Jersey), the premiums are higher.

COMMENT: The NJMIA suggests that because the New Jersey premium is not a floating premium, but a permanent fixed additive, that the Director has engaged in regulatory overkill.

RESPONSE: The New Jersey premium is established for 10 months with provisions for changes at the end of that period. Although neighboring states such as New York and Connecticut have established floating premiums, those states have also established minimum Class I prices which insured that their farmers will receive higher prices than New Jersey farmers within the targeted period. For instance, in New York State the $14.50 minimum Class I price per hundred pounds of milk results in a premium of $1.50 per hundredweight pounds to be paid to New York's dairy farmers during August 1991. In comparison, the New Jersey premium is $1.05, the same as the premium in Pennsylvania. The minimum price in Connecticut is $15.20 per hundred pounds. Hence, the New Jersey premium is reasonable and appropriate for New Jersey processors and consumers.

COMMENT: Atlantic Dairy Cooperative ("ADC") comments supported the rules ADC stated that the Director had based the findings and conclusion on substantial record evidence. It further stated that the price New Jersey dairy farmers received for milk had decreased sharply in 1991 and that New York and Pennsylvania had recognized the economic plight of their dairy farmers and have adopted price relief measure.

RESPONSE: The Department agrees with ADC. The New Jersey premium attains parity for New Jersey farmers in relations to Pennsylvania farmers; but are lower than the premiums charged in New York.

COMMENT: The ADC stated that many large, efficient New Jersey dairy farmers substantiated, through testimony, that they are losing money and many will be unable to pay expenses. They expect a cash deficit equivalent to $1.40 per hundredweight in 1991. It is stated that the further loss of New Jersey dairy farmers would have a negative impact on the economy and ecology of the State.

RESPONSE: The Department agrees with the ADC. Further loss of New Jersey dairy farmers jeopardizes the state's local milk supply and sectors of the State's economy that are linked with the dairy industry.

COMMENT: The ADC stated there was no reasonable expectation that New Jersey dairy farmers will receive sufficient economic relief through the Federal Marketing Order system in the near future. Although it is expected that the Minnesota-Wisconsin price will increase approximately $1.60 per hundredweight during the remainder of 1991, the proposed price relief for New Jersey dairy farmers is urgently needed and justified.

RESPONSE: The Department agrees with ADC.

COMMENT: The ADC stated that since September 1988 dealers in South Jersey, regulated under Federal Order No. 4, have been paying New Jersey dairy farmers, who are members of the Atlantic Dairy Cooperative, $1.05 per hundredweight over the Federal order price for Class I milk; and all have an economic interest in maintaining reasonable, competitive price levels which will not price them out of the markets. If prices get out of alignment so as to cause disorderly marketing conditions, a hearing could be called to correct the conditions. The commentor approves of the rule remaining in effect through July 30, 1991.

RESPONSE: The Department agrees with ADC.

Summary of Agency-Initiated Changes:

On its own initiative, the Department of Agriculture has amended proposed N.J.A.C. 2:51-3.1 to make it clear that the rule expires one year from the effective date of the emergency rule and not from the effective date of the adopted concurrent proposed rule.

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

CHAPTER 51
EMERGENCY STATE MILK ORDER PRICE

SUBCHAPTER 1. DEFINITIONS

2:51-1.1 Definitions

Words used in this chapter, unless otherwise expressly stated or unless the context or subject matter otherwise requires, shall have the following meanings.

"Class I milk" shall mean milk classified as Class I pursuant to Joint and Concurrent Federal-State orders in effect in New Jersey (7 CFR Parts 1002 and 1004).

"Dealer" shall mean any person who purchases milk from producers for processing or resale, who is licensed as a dealer under the Milk Control Act, N.J.S.A. 4:12A-1 et seq., and is also classified as a handler by the Market Administrator pursuant to 7 CFR Part 1002 and 7 CFR Part 1004.

"Director" shall mean the director of the Division of Dairy Industry, New Jersey Department of Agriculture or such other authority as designated by the New Jersey Secretary of Agriculture.

"Producer" shall mean a dairy farmer living in New Jersey and producing Grade A milk for sale to milk dealers, as hereinafter defined.

"Settlement fund" shall mean the fund established by the Director for the purpose of equalizing obligations of individual dealers with payments to producers.

SUBCHAPTER 2. CLASS I PRICES FOR MILK PURCHASED FROM NEW JERSEY PRODUCERS

2:51-2.1 Additional payments to producers

Each dealer purchasing milk from New Jersey producers shall pay such producers an amount equal to $1.05 per hundredweight more than the Class I price applicable to such purchases under terms of Federal-State Orders No. 2 and No. 4 (7 CFR Parts 1002 and 1004). Dealers processing milk from producers from other states shall prorate total Class I usage to New Jersey producers based upon the proportion of total receipts represented by milk from New Jersey producers. This $1.05 per hundredweight additional obligation shall be termed "the $1.05 per hundredweight New Jersey State order price."

2:51-2.2 Reports by dealers

(a) For each month that this chapter is in effect, each dealer receiving milk from New Jersey producers shall, no later than the 10th day of the following month, report to the Director on forms provided for such purposes as follows:

1. The volume of milk received from New Jersey producers for the preceding month;

2. The percentage of total producer receipts from all sources utilized as Class I milk for the preceding month;

3. The total pounds of New Jersey milk allocated to Class I; and

4. Such other information as may be required to administer and enforce the provisions of this chapter.

2:51-2.3 Pay price to producers

(a) Computation of price shall be as follows:

1. Each month that this chapter is in effect, the Director shall, for the preceding month, calculate the total amount due producers under this chapter for Class I milk and the average value (price) per hundredweight for all New Jersey milk sold to licensed New Jersey dealers.

2. The average monthly price hereinafter designated as the month's "New Jersey premium" shall be announced by the Director no later than the 15th day of the month. Each dealer shall be notified by phone or fax, with confirmation in writing.

(b) Payment of premium shall be as follows:

1. An amount determined by multiplying the announced "New Jersey premium" price times each New Jersey producer's total deliveries shall be paid to such producer no later than the 20th day of the succeeding month; or, in the case of producers whose milk is marketed by cooperatives, payments shall be made to such cooperatives no later than the 18th day of the succeeding month.

2. The monthly "New Jersey milk premium" shall be clearly designated as such on New Jersey producer check statements.

2:51-2.4 Operation of settlement fund

(a) The Director shall establish a "settlement fund" for the purpose of equalizing the obligations of individual New Jersey plants under the terms of this chapter, with payments to producers of the monthly "New Jersey premium" price, as follows:

1. Dealers with total monthly obligation under this chapter in excess of the monthly "New Jersey premium" for receipts of milk from New Jersey producers, shall no later than the 16th day of the month, pay such excess amount into the settlement fund.

2. Dealers with a total monthly obligation under this chapter, which is less than the monthly "New Jersey premium" payable to New Jersey producers delivering milk to said plants, shall be paid the difference from the fund. The Director shall make such equalization payment to the dealer not later than the 17th day of the month.

3. The Director shall establish such financial reserves as are necessary to operate the settlement fund and to pay the actual cost of fund operation, such as checks and bank charges, by withholding the necessary sum from the first month's "average New Jersey premium" payable to producers. Such reserve shall be paid to producers prior to the termination of this or any succeeding chapter.

SUBCHAPTER 3. TERMINATION OF CHAPTER

2:51-3.1 Chapter expiration

This chapter shall *[be effective for a period of one year from date of adoption unless extended or modified pursuant to the Administrative Procedure Act.]* ***expire on May 31, 1992.***

(a)

DIVISION OF REGULATORY SERVICES

Plant Food Nutrient Values

Adopted Amendment: N.J.A.C. 2:69-1.11

Proposed: June 3, 1991 at 23 N.J.R. 1728(b).

Adopted: July 24, 1991 by Arthur R. Brown, Jr., Secretary, Department of Agriculture; and State Board of Agriculture.

Filed: July 25, 1991 as R.1991 d.431, **without change.**

Authority: N.J.S.A. 4:9-15.26.

Effective Date: August 19, 1991.
Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

2:69-1.11 Commercial values
(a) The State Board of Agriculture, pursuant to N.J.S.A. 4:9-15.26, determines the commercial values of primary plant nutrients to be:
1. Nitrogen: $4.00 per unit;
2. Slowly released nitrogen:
i. Water insoluble nitrogen: $9.50 per unit;
ii. Coated available nitrogen: $6.00 per unit;
3. Available phosphoric acid: $3.00 per unit;
4. Soluble potash: $3.00 per unit.
(b) These values shall be effective from July 1, 1991 through June 30, 1992.

(a)

DIVISION OF REGULATORY SERVICES

Eggs
Official State Seal
Adopted Repeal: N.J.A.C. 2:73-2

Proposed: June 3, 1991 at 23 N.J.R. 1729(a).
Adopted: July 24, 1991 by Arthur R. Brown, Jr., Secretary, State Board of Agriculture.
Filed: July 25, 1991 as R.1991 d.432, **without change.**

Authority: N.J.S.A. 4:10-18 et seq.

Effective Date: August 19, 1991.

BANKING

(b)

OFFICE OF REGULATORY AFFAIRS

Pawnbroker Service Charges
Adopted Amendment: N.J.A.C. 3:16-2.1

Proposed: June 3, 1991 at 23 N.J.R. 1729(b).
Adopted: July 12, 1991 by Jeff Connor, Commissioner, Department of Banking.
Filed: July 19, 1991 as R.1991 d.426, **without change.**

Authority: N.J.S.A. 45:22-11 and 22.

Effective Date: August 19, 1991.
Expiration Date: June 18, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

3:16-2.1 Service charges
(a) On loans secured by the pledge of articles, a service charge may be levied to equal eight percent of the amount of the loan, but such service charge shall not exceed $3.00.
(b)-(c) (No change.)

PERSONNEL

(c)

DIVISION OF APPELLATE PRACTICES AND LABOR RELATIONS

Notice of Administrative Correction
Veterans and Disabled Veterans Preference
Use of Preference
N.J.A.C. 4A:5-2.1 and 2.2

Take notice that the Department has requested, and the Office of Administrative Law has agreed to permit, the deletion of references at N.J.A.C. 4A:5-2.1(d) and 2.2(c) to repealed rules and their replacement with appropriate references. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

4A:5-2.1 Open competitive examinations
(a)-(c) (No change.)
(d) Appointing authorities are not required to give preference to disabled veteran or veterans when making a provisional appointment from an incomplete list. See N.J.A.C. [4:1-14.2] **4A:4-1.5.**

4A:5-2.2 Promotional examinations
(a)-(b) (No change.)
(c) Whenever the name of a veteran appears in the highest rank on a promotional certification, a nonveteran shall not be appointed unless the appointing authority shows cause why the veterans should be removed from the promotional list. See N.J.A.C. [4:1-12.11] **4A:4-4.7** for removal procedures.
(d)-(f) (No change.)

COMMUNITY AFFAIRS

(d)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Barrier-Free Recreational Standards
Departmental Appeal
Adopted Amendment: N.J.A.C. 5:23-2.38

Proposed: June 3, 1991 at 23 N.J.R. 1730(a).
Adopted: July 12, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: July 25, 1991 as R.1991 d.428, **without change.**

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

Effective Date: August 19, 1991.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
A comment in support of the proposal was received from the Eastern Paralyzed Veterans Association. Additionally, the Department received a telephone inquiry (from a caller whose identity was not noted) as to the time limits placed on the period within which a facility owner or administering agency may appeal a Department order. The time limits are those specified in N.J.A.C. 5:23-2.35 for construction boards of appeal, and made applicable to the Department by N.J.A.C. 5:23-2.38(a).

Full text of the adoption follows.

5:23-2.38 Departmental appeal
(a) (No change.)
(b) Any party in interest aggrieved by any decision made by a facility manager with respect to compliance with the Barrier Free Recreational Standards (N.J.A.C. 5:23-7.100 through 7.116) shall have the right to appeal the decision to the Department.

1. The Department shall forward a copy of the complaint to the facility manager and to the facility owner or agency responsible for administration of the facility and shall request a response from the facility manager.

2. The facility manager shall respond in writing within 45 days of receipt of the request.

3. The Department shall review the response and shall determine whether the complaint is justified and what corrective measures shall be required to be taken by the facility owner or administering agency. The Department shall make such determination and issue any necessary orders within 60 days.

4. In the event that the owner or administering agency of a facility appeals any such order and the Department determines that a contested case exists, it shall forward such case for adjudication in an administrative hearing before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1).

Recodify existing 1. as 5. (No change in text).

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Subcodes: Radon Hazard Subcode

Adopted Amendments: N.J.A.C. 5:23-3.14, 3.18, 3.20 and 10.3

Proposed: May 20, 1991 at 23 N.J.R. 1487(a).

Adopted: July 12, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: July 25, 1991 as R.1991 d.429, **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. 52:27D-124.

Effective Date: August 19, 1991.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*).

5:23-3.14 Building subcode

(a) Rules concerning the building subcode adopted are as follows:

1.-2. (No change.)

3. The 1991 Supplement to the BOCA National Building Code/1990 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.

(b) (No change.)

(c) These articles or sections of the 1991 Supplement to the building subcode are modified as follows:

1. Article 1 of the Building subcode, entitled "Administration and Enforcement":

i. Section 119.0 is deleted.

2. Article 2 of the Building subcode, entitled "Definitions":

i. Article 2 is amended to delete these terms and definitions:

(1) Heated slab;

(2) Infiltration;

(3) Opaque areas;

(4) Overall thermal transfer value (OTTV); and

(5) Shading coefficient.

3. Article 8 of the building subcode, entitled "Means of Egress":

i. Section 813.3, line 4, is amended to replace the phrase "Section 512.0" with "the Barrier-free Subcode";

ii. Subsection 813.4.1.2 item 5 is amended to replace the phrase "15-pounds (73N)" with "8-pounds (39N)"; and

iii. Subsection 816.3 is amended to replace the phrases "Section 512.0—otherwise" with "the Barrier-free Subcode".

4. Article 9 of the building subcode, entitled "Fireresistive Construction":

i. Subsection 929.2.5 is amended to replace the phrase "UL 910 listed in Appendix A" with "NFiPA-262-1985(ANSI)".

5. Article 28 of the building subcode, entitled "Plumbing Systems":

i. Section 2804.0 is deleted.

6. Appendix A of the building subcode, entitled "Referenced Standards":

i. Delete the subheading "ASHRAE" and all titles under the subheading.

ii. Under the subheading "BOCA", delete these titles:

(1) BOCA National Property Maintenance Code;

(2) BOCA National Plumbing Code; and

(3) BOCA National Private Sewage Disposal Code.

iii. Under the subheading CABO, delete this title:

(1) Model Energy Code.

5:23-3.18 Energy Subcode

(a) (No change.)

(b) These chapters or articles of the Energy Subcode are amended as follows:

1.-4. (No change.)

5. The following amendments are made to Article 5 of the Energy Subcode, entitled "Plumbing Systems":

i. (No change.)

*[i.]***ii.*** Section E-502.4 is amended to add the words "other than dwelling units served by individual water heaters" after the words "Individual showers in all buildings"; to add the words "unless the water heater outlet temperature is limited to 110°F" after "Appendix A"; and to delete the sentence: "Water temperature control valves shall be equipped with high limit stops and adjusted to a maximum hot water setting of 110°F (43°C)."

6.-8. (No change.)

(c) (No change.)

5:23-3.20 Mechanical Subcode

(a) Rules concerning subcode adopted are as follows:

1.-2. (No change.)

3. The 1991 supplement to the BOCA National Mechanical Code/1990 is adopted by reference with modifications cited in (c) below as part of the mechanical subcode for New Jersey.

(b) (No change.)

(c) The following section of the 1991 supplement to the Mechanical Subcode is modified as follows:

1. Appendix A of the Mechanical Subcode:

i. Under the subheading "ASHRAE", delete these titles:

(1) Thermal Environmental Conditions for Human Occupancy;

(2) Energy Conservation in New Building Design—with Addendum 90A-a-1987; and

(3) Handbook of Fundamentals.

ii. Under the subheading "BOCA", delete these titles:

(1) BOCA National Building Code; and

(2) BOCA National Plumbing Code.

iii. Under the subheading "NFiPA", delete this title:

(1) National Electric Code.

5:23-10.3 Enforcement

(a) (No change.)

(b) Enforcement responsibility shall be divided among subcode officials in the following manner:

1.-.2 (No change.)

3. Plan review with regard to compliance with N.J.A.C. 5:23-10.4(b)6 and 9 shall be the joint responsibility of the building and fire protection subcode officials;

4. Inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)6 and 9 shall be the responsibility of the building subcode official;

5. Plan review with regard to compliance with N.J.A.C. 5:23-10.4(b)12 shall be the joint responsibility of the building, fire protection and plumbing subcode officials; and

6. Inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)3 through 5, 7, 8 and 12 shall be the responsibility of the plumbing subcode official.

EDUCATION

(a)

STATE BOARD OF EDUCATION

School Facility Planning Service

Adopted Amendments: N.J.A.C. 6:22

Proposed: May 6, 1991 at 23 N.J.R. 1238(a).

Adopted: July 3, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 26, 1991 as R.1991 d.443, **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. 18A:1-1, 18A:4-15, 18A:18A-16, 18A:18A-18, 18A:18A-39, 18A:20-36, 18A:33-1 et seq. and 52:27D-130.

Effective Date: August 19, 1991.

Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

The Economic Impact Statement included in the proposal (23 N.J.R. 1238(a)) incorrectly stated that there was to be a split of fees between the Bureau of Facility Planning Services and the local municipal enforcing agency. When a set of plans is to be reviewed by the Bureau of Facility Planning Services for conformance with N.J.A.C. 6:22 requirements, the Bureau assesses its standard fee. The local municipal enforcing agency may, if it so desires, assess its standard fee for conducting a review for the Uniform Construction Code requirements. There is no split of fees by either agency.

Two individuals spoke at the May 15, 1991 monthly public testimony session provided by the State Board of Education and two letters with comments were received. The individuals testimony did not concern itself with any of the proposed amendments. Therefore the comments of these two individuals will be answered by individual letter specifically addressing their comments. A copy of the public testimony may be reviewed by contacting the State Board of Education at (609) 292-0739.

Written comments received from the following:

Mr. Nicholas C.A. Puleio
Board Secretary
Lawrence Township Board of Education

Mr. Gerard M. Garofalow
Construction Official
Village of Ridgefield Park

Speakers on May 15, 1991 were:

Mr. Douglas Wicks

Mr. Frank Moore
ARMM Consultants, Inc.

COMMENT: A commenter suggested that the educational review of plans should contain time lines for review similar to those set forth in the Uniform Construction Code.

RESPONSE: The statute, N.J.S.A. 18A:18A, does not authorize the Board to establish such time frames for review.

COMMENT: The same commenter questioned the payment of fees when a review is done by the Department of Education and the local municipal enforcing agency.

RESPONSE: The Department maintains that the payment of fees is authorized by P.L. 1990, c.23 which states that agencies may assess the actual costs of review as set by the individual agency.

COMMENT: The same commenter requested the deletion of language in N.J.A.C. 6:22-1.6(d) that would require boards of education to certify that building plans done by a local municipal enforcing agency meet the requirements of N.J.A.C. 6:22.

RESPONSE: The Department maintains that the school district's architect of record would make such certification to the Bureau of Facility Planning Services.

COMMENT: The same commenter requested the deletion of N.J.A.C. 6:22-1.7(a) and the insertion of a provision that would allow school districts to go out to bid after receiving approval from either the Bureau of Facility Planning Services or the local municipal enforcing agency.

RESPONSE: The State Board of Education has determined based upon N.J.S.A. 18A:18A that school districts must have final approved plans, received from the Bureau of Facility Planning Services, prior to advertising for bids.

COMMENT: The same commenter proposed the insertion of the word "school" in the table for installed lighting intensity.

RESPONSE: The Department agrees and has made the change.

COMMENT: The same commenter requested the deletion of N.J.A.C. 6:22-6.1(g)1i(4) and the insertion that all door hardware be in accordance with N.J.A.C. 5:23, Uniform Construction Code.

RESPONSE: The Department declines to make this deletion but will revise N.J.A.C. 6:22-6.1(g)1i(3) to agree with door hardware for regular classrooms by deleting the words "knob-operated or lever-operated type only".

COMMENT: The same commenter requested the deletion of the term "slip resistant" in N.J.A.C. 6:22-6.1(g)1i(8) and (g)2i(5) as it is more restrictive than for standard classrooms.

RESPONSE: The Department agrees that it would be more restrictive and has made the changes.

COMMENT: The same commenter requested the addition of the words "per person" be added in reference to the ventilation requirements as outlined in N.J.A.C. 6:22-6.1(g)1iii(2) and (g)2iii(2) for clarification purposes.

RESPONSE: The Department agrees and has made the change.

COMMENT: A commenter questioned the charging of fees by the local municipal enforcing agency for conducting plan review. P.L. 1989, c.43 amended N.J.S.A. 52:27D-126c to state "A municipality shall exempt a board of education from the payment of any fee charged under this act."

RESPONSE: The Department maintains that fees can be charged by the local municipal enforcing agency. P.L. 1990, c.23 changed P.L. 1989, c.43 to allow for the charging of fees when a local school district chooses a local municipal enforcing agency to conduct the Uniform Construction Code portion of the plan review for public schools.

COMMENT: The same commenter suggested that there was a conflict regarding variances and how they are to be handled between N.J.A.C. 6:22-1.7(c) and 8.1(c).

RESPONSE: The Department maintains that there is no conflict between N.J.A.C. 6:22-1.7(c) and 8.1(c). The Uniform Construction Code, N.J.A.C. 5:23, outlines a variance procedure and N.J.A.C. 6:22 outlines a different variance procedure. N.J.A.C. 6:22-8.1(c) states that the Director may approve variances from Department requirements but that variations from the Uniform Construction Code must be acted upon in accordance with N.J.A.C. 5:23.

Summary of Changes Made upon Adoption:

At N.J.A.C. 6:22-5.4(g)1, the Department added the word "school" after the word "primary" in the "Installed Lighting Intensity" table to be consistent with secondary schools.

At N.J.A.C. 6:22-6.1(g)1i(3) and 2ii(4), the Department deleted language to clarify the type of door hardware to be used on doors of substandard rooms. N.J.A.C. 6:22-6.1(g)2ii(4) was corrected to read: The hardware on doors of any space occupied by pupils shall permit egress from the room at all times. Key-operated locks, thumb-turn locks, hasps or similar types of locking devices shall not be permitted. Reference to knob-operated or lever-operated types was deleted.

At N.J.A.C. 6:22-6.1(g)1i(8) and 2ii(5), the Department deleted language to maintain that the floor surface requirements in substandard classrooms are the same as for regular classrooms. The sections were corrected to read: Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering. "Slip-resistant" was deleted.

At N.J.A.C. 6:22-6.1(g)1iii(2) and 2iv(2), the Department added the words "per person" after 10 cfm and 15 cfm for clarification purposes.

At N.J.A.C. 6:22-6.1(g)2ii(7), the sentence, "The minimum clear width for corridors shall be 6'0"." which correctly appears in the Administrative Code was inadvertently omitted from the proposal text. The missing sentence is restored to the rulemaking text, with a technical change to conform to current code standards.

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

6:22-1.2 Educational specifications for building construction or modifications

(a) (No change.)

(b) Estimates of dimensions and square feet for each area of new or modified construction shall be provided, together with an explanation of the proposed area utilization and relationships, and shall be signed by the president of the local district board of education and chief school administrator as evidence of certification of approval by the local district board of education.

(c) Educational specifications and subsequent revisions must be approved prior to the submission of plans. Incomplete educational specifications will not be accepted.

6:22-1.3 Architectural plans and specifications; general

(a) (No change.)

(b) A New Jersey registered architect or licensed engineer, as prescribed by N.J.S.A. 45:4B-1 et seq. which defines the practice of architecture and engineering, shall submit the architectural plans and specifications on behalf of the local district board of education.

6:22-1.4 Submission of schematic plans prior to local funding

(a) (No change.)

(b) Schematic plans shall be reviewed for conformance with the educational specifications and shall include layouts of the built-in and moveable furniture and equipment for all occupied spaces drawn to a scale of not less than 1/8 inch. A list of the built-in and moveable furniture which shows the dimensions and square feet of each item for any occupied space which is typical of any kind of occupied space may be included in lieu of plans of furniture and equipment layouts. Whenever site work is required, a completed plot plan shall be submitted and on it shall be shown the intended location of the school and a layout of the locations of all other structures, play and recreation areas, athletic fields, walkways, roadways, access roads, buffer and set back zones, and parking areas.

1.-2. (No change.)

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

6:22-1.5 Submission of preliminary plans following local funding authorization

(a) One set of preliminary plans shall be submitted by a New Jersey registered architect or licensed engineer on behalf of a local district board of education after funds are authorized locally. This set of plans shall include:

1.-9. (No change.)

(b) Preliminary plans shall be signed and sealed by a New Jersey registered architect or licensed engineer, and signed by the president of the local district board of education and chief school administrator.

6:22-1.6 Submission of final plans

(a) When written receipt of preliminary plan approval has been received by the architect or engineer and the local district board of education, one set of final plans, drawn to a scale of not less than 1/8 inch per foot, and specifications, signed and sealed by a New Jersey registered architect or licensed engineer and signed by the president of the local district board of education and chief school administrator, shall be submitted to the Bureau of Facility Planning Services for review and approval. This submission shall include the following:

1.-2. (No change.)

3. A check payable to the "Treasurer, State of New Jersey";

4.-8. (No change.)

9. A completed "Checklist: Subcodes of the State Uniform Construction Code to Assist in the Design Completion of Public School Buildings," as provided by the Department of Education, Bureau of Facility Planning Services, signed by the architect or engineer certifying compliance and signed by the president of the local district board of education and chief school administrator; and

10. (No change.)

11. A properly executed copy of a "Release Form for School Construction Plans" for a district which chooses to have its local municipal code enforcing agency review its plans for conformance with the Uniform Construction Code, N.J.A.C. 5:23. This form must be signed by the district's chief school administrator and the municipal code enforcing agency chief. This form may be obtained from the Bureau of Facility Planning Services, 225 West State Street, CN 500, Trenton, New Jersey 08625.

(b) Copies of letters of approval from all other State agencies having jurisdiction over this project shall be required prior to receiving final approval from the Bureau of Facility Planning Services. Upon written receipt of final approval to the architect or engineer and to the local district board of education, four sets of final plans and specifications, including a cover sheet signed by the president of the local distict board of education and chief school administrator, shall be submitted to the Bureau of Facility Planning Services for approval and distribution.

1.-2. (No change.)

(c) (No change.)

(d) If a district chooses to have a local municipal code enforcing agency review its plans for conformance with the Uniform Construction Code, N.J.A.C. 5:23, the Bureau of Facility Planning Services will review the plans for conformance with N.J.A.C. 6:22 only. Upon approval by the bureau, plans will be stamped: "APPROVED, New Jersey Department of Education, Bureau of Facility Planning Services, N.J.A.C. 6:22 Regulations Only," and released to the local code enforcing agency for review and approval for conformance with the Uniform Construction Code, N.J.A.C. 5:23. The Department of Education will charge only that portion of the fee associated with the review for conformance with N.J.A.C. 6:22. Upon final review and approval by the local code enforcing agency, both the local code enforcing agency and the local district board of education shall certify to the Department of Education that the plans and specifications are in compliance with both the Uniform Construction Code (U.C.C.) and N.J.A.C. 6:22, Facility Planning Service Code. A final set of approved plans and specifications shall be forwarded to the Bureau of Facility Planning Services for their files along with the required certification.

6:22-1.7 Bids, construction permits and variances

(a) Bids may be advertised, received, and contracts awarded only after the receipt of final plans, specifications and written approval from the Department of Education, Bureau of Facility Planning Services and the local enforcing agency if it performs the Uniform Construction Code review in accordance with N.J.A.C. 5:23.

(b) Following approval referred to above, the local district board of education may sign contracts and apply to the municipal construction enforcing official for the required building permits.

(c) When there are difficulties involved in meeting the requirements of the State Uniform Construction Code, the designated and licensed construction official in the Department of Education, Bureau of Facility Planning Services, may vary the rules provided the spirit and intent of the rules are observed and the public welfare and safety are ensured.

1.-2. (No change.)

6:22-2.1 Approval of land acquisition for school sites

(a) No local district board of education may conduct a referendum for land acquisition, secure board of school estimate approval, or enter into a lease agreement or otherwise acquire land without prior school site approval from the Department of Education, Bureau of Facility Planning Services.

(b) Before any action is taken to purchase or otherwise acquire or lease land, approval of the adequacy of the land from the Department of Education, Bureau of Facility Planning Services, is required. To consider the approval of such land, the Director of the Bureau of Facility Planning Services shall be provided with the following:

1. A written request for approval from the local district board of education, which includes a statement indicating the immediate and ultimate proposed uses of the land in terms of grade organization and potential maximum enrollment;

2.-3. (No change.)
4. A completed plot plan of the land to be acquired showing topographical and contour lines, all adjacent properties and access roads. The acreage and dimensions of the tract proposed for acquisition shall be included as per the application of the standards for minimum acceptable school site sizes in (c) below;
5.-10. (No change.)
11. Prior approvals of other agencies, if required, such as the State Departments of Agriculture and Environmental Protection and the Pinelands Commission;
12.-13. (No change.)
(c)-(d) (No change.)
(e) Land owned by a local district board of education which does not meet the standards of this section may be supplemented by adjacent municipally-owned land so long as such land is formally leased on a long-term basis to the local district board of education for exclusive use during school hours.
(f) If a local district board of education does not have authority to acquire the land by bond referendum, an approved lease-purchase agreement or other statutory means within 18 months from the date of approval of a school site by the Bureau, the local district board of education shall resubmit the information required in (b) above for consideration and approval before any action is taken to conduct a bond referendum, purchase, lease-purchase or otherwise acquire the site.

6:22-2.2 Approval for the disposal of land for school sites
(a) If an approved school site on which there is an operational school building is to be altered through sale, transfer or exchange of all or part of the total acreage, a written request for approval shall be made to the Department of Education, Bureau of Facility Planning Services. A copy of the request shall be sent to the county superintendent of schools who shall make recommendations to the Bureau, with a copy of the recommendations to the local district board of education.
(b) Written approval or disapproval shall be given to the county superintendent with a copy to the local district board of education.

6:22-3.1 Approval for the acquisition of existing buildings
(a) A local district board of education planning to acquire any existing building or facility through purchase, gift, lease or otherwise shall comply with all procedures and rules pertaining to the appropriation and use of capital funds as required by N.J.S.A. 18A:20-4 and 18A:20-4.2 and shall also have the building approved in accordance with the rules of this chapter which apply to the construction of a new building.
(b) (No change.)

6:22-3.2 Approval for the closing of a school or schools
(a) The local district board of education shall provide the Department of Education, Bureau of Facility Planning Services, with the following assurances that with the closing of a school or schools:
1.-3. (No change.)
(b) (No change.)

6:22-4.1 Requirements for Department of Education approval of private schools for handicapped pupils and schools for handicapped pupils of the New Jersey State Department of Human Services
(a)-(e) (No change.)
(f) Existing buildings to be acquired for use as a school building shall meet the requirements of this subchapter and the State Uniform Construction Code, N.J.A.C. 5:23. The Bureau of Facility Planning Services shall review plans and specifications for compliance with this chapter.
(g)-(i) (No change.)

6:22-5.4 Educational facility planning standards
(a) The educational facility planning standards delineated in (b) through (h) below, in conjunction with the Uniform Construction Code, shall form the requirements for the design and construction of public schools.
(b) General design and construction requirements are as follows:
1.-9. (No change.)
10. Instructional greenhouses shall meet the following standards in addition to the U.C.C. standards and requirements of the Fire Prevention Code:
i.-ii. (No change.)
iii. Greenhouses may be either attached to a school building or located no less than 20 feet from the school building;
iv. (No change.)
11.-12. (No change.)
(c)-(d) (No change.)
(e) Safety requirements are as follows:
1. Glazing in fire-rated assemblies shall be in accordance with BOCA. All other interior glazing shall be safety glazing.
2.-4. (No change.)
5. Materials provided at the base of playground equipment shall be of a soft composition such as sand or synthetic composition materials in order to prevent injuries.
6. (No change.)
(f) Electrical requirements are as follows:
1. Push-type emergency cut-out switches shall be provided at appropriate locations within shops to de-energize the electrical supply to nonportable machinery and shall have a clear unobstructed access of a minimum of 36 inches. These switches shall be provided on the basis of one for each 1,000 square feet or fraction thereof of floor area in the shop, but in no case less than two. Reset of the interrupted service shall be by a key-operated switch located within the shop. The cut-off and reset circuits shall be designed and installed to negate the possibility of the control circuit being de-energized, thereby being inoperative.
2. All nonportable motorized equipment and machinery shall be provided with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the above emergency cut-off.
3.-6. (No change.)
(g) Lighting requirements are as follows:
1. Installed artifical lighting intensity shall comply with the following minimum footcandles which shall be maintained on the task at any time:

INSTALLED LIGHTING INTENSITY

Locations	Minimum Acceptable Footcandles
Classrooms and instructional areas—study halls, lecture rooms, art rooms, offices, libraries, conference rooms, work rooms, shops, laboratories and secondary school cafeterias	50
Drafting, typing and sewing rooms	70
Reception rooms, gymnasiums, auditoriums, primary ***school*** cafeterias, all-purpose rooms and swimming pools	30
Locker rooms, washrooms, toilet rooms, corridors containing lockers, stairways	10
Corridors without lockers and storerooms	5
Classrooms for the partially sighted	70

(h) Plumbing requirements are as follows:
1.-3. (No change.)
4. Toilet facilities for early intervention, pre-kindergarten and kindergarten classrooms shall be provided as follows:
i.-ii. (No change.)
iii. If a school district chooses to provide toilet rooms adjacent to or outside the classroom in conformance with (h)4ii above, the chief school administrator shall certify to the county superintendent how the alternate method of compliance shall be addressed on forms prescribed by the Commissioner. The completed form and a copy of a resolution by the local district board of education approving the alternate method of compliance shall be submitted to the county

superintendent for approval. Annually, thereafter, the chief school administrator shall resubmit the form certifying how the alternate method of compliance shall be addressed. Any changes to the approved alternate method of compliance shall be submitted to the county superintendent for approval.

5.-11. (No change.)

(i) Pre-manufactured educational units, vans, trailers and/or other mobile units shall comply with the following:

1. Pre-manufactured units shall be reviewed and approved by the Bureau of Facility Planning Services. The local enforcing agency shall inspect the installation and shall issue the certificate of occupancy. Pre-manufactured units shall:

i.-iv. (No change.)

v. Have sturdy steps and be provided with a handrail and be barrier free;

vi.-ix. (No change.)

x. Have floor covering of either carpet which meets the requirements of the U.C.C. or asbestos-free vinyl tile;

xi.-xiii. (No change.)

