

NEW JERSEY



REGISTER

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(Includes adopted rules filed through April 7, 1995)

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

NEXT UPDATE: SUPPLEMENT MARCH 20, 1995

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **May 31, 1995**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

BANKING

(a)

OFFICE OF THE COMMISSIONER

Advertising

Proposed New Rules: N.J.A.C. 3:2

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

Authority: N.J.S.A. 17:16H-1 et seq.

Proposal Number: PRN 1995-246.

Submit comments by May 31, 1995 to:

Rule Comments

Attn: Elaine Ballai, Regulatory Officer

Department of Banking

CN 040

Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 3:2, Advertising, expired on April 12, 1995. The Department of Banking has reviewed the rules as required by the Executive Order and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. In accordance with N.J.A.C. 1:30-4.4(g), the expired rules are proposed herein for adoption as new rules.

These rules regulate advertisements and other solicitations of banks, savings banks, savings and loan associations, and other persons subject to supervision, regulation or licensing by the Department of Banking. Pursuant to these rules, all advertisements must comply with the requirements set forth in Federal Truth in Lending law, 15 U.S.C. §§ 1601 et seq., and Regulation Z, 12 C.F.R. 226 et seq. In addition, the rules prohibit advertising practices which are inaccurate, untrue, deceptive or misleading, or which negatively affect the public's confidence in such financial institutions. Listed in the rules at N.J.A.C. 3:2-1.4(b) are seven practices which the Department deems to be deceptive or misleading.

In the event the Commissioner determines that an advertisement violates this standard, the rules provide that the Commissioner shall notify the institution of the violation and request a response. If no response or an unsatisfactory response is given, the Commissioner may issue a show cause order referencing the statute or rule which allegedly was violated. The parties desiring to contest this order may request an administrative hearing. An institution which continues to violate these rules after being ordered to cease and after the order is not successfully contested is subject to a \$500.00 penalty for each violation.

A recent proposal to amend this chapter would also require that depositories conform with the requirements of the Federal Truth in Savings Act, 12 U.S.C. §§ 4301 et seq., and Federal Regulation DD, 12 C.F.R. 230.1 et seq. See 27 N.J.R. 793(a).

Social Impact

The rules proposed for re-adoption apply to all financial institutions subject to supervision, regulation or licensing by the Department. They have the beneficial impact of prohibiting particular advertising practices which the Department believes are deceptive or misleading. Loan applicants and prospective borrowers, as well as depositors, are the direct beneficiaries of these rules.

Economic Impact

The rules proposed for re-adoption are expected to have no discernible economic impact on financial institutions since they merely prohibit deceptive and misleading practices. The cost of compliance has been minimized by making most of the advertising requirements consistent with Federal law. The requirement that mortgage bankers and brokers include in advertisements their name, address, telephone number and license type may have a marginal negative economic impact on these licensees, since this might require more advertising space. There will be no economic impact on the Department.

Executive Order No. 27 Statement

The rules proposed for re-adoption do not exceed the requirements imposed by Federal law under Truth in Lending or Truth in Savings. Therefore, an Executive Order No. 27 analysis is not required.

Regulatory Flexibility Analysis

The financial institutions regulated by these rules proposed for re-adoption are predominantly small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The only areas of compliance, that is, disclosure and advertising prohibitions, are not expected to necessitate professional services or require initial capital costs. Annual costs are expected to be minimal, if at all discernible. Minimization of any adverse impact upon small businesses is not attainable since the rules proposed for re-adoption are necessary to protect the public from deceptive and misleading practices.

Full text of the expired rules proposed herein as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 3:2.

COMMUNITY AFFAIRS

(b)

OFFICE OF THE COMMISSIONER

Organizational Rules

Petitions for Rules

Proposed New Rules: N.J.A.C. 5:2-2

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

Authority: N.J.A.C. 52:14B-4 and 52:27D-3.

Proposal Number: PRN 1995-268.

Submit comments by May 31, 1995 to:

Michael L. Ticktin, Esq.

Chief Legislative Analysis

Department of Community Affairs

CN 802

Trenton, New Jersey 08625

Fax No. (609) 633-6729

The agency proposal follows:

Summary

N.J.S.A. 52:14B-4(f) provides that any interested person may petition an agency to promulgate, amend or repeal any rule, that each agency shall prescribe the form for the petition and the procedure for the submission, consideration and disposition of the petition, and that the petition shall state clearly and concisely: (1) the substance or nature of the requested rulemaking; (2) the reasons for the request and the petitioner's interest in the request; and (3) references to the authority of the agency to take the requested action.

The proposed new rules at N.J.A.C. 5:2-2 which have the same text as rules that were previously in effect and that expired in 1994, implement these statutory requirements and establish a procedure for the review of petitions for rules. In addition to the statutory requirements for the content of the petition for rules, the Department would require a petitioner to give his or her full name and address and would have the statement concerning the petitioner's "interest in the request" include any relevant organizational affiliation or economic interest.

Social Impact

The proposed new rules provide a standard procedure for responding to petitions for rules that will ensure their being handled in an efficient manner that will be consistent with the statute.

Economic Impact

Interested parties may use the rule petition procedure to suggest rule changes that may be economically beneficial, either to them or to the public generally. These rules are intended to ensure that any such suggested changes are given full and fair consideration.

Executive Order No. 27 Statement

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

Regulatory Flexibility Analysis

The basic requirements for the submission of rule petitions are established by statute. The only additional requirements that would be imposed upon petitioners under the proposed new rules would be (1) inclusion of the petitioner's full name and address and (2) inclusion in the statement concerning the petitioner's interest in the request, which is required by statute, of mention of any relevant organizational affiliation or economic interest. Neither of these additional requirements is in any way burdensome, either to a "small business," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or to any other petitioner.

A petitioner may, if he or she so desires, engage the services of attorneys, accountants, planners, engineers or other professionals to assist in preparing a rule petition. There is, however, nothing in the proposed rules that would make it necessary for him or her to do so.

Full text of the proposed new rules follows:

5:2-2.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Department of Community Affairs, or by any of its component divisions or bureaus, pursuant to N.J.S.A. 52:14B-4(f).

5:2-2.2 Form of petition

(a) A petition for the promulgation, amendment or repeal of a rule shall be in writing, shall be legible and reasonably comprehensible, and shall be signed by the petitioner.

(b) Any such petition shall contain all of the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking that is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including, without limitation, any relevant organizational affiliation or economic interest; and
5. The statutory authority under which the Department may take the requested action.

(c) Any document submitted to the Department or to any of its component divisions or bureaus that is not in substantial compliance with (a) and (b) above shall not be deemed to be a petition for a rule requiring further action pursuant to N.J.S.A. 52:14B-4(f).

5:2-2.3 Procedure for petitions

(a) Petitions for the promulgation, amendment or repeal of a rule by the Department of Community Affairs or any of its component divisions or bureaus shall be addressed to the Office of the Commissioner, Department of Community Affairs, CN 800, Trenton, New Jersey 08625.

(b) Upon receipt of any such petition for a rule, the Office of the Commissioner shall date-stamp and log the petition and send a copy thereof to the director of any division having jurisdiction.

1. The Office of the Commissioner shall also provide a copy of the petition to the Department's Administrative Practice Officer.

(c) Within 20 days following receipt of a copy of the petition, a division director to whom such copy was sent shall recommend to the Commissioner, in writing, the proper course of action to be taken in response to such petitioner.

(d) Upon receipt of a copy of the petition, the Administrative Practice Officer shall prepare, for the Commissioner's signature, a notice of petition for a rule that is in compliance with N.J.A.C. 1:30-3.6(a). Upon signature by the Commissioner, the Administrative Practice Officer shall file such notice with the Office of Administrative Law.

(e) Within 30 days following receipt of the petition, the Commissioner, or any board or subordinate official within the Depart-

ment having rulemaking authority with regard to the subject matter of the petition, shall either deny the petition or proceed to act on the petition.

1. Upon notification as to the decision of the Commissioner, or of the board or subordinate official having rulemaking authority, with respect to the petition, the Administrative Practice Officer shall prepare a notice of action that is in compliance with N.J.A.C. 1:30-3.6(b). Upon signature by the Commissioner or other person having rulemaking authority, or person authorized to sign for a board having such authority, the Administrative Practice Officer shall file such notice with the Office of Administrative Law.

(a)

DIVISION OF CODES AND STANDARDS**Uniform Construction Code****Annual Permits****Proposed Amendments: N.J.A.C. 5:23-2.14, 4.18 and 4.20**

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

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

Proposal Number: PRN 1995-269.

Submit written comments by May 31, 1995 to:

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

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 5:23-2.14, 4.18 and 4.20 would change the method of training for annual permit holders. The training is provided so the annual permit holders can keep current with the adopted codes. Current rules provide for the Department to send training material (video tapes) to the annual permit facility and for the facility to use them as directed. The facility keeps a training log and certifies to the construction official that the information in the training log is correct. This procedure is costly for the Department and has not proven to be a good training tool for annual permit holders.

The proposed amendments would bring the journeymen and supervisors of the annual permit workers into the regular code enforcement training program. Instead of watching video tapes, up to three individuals per registered annual permit subcode would be eligible to take the training at the regular seminars given by the Department and to receive all training material. The Department would register these individuals and be responsible for verifying that the educational requirements are met.

Social Impact

The proposed amendments would raise the quality of training that the annual permit holder receives. They would be able to interact with the instructor and the class in a way not possible with video tapes. The materials received and the information presented may then be used at the facility and distributed to any other staff requesting the information.

Economic Impact

There would be a savings to the Department of \$15,000 that is now used for the production of video tapes. This savings would be in addition to the raising of the educational standard of the program. There would be no negative economic impact on the annual permit facility, since the annual permit training fee would be unchanged at \$140.00 per subcode. For the same money, the facility personnel will get a better quality of training.

Executive Order No. 27 Statement

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

Regulatory Flexibility Analysis

Businesses that choose to take advantage of the annual permit option will no longer have to provide construction code training for the entire maintenance staff. Instead, more effective training will be provided to not more than three individuals per subcode. Since the training will be provided by the Department at the same fee currently charged to each annual permit holder, there will be no added costs to businesses, regardless of whether they qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

5:23-2.14 Construction permits—when required

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

(c) An annual construction permit may be issued by the construction official to educational, industrial, institutional, mercantile, business and government facilities based upon submission of the following in duplicate:

1.-5. (No change.)

6. A statement from the management explaining their [policies and] procedures for providing training at **Department seminars** on construction codes on a regular basis for [their entire maintenance staff] **at least one, but not more than three, individuals per subcode.**

7.-8. (No change.)

(d) (No change.)

(e) Conditions of the annual permit are as follows:

1.-9. (No change.)

10. [Any training material made available to the facility by this Department will be used as directed.

i. The facility will conduct a minimum of five (5) instructional hours per year per subcode area in which the annual permit has been issued. Management of the facility will insure that the training is attended by all supervisors, engineers, foremen and workers involved in construction or maintenance work done under the annual permit.

ii. A training log will be maintained by the management of the facility. This log will indicate the types of training conducted, the dates, names and signatures of the staff who attended the training and certification by management to the Construction Official that the information is correct.] **Training for annual permits shall be provided at the seminars for code officials.**

i. **The facility shall provide a list of at least one, but not more than three, individuals per subcode who are required to complete five hours of continuing education per year.**

ii. **The Department shall maintain the training records for each annual permit. The annual permit shall not be renewed unless the facility completes the training for each issued subcode.**

iii. **The Department shall notify the construction official who issued the permit if the training has not been completed.**

11.-12. (No change.)

(f) (No change.)

5:23-4.18 Standards for municipal fees

(a) General:

1.-4. (No change.)

5. Prior to the issuance of the annual permit, a training registration fee of \$140.00 per subcode **and a list of at least one, but not more than three, individuals to be trained per subcode** shall be submitted by the applicant to the municipal construction official, who shall forward the fee **and list** to the Department of Community Affairs, Bureau of Technical Assistance, Training Section along with a copy of the construction permit (Form F-170C). Checks shall be made payable to "Treasurer, State of New Jersey." **The Department shall register these individuals and notify them of the courses being offered.**

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

5:23-4.20 Departmental fees

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

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

1.-4. (No change.)

5. Annual permit requirements are as follows:

i. (No change.)

ii. Fees for annual permits shall be as follows:

(1) (No change.)

(2) Prior to the issuance of the annual permit, a training registration fee of \$140.00 per subcode **and a list of at least one, but not more than three, individuals to be trained per subcode** shall be submitted by the applicant to the Department of Community Affairs, Bureau of Technical Assistance, Training Section along with a copy of the construction permit (Form F-170C). Checks shall be made payable to "Treasurer, State of New Jersey." **The Department shall register these individuals and notify them of the courses being offered.**

6.-9. (No change.)

(d) (No change.)

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code Building Subcode

Proposed Amendment: N.J.A.C. 5:23-3.14

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

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

Proposal Number: PRN 1995-270.

Submit comments by May 31, 1995 to:

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

The agency proposal follows:

Summary

N.J.A.C. 5:23-3.14 is proposed to be amended to restore the definition of "habitable attic" that appeared in the editions of the BOCA National Building Code issued prior to 1993. The definition was deleted editorially by the BOCA organization, without reference to the established code change process, on the grounds that the defined term does not appear in the text of the model code. It does, however, appear in BOCA Code Interpretation 29/201/82, a document published by BOCA in order to assist code officials in practical application of the code. This interpretation answers the question as to whether a habitable attic is a story above grade for purposes of determining building height (and therefore in determining what construction category the building is in) by stating that it is not, the reason being that "the definition of "Attic, habitable" limits the area of the ceiling to 'not more than one-third the area of the floor next below.' This is consistent with the definition for 'mezzanine' and 'penthouse,' neither of which are considered additional stories until they exceed the limitation of one-third the area of the floor next below." The absence of the definition in the 1993 edition of the code has made the use of this interpretation problematic.

Social Impact

Restoration of the definition will benefit code officials and persons doing construction alike by removing what is currently a source of uncertainty.

Economic Impact

Persons adding a habitable attic that meets the definition have been able to avoid more restrictive code requirements that would apply if the habitable attic were considered to be a story. Restoration of the definition will allow this to continue to be the case. The continued ability to rely upon the interpretation that uses this definition is therefore important to homebuilders and their purchasers, for whom more restrictive code requirements would result in unnecessary increased costs for homes built with habitable attics.

Executive Order No. 27 Statement

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

Regulatory Flexibility Statement

The proposed amendment will be equally beneficial to all persons doing construction involving the creation of habitable attics, regardless of whether or not they may qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

5:23-3.14 Building subcode

(a) (No change.)

(b) The following chapters of the building subcode are modified as follows:

1. (No change.)

2. The following amendments are made to Chapter 2 of the building subcode, entitled "Definitions," section 202.0 general definitions:

i-iv. (No change.)

v. **The following term and definition are added: "Attic, habitable: A habitable attic is an attic which has a stairway as a means of access and egress and in which the ceiling area at a height of 7½ feet (2235 mm.) above the attic floor is not more than one-third the area of the next floor below.";**

Recodify existing v.-xxv. as vi.-xxvi. (No change in text.)

3.-20. (No change.)

(a)

DIVISION OF CODES AND STANDARDS**Condominium, Fee Simple and Cooperative Conversion and Mobile Home Park Retirement****Proposed Readoption with Amendments: N.J.A.C. 5:24**

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

Authority: N.J.S.A. 2A:18-61.12, 2A:18-61.38 and 2A:18-61.59.

Proposal Number: PRN 1995-271.

Submit written comments by May 31, 1995 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules regarding condominium, fee simple and cooperative conversion and mobile home park retirement, N.J.A.C. 5:24, are scheduled to expire on July 10, 1995. N.J.A.C. 5:24 includes subchapters containing general provisions, rules on senior citizen and disabled protection tenancy, and protected tenancy in qualified counties. (This last subchapter applies only to Hudson County.)

The Department has reviewed these rules and finds that they continue to be necessary for the orderly and uniform administration of P.L. 1975, c.311, which provides protection from eviction for between three and eight years for tenants, regardless of age, condition or income, whose dwelling units are converted to a condominium, fee simple or cooperative form of ownership, of P.L. 1981, c.8, which provides protection to owners of mobile homes in mobile home parks being permanently retired from the rental market, of P.L. 1981, c.226, which protects senior citizens and disabled tenants who meet income and residency requirements from eviction for up to 40 years, and of P.L. 1991, c.509, which extends eligibility for protected tenancy in "qualified counties," defined by statute

in terms of minimum population and population density and currently including only Hudson County, to certain persons who would not otherwise meet either age or income requirements.

Subchapter 1, General Provisions, includes requirements for the "notice of intent" and "full plan of conversion" that must be furnished to tenants. It also specifies what constitutes the "comparable housing" that is required to be offered to tenants and what a "reasonable opportunity to examine and rent" such housing must involve. Additionally, it includes various procedural requirements and sets forth standards of fair dealing applicable to any conversion.

Subchapter 2 implements P.L. 1981, c.226, the Senior Citizens and Disabled Protected Tenancy Act. It prescribes the content of application forms, the application procedure, requirements for eligibility, subsequent determination of ineligibility, rules for local administrative hearings, rules concerning rent increases, procedural requirements for owners, rules for certification by local administrative agencies and fees to be paid to these agencies. Subchapter 3 supplements subchapter 2 by establishing additional procedures in accordance with P.L. 1991, c.509 and integrating them with existing procedures so as to avoid any unnecessary duplication.

Amendments are proposed for the purpose of making these rules consistent with the Planned Real Estate Development rules (see N.J.A.C. 5:26), as well as for making certain other corrections, including changing the name of the Division in accordance with the Department's recent reorganization.

Social Impact

N.J.A.C. 5:24 implements statutes that protect tenants, particularly those who are senior citizens or disabled, from eviction from their homes for a specified period of time when the buildings in which they live are converted from rental housing to a condominium, cooperative or fee simple form of unit ownership. It also implements statutory protection for mobile home owners who lease space in mobile home parks that are being retired from use. This protection allows time for these tenants or mobile home owners to make alternative plans and, for those who qualify, may make it unnecessary to search for alternatives. The re-adoption of these rules is necessary in order to provide owners, tenants, converters and local administrative agencies with the necessary guidelines to allow proper and uniform implementation of the statutes. Re-adoption will prevent the confusion that might result without the clear direction that the rules provide.

Economic Impact

These rules reduce the potential for confusion and uncertainty that could lead to unnecessary and costly litigation as parties attempt to sort out their rights and obligations. These costs could be significant to those involved, but cannot be determined specifically due to the multiplicity of factors involved.

Executive Order No. 27 Statement

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

Regulatory Flexibility Analysis

The rules place procedural and other requirements on owners or converters of rental buildings and on owners of mobile home parks. Most of these owners or converters would qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements include providing tenants with a notice of intent to convert and a full plan of conversion; providing moving expense compensation to certain tenants; providing copies of N.J.A.C. 5:24-1 to certain tenants; conforming to standards of fair dealing; and providing notice of intention to file application for registration of conversion, with supporting documentation, to Division. The administrative costs involved will vary with each conversion; professional services, including engineers and accountants, will be needed to produce the full plan of conversion. Since these rules implement statutory mandates, the Department is not able to establish different rules based upon business size or form of organization. The protection that must be provided to tenants and mobile home owners is the same, regardless of the size of the business of the owner or converter.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:24.

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

5:24-1.3 Documents required; conversion

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

(e) Any material change in the full plan of conversion or amendment to the Public Offering Statement (POS) under N.J.S.A. 45:22A-21 et seq. and N.J.A.C. 5:26[-1.1 et seq.] shall require such extension of the 90-day exclusive right to purchase as may be necessary to allow tenants who have not yet purchased their units at least 30 days remaining in which to exercise such exclusive right.

1. If the purchase contract offered by the developer does not include a contingency provision allowing a purchaser at least 60 days in which to secure financing for the purchase, then, unless the developer is providing such financing upon terms found by the Division of [Housing and Development] **Codes and Standards** to be reasonable, the exclusive right to purchase period shall be extended as long as may be necessary to allow such tenants at least 60 days in which to exercise such exclusive right.

[1.]2. (No change in text.)

[2.]3. A change shall be deemed "material" for the purpose of (e) [of this section] above if [so deemed by the Division of Housing and Development pursuant to N.J.A.C. 5:25-3.3(a)] **it is deemed by the Division of Codes and Standards to be a "material change" as defined in N.J.A.C. 5:26-1.3.**

[3.]4. Any determination by the Division of [Housing and Development] **Codes and Standards** that a change [in] is material shall be made within the 90 day exclusive right to purchase period or within such further period as may be required by the Division of [Housing and Development] **Codes and Standards** in order to investigate any allegation made during such 90 day period as to the existence of any circumstance or condition that might constitute or necessitate a material change.

5:24-1.4 Contents of notice of intent to convert

(a) The notice of intent to convert shall consist of three items as follows:

1.-2. (No change.)

3. A copy of this subchapter or any statement of tenants' rights in relation to conversion subsequently approved for this purpose by the Department of Community Affairs. These may be obtained from: Bureau of Homeowner Protection, Office of Landlord-Tenant Information, CN [809] **805**, Trenton, New Jersey 08625.

5:24-1.10 Landlord's liability

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

(c) This penalty of triple damages plus attorney's fees and court costs is also applicable where a tenant or mobile home owner vacates the premises after being given a notice alleging that the landlord seeks to permanently board up or demolish the premises or retire the premises from rental use under subparagraph g(1) or paragraph h of N.J.S.A. 2A:18-[16.1] **61.1** and the landlord thereafter permits personal occupancy of the premises by another tenant or mobile home owner within five years of such vacancy.

(d) (No change.)

5:24-2.2 Application forms

(a) A tenant seeking protected tenancy pursuant to the Act shall apply to the appropriate administrative agency or officer on a form prescribed by the Division of [Housing and Development] **Codes and Standards** of the Department of Community Affairs.

(b) (No change.)

5:24-2.9 Procedural requirements for owners

(a) An owner providing notice to an administrative agency or officer of his or her intention to file an application for registration of conversion with the Division of [Housing and Development] **Codes and Standards** shall provide to the administrative agency or officer sufficient current copies of the following forms provided by the Division of [Housing and Development] **Codes and Standards**:

1. [Fact] Instruction sheet;

2.-6. (No change.)

(b) (No change.)

(c) Forms at variance with the forms provided by the Division of [Housing and Development] **Codes and Standards** shall not be accepted.

(d) Notice of the conversion recording shall be given by the owner to the administrative agency or officer and to the Division of [Housing and Development] **Codes and Standards** within 10 days of such conversion recording.

5:24-2.10 Certification by administrative agency

(a) (No change.)

(b) Within two business days of the mailing of such notices, the administrative agency or officer shall provide to the owner an affidavit or certification of mailing by the person who mailed the notices. A duplicate of such affidavit or certification shall be included in the application for registration submitted by the owner to the Division of [Housing and Development] **Codes and Standards**, submission of such affidavit or certification with respect to all applications filed within the statutory 60 day period being a precondition to the issuance by the Division of [Housing and Development] **Codes and Standards** of a notice of filing for registration.

(c) Within two business days of having mailed notices of determination of eligibility to all applicants who filed during the statutory 60 day period, such determinations being required by the Act to be made in each case within 30 days of application, the administrative agency or officer shall provide to the owner a list of such determinations and an affidavit or certification by the person who mailed notices of such determination to the applicants. A duplicate of such list of determinations and affidavit or certification shall be [assigned] **forwarded** by the administrative agency or officer to the Division of [Housing and Development] **Codes and Standards** at CN **805**, Trenton, New Jersey **08625**, receipt thereof being a precondition [to] of registration.

(d) (No change.)

(a)

DIVISION ON AGING

County Offices on Aging

Proposed Readoption with Amendments: N.J.A.C. 5:71

Authorized By: Ruth Reader, Director, Division on Aging,
Department of Community Affairs.

Authority: N.J.S.A. 40:23-6.44.

Proposal Number: PRN 1995-278.

Submit written comments by May 31, 1995 to:

Warren McClain

Supervisor, Office of Area Agency on Aging Administration

Division on Aging

Department of Community Affairs

CN 807

Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules for County Offices on Aging, N.J.A.C. 5:71, are due to expire on June 4, 1995. The State Division on Aging has reviewed these rules and finds that they continue to be necessary for the orderly and uniform administration of the offices on aging that have been established in the 21 counties of this State.

N.J.A.C. 5:71 contains the rules concerning designation of grantees, functions of county offices on aging, responsibilities and qualifications of County Offices on Aging, executive directives, establishment and membership of advisory councils, responsibilities of the Division on Aging, requirements for cost sharing between the Division and the county offices, and audit procedures. These rules are proposed for readoption with the following amendments:

N.J.A.C. 5:71-1.5 is amended to provide the County Office on Aging's executive director with the power to appoint, with the approval of the contracting authority, an advisory council. The membership of the advisory council is clarified, to consist of older individuals (including minor-

ty individuals) who are participants or who are eligible to participate in programs assisted under the Older Americans Act, representatives of older individuals, local elected officials, providers of veterans' health care (if appropriate), and the general public.

N.J.A.C. 5:71-2.2 is amended to increase the calendar year grant limit from the Division on Aging from \$20,000 to \$40,000 per office, and to permit the County Office on Aging to use both cash and in-kind resources in calculating the annual allowable non-Federal costs.

N.J.A.C. 5:71-2.3 is amended to change the deadline for supplemental schedule or separate audit submission to the Division on Aging from April 15 to May 15 following completion of the grant agreement year.