2. Nonconformance to requirements (i)1i through xiii above which is found during an evaluation of any pre-manufactured unit placed in service after June 4, 1986 or of a subsequent future inspection of a unit approved according to (i)1i through xiii above shall be corrected within 30 days of such evaluation. Staff of the Bureau of Facility Planning Services or county offices of education may order a unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety or exiting. Failure or inability to correct code deficiencies shall be cause to permanently abandon a pre-manufactured unit.

3. (No change.)

4. A self-propelled van and/or other mobile unit used for instruction shall:

i.-vi. (No change.)

vii. Have two means of clear and unobstructed egress which are remote from each other;

viii.-xiii. (No change.)

xiv. Have floor covering of either carpet which meets the requirements of the U.C.C. or asbestos-free vinyl tile;

xv.-xviii. (No change.)

5. Nonconformance of code requirements (i)4i through xviii above which is found during an evaluation of any van and/or other mobile unit placed in service after June 4, 1986 or of a subsequent future inspection of a van and/or other mobile unit approved according to this subsection shall be corrected within 30 days of such evaluation. Staff of the Bureau of Facility Planning Services or the county superintendent may order a van and/or other mobile unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety and exiting. Failure or inability to correct code deficiencies shall be cause to order a permanent abandonment of a van and/or other mobile unit.

6. (No change.)

7. A self-propelled van or other pre-manufactured mobile unit being utilized as an emergency, temporary replacement for a regular classroom facility may be utilized for a maximum of two school years. As a pre-condition to the approval for the use of a van or other mobile unit, a school district must have a plan, including an implementation schedule, approved by the county superintendent of schools for the provision of permanent facilities. A van or other mobile unit to be used for the delivery of basic skills services to nonpublic school students under the Federal Education Consolidation Improvement Act, P.L. 1977-1, sections 192 and 193 may be used as long as it meets the standards of this section.

(j) (No change.)

6:22-5.5 School space sizes and capacity

(a) (No change.)

(b) The minimum square feet for each instructional space shall be determined by the net and gross square feet values shown below together with the definitions of net and gross square feet presented in (c) below. The capacity of a school building shall be calculated according to definitions in (a) above.

Area	Minimum Required Floor Area in Square Feet per Occupant
Classrooms, including early intervention, pre-kindergarten, kindergarten	20 net
Classrooms (students with physical mobility problems, for example, wheelchair)	25 net
Science laboratories	20 net
Shops and laboratories for industrial arts and vocational education	50 net
Small group instruction, including music practice	20 net
Conference rooms	15 net
Auditorium, excluding stage	7 net
Cafeteria and faculty dining	—
Food service	12 net
Assembly, unfixed seats	7 net
Gymnasium (all school types)	—
Spectator area	3 net
Physical education-athletics, with spectator area in gymnasium	100 net
Physical education-athletics, with no spectator area	125 net
Assembly, unfixed seats	7 net
Auxiliary gymnasium and/or weight room (20 student capacity base)	40 net
Locker room	20 net
Multi-purpose Room	—
Spectator area	3 net
Physical education-athletics	80 net
Food service	12 net
Assembly, unfixed seats	7 net
Library/Media Center	—
Reading room	50 net
Seminar—small group	20 net
Stacks (.25 reading room capacity-elementary) (.33 reading room capacity—middle, junior/ senior high school)	100 gross
Other support spaces	20 net
Health Center	—
Cot area	30 net
Examination room	20 net
Offices	60 net, first occupant; 15 net additional occupants

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

6:22-6.1 Emergency provisions for accommodation of school pupils in substandard school facilities

(a) Substandard facilities shall be defined as:

1. (No change.)

2. All off-site facilities being provided by local district boards of education or approved private schools for the handicapped for use by public school pupils;

3. All facilities not planned and constructed as school buildings which are rented or leased from private owners by local district boards of education or approved private schools for the handicapped for use as school buildings by public school pupils.

(b) All substandard educational facilities shall be initially approved by the county superintendent of schools in which the local district board of education or approved private school for the handicapped is situated. Such approval shall be given for a maximum

period of two years. No substandard educational facility, however, shall be approved for more than two consecutive years unless inspected by the Bureau of Facility Planning Services, Department of Education to ensure that:

1.-2. (No change.)

3. A plan has been developed by the local district board of education or approved private school for the handicapped and approved by the county superintendent of schools to upgrade the facilities to standard, fully-approved conditions.

(c) The Bureau of Facility Planning Services and the county superintendent of schools, when considering educational adequacy, shall apply the minimum standards of square feet per space and per pupil as contained in this chapter. In cases where a local district board of education or approved private school for the handicapped feels it must have relief from the minimum square feet requirements, such relief shall be determined upon application to the county superintendent of schools. The county superintendent of schools shall make recommendations to the assistant commissioners of the Divisions of Finance and County and Regional Services who jointly may grant relief.

(d) County superintendents of schools will annually monitor the plans of local district boards of education or approved private schools for the handicapped to upgrade facilities to State-approved temporary substandard and/or fully approved, standard status.

(e) Local district boards of education or approved private schools for the handicapped must provide funds in the next immediate annual budget to correct deficiencies about which they are notified by the county superintendent of schools on or before October 1 annually. Failure to budget for the correction of deficiencies and to implement the corrections by the next September 1 following the October 1 notice, except as specified in (f) below, shall result in the facility being abandoned.

(f) If a local district board of education cannot afford to correct all identified deficiencies in one budget year because of the total costs associated with large numbers of substandard facilities, the local district board's long-range facility plan must include a sub-plan for the correction of the deficiencies. The sub-plan must be updated annually and identify funding sources such as an annual budget or a capital improvement authorization. Inclusion of a sub-plan to correct deficiencies in substandard facilities does not relieve a local district board of education from implementing the corrections in the shortest time possible or extend the use of substandard facilities beyond five years.

(g) In making a determination upon any application for the use of emergency substandard facilities, the following factors shall be taken into account:

1. Accommodations in an existing public school:

i. Safety factors:

(1) (No change.)

(2) Each instructional room housing more than 10 pupils and containing more than 300 square feet shall have a door opening directly into the corridor or an exit door opening directly to the exterior;

(3) The hardware on doors of any space occupied by pupils shall *[be of the knob-operated or lever-operated types only, permitting]* ***permit*** egress from the room at all times. Key-operated locks, thumb-turn locks, hasps or similar types of locking devices shall not be permitted;

(4) Doors opening into the corridor, transoms and sidelights shall be glazed with one-quarter inch wire plate glass; however, replacement vision panels may be the same material as originally approved;

(5) Every enclosed space shall be protected by an approved automatic fire or smoke detector or a fire suppression device tied into the total public school fire alarm system;

(6) Each instructional space shall have an approved exitway;

(7) Directions for exiting from the building in case of emergency shall be posted by the exit in each space;

(8) Concrete floors in all instructional areas, except shops, shall be covered with a *[slip resistant]* resilient floor covering.

ii. (No change.)

iii. Heating and ventilation:

(1) (No change.)

(2) Each instructional room shall have natural light with one or more operative window sashes or the room shall have mechanical air supply and exhaust sufficient to provide not less than 10 cfm ***per person*** of tempered outside air and 15 cfm ***per person*** of recirculated air.

iv. Toilet facilities and drinking fountains: Toilet facilities shall be available within a reasonable distance, not more than one floor away, and shall be equipped with an exterior operating window sash or mechanical exhaust ventilation. Toilet facilities shall be provided for students in early intervention, pre-kindergarten and kindergarten programs as per N.J.A.C. 6:22-5.4(h)4.

v. Lighting: At least 50 footcandles of uniformly distributed artificial illumination shall be provided in all instructional areas.

vi. (No change.)

vii. Room size: Each instruction space shall provide at least 20 net square feet of open floor area per pupil with no dimension less than 10 feet. Local district boards of education shall consider the recommendations of the Department of Education in planning for facilities housing handicapped pupils.

viii. (No change.)

2. Emergency provisions for accommodation of school pupils in off-site, rented or leased buildings:

i. Required documentation:

(1) A copy of the certificate of occupancy for the facility, indicating the current BOCA Use Group, issued by the local construction official shall be on file in the office of the county superintendent of schools, prior to occupancy; and

(2) A copy of the current annual inspection report from the local fire official and/or health official approving use of the facility shall be on file in the office of the county superintendent of schools prior to occupancy.

ii. Safety factors:

(1) The floors, walls and ceilings of spaces used for instruction shall be free from moisture, peeling paint, plaster and potentially hazardous materials;

(2) (No change.)

(3) Each instructional space containing more than 300 square feet shall have a door opening directly into the corridor or an exit door opening directly to the exterior;

(4) The hardware on doors of any space occupied by pupils shall *[be of the knob-operated or lever-operated types only, permitting]* ***permit*** egress from the room at all times. Key-operated locks, hasps or similar types of locking devices shall not be permitted;

(5) Concrete floors in all instructional areas, except shops, shall be covered with a slip resistant resilient floor covering;

(6) An off-site, rented or leased building shall be provided with an automatic and manual fire detection system which is interconnected to every space in use installed prior to occupancy by students and staff;

(7) Adequate and approved units of exit and exitways as required by the Uniform Construction Code shall be provided. The minimum clear width for corridors shall be *[6'0"]* ***six feet***. Directions for exiting the facility under emergency conditions shall be posted by the exit in every instructional room;

(8) The boiler room interior entrance shall be equipped with a self-closing "C" label fire door lettered "Fire Door Keep Closed."

iii. Ceiling height: The average ceiling height shall be at least eight feet for instructional spaces.

iv. Heating and ventilation:

(1) The room shall be heated to a temperature as established by the local district board of education;

(2) Each instructional room shall have natural light with one or more operative window sashes or the room shall have mechanical air supply and exhaust sufficient to provide not less than 10 cfm ***per person*** of outside air and 15 cfm ***per person*** of recirculated air. Air conditioning is required for a windowless space;

v. Lighting: At least 50 footcandles of uniformly distributed artificial illumination shall be provided in all instructional areas.

vi. Toilet facilities and drinking fountains:

(1) Toilet facilities and drinking fountains shall meet existing U.C.C. requirements for Use Group as determined by the construction official. Toilet facilities shall be available within a reasonable distance, not more than one floor away, and shall be equipped with an exterior operating window sash or mechanical exhaust ventilation. Toilet facilities shall be provided for students in early intervention, pre-kindergarten and kindergarten programs as per N.J.A.C. 6:22-5.4(h)4.

(2) (No change.)

vii. Schoolground and play facilities: The outside recreational play area for students shall include, but not be limited to, sufficient space, equipment and safe surfaces for the building enrollment and program need and be protected from hazards or traffic conditions.

viii. Equipment and supplies: Furniture and equipment which is in good condition and suitable for the age and size of the pupils and purposes of instruction shall be provided.

ix. Room size: Each instructional space shall provide at least 20 net square feet of open floor area per pupil with no dimension less than 10 feet.

x. (No change in text.)

6:22-7.1 Long-range facilities plans

(a) (No change.)

(b) Long-range facilities plans shall be updated every five years from the original submission date of July 1, 1985 and submitted to the county superintendent of schools for review and approval. Once the plan has been reviewed and approved by the county superintendent, a copy of the approved plan shall be forwarded to the Bureau of Facility Planning Services no later than the July 1 submission deadline.

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

6:22-8.1 Appeals and hearing process

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

(c) Requests for variances from the Department of Education requirements as specified in N.J.A.C. 6:22-2.1, and N.J.A.C. 6:22-5.4, N.J.A.C. 6:22-5.5 and the State Uniform Construction Code as specified in N.J.A.C. 5:23 may be made in writing by the local district board of education to the Director of the Bureau of Facility Planning Services. The Director may approve variances from department requirements provided the spirit and intent of the standards are observed and the need for the variances is satisfactorily documented. Variations from the State Uniform Construction Code must be acted upon in accordance with N.J.A.C. 5:23.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Adoption and Upcoming Publication of New Rules

Discharges of Petroleum and Other Hazardous Substances

N.J.A.C. 7:1E

Take notice that the Department of Environmental Protection (Department) has repealed its existing rules and adopted new rules governing discharges of petroleum and other hazardous substances, N.J.A.C. 7:1E.

The new rules consist of six subchapters and three appendices. Subchapter 1 establishes the general provisions of the chapter, including the definitions that are used throughout the chapter. Subchapter 2 establishes rules applicable to the storage, transfer, handling and use of hazardous substances, and sets standards for equipment and procedures used at major facilities. Subchapter 3 provides for registration of transmission pipelines. Subchapter 4 contains the Department's requirements for the preparation and submission of registrations, discharge prevention, control and countermeasure plans, and discharge cleanup and removal plans. Subchapter 5 establishes procedures for notification and reporting of discharges of hazardous substances, the reporting of malfunctions of leak detection systems, and response to discharges of hazardous substances. Subchapter 6 sets forth civil administrative penalties for violations of these rules and of the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., as well as procedures for requesting an adjudicatory hearing. The three appendices contain the list of hazardous substances, forms for demonstrating financial responsibility, and forms for documenting mapped data.

The Department expects that the adoption will be published in the September 3, 1991 New Jersey Register. **To obtain an advance copy of the adoption,** please contact:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Please note that the Office of Administrative Law reviews the adoption for compliance with its requirements and for typographical errors, and normally will make minor changes in the adoption before it is published in the New Jersey Register. Therefore, the Department recommends that interested persons obtain the official text of the adoption from the New Jersey Register when it becomes available.

(b)

DIVISION OF PARKS AND FORESTRY

Endangered Plant Species List

Adopted Amendments: N.J.A.C. 7:5C-1.4, 3.1 and 5.1

Proposed: March 18, 1991 at 23 N.J.R. 812(a).
Adopted: July 25, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: July 29, 1991 as R.1991 d.446, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1B-1 et seq., particularly 13:1B-15.146 through 13:1B-15.150 and 13:1B-15.151 through 13:1B-158; and 13:1D-9.

DEP Docket Number: 008-91-02.
Effective Date: August 19, 1991.
Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

On March 18, 1991 at 23 N.J.R. 812(a), the Department of Environmental Protection (Department) proposed to amend N.J.A.C. 7:5C in order to make several minor revisions to the Endangered Plant Species Program Rules, to add 22 plant species to the State Endangered Plant Species List (List), and to delete one species from the List. The proposed changes were based on comments received during the rulemaking for the original List adopted on June 4, 1990 and other information contained in the Natural Heritage Database, upon which the List is based.

The Department received written comments on the proposal from one commenter, William Olsen of Najarian Associates, during the public comment period which closed on May 17, 1991. Secondary notice of the proposal was achieved by publication of legal notices in four newspapers.

N.J.A.C. 7:5C-1.4

COMMENT: The term "extant populations" should be defined as "currently or actually existing, not destroyed or lost." Unless populations are currently documented, the Department should not assume that they still exist. Although many historical locations may still exist, many will not due to habitat destruction, successional changes in habitats, changes in water quality, invasion of exotic species and many other factors. The Department should not classify populations as extant solely because suitable habitat exists; "extant populations" must describe currently documented populations.

RESPONSE: The Department agrees that populations that are destroyed or lost should not be classified as "extant populations" under N.J.A.C. 7:5C-1.4. However, the Department disagrees with the commenter's view that populations that are documented in the Natural Heritage Database but whose existence has not been recently confirmed should be assumed not to be extant. The Department will consider a population to no longer exist at a particular location when information available to the Department indicates that the habitat conditions required by the species for survival no longer exist at the site, or when field surveys document that the species no longer exists at the location. The Depart-

ment believes that this is a reasonable approach given the fiscal constraints under which it operates its ongoing programs to inventory State flora.

N.J.A.C. 7:5C-5.1

COMMENT: Potamogeton confervoides should not be included on the New Jersey Endangered Plant Species List. Although this species is restricted to ponds and streams in the Pinelands, it has been historically found in the following eight stream systems: Cedar Creek, Egg Harbor River, Forked River, Maurice River, Mullica River (including Batsto River), Rancocas River, Toms River, and Wading River (including Oswego River). Within the last five years, this investigator has observed this species in various locations on the following waterways: Cedar Creek, Batsto River, Mullica River, Oswego River, and the Wading River. Although the species can only be accurately investigated by canoe or by walking in streams, this investigator feels that the species is a typical, though infrequent, taxon that can be found in most of the more pristine waterways. There are many other taxa that are more imperiled than Potamogeton confervoides.

RESPONSE: On February 21, 1990, Potamogeton confervoides became listed in the Notice of Review for Plant Taxa published by the U.S. Fish and Wildlife Service in the Federal Register. See 55 Fed. Reg. 6184. This species is now considered to be "Under review by the Federal government as endangered or threatened" as that term is defined by N.J.A.C. 7:5C-1.4. Its inclusion on the Endangered Plant Species List is mandatory pursuant to N.J.A.C. 7:5C-2.2(a)2. This criterion is derived directly from the definition of "endangered species" contained in the Endangered Plant Species List Act, N.J.S.A. 13:1B-15.150 through 13:1B-15.158.

COMMENT: Since Sphagnum macrophyllum var. floridanum is considered by many bryologists to be a questionable taxon, it is suggested that the species name Sphagnum macrophyllum, in the broad sense, be used in place of it. Both of these taxa exist in uncommon habitat types in New Jersey (intermittent pond communities on the coastal plain.) The questionable taxon, variety floridanum, has been collected in two locations in New Jersey, while the typical variety has been collected in nine locations, six of these since 1960. Given the imperiled status of the habitat in which these taxa exist, the low number of populations and their sensitivity to disruption of water quality and water levels, Sphagnum macrophyllum should still be included on the List.

RESPONSE: The Department disagrees that the taxonomic status of Sphagnum macrophyllum var. floridanum is questionable. The variety is described in Howard A. Crum and Lewis E. Anderson's Mosses of Eastern North America (1981. Columbia University Press.) In addition, recent publications of Drs. Eric F. Karlin and Richard E. Andrus, recognized authorities on Sphagnum species in New Jersey, support the recognition of this variety as a distinct taxon. These publications include The Sphagnum species of New Jersey (Karlin, E.F. and R.E. Andrus. 1988. The Bulletin of The Torrey Botanical Club. Vol. 115, No. 3) and a preliminary report on New Jersey's rare species of Sphagnum: A first look at endangered and threatened Bryophytes in New Jersey (Andrus, R.E. and E.F. Karlin. *In* E.F. Karlin [editor]. 1989. New Jersey's rare and endangered plants and animals. Institute for Environmental Studies, Ramapo College, Mahwah, NJ. 280 p.) Therefore, the Department supports inclusion of this variety on the List. Based on information in the Natural Heritage Database, Sphagnum macrophyllum var. macrophyllum does not qualify as endangered under the criteria at N.J.A.C. 7:5C-2.2, and will not be included on the List at this time.

Summary of Agency-Initiated Change:

The Department has amended N.J.A.C. 7:5C-5.1(a)1 to list the correct common name for Potamogeton robbinsii, or Robbins' pondweed. The common name for this species was listed incorrectly in the proposal as Richard's pondweed.

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

7:5C-1.4 Definitions

The following word and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

"Extant populations" means those populations documented in the Natural Heritage Database to exist at a particular location.

...

"Plant Kingdom" means those organisms contained in the phylum Bryophyta and phylum Tracheophyta.

...

"Under review by the Federal government as endangered or threatened" means plant species listed within status categories 1 and 2 in the most recent Notice of Review published in the Federal Register by the United States Fish and Wildlife Service.

SUBCHAPTER 3. PLANT SPECIES OF CONCERN

7:5C-3.1 Plant species of concern

The Department will maintain a list of plant species of concern for the purpose of monitoring the status of the State's flora and to serve as a working list for transition of species to and from the Endangered Plant Species List. The list of plant species of concern will be composed of those species not listed as endangered at N.J.A.C. 7:5C-5.1 and whose populations are monitored by the Natural Heritage Database.

7:5C-5.1 Endangered Plant Species List

(a) The following plant species are designated as endangered plant species:

1. Scientific Name	Common Name
...	
Carex formosa	handsome sedge
...	
Castanea pumila	Allegheny chinquapin
...	
Claytonia sp.	Hammond's yellow spring beauty
...	
Isanthus brachiatus	false pennyroyal
...	
Liatris borealis	northern blazing star
...	
Penstemon laevigatus	smooth beard tongue
Phlox divaricata var divaricata	wild blue phlox
...	
Platanthera hookeri	Hooker's orchid
...	
Potamogeton confervoides	algae-like pondweed
...	
Potamogeton robbinsii	*[Richard's]* ***Robbins*** pondweed
...	
Rudbeckia fulgida	orange coneflower
...	
Sphagnum augustifolia	sphagnum
Sphagnum austinii	sphagnum
Sphagnum centrale	sphagnum
Sphagnum contortum	sphagnum
Sphagnum macrophyllum var. floridanum	sphagnum
Sphagnum platyphyllum	sphagnum
Sphagnum riparium	sphagnum
Sphagnum strictum	sphagnum
Sphagnum subsecundum	sphagnum
...	
Viola septentrionalis	northern blue violet
...	
Zigadenus leimanthoides	oceanorus

CORRECTIONS

(a)

THE COMMISSIONER

Fiscal Management

Gifts

Adopted New Rules: N.J.A.C. 10A:2-9

Proposed: June 3, 1991 at 23 N.J.R. 1754(a).
Adopted: July 23, 1991 by William H. Fauver, Commissioner, Department of Corrections.
Filed: July 29, 1991 as R.1991 d.449, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: August 19, 1991.
Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 9. GIFTS

10A:2-9.1 Definition

The following term, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

"Gift" means money or material donated to a correctional facility or administrative unit for a specified or unspecified purpose by a person(s) or organization(s) without an expectation of compensation.

10A:2-9.2 Forms

(a) The following forms related to gifts shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 947-I Monthly Report of Gifts Received; and
2. 947-II Annual Report of Gifts Received.

10A:2-9.3 Gifts of money with specifications as to use

Gifts of money with specifications as to their use shall be recorded as Special Revenue Dedicated Funds when received by the Superintendent in accordance with the State of New Jersey Chart of Appropriation/Revenue accounts, codes and titles. These gifts shall be used in accordance with the specification of the donor(s).

10A:2-9.4 Gifts of money without specifications as to use

(a) Gifts of money without specifications for their use shall be placed in the Inmate Welfare Fund Account and used for the welfare of inmates.

(b) Pursuant to N.J.S.A. 30:4-1.1k, the Inmate Welfare Fund Account is under the supervision of the Institutional Board of Trustees which shall authorize all expenditures of donations without specifications as to use.

10A:2-9.5 Gifts from inmates to inmate organizations

(a) Gifts, other than money, may be donated by inmates to inmate organizations.

(b) The Superintendent shall determine the inmate organization which will receive the gift(s) donated by inmates.

10A:2-9.6 Gifts of computers

(a) Inmate organizations are permitted to receive microcomputers and software as gifts if the microcomputers and software were purchased from and delivered directly by a vendor authorized by the correctional facility.

(b) Each inmate organization shall be permitted to possess one stand-alone microcomputer which may be attached to a single dot matrix printer.

(c) Each request to provide an inmate organization with a micrcomputer and/or software, as a gift, shall be reviewed by the Institutional Computer Security Manager to ensure that the request is consistent with the rules outlined in this subchapter and internal management procedures of the Department of Corrections and the correctional facility.

(d) Requests to provide inmate organizations with microcomputers and/or software which, in the opinion of the Institutional Security Manager, could be detrimental to the security of the correctional facility shall not be approved for purchase.

(e) The microcomputer shall include a surge protector in order to minimize the possibility of damage to the microcomputer or the electrical system and associated appliances within the correctional facility.

(f) The microcomputer shall not include an internal or external modem.

(g) The microcomputer shall not be connected to any other computer, computer system or network. No gift can be approved which includes:

1. Communication software;
2. Local area network software (L.A.N.);
3. Wide area network software (W.A.N.); or
4. Other software prohibited by the correctional facility to which an inmate organization is assigned.

(h) Gift microcomputers and/or software that have been purchased from an authorized vendor shall not, under any circumstances, be opened before the microcomputers and/or software have been inspected upon receipt at the correctional facility.

10A:2-9.7 Gifts of vehicles or vehicle parts

(a) Prior to accepting a gift of a vehicle or vehicle parts, the proposal should be referred by the Superintendent or Administrative Unit Head to the Assistant Commissioner who is responsible for the operation of the correctional facility or administrative unit. The vehicle and vehicle parts must benefit the Department of Corrections and funds must be designated for the costs associated with the operation and maintenance of the vehicle.

(b) The Assistant Commissioner shall submit the proposal of a gift of a vehicle or vehicle parts and justification for the vehicle to the Director, Office of Institutional Support Services for review.

(c) Upon review of the proposal of a gift of a vehicle or vehicle parts, by the Director, Office of Institutional Support Services, the Director shall approve or disapprove the proposal.

(d) The written approval or disapproval of the proposal of a gift of a vehicle or vehicle parts shall be returned to the Assistant Commissioner.

(e) The Director, Office of Institutional Support Services, shall be responsible for notifying the Superintendent or Administrative Unit Head of the approval or disapproval of the proposed gift.

10A:2-9.8 Gifts for capital construction

(a) Prior to accepting a gift for capital construction, the proposal of the gift shall be referred by the Superintendent or Administrative Unit Head to the Assistant Commissioner who is responsible for the operation of the correctional facility or administrative unit.

(b) The Assistant Commissioner shall submit the proposal of a gift for capital construction to the Director, Office of Institutional Support Services (O.I.S.S.), for review.

(c) Upon review by the Director, Office of Institutional Support Services (O.I.S.S.), the proposal of a gift for capital construction shall be submitted to the Commissioner, Department of Corrections, with a recommendation for approval or disapproval.

(d) The Commissioner's written approval or disapproval of the proposed gift for capital construction shall be returned to the Director, Office of Institutional Services (O.I.S.S.).

(e) The Director, Office of Institutional Support Services (O.I.S.S.), shall be responsible for notifying the Superintendent or Administrative Unit Head of the Commissioner's approval or disapproval of the proposed gift for capital construction.

10A:2-9.9 Gifts for research purposes

Gifts for research purposes shall not be accepted until the research project has been reviewed and approved by the Commissioner, Department of Corrections, in accordance with the established Department procedures for evaluating research projects.

10A:2-9.10 Gifts of medical supplies or medical equipment

(a) Prior to accepting gifts consisting of medical supplies or equipment, the Superintendent or Administrative Unit Head shall submit

notification of the availability of these gifts to the Assistant Commissioner who is responsible for the operation of the correctional facility or administrative unit.

(b) The Assistant Commissioner shall submit the notification regarding the gifts of medical supplies or equipment to the Supervisor, Health Services Unit, Office of Institutional Support Services (O.I.S.S.), for review.

(c) The Supervisor, Health Services Unit, shall submit to the Assistant Commissioner written approval or disapproval of the acceptance of gifts of medical supplies or equipment. If the Supervisor, Health Services Unit, approves acceptance of the gifts of medical supplies or equipment, he or she shall designate the appropriate placement of such supplies and equipment.

(d) The Assistant Commissioner shall be responsible for accepting the gifts of medical supplies or equipment and for notifying the Superintendent or Administrative Unit Head receiving the gifts in order that arrangements for the transportation of the gifts to the correctional facility or unit may be made.

10A:2-9.11 Gifts which may result in financial burdens or obligations

(a) Gifts which may impose a financial burden or obligation upon the State of New Jersey shall not be accepted by a Superintendent or Administrative Unit Head without receiving written approval from the Commissioner or his or her designee.

(b) Upon receiving the approved gift at the correctional facility, the Superintendent or Administrative Unit Head shall submit a written notification to the Assistant Commissioner who is responsible for the operation of the correctional facility or administrative unit.

(c) The Assistant Commissioner shall notify the Commissioner when the gift has been received.

10A:2-9.12 Use of gifts to purchase supplies or equipment

(a) If supplies or equipment are purchased with funds made available by gifts, such items shall be purchased from a vendor currently under contract to supply these items to the State of New Jersey, if a vendor is available.

(b) If supplies or equipment cannot be purchased from a vendor currently under State contract, the Superintendent or Administrative Unit Head shall secure competitive price quotations consistent with the current State of New Jersey procurement policy as delineated in the Department of the Treasury's Procurement Circulars.

10A:2-9.13 Reports of gifts of money or material

(a) The Superintendent and Administrative Unit Head or his or her designee shall ensure that all assets obtained as gifts be recorded in accordance with current Department of Treasury policy regarding Fixed Assets Inventory Records.

(b) The Superintendent or Administrative Unit Head or his or her designee shall implement and maintain an adequate control system to safeguard gifts of money and other assets from theft and misuse, and provide an appropriate accounting of all gifts received.

(c) Superintendent and Administrative Unit Heads shall complete and attach a FORM 947-I, MONTHLY REPORT OF GIFTS RECEIVED to their monthly reports which list all gifts of money or material received having a value in excess of $100.00 along with the conditions, limitations or restrictions placed by the donor(s) on the use of such gifts.

(d) If gifts of money in amounts that are less than $100.00 are received on several occasions during the calendar year from the same source, the total amount from the donor shall be reported when it exceeds $100.00.

(e) As a part of the Annual Report to the Assistant Commissioner, Superintendents and Administrative Unit Heads shall report on FORM 947-II, ANNUAL REPORT OF GIFTS RECEIVED all gifts received during the fiscal year and the progress of projects funded by these gifts.

(a)

THE COMMISSIONER

Medical and Health Services

Suicide

Adopted New Rules: N.J.A.C. 10A:16-12

Proposed: June 3, 1991 at 23 N.J.R. 1756(a).
Adopted: July 23, 1991 by William H. Fauver, Commissioner, Department of Corrections.
Filed: July 26, 1991 as R.1991 d.439, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: August 19, 1991.
Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received a comment from Jean Paashaus of Summit, New Jersey. A summary of the comment and the Department of Corrections' response follows:

COMMENT: The commenter suggested that N.J.A.C. 10A:16-12.5 be modified to provide for clinical review of a suicide watch within 12 to 18 hours instead of 72 hours. She believes that the longer time period improperly stresses the custodial, rather than clinical, needs of the inmate.

RESPONSE: In most cases it is likely that clinical review will occur sooner than 72 hours; however, some latitude must be given to staff to allow for those situations where clinical staff persons are unable to conduct the necessary interview at the earliest desirable time. Such situations may occur due to illness, vacation or other clinical emergency. It is believed that 72 hours is a reasonable time period within which to require compliance.

Full text of the adoption follows.

SUBCHAPTER 12. SUICIDE

10A:16-12.1 Definition

The following terms, when used in the subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Close observation" means intermittent monitoring of an inmate on suicide watch, either in-person or by T.V. monitor, at 15 minute intervals.

"Constant observation" means uninterrupted surveillance of an inmate on suicide watch, usually in-person, but permitted by T.V. monitor when conditions allow for continuous unobstructed visual access.

"Suicide watch" means monitoring the activities, emotional status and behavior of inmates who are identified as emotionally troubled, mentally disturbed or otherwise deemed likely to inflict physical injury or death upon themselves.

10A:16-12.2 Reporting likely suicide attempts

A staff person(s) who, by reason of his or her experience, education and observation of an inmate, believes that an inmate is likely to attempt suicide, shall convey this information to the ranking custody supervisor and the Director of Professional Services or a designated professional person as soon as is reasonably practicable.

10A:16-12.3 Decision making criteria for placing or releasing an inmate on suicide watch

(a) In determining whether to place an inmate on suicide watch or to release an inmate from suicide watch, the factors to be considered include, but are not limited to:

1. Mood or attitude;
2. Behavior;
3. Participation in activities;
4. Personal hygiene;
5. Sleeping patterns;
6. Eating habits;
7. Previous suicide attempts, if known; and/or
8. Other information deemed relevant.

10A:16-12.4 Temporary placement on suicide watch

(a) The following correctional facility staff persons are authorized to order that an inmate be placed on temporary suicide watch:

1. The Medical Director;
2. The Director of Psychology;
3. The shift commander;
4. The Superintendent;
5. The psychiatrist;
6. The Director of Professional Services;
7. The Director of Custody Operations; or
8. Another staff person as designated by the Superintendent.

(b) The Medical Director, the Director of Psychology, the psychiatrist or another physician may order that the inmate be placed on close observation or constant observation depending on the inmate's condition.

(c) The shift commander, the Superintendent or his or her designee, the Director of Professional Services, or the Director of Custody Operations may order that the inmate be placed on close observation or constant observation depending on the inmate's observable condition and upon the advice of a psychiatrist or physician.

(d) If a psychiatrist, psychologist or physician is unavailable, a designated professional staff person may order that the inmate be placed on close observation or constant observation depending on the inmate's observable condition.

(e) A SUICIDE WATCH NOTICE (FORM 301-VII) shall be completed by the staff person who ordered the initial placement of the inmate on suicide watch, and this notice shall be submitted to the Superintendent or his or her designee for review and approval within two hours of placement on suicide watch.

10A:16-12.5 Psychological/psychiatric review

(a) The staff psychologist or psychiatrist shall interview the inmate as soon as possible, but in no event later than 72 hours after placement on suicide watch, and the inmate shall be interviewed daily thereafter by the staff psychologist or psychiatrist or a designated professional staff person in the event that a psychologist or psychiatrist is unavailable.

(b) A PSYCHOLOGICAL MONITORING REPORT (FORM 301-VIII) shall be completed by the psychologist or psychiatrist after each visit. FORM 301-VIII shall be placed in the classification folder and a copy in the inmate's medical file.

10A:16-12.6 Change in type of observation

(a) After the initial placement of an inmate on suicide watch, the psychiatrist, psychologist or physician may change the type of observation of an inmate from close observation to constant observation or from constant observation to close observation by filling out FORM 301-IX CHANGE IN TYPE OF OBSERVATION.

(b) If a psychiatrist, psychologist or physician is unavailable, a designated professional staff person may recommend a change in the type of observation of an inmate on suicide watch using FORM 301-IX.

(c) The recommendation for a change in the type of observation of an inmate on a suicide watch (FORM 301-IX) shall be reviewed and approved by the Superintendent before action is taken to change the type of observation of an inmate on suicide watch.

10A:16-12.7 Daily written report

(a) The correction officer on each shift, who is assigned to the suicide watch post, shall complete a FORM 301-X DAILY CORRECTION OFFICER SUICIDE WATCH REPORT. The report shall contain the following information:

1. The inmate's name;
2. The inmate's number;
3. The inmate's housing unit;
4. The time;
5. The date;
6. The inmate's behavior;
7. The inmate's mood or attitude;
8. The inmate's personal hygiene;
9. The inmate's sleeping/eating pattern;
10. The inmate's social adjustment; and
11. Other symptoms or actions which the correction officer thinks may be of significance.