Social Impact

The Division on Aging has been designated, in accordance with Federal and State statutes, as the agency primarily responsible for the comprehensive planning and coordination of programs and services for older persons in New Jersey. The establishment of county offices on aging and their designation as area agencies on aging assist the Division in overseeing the planning of comprehensive and coordinated service delivery systems, promotes the effective and efficient use of resources, and avoids the duplication which could diminish the full and positive social impact of programs and services intended by legislation.

Failure to readopt these rules would leave county offices on aging without necessary guidelines to prepare, develop and carry out an effective and efficient delivery of services to senior citizens. The mission of area agencies on aging is to: secure and maintain maximum independence and dignity in a home environment for older individuals capable of self-care with appropriate supportive services; remove individual and social barriers to economic and personal independence for older individuals; and provide a continuum of care for the vulnerable elderly. Through the development on an annual area plan contract, Area Agencies provide a coordinated service delivery system which includes, but is not limited to, case management, transportation, congregate and home delivered meals, homemaker services, preventative health services, and legal assistance.

There are over 1,395,546 persons aged 60 and over in the State of New Jersey. During 1994, over 392,651 elderly persons received in-home and community support services through the efforts of the area agencies on aging. In addition, 2,462,963 meals were served to over 36,786 individuals in congregate settings, and 2,426,238 meals were delivered to the homes of approximately 20,988 homebound elderly.

There are three changes in the proposed amendments. The first, N.J.A.C. 5:71-1.5, clarifies the composition and appointment process for Advisory Councils. The second, N.J.A.C. 5:7-12.2, updates and clarifies the Cost sharing requirements. The third change, N.J.A.C. 5:71-2.3, updates Audit procedures.

Economic Impact

There is a positive economic impact on persons aged 60 and over in the State of New Jersey, in that through these programs seniors are able to receive services to help them remain in their own homes. The more costly alternative of institutional care, therefore, becomes an alternative of last resort. Persons receiving services may make a voluntary contribution towards the costs of these services.

Failure to readopt these rules would leave county offices on aging without guidance as to the extent of State reimbursement for annual allowable costs they may expect to receive. Offices on aging may be reimbursed up to \$40,000 annually rather than \$20,000. In 1994, Federal Title III allocations totaled over \$24,657,590. An additional \$1,305,402 was provided through State funds.

Executive Order No. 27 Statement

No Executive Order No. 27 analysis is required because, although these rules implement Federal requirements under the Older Americans Act of 1965 as amended (P.L. 98-459), they do not exceed those requirements.

Regulatory Flexibility Statement

These rules affect county offices on aging. They do not affect "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:71.

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

5:71-1.5 Advisory councils

(a) The [grantee shall appoint, with the advice of the] executive director of the County Office on Aging shall appoint, with the approval of the contracting authority, an advisory council to assure broad representation with all segments of the general populace and to gain advice and assistance on program objectives, development and support.

(b) The advisory council shall [be representative of the total community. A majority of the advisory council must be age 60 or older and shall be consumers or potential consumers of planning and service area services. Those in greatest social and economic need must be represented on the council] consist of older individuals (including minority individuals) who are participants or who are eligible to participate in programs assisted under the Older Americans Act, representatives of older individuals, local elected officials, providers of veterans' health care (if appropriate), and the general public.

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

5:71-2.2 Cost sharing requirements

(a) The Division on Aging shall pay to each County Office on Aging which the Division has designated as the area agency on aging one-half of the amount of the annual allowable costs of the Office, provided the State appropriates such funds. In no case, however, may the Division on Aging's grant to an office for a calendar year exceed [\$20,000] \$40,000.

(b) In calculating the annual allowable non-Federal costs, the County Office on Aging may use both cash [or] and in-kind resources.

5:71-2.3 Audit procedures

(a) (No change.)

(b) The County Office on Aging, which the Division has designated as the area agency on aging, is required to provide the Division on Aging, through the board of chosen freeholders, with certified supplemental schedules to a single agency audit pursuant to the requirements of the Single Audit Act of 1984 (P.L. 98-502) for all funds received under the Older Americans Act, as amended (P.L. 98-459), except when the board of chosen freeholders elects to secure a separate certified audit of the Office on Aging area plan grant. Such supplemental schedules or separate audits must be provided to the Division no later than [April] May 15 following completion of the grant agreement year.

ENVIRONMENTAL PROTECTION

(a)

ENFORCEMENT OFFICE OF LOCAL ENVIRONMENTAL MANAGEMENT

County Environmental Health Standards of Administrative Procedure and Performance

Proposed Readoption: N.J.A.C. 7:1H

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

Authority: N.J.S.A. 26:3A2-21 et seq. and 13:1D-1 et seq.

DEP Docket Number: 14-95-03/52.

Proposal Number: PRN 1995-277.

Submit written comments, identified by the DEP Docket Number given above, by May 31, 1995 to:

Janis Hoagland, Esq.

New Jersey Department of Environmental Protection

Office of Legal Affairs

CN 402

Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the County Environmental Health Standards of Administrative Procedure and Performance, N.J.A.C. 7:1H, are scheduled to expire on July 13, 1995. The New Jersey Department of Environmental Protection (Department) has reviewed these rules and determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated and proposes to readopt this chapter without change. The re-adoption of N.J.A.C. 7:1H is necessary to ensure continued implementation of the County Environmental Health Act, N.J.S.A. 26:32A-21 et seq. (CEHA). Under CEHA, county health departments and other local agencies provide environmental health services throughout New Jersey. Local agencies provide these services under a delegation of authority from the Department.

CEHA directs the Department to promulgate performance standards and administrative standards to govern this local administration of environmental health services. In 1980, the Department promulgated rules containing those standards at N.J.A.C. 7:1H. The Department made minor amendments to those rules in 1983, and has not amended them since.

As it was enacted originally, CEHA authorized the Department to delegate authority for environmental health services in the areas of air pollution, solid waste, noise, and water pollution. Amendments to CEHA enacted in 1991 authorized the Department to delegate authority for environmental health services in additional areas, including hazardous waste, pesticides, radiation, the protection of workers and the public from hazardous substances and toxic catastrophes, and other areas specified by the Commissioner of the Department. These statutory amendments make it necessary for the Department to amend the rules implementing CEHA by establishing performance standards for the additional areas of environmental health services.

To assist the Department in finalizing amendments to the rule, the Department published a pre-proposal of the rules to solicit comments from interested members of the public (26 N.J.R. 3526(a), September 6, 1994). During October 1994, the Department held three public workshops to discuss the pre-proposed rules. The Department received substantial written and oral comments on the increased universe of programs which would be eligible for delegation to the CEHA agencies and the potential for overlap of responsibilities between the Department and CEHA agencies. Commenters requested that the Department postpone further development of the rules until their concerns regarding consistency in enforcement between the CEHA agencies and the Department, and among the CEHA agencies from county to county could be addressed. The Department agreed and established a task force of Department, regulated industry, and local health representatives to make recommendations to the Commissioner on how to best address these concerns in revised CEHA rules.

To continue the CEHA program without interruption in the environmental health services provided by the CEHA agencies in nineteen counties of the State, the Department proposes at this time to readopt the existing CEHA rules without amendments. This will enable the CEHA Task Force to make its recommendations to the Department and the Department to address these recommendations when it proposes the revised CEHA rules.

The following is a section-by-section description of N.J.A.C. 7:1H. Subchapter 1 contains the General Provisions, subchapter 2 contains the Environmental Health Standards of Administrative Procedure, and subchapter 3 contains the Environmental Health Performance Standards.

N.J.A.C. 7:1H-1.1 establishes the scope of the chapter.

N.J.A.C. 7:1H-1.2 provides that the rules are to be liberally construed so that the Department may effectuate the purpose of CEHA.

N.J.A.C. 7:1H-1.3 identifies the purposes of the chapter.

N.J.A.C. 7:1H-1.4 defines the words and terms used throughout the chapter.

N.J.A.C. 7:1H-2.1 states that CEHA certified agencies are required to meet the standards of administration and performance authorized in N.J.A.C. 7:1H, and in doing so, are eligible for receipt of grants, if available.

N.J.A.C. 7:1H-2.2 establishes the duties and powers of CEHA agencies.

N.J.A.C. 7:1H-2.3 requires the lead CEHA agency, as designated by the county governing body, to submit a work program to meet the administrative and environmental health performance standards. The

work program must describe the personnel and resources required to meet program objectives, the nature and scope of the environmental health programs for which delegation is being sought, the delineation of responsibilities in each program area, and a schedule for implementation. The Department uses the information set forth in the work program as the criteria for its decisions regarding agency certification, including the consistency of the delegation with applicable Federal or State law; the probable effects of the delegation on the effectiveness and efficiency of program administration; and the availability of technical expertise, adequate staff levels, and other resources needed to adequately perform program administration.

N.J.A.C. 7:1H-2.4 establishes conditions for local health agencies seeking to petition the department for certification under CEHA.

N.J.A.C. 7:1H-2.5 establishes personnel standards for individuals managing the delivery of environmental health services and for individuals performing the duties of a sanitary inspector.

Subchapter 3 contains the standards of performance for conducting environmental health programs in the areas of air pollution control (N.J.A.C. 7:1H-3.1), noise control (N.J.A.C. 7:1H-3.2), hazardous substance control, (N.J.A.C. 7:1H-3.3) solid waste control (N.J.A.C. 7:1H-3.4), potable water supply control (N.J.A.C. 7:1H-3.6), ground water pollution control and on-site sewage system management (N.J.A.C. 7:1H-3.7), surface water pollution control (N.J.A.C. 7:1H-3.8), and provision of public health laboratory services (N.J.A.C. 7:1H-3.5).

Social Impact

The proposed re-adoption of this chapter will allow the Department to continue, in full force and effect, the beneficial environmental programs resulting from the promulgation of these rules. The implementation of these rules has resulted in a strong cooperative effort between the State and its CEHA agencies. These rules have improved, and will continue to improve, long range planning, program development and implementation required by Federal and State laws in the control of air, water, solid waste, hazardous waste and noise pollution. The re-adoption will have a positive social impact since the public and the regulated business community will benefit from the provision of environmental health services by the 19 CEHA agencies.

Economic Impact

The proposed re-adoption of this chapter will result in a continuation of the existing program. Consequently, the Department foresees no additional economic impact. However, persons subject to enforcement actions taken by the CEHA agencies will continue to be required to come into compliance with the applicable environmental statutes.

Certified local health agencies under CEHA will continue to need county or municipal government funding support, and/or continue to require the assessment of fees for services provided to help maintain their environmental programs.

Historically, the State has provided a direct appropriation to the Department to implement CEHA as well as established a mechanism for CEHA agencies to receive excess penalty receipts to support, in part, the implementation of CEHA programs on a 50 percent matching grant basis. Future funding of the program will be one of the issues evaluated by the CEHA Task Force.

Environmental Impact

The proposed re-adoption of the rules will have the positive environmental impact of continuing the regulatory framework necessary to implement the benefits of the County Environmental Health Act, which include local health agency investigation, inspection, emergency response, enforcement, laboratory, and monitoring activities resulting in timely actions to minimize environmental impacts and ensure appropriate remedial and enforcement action when necessary. At present, 19 counties have obtained CEHA certification. There is in place, therefore, a system of local environmental services that supplement and enhance State environmental protection efforts.

Executive Order No. 27 Statement

This re-adoption is not proposed under the authority of or in order to implement or comply with any program established under Federal law. The re-adoption also is not proposed under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) does not require a comparison with Federal law.

Regulatory Flexibility Statement

The proposed readoption provides standards for the development of agreements between the Department and local health agencies to implement the provisions of the County Environmental Health Act. Continuation of the rules will, therefore, impose no reporting, recordkeeping or compliance upon small businesses as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1H.

(a)**COMMISSION ON RADIATION PROTECTION**

Notice of Public Workshops and Request for Public Comment
Regulations Governing Magnetic Fields from Electric Power Transmission Lines

DEP Docket Number: 15-95-03.

Take notice that the Commission on Radiation Protection (Commission) is requesting informal comments on draft regulatory language designed to reduce the magnetic fields from new or modified electric power transmission lines of 100 kilovolts and higher voltages. The draft regulatory language was developed by the Advisory Committee on Nonionizing Radiation, an advisory body appointed by the Commission, and has been endorsed by the Commission.

Three public workshops will be held throughout the State to discuss these draft regulations. The workshops will be held on:

Tuesday, May 23, 1995, at 9:30 A.M.

The New Jersey Board of Public Utilities' Board
Hearing Room

2 Gateway Center, Tenth Floor
Newark, New Jersey

Thursday, June 1, 1995, at 7:00 P.M.

The Greater Salem Community Center's Media Room
118 Walnut Street
Salem, New Jersey

Monday, June 12, 1995, at 6:00 P.M.

The New Jersey Department of Environmental Protection's
Radiation Protection Programs' Office, Large
Conference Room
729 Alexander Road
Princeton, New Jersey

A draft of the regulations is available for review by interested parties by contacting:

Deborah Riggs Wenke
Research Scientist
Bureau of Environmental Radiation
Department of Environmental Protection
CN 415
Trenton, New Jersey 08625-0415

Background

Over the past several years, there has been growing public concern about the potential adverse human health effects from exposure to 60 Hertz magnetic fields (EMFs). At the present time, however, there is uncertainty regarding the possible association between exposure to EMFs and cancer. In light of this scientific uncertainty, but recognizing that several studies have found adverse health effects associated with exposure to EMFs, the Commission believes that it is prudent to address this issue.

At this stage in the regulatory process, the Commission has adopted a philosophy to reduce the magnetic fields from all new or modified electric power transmission lines to levels as low as reasonably achievable (ALARA).^{*} The Commission's regulatory approach to the EMF issue, for which it is seeking comments, is as follows:

^{*}ALARA is a commonly-used term in the radiation protection field that takes into account the state of technology and the economics of improvements, in relation to the benefits to the public health and safety and other societal and socioeconomic factors.

1. The regulations will apply to new or modified electric power transmission lines of 100 kilovolts or higher voltage.

2. Owners of proposed new or modified electric power transmission lines must provide notice to the Department of Environmental Protection (Department) and the mayor of the local municipality affected by the proposed new or modified line. Notification of the proposed new or modified line must be made available to the public.

3. Owners of new or modified electric power transmission lines must reduce the magnetic field by at least 50 percent from standard line configurations within the right of way.

4. Owners of proposed new or modified electric power transmission lines may petition for a waiver from the requirements of these regulations. In the petition, the owners must demonstrate economic hardship or compelling need to justify such a waiver.

5. Individuals, who are aggrieved by the proposed new or modified electric power transmission line, may petition for a greater than 50 percent magnetic field reduction. In the petition, the individuals must demonstrate the uniqueness of the proposed line or must provide any other appropriate reason justifying the waiver request.

6. The draft regulations include a technical section on calculation and measurement methodology.

7. The draft regulations include a reporting requirement of the location and characteristics of each line.

8. The draft regulations include a provision that new recreational areas shall not be built within the right of way. For existing recreational areas in public areas that are within or abutting the right of way, the owner of the electric power transmission line is required to place warning signs to alert the public of the potential health hazard from exposure to EMFs. The regulations will specify the required language, color and size of the signs, and will specify where the signs should be placed.

9. The draft regulations will also include a section imposing fees on the owners of new and modified electric power transmission lines and subtransmission lines. The fees will be used to fund a program within the department to enforce these EMF regulations. The information gathered via this rule will be used to establish a database for use in the possible development of future regulations. At the present time, the Department's fee structure is too preliminary for comment. Notice of the fee schedule and a full opportunity to comment will be provided in the future, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

In addition, the Commission has reviewed Executive Order No. 27, (1994), which became effective on January 1, 1995 and was issued by Governor Whitman to prevent unnecessary State regulation in areas that are already regulated by the Federal government. In order to comply with Executive Order No. 27, Administrative agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements are required to include a comparison with Federal law. To the knowledge of the Commission, the Federal government has not instituted and is not currently considering regulating power frequency magnetic fields. Based on the information provided by utilities, transmission line designs are available that can reduce the magnetic fields by 50 percent from that of standard configuration. These designs would result in a cost of less than one dollar per year per ratepayer for a typical 15 mile segment of line. If the hypothesized association between health impacts and power frequency magnetic fields is validated, these designs would result in a substantial reduction of disease.

Issues

Several issues, which are summarized below, are raised by the Commission's draft EMF regulations. The Commission seeks public input regarding these issues, but does not intend to limit discussion with interested persons to these issues. The Commission welcomes input regarding all aspects of these regulations.

While the draft regulations are available for review, they are preliminary and conceptual in nature. Accordingly, any statement made therein is subject to change. Neither the Commission nor the Department shall be bound by any statement or concept presented in the draft regulations.

Regulatory approach. The Commission's proposed approach to regulating EMFs is to require at least a 50 percent reduction in the magnetic fields from new and modified electric power transmission lines as compared with those of standard line configurations. Some individuals believe a better approach would be to establish specific exposure or ambient magnetic field standards at the edge of the right of way. The values that have been proposed range from two milligauss to 200 milligauss.

However, the Commission believes that there are not sufficient scientific data to establish a numerical health-based standard. The Commission seeks public input on whether the proposed minimum 50 percent reduction of magnetic fields from new and modified electric power transmission lines is a reasonable regulatory approach.

Minimum 50 percent magnetic field reduction. The Commission chose the minimum 50 percent reduction figure because it was at this level that magnetic field reductions could be realized without incurring substantial costs. The Commission referred to a Washington State study entitled "Electric and Magnetic Field Reduction: Research Needs" in helping to reach this figure. The Commission seeks public input on whether this is an appropriate level of magnetic field reduction.

Placement of new lines in existing rights of way. The Commission considered whether to encourage the placement of new lines within new rights of way, or whether to encourage the placement of new lines in existing rights of way, which already have other high voltage electric power transmission lines. The question is whether the Commission should allow an increase in the total number of people living near electric power transmission lines in New Jersey, or whether the Commission should allow the potential hazard to be concentrated in existing rights of way. If the Commission chose this latter approach, future mitigation, should it become necessary, would be easier to implement. The Commission seeks public input on this issue.

Notification to public of new or modified lines. The Commission would like to include a notification mechanism in the regulations, which would alert the public of the proposed new or modified line. As envisioned, the Commission would require the Department and the mayor of each municipality affected by the line to be notified. The Commission seeks public input on how to make this information available to as many affected people as possible.

Measurement of magnetic fields. In developing the draft regulations, there was much discussion about how EMFs should be evaluated to determine compliance with the proposed regulations. The Commission believes that a reasonable approach is to calculate magnetic fields at every 50 foot interval from the centerline to the edge of the right-of-way or 100 feet from the centerline, whichever distance is greater. The Commission seeks public input on this question.

Waiver request by owners. The Commission is considering a waiver section, which would allow owners of electric power transmission lines to petition the Commission for a waiver from the requirements of the proposed regulations. The Commission seeks public input on the advisability of including such a waiver provision. The Commission also seeks public input on the standards (for example, economic hardship, compelling need) the Commission would use in determining whether to grant or deny a waiver request.

Waiver request by aggrieved persons. The Commission is considering a waiver section, which would give people aggrieved by the proposed new or modified electric power transmission line an opportunity to petition the Commission for a more stringent magnetic field reduction. The Commission seeks public input into the advisability of including such a waiver provision. The Commission also seeks public input on the basis (for example, uniqueness of line, proximity of line to unusually sensitive population) by which the Commission would determine whether to apply a more stringent standard to the proposed line.

Recreational areas located within rights of way. The Commission intends to prohibit all new recreational areas from being built within a right of way. However, for existing recreational areas within a right of way, the Commission recognizes the need for regulations to minimize exposures to EMFs. The Commission is considering requiring the owners of electric power transmission lines to place signs in any public areas within or abutting the right of way to alert the public of this potential health hazard. The Commission proposes to require that signs be placed every 100 feet along the perimeter of the entire recreational area. The Commission seeks public input on whether such warning signs would be too burdensome on the owners and whether these signs would unnecessarily frighten the public.

Text of warning signs. The warning sign language under review by the Commission is as follows:

NOTICE

Electromagnetic fields present at this site may have an adverse health impact to persons in this area. For further information contact the US Environmental Protection Agency or your local environmental officials.

The Commission seeks public input on the appropriateness of this language, and welcomes other suggested language.

Definitions. The Commission seeks public input on the draft definitions of "modified" and "recreational areas." "Modified," as defined, means:

the alteration of a substation or portion of an electric power transmission line, said portion having a minimum continuous length of 0.5 mile, which is reinsulated, reconductored or rebuilt for any reason, after the effective date of this rule.

Concern has been raised that this definition should be relaxed in order to allow for minor changes to the lines or changes that do not alter the magnetic fields. The Commission seeks public input addressed to this concern.

The definition of "recreational areas" is defined as follows:

an area used for non-occupational activities such as, but not limited to, playgrounds, ball fields, tennis courts and school yards.

Concern exists that this definition is too broad, and should be limited to playgrounds that children use. Another concern is whether recreation areas should include "passive" recreation areas such as wilderness areas and nature preserves. The Commission seeks public input in defining this term.

In addition to the public workshops, discussed above, **interested persons** may submit written comments by July 15, 1995 to:

Janis E. Hoagland, Esq.
Attention: DEP Docket No. 15-95-03
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

HEALTH

(a)

DRUG UTILIZATION REVIEW COUNCIL List of Interchangeable Drug Products Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry Kozek,
Secretary.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1995-276.

A **public hearing** concerning these proposed amendments will be held on Monday, May 22, 1995, at 2:00 P.M. at the following address:

Room 804, Eighth Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit comments by May 31, 1995 to:
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed conjugated estrogen could be used as a less expensive substitute for Premarin, a branded prescription medicine. Similarly, the proposed ranitidine, could be substituted for the more costly branded product, Zantac.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on

these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was \$7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Executive Order No. 27 Statement

The proposed amendments to N.J.A.C. 8:71 impose a standard of practice in New Jersey for licensed pharmacists and prescribers concerning generic drug substitution. The Federal government does not license practitioners to dispense, administer, or prescribe drugs. State law fixes the scope and standards of these authorized practices. The purpose of N.J.A.C. 8:71 was to encourage the substitution of cheaper, but therapeutically equivalent, generic drugs for more expensive brand name drugs. N.J.A.C. 8:71 does require that the pharmaceutical manufacturer demonstrate compliance with "Good Manufacturing Practices" of Title 21 of the United States Code and evidence of a satisfactory inspection by the Food and Drug Administration. These requirements do not exceed the Federal Food, Drug, and Cosmetic Act, Public Law 75-717.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq; specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendment follows:

The following products are proposed for **ADDITION** to the List of Interchangeable Drug Products:

ANAPROX Naproxen sodium 275 mg Tablet Chelsea	ANAPROX Naproxen sodium 275 mg Tablet Mutual
ANAPROX DS Naproxen sodium 550 mg Tablet Chelsea	ANAPROX DS Naproxen sodium 550 mg Tablet Mutual

ANAPROX Naproxen sodium 275 mg Tablet Purepac	ANAPROX DS Naproxen sodium 550 mg Tablet Purepac	ANEXSIA 5/500 Hydrocodone/APAP 5/500 mg Tablet King Pharm.	ANEXSIA 7.5/650 Hydrocodone/APAP 7.5/650 mg Tablet King Pharm.	ANSAID Flurbiprofen 50 mg Tablet Zenith	ANSAID Flurbiprofen 100 mg Tablet Zenith	ANUSOL HC Hydrocortisone acetate 25 mg Suppository Able	BELLERGA-S Belladonna alkaloids/ ergotamine tartrate/ phenobarbital 0.2/0.6/40 mg Tablet Anabolic	BENTYL Dicyclomine HCl 10 mg Capsule Lannett	BROMFED Brompheniramine/ pseudoephedrine 12/120 mg Capsule Kemont Labs	BROMFED PD Brompheniramine/ pseudoephedrine 6/60 mg Capsule Kenmont Labs	BRONTEX Guaifenesin/codeine 75/2.5 mg Per 5 ml Syrup DSC Labs
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BUMEX Bumetanide 0.5 mg Tablet Hoffman-LaRoche	BUMEX Bumetanide 1 mg Tablet Hoffman-LaRoche	BUMEX Bumetanide 2 mg Tablet Hoffman-LaRoche	CAFERGOT P-B Ergotamine tartrate 2 mg, caffeine 100 mg, belladonna 0.25 mg, pentobarbital 60 mg Per suppository Suppository Bio-Pharm	CAPOTEN Captopril 12.5 mg Tablet Geneva	CAPOTEN Captopril 25 mg Tablet Geneva	CAPOTEN Captopril 50 mg Tablet Geneva	CAPOTEN Captopril 100 mg Tablet Geneva	CAPOTEN Captopril 12.5 mg Tablet Lemmon	CAPOTEN Captopril 25 mg Tablet Lemmon	CAPOTEN Captopril 50 mg Tablet Lemmon	CAPOTEN Captopril 100 mg Tablet Lemmon	CAPOTEN Captopril 12.5 mg Tablet Mylan
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PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