(b) The completed FORM 301-X DAILY CORRECTION OFFICER SUICIDE WATCH REPORT, shall be submitted to the shift commander at the conclusion of the shift, and copies of FORM 301-X shall be forwarded by the shift commander to:

1. The Director of Custody Operations;
2. The Medical Director;
3. The Superintendent;
4. The Director of Psychology;
5. The Director of Professional Services; and
6. The Classification Department.

10A:16-12.8 Personal property

(a) The shift commander, after consultation with the Director of Professional Services or a designated professional person, shall determine the items of personal property which an inmate on suicide watch is permitted to possess in the inmate's cell. This decision shall depend on the inmate's:

1. Emotional status;
2. Behavior; and
3. General prognosis.

10A:16-12.9 Supervision

The Superintendent shall assign an Assistant Superintendent, the Medical Director, or the Director of Psychology to supervise the initiation and implementation of suicide watch procedures to ensure that the inmate is receiving appropriate care.

10A:16-12.10 Release from suicide watch

(a) The Medical Director or psychiatrist may order the inmate released from suicide watch by filling out FORM 301-XI RELEASE FROM SUICIDE WATCH.

(b) The order to release an inmate from suicide watch (FORM 301-XI) shall be reviewed and approved by the Superintendent before action is taken to release the inmate from suicide watch.

(c) The shift commander shall be notified by the Superintendent or his or her designee of the approval of an inmate's release from suicide watch.

(d) If the inmate's release from suicide watch involves a transfer of the inmate and space is unavailable to accommodate an immediate transfer, the shift commander shall determine the time the transfer will take place.

(e) FORM 301-XI shall be forwarded to the Classification Department and a copy shall be sent to the Medical Department.

10A:16-12.11 Attempt to commit suicide

(a) A correction officer or staff person who becomes aware that an inmate is attempting to commit suicide, or apparently has already committed suicide, shall call Center Control immediately.

(b) Center Control shall advise the correction officer on actions to take and shall send additional staff as are deemed necessary; for example, emergency, medical and supervising staff.

(c) In circumstances where there is at least one correction officer located in a protected position, another correction officer may enter the cell to take the action that is necessary to:

1. Cut down a hanging inmate;
2. Extinguish a fire; or
3. Administer first aid.

(d) In circumstances where there is only one correction officer assigned to a secured housing unit, that correction officer must wait for a second correction officer to arrive and to be located in a protected position before action can be initiated.

(e) Factors which should be considered when an inmate is attempting or has committed suicide include, but are not limited to:

1. The availability and location of back-up staff;
2. The staff present at location of incident;
3. The availability of keys;
4. The potential for hostage situations; and
5. The emergent nature of present circumstances.

(f) When determining the action to take, security of the housing unit and correctional facility shall be of primary concern.

10A:16-12.12 Cutting tool

A special cutting tool known as a "911 rescue tool" shall be made available to each correction officer working on a housing unit to use in cutting down a hanging inmate.

10A:16-12.13 Post orders policies and procedures

(a) In order to implement this subchapter, each correctional facility shall develop written:

1. Post orders;
2. Policies; and
3. Procedures.

(b) When developing these post orders, policies and procedures, special attention shall be given to two primary objectives:

1. Maintaining security of the housing unit and the correctional facility at large; and
2. Providing the quickest and most effective means by which a suicide attempt is handled in order to save the victim's life under the circumstances presented.

(c) The post orders, policies and procedures shall be updated on a yearly basis and submitted to the appropriate Assistant Commissioner for review.

10A:16-12.14 Forms

(a) The following forms related to suicide watch shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 301-VII SUICIDE WATCH NOTICE;
2. 301-VIII DAILY PSYCHOLOGICAL SUICIDE MONTIORING REPORT;
3. 301-IX CHANGE IN TYPE OF OBSERVATION;
4. 301-X DAILY CORRECTION OFFICER SUICIDE WATCH REPORT; and
5. 301-XI RELEASE FROM SUICIDE WATCH.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Voluntary Wage Deduction for Repayment of Financial Obligations to the State of New Jersey

Adopted New Rule: N.J.A.C. 12:55-1.4

Proposed: May 20, 1991 at 23 N.J.R. 1660(a).
Adopted: July 29, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: July 29, 1991 as R.1991 d.447, **without change.**

Authority: N.J.S.A. 34:1-20 and 34:11-4.4b(8).

Effective Date: August 19, 1991.
Expiration Date: September 26, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:55-1.4 Voluntary wage deduction for repayment of financial obligations to the State of New Jersey

(a) Each employer may institute a system whereunder a portion of an employee's salary is withheld as an installment payment against any financial obligation by that employee to the State of New Jersey.

(b) Any employer who institutes such a repayment plan pursuant to (a) above shall withhold on a periodic basis from an employee's salary only such an amount as that employee shall have expressly authorized in writing.

(c) Any employer who withholds any sum from an employee's salary for repayment of a financial obligation by the employee to the State shall forthwith pay the amount of such withheld salary to the appropriate State officer or agent to whom such obligation is made payable.

(d) Nothing in this section shall be construed as mandating participation by any employer or employee in such an installment repayment program.

(b)

OFFICE OF STANDARDS

Notice of Administrative Correction

Boilers, Pressure Vessels and Refrigeration Inspection and License Fees

N.J.A.C. 12:90-4.13, 6.5, 7.2, 7.16 and 7.19

Take notice that the Department of Labor has requested, and the Office of Administrative Law has agreed to permit, the revision of the inspection fees set forth in N.J.A.C. 12:90-4.13(c) and (e) and 6.5(a) and (c), and the operating engineers and firemen license fees set forth in N.J.A.C. 12:90-7.2(l), 7.16(a) and 7.19(a) and (c)1. These revisions are necessary in order for the rules to conform to the specific increased fees provided under P.L. 1991, c.205 §§7, 9, 10 and 12. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

12:90-4.13 Fee for field inspection

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

(c) The fee for a State field inspection for each annual internal-external inspection, which shall include a hydrostatic test if found necessary, shall be paid to the inspector as follows:

1. Ten and not over 60 square feet [$15.00]**$25.00**
2. 60 and not over 1,000 square feet [$20.00]**$35.00**
3. 1,000 square feet and over [$35.00]**$50.00**

(d) (No change.)

(e) In addition to the annual internal-external inspection, there may be an external inspection for which the owner or user shall pay to the State inspector a fee of [$15.00]**$25.00**, in addition to the travel expense, at the time of the field inspection.

12:90-6.5 Fee for field inspection

(a) An insurance company making an annual inspection of refrigeration systems shall pay a [$7.50]**$10.00** fee to the State, payable by and collected from the user by the inspector at the time of the field inspection for each system.

(b) (No change.)

(c) The fee for an annual field inspection by the State, based on the refrigeration capacity of the system, shall be paid to the State inspector as follows:

1. Other three and under 25 tons [$20.00]**$35.00**
2. 25 tons and over, but less than 300 tons [$35.00]**$50.00**
3. 300 tons and over [$45.00]**$70.00**

(d) (No change.)

12:90-7.2 Application for license

(a)-(k) (No change.)

(l) The fee for examination for an original license shall be [$15.00] **$25.00**, and the fee for a raise of grade or additional classification shall be [$10.00]**$20.00**.

(m)-(p) (No change.)

12:90-7.16 Re-examination

(a) The applicant may not be re-examined for a period of at least three months, but may be allowed one re-examination without additional charge, within six months of the original examination. If again unsuccessful, the applicant may request an additional examintion, provided that the request is accompanied by a fee of [$7.50] **$10.00**.

(b) (No change.)

12:90-7.19 Renewal of license

(a) When applying for the renewal of a license it shall be necessary to return only the signed identification card with a fee of [$5.00]**$10.00** for a one year renewal or [$10.00]**$20.00** for a three year renewal.

(b) (No change.)
(c) An application for a renewal of an expired license shall be approved provided:
1. A fee of [$7.50]**$15.00** is enclosed for one year or [$15.00]**$30.00** for a three year renewal;
2.-3. (No change.)
(d)-(e) (No change.)

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY COMMISSION ON SCIENCE AND TECHNOLOGY

Commission on Science and Technology

Readoption: N.J.A.C. 12A:100

Proposed: May 20, 1991 at 23 N.J.R. 1515(a).
Adopted: July 16, 1991 by the New Jersey Commission on Science and Technology, Jay J. Brandinger, Executive Director.
Filed: July 17, 1991 as R.1991 d.419, **without change.**

Authority: N.J.S.A. 52:9X-9.

Effective Date: July 17, 1991.
Expiration Date: July 17, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:100.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF CHIROPRACTIC EXAMINERS

Advertising

Adopted New Rule: N.J.A.C. 13:44E-2.1

Proposed: February 19, 1991 at 23 N.J.R. 389(a).
Adopted: June 20, 1991 by the State Board of Chiropractic Examiners, Anthony DeMarco, D.C., President.
Filed: July 26, 1991 as R.1991 d.440, **without change.**

Authority: N.J.S.A. 45:9-41.23(h).

Effective Date: August 19, 1991.
Expiration Date: July 1, 1996.

The Board of Chiropratic Examiners afforded all interested parties an opportunity to comment on the proposed new rule relating to advertising, N.J.A.C. 13:44E-2.1. The official comment period ended on March 21, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on February 19, 1991 at 23 N.J.R. 389(a). Announcements were also forwarded to: the Trenton Times, the Star-Ledger, the Camden Courier Post, the Council of New Jersey Chiropractors, the New Jersey Chiropractic Society, the New Jersey Hospital Association, the New Jersey Association of Osteopathic Physicians and Surgeons, the Southern New Jersey Chiropractic Society, the State Board of Medical Examiners, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Chiropractic Examiners, P.O. Box 45004, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:
Comments were received from the State Board of Medical Examiners, Robert A. Washleski, D.C., Garrison Y. Pomeroy, and the Chiropractic Alliance of New Jersey. A summary of the comments received and the Board's responses follows.

COMMENT: N.J.A.C. 13:44E-2.1(g)1 allows a licensee to list a reference fee for an offer of a discount on the basis of the advertiser's most commonly charged fee for the stated service within the most recent 60 days prior to, or to be charged in the first 60 days following, the effective date of the advertisement. This provision has a significant potential for misrepresentation since an advertiser could simply publish fees that were double those of the previous day, claim they would be the fees for the next 60 days, and then offer a discount which in fact was the fee charged previously.

RESPONSE: The purpose of the 60 day period prior to or following the date of the advertisement is to establish a reasonable reference period against which the potential patient may assess the value of an offered discount. The rule requires the advertiser to set forth the most recent usual and customary fee and/or to provide notice of an anticipated increase in fees in the near future. An advertiser who artificially doubled the usual fee, as suggested by the commenter, in order to offer a "discount" which equalled, in fact, the usual fee probably would be deemed to be engaging in false, deceptive or misleading advertising.

COMMENT: N.J.A.C. 13:44E-2.1(g)2ii appears to invite a licensee to charge one fee for consultation and a separate fee for examination.

RESPONSE: A separate fee for a consultation and for an examination is permissible so long as they are separate procedures.

COMMENT: The prohibition on in-person solicitation appears to limit ways to meet new people in the community and to talk about chiropractic.

RESPONSE: It is only those actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence who may not be engaged directly or indirectly in uninvited, in-person solicitation by a licensee. For example, the prohibition does not apply in circumstances where a licensee is making a presentation at a health fair and wishes to discuss chiropractic with a potential patient. On the other hand, the prohibition would apply in circumstances where the licensee comes into contact with a potential patient who is currently in pain as the result of an accident and is, therefore, vulnerable to the licensee's influence.

COMMENT: Free market health care should be a goal of the Board. Should not the Board take the position that chiropractors should be given more latitude, not less?

RESPONSE: The Board's rules concerning advertising are intended to achieve a balance between the advertiser's right to offer services and compete in the health care field with the potential patient's need to be protected from claims in advertising which have the potential to be false and/or misleading.

COMMENT: The Board should eliminate the entire proposal and, if necessary, state only that it shall be unlawful for chiropractors to advertise in accordance with the laws of the land.

RESPONSE: The Board does not believe that such a rule would provide licensees with sufficient guidance to determine whether certain forms of advertising would be deemed fraudulent or deceptive. The Board is charged with the duty of ensuring standards of competency and integrity of the profession, and it is hoped that this regulatory scheme will aid the Board in its responsibility to protect the public and, at the same time, advance the chiropractor's right to advertise truthful information.

Full text of the adoption follows.

CHAPTER 44E
STATE BOARD OF CHIROPRACTIC EXAMINERS

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. GENERAL RULES OF PRACTICE

13:44E-2.1 Advertising
(a) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.
1. The term "advertisement" shall refer to the attempt, directly or indirectly by publication, dissemination, solicitation, endorsement or circulation in print or electronic media or in any other way, to attract directly or indirectly any person to enter into an expressed

or implied agreement to accept chiropractic services or treatment or goods related thereto.

2. The term "routine professional service" shall refer to a service which the advertising licensee, professional association or institution providing chiropractic care routinely performs.

3. The term "print media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, fliers or other publications, the content of which is disseminated by means of the printed word.

4. The term "electronic media" shall include, but not be limited to, radio, television, telephone, facsimile machine, and computer.

5. The term "range of fees" shall refer to an expressly stated upper and lower limit on the fee charged for a professional service.

(b) A licensed chiropractor who is actively engaged in the practice of chiropractic in the State of New Jersey may provide information to the public by advertising in print or electronic media.

(c) A licensee who engages in the use of advertising which contains the following shall be deemed to be engaged in professional misconduct:

1. Any statement, claim, or format which is false, fraudulent, misleading or deceptive;

2. Claims that the professional service performed or the materials used are superior to that which is ordinarily performed or used unless such claims can be substantiated by the licensee;

3. Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform;

4. Techniques of communication which appear to intimidate, exert undue pressure or undue influence over a prospective patient;

5. The communication of personally identifiable facts, data, or information about a patient without the patient's signed written permission obtained in advance;

6. The use of any misrepresentation;

7. The suppression, omission or concealment of any material fact under circumstances which a Board licensee knows or should know that the omission is improper or prohibits a prospective patient from making a full and informed judgment on the basis of the information set forth in the advertisement;

8. Any print, language or format which directly or indirectly obscures a material fact;

9. Any guarantee that services rendered will result in a cure; or

10. Any violations of (d) through (m) below.

(d) The Board may require a licensee to provide factual substantiation of the truthfulness of any objective assertion or representation set forth in an advertisement.

(e) A Board licensee shall not engage directly or indirectly in uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence. This subsection shall not prohibit the offering of services by a Board licensee to any bona fide representative of prospective patients including, but not limited to, employers, labor union representatives, or insurance carriers.

(f) Advertising making reference to or setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for a specifically described professional service or class of services. A licensee who advertises shall disclose all the relevant variables and considerations which are ordinarily included in such a service so that the fees will not be misunderstood. In the absence of such a disclosure, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement includes the following disclaimer:

"Additional charges may be incurred for related services which may be required in individual cases." The disclaimer cannot be used for treatment where related services are ordinarily required.

1. In any advertisement in which examination fees are set forth, the cost of x-rays shall also be set forth along with the disclosure: "if needed."

(g) Offers of discounts or fee reductions or free services shall indicate the advertiser's fixed or stated range of fees against which said discount is to be made and/or the value of the free services. Any service for which there is routinely or ordinarily no charge shall not be advertised as "free."

1. The fixed or stated range of fees or value of free services shall mean and be established on the basis of the advertiser's most commonly charged fee for the stated service within the most recent 60 days prior to, or to be charged in the first 60 days following, the effective date of the advertisement.

2. Offers of across-the-board discounts shall include a representative list of services and the fixed or stated range of fees against which discounts are to be made for these services. The list shall include a sampling of the advertiser's most frequently performed services.

i. "Across-the-board discounts" shall mean the offer of a specified discount on an undefined class of services or the offer of a specified discount to a defined class of patients. For example, "15% discount during April on all chiropractic services" or "15% discount to senior citizens on all chiropractic services."

ii. Example of Representative List of Services:

	Regular Fee	Discount Fee
Consultation	$_____	$_____
Examination	_____	_____
Complete X-Rays	_____	_____
Physical Modality	_____	_____

iii. The effective period during which a fee or discount shall remain in effect shall be set forth on the face of the advertisement. In the absence of such disclosure, the effective period shall be deemed to be 30 days from the date of the advertisement's initial publication.

(h) An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon. An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in the testimonial.

(i) All licensee advertisements and public representations shall contain the name and address or telephone number of the licensee, professional service corporation or trade name under which the practice is conducted and shall also set forth the name of at least one licensee responsible for the chiropractic practice in the facility identified in the advertisement and/or public representation.

(j) A licensee shall be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number. A licensee who employs or allows another to employ for his or her benefit an intermediary source or other agent in the course or advertising shall be personally responsible for the form and contents of said advertisement.

(k) A video or audio tape of every advertisement communicated by electronic media shall be retained by the licensee and made available for review upon request by the board or its designee.

(l) A licensee shall be required to keep a copy of all advertisements for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

(a)

DIVISION OF CONSUMER AFFAIRS

Board of Chiropractic Examiners

Patient Records

Adopted New Rule: N.J.A.C. 13:44E-2.2

Proposed: February 19, 1991 at 23 N.J.R. 391(a)
Adopted: July 18, 1991 by the State Board of Chiropractic Examiners, Anthony DeMarco, D.C., President.
Filed: July 26, 1991 as R.1991 d.441, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30- 4.3).

Authority: N.J.S.A. 45:9-41.23(h).

Effective Date: August 19, 1991.
Expiration Date: July 1, 1996.

The Board of Chiropractic Examiners afforded all interested parties an opportunity to comment on the proposed new rule relating to patient records, N.J.A.C. 13:44E-2.2. The official comment period ended on March 21, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on February 19, 1991 at 23 N.J.R. 391(a). Announcements were also forwarded to: the Trenton Times, the Star-Ledger, the Camden Courier Post, the Council of New Jersey Chiropractors, the New Jersey Chiropractic Society, the New Jersey Hospital Association, the New Jersey Association of Osteopathic Physicians and Surgeons, the Southern New Jersey Chiropractic Society, the State Board of Medical Examiners, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Chiropractic Examiners, P.O. Box 45004, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Five letters were received regarding the proposed new rule. The commenters were: Garrison Y. Pomeroy; Kevin L. Parks, D.C.; Joan D. Gelber, Deputy Attorney General for the State Board of Medical Examiners; Michael J. Harvey, Jr., D.C., President, Chiropractic Alliance of New Jersey; and Robert Levinson, President, ATLA-NJ, an association of attorneys who represent persons injured in accidents. A summary of the specific issues raised by these commenters as well as the Board's responses follows:

COMMENT: Does N.J.A.C. 13:44E-2.2(a)9 which provides that a patient record include the name of the licensee "or other person" rendering the treatment imply that a person who is not a licensed health care professional may render treatment in a chiropractic office?

RESPONSE: The purpose of the requirement that the name of any other person who renders treatment beside the chiropractor be clearly indicated in the patient record is so that any other person reading the records can determine immediately the identity of the individual rendering treatment. For example, although N.J.S.A. 45:9-14.5(a) prohibits a chiropractor, among other health care professionals, from using an unlicensed person to administer physical modalities as defined in that statute, the chiropractor may delegate the application of a hot pack or cold pack to an unlicensed individual. The name of that person should appear in the patient record. Further, if a licensed physical therapist or other licensed health care professional renders treatment in a chiropractic office, the name of that practitioner also should appear in the patient record. There is no intent to permit an unlicensed person to render chiropractic treatment.

COMMENT: Should not X-rays be marked with the full name of the patient or an identification number in order to distinguish patients with common last names?

RESPONSE: The Board believes that the identifying information which is required by the rule which includes the name of the patient, the date of the radiograph, the age of the patient and/or the date of birth, and the name of the facility are sufficient to completely identify the patient and to eliminate confusion among patients with the same last name.

COMMENT: N.J.A.C. 13:44E-2.2(d)2 allows a licensee to provide a summary of the patient record upon request. The Board may wish to consider amending the rule as follows: "The licensee may elect to provide a summary of the record, as long as that summary adequately reflects the patient's history and treatment, **except where the complete record is required by applicable law.**"

RESPONSE: The Board agrees with this assessment. For example, the Personal Injury Protection Law specifically requires that the full and complete patient record be made available for insurance carrier inspection in PIP cases. Accordingly, this section will be clarified by adding the suggested language and placing licensees on notice that other laws may supercede the Board's rule which permits a licensee to provide a summary of a patient record. Accordingly, paragraph (d)2 will be revised by adding the phrase "Except where the complete record is required by applicable law" to the beginning of the paragraph.

COMMENT: Paragraph (d)4 would be clearer if the Board added "... refused to provide such information **to the patient**" in cases where the licensee feels the patient may be harmed by the information. This would make it clear that the complete patient record would be sent to the patient's attorney or another licensed health care professional or the health insurance carrier.

RESPONSE: The Board agrees that the addition of the phrase "to the patient" at the end of the first sentence would make the paragraph more clear. The paragraph will be revised accordingly.

COMMENT: The first sentence of subsection (f) could be clarified as follows: "Where a third party or entity has requested examination or an evaluation of a person for a purpose unrelated to treatment **by the examiner**, and where a report of the examination is to be supplied ..."

RESPONSE: The Board agrees, and for purposes of clarification, this change will be made as suggested.

COMMENT: The Board should eliminate the entire rule and simply state "Chiropractors are encouraged to make adequate records to safely administer chiropractic services to their patients in accordance with their training and technique of choice."

RESPONSE: It does not appear to the Board that such a rule would adequately protect the patient for purposes of assuring that complete and comprehensive records are maintained, that confidentially is adequately protected, and that records will be provided to third parties as required for purposes of treatment or payment.

COMMENT: N.J.A.C. 13:44E-2.2(d)1 should be amended to clarify that the patient's record shall be furnished to the patient's authorized representative as well as the patient or other designated health care provider.

RESPONSE: The Board agrees that this amendment would clarify the section. In view of the fact that the licensee is obligated to provide access to a patient's records upon receipt of a written request from a patient or an authorized representative of the patient, it was intended by the Board that such records could be furnished to the authorized representative directly. This change will be made for purposes of clarity.

COMMENT: The patient's record should include, if requested, all records related to billing.

RESPONSE: The Board intended that billing records would be included in the official record by the inclusion of paragraph (a)12 which provides that records shall include, as a minimum, a number of delineated items including "the amount billed and received on patient's account." The Board believes that this provision could be clarified by revising this paragraph to read as follows: 12. **An itemized statement of** the amount billed and received on patient's account.

COMMENT: The patient's record should include all pertinent objective data including test results and X-ray results.

RESPONSE: The Board believes that this concern is adequately addressed by subsection and paragraphs (a)7, (b) and (d) which repeatedly refer to radiographs and other diagnostic findings as included in any patient's record.

COMMENT: The patient's record should include all reports prepared by the licensee for any third party or entity.

RESPONSE: The Board does not believe that it is necessary to specifically include a reference to such reports since the examination of any patient is assumed to generate a report or other record which must be maintained by the licensee. It is the Board's understanding that such reports also may be obtained directly from insurance carriers.

COMMENT: If a patient's record is illegible or in a foreign language, the licensee should be required to provide a transcription at no cost to the patient.

RESPONSE: The Board believes that a reasonable licensee would comply with this recommendation without a specific requirement. However, for purposes of further clarification, the Board will revise paragraph (d)1 by adding the following sentence: "To the extent that

the record is illegible or prepared in a language other than English, the licensee shall provide a typed transcription and/or translation at no cost to the patient."

COMMENT: Subsection (g) should be amended to provide that a licensee will make reasonable efforts to directly notify any patient treated during the six months preceding the cessation of practice and provide information concerning the established procedure for the retrieval of records.

RESPONSE: The Board agrees that this effort in addition to those which are already provided in subsection (g) will be helpful to patients. However, because changing N.J.A.C. 13:44E-2.4(g) at this time would amount to a substantive change in the rule by enlarging the scope of the rule and its burden on those affected by it, this revision will be made under a separate proposal consistent with the provisions of N.J.A.C. 1:30-4.3. The Board intends to revise the rule text as follows:

"4. Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation, providing information concerning the established procedure for retrieval of records."

COMMENT: Paragraph (d)5 should provide more specific guidelines in regard to the fees which may be charged by a licensee for copying or transcribing records prior to providing them to the patient or other authorized party.

RESPONSE: The Board believes that the paragraph, which provides that the licensee may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription, adequately addresses this concern. Licensees throughout the State are practicing under a variety of circumstances which give differing access to photocopying facilities. It would be very difficult for this Board to establish specific guidelines which would be reasonable for all licensees throughout the State.

COMMENT: It is recommended that the proposed rule be amended to provide that a licensee shall not refuse to provide a patient's record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by the patient's legal representative for the purpose of rendering reasonably required litigation assistance.

RESPONSE: This Board is concerned with the protection of the health and welfare of a patient. To that extent, the rule provides that a licensee shall not refuse to provide a patient record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

COMMENT: It is recommended that specific provisions be included in the rule concerning narrative reports to be provided to the patient or the patient's counsel for the purpose of rendering litigation assistances.

RESPONSE: Although the Board acknowledges that a licensee is obligated to render a reasonable modicum of litigation assistance, the Board does not feel that it is appropriate in the context of a patient record rule to expound on the specifics of such litigation assistance since the duty will vary depending upon the circumstances. *See Spaulding v. Hussain,* 229 *N.J. Super.* 430 (App. Div. 1988).

COMMENT: The rule should be supplemented to provide that a licensee shall not be permitted to charge a fee for the production of the patient's record or for testimony where the sole purpose of the records or the testimony is related to the payment of the doctor's bill.

RESPONSE: When a chiropractor renders a professional service, a patient incurs a fee. This is generally a contractual matter between the doctor and the patient. Although the doctor is obligated to provide reasonable litigation assistance, such licensee should not be required to incur additional financial loss and/or loss of office hours for the purpose of collecting such fees.

Summary of Changes Made Between Proposal and Adoption:

1. N.J.A.C. 13:44E-2.2(a)12 has been revised to clarify the Board's intent that all records related to billing must be included as part of the patient's record.

2. N.J.A.C. 13:44E-2.2(d)1 has been revised to clarify the Board's intent that, upon request, patient records may be furnished to an authorized representative as well as to the patient or other designated health care provider.

3. N.J.A.C. 13:44E-2.2(d)1 has been revised to clarify that where a patient record is illegible or prepared in a language other than English, the licensee will be required to provide a typed transcription and/or translation at no cost to the patient.

4. N.J.A.C. 13:44E-2.2(d)2 has been revised to clarify that other laws may supersede the Board's rule which permits a licensee to provide a summary in lieu of the full patient record.

4. N.J.A.C. 13:44E-2.2(d)4, which concerns instances where the licensee refuses to release subjective information contained in the record or summary because the licensee feels the patient may be harmed by such information, has been revised. The Board wishes to clarify that while the licensee may refuse to release such information to the patient, such information must nevertheless, upon request, be released to the patient's attorney or another licensed health care professional or the health insurance carrier.

5. N.J.A.C. 13:44E-2.2(f) has been revised to clarify that the phrase "unrelated to treatment" means "unrelated to treatment by the examiner."

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

13:44E-2.2 Patient records

(a) A contemporaneous, permanent patient record shall be prepared and maintained by a licensee for each person seeking chiropractic services, regardless of whether any treatment is actually rendered or whether any fee is charged. Licensees also shall maintain records relating to billings made to patients and third party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Such records shall include, as a minimum:

1. The name, address, and date of birth of the patient and, if a minor, the name of the parent or guardian;
2. The patient complaint/reason for visit;
3. A pertinent case history;
4. Findings on appropriate examination;
5. Diagnosis/analysis;
6. A treatment plan;
7. Any orders for tests or consultations and the results thereof;
8. The dates of each patient visit;
9. A description of treatment or services rendered at each visit together with the name of the licensee or other person rendering the treatment;
10. Notation of significant changes in patient's condition and/or significant changes in treatment plan;
11. Periodic notation of patient status regardless of whether significant changes have occurred; and
12. *[The]* ***An itemized statement of the*** amount billed and received on patient's account.

(b) Patient records, including all radiographs and other diagnostic findings, shall be maintained for at least seven years from the date of the last entry.

(c) All radiographs shall be labeled, as a minimum, with the following identifying information:

1. The name of patient;
2. The date of radiograph;
3. The age of patient and/or date of birth;
4. The name of facility; and
5. Right or left identity.

(d) Licensees shall provide access to patient records to the patient or the patient's authorized representative in accordance with the following:

1. Upon receipt of a written request from a patient or an authorized representative and within 30 days thereof, legible copies of the patient record including, if requested, copies of radiographs, shall be furnished to the patient ***or an authorized representative*** or another designated health care provider. ***To the extent that the record is illegible or prepared in a language other than English, the licensee shall provide a typed transcription and/or translation at no cost to the patient.***

2.*[The]* ***Except where the complete record is required by applicable law, the*** licensee may elect to provide a summary of the record, as long as that summary adequately reflects the patient's history and treatment, where the written request comes from an insurance carrier or its agent with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement.

3. A licensee shall provide copies of records in a timely manner to a patient or another designated health care provider where the

patient's continued care is contingent upon their receipt. The licensee shall not refuse to provide a patient record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

4. If, in the exercise of professional judgment, a licensee has reason to believe that the patient may be harmed by release of the subjective information contained in the patient record or a summary thereof, the licensee may refuse to provide such information ***to the patient***. That record or the summary, with an accompanying notice setting forth the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:

i. The patient's attorney;

ii. Another licensed health care professional; or

iii. The patient's health insurance carrier.

5. The licensee may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription.

(e) Licensees shall maintain the confidentiality of patient records, except that:

1. The licensee shall release patient records as directed by a subpoena issued by the Board of Chiropractic Examiners or the Office of the Attorney General, or by a Demand for Statement in Writing under Oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All radiographs and reports maintained by the licensee, including those prepared by other health care professionals also shall be provided.

2. The licensee, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or who has been asked to provide treatment to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.

3. The licensee, in the exercise of professional judgment, who has a good faith belief that the patient because of a mental or physical condition may pose an imminent danger to himself or herself or to others, may release pertinent information to a law enforcement agency or other health care professional in order to minimize the threat of danger.

(f) Where a third party or entity has requested examination or an evaluation of a person for a purpose unrelated to treatment ***by the examiner*** and where a report of the examination is to be supplied to the third party, the licensee rendering those services shall prepare appropriate records and maintain their confidentiality, except to the extent provided by this section. The licensee's report to the third party relating to the patient shall be made part of the record. The licensee shall:

1. Assure that the scope of the report is consistent with the request, to avoid the unnecessary disclosure of diagnoses or personal information which is not pertinent;

2. Forward the report to the individual entity making the request and in accordance with the terms of the patient's authorization; if no specific individual is identified, the report should be marked "Confidential"; and

3. Should the examination disclose abnormalities or conditions not known to the patient, the licensee shall advise the patient to consult another health care professional for treatment.

(g) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the licensee or a designee shall:

1. Establish a procedure by which patients can obtain treatment records or acquiesce in the transfer of those records to another licensee or health care professional who is assuming the responsibilities of that practice;

2. If the practice is unattended by another licensee, publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation; and

3. File a notice of the established procedure for the retrieval of records with the Board of Chiropractic Examiners.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS
Chiropractor of Record; Fee Reimbursement
Adopted New Rule: N.J.A.C. 13:44E-2.4

Proposed: May 6, 1991 at 23 N.J.R. 1280(a).
Adopted: July 18, 1991 by the State Board of Chiropractic Examiners, Anthony DeMarco, D.C., President.
Filed: July 22, 1991 as R.1991 d.427, **without change.**

Authority: N.J.S.A. 45:9-41.23(h).

Effective Date: August 19, 1991.
Expiration Date: July 1, 1996.

Summary of Public Comments and Agency Responses:

One letter expressing support for the proposed new rule was received during the 30-day comment period. Howard Sabell, D.C., stated that he commends the Board for proposing a rule which protects the public. The Board acknowledges and appreciates this comment in support of the proposal.

Full text of the adoption follows.

13:44E-2.4 Chiropractor of record; fee reimbursement

(a) Each patient in a chiropractic facility shall have a chiropractor of record who shall remain primarily responsible for assuring the proper implementation of the chiropractic services to be rendered to such patient regardless of whether the services are rendered by the chiropractor of record or by any other person rendering chiropractic services or ancillary treatment to the patient.

(b) The name of the chiropractor of record shall be conspicuously identified on the patient record. If the chiropractor of record is not identified on the patient record, it shall be presumed that the chiropractor of record is the owner of the practice in which the patient was treated.

(c) Each chiropractor or any other person rendering services shall sign or initial each entry on the patient record pertaining to the services he or she provided. If no such entry appears on the patient record, it shall be presumed that such service was rendered by the chiropractor of record, unless the latter shall establish the identity of the individual who provided such services.

(d) In a multi-chiropractor practice, the chiropractor of record shall remain the same until a subsequent chiropractor affirmatively notes in the patient record that he or she is currently the chiropractor of record. In the event that the chiropractor of record leaves the practice, a successor chiropractor shall be designated if the patient elects to continue treatment in the facility.

(e) A new chiropractor of record shall review the patient's history and chiropractic records, examine the patient, if necessary, and either develop a new treatment plan or continue the pre-existing plan.

(f) Any licensee found to have rendered services in violation of N.J.S.A. 45:1-21 and the owner of the facility in which the licensee renders such services shall be jointly and severally responsible for any restoration of patient fees as may be ordered by the Board.

(a)

DIVISION OF STATE POLICE

Combat Auto Theft Program

Adopted New Rules: N.J.A.C. 13:63

Proposed: April 1, 1991 at 23 N.J.R. 981(a).
Adopted: June 27, 1991 by Colonel Justin J. Dintino, Superintendent, Division of State Police.
Filed: July 17, 1991 as R. 1991 d.423, **without change.**

Authority: N.J.S.A. 39:3-85.5 et seq., specifically 39:3-85.10.

Effective Date: August 19, 1991.
Expiration Date: August 19, 1996.

Summary of Public Comments and Agency Responses:

The proposed new rules were published on April 1, 1991, which notice of proposal set forth May 1, 1991 as the end of the comment period.

The Division received a letter of support with two comments from MCA Insurance Company.

N.J.A.C. 13:63-2.1(b)

COMMENT: The proposed rule should allow for the informed consent agreement to be mailed to a prospective participant who would return the completed agreement with a stamped return envelope. The program decal would be forwarded to the participant in the provided envelope.

RESPONSE: The Division acknowledges this commenter's support for the proposal. With regard to the suggestion that the informed consent agreement be mailed to a prospective participant, it is the opinion of the Divison that such a process would lead to abuse and an inability to properly administer the program.