CAPOTEN
Captopril
25 mg
Tablet
Mylan

CAPOTEN
Captopril
50 mg
Tablet
Mylan

CAPOTEN
Captopril
100 mg
Tablet
Mylan

CAPOTEN
Captopril
12.5 mg
Tablet
Royce

CAPOTEN
Captopril
25 mg
Tablet
Royce

CAPOTEN
Captopril
50 mg
Tablet
Royce

CAPOTEN
Captopril
100 mg
Tablet
Royce

CARAFATE
Sucralfate
1 g
Tablet
Biocraft

CARAFATE
Sucralfate
1 g
Tablet
Blue Ridge

CARDIZEM
Diltiazem
30 mg
Tablet
Lemmon/Teva

CARDIZEM
Diltiazem
60 mg
Tablet
Lemmon/Teva

CARDIZEM
Diltiazem
90 mg
Tablet
Lemmon/Teva

CARDIZEM
Diltiazem
120 mg
Tablet
Lemmon/Teva

CARDIZEM
Diltiazem HCl
30 mg
Tablet
Mutual

CARDIZEM
Diltiazem HCl
60 mg
Tablet
Mutual

CARDIZEM
Diltiazem HCl
90 mg
Tablet
Mutual

CARDIZEM
Diltiazem HCl
120 mg
Tablet
Mutual

CARDIZEM
Diltiazem
30 mg
Tablet
Novopharm

CARDIZEM
Diltiazem
60 mg
Tablet
Novopharm

CARDIZEM
Diltiazem
30 mg
Tablet
Zenith

CARDIZEM
Diltiazem
60 mg
Tablet
Zenith

CARDIZEM
Diltiazem
90 mg
Tablet
Zenith

CARDIZEM
Diltiazem
120 mg
Tablet
Zenith

COLCHICINE
Colchicine
0.6 mg
Tablet
Trinity

CROLOM
Cromolyn sodium
4%
Ophth. soln
B&L/Sight

DARVOCET N
Propoxyphene napsylate/
acetaminophen
50 mg/325 mg
Tablet
Mutual

DARVOCET N
Propoxyphene napsylate/
acetaminophen
100 mg/650 mg
Tablet
Mutual

DECONSAL II
Pseudoephedrine/guaifenesin
60/600 mg
Tablet
Kenmont Labs

DEPAKENE
as Sod valproate
250 mg/5 ml
Syrup
Hi-Tech

DESYREL
Trazodone HCl
150 mg
Tablet
Mutual

DITROPAN
Oxybutynin Cl
5 mg
Tablet
Blue Ridge

DORYX
Doxycycline hyclate
100 mg
Capsule
Faulding Pharm.

DULCOLAX
Bisacodyl
10 mg
Suppository
Able

ENDAL HD
Hydrocodone/phenylephrine/
chlorpheniramine
1.67/5/2 mg
Per 5 ml
Liquid
Kenmont Labs

ERYCETTE
Erythromycin
2%
Pledge
Stiefel Labs

FELDENE
Piroxicam
10 mg
Capsule
Danbury

FELDENE
Piroxicam
20 mg
Capsule
Danbury

FELDENE
Piroxicam
10 mg
Capsule
Royce

FELDENE
Piroxicam
20 mg
Capsule
Royce

GLUCOTROL
Glipizide
5 mg
Tablet
Danbury

GLUCOTROL
Glipizide
10 mg
Tablet
Danbury

HALCION
Triazolam
0.125 mg
Tablet
Chelsea

HALCION
Triazolam
0.25 mg
Tablet
Chelsea

HISTUSSIN HC
Hydrocodone bitartrate 2.5 mg,
phenylephrine HCl 5 mg,
chlorpheniramine 2 mg
Syrup
Kenmont Labs

HUMIBID DM
Dextromethorphan/guaifenesin
30/600 mg
Tablet
Kenmont Labs

HUMIBID LA
Guaifenesin
600 mg
Tablet
Kenmont Labs

HYTRIN
Terazosin
1 mg
Tablet
Novopharm

HYTRIN
Terazosin
2 mg
Tablet
Novopharm

HYTRIN
Terazosin
5 mg
Tablet
Novopharm

HYTRIN
Terazosin
10 mg
Tablet
Novopharm

LEVSIN
L-hyoscyamine sulfate
0.125 mg
Tablet
Trinity

HEALTH

PROPOSALS

LEVSIN
L-hyoscyamine sulfate
0.125 mg
Tablet
Trinity

LONITEN
Minoxidil
2.5 mg
Tablet
Mutual

LONITEN
Minoxidil
10 mg
Tablet
Mutual

LOPID
Gemfibrozil
600 mg
Tablet
Chelsea

LOPID
Gemfibrozil
600 mg
Tablet
Danbury

LOPID
Gemfibrozil
600 mg
Tablet
Mylan

LOTRIMIN
Clotrimazole
1%
Solution
Lemmon

LOZOL
Indapamide
2.5 mg
Tablet
Lemmon

LOZOL
Indapamide
2.5 mg
Tablet
Mylan

LOZOL
Indapamide
2.5 mg
Tablet
Zenith

MACRODANTIN
Nitrofurantoin
25 mg
Capsule
Geneva

MACRODANTIN
Nitrofurantoin
50 mg
Capsule
Geneva

MACRODANTIN
Nitrofurantoin
100 mg
Capsule
Geneva

MEXITIL
Mexiletine HCl
150 mg
Capsule
Geneva

MEXITIL
Mexiletine HCl
200 mg
Capsule
Geneva

MEXITIL
Mexiletine HCl
250 mg
Capsule
Geneva

MODURETIC 5-50
Amiloride HCl with
hydrochlorothiazide
5 mg with 50 mg
Tablet
Lemmon/Teva

MONISTAT
Miconazole
100 mg
Suppository
Able

MONISTAT
Miconazole
200 mg
Suppository
Able

NAPROSYN
Naproxen
250 mg
Tablet
Chelsea

NAPROSYN
Naproxen
375 mg
Tablet
Chelsea

NAPROSYN
Naproxen
500 mg
Tablet
Chelsea

NAPROSYN
Naproxen
250 mg
Tablet
Mutual

NAPROSYN
Naproxen
375 mg
Tablet
Mutual

NAPROSYN
Naproxen
500 mg
Tablet
Mutual

NITROL
Nitroglycerin
2%
Ointment
Blue Ridge

NOVAFED A
Pseudoephedrine HCl with
chlorpheniramine maleate
120/8 mg
Capsule
Kenmont Labs

ORGANIDIN NR
Guaifenesin
200 mg
Tablet
Summa RX Labs

PAMELOR
Nortriptyline HCl
10 mg
Capsule
Lemmon

PAMELOR
Nortriptyline HCl
25 mg
Capsule
Lemmon

PAMELOR
Nortriptyline HCl
50 mg
Capsule
Lemmon

PAMELOR
Nortriptyline HCl
75 mg
Capsule
Lemmon

POLY-HISTINE DM
Phenylpropanolamine HCl 12.5
mg, brompheniramine
maleate 2 mg,
dextromethorphan HBr
10 mg
Per 5 ml
Syrup
Kenmont Labs

POLY-VI-FLOR
Multiple vitamins with fluoride
0.25 mg F/ml
Drops
Bio-Pharm

POLY-VI-FLOR
Multiple vitamins with fluoride
0.5 mg F/ml
Drops
Bio-Pharm

POLY-VI-FLOR WITH IRON
Poly-vi-flor with iron substitute
0.5 mg F/ml
Drops
Bio-Pharm

POLYSPORIN
Bacitracin zinc 500 U,
polymyxin B sulfate 10,000 U
Per g
Ointment
B&L/Sight

PREMARIN
Conjugated estrogen
0.3 mg
Tablet
Duramed

PREMARIN
Conjugated estrogen
0.625 mg
Tablet
Duramed

PREMARIN
Conjugated estrogen
0.9 mg
Tablet
Duramed

PREMARIN
Conjugated estrogen
1.25 mg
Tablet
Duramed

PREMARIN
Conjugated estrogen
2.5 mg
Tablet
Duramed

PRENATE 90
Prenate 90 substitute
Per tablet
Tablet
Inter Tech Pharm.

REGLAN
Metoclopramide
5 mg
Tablet
Biocraft

ROBAXIN
Methocarbamol
500 mg
Tablet
Mutual

ROBAXIN
Methocarbamol
750 mg
Tablet
Mutual

RYNATAN PEDIATRIC
SUSPENSION
Chlorpheniramine 2 mg,
phenylephrine 5 mg,
pyrilamine 12.5 mg (each as
the tannate)
Per 5 ml
Suspension
DSC Labs

RYNATUSS PEDIATRIC
SUSPENSION
Chlorpheniramine 4 mg,
phenylephrine 5 mg,
carbetapentane 30 mg (each
as the tannate)
Per 5 ml
Suspension
DSC Labs

SECTRAL
Acebutolol HCl
200 mg
Capsule
Mylan

SECTRAL
Acebutolol HCl
400 mg
Capsule
Mylan

SELDANE Terfenadine 60 mg Tablet Blue Ridge	WYTENSIN Guanabenz acetate 4 mg Tablet Zenith
SELDANE Terfenadine 60 mg Tablet Novopharm	WYTENSIN Guanabenz acetate 8 mg Tablet Zenith
SILVADENE Silver sulfadiazine 1% Cream Blue Ridge	XANAX Alprazolam 0.25 mg Tablet Chelsea
TENORMIN Atenolol 50 mg Tablet Copley	XANAX Alprazolam 0.5 mg Tablet Chelsea
TENORMIN Atenolol 100 mg Tablet Copley	XANAX Alprazolam 1 mg Tablet Chelsea
TRIDESILON Desonide 0.05% Ointment Taro Pharm.	XANAX Alprazolam 2 mg Tablet Navopharm
VISKEN Pindolol 5 mg Tablet Lemmon	YOCON Yohimbine HCl 5.4 mg Tablet Kenmont Labs
VISKEN Pindolol 10 mg Tablet Lemmon	ZANTAC Ranitidine 150 mg Tablet Novopharm
VOLTAREN Diclofenac sodium 50 mg Tablet Novopharm	ZANTAC Ranitidine 300 mg Tablet Novopharm
VOLTAREN Diclofenac sodium 75 mg Tablet Novopharm	ZENATE Prenatal vitamin Per tablet Tablet Inter Tech Pharm.

Submit comments by May 31, 1995 to:
Dr. Jeanne Oswald
Administrative Practice Officer
Commission on Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Higher Education Restructuring Act of 1994, which abolished the Board and Department of Higher Education, preserved until July 1, 1995 rules governing residency requirements for tuition purposes for review and possible re-adoption by the newly created Commission on Higher Education. The Commission proposes herein new rules to replace those which will expire on July 1. The proposed new rules incorporate and clarify some provisions contained in existing rules and omit others. The proposal is in keeping with the spirit of the Higher Education Restructuring Act of 1994, which seeks to reduce regulation and to promote institutional autonomy.

Language regulating State residency for tuition purposes appears in N.J.A.C. 9:5-1. The Commission proposes repealing these rules and replacing them with new ones; the new chapter would contain two subchapters, one for State and one for county residency. The latter is currently addressed at N.J.A.C. 9:4-3.13, in the chapter establishing policies and procedures for county community colleges, which the Commission has proposed for repeal (see 27 N.J.R. 1387(a) and (b), published April 3, 1995).

Proposed N.J.A.C. 9A:5-1.1(a) would establish 12 months as the required State residency period to qualify for in-State tuition rates at New Jersey public colleges and universities. N.J.A.C. 9A:5-1.1(b) would ensure the continued eligibility for State financial aid of dependent students whose parents move to another state. N.J.A.C. 9A:5-1.1(c) would give colleges the authority to require students to prove residency. Proposed N.J.A.C. 9A:5-1.2 stipulates the types of documentation that a college may require as proof of a student's residency and requires it to keep copies of the evidence provided.

N.J.A.C. 9A:5-2.1 addresses county residency for purposes of paying in-county tuition at county colleges. The proposed new rule requires in-State residency, as defined in proposed N.J.A.C. 9A:5-1.1(a), plus residency in the county where the college is located, but for no minimum period. This language differs from that of the existing rules regulating eligibility for in-county tuition rates. Those rules have been misinterpreted to allow anyone living in the county for six months before enrolling at a county college to pay in-county tuition regardless of whether they had lived in the State for 12 months. However, the Attorney General's office has advised that such interpretation is inconsistent with statute; the proposed new rule clarifies the State residency aspect of eligibility for in-county tuition rates and omits the ambiguous reference to six-month residency that appears in the existing rule. The county college presidents have indicated that they understand the need for such changes in the regulatory language.

Existing N.J.A.C. 9:5-2 sets forth tuition policies for the unemployed and are not addressed in this proposal. In accordance with the Higher Education Restructuring Act, these rules (scheduled to expire April 1, 1996) remain in effect until the Commission of Labor amends or repeals them.