N.J.A.C. 13:63-2.1(c)

COMMENT: The proposed amendment should allow no fee to be paid by the program participant to cover the cost of reproducing the informed consent agreement form, the program decal and of administering the program.

RESPONSE: The enabling statute, N.J.S.A. 39:3-85.5 et seq., allows for a fee to be charged which shall not exceed the actual cost incurred by the police department. The Division, without legislative amendment to the aforementioned statute, has no authority to mandate that no fee be charged to program participants.

Full text of the adoption follows.

CHAPTER 63
COMBAT AUTO THEFT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

13:63-1.1 Purpose

The purpose of this chapter is to implement N.J.S.A. 39:3-85.5 et seq. (P.L. 1990, c.98) and to combat the theft of motor vehicles in New Jersey. In furtherance of this purpose, this chapter provides for a voluntary registration program which will aid law enforcement in identifying stolen vehicles while at the same time deterring the theft of vehicles registered in the program.

13:63-1.2 Definitions

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

"Chief law enforcement officer" means the highest ranking officer of a local law enforcement agency or a State Police Station Commander or their designee.

"Division" means the Division of State Police.

"Informed Consent Agreement" means the form designed by the Superintendent and provided by the Chief Law Enforcement Officer for the purpose of participation in the program. The agreement form is annexed to this chapter as Appendix A, incorporated herein by reference.

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles pursuant to N.J.S.A. 39:1-1.

"Police department" means the local law enforcement agency or State Police station which provides full law enforcement services for a municipality.

"Program" means the Combat Auto Theft (CAT) Program.

"Program decal" means a sticker designed by the Superintendent and provided by the chief law enforcement officer which indicates participation in the program.

"Program participant" means the registered owner of a motor vehicle who agrees to abide by all rules and regulations of the program by signing the Informed Consent Agreement.

"Superintendent" means the Superintendent of the Division of State Police.

SUBCHAPTER 2. RESPONSIBILITIES

13:63-2.1 Program participants' responsibilities

(a) A person who is a New Jersey resident and the owner of a motor vehicle registered in any state may voluntarily participate in this program.

(b) A registered owner who volunteers to participate in this program shall appear in person before the chief law enforcement officer of the municipality in which the registered owner resides.

(c) A program participant shall complete an informed consent agreement (Appendix A) provided by the chief law enforcement officer and receive a copy of the signed informed consent agreement and a program decal. The program participant shall pay a fee, where applicable, to cover the cost of reproducing the informed consent agreement form, the program decal and of administering the program.

(d) The program participant shall affix the issued program decal to the inside lower driver's side corner of the rear window. If not practical, the program decal shall be affixed to the most conspicuous location on the motor vehicle for detection by law enforcement personnel.

(e) A program participant may withdraw from this program in person or by written notification to the chief law enforcement officer and removal of the program decal.

13:63-2.2 Chief law enforcement officer's responsibilities

(a) The chief law enforcement officer shall reproduce the informed consent agreement form as it appears in Appendix A.

(b) The chief law enforcement officer shall provide an informed consent agreement to any registered owner of a motor vehicle who volunteers to participate in this program.

(c) The chief law enforcement officer shall ensure the proper completion of the informed consent agreement.

(d) Upon completion of the informed consent agreement, the chief law enforcement officer shall retain the completed original informed consent agreement and provide a copy to the program participant.

(e) The chief law enforcement officer shall maintain a file of completed informed consent agreements which are still in effect.

(f) The chief law enforcement officer shall make the completed informed consent agreeements available to personnel under his or her command for the purpose of handling inquiries about program participation from other law enforcement agencies.

(g) The chief law enforcement officer shall issue to the program participant the next sequentially numbered program decal.

(h) The chief law enforcement officer shall inform the program participant of the proper location to affix the program decal as set forth at N.J.A.C. 13:63-2.1(d).

(i) The chief law enforcement officer may establish a fee, to be paid by the program participant, for the reproduction of the informed consent form and the program decal. The fee charged shall not exceed the actual costs incurred by the police department.

(j) The chief law enforcement officer shall provide the Division with any information regarding the program which the Superintendent deems necessary.

SUBCHAPTER 3. RECORDKEEPING

13:63-3.1 Recordkeeping responsibilities

(a) The Superintendent shall provide for the recording of the registered owners of motor vehicles who participate in this program. The records shall be available to all law enforcement departments, agencies and forces.

(b) The Superintendent shall cooperate with and assist all law enforcement officers and other agencies in tracing or examining any questionable motor vehicles in order to determine the ownership thereof.

SUBCHAPTER 4. DECALS

13:63-4.1 Decal specifications

(a) All police departments issuing decals pursuant to this program shall adhere to the following decal specifications. The decal shall be:

1. Inside window reflective with laminated adhesive;
2. Three inches by three inches in size;
3. Colored in light resistant blue and/or black ink; and
4. Feature 3/16 inch black consecutive numbering.

(b) The general design and lettering of the decal shall conform to the sample in Appendix B, incorporated herein by reference.

(c) An area no larger than 1.25 inches by 1.25 inches in the center of the decal will be used for the insignia and/or name of the issuing police department.

(d) The lower left corner of the decal will contain the four digit municipality identification code number of the issuing police department except State Police stations which will utilize a telephone number for identification.

(e) Each decal will be sequentially numbered. The lower right corner of the decal will contain the sequential number assigned by the police department.

Appendix A

INFORMED CONSENT AGREEMENT

Decal No. _____

Owner Information:

Name _____ Telephone # _____

Address _____

_____

Driver's License Number and State _____

Vehicle Information:

Make _____ Model _____ Year _____ Color ____

Registration No. _____ State _____

VIN # _____

Other Authorized Drivers:

Name _____ D.L. No. and State _____

_____ _____

As a voluntary participant in the State of New Jersey Combat Auto Theft Program I, _____,
(Print)
represent that I am the registered owner of the vehicle identified above and that I do not normally operate that vehicle between the hours of 1:00 a.m. and 5:00 a.m. I freely consent to and authorize any sworn police officer of the State of New Jersey to stop my decaled vehicle between 1 a.m. and 5:00 a.m., without probable cause, to ascertain why the vehicle is being operated and to conduct any further investigation necessary to ascertain the true owner of the vehicle and to determine whether the vehicle is stolen. It is also my responsibility to notify any person who operates my decaled vehicle that the vehicle is registered in the program.

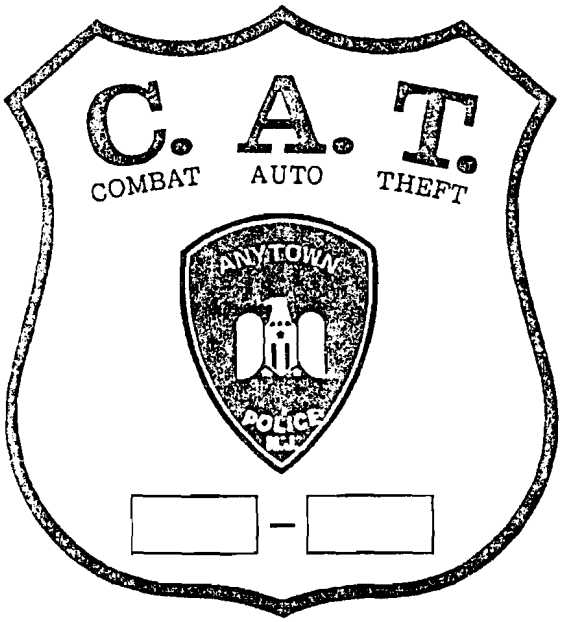
I also realize that participation in this program is no guarantee that my decaled vehicle will not be stolen. I am aware that the program has been enacted as a deterrent to auto theft and as an aid for police to identify stolen vehicles in the State of New Jersey.

I am responsible for notifying the police department where I completed this form, in person or in writing, whenever I move, sell the vehicle or no longer wish to participate in the program. Furthermore, under any of these conditions, I must remove the program decal from my vehicle.

I fully understand the terms and conditions of this program, and voluntarily agree to participate.

Signature _____ Date _____

Appendix B



STATE

(a)

DIVISION OF ARCHIVES AND RECORDS MANAGEMENT

Records Retention

Adopted New Rules: N.J.A.C. 15:3

Proposed: June 17, 1991 at 23 N.J.R. 1912(b).
Adopted: July 29, 1991 by Jerome C. Horn, Assistant Secretary of State.
Filed: July 29, 1991 as R.1991 d.452, **without change.**
Authority: N.J.S.A. 47:3-15.
Effective Date: August 19, 1991.
Expiration Date: August 19, 1996.

Summary of Public Comments and Agency Responses:

No comments received. N.J.A.C. 15:3 expired on July 7, 1991, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendments are adopted herein as new rules.

Full text of the adopted new rules, which were proposed for readoption, may be found in the New Jersey Administrative Code at N.J.A.C. 15:3.

Full text of the adopted amendments to the rules proposed for readoption, adopted as new rules, follows.

CHAPTER 3
RECORDS MANAGEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

15:3-1.1 Purpose and scope

The Division of Archives and Records Management is charged with the responsibility for establishing the framework for the management of public records in a systematic and comprehensive fashion. This chapter encompasses all public entities at the State, county and local government levels, including subdivisions thereof.

15:3-1.2 Definitions

(No change in text.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Cuthbert Boulevard, Camden County (Portion Under State Jurisdiction)

Adopted New Rule: N.J.A.C. 16:28-1.46

Proposed: June 3, 1991 at 23 N.J.R. 1771(a).

Adopted: July 5, 1991 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: July 25, 1991 as R.1991 d.435, **without change.**

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

Effective Date: August 19, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

The Department received two comments concerning the speed limit along Cuthbert Boulevard, Cherry Hill Township, Camden County from Mr. A.M. Dart, Oaklyn, New Jersey and Mrs. Anita Radojna, Westmont, New Jersey.

The Department thanked the commenters for their comments and expression of concerns.

COMMENT: (Dart) The 40 miles per hour speed limit between Park Boulevard (County Road 628) and Hampton Road (County Road 623) is a good start. However, speed limits should be lowered from town line to town line. The commenter would like to see a 30 to 35 miles per hour speed limit from Wisteria in Pennsauken to S. Park Drive in Haddon Township due to major interchanges of Routes 38 and 70 and a number of cross overs.

RESPONSE: The Department thanks the commenter for the favorable comment, and will monitor the speed limit designated from Wisteria in Pennsauken to S. Park Drive in Haddon Township to ascertain whether a change in the established speed limit is warranted.

COMMENT: (Radojna) "The speed limit being established is not the problem from my viewpoint, because I use this area in my daily commuting to and from work. It is apparently the little thru way in front of the Courier Post from Hampton Road cutting across Cuthbert Boulevard which is used by commuters." The commenter suggests that the cross over be changed.

RESPONSE: The Department thanks the commenter for this viewpoint and will monitor the traffic conditions in the designated areas to ascertain whether or not any changes in traffic control devices, design, etc. may be warranted.

Full text of the adoption follows.

16:28-1.46 Cuthbert Boulevard; State jurisdiction

(a) The rate of speed designated for the certain part of Cuthbert Boulevard under State jurisdiction described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. Camden County:

(1) Cherry Hill Township:

(A) 40 miles per hour between Park Boulevard (County Road 628) and Hampton Road (County Road 623) (approximate Station numbers 29+000± to 75+000±).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route U.S. 202 in Morris County; N.J. 15 in Morris County; and N.J. 12 in Hunterdon County

Adopted Amendments: N.J.A.C. 16:28-1.67 and 1.76
Adopted Repeal and New Rule: N.J.A.C. 16:28-1.129

Proposed: May 6, 1991 at 23 N.J.R. 1293(a).

Adopted: July 3, 1991 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: July 25, 1991 as R.1991 d.433, **without change.**

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

Effective Date: August 19, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

The Department received comments from Mr. Stephen G. Correllas, P.E., New Jersey Chapter Coordinator, National Motorists Association, concerning the speed limit along Route U.S. 202 in Harding and Bernards Township, Somerset and Morris Counties, respectively, and Mr. Donald Bahnck, N. Plainfield, New Jersey, concerning the speed limit along Route N.J. 12 between Frenchtown and the Stockton circle at Flemington. There were no comments received regarding Route N.J. 15.

COMMENT: The National Motorists Association (NMA) finds, based on research and survey work, that a change in the speed limit is not warranted along Route U.S. 202 in Harding Township. Inasmuch as the Department of Transportation probably used the 85 percentile speed of free flowing traffic as a basic factor, it appears that other subjective considerations were used to arrive at the proposed 45 mph speed limit. The difficulty of using other factors such as road characteristics and accident experience in conjunction with prevailing speed is a documented problem with current speed zoning practices. There is public pressure concerning current practices based on concern about past accidents. The desire by the Harding Township Police Department to reduce the speed limit from 50 mph to 40 mph **in order to enhance safety** and their justification for the request (police accident report data) is indicative of the misperception by local officials of the role of speed limits. A 5 mph decrease in the speed limit on U.S. 202 from North Maple Avenue to just north of Glen Alpin/Tempe Wick Road will not impact prevailing speeds and, more importantly will not provide the safety benefits desired by Harding Township officials. In fact, all indications point to no increase in safety but, instead to an increase in unwarranted speeding violations."

RESPONSE: The Department does not refute the conceptuality of the information provided by the National Motorists Association. However, in reality, the Department made the speed limit determination after the completion of an engineering and traffic investigation in accordance with established traffic engineering practices. The factors considered in this investigation are, but not limited to, road surface characteristics, shoulder condition, grade alignment and sight distances, and the 85-percentile speed and pace speed; roadside development and culture; and roadside friction; safe speed for curves or hazardous locations within the zone; parking practices and pedestrian activity; and reported accident experience for a recent 12-month period.

The Department does not propose any further change to the speed limit as presently promulgated; however, will continue to monitor the

speed limit in the designated area to ascertain whether the speed limit should be reverted to 50 mph.

COMMENT: Why is there a 50 miles per hour speed limit on Route 12, the connecting route between Frenchtown and the Stockton Circle at Flemington? The highway is straight, level and wide-lane with a full lane pull-off. The commenter further requested the requirements to effect a 55 miles per hour speed limit.

RESPONSE: The Department's records indicate that the 50 miles per hour speed limit was determined after the completion of an engineering and traffic investigation in compliance with established traffic engineering practices. The Department will continue to monitor the speed limit in the designated area to ascertain whether the establishment of a 55 miles per hour speed limit is warranted.

Full text of the adoption follows.

16:2-1.67 Route U.S. 202

(a) The rate of speed designated for the certain parts of State highway Route U.S. 202 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-xiv. (No change.)

xv. In Bernards Township, Somerset County, and Harding Township, Morris County:

(1) 40 miles per hour to the intersection of Madisonville Road (Bernards Township) (milepost 37.92); thence

(2) 50 miles per hour between Madisonville Road (Bernards Township) and North Maple Avenue (Bernards Township) (approximate mileposts 37.92 to 38.95); thence

(3) 45 miles per hour between North Maple Avenue (Bernards Township) and a point 1450 feet north of Glen Alpin—Tempe Wick Road (Harding Township) (approximate mileposts 38.95 to 41.03); thence

(4) 50 miles per hour between a point 1450 feet north of Glen Alpin—Tempe Wick Road (Harding Township) and a point 800 feet south of Frederick Street (Morris Township) (approximate mileposts 41.03 to 42.67); thence

Recodify xvii.-xx. as xvi.-xxi. (No change in text.)

16:28-1.76 Route 15

(a) The rate of speed for the certain parts of State highway Route 15 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. (No change.)

2. For northbound traffic in Morris County:

i. In Wharton Borough:

(A) Zone 3: 55 miles per hour extending through Rockaway Township, Jefferson Township, Morris County, and into Sparta Township, Sussex County, to the northerly terminus of Route 181 (milepost 14.2).

(B) 35 miles per hour along Route N.J. 15 Ramp (northbound North Main Street) from its southerly intersection with North Main Street (County Road 634) to its northerly intersection with northbound Route N.J. 15.

3.-4. (No change.)

16:28-1.129 Route 12

(a) The rate of speed designated for State highway Route 12 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Hunterdon County:

i. Frenchtown Borough:

(1) Mileposts 0.00 to 0.95 under the jurisdiction of the Delaware River Joint Toll Bridge Commission, Municipal and County: 40 miles per hour between Horseshoe Bend Road and the Kingwood Township line (approximate mileposts 0.95 to 1.01); thence

ii. Kingwood Township:

(1) 50 miles per hour between the Borough of Frenchtown easterly line and the Franklin Township westerly line (approximate mileposts 1.01 to 6.13); thence

iii. Franklin Township:

(1) 50 miles per hour between the Kingwood Township easterly line and the Delaware Township westerly line (approximate mileposts 6.13 to 6.55); thence

iv. Delaware Township:

(1) 50 miles per hour between the Franklin Township easterly line and the Raritan Township westerly line (Croton Road) (approximate mileposts 6.55 to 7.49); thence

v. Raritan Township:

(1) Zone 1: 50 miles per hour between the Delaware Township easterly line (Croton Road) and Douglas Court (approximate mileposts 7.49 to 10.44); thence

(2) Zone 2: 45 miles per hour between Douglas Court and Sergentsville-Flemington Road (County Road 523) (approximate mileposts 10.44 to 10.74); thence

(3) Zone 3: 40 miles per hour between Sergentsville-Flemington Road (County Road 523) and the Borough of Flemington westerly line (approximate mileposts 10.74 to 10.98); thence

vi. Flemington Borough:

(1) Zone 1: 40 miles per hour between the Raritan Township westerly line and South Main Street (County Road 611) (approximate mileposts 10.98 to 11.45); thence

(2) Zone 2: 30 miles per hour between South Main Street (County Road 611) and Route N.J. 31—Route U.S. 202 (Circle) (approximate mileposts 11.45 to 11.70).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 45 in Salem and Gloucester Counties

Adopted Repeal and New Rule: N.J.A.C. 16:28-1.96

Proposed: June 3, 1991 at 23 N.J.R. 1772(a).

Adopted: July 5, 1991 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: July 25, 1991 as R.1991 d.434, **without change.**

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

Effective Date: August 19, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.96 Route 45

(a) The rate of speed designated for the certain parts of State highway Route N.J. 45 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Salem County:

(1) In the City of Salem:

(A) 30 miles per hour between Broadway and the Fenwick Creek Bridge (Salem City-Mannington Township line) (approximate mileposts 0.00 to 0.42); thence

(2) Mannington Township:

(A) Zone 1: 40 miles per hour between the Fenwick Creek Bridge (Salem City-Mannington Township line) and First Avenue (approximate mileposts 0.42 to 0.80); thence

(B) Zone 2: 45 miles per hour between First Avenue and Whitney Avenue (approximate mileposts 0.80 to 2.32); thence

(C) Zone 3: 50 miles per hour between Whitney Avenue and the Mannington Township-Pilesgrove Township line (approximate mileposts 2.32 to 7.05); thence

(3) Pilesgrove Township:

(A) Zone 1: 50 miles per hour between the Mannington Township-Pilesgrove Township line and Bailey Street (County Road 616) (approximate mileposts 7.05 to 8.79); thence

(B) 45 miles per hour between Bailey Street (County Road 616) and the Pilesgrove Township-Woodstown Borough line (approximate mileposts 8.79 to 8.97); thence

(4) Woodstown Borough:

(A) Zone 1: 45 miles per hour between the Pilesgrove Township-Woodstown Borough line and 100 feet south of Green Street (approximate mileposts 8.97 to 9.23); thence

(B) Zone 2: 30 miles per hour between 100 feet south of Green Street and East Grant Street (approximate mileposts 9.23 to 9.70); thence

(C) Zone 3: 35 miles per hour between East Grant Street and 300 feet south of High Bridge By-Pass Road (County Road 660) (approximate mileposts 9.70 to 10.33); thence

(D) Zone 4: 50 miles per hour between 300 feet south of High Bridge By-Pass Road (County Road 660) and Woodstown Borough-Pilesgrove Township line (approximate mileposts 10.33 to 10.45); thence

(5) Pilesgrove Township:

(A) Zone 3: 50 miles per hour between Woodstown Borough-Pilesgrove Township line and Pilesgrove Township-South Harrison Township line (approximate mileposts 10.45 to 12.44); thence

ii. In Gloucester County:

(1) South Harrison Township:

(A) Zone 1: 50 miles per hour between the Pilesgrove Township-South Harrison Township line and South Harrison Township-Harrison Township line (approximate mileposts 12.44 to 15.96); thence

(2) Harrison Township:

(A) Zone 1: 50 miles per hour between the South Harrison Township-Harrison Township line and 350 feet south of New Street (approximate mileposts 15.96 to 16.98); thence

(B) Zone 2: 35 miles per hour between 350 feet south of New Street and 350 feet south of Colson Road (approximate mileposts 16.98 to 18.35); thence

(C) Zone 3: 50 miles per hour between 350 feet south of Colson Road and the Harrison Township-Mantua Township line (approximate mileposts 18.35 to 19.35); thence

(3) Mantua Township:

(A) Zone 1: 50 miles per hour between the Harrison Township-Mantua Township line and 100 feet south of Valley View Drive (approximate mileposts 19.35 to 20.88); thence

(B) Zone 2: 45 miles per hour between 100 feet south of Valley View Drive and Barry Drive (approximate mileposts 20.88 to 22.13); thence

(C) Zone 3: 40 miles per hour between Barry Drive and Chestnut Street (approximate mileposts 22.13 to 22.38); thence

(D) Zone 4: 35 miles per hour between Chestnut Street and Main Street (County Road 553) (approximate mileposts 22.38 to 22.59); thence

(E) Zone 5: 50 miles per hour between Main Street (County Road 553) and the Mantua Township-West Deptford-Deptford Township line (approximate mileposts 22.59 to 22.75); thence

(4) West Deptford and Deptford Townships; Woodbury Heights Borough and the City of Woodbury:

(A) Zone 1: 50 miles per hour between the Mantua Township-West Deptford Township-Deptford Township line and Elm Avenue (County Road 652) in West Deptford Township, Deptford Township and Woodbury Heights Borough (approximate mileposts 22.75 to 24.33); thence

(B) Zone 2: 45 miles per hour between Elm Avenue (County Road 652) and Evergreen Avenue (County Road 650) in West Deptford Township and Woodbury Heights Borough (approximate mileposts 24.33 to 24.82); thence

(C) Zone 3: 40 miles per hour between Evergreen Avenue (County Road 650) and Carpenter Street in Woodbury City and Woodbury Heights Borough (approximate mileposts 24.82 to 25.40); thence

(D) Zone 4: 25 miles per hour between Carpenter Street and Hunter Street in Woodbury City (approximate mileposts 25.40 to 25.95); thence

(E) Zone 5: 30 miles per hour between Hunter Street and Hessian Avenue in Woodbury City and West Deptford Township (approximate mileposts 25.95 to 26.94); thence

(F) Zone 6: 45 miles per hour between Hessian Avenue and the West Deptford Township-Westville Borough line in West Deptford Township (approximate mileposts 26.94 to 27.78); thence

(5) Westville Borough:

(A) 45 miles per hour between the West Deptford Township-Westville borough line and Route U.S. 130 (approximate mileposts 27.78 to 28.51).

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund
Methods of Payment
Adopted Amendment: N.J.A.C. 17:3-5.6

Proposed: April 15, 1991, at 23 N.J.R. 1073(a).
Adopted: July 24, 1991, by the Board of Trustees, Teachers' Pension and Annuity Fund, Michael Weik, Secretary.
Filed: July 29, 1991 as R.1991 d.444, **without change.**

Authority: N.J.S.A. 18A:66-56 et seq.

Effective Date: August 19, 1991.
Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:3-5.6 Methods of payment

(a) Methods of payment include the following:

1.-2. (No change.)

3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years;

4. (No change.)

(b)

OFFICE OF THE STATE TREASURER

Public Employee Charitable Fund-Raising Campaign
Adopted Amendments: N.J.A.C. 17:28-2.4, 2.6, 2.7, 2.8, 3.2, 3.4 and 4.6
Adopted Repeal: N.J.A.C. 17:28-3.3
Adopted New Rule: N.J.A.C. 17:28-1.5

Proposed: June 17, 1991 at 23 N.J.R. 1897(a).
Adopted: July 25, 1991 by Nathan B. Scovronick, Executive Director, Department of the Treasury.
Filed: July 25, 1991 as R.1991 d.436, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:14-15.9cl and 52:18A-30.

Effective Date: August 19, 1991.
Operative Date: September 1, 1991.
Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:
There were no formal comments received. However, as a result of informal discussion at a meeting of the Campaign Steering Committee, it was decided to clarify that the proposed restriction against individual advocacy by a fund-raising organization or charitable agency should not be construed to prevent public employees from receiving specific information about the purposes, programs or administration of any individual organization or agency. Therefore, under adopted new rule N.J.A.C. 17:28-1.5, the term "describe or explain" has been added to the permissible activity of an organization or agency.

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

17:28-1.5 General provisions

(a) No charitable agency or charitable fund-raising organization shall engage in any direct solicitation activity at the work site of State employees, except as a participant in a Campaign and in accordance with N.J.A.C. 17:28.

(b) No charitable agency shall participate in a Campaign as both an affiliated and an unaffiliated agency.

(c) All activities of the Campaign shall be conducted in a manner that promotes a unified solicitation on the behalf of all participants. While it is permissible to individually identify***, describe or explain*** the fund-raising organizations or charitable agencies in the Campaign for informational purposes, no person affiliated with the Campaign shall engage in any Campaign activity that is construed to either advocate or criticize any specific fund-raising organization or charitable agency.

(d) No State official or employee shall assume the duties and responsibilities of the Campaign Steering Committee, the Campaign Steering Committee Chairman, or the Campaign Manager. In the event of the inability of the Committee to function, or a continuing vacancy in the position of Chairman or Manager, the State Treasurer reserves the right to cancel the Campaign. The State Treasurer shall designate a State employee coordinator to assist the Campaign Steering Committee.

17:28-2.4 Duties of Campaign Steering Committee

(a) The Campaign Steering Committee shall:

1. Elect a Chairman to conduct the meetings of the Campaign Steering Committee, who shall serve for one year and until the election of a successor, and who shall be eligible for re-election;

2. (No change.)

3. Elect and oversee a Campaign Manager, who shall demonstrate to the satisfaction of the Campaign Steering Committee the administrative, financial, technical and management capability to organize, publicize and operate an extensive fund-raising campaign in an efficient and equitable manner in accordance with N.J.A.C. 17:28;

4. (No change.)

5. Establish policies and procedures for the operation and administration of the Campaign, including the hearing of any grievances concerning the operation and administration of the Campaign.

17:28-2.6 Membership procedure

(a) The State Treasurer shall publish in the New Jersey Register a Public Notice of application for charitable fund-raising organizations wishing to participate on the Campaign Steering Committee at least 30 days prior to the application due date. These applications are due by the close of business on the date and at the location specified in the notice.

(b) Within 30 days of the close of the application due date, the current Campaign Steering Committee, through the State employee coordinator, shall notify each applicant of its eligibility or ineligibility for the Campaign Steering Committee. In cases of ineligibility, the notice shall set forth the reason for such ineligibility.

17:28-2.7 Appeal procedure

(a) Any charitable fund-raising organization receiving notice of ineligibility shall have 15 days from receipt of such notice to file an appeal and to submit to the State Treasurer any additional information.

(b) Within 30 days of receipt of any additional information, the State Treasurer shall convene a special appeal panel consisting of the chairman of the Campaign Steering Committee, the representative of the various labor unions representing State employees and the representative of the executive branch of State government to review the charitable fund-raising organization's appeal and any additional documentation or information submitted by the charitable fund-raising organization.

(c) The special appeal panel shall conduct its review in a timely manner and shall make its decision in writing to the State Treasurer regarding the eligibility of the charitable fund-raising organization to participate on the Campaign Steering Committee. The State Treasurer shall in a timely manner adopt, modify or reject the decision of the panel. The State Treasurer's action shall be final.

17:28-2.8 Application form for charitable fund-raising organizations

(a) (No change.)

(b) In addition to a completed application form, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. 52:14-15.9a, 15.9b, and 15.9c, an Internal Revenue Service Letter of Determination or other proof from the Internal Revenue Service that the applicant:

i. Is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code;

ii.-iii. (No change.)

2. With respect to the requirements set forth in N.J.S.A. 52:14-15.9e, annual financial reports which demonstrate that the organization raised, in each of its two fiscal years preceding its application to participate in a Campaign, at least $35,000 from individual citizens of New Jersey;

3. With respect to N.J.S.A. 52:14-15.9f, annual financial reports which demonstrate that the organization raised at least $60,000 and distributed that sum among a minimum of 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State Campaign;

4. A copy of the organization's Internal Revenue Service form 990 for each of the organization's two fiscal years preceding its application;

5. Documentary evidence that the organization is registered or exempt from registration pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971" (P.L. 1971, c. 469; N.J.S.A. 45:17A-1 et seq.);

6. A copy of the organization's independent auditor's report for each of the organization's two fiscal years preceding its application;

7. A copy of the organization's annual report for each of the organization's two fiscal years preceding its application;

8. A statement affirming that the organization is directed by a governing body whose members have no material conflict of interest in their service on the governing body, and a list of the members of the governing body and the identification of its officers;

9. A list of the affiliated charitable agencies to which the organization gave funds in its two fiscal years prior to the application and a list of the agencies to which it expects to give funds received in the Campaign, and a description of the health, welfare or human care services that each provides;

10. A statement affirming that each of the organization's affiliated charitable agencies is:

i. Registered pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971" (P.L. 1971, c. 469; N.J.S.A. 45:17A-1 et seq.), except for an agency exempt from registration under the law; and

ii. Engaged in the provision of health, welfare or human care services; and

11. A statement affirming that the organization will be represented at meetings of the Campaign Steering Committee and providing the name of the representative.

(c) (No change.)

(d) Those wishing to receive an application can do so by making a request either orally or in writing to Charities Registration, Division of Consumer Affairs, P.O. Box 254, Newark, New Jersey 07101, (201) 648-4704.

(e) Charitable fund-raising organizations, which were found eligible to participate on the Campaign Steering Committee for Campaign immediately prior to the Campaign being applied for, shall be required only to submit to the State Treasurer its most recent information which shall specifically update the requirements of subsection (b) above.

(f) (No change.)

17:28-3.2 Application procedure

(a) (No change.)

(b) The application procedure for charitable agencies is as follows:

1. The State Treasurer shall publish in the New Jersey Register a Public Notice of application for charitable agencies wishing to participate in the Campaign at least 30 days prior to the application due date. These applications are due by the close of business on the date and at the location specified in the notice. The current Campaign Steering Committee shall review the applications.

2. Within 30 days of the close of the application due date, the Campaign Steering Committee, through the State employee coordinator, shall notify each agency of its eligibility or ineligibility to participate in the Campaign. In cases of ineligibility, the notice shall set forth the reasons for such ineligibility.

3. Any charitable agency receiving notice of ineligibility shall have 15 days from receipt of such notice to file an appeal and to submit to the State Treasurer any additional information.

4. Within 30 days of receipt of any additional information, the State Treasurer shall convene a special appeal panel consisting of the Chairman of the Campaign Steering Committee, the representative of the various labor unions representing State employees and the representative of the executive branch of State government to review the charitable agency's appeal and any documentation or information submitted by the charitable agency.

5. The special appeal panel shall conduct its review in a timely manner and shall make its decision in writing to the State Treasurer regarding the eligibility of the charitable agency to participate in the Campaign, and shall notify the charitable agency of its decision. The State Treasurer shall in a timely manner adopt, modify or reject the decision of the panel. The State Treasurer's action shall be final.

17:28-3.3 (Reserved)

17:28-3.4 Application form/unaffiliated charitable agency

(a) (No change.)

(b) In addition to a completed application form, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. 52:14-15.9a, 15.9b and 15.9c an Internal Revenue Service Letter of Determination or other proof from the Internal Revenue Service that the applicant:

i. Is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code;

ii. Qualifies for tax deductible contributions under section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code; and

iii. Is not a private foundation as defined in section 509(a) of the Internal Revenue Code;

2. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7e, annual financial reports which demonstrate that the agency raised, in each of its two fiscal years preceding its application to participate in a Campaign, at least $15,000 from individual citizens of New Jersey;

3. A copy of the agency's Internal Revenue Service form 990 for each of the agency's two fiscal years preceding its application;

4. Documentary evidence that the agency is registered or exempt from registration pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971" (P.L. 1971, c. 469; N.J.S.A. 45:17A-1 et seq.);

5. A copy of the agency's independent auditor's report for each of the agency's two fiscal years preceding its application;

6. A copy of the agency's annual report for each of the agency's two fiscal years preceding its application;

7. A statement affirming that the agency provides health, welfare or human care services within New Jersey, and a description of the services; and

8. A statement affirming that the agency is directed by a governing body whose members have no material conflict of interest in their service on the governing body, and a list of the members of the governing body and the identification of its officers.

(c) (No change.)

(d) Those wishing to receive an application can do so by making a request either orally or in writing to Charities Registration, Division of Consumer Affairs, P.O. Box 254, Newark, New Jersey 07101, (201) 648-4704.

(e) Unaffiliated charitable agencies, which were found eligible by the State Treasurer to participate in the Campaign immediately prior to the Campaign being applied for, shall be required only to submit to the State Treasurer its most recent information which shall specifically update the requirements of subsection (b) above.

(f) (No change.)

17:28-4.6 Designated contribution

(a) Employees may designate, on a Campaign pledge/designation card, their contribution to a specific charitable fund-raising organization and/or charitable agency, and/or may select the undesignated option. Designated contributions through the payroll deduction or in cash shall be a minimum contribution of $.50 per week ($1.00 per pay period, $26.00 per year) per organization or agency designated. The minimum contribution requirement shall be met for each additional organization or agency designated.

(b) A Campaign pledge/designation card shall be valid only for the calendar year of the campaign. An employee who wishes to participate in a subsequent Campaign must file a new Campaign pledge/designation card valid for the subsequent Campaign.

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Negotiations and Impasse Procedure; Mediation, Fact-Finding and Arbitration

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

Proposed: May 6, 1991 at 23 N.J.R. 1296(b).

Adopted: July 17, 1991 by the Public Employment Relations Commission, James W. Mastriani, Chairman.

Filed: July 17, 1991 as R.1991 d.424, **without change.**

Authority: N.J.S.A. 34:13A-5.4(e), 6(b), 11 and 16(h).

Effective Date: July 17, 1991, Readoption.
August 19, 1991, Amendments.

Expiration Date: July 17, 1996.

Summary of Public Comments and Agency Responses:

The Commission received written comments on this proposed readoption with amendments from the following:

1. The Morris County Board of Chosen Freeholders.
2. The Morris County Park Commission.

COMMENT: Both commenters supported the proposed amendment to N.J.A.C. 19:12-4.3(c) and suggested no changes in the rules to be readopted.

RESPONSE: Given the nature of these comments, no response is required.

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

Full text of the adopted amendments follows.

CHAPTER 12
NEGOTIATIONS AND IMPASSE PROCEDURE; MEDIATION, FACT-FINDING AND ARBITRATION

19:12-3.4 Mediator's confidentiality

Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party to any cause pending in any type of proceeding under the New Jersey Employer-Employee

Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

19:12-4.3 Fact-finder's function

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or other representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties agree to have them public, or take such other steps as are deemed appropriate in order to discharge his or her function.

(b) (No change.)

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party to any cause pending in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

Recodify (c)-(f) as (d)-(g) (No change in text.)

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments

Readoption with Amendments: N.J.A.C. 19:16

Proposed: May 6, 1991 at 23 N.J.R. 1298(a).

Adopted: July 17, 1991 by the Public Employment Relations Commission, James W. Mastriani, Chairman.

Filed: July 17, 1991 as R.1991 d.425, **without change.**

Authority: N.J.S.A. 34:13A-5.4(e), (b), 11 and 16(h).

Effective Date: July 17, 1991, Readoption.
August 19, 1991, Amendments.

Expiration Date: July 17, 1996.

Summary of Public Comments and Agency Responses:

The Commission received written comments on this proposed readoption with amendments from the following:

1. James M. Davy, Township Manager, Township of West Milford.
2. James J. Pascale, legislative liaison to the New Jersey Municipal Managers Association.
3. David W. Carew, Business Administrator, Township of Maplewood.
4. M. Joan Foster, Esq., Grotta, Glassman and Hoffman.
5. The Morris County Board of Chosen Freeholders.
6. The Morris County Park Commission.
7. Stephen J. Cuccio, Business Administrator, Township of Wayne.

The commenters expressed dissatisfaction with their experiences with the current system of interest arbitration and advocated changes in the procedures. In particular, the commenters suggested that the Commission assign arbitrators by a rotation system rather than by party selection. It was also suggested that the arbitration panel be increased in size and composed of full-time Commission employees; arbitrators be grouped in panels of three; sanctions for the failure of parties to meet negotiations and filing deadlines be adopted; and arbitrators be issued guidelines concerning the scope of negotiations. Some commenters suggested that some interest arbitrators do not properly apply the criteria listed in N.J.S.A. 34:13A-16(g) and N.J.A.C. 19:16-5.9 and in particular do not carefully consider the employer's ability to pay under the CAP law. N.J.S.A. 34:13A-16(g) and N.J.A.C. 19:16-5.9 direct interest arbitrators to give "due weight to those factors listed below that are judged relevant for the resolution of the specific dispute."

To provide continuity the Commission is readopting N.J.A.C. 19:16 which, absent readoption, would have expired on August 7, 1991. It is also adopting the proposed amendments to N.J.A.C. 19:16-3.4, 4.3 and 5.7 published at 23 N.J.R. 1298(a), as none of the comments received opposed the proposed changes in these sections. The amendments will take effect on publication of this notice in the New Jersey Register.

In response to the comments received, the Commission is publishing a pre-proposal elsewhere in this issue of the New Jersey Register in order to solicit additional comments and to consider possible amendments to the interest arbitration rules. Each of the persons or organizations which submitted comments during the readoption process has been individually notified of this readoption and the pre-proposal. The comments which have been received during the readoption process will be made part of the record of the pre-proposal.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:16.

Full text of the amendment follows.

19:16-3.4 Mediator's confidentiality

Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged by the mediator voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party to any cause pending in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

19:16-4.3 Fact-finder's function

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or other representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties agree to have them public, or take such other steps as are deemed appropriate in order to discharge his or her function.

(b) (No change.)

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party to any cause pending in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

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

19:16-5.7 Conduct of the arbitration proceeding

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

(c) Information disclosed by a party to an arbitrator while functioning in a mediatory capacity shall not be divulged by the arbitrator voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by an arbitrator while serving in a mediatory capacity shall be classified as confidential. The arbitrator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the arbitrator, on behalf of any party to any cause pending in any type of proceeding under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

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

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Administrative and Hospital-Wide Services
Reportable Events
Adopted New Rule: N.J.A.C. 8:43G-5.6

Proposed: November 19, 1990 at 22 N.J.R. 3469(a).
Adopted: July 29, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: July 29, 1991 as R.1991 d.450, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: August 19, 1991.
Operative Date: October 15, 1991.
Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

The Department received written comment on the proposed rule from the New Jersey Hospital Association, the New Jersey State Nurses Association and six hospitals during the public comment period which closed December 19, 1990. The six hospitals included the Medical Center at Princeton, St. Clares Riverside, Englewood Hospital, Beth Israel Hospital, Bergen Pines County Hospital and Cooper Hospital/University Medical Center. These letters are on file at the Standards and Quality Assurance Program of the Department.

On the basis of the comments and recommendations received, the Department has made several changes to the proposed rule. These changes serve to more clearly identify the type of events the Department expects to be immediately notified of, should they occur within a hospital. The time-frame for submitting written reports to the Department has also been lengthened.

The following is a summary of the comments submitted in reference to the proposed rule and the corresponding Departmental responses.

COMMENT: Hackensack Medical Center asks whether the Department will be developing an official report form, and whether a designated individual should be assigned to the responsibility of reporting events.

RESPONSE: The Department has no plan at the present time to develop an official reporting form; the required content of the report is identified in the rule. The rule provides hospitals with the flexibility to develop their own system for delegating responsibility for notifying the Department of reportable events.

COMMENT: Two commenters objected to the 72 hour time-frame for submission of the follow-up written report. It is suggested that the time be extended to allow for a more in-depth investigation.

RESPONSE: The Department has reconsidered this requirement and agrees to increase the time-frame to seven calendar days. The rule has been revised accordingly.

COMMENT: Several commenters questioned whether the Department's intent was to have "unscheduled" interruptions reported, and if so, to insert such language for clarity in N.J.A.C. 8:43G-5.6(a)1. Bergen Pines County Hospital suggests adding the phrase "reportable only if it results in risk or harm to patients or employees", to maintain consistency of language. Beth Israel Hospital asks for a definition of "essential services" and questions whether a shutdown of the fire alarm system for more than three hours, if covered by a verbal alert procedure, would be considered a reportable event.

RESPONSE: The intent of the proposed rule is to have only "unscheduled" interruptions of essential services reported. The Department agrees with the requests for clarity, and has revised the language as follows: "Unscheduled interruption for three or more hours of physical plant and clinical services essential to the health and safety of patients and employees." A scheduled or unscheduled shutdown of a fire alarm system for maintenance or repair, where alternative alert procedures are instituted, would not constitute a reportable event under the rule.

COMMENT: Several commenters expressed the need for further definition of the term "incidents" in N.J.A.C. 8:43G-5.6(a)2. Beth Israel Hospital believes reporting of patient and employee incidents should be limited to only those which are work related.

RESPONSE: Based on the comments received, the Department has concluded the word "incident" is too widely interpretable, and has eliminated its use in the rule. In reviewing the proposed language, the Department felt the words "accident" and "incident" were generically synonymous, and therefore deletion of the word "incidents" would not diminish the scope of intended reporting. The Department does not agree that the scope of reportable incidents should be limited to only those which are work related.

COMMENT: Several hospitals believed it was necessary to identify the crimes which need to be reported in N.J.A.C. 8:43G-5.6(a)3. There was uncertainty as to whether occurrences such as theft of personal belongings or false bomb threats represented reportable crimes. Beth Israel Hospital stated that occurrences which are not related to the functions and operation of the facility should not be reported to the Department of Health.

RESPONSE: The Department recognizes that the rule necessitates judgment on the part of administration to distinguish which alleged or suspected crimes fall within the scope of the reporting requirement. However, the rule would become prohibitively long if a listing of reportable crimes was provided. In an attempt to make the requirement more specific, the Department has replaced the phrase "resulting in risk or harm to a patient(s) or employee(s) life or safety" with the following: "All alleged or suspected crimes which endanger the life or safety of patients and employees". The Department has also narrowed the scope by adding the condition that the alleged or suspected crime must result in an immediate on-site investigation by the police. This is not to require every crime having an on-site police investigation to be reported, as the threshold of endangerment of life and safety must initially be met.

This, for example, would exclude petty thefts of patient's personal belongings as questioned by the commenter, but would include assaults where an on-site police investigation had occurred. The Department believes these changes more clearly reflect the magnitude of events the Department considers reportable.

The Department considers a bomb threat reportable only if it causes the two following actions: an immediate on-site investigation by police and evacuation of patients from the facility. The authenticity of the threat is not itself the basis for determining reportability. The Department is unclear as to the type of event which could occur within the hospital and not somehow be related to the function or operation of the facility, and for this reason is unable to agree to the exemption being requested by Beth Israel Hospital.

COMMENT: The Medical Center at Princeton strongly objected to the requirement, and believes reporting non-medical information to the Department raises questions of confidentiality. The commenter suggests an alternative approach which would require the Department to bear the responsibility of contacting the hospital if it becomes aware of an incident.

RESPONSE: The Department acknowledges the commenter's concern regarding issues of confidentiality, and has revised the proposed rule to specifically address this concern. The revised language serves to ensure that neither the names of patients nor names of employees to whom the information pertains will be publicly disclosed by the Department prior to receipt of a follow-up written report. It should be noted, however, that this provision for confidentiality applies only to public disclosure and does not prevent the Department from obtaining information which identifies patients or hospital employees.

The Department does not agree that the alternative approach suggested by the commenter is a preferable alternative. The events falling within this reporting requirement do not occur on a frequent or anticipated basis. The commenter appears to assume that the Department would be notified of events by a source other than the hospital. The Department does not believe it is in the best interest of the hospital to rely on the Department being notified by a third party, nor does such a reporting mechanism adequately ensure the Department's ability to fulfill its obligation to protect the safety of patients.

COMMENT: St. Clares-Riverside suggests it should be sufficient for the Department to receive reports of events at specified intervals, rather than being notified at the time of the event. The commenter believes the rule, as proposed, places the Department in a primary role for ensuring patient safety.

RESPONSE: The Department has a statutory mandate to ensure patient safety, and has been vested with the authority to regulate and monitor the quality of care provided in licensed health care facilities.

While the Department does not provide direct assistance or intervention, it has a responsibility to ensure patients and the general public that immediate and appropriate action is taken by facilities when an unforeseen event occurs. Reviewing periodic reports of events does not enable the Department to adequately fulfill its obligation to the public.

COMMENT: The New Jersey State Nurses Association (NJSNA) contends that the proposed rule bypasses the authority of State regulatory boards and states that actual or suspected unlawful acts committed by licensed health professionals are to be reported to the individual's respective licensing board.

RESPONSE: The Department does not agree that the proposed rule bypasses the authority of State regulatory boards. The emphasis of the rule is on the reporting of "events" which jeopardize the health or safety of patients. The involvement of a health care professional in such an event is incidental to the purpose of the rule. As the commenter is most likely aware, N.J.A.C. 8:43G-5.2(i), in the hospital licensure standards, requires hospitals to comply with all requirements of professional licensing boards. Whether a health care professionals' conduct would be reportable to his or her respective licensing board via this rule, would depend on the nature of the individuals' actions in such an "event."

COMMENT: The New Jersey Hospital Association comments that the proposed rule leaves little protection for individuals who have not gone through due process, and risk of liability to hospitals can remain an issue even if the names of patients, employees or visitors involved in the events need not be submitted.

RESPONSE: The Department believes it has been responsive to the concerns of hospitals regarding issues of confidentiality through revision of the rule to ensure that the names of hospital employees are not contained in publicly disclosed information. The Department does not agree that the proposed rule represents a liability risk to hospitals, or interferes with an individual's right to due process.

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

8:43G-5.6 Reportable events

(a) The hospital shall notify the Department immediately by telephone at (609) 588-7725, or (609) 392-2020 after business hours, of any event occurring within the hospital that jeopardizes the health and safety of patients or employees. Events which shall be reported to the Department include, but are not limited to, the following:

1. *[Interruption]* ***An unscheduled interruption*** for three or more hours of *[essential]* physical plant and ***/or*** *[safety]* ***clinical*** services ***essential to the health and safety of patients and employees***;

2. All fires, disasters ***or*** accidents *[or incidents]* which result in serious injury or death of patients or employees, or in evacuation of patients out of the facility;

3. All alleged or suspected crimes *[resulting in risk or harm to a patient(s) or employee(s)]* ***which endanger the*** life or safety ***of patients or employees***, which *[have also been reported at the time of occurrence]* ***are also reportable*** to the police department***, and which result in an immediate on-site investigation by the police***.

(b) Information received by the Department of Health through immediate notification shall not be disclosed to the public in such a way as to indicate the names of the specific patients or hospital employees to whom the information pertains.

*[(b)]***(c)*** A follow-up written report shall be submitted to the Department within *[72 hours]* ***seven calendar days*** of the event, unless determined not to be necessary by the Department. The written report shall contain information about injuries to patients and/or staff, disruption of services, *[and]* extent of damages ***and corrective actions taken***.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Licensing Standards for Hospitals Anesthesia

Adopted Amendments: N.J.A.C. 8:43G-6

Proposed: November 19, 1990 at 22 N.J.R. 3470(a).

Adopted: July 26, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: July 29, 1991 as R.1991 d.451, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: August 19, 1991.

Operative Date: October 15, 1991.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

On November 19, 1990, the Department proposed amendments to subchapter 6, Anesthesia, at N.J.A.C. 8:43G, Licensing Standards for Hospitals. The Department has adopted similar amendments to subchapter 12, Surgical Services, at N.J.A.C. 8:43A, Standards for Licensure of Ambulatory Care Facilities.

The Department received 43 letters of comment regarding the proposed amendments to N.J.A.C. 8:43G. Two letters were submitted by the New Jersey Hospital Association and 11 by the following individual hospitals: Mercer Medical Center, Riverview Medical Center, St. Elizabeth Hospital, Union Hospital, Cooper Hospital/University Medical Center, Valley Hospital, Englewood Hospital, Overlook Hospital, the Medical Center at Princeton, Our Lady of Lourdes Medical Center, and West Jersey Health System. Two letters were submitted by the New Jersey State Society of Anesthesiologists and one by the New Jersey State Nurses Association. Additional letters were received from the New Jersey Psychiatric Association, from Linus B. Root, M.D., F.A.P.A., from Rahway Anesthesiologists, P.A., and from Powers & Hall, legal counsel for the American Association of Nurse Anesthetists. The balance were submitted by the followng members of the New Jersey Association of Nurse Anesthetists: Anthony M. Jadick, Michele L. Revoir, Kevin Ducko, Sanford R. Stark, Phyllis A. McGehean, Clare F. Golden, Bert R. Cedermark, Chester Homicki, Karen J. Ocker, Mary Ellen Retter, Angela Richman, Christine Sherman, Michael Akins, George M. Neumann, Judith D. Larsen, Donna F. Connor, Daniel Denesevich, Richard J. Troast, Thomas V. Westerman, Jr., John B. Shanahan, Linda J. Tisdale, and George B. Martin. These letters are on file at the Standards and Quality Assurance Program of the Department. As discussed below, consideration of the comments and further review of the proposed rules have resulted in changes being made to the rules. The Department maintains that these changes will not jeopardize patient health or safety, nor are they so substantive as to require additional public notice and comment. In preparing its responses to the comments, the Department made an extensive review of the literature, sought and received the advice of technical experts who serve as members of the Anesthesia Standards Advisory Committee, and incorporated the results of a Statewide survey of anesthesia care and practices in New Jersey's general acute care hospitals.

Comment letters fell into two categories, those responding to specific rules and those addressing generic concerns about the proposed amendments. The majority of comments submitted by hospitals and associations addressed individual rules, while comments submitted by nurse anesthetists or their representatives generically addressed the issue of supervision. The following agency responses will address both comments made to specific rules and more generic issues including anesthesia safety, differentiation between pain management and conscious sedation, and clarification of definitions regarding supervision of anesthesia personnel.

N.J.A.C. 8:43G-6.1 Definitions

COMMENT: Ervin Moss, M.D., representing the New Jersey State Society of Anesthesiologists, requested further definition of the term "immediately available" as it relates to supervision. Dr. Moss states that

the term is vague, is left to individual interpretation, and could in some instances lead to abuses by anesthesiologists who might try to "supervise" and bill for multiple cases. Dr. Moss stated that the purpose of the recently-adopted regulations was "to correct, update, and upgrade practices that had not been reviewed in 30 years" in the State. He requested that the definition of "immediately available" indicate that the anesthesiologist should be "physically present and available for immediate diagnosis and treatment of emergencies."

RESPONSE: The Department recognizes that there are separate definitions for supervision for reimbursement purposes under Medicare and for supervision within licensing regulations. The Department is not adopting billing requirements for licensing purposes. Within the scope of the licensing standards, however, the Department interprets "immediately available" to mean that the supervising physician is present in the hospital and is available to respond and proceed immediately to the anesthetizing location. The definition of supervision is revised accordingly.

COMMENT: Union Hospital commented that there are "gray areas" between the definitions of general anesthesia and conscious sedation in that administering drugs to cause conscious sedation could lead to loss of consciousness (the definition of general anesthesia).

RESPONSE: The Department recognizes that there is a continuum rather than a sharp delineation between levels of consciousness. However, the definitions are written to distinguish between the levels of anesthesia that are intended. Loss of consciousness during the administration of conscious sedation would be an unintended consequence. No change is made to the definitions.

COMMENT: Cooper Hospital/University Medical Center commented that the definition for conscious sedation is very broad. Although the hospital "is obligated to write policies for this ... [it] should retain the right to exclusions from the regulations" such as lower dosage. The commenter appeared to be referring to drug dosages used for pain management. Englewood Hospital also stated that the definition of conscious sedation needs further clarification; are pre-operative or intra-operative doses of Demerol included?

RESPONSE: The issue of pain management and its relationship to conscious sedation has been raised by numerous respondents. The Department has considered this issue in consultation with its technical advisors, particularly in regards to patient safety. Although similar anesthetic agents may be used in both pain management and conscious sedation, the two techniques are used in different contexts. When conscious sedation is intended, a variable dose of drugs is used in combination with an invasive, operative, or manipulative procedure. It has been well documented that the combination of drugs and procedure is additive, compromises patient safety, and requires specific monitoring equipment and personnel, as delineated in the licensing standards. On the other hand, evidence does not exist that the same drugs, even administered by the same routes, are equally dangerous if given in the context of non-invasive, non-operative, or non-manipulative procedures. Consequently, the Department does not intend to apply the licensing standards for conscious sedation to the medical practice of pain management. A definition of pain management is added at N.J.A.C. 8:43G-6.1.

In response to the comment made by Englewood Hospital, preoperative doses of Demerol would most likely fall into the category of pain management, whereas intra-operative doses would be considered part of the anesthetic technique of conscious sedation. This determination would need to be made by the physician in individual cases.

N.J.A.C. 8:43G-6.3 Anesthesia staff; qualifications for administering anesthesia

N.J.A.C. 8:43G-6.3(d)

COMMENT: Mercer Medical Center asks for the status of a registered nurse anesthetist between the date he or she has taken the certifying examination and the date the result of the exam is known.

RESPONSE: The Department considers such an individual to be in the same category as the registered nurse anesthetist described at N.J.A.C. 8:43G-6.3(d)2i. The nurse anesthetist is not certified until all certification requirements have been met.

COMMENT: Linus B. Root, M.D., F.A.P.A. commented that anesthesia for electroconvulsive therapy should be considered differently from anesthesia for surgical general anesthesia. Dr. Root requested that the rules extend the exception for qualified oral surgeons to qualified psychiatrists, provided that they are credentialed by the institution according to medical staff bylaws, and that they prove satisfactory evidence of completion of an accredited residency program including special training for ECT anesthesia. The New Jersey Psychiatric Association made an analogous comment, stating that many psychiatrists have undergone training which is similar to that of dentists and oral surgeons in the use of anesthesia, in this case for ECT. The Association stated: "For those who have successfully completed such specialized training, we believe that it is safe, cost effective and logical for the rules to permit them to be credentialed by their hospitals to administer anesthesia specifically in conjunction with this procedure."

RESPONSE: The Department is in the process of revising the standards regarding electroconvulsive therapy in subchapter 26, Psychiatry. The comments made by Dr. Root and the New Jersey Psychiatric Association will be considered carefully. The amendments will address staff qualifications for anesthesia care during ECT.

COMMENT: Overlook Hospital agrees that the requirement for anesthesia personnel to administer and be continuously present to monitor patients receiving general or regional anesthesia is "a reasonable expectation during any procedure," but questions the continuous presence of anesthesia personnel and the use of EKG monitoring and pulse oximetry for patients in labor who are receiving epidural anesthesia. West Jersey Health System commented that N.J.A.C. 8:43G-6.3(d) would necessitate an increase in anesthesia staff, and that since nursing staff would no longer be responsible for monitoring patients receiving epidural anesthesia in labor, "this regulation may serve to restrict the use of epidural anesthesia when adequate anesthesia staff members are not present."

RESPONSE: Specific amendments addressing the roles of pain management and anesthesia care during labor, delivery, and recovery are under review, and will be proposed separately in subchapter 19, Obstetrics.

N.J.A.C. 8:43G-6.3(f)

COMMENT: Mercer Medical Center commented that wording should be added to acknowledge that emergency situations will arise on nights and weekends when a suitably credentialed physician with no direct patient care responsibilities will not be available.

RESPONSE: In life-threatening emergency situations an emergency doctrine would apply. In these cases, documentation is necessary to verify the nature of the emergency. Compliance with the standards is required to all other circumstances. There is no change to the standard.

COMMENT: The Medical Center at Princeton commented that the phrase "immediately available and who has no direct patient care responsibilities" is vague and needs to be clarified. The commenter stated that if this terminology remains, the Department should defer to each individual hospital for an operational definition and procedure.

RESPONSE: The commenter is referred to the description of "immediately available" which is now incorporated into the definition of supervision at N.J.A.C. 8:43G-6.1. In regards to "no direct patient care responsibilities," the Department has reconsidered this requirement and has determined that the prohibition against any patient care by a supervising physician should be altered. The intent of the standard is that the supervising physician have immediate ability to attend to medical complications or to provide technical assistance without endangering the life or safety of a patient for whom the supervisor is directly responsible. Consequently, the rule has been rewritten to permit the supervising physician to be concurrently responsible for patient care if he or she is available to attend to supervisory duties without jeopardizing the life or safety of patients under his or her care. Thus there are many patient care activities which could be carried out by the supervising physician; for example, preanesthesia assessments, supervising care in postanesthesia units, or writing medication orders. However, there are certain patient care responsibilities which cannot be safely interrupted, specifically surgery or the direct administration of anesthesia. The revised rule therefore prohibits the supervising physician from performing these activities, but it does permit the hospital's medical staff to determine, in written policy, whether there are specific minor surgical procedures which may be exempted. As as guideline, hospitals might limit these to non-invasive procedures or procedures in which there is no breaking of scrub in order to attend to supervisory duties. The decision whether or not to create exceptions for minor surgery and the specific definitions of exempted procedures are left to the judgement of the hospital's medical staff. The rule at N.J.A.C. 8:43G-6.3(f) is revised according to these interpretations.

N.J.A.C. 8:43G-6.3(g)

COMMENT: Union Hospital commented that N.J.A.C. 8:43G-6.3(g) infers that conscious sedation is considered lower risk than general or

regional anesthesia, and recommended that the Department re-evaluate this standard as there are many adverse effects associated with the use of intravenous anesthetic agents such as Versed.

RESPONSE: The Department recognizes that there are serious risks in the use of anesthetizing agents which produce conscious sedation. As a result of technical advice received from the Anesthesia Standards Advisory Committee, however, the Department believes that the standards as proposed provide a minimum but adequate level of patient safety.

COMMENT: Overlook Hospital commented that these rules do not address the fact that general dentists and other dental specialists, other than oral or maxillofacial surgeons, routinely administer conductive blocks and conscious sedation to perform dental procedures. Under the proposed rules, an anesthesiologist or oral surgeon would be required to administer the anesthetic agent for such procedures as fillings and root canals, posing an economic burden to patients and limiting access to dental care within the hospital setting. The commenter states that the hospital's dental residency program would also be in jeopardy as a resident would have to be supervised by both a physician and a dentist, leading to increased cost and the training of fewer dental students.

RESPONSE: In regards to the respondent's first comment, the Department refers the facility to N.J.A.C. 8:43G-6.3(d)4, 6.3(g)3, and 6.3(i)3, which state that a dentist with anesthesia training may administer conduction blocks and anesthesia agents utilized for conscious sedation. There is no requirement that this be done by an anesthesiologist or an oral surgeon. In the case of a dental residency program, the Department would permit the supervision of dental residents to be performed by dentists trained in anesthesiology.

COMMENT: Valley Hospital and Cooper Hospital/University Medical Center commented that a registered nurse, under the supervision and direction of a physician who has been credentialed in accordance with medical staff bylaws, should be allowed to administer conscious sedation in accordance with hospital medical board rulings. Cooper added: "This would be more realistic and consistent with current practices in such areas as GI studies." West Jersey Health System similarly commented that IV medications for pain relief and sedation are administered throughout the hospital by registered nurses.

RESPONSE: The respondents are referred to the Department's definition of pain management through the use of anesthetic agents, which is outside the scope of the rules. However, it should be noted that the standard precludes administration of anesthetic agents by registered nurses during invasive procedures such as endoscopy.

N.J.A.C. 8:43G-6.3(h)

COMMENT: St. Elizabeth Hospital commented that the proposal for an ACLS certified nurse in all anesthetizing locations conflicts with the current cardiology regulation at N.J.A.C. 8:43G-7.15(d), which states that the circulating nurse in cardiac catheterization labs shall be certified in BCLS.

Riverview Medical Center commented that the ACLS nurses will be working with physicians without ACLS certification and will have to guide the physicians through ACLS protocol. The facility also commented that ACLS certification will be difficult to maintain in noncritical care areas such as OPD, Oncology, and Day Stay units, since they rarely have the need to use ACLS protocol.

Valley Hospital commented that ACLS certification is not needed for monitoring, but that "basic arrhythmia certification" should be substituted since a physician is present during the procedure and a code team would be called in the event of cardiac arrest.

Mercer Medical Center wrote that the requirement of ACLS certification for the nurse performing patient monitoring decreases the pool of available personnel and increases cost. Mercer Medical stated that patient safety could equally be assured by allowing the hospital to train and certify registered nurses and licensed practical nurses in the use and interpretation of monitoring devices. Englewood Hospital and West Jersey Health System also cited cost for ACLS certification of staff who monitor patients. West Jersey stated that the requirement would affect all nursing units.

Our Lady of Lourdes Medical Center questioned the ACLS certification of physicians or nurses for ambulatory services patients receiving IV conscious sedation; nurses in this unit are BCLS certified, and emergency room and anesthesia staff are available for emergencies.

Overlook Hospital believed that the requirement of an anesthesiologist or an ACLS certified registered nurse to monitor all patients receiving conscious sedation "is a very demanding standard that may be difficult to achieve in this era of scarce skilled resources;" the standards may also be excessive since additional help is readily available in a hospital in an emergency. Many hospitals, Overlook stated, may not be able to achieve this standard and would therefore be unable to provide services to any patient requiring conscious sedation.

RESPONSE: The issue of ACLS certification of nurses who monitor patients under conscious sedation received comments from eight of the 11 hospitals which submitted comments. Respondents are asked to note that proposed N.J.A.C. 8:43G-6.3(h) requires monitoring for conscious sedation to be provided by any one of the following: 1) a credentialed physician; 2) a CRNA, a CRNA candidate, or a resident under the supervision of a credentialed physician; 3) a dentist trained in anesthesiology; or 4) a RN certified in ACLS and trained and experienced in monitoring devices. N.J.A.C. 8:43G-6.3(h) also states that this individual must be separate from the individual performing the procedure and must be continuously present for the primary purpose of anesthesia monitoring. The trained RN who can initiate life support is included in order to broaden the categories of available staff who can provide an acceptable level of care, but the list of individuals who are permitted to monitor conscious sedation is not limited to this category.

An additional concern raised by hospitals is that the cost of ACLS training is excessive and that there would be insufficient numbers of trained staff available. Information available to the Department indicates that the cost of a certifying course is approximately $100.00 to $150.00 and that the approximate time required for this training is two days or five evenings. Although the Department recognizes that there may be additional administrative costs in terms of educational leave time and temporary staff replacement, cost does not seem to be a overriding factor. Nevertheless, the Department has reconsidered the certification requirements and believes, upon consultation with its anesthesia safety technical advisors, that certification in basic cardiac life support provides an adequate level of care when properly backed up with hospital policies and procedures regarding the management of cardiac and respiratory emergencies. Consequently, N.J.A.C. 8:43G-6.3(h) is revised to require basic (rather than advanced) cardiac life support certification for a registered nurse who performs monitoring functions for conscious sedation.

COMMENT: The Medical Center at Princeton wrote that the hospital should decide who can perform monitoring functions, and whether or not monitoring is required based on the procedure to be performed.

RESPONSE: The Department has prepared these amendments in response to many requests for clarification during implementation of the anesthesia standards adopted in 1989, with specific guidance requested regarding staff qualifications for the administration, monitoring, and supervision of anesthesia. The standards set minimum and uniform levels of patient safety for all patients in New Jersey hospitals. In addition, the Department believes that the level or type of anesthesia provided is the proper framework within which to assess quality of care and patient safety issues, as opposed to types of procedures performed or locations in which anesthesia is given. No change is made to the rules.

N.J.A.C. 8:43G-6.3(j)

COMMENT: Mercer Medical Center asked whether the person monitoring minor conduction blocks must be separate from the person performing the procedure, and wanted to know who is included in the definition of nursing personnel—LPN, nurses aide, etc.? The facility also asked if there is any evidence that any monitoring is warranted. Similarly, Riverview Medical Center requests a definition of continuous monitoring for minor cases, and inquired about the impact on physician coverage during minor local block.

RESPONSE: The proposed amendments were developed in consultation with the Department's Anesthesia Standards Advisory Committee, which strongly recommends that no patient be left unattended after having received any anesthetic agent. Continuous monitoring means that the individual performing the monitoring must be continuously present in the anesthetizing location. The rule at N.J.A.C. 8:43G-6.3(j) permits, but does not require monitoring by a physician, and it permits monitoring to be performed by the same person who is performing the procedure. Nursing personnel must be licensed; therefore, a registered professional nurse or a licensed practical nurse, but not a nurse's aide, could perform the monitoring function. The standard is revised to include the word "licensed."

N.J.A.C. 8:43G-6.5 Anesthesia patient services

N.J.A.C. 8:43G-6.5(a)

COMMENT: Mercer Medical Center, citing the practice of preanesthesia evaluation by CRNAs, requested that the language of the rule be changed to: "A preanesthesia note ... shall be made or certified by a physician and entered into the medical record ...." Both Mercer and Cooper Hospital commented that the evaluation is not necessarily performed by the physician who will administer or supervise the administration of anesthesia.

RESPONSE: In consultation with the Anesthesia Standards Advisory Committee, the Department agrees that patient safety is able to be maintained if the preanesthesia evaluation is performed by qualified anesthesia personnel and reviewed and signed by the physician prior to the administration of anesthesia. The rule is revised to reflect this change.

N.J.A.C. 8:43G-6.8 Anesthesia supplies and equipment; patient monitoring

N.J.A.C. 8:43G-6.8(c)

COMMENT: Union Hospital asked that an exception to temperature monitoring be made in those instances in which patient positioning does not allow for the use of a temperature device.

Cooper requested that an exception regarding temperature monitoring be made for obstetrical patients receiving epidural analgesia.

RESPONSE: Technical advice supplied to the Department indicates that new technology permits temperature monitoring through devices such as liquid crystal strips which do not depend on the patient's position. No exception will be made in the rule. In regards to the second comment, the Department is in the process of revising standards which address anesthesia requirements for obstetrical patients in subchapter 19, Obstetrics, which will address this monitoring requirement.

N.J.A.C. 8:43G-6.8(d)

COMMENT: Cooper Hospital also requested that obstetrical patients receiving epidural analgesia during ordinary labor be exempted from the requirement for monitoring by pulse oximetry, citing cost and little, if any, increase in safety.

RESPONSE: As noted above, there will be a specific set of rules for anesthesia care for obstetrical patients in amended subchapter 19.

N.J.A.C. 8:43G-6.8(f)

COMMENT: Riverview Medical Center stated that cardiac monitoring during endoscopy and bronchoscopy will be difficult due to artifact generated by movement. The facility also wrote that cardiac monitoring during local procedures will be frightening for patients.

RESPONSE: The Department does not believe that the possibility of artifact in cardiac monitoring negates its necessity. The concern about patients being frightened is moot, since cardiac monitoring is not required under the present rules for minor conduction blocks, that is, local anesthesia.

N.J.A.C. 8:43G-6.10 Anesthesia quality assurance methods

N.J.A.C. 8:43G-6.10(c)

COMMENT: The New Jersey Hospital Association wrote that the "Confidential Report of Anesthesia-Related Incident" form appears to be mistitled, since the reportable events or outcomes are not specific to anesthesia but may reflect untoward events which occur during surgical and special procedures.

RESPONSE: The Department recognizes that reportable events may occur in relation to the patient's status, the anesthesia, or the surgery or procedure. The rules require reporting whenever there is a combination of untoward incident and anesthesia administration. The purpose of the reporting requirement is not to assign responsibility, but to develop statistical information for Department research on the effectiveness of the anesthesia rules and to determine compliance with the standards in individual situations. The title of the form is not established by regulation and will remain unchanged at this time. However, in order to clarify the reporting requirements, the rule is revised to exclude deaths in anesthetizing locations where the patient expired prior to administration of anesthesia.

COMMENT: Our Lady of Lourdes commented that "while it is clear that the intent of the reporting requirement is to give the State valuable quality assurance information to help assess the impact of the regulations on patient care," the requirement to include staff names and license numbers of physicians, CRNA's, and others seems unnecessary and raises medical legal concerns.

RESPONSE: In addition to statistical information for quality assurance and research purposes, identifying information is required as part of the fact-gathering process. The Department has indicated that the information contained in the reports is confidential and is not available to the public. Further, the Department's policy on discovery is not to release reports solely upon subpoena but to require a court order. Again, the information requested on the reporting form is not established by regulation and remains unchanged.

N.J.A.C. 8:43G-6 Hospital Licensing Standards: Anesthesia Proposed Amendments

COMMENT: Roger A. Moore, M.D., president of the New Jersey State Society of Anesthesiologists, commented that with the adoption of these standards, New Jersey will rank as the safest State in the union for the provision of anesthetic care. He stated that these rules will serve as a model upon which other states, if not nations, will base similar regulations. Dr. Moore discussed the need for change based upon poor anesthesia practices prior to the institution of the standards, and requested that the rules as proposed stand unchanged.