Social Impact

The former Board of Higher Education exercised significant regulation and oversight of higher education institutions in New Jersey. The Board's rules in N.J.A.C. 9:5-1 set forth general tuition policies, including student residency requirements for tuition purposes, applicable to all public colleges and universities; the rules at N.J.A.C. 9:4-3.13 regulate eligibility for in-county tuition at county community colleges. The Higher Education Restructuring Act of 1994 removes State-level oversight to a large extent and gives trustee boards greater responsibility and authority for managing their respective institutions. The act preserves for one year rules concerning residency for tuition purposes for re-adoption, revision, or repeal by the Commission on Higher Education.

In the spirit of restructuring, the Commission proposes repeal of the existing rules and adoption of new ones that reduce State regulation and promote institutional autonomy, keeping intact only those portions where it believes State involvement is appropriate. The proposed new rules would omit two areas currently regulated by the State: partial

HIGHER EDUCATION

(a)

COMMISSION ON HIGHER EDUCATION

Residency Requirements for Tuition Purposes at Public Colleges and Universities

Proposed Repeal: N.J.A.C. 9:5-1

Proposed New Rules: N.J.A.C. 9A:5

Authorized By: Commission on Higher Education, Joseph D. Williams, Chair.

Authority: N.J.S.A. 18A:3B-15.

Proposal Number: PRN 1995-280.

tuition remission for foreign students, at N.J.A.C. 9:5-1.4, and free tuition for senior citizens, at N.J.A.C. 9:5-1.5. The former currently limits public college governing boards' authority to waive for foreign students the difference between nonresident and resident tuition. Removing this restriction accords with the intent of autonomy and with the State colleges' statutory authority to grant tuition waivers to accomplish mission-related goals. The rule on senior citizen waivers (N.J.A.C. 9:5-1.5) is unnecessary because the Restructuring Act eliminated the need for rules to implement the related statute (N.J.S.A. 18A:62-3). The public colleges and universities enrolled approximately 2,000 undergraduates from foreign countries and about the same number of senior citizens in fall 1993.

The proposed new rules allow New Jersey residents to attend public institutions at reduced tuition rates. In the Fall term of 1993, about 237,000 of the 248,000 undergraduates at the State's public colleges and universities were from New Jersey.

Economic Impact

The proposed new rules allow (as did the repealed rules) reduced tuition rates for State residents at public colleges and universities and for county residents at county community colleges. Average tuition for New Jersey resident undergraduates at Rutgers University in the 1994-95 academic year was roughly half that for out-of-State students (\$119.00, compared with \$243.00 per credit). In-county tuition charges at county community colleges ranged from \$48.00 to \$62.00 per credit; the out-of-county differential ranged considerably from college to college. (At most county colleges, the non-New Jersey resident charge is significantly higher than the out-of-county rate.) At the State colleges, per credit tuition charges for in-State students ranged from \$69.50 to \$106.00 per credit, while that for non-New Jersey residents ranged from \$95.00 to \$185.00; the out-of-State differential ranged from \$23.50 to \$79.00. Removal of State regulation of tuition remissions and waivers for foreign nationals and for senior citizens will not affect the availability of these benefits for such individuals.

Executive Order No. 27 Statement

The proposed repeal and new rules are not subject to the Federal exceedance standards because establishment by the Commission on Higher Education of residency requirements for tuition purposes is not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed repeal and new rules do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined under N.J.S.A. 52:14B-16 et seq., known as the Regulatory Flexibility Act. The proposed new rules deal strictly with residency requirements for tuition purposes at public colleges and universities in New Jersey.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 9:5-1.

Full text of the proposed new rules follows:

CHAPTER 5

RESIDENCY REQUIREMENTS FOR TUITION PURPOSES AT PUBLIC COLLEGES AND UNIVERSITIES

SUBCHAPTER 1. STATE RESIDENCY

9A:5-1.1 Eligibility for New Jersey resident tuition

(a) Persons residing in New Jersey for a period of 12 months before first enrolling at a public higher education institution in this State are presumed to be State residents for tuition purposes.

(b) A dependent student as defined in regulations of the Student Assistance Board, who has been determined to be a State resident as defined in this subchapter, shall continue to be eligible for State resident tuition status despite a change of domicile to another state by the student's supporting parent(s) or guardian(s) provided that the student maintains New Jersey residency during each academic year of enrollment.

(c) Persons presumed to be residents or those whose residency status is challenged by the institution must, at the institution's discretion, prove residency according to this subchapter.

9A:5-1.2 Proof of residency

(a) For the purposes of N.J.A.C. 9A:5-1.1, primary evidence of residency shall include a notarized affidavit by the student stating his or her residence and either:

1. For an independent student, a copy of his or her New Jersey income tax return or evidence of withholding of said tax; or

2. For a dependent student, a copy of the parent's(s') or guardian's(s') New Jersey income tax return or evidence of withholding of said tax.

(b) If the institution requires a student to document his or her residency status pursuant to this chapter, the student shall provide, in addition to that which is specified in (a) above, as much supplementary evidence as the institution deems necessary. Supplementary evidence may include a voter registration card, a motor vehicle license and/or a registration, or such other material as the institution deems acceptable.

(c) If primary evidence of residency is not immediately available due to the loss or destruction of records, the institution may make a determination based exclusively on supplementary evidence.

(d) In every instance, the institution shall keep with the student's records copies of the evidence it used in determining domicile pursuant to this section.

SUBCHAPTER 2. COUNTY RESIDENCY

9A:5-2.1 Eligibility for county resident tuition

To qualify as a county resident for tuition purposes at county community colleges, a student must be a State resident as defined in N.J.A.C. 9A:5-1.1 and have permanent residency in the county or counties sponsoring the college before first enrolling at the college, as documented by a certificate of residency, a voter registration card, a motor vehicle license and/or registration, or such other material as the institution deems acceptable.

CORRECTIONS

(a)

THE COMMISSIONER

Adult County Correctional Facilities

Proposed New Rules: N.J.A.C. 10A:31

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and P.L. 1994, c.153.

Proposal Number: PRN 1995-279.

Submit comments by May 31, 1995 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:31, Adult County Correctional Facilities, expired on March 5, 1995. The Department of Corrections has reviewed the expired rules and, with the following amendments, has determined these rules to be necessary, reasonable and proper for the purposes for which they were originally promulgated. Due to the expiration of this chapter, these rules are proposed as new rules; however, to facilitate understanding of the changes proposed to be made to the expired rules and due to the retention of the text thereof in the Administrative Code, the changes proposed are discussed below, and depicted in the rule text, as amendments.

The name of the Correction Officers Training Academy and Staff Development Center was officially changed on November 10, 1994, to the Thomas M. Cooper Corrections Staff Training Academy. This change has been made throughout Chapter 31.

Subchapter 1 provides the purpose, scope of the chapter, and the definitions of words and terms used. Definitions for "multiple occupancy sleeping unit" and "unencumbered space" are proposed to be added.

Subchapter 2 establishes the authority of the Department of Corrections to set minimum standards for adult county correctional facilities and the guidelines which permit correction officials to analyze, inspect and evaluate the adult county correctional facilities.

Subchapter 3 establishes the minimum criteria for the planning, design and construction of new adult county correctional facilities or renovation of existing facilities. On further examination of this subchapter, the Department of Corrections agrees that the New Jersey adult county correctional facilities are being held subject to more stringent standards on physical plant and design than those standards recommended by the American Correctional Association (ACA). Thus, the Department of Corrections is hereby proposing amendments throughout this subchapter which do not exceed the ACA minimum standards. Also, N.J.A.C. 10A:31-3.2, Program statement, is not retained as a new rule because it is redundant with N.J.A.C. 10A:31-3.3, which requires submission of all plans and specifications to the Chief, Bureau of County Services. N.J.A.C. 10:31-3.3. through 3.16 have been recodified as N.J.A.C. 10A:31-3.2 through 3.15.

In addition to the aforementioned proposed amendments, minor changes in language for the purpose of simplification and clarification have been made throughout this subchapter.

In N.J.A.C. 10A:31-3.2(a) (recodified from 3.3), language referring to copies of specifications being submitted to other applicable regulatory agencies has been deleted and replaced with the words, "to ensure compliance with the requirements set forth in this chapter." The function of the Chief, Bureau of County Services, is to ensure compliance with the N.J.A.C. 10A:31 not to act as a regulatory agent. The Department also proposes that at subsection (b) the word "let" be changed to the more appropriate architectural term of "awarded." The reference to Jail Administrator is being replaced with the words, "appropriate county administrator," because the Jail Administrator is not always the person who oversees the contracts within the counties.

In N.J.A.C. 10A:31-3.3 (recodified from 3.4), subsection (a) has been clarified to require construction and/or renovation that is in compliance with both State and local building and fire codes. The Department proposes the deletion of subsection (b) because the Chief, Bureau of County Services, does act as arbitrator between State and local agencies that set standards.

Numerous changes are proposed to N.J.A.C. 10A:31-3.4 (recodified from 3.5) that reflect the intent of the Department to conform with American Correctional Association Standards. The current subsection (b) as written, is too restrictive as to the placement of correctional facilities; therefore the Department proposes that placement of adult county correctional facilities be geographically accessible to the public and staff. At subsection (c), the words, "that is possible" are inferred and have been deleted from the language that specifies that work stations and control rooms be situated to provide the greatest degree of observation. Also, pursuant to the American Correctional Association (ACA) standards, language has been added at subsection (c) which requires access to toilet facilities from the staff work stations and control rooms. Some language deletions at subsections (d), (e) and (h) are being proposed because the language is programmatic and does not relate to facility planning and design. Subsection (i) has been rewritten. The building requirements for new facilities have changed because both single and multiple occupancy sleeping units are considered appropriate for general population inmates. Language regarding a communication system at existing subsection (n) has been deleted since this is redundant with the section entitled "Monitoring system" at recodified N.J.A.C. 10A:31-3.20. Subsections (o) through (v) have been recodified as (n) through (u). At subsection (n), the list of items to be secured in storage has been expanded to include personal clothing of inmates, personal property of inmates and institutional clothing of inmates. This amendment represents a consolidation of similar lists found at existing N.J.A.C. 10A:31-3.5(w), 3.6(g) and 3.17. To eliminate redundancy, the lists found at existing N.J.A.C. 10A:31-3.5(w), 3.6(g) and 3.17 have been deleted. Language has been added to subsection (o), which requires that weapon lockers be individual compartments, each with an individual lock and key. Similar language has been deleted from existing N.J.A.C. 10A:31-3.6(e) because this statement is a general condition requirement for a facility. The word "cabinet" has been deleted at N.J.A.C. 10A:31-3.4(p) because this rule is security related in nature for the purpose of deterring inmates from escaping from a facility, and does not relate to a cabinet. Subsection (q) has been reworded to reflect the change in the candle illumination level from 30 to 20 foot candles. This reduction is based on the ACA standards. Also, in order to clarify that

light fixtures throughout the correctional facility should be of the same type as required for housing units and dayroom areas, the requirement that light fixtures throughout the correctional facility shall be security tamper-proof recessed type protected by laminate tempered glass or break-resistant plastic lens has been added at subsection (q). References to ventilation have been deleted from subsection (r) since ventilation requirements are regulated by State and local building codes, and clarification provided that security screening must be installed on operable windows. Language referring to individual visiting rooms being provided at subsection (s) has been deleted because as written this requirement exceeds ACA standards.

The heading of N.J.A.C. 10A:31-3.5 (recodified from 3.6) has been changed from "Area for reception and booking" to "Reception and booking area; holding room." The words, "(pedestrian and/or vehicle)" have been deleted from subsection (b) because the intent of having a separate entrance is to ensure security of inmates, not pedestrians and/or vehicles. The existing subsections (d) and (h) have been rewritten for clarity by creating four new subsections (e) through (h). Since holding rooms are part of the intake area and are used to detain inmates temporarily during the reception process, at subsection (e) the minimum floor space per individual occupancy holding room has been reduced from 70 to 60 square feet of floor space. This requirement will now be consistent with the municipal detention facility minimum specification of 60 square feet of floor space—N.J.A.C. 10A:34-2.7(b). Subsection (f) has been recodified as (i) and rewritten to clarify where interview rooms should be placed in the facility. Existing subsection 3.6(g) has been deleted because this section is redundant with language at N.J.A.C. 10A:31-3.4(h), (recodified from 3.5).