RESPONSE: The Department wishes to acknowledge the many members of the health care community who have made valuable contributions of time and expertise and who have made possible the development of these standards. Throughout the process the common goal has been the enhancement of patient safety when anesthesia care is provided. Although some modifications and clarifications have occurred as a result of the public comment process, the intent of the proposed regulations has been preserved. The Department believes that these standards, which have been built on the strength of the original rules adopted in 1989, will contribute significantly to the quality of care given to New Jersey patients.

N.J.A.C. 8:43G-6.3(f)

COMMENT: Twenty one letters were submitted to the Department by certified registered nurse anesthetists (CRNAs), three by Rahway Anesthesiologists, P.A., and one by Powers and Hall, legal counsel for the American Association of Nurse Anesthetists. These letters commented on several issues both within and beyond the scope of the rules. Issues such as the history, demographics, and third-party reimbursement of nurse anesthetists fall outside of the range of hospital licensing standards and therefore are not responded to directly by the Department. Within the scope of the rules, many of the respondents focused upon the proposed requirements for supervision of nurse anesthetists by a physician.

Proposed N.J.A.C. 8:43G-6.3(f) pertains to supervision of the administration of general and regional anesthesia. It requires a physician who is immediately available and who has no direct patient care responsibilities to supervise CRNAs. The CRNA commenters stated that the proposed standards "ignore professionally recognized standards across the country, insult 24,000 CRNAs nationwide and 315 CRNAs who live and work in New Jersey, eliminate competition in a key area of health care, and substantially increase cost." In support of the position that medical supervision of CRNAs is unnecessary, the writers, including legal counsel for the American Association of Nurse Anesthetists (AANA), adduced that there is no evidence that supervision by an anesthesiologist or a physician other than the operating surgeon or physician increases quality of care.

Other commenters noted that it is inappropriate to require nonanesthesia physicians to supervise CRNAs as they are unqualified, untrained in anesthesia, and know less about anesthesia and resuscitation than CRNAs. These commenters believed that the proposed rules constituted a restraint of trade.

Several other commenters addressed the use of anesthesia in pain management. It was noted by some that supervision by anesthesiologists was available during the hours for regularly scheduled surgery, but that at night CRNAs have traditionally been on call and that their livelihood might be jeopardized if supervision is required after regular hours. Other respondents claimed that neither the Joint Commission on the Accreditation of Health Care Organizations nor any other state has such a rule. They asked that the proposed rules be withdrawn.

No comments regarding the issue of medical supervision of CRNAs were received from individual hospitals or from the New Jersey Hospital Association.

RESPONSE: The Department adopted rules for anesthesia care in Ambulatory Care Facilities on September 13, 1990. The proposed

amendments for anesthesia care in hospitals were developed concurrently and are nearly identical to these adopted rules. The intent of this dual process is to assure New Jersey residents of a uniform level of safety irrespective of the type of facility in which they undergo a medical or surgical procedure requiring anesthesia.

During the regulatory development process, the Department relied heavily on technical guidance from clinical and academic resource people. The Department also held discussions with representatives of the New Jersey CRNA Association, the New Jersey State Society of Anesthesiologists, and their respective legal counsel to address their concerns. A number of revisions resulted from these discussions; for example, an earlier proposed requirement for supervision of CRNAs by an anesthesiologist when general or regional anesthesia was being administered was revised to permit supervision by a physician who was credentialed in accordance with medical staff bylaws. This change was made so that the hospital could review the credentials of a physician and determine whether that individual's training met hospital requirements to administer and supervise the administration of anesthesia. Thus, the Department does not specify that CRNAs must be supervised by anesthesiologists; rather, it gives hospitals flexibility in deciding to which physicians to grant privileges in regards to the administration and supervision of specific levels of anesthesia care. In addition to these changes, the Department also made a number of other revisions to the standards for ambulatory care during the public comment period.

The Department believes that the proposed amendments represent a consensus of expert opinion which will further its mission of improving patient care and safety while balancing cost containment and access to care issues. For example, the Department has a strong commitment to the concept that all patients, regardless of the time of day that they happen to need care, are entitled to the same quality of service. Consequently, the same standards of care must apply during evening or night hours for unscheduled procedures as apply during regularly scheduled procedures. Further, there is evidence that the preponderance of off-hour cases are serious or emergent in nature, requiring a level of care at least equivalent to that of scheduled cases. The Department recognizes that in life-threatening emergencies, interventions must be initiated by staff in the best interest of the patient. Absent emergency conditions, however, a hospital must assure that the required standards of care are being met.

In regards to concerns that have been expressed about increased costs as a result of the proposed rules, the Department is extremely aware of the need for cost containment and continues to balance the three major issues of quality, access, and cost in the development of all licensing standards. At this time the overall cost impact of application of the rules appears to be minimal; in the vast majority of hospitals in the State these rules are the existing standard of care. There was no comment on the issue of cost from either individual facilities or from the New Jersey Hospital Association. The Department notes that recent studies have shown that, nationally, CRNAs and anesthesiologists work in teams in over 70 per cent of cases. The Department believes that the team concept is the most cost effective approach to assure safe and efficient use of anesthesia personnel, especially in more complex anesthesia procedures.

To further clarify the proposed rule at N.J.A.C. 8:43G-6.3(f), requiring that supervision be provided by a physician who is immediately available and who has no direct patient care responsibilities, the Department refers commenters to the definition of "immediately available" and the interpretation of "no direct patient care responsibilities" which appear earlier in this document.

In response to comments that it is inappropriate to require nonanesthesia physicians to supervise CRNAs, the Department agrees that it serves no purpose for a surgeon or other physician who is unfamiliar with modern anesthesia techniques and equipment to be considered a "supervisor." The Department believes that anesthesia care must be performed or medically directed by a practitioner who is thoroughly trained and experienced in applying medical judgement to complex situations arising in connection with anesthesia. Consequently, the rules require that a physician intending to administer or supervise anesthesia care must be credentialed by the hospital's medical staff bylaws to do so.

Regarding medical supervision of CRNAs, the Department believes that patient safety requires the availability of medically trained and experienced personnel to assist nonmedical anesthesia personnel in unexpected or severe events or emergencies related to anesthesia. It is well known that modern medicine utilizes more complex surgical procedures to treat patients who are more seriously ill than previously found; anesthesia care during the entire perioperative period requires a high level of skill, medical knowledge, and judgement. In fact, medical supervision of nurses, including specialized nurse practitioners such as CRNAs, is generally accepted in principle and practice.

In preparing licensure rules for any health care facility it regulates, the Department conducts a review of the applicable JCAHO standards for accreditation as well as standards from other states and organizations. JCAHO standards and accreditation surveys are an important element of independent quality assurance activities for health care facilities. However, there are several important limitations to their applicability. First, they are national in scope, and as such, the accreditation requirements must recognize the standard of care that exists and is achievable in all parts of the country. Just as state licensure standards represent the minimal acceptable level of care in a statewide context, JCAHO cannot promulgate requirements which would have the effect of preventing accreditation of a substantial number of facilities in a state or section of the country. In addition, JCAHO accreditation standards, while in general a prerequisite to Medicare and Medicaid reimbursement, are not binding or enforceable; thus, licensure standards throughout the country are written in a more specific manner to assure objectivity and enforceability. For these two principal reasons, a contention that New Jersey has not followed JCAHO standards in regard to anesthesia safety is not persuasive.

The Department has considered those comments which allege that the rules represent a restraint on trade for nurse anesthetists and have the effect of eliminating competition. While antitrust doctrine is believed to have limited applicability to state actions intended to assure quality of care in health care facilities, the Department does not have an intent through these rules to negatively affect employment options for CRNAs, and in fact, wishes to promote their continued use in hospitals and ambulatory care centers.

It is the Department's responsibility in promulgating rules to balance the health, safety, and welfare of patients against the effects on the cost of health care. A cost impact could occur if either additional or higher-salaried personnel are required by application of the standards. The Department's interpretation of the research is that the team approach has been shown to achieve the most cost-effective and the safest delivery of anesthesia care. These rules are intended to continue to permit and promote use of nurse anesthetists in hospital settings, which would be through a team approach for more complex cases and independently for administration of agents for conscious sedation or minor local blocks. The rules do not preclude a hospital from utilizing CRNAs in any anesthetic procedure, and the intent is to assure only that appropriate medical supervision for the procedures involving the highest medical risk to patients is available.

The Department has considered the comment that no evidence or data exists which demonstrates a difference in quality of care between anesthesia providers (anesthesiologists or nurse anesthetists). However, the data relied upon by the CRNAs for their claim is taken from a review of 90 anesthesia deaths from 1969 to 1976 reported in a regional medical journal (North Carolina Medical Journal, April, 1981. Bechtoldt, Albert A., Jr., M.D.: "Committee on Anesthesia Study Anesthetic-Related Deaths: 1969-1976"). In fact, current or large-scale statistical data does not exist from which one can infer the relative level of patient safety by anesthesia provider. However, a recent Harvard study demonstrates that inadequate supervision was a factor in a number of cases of anesthesia-related deaths and incidents studied through closed medical claims. (Anesthesiology 70:572-577, 1989. Eichhorn, John H., M.D.: "Prevention of Intraoperative Anesthesia Accidents and Related Severe Injury through Safety Monitoring"). Comparability of relative levels of safety is generally difficult to determine, as more than 70 percent of all anesthesia care in the United States is rendered by anesthesia teams. Data from the Center for Health Economics Research (CHER) indicates that a relatively small proportion (10 percent) of CRNAs practice independently, that is, in a facility without anesthesiologist supervision.

It also should be noted that independent CRNA practice is generally associated with small community hospitals. Recent data indicates hospitals that rely on only CRNAs accounted for just eight per cent of all surgical procedures nationally and averaged a total of 51 beds (HCFA Cooperative Agreements, December, 1989. Rosenbach, Margo L., Ph.D., Center for Health Economics Research," "Anesthesia Practice Survey.") Thus, evidence suggests that the majority of independent CRNA practitioners are found in smaller hospitals in more rural areas of the United States.

The Department has also relied upon an extensive review of the literature, including verbal and written testimony before a rate-setting commission for Medicare addressing reimbursement mechanisms for anesthesiologists and CRNAs. The Department is convinced that this evidence demonstrates that patient safety requires not just technical skills in the administration of anesthesia, but also the availability of individuals possessing complex medical skills and knowledge based upon the disciplines of internal medicine, pharmacology, pathology, and physiology. The standards ensure that this level of skill and knowledge is at least available to the patient through supervising personnel who can respond immediately and effectively if needed.

Various commenters also alleged that New Jersey is the only state to require medical supervision of anesthesia personnel. This comment fails to recognize that physician supervision of nurse anesthetists is required generally in all medical and nurse practice acts. The rules adopted herein as affecting CRNAs only alter this basic requirement for physician supervision during those anesthetic procedures which have a higher risk to the patient, namely, general anesthesia and regional conduction blocks. Again, the standards will assure availability of a medically trained individual for technical supervision, if needed, and for clinical emergency back-up purposes. The Department has considered information gathered by the New Jersey Hospital Association which indicated that this standard of care is being met by a substantial majority of hospitals in the State for scheduled surgery. Thus, it is believed that the amendments reflect the current standard of care rather than altering it significantly.

Finally, the Department's efforts in regards to patient safety and quality of care as reflected in the anesthesia regulations adopted in 1989 are now being recognized and emulated not only throughout the United States but also internationally. The earlier regulations focused on requirements for state-of-the-art patient monitoring equipment. The proposed amendments which clarify staff qualifications for the administration, monitoring, and supervision of anesthesia care place New Jersey firmly in the vanguard of ensuring the health and safety of patients.

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. ANESTHESIA

8:43G-6.1 Definitions

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

"Anesthesiologist" means a physician who has successfully completed an approved residency program in anesthesiology, or who is a diplomate of either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, or who was made a Fellow of the American College of Anesthesiology before 1972.

"Anesthetic agent" means any drug or combination of drugs administered with the purpose of creating conscious sedation, deep sedation, conduction anesthesia, or general anesthesia.

"Anesthetizing location" means any location in a health care facility where anesthetic agents are administered.

"Conduction anesthesia" means the administration of anesthetic agents to interrupt nerve impulses without loss of consciousness. Major conduction blocks include regional nerve blocks (epidural, caudal, and spinal anesthesia). Minor conduction blocks include local infiltration, local nerve blocks, and nerve blocks by direct pressure and refrigeration.

"Conscious sedation" means the administration of drugs to obtund, or dull or reduce the intensity of, pain and awareness without the loss of defensive reflexes.

"Credentialed" means having been granted privileges by the hospital to provide specified anesthesia services, such as administration or supervision of one or more types of anesthetic agents or procedures.

"Deep sedation" means the administration of drugs which results in some loss of defensive reflexes; the patient, however, remains arousable by strong stimulation.

"Defensive reflexes" means the ability of an individual to counteract noxious events, especially to defend the breathing passages against foreign material.

"General anesthesia" means the administration of drugs which cause loss of consciousness, that is, complete unawareness of routine surroundings. During general anesthesia, the patient cannot make meaningful responses to even the strongest stimulation.

"Local anesthetic" means an agent which produces a transient and reversible loss of sensation in a circumscribed portion of the body.

"Minor conduction block" means the injection of a local anesthetic to stop a painful sensation in a severely circumscribed area of the body (that is, local infiltration or local nerve block), or the block of a nerve by direct pressure and refrigeration.

"Monitoring" means the observation of a patient using instruments to measure, display, and/or record (continuously or intermittently) the values of certain physiologic variables such as pulse, blood pressure, oxygen saturation, and respiration.

"Operating room" means a unit for the performance of surgery.

"Pain management" means the administration of pharmacologic agents or drugs by any route for the purpose of alleviating acute or chronic pain. Administration of such agents or drugs shall be considered pain management only if it occurs in the absence of any invasive, operative, or manipulative procedure, and if the patient maintains consciousness and defensive reflexes.

"Regional anesthesia" means a major conduction block such as epidural, caudal, and spinal anesthesia.

"Special procedure" means patient care which requires entering the body with instruments in a potentially painful manner. Examples are: Endoscopy (diagnostic and surgical), oral surgery, radiologic procedures, or emergency procedures.

"Special procedure room" means the specially equipped hospital location in which special procedures are performed.

"Supervision" means responsibility by a physician who is credentialed in accordance with medical staff bylaws, and who is immediately available for overseeing the administration and monitoring of anesthesia by anesthesia personnel. ***Immediately available means that the supervising physician is present in the hospital and is available to respond and proceed immediately to the anesthetizing location.***

8:43G-6.2 (No change in text.)

8:43G-6.3 Anesthesia staff; qualifications for administering anesthesia

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

(c) Anesthetic agents administered with the purpose of creating conscious sedation, deep sedation, conduction anesthesia, or general anesthesia shall be administered in any location in the hospital only in accordance with medical staff policies and procedures.

(d) All anesthetic agents, except those utilized for conscious sedation or as minor conduction blocks, shall be administered and monitored only by the following:

1. An anesthesiologist;

2. Under the supervision of an anesthesiologist:

i. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA), provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

ii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty;

3. Under the supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise the administration of anesthesia, a certified registered nurse anesthetist who holds a current certification under a program governed or approved by the AANA; or

4. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology or oral and maxillofacial surgery.

(e) The administration and monitoring of any anesthesia, except those agents utilized for conscious sedation or minor conduction blocks, shall be provided by an individual who is continuously present and separate from the individual who is performing the procedure.

(f) The supervision of any anesthesia, except those agents utilized for conscious sedation or minor conduction blocks, shall be provided by a physician who is immediately available *[and who has no direct patient care responsibilities]*. ***The supervising physician may concurrently be responsible for patient care if he or she is available to attend to supervisory duties without jeopardizing the life or safety of patients under his or her care. While supervising anthesthesia personnel, the supervising physician shall not perform surgery, except minor surgery as defined by medical staff policy, or administer anesthesia to patients under his or her direct care.***

(g) Anesthetic agents used for conscious sedation shall be administered only by the following:

1. A physician who has been credentialed in accordance with medical staff bylaws to administer anesthetic agents used for conscious sedation; or

2. Under the supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise anesthetic agents used for conscious sedation and who is immediately available:

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology or oral and maxillofacial surgery.

(h) The monitoring of patients who have been given an anesthetic agent for the purpose of creating conscious sedation shall be provided by an individual who is continuously present for the primary purpose of anesthesia monitoring, and who is separate from the individual performing the procedure. This individual shall be one of the personnel identified in *[N.J.A.C. 8:43G-6.3]*(g) ***above***, or a registered professional nurse who is certified in *[Advanced Cardiac Life Support (ACLS) by the American Heart Association]* ***basic cardiac life support*** and who has training and experience in the use of monitoring devices.

(i) Minor conduction blocks shall be administered only by one of the following:

1. A physician who has been credentialed in accordance with medical staff bylaws to administer minor conduction blocks;

2. Under the supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise minor conduction blocks and who is immediately available:

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology or oral and maxillofacial surgery.

(j) Minor conduction blocks shall be monitored continuously by medical or ***licensed*** nursing personnel.

(k) Provision shall be made for remote monitoring of the patient if radiation or another direct hazard necessitates the removal of personnel.

8:43G-6.4 (No change in text.)

8:43G-6.5 Anesthesia patient services

(a) A preanesthesia note, reflecting evaluation of the patient and review of the patient record prior to administration of anesthesia, shall be made ***or certified*** by the physician administering or supervising the administration of anesthesia and entered into the medical record of each patient receiving anesthesia.

(b) (No change.)

(c) Postanesthesia notes shall be entered into the patient's medical record by a member of the hospital's anesthesia team early in the postoperative period and after the patient's discharge from the postanesthesia care unit.

8:43G-6.6 Anesthesia supplies and equipment; safety systems

(a) Diameter index safety systems or equivalent shall be used on all large cylinders of medical gases and wall and ceiling outlets of medical gases.

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

(d) An oxygen failure-protection device ("fail-safe" system) shall be used on all anesthesia machines to announce a reduction in oxygen pressure, and, at lower levels of oxygen pressure, to discontinue other gases when the pressure of the supply of oxygen is reduced.

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

(j) There shall be a *[wirtten]* ***written*** protocol to assure that surgery does not proceed when there are disabled alarms, depleted batteries and inactive sensors in oxygen monitors, improperly positioned breathing-circuit sensors, or other insufficiencies.

8:43G-6.7 (No change in text.)

8:43G-6.8 Anesthesia supplies and equipment; patient monitoring

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

(c) The body temperature of each patient under general or regional anesthesia shall be continuously monitored.

(d) Pulse oximetry shall be performed continuously during administration of general anesthesia, regional anesthesia, and conscious sedation at all anesthetizing locations, unless such monitoring is not clinically feasible for the patient. Any alternative method of measuring oxygen saturation may be substituted for pulse oximetry if the method has been demonstrated to have at least equivalent clinical effectiveness.

(e) End-tidal carbon dioxide monitoring shall be performed continuously during administration of all general anesthesia, unless such monitoring is not clinically feasible for the patient.

(f) An electrocardiogram monitor shall be used continuously on all patients receiving general anesthesia, regional anesthesia, or conscious sedation at any anesthetizing location.

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

(j) A peripheral nerve stimulator shall be available in any anesthetizing location in which patients receive general or regional anesthesia to monitor the patient's extent of muscle paralysis from muscle relaxants. Another peripheral nerve stimulator shall be available within the postanesthesia care unit.

8:43G-6.9 Anesthesia staff education and training

(a) Requirements for the anesthesia education program shall be as provided in N.J.A.C. 8:43G-5.9.

(b) Staff education programs and training sessions shall include patient safety and the inspection and use of equipment.

8:43G-6.10 Anesthesia quality assurance methods

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

(c) The hospital shall notify the Division of Health Facilities Evaluation and Licensing, New Jersey State Department of Health by telephone at (609) 588-7727 or (800) 792-9770 within 24 hours, and in writing within 30 days, of all deaths in anesthetizing locations and unexpected intraoperative or postoperative events or outcomes related to anesthesia.

1. The written report shall be submitted on the form entitled "Confidential Report of Anesthesia-Related Incident" (HFE-5), available from the Department of Health***, and shall include:***

i. All deaths in anesthetizing locations, except those in which the patient expired prior to administration of anesthesia; and

ii. All unexpected severe intraoperative or post-operative untoward events or outcomes related to anesthesia.*

2. Records of such reports and telephone calls shall be made available only to Department of Health personnel for official purposes and, for each report, to the specific facility to which the report pertains.

HUMAN SERVICES

(a)

CONTRACT POLICY AND MANAGEMENT UNIT

Contract Administration

Cognizant Division Contracting

Adopted New Rule: N.J.A.C. 10:3-4

Proposed: May 20, 1991 at 23 N.J.R. 1647(a).
Adopted: July 26, 1991, by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: July 26, 1991 as R.1991 d.442, **without change.**

Authority: N.J.S.A. 30:1-12.

Effective Date: August 19, 1991.
Expiration Date: November 21, 1993.

Summary of Public Comments and Agency Responses:

There were a number of comments submitted by Anita M. Kneeley, Executive Director of United Cerebral Palsy of Monmouth and Ocean Counties, Neptune, New Jersey.

COMMENT: It was suggested that the responsibility of the provider be included in N.J.A.C. 10:3-4.3(c), since these are referenced in N.J.A.C. 10:3-4.4.

RESPONSE: There are no administrative policy responsibilities for the provider agency concerning the intra-departmental agreement in the cognizant process. The policy section of the intra-departmental agreement delineates and establishes the responsibilities of the Departmental components so that the cognizant process is coordinated within the Department in a manner which eliminates duplication and ensures that no essential administrative duty is forgotten or compromised as a result of the cognizant process. The cognizant process has been designed basically as an internal mechanism that establishes the policies to be followed by Departmental components in streamlining the fiscal aspects of a multi-funded provider agency.

COMMENT: The intra-departmental agreement should specifically include the provider in section III, A and B.

RESPONSE: The intent of the intra-departmental agreement is to establish an arrangement between two or more departmental components "within" the Department. Furthermore, the definition of intra-departmental agreement, as it appears in the proposed rules, clearly indicates that it is meant for the cognizant and non-cognizant divisions only. It was never intended to include parties outside the scope of the Department of Human Services. A copy of the completed document is given to the provider for informational purposes so that the provider understands the roles of the different Departmental components that comprise the cognizant process.

COMMENT: Will the provider agency be notified?

RESPONSE: The provider will always be notified. Please note that the rule includes a form letter entitled, "Cognizant Designation Letter". It is the reponsibility of the selected cognizant division to send this letter, according to N.J.A.C. 10:3-4.4(a)2i, to the provider agency before the contract negotiation process begins.

COMMENT: What right of change or termination is available to the provider agency?

RESPONSE: Since the provider agency is not a party to the intra-departmental agreement, the right of change or termination to the intra-departmental agreement is obviously limited. However, if the provider is not in agreement with the cognizant division selection, they can bring this information to the attention of the Department's Contract Policy and Management Unit.

COMMENT: Will copies of any information pertinent to the contract be made available to the provider agency?

RESPONSE: The designation of a cognizant division does not change the requirements for the distribution of pertinent information in the contract to the provider. The cognizant division merely coordinates the flow of information so that it is timely and as it is transmitted to the provider.

Full text of the adoption follows.

SUBCHAPTER 4. COGNIZANT DIVISION CONTRACTING

10:3-4.1 Purpose and scope

The purpose of these rules is to advise provider agencies of the policies and procedures to be followed in cognizant division contracting. These rules apply to all provider agencies that contract with more than one departmental component and have a cognizant division assigned to coordinate the contracting process.

10:3-4.2 Definitions

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

"Cognizant division" means the division or other designated departmental component responsible for all fiscal contract administration functions when a provider agency contracts with more than one departmental component.

"Contract" means one of the Department's social service or training contracts with a provider agency. Terms and conditions of the contract are included in the standard language document, annexes, appendices, attachments (including any approved assignments, subcontracts and modifications) and supporting documents. The contract constitutes the entire agreement between the Department and the provider agency.

"Contract modification" means the formal procedures entailing the Department's written approval to allow certain programmatic and/or financial changes in the contract during the contract term.

"Day" means calendar days.

"Department" means the New Jersey Department of Human Services. As used in these rules, it also means, where appropriate from the context, the division, commission, bureau, office, unit or other designated component of the Department of Human Services responsible for the administration of particular contract programs.

"Departmental component" means the division, commission, bureau, office, or other unit within the Department responsible for the negotiation, administrative review, approval and monitoring of certain social service or training contracts.

"Intra-departmental agreement" means the document signed by the cognizant and non-cognizant division(s) which delineates the authority and responsibilities of the cognizant and non-cognizant division(s) that contract for services with the same provider agency.

"Provider agency" means the public or private organization which has a social or training contract with the Department.

"Reimbursable ceiling" means the total cost of the contract to the Department. The reimbursable ceiling is the maximum payment to the provider agency.

"Standard language document" means the document which establishes the non-negotiable obligations, responsibilities, rights and relationships of the contract parties.

10:3-4.3 Administrative policies

(a) A cognizant division shall be identified and may be assigned by the Department's Contract Policy and Management Unit when a provider agency contracts with more than one departmental component.

(b) Generally, the cognizant division is chosen based on the departmental component which provides the most contract dollars to the provider agency, unless circumstances and/or past history indicate the selection of another departmental component.

(c) A copy of the intra-departmental agreement shall be forwarded to the provider agency by the cognizant division after the agreement is completed and signed by all involved departmental components. The intra-departmental agreement delineates the authority and responsibilities of the cognizant division and non-cognizant division(s) that contract for services with the same provider agency.

10:3-4.4 Administrative procedures

(a) For pre-contract negotiations, the following procedures shall apply:

1. The Contract Policy and Management Unit shall:

i. Annually notify the departmental components of those provider agencies which contract with more than one departmental component; and

ii. Meet with the responsible contract administration supervisors of the departmental components to determine the assignment of a cognizant division for each provider agency.

2. The cognizant division shall:

i. Notify the provider agency that a cognizant division has been assigned and is responsible for coordinating the contract negotiation process; and

ii. Coordinate the planning, negotiating, finalizing and distribution of the intra-departmental agreement in a timely manner.

3. The cognizant/non-cognizant division(s) shall:

i. Ensure that each responsible contract administration supervisor designate a contact person, usually the contract administrator assigned to the provider agency, to coordinate all aspects of its participation in the cognizant contract; and

ii. Ensure that the intra-departmental agreement is signed prior to the contract effective date.

(b) For contract negotiations, the following procedures shall apply:

1. The cognizant division shall:

i. Coordinate contract negotiations with the non-cognizant division(s) and provider agency;

ii. Be responsible for obtaining the provider agency authorized signature on the standard language document (SLD) and the addendum to the SLD;

iii. Receive the signed and approved contract confirmation letter from the Department's Office of Finance and Accounting; and

iv. Send a copy of the following documents to the provider agency and the non-cognizant division(s):

(1) The signed contract;

(2) The cognizant designation letter, Appendix A, incorporated herein by reference;

(3) The intra-departmental agreement, Appendix B, incorporated herein by reference;

(4) The reporting requirements form, Appendix C, incorporated herein by reference; and

(5) The signed and approved contract confirmation letter.

(c) For the contract term, the following procedures shall apply:

1. Fiscal procedures as follows:

i. The provider agency shall be responsible for sending the required expenditure reports to the cognizant division according to the time frames established during contract negotiations. The cognizant division shall distribute copies to the non-cognizant division(s).

ii. The cognizant division shall make scheduled payments (monthly, quarterly, etc.) consistent with the cognizant division's payment system as specified in the contract negotiations.

iii. The cognizant division, with the assistance of the non-cognizant division(s), shall monitor contract expenditures. If provider agency expenditures are significantly over or under the contract reimbursable ceiling, the appropriate non-cognizant division(s) shall contact the cognizant division for consultation concerning possible modification to the contract or other appropriate action.

2. Programmatic procedures as follows:

i. The provider agency shall send all required program reports to the cognizant division according to the time frames established during contract negotiations. The cognizant division shall distribute copies to the non-cognizant division(s).

ii. All departmental components (cognizant and non-cognizant) shall monitor their own programmatic service delivery, unless otherwise negotiated through the intra-departmental agreement.

iii. If there is a programmatic inconsistency or failure by the provider agency to meet contractual programmatic levels, the cognizant and non-cognizant division(s) must consult with each other for any contemplated remedial or fiscal action.

(d) For contract closeout and audit, the following procedures shall apply:

1. The provider agency shall send a completed notification of the licensed public accountant form and a photocopy of the accountant's license to operate to the cognizant division.

2. The provider agency shall send a copy of the audit report for each departmental component, including the Department's Office of Auditing, to the cognizant division within 120 days after its fiscal year end.

3. The cognizant division shall process and distribute the provider agency's final expenditure report and any other reconciliation documents.

4. The cognizant division shall consult with the non-cognizant division(s) to determine final settlement with the provider agency. Any amount remaining due for contract services within the specified funding ceiling will be paid, any refund amount determined to be an overpayment and/or disallowed cost, which has not been authorized for retention by the provider agency, will be collected.

Appendix A

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

COGNIZANT DESIGNATION LETTER

Subject: Cognizant Division Contracting

In accordance with Department of Human Services' Policy Circular Pl.25, _____ has been assigned as the Cognizant Division for all Department contracts with your agency for the period _____ to _____ .

The Cognizant Division is responsible for coordinating the contracting process into one consolidated contract. The consolidation includes the coordination of most contract functions such as contract modifications, reporting requirements, and contract closeout. Although the program commitments will remain separate for each Departmental Component, the consolidated contract budget and the individual Annex A materials should be submitted to the Cognizant Division.

Attached for your information and review are forms (Funding Summary and Reporting Requirements) that identify the available Department funding and routine contract reporting requirements for the contract term.

The contract administrator assigned to assist you in all contract matters is _____ and may be reached at

_____ _____

Attachments

_____
(Signature)

_____
(Title)

c: Contract Policy and Management Unit
Non-cognizant division(s)
Office of Auditing
Contract File

Appendix B

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

INTRA-DEPARTMENTAL AGREEMENT
CONTRACT SUMMARY

Provider Agency	Provider Agency: Address: Executive Director _____	Telephone No. _____	
	Federal I.D. No. _____		
	Contract No. _____	From _____	To _____
	Contract No. _____	From _____	To _____
Cognizant Division	Division: Address: Contact Person _____	Telephone No. _____	
	Contract Services _____		
	Credit Account # _____	Amount $ _____	FY _____
	Credit Account # _____	Amount $ _____	FY _____
Non-Cognizant Division	Division: Address: Contact Person _____	Telephone No. _____	
	Contract Services _____		
	Debit Account # _____	Amount $ _____	FY _____
	Debit Account # _____	Amount $ _____	FY _____
Non-Cognizant Division	Division: Address: Contact Person _____	Telephone No. _____	
	Contract Services _____		
	Debit Account # _____	Amount $ _____	FY _____
	Debit Account # _____	Amount $ _____	FY _____

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

INTRA-DEPARTMENTAL AGREEMENT
FOR COGNIZANT DIVISION CONTRACTING

The purpose of this intra-departmental agreement is to delineate the authority and responsibilities of the cognizant division and non-cognizant division(s) when a provider agency contracts with more than one departmental component.

I. Cognizant Division

A. Pre-contract negotiations

1. Schedule any meetings with the non-cognizant division(s) necessary to expedite the intra-departmental agreement.
2. Notify the provider agency of the assigned cognizant division.

B. Contract negotiations

1. Coordinate completion and signing of the intra-departmental agreement.
2. Process the certificate(s) of debit and credit (AR 30) applicable to the appropriate State fiscal years.
   a. Contracts that begin on the State's fiscal year will require one certificate of debit and credit. The non-cognizant division(s) will transfer its full share of the contract reimbursable ceiling to the cognizant division via this document.
   b. Contracts that have an effective date other than the State's fiscal year will require two certificates of debit and credit. The first certificate of debit and credit form shall reflect the applicable portion of the contract reimbursable ceiling that coincides with the first State fiscal year. A second debit and credit shall be completed for the balance of the reimbursable ceiling to cover the second State fiscal year.

C. Contract term

1. Receive, monitor, and process the interim, fiscal-year-end and final expenditure reports.
2. Distribute copies of the expenditure reports to the non-cognizant division(s).
3. Make all contract payments to the provider agency.

D. Contract audit/close-out

1. Obtain, review and forward the provider agency's notification of licensed public accountant form and a photocopy of the accountant's license to operate to the Office of Auditing.
2. Obtain, review, and forward the provider agency's annual organization-wide audit report to the non-cognizant division(s) and the Office of Auditing.
3. Coordinate the recovery/resolution of any audit disallowances with the non-cognizant division(s).
4. Return any unexpended funds to the non-cognizant division(s), unless otherwise mutually agreed upon.
5. Complete contract close-out.

E. Contract modification

Approve any contract modification after consultation and agreement with the non-cognizant division(s); review those modifications which involve changes in the program(s) sponsored by the non-cognizant division(s).

II. Non-Cognizant Division

A. Pre-contract negotiations

1. Send all forms and information (fiscal and programmatic) to the cognizant division for inclusion in the contract proposal package.
2. Review the provider agency's completed contract proposal package and any subsequent revisions, submitting comments or requests for changes or additional information to the cognizant division.

B. Contract negotiations

1. Assist the cognizant division in negotiating the programmatic and fiscal aspects of the contract.
2. Complete and forward certificate(s) of debit and credit to the cognizant division in accordance with current policy circulars.

C. Contract term

Monitor the programmatic aspects of its programs, unless otherwise noted.

D. Contract modification

Consult with the cognizant division regarding any contract modification which involves a fiscal or programmatic change in accordance with current policy circulars.

III. General

A. The cognizant and non-cognizant division(s) may terminate the intra-departmental agreement upon 30 days' advance written notice to the other party after consultation and approval by the Department's Contract Policy and Management Unit. If the agreement is terminated, the cognizant division shall make available to the non-cognizant division its appropriate share of funds not paid to the provider agency. A final reconciliation for the period in question will be completed by the cognizant and non-cognizant division(s).

B. Copies of any special monitoring reports, correspondence, program observations, or any information pertinent to the contract shall be made available to the cognizant or non-cognizant division(s), as necessary or upon request.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
INTRA-DEPARTMENTAL AGREEMENT

AGREEMENT SIGNATURES

The terms of this Intra-departmental Agreement have been read and understood by the persons whose signatures appear below. The Departmental Components agree to comply with the terms and conditions of the Agreement and to work cooperatively in all aspects of the Agreement.