The reference to "including cell" in the heading of N.J.A.C. 10A:31-3.6 (recodified from 3.7) is not necessary and has been deleted. Subsection (a) has been deleted because this information is provided at N.J.A.C. 10A:31-3.4(q) (recodified from 3.5). N.J.A.C. 10A:31-3.6(b) and (c) (recodified from 3.7) concerning heating and ventilation systems and noise levels have been deleted since these requirements are now regulated by State and local building codes. Language at subsection (d) regarding cells and rooms not being less than 70 square feet in area and having at least 560 cubic feet in air space has been deleted and replaced by subsections (a) through (c). The new subsections are based on the ACA standards which now require unencumbered floor space rather than air space and partitions if more than four inmates are housed in one multiple occupancy sleeping unit. Subsections (e) through (f) have been recodified as (d) through (e). The words, "single occupancy cell or multiple occupancy sleeping unit" have been added to recodified (d) because the regulations listed in paragraphs 1 through 6 apply to both types of units. At recodified paragraph (d)1, the words "for each occupant" have been added to specify that a separate bunk is required for each occupant. Additionally, the language referring to the specific inch size of a mattress has been deleted because mattress measurements depend on the size of the bunk. At recodified paragraph (d)2, language requiring lavatory combination units and the recommendation to use stainless steel bathroom equipment has been deleted because this is not a requirement of the ACA. The words "serviceable from outside the cell or multiple occupancy sleeping unit" have been added to recodified paragraph (d)2 because the Department has deemed this requirement necessary to ensure security and safety. Amendments at recodified (d)3 through 6 have been made in accordance with the ACA standards. At paragraph (d)3, language regarding the specific dimensions and description of a steel shelf has been deleted because it exceeds ACA standards which requires that a storage area for personal items be provided. At paragraph (d)4, the requirement to provide "a metal" mirror has been replaced with broader language indicating that the mirror should be "unbreakable." Language has been added at paragraph (d)5 and 6 which will require the provision of a writing surface, a sitting area and proper ventilation and exhaust equipment. At recodified subsection (e), the word "detention" has been added because this word is one of the three commonly referred to names of this type of cell. The word "floorspace" has been added to the recodified paragraph (e)1 to clarify what area is being referenced. Language at recodified paragraph (e)2 concerning minimum cubic feet of airspace has been deleted because it exceeds the ACA standards; also the word "metal" has been inserted before bunk because metal bunks are sturdier, safer and more secure. Recodified paragraph (e)3 has been reworded for clarity, with "a security tamper-proof recessed light" replacing "an inaccessible recessed light." Existing N.J.A.C. 10A:31-3.7(f)5 and 6 were combined and rewritten as N.J.A.C. 10A:31-3.6(e)4.

Existing subsections N.J.A.C. 10A:31-3.7(g), (h) and (j) have also been rewritten for clarity and combined into N.J.A.C. 10A:31-3.6(f), (g) and (i). At recodified subsection (j), the minimum ratio of toilets, wash basins and mirrors have been increased to be in accordance with ACA standards. The existing N.J.A.C. 10A:31-3.7(k) has been deleted because the cell and room requirements are redundant with recodified N.J.A.C. 10A:31-3.6(e) and much of the deleted language is programmatic in nature. In order for the Department of Corrections to be in agreement with ACA standards, square footage will now be based on "unencumbered space." Thus, at recodified N.J.A.C. 10A:31-3.6(h), the square footage of floor space per inmate in dormitories has been changed from "75 square feet of floor space" to 25 square feet of unencumbered floor space. The ceiling height has been changed from 10 feet to the standard construction height of eight feet. The portion within subsection (h) explaining dormitory use has been deleted due to being programmatic and not related to physical plant planning and design. To meet ACA standards, amendments to subsection (k) regarding dayrooms include the addition of language that requires the floor space to be exclusive of lavatories, showers and toilets, and the deletion of language which requires dayrooms to be located in each housing area serving groups of eight to 16 inmates. The general statement that dayrooms "should avoid a corridor-like proportion and be conducive to the conduct of various program activities" has been deleted. The existing N.J.A.C. 10A:31-3.7(m) has been rewritten for clarity and codified as N.J.A.C. 10A:31-3.6(j). Language at existing N.J.A.C. 10A:31-3.7(p) and (q) has been deleted and replaced with the language at recodified N.J.A.C. 10A:31-3.6(l) because existing language stipulates more specific requirements than are set forth by ACA standards of providing sufficient seating, writing and eating surfaces for every inmate using the dayroom at one time. At recodified N.J.A.C. 10A:31-3.7(m), language regarding the housing of a qualified inmate with a disability has been added in accordance with ACA standards.

At N.J.A.C. 10A:31-3.7 (recodified from 3.8), the words "in cell areas" have been deleted from the heading because cells are not the only places within the correctional facilities which have showers, drinking fountains, shut off valves and drains. At subsection (a), language regarding water temperature has been added pursuant to the American Correctional Association (ACA) standards. Additionally, the ratio of showers to inmates has been increased from one shower head per 15 inmates to one shower head per 16 inmates due to the fact that housing units are usually constructed in even numbers. Amendments at subsections (b), (c) and (d) are for clarification purposes and have been made to meet ACA standards.

At N.J.A.C. 10A:31-3.8 (recodified from 3.9) the words "indoor and" have been added to the text at subsection (b) to clarify that indoor exercise areas are also required. The Department of Corrections does not feel a minimum height of 18 feet is necessary for all indoor exercise areas and proposes the deletion of this requirement at subsection (c) and suggests rather that the minimum clearance height be determined by the activities performed.

The heading of N.J.A.C. 10A:31-3.10 (recodified from 3.11) has been changed to read, "Health care facilities and equipment." Subsection (a) has been rewritten and (c) has been deleted because the Department of Corrections believes that the county appointed health authority should determine health care space, equipment, supplies and materials.

At N.J.A.C. 10A:31-3.11 (recodified from 3.12), specific language referring to a multipurpose room was deleted because it exceeds the ACA standards which requires space to be available for haircare, not specifically in a multipurpose room.

At N.J.A.C. 10A:31-3.12 (recodified from 3.13), subsection (a), regarding provision being made for inmates to purchase specified items, has been deleted due to being programmatic and not related to physical plant planning and design. Subsection (b) has been rewritten for clarity and to bring these regulations into agreement with the ACA standards which state that an area be provided for a commissary or provisions be made for a commissary service.

The heading of N.J.A.C. 10A:31-3.14 (recodified from 3.15) has been changed to read "Visiting and interview areas" and language referring to "attorney interviews" has been deleted. As written, the present heading refers to attorney interviews which is too restrictive since these areas may be used by persons other than attorneys for interviews. Two new subsections, (d) and (e), were added which require areas for searching both visitors and inmates and areas that provide storage for the visitor's personal items which are not permitted into the visit area.

At N.J.A.C. 10A:31-3.15 (recodified from 3.16), a grammatical change was made to subsection (a) and a new subsection (b) was added requiring that janitorial closets be accessible to the living and activity area of inmates. This regulation is a minimum requirement of the American Correctional Association (ACA).

Existing section N.J.A.C. 10A:31-3.17 regarding storage rooms has been deleted because this section is redundant with language at N.J.A.C. 10A:31-3.4(n) (recodified from 3.5).

The heading of N.J.A.C. 10A:31-3.16 (recodified from 3.18) has been changed to read "Administrative and staff areas" since this section includes regulations that refer to staff as well as administrative areas. Subsection (a) has been clarified to delineate the staff, and paragraphs (a)2 and 5 have been expanded to require shower and toilet facilities for staff.

At N.J.A.C. 10A:31-3.17 (recodified from 3.19) the word "separate" has been added before the words "prisoner entrance" and "visitor and delivery entrances" for clarification. Also, a new paragraph (a)5 has been added in order to clarify that perimeter surveillance is a requirement not an option.

N.J.A.C. 10A:31-3.18 (recodified from 3.20) has been clarified to delineate that arsenals shall be secure, adequately ventilated, located outside the housing and activity areas, and readily accessible to authorized staff members.

The heading of N.J.A.C. 10A:31-3.19 (recodified from 3.21) has been changed to read "Building and fire codes" and has also been rewritten because fire alarm systems and new construction or renovated buildings must conform with all applicable Federal, State and local building and fire codes and a letter or certificate must be issued by the respective code official.

N.J.A.C. 10A:31-3.20 (recodified from 3.22) has been given a new heading, "Monitoring systems," and revised because communication is not only required with the central control station and inmate living areas but with supervising officers as well.

At N.J.A.C. 10A:31-3.21 (recodified from 3.23), several minor amendments in language have been made for clarification and specificity. A new paragraph (b)4 has been added requiring emergency power to any areas as regulated by building and/or fire codes.

At N.J.A.C. 10A:31-3.22 (recodified from 3.24), a new subsection (b) has been added. This new subsection requires security bars no more than four inches on center in all ventilation ducts located inside the security perimeter of the facility.

Subchapter 5 establishes the minimum policy guidelines for the training of adult county correctional facility employees.

Subchapter 6 provides the policy guidelines for the maintenance of inmate records and the procedure for the release and examination of records by authorized individuals and agencies.

Subchapter 7 establishes the minimum criteria for the development of emergency plans and the handling of emergencies for adult county correctional facilities.

Subchapter 8 provides the definition for contraband; the policy guidelines which govern the search of inmates and facilities to include the use of search plans and security devices; the use of force by custody personnel; and the transportation of inmates.

Subchapter 9 provides guidelines for the use and storage of security equipment, such as, but not limited to, restraining equipment, chemical agents and weapons.

Subchapter 10 provides policy guidelines for food service within adult county correctional facilities.

Subchapter 11 provides the policies for sanitation at adult county correctional facilities and requires compliance with codes, housekeeping plans, inspections, floors, vermin and pest control, and proper disposal of liquid and solid wastes.

Subchapter 12 provides the policies concerning inmate clothing, and living conditions such as, but not limited to laundry, bedding, and personal hygiene.

Subchapter 13 provides the policies and procedures to be followed in providing medical, dental and health services to inmates at adult county correctional facilities.

Subchapter 14 provides the general policy guidelines on presumption of innocence, protection from abuse, discrimination, inmate grievance procedures, religious freedom, and media access.

Subchapter 15 establishes the general policy guidelines for the provision of legal services to inmates in order to facilitate their access to State and Federal courts.

Subchapter 16 requires the adult county correctional facility to notify inmates of the rules, regulations and the disciplinary process within the facility by providing inmates with a booklet as part of the admission process. This subchapter also provides a schedule of sanctions which may be imposed on inmates who have been found guilty of prohibited acts; provides procedures for the disciplinary process which is initiated when an inmate violates a prohibited act; and provides the process by which an inmate may file an appeal for the disciplinary sanctions imposed.

Subchapter 17 provides the factors to be considered when determining whether to place an inmate in disciplinary detention; the security procedures for the disciplinary detention unit; and the services provided. N.J.A.C. 10A:31-17.8 has been deleted because assignment of correction officers is a union contractual bidding process and should not be regulated by N.J.A.C. 10A:31. A new section with the heading "Recreation" has been added at N.J.A.C. 10A:31-17.8. This new rule requires five hours per week of recreation outside the detention cell when conditions permit.

Subchapter 18 provides the general rules which govern the admission of an inmate to protective custody, the hearing procedures for involuntary protective custody, the review of cases in inmates who are in protective custody, the release of an inmate from protective custody, the security requirements for protective custody, and the privileges of inmates in protective custody.

Subchapter 19 establishes the general policy guidelines which govern the sending and receiving of correspondence, publications, and packages for inmates and the guidelines for the inspection and reading of mail.

Subchapter 20 establishes the general policy guidelines which govern the administration of the inmate visit programs within adult correctional facilities.

Subchapter 21 establishes the activities which must be completed during the admission process to include inmate orientation, property control and release of inmates.

Subchapter 22 establishes the responsibilities of the Classification Committee, the categories for separation of inmates, and the criteria for initial classification, classification hearing and appeals. At N.J.A.C. 10A:31-22.5(b), the requirement to initially assign inmates for a two week period to an intake area is unrealistic and has been rewritten. It is proposed that inmates be assigned to an intake area until such time as they are appropriately classified and medically screened.

Subchapter 23 establishes the general policy guidelines which adult county correctional facilities must adhere to in order that inmates may receive compensation for employment while incarcerated. This compensation shall be in the form of cash and/or remission of time from sentence.

Subchapter 24 establishes the general policy guidelines for the operation of inmate work programs within adult county correctional facilities.

Subchapter 25 establishes the general policy guidelines for the operation of work release programs outside the adult county correctional facilities. N.J.A.C. 10A:31-25.6(a) has been revised due to the passage of P.L. 1994, c.153 effective December 9, 1994. The word "inappropriate" has been replaced by the word "ineligible," in order to clarify that inmates will not be placed in work release programs if the outlined circumstances in this subsection exist. Paragraph (a)4 has been revised to further clarify those CDS crimes which make an inmate ineligible for work release. Two new paragraphs, (a)5 and 6, have been added. Inmates convicted of crimes concerning sexual conduct against children or incompetents and crimes involving the use of force or the threat of force upon a person or property shall be ineligible for Work Release Program participation.

Subchapter 26 provides the general policy guidelines for social service programs, education programs, religious services, recreation and leisure time activity programs and library programs within the adult county correctional facilities.

Subchapter 27 provides the general policy guidelines for selecting, orienting, supervising and evaluating volunteers who provide various services to inmates in adult county correctional facilities.

Subchapter 28 prohibits placement of juveniles in adult county correctional facilities.