BY: _____ (signature)
_____ (type name)
TITLE: _____ (type)
COGNIZANT DIVISION: _____ (type)
BY: _____ (signature)
_____ (type name)
TITLE: _____ (type)
NON-COGNIZANT DIVISION: _____ (type)

BY: _____ (signature)
_____ (type name)
TITLE: _____ (type)
NON-COGNIZANT DIVISION: _____ (type)
BY: _____ (signature)
_____ (type name)
TITLE: _____ (type)
NON-COGNIZANT DIVISION: _____ (type)

AGREEMENT EFFECTIVE DATE: _____

Appendix C

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
COGNIZANT DIVISION CONTRACTING

PROVIDER AGENCY REPORTING REQUIREMENTS

AGENCY _____

ADDRESS _____

CONTRACT # _____ CONTRACT TERM _____

COGNIZANT DIVISION _____

DEPARTMENTAL COMPONENT	REQUIRED REPORTS	DUE DATES

NOTE: All required reports listed above shall be prepared and submitted by the Provider Agency to the Cognizant Division in an accurate, complete and timely manner.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Mechanical Restraints and Safeguarding Equipment

Adopted Repeal and New Rules: N.J.A.C. 10:42

Proposed: May 20, 1991 at 23 N.J.R. 1653(a).
Adopted: July 25, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: July 25, 1991 as R.1991 d.437 **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4-6 et seq., 30:1-12 et seq., and 30:6D-5.

Effective Date: August 19, 1991.
Expiration Date: August 19, 1996.

Summary of Public Comments and Agency Responses:

The proposed repeal and new rules was published in the New Jersey Register on May 20, 1991. During the comment period, comments were received from the following two commenters:

Association for Retarded Citizens, Union County

COMMENT: At N.J.A.C. 10:42-1.3, under the definition of qualified mental retardation professional (QMRP), add "nutritionist" to subparagraph 3ix.

RESPONSE: The Department agrees. Because many individuals the Department serves also receive services from nutritionists, the term nutritionist has been added to the subparagraph discussing professional dietician qualifications. In general, the terms dietitian and nutritionist are used interchangeably in service provision.

COMMENT: Under N.J.A.C. 10:42-1.4, it is suggested that the need for devices to be used for behavior intervention or control be evaluated at least every three months.

RESPONSE: The Department agrees that the devices may have to be reviewed more frequently than annually. The Interdisciplinary Team should determine the frequency of review, and this requirement has been added at N.J.A.C. 10:42-1.4(f).

COMMENT: N.J.A.C. 10:42-3.2(a)(9) sets forth an important requirement. The second sentence could be more clearly stated. Does it mean each limb would be released consecutively during one 10 minute period or one limb released for 10 minutes and another released for 10 minutes during the next hour?

RESPONSE: The Department agrees that N.J.A.C. 10:42-3.2(a)9 requires clarification. It has been amended to clarify that one limb may be released at a time during the 10 minute period.

The Matheny School

COMMENT: Overall the changes make the rule comprehensive, yet with the sufficient flexibility needed in a variety of situations. However some of the people at our facility suffer from Lesch-Nyhan disease. This is an extremely rare genetic condition which results in severe self injury. The self injury is not a primary behavioral phenomenon but is the result of proposed disturbancy in the biochemistry of the brain. The self abuse is involuntary.

We view safeguarding equipment as devices used to protect an individual from accidental self injury or to restrict body movement in or to provide support for the achievement of functional positioning or proper balance. It is used to protect an individual from symptoms of existing medical conditions including, but not limited to, seizures and ataxia. It is apparent that for our Lesch-Nyhan students, safeguarding equipment is necessary to protect them from the symptoms of their neurologic-based, involuntary self-abuse as well as to stabilize them with regard to their dystonia and movement disorder.

RESPONSE: The Department agrees that there may be instances where persons suffering from a specific disease may display symptoms which require the use of mechanical restraint. In those instances, the devices should be regarded as safeguarding equipment. The definition of safeguarding equipment at N.J.A.C. 10:42-1.3 has been revised to include involuntary self-abuse.

Several comments were received internally by the Department, which resulted in changes upon adoption.

COMMENT: Since some parts of the Division such as Day Training Centers produce an Individual Education Plan (IEP) rather than an Individual Habilitation Plan (IHP), a definition of IEP should be added.

RESPONSE: Although an IHP usually includes the person's IEP, the Department has also added a definition of IEP at N.J.A.C. 10:42-1.3.

COMMENT: The phrase "when those behaviors reasonably could have been anticipated" in the definition of emergency procedures at N.J.A.C. 10:42-1.3 does not appear clear and should be deleted.

RESPONSE: The Department agrees; this phrase has been deleted.

COMMENT: In N.J.A.C. 10:42-1.3, the definition of "informed consent" should be clarified.

RESPONSE: The Department agrees. The definition of "informed consent" has been revised in order to clarify its meaning by adding additional language. The change has not affected the original meaning of the definition.

COMMENT: Delete the word "acute" from N.J.A.C. 10:42-1.4(d) which addresses persons in physical distress.

RESPONSE: The Department agrees that **all** signs of physical distress should be recognized; therefore, the adjective "acute" has been deleted from both N.J.A.C. 10:42-1.4(d) and 2.2(d). For the sake of consistency, the definition "acute physical distress" has been revised as the definition "physical distress," now at N.J.A.C. 10:42-1.3.

COMMENT: Delete the word "obvious" from N.J.A.C. 10:42-3.2(a)7 as it applies to signs of physical distress.

RESPONSE: The Department agrees that any signs of physical distress would call for intervention thus making the use of the word "obvious" unecessary. The word obvious, therefore, has been deleted from both N.J.A.C. 10:42-3.2(a)7 and 3.3(b)6.

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 42

MECHANICAL RESTRAINTS AND SAFEGUARDING EQUIPMENT

SUBCHAPTER 1. GENERAL PROVISIONS

10:42-1.1 Purpose

The purpose of this chapter is to detail the policies and procedures for the utilization of safeguarding equipment and mechanical restraints.

10:42-1.2 Scope

This chapter applies to components of the Division of Developmental Disabilities, as well as providers regulated by or under contract with the Division.

10:42-1.3 Definitions

For the purpose of this chapter, the following terms shall have the following meanings:

["Acute physical distress" means the individual is having difficulty breathing, is choking, has vomited, appears to be in pain, is bleeding, unconscious, discolored, has swelling at the points of stress or has cold and discolored extremities. Such and other similar manifestations (fainting, turning blue) must be investigated to insure the safety of the individual.]

"Continual observation" means that the person in mechanical restraint can be seen by a staff member at all times.

"Emergency procedures" means the brief use of procedures to control severely aggressive or destructive behaviors that place the individual or others in imminent danger or physical harm *[when those behaviors reasonably could have been anticipated]*.

"Highly restrictive mechanical restraint" means restraints whose use is considered to be intrusive, and can restrict circulation, breathing or render an individual vulnerable to other persons in the immediate area. Highly restrictive mechanical restraints include, but are not limited to: a camisole, wrist cuff, ankle cuff, papoose boards, restraint chairs and standing boxes.

"Human Rights Committee" means a group comprised of professionals, individuals served, advocates, and/or interested individuals from the community at large who function as an advisory body to the chief executive officer, executive director, regional administrator, or superintendent on issues directly or indirectly affecting the rights of individuals served by the Division.

"Individual Habilitation Plan" (IHP) (see N.J.S.A. 30:6D-10 et seq.) 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 outlines progressive steps and the anticipated outcomes of services. The IHP is a single plant 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 (IDT) 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.

***"Individualized education program (IEP)" means a written plan developed at a meeting according to N.J.A.C. 6:28-3.6 which sets forth goals and measurable objectives and describes an integrated, sequential program of individually designed educational activities and/or related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the pupils educational placement, serve as the basis for program implementation."**

"Informed *[Consent]* ***consent***" means a formal expression, oral or written, of agreement with a proposed course of action by an individual who has the capacity, the information and the *[voluntariness to render such agreement]* ***ability to render voluntary agreement on his or her own behalf or on behalf of another***.

"Interdisciplinary Team" (IDT) means an individually constituted group responsible for the development of a single, integrated IHP. The team shall consist of the person receiving services; the person's parent or family member (if the adult desires that the parent or family member be present); guardian; those persons who work most directly with the individual served; and professionals and representatives of service areas who are relevant to the identification of the person's needs and the design and evaluation of programs to meet them.

"Mechanical restraint" means the application of a device which restricts freedom of movement either partially or totally. These devices include, but are not limited to: domed or enclosed cribs, bedside rails, mitts, jumpsuits, arm splints, vest, helmets and body harness.

"Physical distress" means the individual is having difficult breathing, is choking, has vomited, appears to be in pain, is bleeding, unconscious, discolored, has swelling of the points of stress or has cold and discolored extremities. Such and other similar manifestiations (fainting, turning blue) must be investigated to insure the safety of the individual.

"Qualified mental retardation professional (QMRP)" means a person who has at least one year of experience in working with the developmentally disabled and is one of the following:

1. A doctor of medicine or osteopathy;
2. A registered nurse;
3. A professional program staff person who is licensed, certified or registered, as applicable. If the professional program staff do not fall under the jurisdiction of State licensure, certification or registration requirements, he or she shall meet the following qualifications:

i. To be designated as an occupational therapist, an individual shall be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body;

ii. To be eligible as an occupational therapy assistant, an individual shall be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or other comparable body;

iii. To be eligible as a physical therapist, the individual shall be eligible for certification as a physical therapist by the American Physical Therapy Association or other comparable body.

iv. To be eligible as a physical therapy assistant, an individual shall be eligible for registration by the American Physical Therapy Association or be a graduate of a two-year college level program approved by the American Physical Therapy Association or other comparable body;

v. To be designated as a psychologist, an individual shall have at least a master's degree in psychology from an accredited school;

vi. To be designated as a social worker, an individual shall:

(1) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(2) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body;

vii. To be designated as a speech language pathologist or audiologist, an individual shall:

(1) Be eligible for a certificate of clinical competence in speech language pathology or audiology granted by the American Speech Language Hearing Association or other comparable body; or

(2) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification;

viii. To be designated as a professional recreation staff, an individual shall have a bachelor degree in recreation or in a specialty area such as art, dance, music or physical education;

ix. To be designated as a professional dietician ***or nutritionist***, an individual shall be eligible for registration by the American Dietetics Association;

x. To be designated as a human services professional, an individual shall have at least a bachelor degree in a human services field, including, but not limited to, sociology, special education, rehabilitation, counselling or psychology.

"Safeguarding equipment" means devices which restrict movement used to provide support for the achievement of functional body position or proper balance; devices used for specific medical, dental or surgical treatment; and devices to protect the individual from symptoms of existing medical conditions, including, but not limited to, seizures *[and]**,* ataxia ***and involuntary self abuse***.

"Unusual incident" means an exeptional or extraordinary occurrence involving a client, staff member or program operation which has resulted in or may lead to serious or harmful consequence.

10:42-1.4 General requirements

(a) The Division of Developmental Disabilities recognizes that acceptable behavior in developmentally disabled children and adults is fostered and maintained by a stimulating environment, participation in activities that encourage development of new skills and support from the people with whom they come into contact. The Division is committed to providing a supportive environment to the developmentally disabled individuals it serves. However, the Division also recognizes that, even in a supportive environment, some individuals will exhibit aggressive, destructive or self-injurious behaviors. When such behaviors present a danger to the individual himself or herself or others, action must be taken to help the individual control himself or herself, or, if that is not possible, to control the individual. If the individual exhibits these problem behaviors on a regular basis, a professionally designed program (such as a medical intervention or behavior modification) shall be applied to change these behaviors. When the individual exhibits a dangerous behavior that has not been previously observed or reported, emergency measures must be available to assist them in protecting the individual or others. Among the emergency measures that are used in such situations are mechanical restraints. Some of the devices used as mechanical restraints may also be used to help an individual achieve functional body alignment or to protect the individual from harm. In some instances, only the intended use of the device will determine whether it is a mechanical restraint or a piece of safeguarding equipment.

(b) Devices such as bed rails, mitts, jumpsuits, arm splints, vest, helmets and body harnesses may be used as either a mechanical restraint for control purposes or safeguarding equipment, depending upon circumstances. For example, a helmet used to prevent injury due to seizures is a safeguarding device. Use of a helmet to prevent injury due to self-injurious behavior is for control purposes.

(c) Primary reliance on punishment, physical or mechanical restraints or aversive techniques to decrease undesirable behavior is contrary to the requirements for active treatment. Mechanical restraints for control purposes are considered to be appropriate only when absolutely necessary and their use shall be minimized in favor of other, more positive interventions.

(d) When highly restrictive mechanical restraints are in use, continual observation by staff is required to recognize obvious signs of *[acute]* physical distress.

(e) All devices shall be applied only by staff trained in their use and applications.

(f) The need for the particular device to be used as safeguarding equipment or for behavioral intervention shall be documented in the Individual Habilitation Plan (IHP) and re-evaluated no less than annually as a part of the IHP review or as specified ***by the Interdisciplinary Team in the IHP***.

(g) Only commercially produced devices shall be employed for control purposes. If a special device must be developed, the need for the device shall be:

1. Documented in the IHP;

2. Approved by the Division's Medical Director or the Department's Chief Medical Consultant; and

3. Approved by the appropriate Human Rights Committee.

(h) All safeguarding equipment shall be prescribed by a licensed physician. With regard to dental matters, the safeguarding equipment shall be prescribed by a dentist.

(i) Restraints may be used on a temporary basis to conduct medical and dental evaluations, examinations or treatments when the individual's behavior prevents the evaluation, examination or treatment.

(j) Mechanical restraints shall be inspected prior to each use to ensure that they remain in good repair and free from tears or protrusions which may cause injury.

(k) The Division of Developmental Disabilities may require a service provider to terminate restraint usage for an individual if any requirements of this chapter are violated.

SUBCHAPTER 2. SAFEGUARDING EQUIPMENT AND MECHANICAL RESTRAINTS

10:42-2.1 Use of safeguarding equipment

(a) The use of safeguarding equipment shall be initiated on the prescription of a physician.

(b) A physician shall document in the client record the need for safeguarding equipment and the specific device to be applied. That prescription shall indicate the specific medical condition for which the safeguarding equipment is to be used and the length of time permitted for its use. The prescription shall be included in the client record.

(c) If the equipment is used to prevent accidental self-injury, the physician shall document the specific medical condition which warrants its use. The equipment is to be used to address a specific symptom of the individuals medical condition which is not likely to be changed through behavior modification.

(d) Once the physician has documented the need for safeguarding equipment, the need shall be reviewed by the individual's IDT. If the use of the safeguarding equipment is consistent with the goals and objectives in the individual's IHP and can be implemented, the use of the safeguarding equipment shall be included in the IHP.

(e) If the use of the safeguarding device cannot be integrated into the IHP, the IDT shall meet to revise the plan to provide for the individual's safety and habilitation needs. The IDT shall meet within 10 working days from the initial application for a safeguarding device.

(f) The need for safeguarding equipment shall be reviewed as part of the IHP no less than annually.

(g) The continued need for a safeguarding device shall be authorized by a physician in the client record at least annually.

10:42-2.2 Mechanical restraints

(a) Mechanical restraints may be utilized only as follows:

1. As an emergency measure to control a person in order to protect him/herself or others from harm;

2. As part of an approved behavior modification program utilizing aversive techniques to attempt to change a targeted behavior;

3. As a safeguarding device to protect the individual from accidental self-injury; or

4. As a control device for medical, surgical and dental examinations.

(b) A facility or service provider may implement a program of mechanical restraint only with specific authorization of the Director, Division of Developmental Disabilities.

(c) Mechanical restraints shall not be used as punishment (retribution), for the convenience of staff, or as a substitute for programming.

(d) The individual shall be immediately released if he or she appears to be in *[acute]* physical distress.

(e) The individual must be placed in the least restrictive form of mechanical restraint unless clinical evidence to justify the use of a more restrictive technique is available.

(f) Only personnel who have successfully completed a training program approved by the Division of Developmental Disabilities

shall be permitted to apply, monitor and release mechanical restraints.

(g) Whenever an individual exhibits serious assaultive, self-injurious or destructive behavior, controllable only by use of mechanical restraint, the interdisciplinary team shall meet to identify possible causes and develop strategies to address the maladaptive behavior.

SUBCHAPTER 3. APPLICATION AND IMPLEMENTATION

10:42-3.1 Application to use mechanical restraint

(a) Each facility or service provider requesting approval to utilize mechanical restraints shall submit to the Director, Division of Developmental Disabilities, comprehensive written procedures governing the use of restraint.

(b) The procedure submitted shall include the following:

1. A statement specifically identifying the forms of mechanical restraint to be used and the number of trained staff that shall be available to apply restraints;

2. Criteria for use of mechanical restraint;

3. Instructions for the application of each type of restraint;

4. Precautions for the use of mechanical restraint including certification by a physician that the use of restraint is not medically contra-indicated for the individual;

5. Recordkeeping and review requirements; and

6. A curriculum for training staff which shall include, but not be limited to, training in the proper use and application of each form of mechanical restraint to be employed as well as the recognition of the signs of physical distress.

10:42-3.2 Implementation standard: development centers/licensed private residential facilities

(a) Following approval by the Director, Division of Developmental Disabilities, for the use of mechanical restraint, the following standards shall apply;

1. Prior to the initial restraint authorization, a physician must certify that the technique to be employed is not medically contraindicated for the individual.

2. In an emergency situation, the superintendent, chief executive officer (CEO) or his or her designee shall be responsible for authorizing the use of restraint. The authorized agent must be a qualified mental retardation professional (QMRP) as defined in 42 CFR 483.430(a) and this chapter.

3. The superintendent/CEO shall identify those QMRPs who are responsible to authorize the use of restraint.

4. As soon as possible, but in less than 24 hours, a physician must review and countersign each "emergency" restraint order.

5. An emergency restraint order shall be effective for not more than 12 consecutive hours. If a new order is issued, all authorizations must be renewed.

6. Restraint orders shall include documentation of the type of mechanical restraint authorized, the length of time to be applied, the reason for restraint, and any special instruction. Each restraint order must be signed and dated by the authorizing agent.

7. Individuals placed in highly restrictive forms of mechanical restraint shall be under continual observation by staff trained to recognize *[obvious]* signs of physical distress.

8. While in mechanical restraint, documentation of a physical check by a staff member every 15 minutes is required. The check shall address the following:

i. Whether the continued use of the restraint is necessary; and

ii. Whether the restraint is applied in accordance with principles of good body alignment, a concern for circulation and allowance for change of position.

9. The individual shall be released from restraint for a period of not less than 10 minutes during each hour of restraint. One limb may be released at a time *[for]* ***during*** the 10-minute period if the person cannot be completely released.

10. The use of jumpsuits or open-faced helmets does not require 15-minute checks. The individual does not have to be removed from the restraint for a 10-minute period during each hour.

11. The individual's personal hygiene and nutritional needs shall be met while in restraint.

12. If a crib is used as a safeguarding device, documentation of 15-minute checks shall not be required. If a crib is used for control purposes, checks shall be required. It is not necessary to remove the individual from a crib for 10 minutes during each hour of use if the crib is used for sleeping.

13. The nature, reasons for and notation of each staff check shall be recorded in the individual's records.

14. Whenever an individual exhibits serious assaultive self-injurious or destructive behavior controlled by use of mechanical restraints, a special meeting of the IDT must be held to review current programming and alternatives. If the recurrence of the behavior may be anticipated, a behavior plan shall be developed.

15. An unusual incident report shall be completed.

10:42-3.3 Implementation standards: community programs for the developmentally disabled

(a) In community programs, the utilizations of mechanical restraint shall be considered only for those special programs adequately staffed by trained professional personnel and serving individual who present a danger to himself or herself as others.

(b) Following approval of a mechanical restraint program by the Director, Division of Developmental Disabilities, the following shall apply:

1. Only a licensed psychologist or physician may authorize each use of mechanical restraint.

2. Prior to or at the time of the initial authorization, a physician must certify that the technique to be employed is not medically contra-indicated for the individual.

3. Whenever possible, the restraint order shall be immediately signed by the licensed psychologist or physician. However, the use of mechanical restraint may be authorized over the telephone by the qualified authorizing agent in accordance with the following:

i. Such approval is strictly temporary and the restraint order shall be reviewed and signed by the authorizing agent as soon as possible but at least within 12 hours of its application; and

ii. The specific circumstances necessitating approval over the telephone shall be part of the individual's record and include the name of the party requesting or authorizing the restraint.

4. Restraint orders shall be effective for not more than 12 consecutive hours. If a new order is issued, all authorization shall be renewed.

5. Restraint orders shall include documentation of the type of mechanical restraint authorized, the length of time to be applied, the reason for restraint, and any special instruction for utilizing the restraint. Each restraint order must be signed and dated by the licensed psychologist or physician.

6. Individuals placed in highly restrictive forms of mechanical restraints shall be under continual observation by staff trained to recognize *[obvious]* signs of physical distress.

7. While in mechanical restraint the individual shall be checked by a staff member every 15 minutes. The check shall document the following:

i. Whether the continued use of the restraint is necessary; and

ii. Whether the restraint is applied in accordance with principles of good body alignment, a concern for circulation and allowance for change of position.

8. The individual shall be released from restraint for a period of not less than 10 minutes during each hour of restraint. One limb may be released at a time for a 10-minute period.

9. The use of jumpsuits or open faced helmets do not require 15-minute checks. The individual does not have to be removed from the restraint for a 10-minute period during each hour of use since it does not restrict range of motion.

10. The nature, reasons for and notation of each staff check shall be recorded in the client record.

11. The individual's personal hygiene and nutritional needs shall be met while in restraint.

12. The service provider shall forward a report of the unusual incident to the Division Director.

13. Whenever an individual exhibits serious assaultive, self-injurious or destructive behavior controlled by the use of mechanical restraints, a special meeting of the IDT must be held to review programming and alternatives. If a recurrence of the behavior is anticipated, a behavior plan shall be developed. The IDT shall forward the results of their review to the regional Human Rights Committee within 15 working days.

14. The Regional Human Rights Committee shall review the pertinent circumstance surrounding the utilization of each application of emergency mechanical restraints. The results of this review shall be forwarded to the Assistant Director of Community Services, appropriate Regional Administrator, and the Office of Licensing and Inspections within 10 days of the review by the Human Rights Committee.

SUBCHAPTER 4. MEDICAL/DENTAL EVALUATIONS, EXAMINATIONS OR TREATMENT

10:42-4.1 Use of mechanical restraint for medical/dental evaluations, examinations or treatment

(a) The physician/dentist may use or direct the use of restraint to accomplish a needed evaluation, examination or treatment. Such use shall be documented in the client record.

(b) Informed consent shall be required unless an emergency exists.

(c) In the judgment of the physician/dentist, when there is an emergency he or she may use or direct the use of restraints to accomplish a needed evaluation, examination or treatment. Such use shall be documented in the client record.

(d) Restraints shall be used under the continuous observation of the physician/dentist or his/her designee. The individual shall be released upon completion of the necessary procedures.

(e) At no time shall the individual be permitted to remain in restraints for the convenience of staff including pre- and post-treatment.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Other Governmental Programs/Extended Medicaid Eligibility for Newborns

Adopted Amendments: N.J.A.C. 10:81-8.22 and 8.23

Proposed: May 20, 1991 at 23 N.J.R. 1657(a).

Adopted: July 25, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: July 25, 1991 as R.1991 d.438, **without change.**

Authority: N.J.S.A. 44:7-3 and 44:10-3; 4603 of P.L. 101-508 cited as 1902(e) of the Social Security Act, codified as 45 U.S.C. 1396a(e).

Effective Date: August 19, 1991.
Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:81-8.22 Persons eligible for medical assistance

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

(e) For newborns of eligible women who have applied (before or on the date of the birth) and are eligible for Medicaid on the date of birth (except for a presumptively eligible pregnant woman, as defined at N.J.A.C. 10:72-6.1, who is subsequently found ineligible for the month the child was born) eligibility continues for both mother and child through the last day of the month in which the 60-day post-partum period ends, without regard to other program requirements. So long as the mother remains eligible, or would remain eligible if pregnant, and the child resides with her, the child remains eligible for Medicaid for a period of one year, whether or not application has been made for the child.

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

10:81-8.23 Medicaid Special

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

(d) Rules concerning pregnant women age 21 and over are:

1. (No change.)

2. Eligibility is determined for an eligible family of two, or more if a multiple pregnancy (woman and unborn children) based on her income and available resources only, or, if she is married and living with her spouse, on an eligible family of three or more (woman, spouse and unborn children) including income and available resources of both spouses. Medicaid coverage does not include the spouse even though his income is included in the eligibility determination.

i. A pregnant woman with other dependent children should be assisted in making immediate application for AFDC. If she is found ineligible for AFDC, the CWA shall determine eligibility for Medicaid Special on behalf of her unborn child. The eligible family shall consist of the woman, her spouse if present, any dependent child(ren) and the unborn child. All income and resources shall be applied to the appropriate AFDC-C or -F standard but only the woman and the unborn child may be eligible for Medicaid coverage.

(1) Coverage under Medicaid Special begins with the medical determination of pregnancy and ends, for the mother, with the last day of the month in which the 60-day post-partum period expires. So long as the mother remains eligible, or would remain eligible if pregnant, and the child resides with her, the child remains eligible for Medicaid for a period of one year, whether or not application has been made. The child may remain eligible for Medicaid Special in accordance with this subsection or with (b) above; he or she will keep the same case number.

(2)-(3) (No change.)

(e) (No change.)

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Medicaid Eligibility

Pregnant Women and Children

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 10:72-1.1 and 4.1.

Emergency Amendment Adopted and Concurrent Proposed Amendments Authorized: July 16, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): July 19, 1991.

Emergency Amendment Filed: July 29, 1991 as R.1991 d.445.

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

Concurrent Proposal Number: PRN 1991-438.

Emergency Amendment Effective Date: July 29, 1991.

Emergency Amendment Expiration Date: September 27, 1991.

Submit comments by September 18, 1991 to:

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

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 1:30-4.4(d)), if filed on or before the emergency expiration date.

The agency emergency adoption and concurrent proposal follows:

Summary

New Jersey currently provides Medicaid to pregnant women and children up to the age of six whose family's income is less than 133 percent of the Federal poverty guideline. The Omnibus Budget Reconciliation Act of 1989 offered the states the option of providing Medicaid coverage for pregnant women and children up to the age of one with family income less than 185 percent of poverty. With the enactment of P.L. 1991, c.187 on July 1, 1991, New Jersey can now provide this optional coverage. A pregnant woman with four other members in her family, under current rules, is eligible only if the family's monthly income is less than $1,735. Under the new rules, such a woman is potentially eligible if her family's monthly income does not exceed $2,414. As under existing rules, pregnant women determined eligible under the new higher income standards will remain eligible for the period ending 60 days following the end of her pregnancy regardless of changes in her income. This assures continued access to prenatal and postnatal care even if her income increases above the income standard during the course of her pregnancy.

Social Impact

It is estimated that this program expansion will increase the Medicaid caseload by 1,036 pregnant women and an equal number of children. It is expected that this expansion of Medicaid will have a significant effect on health care access for low income pregnant women and children. This should manifest itself in a decrease in prenatal problems and improved birth outcomes. The expansion of eligibility for children provides an avenue for increased early medical intervention which should result in an overall improvement in the short and long-term health of the newly eligible children and, therefore, a long-term reduction in health care costs.

Economic Impact

The additional estimated annualized cost of the increased number of pregnant women and children expected to enroll in the Medicaid program is $16.8 million, 50 percent of which will be borne by the Federal government.

Regulatory Flexibility Statement

The proposed amendments impose no additional recordkeeping, reporting or other compliance requirements on Medicaid providers or other small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule does impact the county welfare agencies charged with the responsibility of certifying Medicaid eligibility for the newly expanded eligible population. Therefore, a regulatory flexibility analysis is not required.

Full text of the emergency adopted and concurrent proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

10:72-1.1 Program scope

(a) and (b) (No change.)

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

i. Retroactive Medicaid coverage is not available under the provisions of this chapter for [children aged two through five whose family's income exceeds the AFDC income standard (N.J.A.C. 10:82-1.2(c)) or pregnant women and children under the age of two whose family's income exceeds the 100 percent of the poverty level for any period prior to April 1, 1991] **for pregnant women and children up to the age of one whose income exceeds 133 percent of the Federal poverty guideline for any period prior to July 1, 1991.**

10:72-4.1 Income eligibility limits

(a) (No change.)

(b) Income limits for [pregnant women and] children **aged one through five years** covered under the provisions of this chapter shall be based on the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L 97-35). The monthly income standard will be one-twelfth of 133 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(c) Income limits for pregnant women and children under the age of one year covered under the provisions of this chapter shall be based on 185 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L 97-35). The monthly income standard will be one-twelfth of 185 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

[(c)](**d**) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a), [or] (b), **or** (**c**) above as applicable.

1. (No change.)
2. With the exception in [(c)] (**d**)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Public Hearings for Comment on the State's Comprehensive Housing Affordability Strategy

Take notice that the New Jersey Department of Community Affairs (DCA) will be conducting three public hearings on the State's Comprehensive Housing Affordability Strategy (CHAS).

The submission of the CHAS is a requirement of Title I of the Cranston-Gonzalez National Affordable Housing Act of 1990. The Act specifies that in order to apply for certain HUD funding and programs, State and local governments must have a complete and HUD approved CHAS.

The CHAS, a single planning document and management tool, will assist the State and local governments in addressing their respective housing needs. The Federal CHAS regulations (24 CFR Part 91, section 91.20) require the State to identify housing needs, establish housing goals and resources and develop a plan for carrying out the strategies necessary to meet its housing needs.

Three public hearings to obtain the comments and input of citizens, public agencies, and other interested parties on the housing needs and strategies of the State CHAS will be held.

1. The first hearing will be held on Thursday, September 12, 1991 from 9:30 A.M. to 3:00 P.M. in Pomona, Atlantic County, at Stockton State College, Townsend Residential Life Center, Multi-Purpose Center, Pomona.

2. The second hearing will be held on Friday, September 20, 1991 from 9:30 A.M. to 3:00 P.M. in Trenton, Mercer County, at Trenton City Hall, City Council Chamber, 2nd floor, 319 East State Street, Trenton.

3. The third hearing will be held on Tuesday, September 24, 1991, from 9:30 A.M. to 3:00 P.M. in Newark, Essex County, in the Hall of Records, Room 501, 465 Dr. Martin Luther King Blvd., Newark.

On or about August 21, 1991, DCA will release a draft of the State's CHAS. The CHAS will address all the areas (and subparts) required by HUD including: needs assessments, market and inventory conditions, strategies, resources and implementation.

Copies of the draft CHAS will be available for the New Jersey State Library, 185 West State Street, Trenton and its depositories throughout the State. Copies will also be sent to each of the 21 county freeholders' offices and other appropriate public places, in addition to being on file at the DCA in Trenton.

A summary of the State's CHAS will be published in an appropriate number of newspapers of general circulation. The comment period will remain open to the public until October 21, 1991 and must be received on or before 5:00 P.M.

At those times and locations noted, interested citizens, public agencies, and other interested parties will have an opportunity to make comments and views known on all aspects of the State's CHAS. **Written comments** should be sent at least five working days prior to the respective public hearing. Comments should be mailed to:

Department of Community Affairs
Division of Housing
101 S. Broad Street/CN 806/5th Floor
Trenton, New Jersey 08625-0806
ATTN: State CHAS Comments

Any question(s) concerning this notice, the CHAS or hearings should be directed to Anthony Cancro, Assistant Director, DCA, Division of Housing, CN 806, 5th floor, Trenton, New Jersey 08625-0806 or by calling 609-633-6303.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan and Upper Delaware Water Quality Management Plans
Public Notice

Take notice that on July 9, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan and Upper Delaware Water Quality Management Plans was disapproved by the Department. This amendment would have adopted a Wastewater Management Plan (WMP) for Mount Olive Township, Morris County.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan
Public Notice

Take notice that on July 5, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment identifies a proposed discharge to groundwater treatment facility at Block 93, Lot 79 in Mount Olive Township to service the TM Enterprises commercial development. The facility consists of four individual subsurface sewage disposal systems; each serving a single commercial building.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Ocean County Water Quality Management Plan
Public Notice

Take notice that, at the request of the applicant, the proposed amendment to the Ocean County Water Quality Management Plan to designate the site of the Jackson Asphalt Plant, Block 16, Lot 1.02 in Jackson Township, as a ground water discharge service area for a treatment works of less than 20,000 gallons per day has been withdrawn. The proposed amendment was noticed in the July 15, 1991 New Jersey Register at 23 N.J.R. 2188(a).

This notice is published as a matter of public information.

HEALTH

(e)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Receipt of Petition for Rulemaking
Hospital Reimbursement—N.J.A.C. 8:31B-3.22(d)

Petitioner: Ivan J. Punchatz, Esq., representing Hackettstown Community Hospital, Newton Memorial Hospital, Wallkill Valley Hospital and Warren Hospital.

Take notice that on July 10, 1991, the Department of Health received a petition from Ivan J. Punchatz, Esq., representing Hackettstown Community Hospital, Newton Memorial Hospital, Wallkill Valley Hospital and Warren Hospital, requesting that the Department amend one of

its hospital rate-setting regulations, N.J.A.C. 8:31B-3.22(d) to eliminate the Newton-Phillipsburg labor market area and include Sussex and Warren counties within the Newark-Suburban labor market.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of a One-Time Only Deletion of the Certificate of Need Batching Cycle for Long-Term Care Beds and Facilities by the New Jersey State Department of Health

N.J.A.C. 8:33H

Take notice that the Department of Health is hereby deleting the September 15, 1991 certificate of need batching cycle for long-term care beds and facilities. This action is being taken at the present time since the current Policy Manual for Planning and Certificate of Need Reviews of Long-Term Care Facilities and Services (N.J.A.C. 8:33H) is expected to be repealed shortly. Simultaneously, new, replacement rules are to be proposed for adoption.

The current version of N.J.A.C. 8:33H was adopted in 1980 and readopted in 1985 and 1990. A variety of amendments were incorporated during the intervening years. In 1989, Department of Health staff and a Long-Term Care Planning Advisory Committee, which was constituted by the Policy and Plan Development Committee of the Statewide Health Coordinating Council, undertook a comprehensive analysis of the Policy Manual. Their goal was to address a number of long-term care policy issues and to create an up-to-date, better organized document articulating the planning and certificate of need review requirements for long-term care facilities and related services. Nearly two years after this endeavor was initiated, the new version of N.J.A.C. 8:33H is ready to be proposed for adoption.

It is anticipated that the repeal of N.J.A.C. 8:33H and the adoption of new, replacement rules will occur by early 1992, in time for the March 15, 1992 long-term care batching cycle. The policies contained in the Department's proposed new Policy Manual are substantially different from the existing certificate of need review requirements for long-term care facilities. For this reason, it would be inadvisable to continue reviewing long-term care applications under the current rules. Deletion of the September 15, 1991 batching cycle for long-term care will afford the Department of Health an opportunity to adopt new rules and will preclude the review of any additional long-term care applications under the existing rules.

This one-time batch deletion will be effective for August 1, 1991 certificate of need submission date; applications for new, batched long-term care beds and facilities will not be accepted for processing at that time. The Department of Health's acceptance of long-term care applications will resume on February 1, 1992, which is the filing date for the subsequent long-term care batching cycle. Non-batched projects, such as continuing care retirement communities and dedicated long-term care beds for AIDS/HIV-infected patients, will not be affected by this batch deletion; non-batched applications shall continue to be accepted and processed by the Department in accordance with the submission dates specified in N.J.A.C. 8:33-1.5(c).

Any inquiries about this batch deletion or the new proposal for N.J.A.C. 8:33H should be referred to:

John Gontarski, Chief
Health Systems Review
New Jersey State Department of Health
CN 360, Room 604
Trenton, N.J. 08625

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of a One Time Only Moratorium on the Submission of Certificate of Need Applications for Child and Adolescent Intermediate and Special Psychiatric Beds for One Year by the New Jersey State Department of Health

Take notice that the Department of Health, in conjunction with the Health Care Administration Board (HCAB) and the Statewide Health Coordinating Council (SHCC), is proposing to remove from consideration for one time only applications for the addition of child and adolescent intermediate and special psychiatric beds for a maximum of one year. No health care services other than these proposed new or expanded psychiatric services are affected by this proposed action. Any certificate of need application for the addition of child and adolescent intermediate and special psychiatric bed services that have been previously filed by any applicant prior to the adoption of this Notice is also unaffected by this moratorium.

The Department of Health is proposing this one year moratorium in response to a request from the Department of Human Services and in response to recent Certificate of Need applications which are being reviewed without the benefit of applicable planning regulations.

The purpose of this moratorium is to allow sufficient time for the Department, with the assistance of the Division of Mental Health and Hospitals, to gather data for the development of need estimates, to convene a technical advisory committee, and to establish a coordinated Statewide policy regarding the future orderly review of Certificate of Need applications for the addition of child and adolescent intermediate and special psychiatric beds. The one year time period will also permit the Department of Health in conjunction with the Department of Human Services to study the issue of financing care to indigent patients and to study the impact of recent changes in the provision of services at the State Hospital serving adolescent psychiatric patients, and will permit the development of a methodology for estimating the unmet need for child and adolescent intermediate and special psychiatric beds.

This one year moratorium will become effective (following publication of this notice in the New Jersey Register) with the November 15, 1991 certificate of need review cycle (October 1, 1991 application submission deadline) and will end with the November 15, 1992 certificate of need review cycle (October 1, 1992 application submission date). Should the Department of Health complete its development of Statewide child and adolescent intermediate and special psychiatric bed review criteria prior to this one year time period, the length of the moratorium will be shortened accordingly.

Any inquiries should be sent to:

John J. Gontarski, Chief
Health Systems Review
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

INSURANCE

(c)

DIVISION OF LIFE AND HEALTH

Notice of Receipt of and Action on Petition for Rulemaking
Declaration of Authority to Regulate Group Health Insurance Contracts

N.J.A.C. 11:4

Petitioner: New Jersey Optometric Association
Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 11:1-15

Take notice that on December 18, 1990 the Department of Insurance (Department) received a petition for rulemaking from the New Jersey Optometric Association through its counsel, Albert, Schragger, Lavine, Levy and Segual, P.C. The petition requests the Department to

promulgate a rule to extend the provisions of N.J.S.A. 17B:26-2c and/or N.J.S.A. 17B:27-51 to group health contracts issued or delivered out-of-state which cover New Jersey residents. N.J.S.A. 17B:26-2c and 17B:27-51 provide that policies of individual or group health insurance delivered or issued for delivery in this State which provide for the reimbursement of optometric services shall entitle the insured to reimbursement regardless of whether the service is performed by a physician or duly licensed optometrist.

Specifically, Petitioner requests that the Department promulgate a rule that includes the following provisions:

1. Declaring that under the authority granted to it under N.J.S.A. 17B:17-1a the Commissioner of Insurance shall be permitted to regulate group health insurance policies or contracts that are issued out-of-State for coverage of or delivery to New Jersey residents;

2. Declaring that group health contracts issued out-of-State for delivery to New Jersey residents are subject to the non-discriminatory provisions of N.J.S.A. 17B:26-2c and/or N.J.S.A. 17B:27-51;

3. Declaring that group health contracts that are issued out-of-State for delivery to New Jersey residents which discriminate between licensed practitioners of optometry and other ocular practitioners or interfere with the rights of a subscriber, enrollee or insured to free choice of ocular practitioner are illegal and, therefore, void as against public policy; and

4. Declaring that all out-of-State insurance companies which deliver or issue for delivery group health insurance contracts for coverage of New Jersey residents cease or desist from entering into contracts for the provision of eye care services which fail to reimburse optometrists for covered vision or ocular services or which violate N.J.S.A. 17B:26-2c and/or N.J.S.A. 17B:27-51.

The Commissioner hereby certifies that the petition was duly considered pursuant to law. Upon due deliberation, the Commissioner hereby refers the matter to the Department for further deliberations, to be concluded by November 15, 1991. The reasons for and scope of further deliberations are set forth below.

1. The Department does not necessarily construe the provisions of N.J.S.A. 17B:17-1a to extend its jurisdiction, in this instance, to health insurers that do not deliver or issue for delivery in this State policies of health insurance. Rather, it construes that statute to provide only that insurers organized or authorized to do business in this State under the provisions of Title 17 (that is, property/liability insurers that issue policies including coverages defined as "health insurance" in N.J.S.A. 17B:17-4) are subject to the specific provisions of Title 17B set forth by Petitioner.

2. The specific provisions of N.J.S.A. 17B:26-1 et seq. (and specifically N.J.S.A. 17B:26-2c) provide that those statutes apply only to policies or contracts of individual health insurance. Those statutes therefore appear not to provide support for a rule regarding group health insurance plans, as advanced by Petitioner.

3. Petitioner's request to promulgate this rule raises issues concerning the authority and jurisdiction to regulate the terms and practice of group health insurers that write policies or contracts issued and delivered out-of-state, but which cover New Jersey residents. The Department notes the provision of N.J.S.A. 17B:17-13c(5), which permits these contracts without specific authorization of the laws of this State. Nevertheless, the Commissioner is granted broad powers to promulgate rules that are authorized or required by law. N.J.S.A. 17:1-8.1 and 17:1C-6.

4. N.J.S.A. 17B:27-51, advanced by Petitioner in its support, is included among the provisions of Article 2 of Chapter 27 of Title 17B that establish a regulatory framework for Group Health and Blanket Insurance. N.J.S.A. 17B:27-26 et seq. These statutes set forth, however, a number of other standards in addition to the non-discriminatory provisions of N.J.S.A. 17B:27-51, which specifically addresses optometrists. A determination to adopt the rules advanced by Petitioner should not be made until after a careful evaluation of what additional rules may be necessary or desirable concerning the other statutory standards of this Article.

Therefore, pursuant to N.J.A.C. 11:1-15.3(c), this petition for rulemaking is referred to the Department for further deliberations, which shall conclude on or before November 15, 1991.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Notice of an Application for Contract Carrier Permit

Take notice that Acting Director Stratton C. Lee, Jr., Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed an application for a Contract Carrier Permit:

CONTRACT CARRIER (NON-GRANDFATHER)
W & S Services, Inc.
20 Raleigh Road
Kendall Park, NJ 08824

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, N.J. 08666, within 20 days (September 8, 1991) following the publication of an application.

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 July 1, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

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 JUNE 17, 1991

NEXT UPDATE: SUPPLEMENT JULY 15, 1991

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
22 N.J.R. 2387 and 2622	August 20, 1990	23 N.J.R. 637 and 798	March 4, 1991
22 N.J.R. 2623 and 2860	September 4, 1990	23 N.J.R. 799 and 924	March 18, 1991
22 N.J.R. 2861 and 3072	September 17, 1990	23 N.J.R. 925 and 1048	April 1, 1991
22 N.J.R. 3073 and 3182	October 1, 1990	23 N.J.R. 1049 and 1226	April 15, 1991
22 N.J.R. 3183 and 3274	October 15, 1990	23 N.J.R. 1227 and 1482	May 6, 1991
22 N.J.R. 3275 and 3420	November 5, 1990	23 N.J.R. 1483 and 1722	May 20, 1991
22 N.J.R. 3421 and 3606	November 19, 1990	23 N.J.R. 1723 and 1854	June 3, 1991
22 N.J.R. 3607 and 3666	December 3, 1990	23 N.J.R. 1855 and 1980	June 17, 1991
22 N.J.R. 3667 and 3896	December 17, 1990	23 N.J.R. 1981 and 2071	July 1, 1991
23 N.J.R. 1 and 144	January 7, 1991	23 N.J.R. 2079 and 2204	July 15, 1991
23 N.J.R. 145 and 248	January 22, 1991	23 N.J.R. 2205 and 2446	August 5, 1991
23 N.J.R. 249 and 332	February 4, 1991	23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 333 and 636	February 19, 1991		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3	Return of contested cases: failure of party to appear at hearing	23 N.J.R. 1728(a)		
1:5	Council on Affordable Housing hearings	23 N.J.R. 2082(a)		
1:10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)		
1:10-8.1	Transmission of Economic Assistance cases: withdrawal of proposal	23 N.J.R. 2083(a)		
1:10B	Medical Assistance and Health Services hearings	23 N.J.R. 2083(b)		
1:13-1.1, 4.1	Division of Motor Vehicle cases	23 N.J.R. 928(a)	R.1991 d.330	23 N.J.R. 2010(a)
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 2208(a)		
1:14	Board of Public Utility hearings	23 N.J.R. 640(a)	R.1991 d.361	23 N.J.R. 2120(a)
1:14	Board of Public Utility hearings: extension of comment period	23 N.J.R. 1230(a)		
1:14-14.1, 14.4	Board of Public Utility hearings: prefiled testimony; interlocutory review	23 N.J.R. 2083(c)		
	Most recent update to Title 1: TRANSMITTAL 1991-3 (supplement June 17, 1991)			
AGRICULTURE—TITLE 2				
2:9-1	Avian influenza: indemnification of poultry losses	23 N.J.R. 1485(a)	R.1991 d.430	23 N.J.R. 2498(a)
2:17-7.1	Movement into State of pepper transplants	Emergency (expired 7-30-91)	R.1991 d.317	23 N.J.R. 1966(a)
2:18	Nursery inspection fees	23 N.J.R. 1230(b)	R.1991 d.407	23 N.J.R. 2328(a)
2:21-7	Fees for seed testing	23 N.J.R. 1231(a)	R.1991 d.400	23 N.J.R. 2330(a)
2:50-1.1, 2.1	Dairy farmers and milk dealers notice to discontinue sale or purchase of milk	23 N.J.R. 929(a)	R.1991 d.323	23 N.J.R. 2010(b)
2:51	Milk prices to dairy farmers	23 N.J.R. 1966(b)	R.1991 d.448	23 N.J.R. 2498(b)
2:69-1.11	Commercial values of primary plant nutrients	23 N.J.R. 1728(b)	R.1991 d.431	23 N.J.R. 2499(a)
2:73-2	Seal of Quality for Eggs program	23 N.J.R. 1729(a)	R.1991 d.432	23 N.J.R. 2500(a)
	Most recent update to Title 2: TRANSMITTAL 1991-4 (supplement June 17, 1991)			
BANKING—TITLE 3				
3:1-2.17	Closing of branch offices	23 N.J.R. 801(a)	R.1991 d.392	23 N.J.R. 2305(a)
3:1-2.17	Closing of branch offices	23 N.J.R. 2208(b)		
3:1-6.1, 6.2, 6.6	Assessments on trust assets	23 N.J.R. 1073(b)	R.1991 d.350	23 N.J.R. 2028(a)
3:1-18	Foreign banks and associations: registration of service facilities	23 N.J.R. 1233(a)	R.1991 d.347	23 N.J.R. 2029(a)
3:3-2.1	Department records designated nonpublic	23 N.J.R. 1858(a)		
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2209(a)		
3:16-2.1	Pawnbroker service charges	23 N.J.R. 1729(b)	R.1991 d.426	23 N.J.R. 2500(b)
3:17	Consumer Loan Act rules	23 N.J.R. 1234(a)	R.1991 d.354	23 N.J.R. 2121(a)
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:17-1.1, 1.4	Consumer loan licensees: check solicitations	23 N.J.R. 931(a)	R.1991 d.329	23 N.J.R. 2031(a)
3:17-3.4	Location of consumer loan records	23 N.J.R. 803(a)	R.1991 d.362	23 N.J.R. 2122(a)
3:18-2.1	Location of secondary mortgage loan records	23 N.J.R. 803(a)	R.1991 d.362	23 N.J.R. 2122(a)
3:18-10.3	Licensure of secondary mortgage lenders	23 N.J.R. 2210(a)		
3:23-2.1	License fees for motor vehicle installment sellers and home repair contractors	23 N.J.R. 1073(b)	R.1991 d.350	23 N.J.R. 2028(a)
3:24-2.7	Posting of general ledger by check cashers	23 N.J.R. 932(a)	R.1991 d.324	23 N.J.R. 2032(a)
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2209(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	23 N.J.R. 1485(b)	R.1991 d.418	23 N.J.R. 2306(a)
3:38-1.2, 1.4, 1.9	Mortgage banker and broker net worth standards	23 N.J.R. 643(a)		
3:38-1.3	Licensure of mortgage lenders	23 N.J.R. 2210(a)		
3:38-2.1	Location of mortgage loan records	23 N.J.R. 803(a)	R.1991 d.362	23 N.J.R. 2122(a)

Most recent update to Title 3: TRANSMITTAL 1991-5 (supplement June 17, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A

4A:4-2.11	Enforcement of residency requirements	23 N.J.R. 1984(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
4A:5-2.1, 2.2	Veterans and disabled veterans preference: administrative correction	———	———	23 N.J.R. 2500(c)

Most recent update to Title 4A: TRANSMITTAL 1991-1 (supplement May 20, 1991)

COMMUNITY AFFAIRS—TITLE 5

5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-1.5	Fire official and fire inspector certification	23 N.J.R. 1235(a)	R.1991 d.359	23 N.J.R. 2122(b)
5:18-2.4A, 2.4B, 2.4C, 2.4D, 2.7, 2.8	Uniform Fire Code: life hazard uses and permit fees	23 N.J.R. 2234(a)		
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)		
5:18A-1.4, 2.3, 3.3, 4.3–4.7, 4.9, 4.10	Fire official and fire inspector certification	23 N.J.R. 1235(a)	R.1991 d.359	23 N.J.R. 2122(b)
5:18A-2.6	Fire Code enforcement: life hazard uses and permit fees	23 N.J.R. 2234(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:20-1	Meetings of governing board of a condominium association	23 N.J.R. 1901(a)		
5:23-1.1, 1.4, 2.14, 2.23, 2.25, 3.4, 3.11, 3.14, 4.3, 4.5, 4.12, 4.13, 4.18, 4.20, 4.24, 5.1, 5.3, 5.5, 5.7, 5.19, 5.20, 5.23, 12	Elevator Safety Subcode	23 N.J.R. 805(a)	R.1991 d.325	23 N.J.R. 2046(a)
5:23-2.8, 2.17A, 2.24, 2.32	Uniform Construction Code: approval of completed work	23 N.J.R. 2236(a)		
5:23-2.38	Barrier Free Recreational Standards: appeals regarding facility noncompliance	23 N.J.R. 1730(a)	R.1991 d.428	23 N.J.R. 2500(d)
5:23-3.14, 3.18, 3.20, 10.3	Uniform Construction Code: 1991 subcode references; Energy and Radon Hazard subcodes	23 N.J.R. 1487(a)	R.1991 d.429	23 N.J.R. 2501(a)
5:23-3.15, 3.18	Uniform Construction Code: plumbing and energy subcodes	23 N.J.R. 804(a)	R.1991 d.326	23 N.J.R. 2044(a)
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-7.3, 7.11	Barrier Free Subcode: exemptions and Use Group R-2 and R-3	23 N.J.R. 1902(a)		
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:33-3	Tenants' Property Tax Rebate Program	Emergency (expires 8-30-91)	R.1991 d.383	23 N.J.R. 2183(a)
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)	R.1991 d.408	23 N.J.R. 2306(b)
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)	R.1991 d.334	23 N.J.R. 2055(a)
5:80-9.9	Housing and Mortgage Finance Agency: JUMPP project net increases	23 N.J.R. 646(a)	R.1991 d.335	23 N.J.R. 2058(a)
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		
5:91-4.1, 4.5	Council on Affordable Housing: petition for substantive certification; municipal/developer incentives	23 N.J.R. 1088(a)	R.1991 d.344	23 N.J.R. 2058(a)
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 6.1, 6.2, 6.3, 14.4	Council on Affordable Housing: credits for rehabilitation and new construction; rental housing	23 N.J.R. 1488(a)	R.1991 d.412	23 N.J.R. 2307(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
5:92-1.6	Council on Affordable Housing: extension of certification period/judgment of repose	23 N.J.R. 2084(b)		
	Most recent update to Title 5: TRANSMITTAL 1991-6 (supplement June 17, 1991)			
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		
	Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)			
EDUCATION—TITLE 6				
6:8-1.1, 6.1, 6.2, 6.3	Preventive and remedial programs in reading, writing and mathematics	23 N.J.R. 2085(a)		
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-2.12, 2.13, 2.14, 2A.10, 2A.11, 2A.12, 4.1, 5.3, 5.6, 8.3	Financial management in local districts	23 N.J.R. 1733(a)		
6:21-7, 19	Pupil transportation aid	23 N.J.R. 1737(a)		
6:22-1.2–1.7, 2, 3, 4, 5.4, 5.5, 6, 7, 8	School Facility Planning Service	23 N.J.R. 1238(a)	R.1991 d.443	23 N.J.R. 2502(a)
6:28-1.1, 1.3, 3.2, 3.5, 3.7, 4.2, 4.4, 6.5, 7.1, 7.2, 10.1, 10.2, 11.4	Special education	23 N.J.R. 1053(b)	R.1991 d.337	23 N.J.R. 2032(b)
6:30-4.4, 4.5	Reporting of enrollments in adult high schools	23 N.J.R. 1243(a)	R.1991 d.401	23 N.J.R. 2330(b)
6:39-1.3, 1.4	Statewide assessment of pupil achievement: students with educational disabilities; State mandated tests	23 N.J.R. 1244(a)	R.1991 d.402	23 N.J.R. 2331(a)
6:41	Repeal Advisory Council	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:43-1.1, 1.2, 3.3, 7.1, 8.1	Vocational and technical education: programs and standards	23 N.J.R. 1246(a)	R.1991 d.404	23 N.J.R. 2331(c)
6:46-1.1, 2	Local area vocational school districts	23 N.J.R. 1247(a)	R.1991 d.405	23 N.J.R. 2332(a)
6:47	Repeal Management Services	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:48	Repeal Professional Services	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:49	Repeal Occupational Research Development	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:50	Repeal Urban Education and Manpower Training	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:51	Vocational and technical education: administration and organization	23 N.J.R. 1250(a)	R.1991 d.406	23 N.J.R. 2333(a)
6:52	Repeal Residential Schools	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
	Most recent update to Title 6: TRANSMITTAL 1991-5 (supplement June 17, 1991)			
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1E	Discharges of petroleum and other hazardous substances	23 N.J.R. 1335(a)		
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:2-11.3–11.9, 11.12–11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:5C-1.4, 3.1, 5.1	Endangered Plant Species Program	23 N.J.R. 812(a)	R.1991 d.446	23 N.J.R. 2507(b)
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Stormwater management: Water Pollution Control Act compliance	23 N.J.R. 1926(a)		
7:9-5.7	Wastewater effluent standards: administrative correction	———	———	23 N.J.R. 2166(a)
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8	Clean Water Enforcement Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)	R.1991 d.378	23 N.J.R. 2366(a)
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1.8	NJPDES fee schedule: administrative correction	_____	_____	23 N.J.R. 2346(a)
7:14A-1.9, 2.5, 3.10, 8.13	Clean Water Enforcement Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)	R.1991 d.378	23 N.J.R. 2366(a)
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14A-2.1	NJPDES and DTW co-permittee requirements: notice of rule invalidation	_____	_____	23 N.J.R. 2346(b)
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:15-4.1	DTW and NJPDES co-permittee requirements: notice of rule invalidation	_____	_____	23 N.J.R. 2346(b)
7:18	Certification of laboratories analyzing drinking water and wastewater	23 N.J.R. 1109(a)	R.1991 d.385	23 N.J.R. 2346(c)
7:18-6.6	Clean Water Enforcement Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)	R.1991 d.378	23 N.J.R. 2366(a)
7:25-5	1991-92 Game Code	23 N.J.R. 1494(a)	R.1991 d.416	23 N.J.R. 2347(a)
7:25-6	1992-93 Fish Code	23 N.J.R. 2115(a)		
7:25-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)	R.1991 d.348	23 N.J.R. 2011(a)
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.1, 18.12, 18.13	Weakfish management program	23 N.J.R. 1989(b)		
7:25-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)	R.1991 d.328	23 N.J.R. 2011(b)
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)	R.1991 d.327	23 N.J.R. 2012(a)
7:25A-1.4, 1.5, 1.6, 1.9	Oyster management	23 N.J.R. 1112(a)	R.1991 d.349	23 N.J.R. 2012(b)
7:26-1.4, 4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)	R.1991 d.368	23 N.J.R. 2166(b)
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-8.1	Mixtures of solid and listed hazardous wastes	23 N.J.R. 1113(b)	R.1991 d.420	23 N.J.R. 2360(a)
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity Characteristic	23 N.J.R. 151(a)	R.1991 d.421	23 N.J.R. 2360(b)
7:26-8.2, 8.8, 8.12	Hazardous waste management: reopening of comment period regarding Toxicity Characteristic of waste	23 N.J.R. 1401(a)		
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)	R.1991 d.422	23 N.J.R. 2361(a)
7:26-8.14	Hazardous waste management: reopening of comment period regarding listing of methyl bromide production wastes	23 N.J.R. 1401(b)		
7:26-8.15, 8.16	Hazardous waste criteria, identification, and listing	23 N.J.R. 1114(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3–17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)		
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		
7:27B-3.1, 3.2, 3.4–3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic comounds: sampling and analytical procedures	23 N.J.R. 1858(b)		

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7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)	R.1991 d.417	23 N.J.R. 2362(a)
7:31-2.16	Toxic Catastrophe Prevention Act Program: annual registration fees	23 N.J.R. 818(a)		
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8:9-1.2, 1.4, 1.5	Handling and disposition of human remains	23 N.J.R. 1508(a)	R.1991 d.410	23 N.J.R. 2334(a)
8:20-1.2	Birth Defects Registry: reporting requirements	23 N.J.R. 820(a)	R.1991 d.414	23 N.J.R. 2335(a)
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:22-1	Campground sanitation	23 N.J.R. 1252(b)	R.1991 d.409	23 N.J.R. 2336(a)
8:24	Retail food establishments	23 N.J.R. 168(b)	R.1991 d.357	23 N.J.R. 2124(a)
8:24-2.1	Retail food establishments: administrative correction	_____	_____	23 N.J.R. 2337(a)
8:24-13.9, 13.11	Sanitation in community residences and bed and breakfast establishments	23 N.J.R. 2088(a)		
8:31A-1.1, 2.6, 7.4, 7.5, App. A, D	SHARE Manual: patient day add-on; EDR and OPPM cost centers	23 N.J.R. 2242(a)		
8:31C-1.21, App. A	Residential alcoholism treatment facilities: patient day add-on	23 N.J.R. 2243(a)		
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:40	Licensure of invalid coach and ambulance services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 2245(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)	R.1991 d.450	23 N.J.R. 2526(a)
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)	R.1991 d.451	23 N.J.R. 2527(a)
8:57-2.2, 2.4, 2.6, 2.7	Reporting of HIV infection with identifiers	23 N.J.R. 2089(a)		
8:61	AIDS prevention and control	23 N.J.R. 2245(b)		
8:61-2.1, 2.2, 2.3, 2.6	Participation in AIDS Drug Distribution Program	23 N.J.R. 2247(a)		
8:65	Controlled dangerous substances: reopening of comment period	23 N.J.R. 823(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a), 3581(b))	22 N.J.R. 1214(b)	R.1991 d.161	23 N.J.R. 906(a)
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a); 23 N.J.R. 206(a), 907(a), 1672(a))	22 N.J.R. 2501(a)		
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
8:71	Interchangeable drug products (see 23 N.J.R. 1670(a))	23 N.J.R. 178(a)	R.1991 d.365	23 N.J.R. 2136(a)
8:71	Interchangeable drug products: administrative correction	_____	_____	23 N.J.R. 2338(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)		
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9:7-3.2	Tuition Aid Grant Program: determining award levels	23 N.J.R. 1057(a)	R.1991 d.336	23 N.J.R. 2013(a)
9:7-4.2	Garden State Scholarships: academic requirements	23 N.J.R. 2211(a)		
9:9-7	New Jersey College Loans to Assist State Students (NJCLASS) Program	23 N.J.R. 1257(a)	R.1991 d.396	23 N.J.R. 2338(b)
9:9-7.7	New Jersey College Loans to Assist State Students (NJCLASS) Program: repayment of loan	23 N.J.R. 2212(a)		
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10:3-4	Cognizant division contracting by community provider agencies	23 N.J.R. 1647(a)	R.1991 d.442	23 N.J.R. 2534(a)
10:36	Patient supervision at State psychiatric hospitals	23 N.J.R. 1652(a)		
10:42	Use of mechanical restraints and safeguarding equipment on developmentally disabled individuals	23 N.J.R. 1653(a)	R.1991 d.437	23 N.J.R. 2538(a)
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:51-1.2, 1.13, 1.14, 1.20, App. B, C, D, E	Pharmaceutical services under Medicaid program	23 N.J.R. 1310(b)	R.1991 d.353	23 N.J.R. 2035(a)
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:52-1.6, 1.14	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)	R.1991 d.352	23 N.J.R. 2041(a)
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.5, 1.13	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)	R.1991 d.352	23 N.J.R. 2041(a)
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56	Dental Services Manual	23 N.J.R. 1992(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.6, 3	Independent Clinic Services: partial care	23 N.J.R. 2213(a)		
10:66-3	Medicaid program: personal care assistant services at independent clinics	23 N.J.R. 2091(a)		
10:68	Manual of Chiropractic Services	23 N.J.R. 1327(a)	R.1991 d.377	23 N.J.R. 2309(a)
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:70	Medically Needy Manual	23 N.J.R. 964(a)	R.1991 d.331	23 N.J.R. 2042(a)
10:72-1.1, 4.1	Medicaid eligibility: pregnant women and children	Emergency (expires 9-27-91)	R.1991 d.445	23 N.J.R. 2543(a)
10:72-2.5, 3.4	Extended Medicaid eligibility for newborns	23 N.J.R. 1889(a)		
10:73	Medicaid program case management services	23 N.J.R. 1328(a)	R.1991 d.367	23 N.J.R. 2137(a)
10:81-8.22, 8.23	Extended Medicaid eligibility for newborns	23 N.J.R. 1657(a)	R.1991 d.438	23 N.J.R. 2542(a)
10:81-14.12, 14.18	Public Assistance Manual: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2214(a)		
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-2.8, 4.4, 5.3	Assistance Standards Handbook: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2217(a)		
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 2220(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)		
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-1.1, 1.2, 1.3, 2.1, 2.2, 2.5, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1–6.9, 7.2, 9.4, 12.1, 12.2	General Assistance Program	23 N.J.R. 1741(a)		
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:97-1.3, 1.4, 2.1–2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.6, 4.7, 4.8, 4.14, 4.15, 5.1, 5.3, 5.4, 6.1, 6.3, 6.4, 6.5, 7.1–7.4, 8.1, 8.2, 8.3, 9.1	Commission for Blind and Visually Impaired: Business Enterprise Program	23 N.J.R. 1749(a)		
10:120	Youth and Family Services administration	23 N.J.R. 1658(a)	R.1991 d.397	23 N.J.R. 2309(b)
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10A:2-5	Reporting loss of funds	23 N.J.R. 1510(a)	R.1991 d.373	23 N.J.R. 2310(a)
10A:2-8	Inmate financial aid upon release from correctional facility	23 N.J.R. 1511(a)	R.1991 d.372	23 N.J.R. 2310(b)
10A:2-9	Gifts to correctional facilities	23 N.J.R. 1754(a)	R.1991 d.449	23 N.J.R. 2509(a)
10A:3	Security and control	23 N.J.R. 1259(a)		
10A:5	Close custody units	23 N.J.R. 1260(a)	R.1991 d.358	23 N.J.R. 2143(a)
10A:9-5.5	Restoration of forfeited commutation time	23 N.J.R. 1261(a)	R.1991 d.346	23 N.J.R. 2043(a)
10A:10-3	Interstate Corrections Compact	23 N.J.R. 2221(a)		
10A:16-12	Inmates at risk of suicide	23 N.J.R. 1756(a)	R.1991 d.439	23 N.J.R. 2510(a)
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)		
10A:18-1.3, 2.7	Inspection of inmate outgoing mail	23 N.J.R. 1758(a)	R.1991 d.413	23 N.J.R. 2312(a)
10A:22-2.5	Inmate and parolee records: availability of information to correctional facility personnel	23 N.J.R. 1512(a)	R.1991 d.415	23 N.J.R. 2312(b)
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11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)		
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-36.2, 36.4, 36.5, 36.6, 36.7, 36.11	Automobile physical damage coverage inspection procedures	23 N.J.R. 1262(a)		
11:3-39	Automobile physical damage coverage: rate reductions for anti-theft devices and safety features	23 N.J.R. 384(a)	R.1991 d.363	23 N.J.R. 2144(a)
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:4-16.6, 16.8, 23	Medicare supplement coverage: minimum standards	23 N.J.R. 1264(a)	R.1991 d.345	23 N.J.R. 2014(a)
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11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)	R.1991 d.411	23 N.J.R. 2340(a)
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
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12:55-1.4	Voluntary wage deductions for repayment of debts to State	23 N.J.R. 1660(a)	R.1991 d.447	23 N.J.R. 2512(a)
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12A:31-3	Development Authority: direct loans	23 N.J.R. 832(a)	R.1991 d.395	23 N.J.R. 2315(a)
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13:27-5.8, 8.15	Licensure of architects and certification of landscape architects: fee schedules	23 N.J.R. 1059(a)	R.1991 d.318	23 N.J.R. 2021(a)
13:27-6.2–6.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:29-1.8, 1.11, 1.12, 1.13, 2.3	Board of Accountancy: fee schedule	23 N.J.R. 1061(a)	R.1991 d.319	23 N.J.R. 2022(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)	R.1991 d.351	23 N.J.R. 2159(a)
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.3	Master plumbers licensing examination	23 N.J.R. 288(a)		
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.7	Practice of medicine: prescribing of amphetamines and sympathomimetic amine drugs	23 N.J.R. 2248(a)		
13:35-8.9, 8.17	Hearing Aid Dispensers Examining Committee: fee schedules; licensure reinstatement fee	23 N.J.R. 1895(a)		
13:36-1.6	Board of Mortuary Science: fee schedule	23 N.J.R. 1063(b)	R.1991 d.356	23 N.J.R. 2160(a)
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:38-3.6, 5.1	Board of Optometrists: fee schedule	23 N.J.R. 1064(a)	R.1991 d.360	23 N.J.R. 2160(b)
13:38-3.6, 5.1	Board of Optometrists fee schedule: correction to comments submission address	23 N.J.R. 1279(a)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)	R.1991 d.355	23 N.J.R. 2161(a)
13:39A	Board of Physical Therapy rules	23 N.J.R. 1065(a)	R.1991 d.366	23 N.J.R. 2162(a)
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13:41-4.2–4.5	Certified landscape architects; site planning services	23 N.J.R. 1516(a)		
13:44-4.1	Board of Veterinary Medical Examiners: fee schedule	23 N.J.R. 1066(a)	R.1991 d.321	23 N.J.R. 2023(a)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: fee schedule	23 N.J.R. 1066(b)	R.1991 d.376	23 N.J.R. 2316(a)
13:44E-1.1	Scope of chiropractic practice	23 N.J.R. 2100(a)		
13:44E-2.1	Advertising of chiropractic services	23 N.J.R. 389(a)	R.1991 d.440	23 N.J.R. 2513(b)
13:44E-2.2	Chiropractic patient records	23 N.J.R. 391(a)	R.1991 d.441	23 N.J.R. 2515(a)
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.4	Chiropractor of record: responsibility for patient care	23 N.J.R. 1280(a)	R.1991 d.427	23 N.J.R. 2517(a)
13:44E-2.5	Board of Chiropractic Examiners: fee schedule	23 N.J.R. 1067(a)	R.1991 d.320	23 N.J.R. 2023(b)
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:47E, 47G	Weighmasters; standard containers for farm products: administrative correction	———	———	23 N.J.R. 2163(a)
13:51	Chemical breath testing	23 N.J.R. 2248(b)		
13:54	Regulation of firearms	23 N.J.R. 2250(a)		
13:63	Combat Auto Theft Program	23 N.J.R. 981(a)	R.1991 d.423	23 N.J.R. 2518(a)
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-2.1	Thoroughbred racing: "advance wagers", "delay period", "early bird wagering"	23 N.J.R. 2266(a)		
13:70-13A.1, 13A.2, 13A.3, 13A.5, 13A.7	Thoroughbred racing: hearings regarding license suspensions	23 N.J.R. 1281(a)	R.1991 d.379	23 N.J.R. 2318(a)
13:70-29.48	Thoroughbred racing: daily double	23 N.J.R. 2003(a)		
13:70-29.55	Thoroughbred racing: cash-sell wagering system	23 N.J.R. 2266(b)		
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:70-29.59	Thoroughbred racing: cancellation of certain wagers	23 N.J.R. 2267(a)		
13:70-29.60	Thoroughbred racing: expiration of mutuel tickets and vouchers	23 N.J.R. 2267(b)		
13:71-3	Harness racing: hearings regarding license suspensions	23 N.J.R. 1282(a)	R.1991 d.380	23 N.J.R. 2319(a)
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13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:71-27.57	Harness racing: cancellation of certain wagers	23 N.J.R. 2268(b)		
13:71-27.58	Harness racing: expiration of mutuel tickets and vouchers	23 N.J.R. 2269(a)		
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16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
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