Social Impact

The rules within N.J.A.C. 10A:31 have been revised in effect as rules since March 5, 1990. These rules establish the minimum criteria for designing and planning the construction of new adult county correctional facilities, and for the renovation of existing facilities. These rules are intended to ensure that inmates are provided programs and services in clean, safe

and secure adult county correctional facilities. The proposed amendments will have no significant social impact because they further clarify existing procedures and bring certain sections into accordance with the minimum standards provided by the American Correctional Association (ACA) for adult county correctional facilities.

Economic Impact

The rules proposed for readoption will continue to impose economic burdens in the form of rule compliance requirements on county correctional facilities. The nature of the costs imposed include those expenses associated with inspections; program evaluations; enforcement action; administration of personnel; the development of policy and procedure manuals; the maintenance of records and information systems; training and staff development; the handling of emergencies; the maintenance of security and control to include searches, electronic surveillance and transportation of inmates; the provision of sufficient staff and use of force; the use and control of security equipment; the provision of mail and food services, clothing, sanitation, medical, dental and health services; inmate access to courts; the maintenance of a program of discipline; the handling of inmate admission and release; property control; inmate classification; inmate work programs; inmate services and programs to include social services, education, religion, recreation and volunteer programs.

The economic impact of the rules contained in the proposed readoption of N.J.A.C. 10A:31-3 is derived from costs associated with standards established by the American Correctional Association (ACA) for county correctional facility construction projects. Although construction costs are unpredictable, the proposed amendments to the rules, which have amended existing standards on physical plant and design to the broader standards recommended by the ACA, may result in reduced costs of renovation and/or construction. The readopted rules which have been amended to require additional facilities for inmates and administrative staff may however result in additional costs during renovation and/or new construction. The readopted rules without amendments will cause no change in economic impact. Those changes to rules caused by amendments are enumerated in the following paragraphs.

N.J.A.C. 10A:31-1.3 sets forth definitions used in this chapter. No additional costs are anticipated with the readoption of this rule.

N.J.A.C. 10A:31-3.2 is being deleted and should result in a decrease in cost through savings on personnel time to develop and implement the program statement.

N.J.A.C. 10A:31-3.3 recodified as N.J.A.C. 10A:31-3.2 sets forth the policy regarding the submission of plans and specifications. No additional costs are anticipated with the readoption of this rule.

N.J.A.C. 10A:31-3.4 recodified as N.J.A.C. 10A:31-3.3 requires that all new construction or renovations comply with State and local building and fire codes. These costs are unpredictable and part of any building costs.

N.J.A.C. 10A:31-3.5 recodified as N.J.A.C. 10A:31-3.4 sets forth general conditions for the planning process. Amendments to provide toilet facilities, storage areas, weapons lockers, appropriate illumination and security windows are anticipated to have additional costs. The amendment providing for multiple occupancy units and the deletion of language requiring individual visiting rooms should provide long term cost savings.

N.J.A.C. 10A:31-3.6 recodified as N.J.A.C. 10A:31-3.5 sets forth the standards for reception, booking areas, and holding rooms. The amendment that represents a reduction of square feet of floor space in single occupancy holding rooms should result in a decrease in cost during renovation or in new construction costs. No economic impact is anticipated with the readoption of the additional amendments in this section.

N.J.A.C. 10A:31-3.7 recodified as N.J.A.C. 10A:31-3.6 establishes the minimum requirements for housing units and dayroom areas. Amendments that represent construction specifications regarding floor space, secure tamper-proof lighting, plumbing, toilets, urinals, wash basins and mirrors, concrete block and pre-cast concrete plank, doors, locking devices and provisions for inmates with disabilities may entail increased construction costs.

N.J.A.C. 10A:31-3.8 recodified as N.J.A.C. 10A:31-3.7 sets forth the specifications for showers, drinking fountains, shutoff valves and drains. The amendment to increase the number of inmates per shower should result in a decrease in construction cost. The amendments that will increase the number of drains, drain covers with tamper resistant security screws, and plumbing shutoff valves may increase renovation and new construction costs.

N.J.A.C. 10A:31-3.9 recodified as N.J.A.C. 10A:31-3.8 establishes specifications for exercise areas. The amendment that requires a proportionate indoor exercise area may increase new construction or renovation costs. The deletion of the requirement to provide a minimum clearance height of 18 feet for the indoor exercise area could provide a construction cost saving.

N.J.A.C. 10A:31-3.11 recodified as 3.10 sets forth specifications regarding health care facilities and equipment. The amendment to require the county appointed health authority to determine health care needs is not anticipated to impose an economic impact.

N.J.A.C. 10A:31-3.12 recodified as N.J.A.C. 10A:31-3.11 requires the provision of space for hair cutting. No additional costs are anticipated with this amendment.

N.J.A.C. 10A:31-3.13 recodified as N.J.A.C. 10A:31-3.12 establishes the provision of an inmate commissary or commissary service. No additional costs are anticipated with this amendment.

N.J.A.C. 10A:31-3.15 recodified as N.J.A.C. 10A:31-3.14 establishes specifications for visiting and interview areas. The amendments to require screening, searching and storage space may entail additional costs during renovation and/or construction.

N.J.A.C. 10A:31-3.16 recodified as N.J.A.C. 10A:31-3.15 requires a janitor closet. No economic impact is anticipated with the readoption of this rule.

N.J.A.C. 10A:31-3.17 regarding storage rooms is being deleted. Language in the form of an amendment regarding storage rooms has been added at the recodified N.J.A.C. 10A:31-3.4, therefore no economic impact is anticipated with the deletion of this section.

N.J.A.C. 10A:31-3.18 recodified as N.J.A.C. 10A:31-3.16 establishes provisions for administration and staff areas. The amendment to provide shower facilities and toilet facilities for staff use only may entail additional costs during renovation and/or new construction.

N.J.A.C. 10A:31-3.19 recodified as N.J.A.C. 10A:31-3.17 establishes specifications for a security perimeter. Amendments which require separate entrances for visitors and prisoners and perimeter surveillance may entail additional costs during renovation and/or new construction.

N.J.A.C. 10A:31-3.20 recodified as N.J.A.C. 10A:31-3.18 establishes an arsenal. Costs are associated with the amendment to require the arsenal to be secure and adequately ventilated. No additional costs are anticipated with the amendments in this section.

N.J.A.C. 10A:31-3.21 recodified as N.J.A.C. 10A:31-3.19 sets forth the requirement to adhere to building and fire codes. These costs are unpredictable and are part of any building costs.

N.J.A.C. 10A:31-3.22 recodified as N.J.A.C. 10A:31-3.20 establishes the monitoring system. The readoption of this amended rule is not anticipated to impose an economic impact.

N.J.A.C. 10A:31-3.23 recodified as N.J.A.C. 10A:31-3.21 provides for emergency power. The readoption of this amended rule is not anticipated to impose an economic impact.

N.J.A.C. 10A:31-3.24 recodified as N.J.A.C. 10A:31-3.22 establishes plumbing and mechanical space. The amendment that stipulates ventilation ducts must contain security bars may entail additional costs during renovation and/or new construction.

N.J.A.C. 10A:31-5.1, 5.3, 17.8, 22.5, 25.6 are proposed for readoption with amendments. No additional costs or economic impacts are associated with these rules.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for the proposed new rules because the rulemaking requirements of the Department of Corrections are governed by N.J.S.A. 30:1B-6 and 30:1B-10. The proposed new rules are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:143-16 et seq. The proposed new rules impact on inmates, the New Jersey Department of Corrections, and all adult county correctional facilities.

Full text of the expired rules proposed herein as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 10A:31.

Full text of the proposed amendments to the expired rules proposed herein as new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10A:31-1.3 Definitions

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

...
“Multiple occupancy sleeping unit” means an area, room, or cell housing more than two, but less than 50, inmates.

...
“Unencumbered space” means usable space that is not hindered by furnishings or fixtures.

[10A:31-3.2 Program statement

(a) The Jail Administrator and the architect shall develop an adult county correctional facility program statement as a part of the planning phase. Such a program statement shall include, but not be limited to, a description of criteria for the following:

1. Type of facility needed and evaluation of alternatives to incarceration;
2. Maximum estimated capacity of facility based on projected needs;
3. Types of inmates to be housed;
4. Methods of entry and exit from the facility;
5. Living units;
6. Food preparation and serving facilities;
7. Intake and book area;
8. Visiting and attorney interview areas;
9. Telephone access for inmates;
10. Library facilities;
11. Medical examination areas;
12. Activity areas for exercise and rehabilitation program;
13. Cleaning and/or laundering;
14. Security arrangements and physical relationships among components; and
15. All other plans for compliance with these rules.

(b) The facility program statement shall be submitted in duplicate to the Chief, Bureau of County Services, New Jersey Department of Corrections.]

10A:31-[3.3]3.2 Submission of plans and specifications

(a) All plans and specifications shall be submitted to the Chief, Bureau of County Services, New Jersey Department of Corrections[, and copies shall also be submitted to other applicable regulatory agencies] **to ensure compliance with the requirements set forth in this subchapter.**

(b) Contracts shall not be [let] **awarded** until approval of final documents is received by the [Jail Administrator] **appropriate county administrator** in writing from the Chief, Bureau of County Services, and other applicable regulatory agencies.

10A:31-[3.4]3.3 Construction principles

[(a)] All adult county correctional facility construction **or renovations** shall comply with the regulations required by State and local building **and fire codes.**

[(b) Should a conflict exist between the regulations required by State and local building codes and those of any other standards setting agency, the conflicting Department rule shall not be effective until such conflict has been resolved by the Chief, Bureau of County Services, New Jersey Department of Corrections.]

10A:31-[3.5]3.4 General conditions

(a) (No change.)

(b) The facility [shall be reasonable] **should be geographically accessible (such as, but not limited to, public transportation and parking)** to the public and to the facility staff, as well as to the officers of the court, attorneys and law enforcement officers. [This accessibility shall be reflected in the availability of public transportation as well as fully adequate provisions for the parking of official and personal automobiles.]

(c) Staff work stations and control rooms shall be situated to provide the greatest degree of observation of traffic flow and supervised internal activities [that is possible]. **The staff work stations and control rooms shall provide access to toilet facilities.**

(d) [The orderly circulation of inmates through strategically located corridors (minimum four feet wide), eliminating all unnecessary cross-traffic and undesirable contacts between different categories of inmates, will ensure the security and efficiency of operation.] The facility shall be so designed that sections or parts can be closed off for varied use to meet changing needs.

(e) Exit and entry control stations shall be separated from the public and inmates by security barriers and shall be protected from direct observation from outside of the facility. [Program and custody staff shall be dispersed within resident areas for supervisory and programmatic activities.]

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

(h) [Special] **The number of special purpose cells shall be based on the size and needs of the facility and shall be used only for the temporary detention of inmates [who are likely to harm themselves, require protection, or are uncontrollably violent or self-destructive].**

(i) [All living units in new facilities shall be] **General population sleeping units in new correctional facilities may be multiple or single occupancy units.**

(j)-(m) (No change.)

(n) A two-way communication system shall be installed to provide communication between control stations and living areas.]

(o)(n) Provisions shall be made for the [security] **secure storage areas** of the following:

1.-4. (No change.)

5. [Valuables] **Evidence;**

6. **Personal clothing of inmates;**

7. **Personal property of inmates;**

8. **Institutional clothing for inmates;**

Recodify existing 6.-8. as 9.-11. (No change in text.)

(p)(o) Secure depositories for **off-duty and on-duty weapons** shall be provided **at each facility** outside the areas accessible to the inmates. **Weapon lockers provided for off-duty weapons shall be equipped with individual compartments, each with an individual lock and key.**

(q)(p) Padlocks shall not be used in place of, or in addition to, a security lock on any door[,] or window [or cabinet] within the facility.

(r)(q) The illumination level shall provide at least [30] **20 foot candles of illumination at desk level and in personal grooming areas of the inmate's sleeping unit** [in all living areas, and 100 foot candles in all work or study areas of the facility]. **Illumination throughout the remainder of the correctional facility shall be appropriate for the task being performed and light fixtures shall be security tamper-proof recessed type protected by laminated tempered glass or break-resistant plastic lens.**

(s)(r) The design of windows shall take into consideration the need for the admission of natural light [and ventilation (where such ventilation is not provided mechanically)]. Security type windows are necessary. Tool resisting steel shall be used in the construction of window sash or permanently fixed security windows where there is mechanical air exchange for ventilation]. **All inmate sleeping units shall have a security type window installed. If the window is operable, security screening must be installed.**

(t)(s) Visiting areas shall be designed for contact and non-contact visiting[, and individual visiting rooms shall be provided. Where necessary, provisions for non-contact visiting may be provided].

Recodify existing (u)-(v) as (t)-(u) (No change in text.)

(w) Sufficient and secure storage areas shall be provided for:

1. Evidence;

2. Supplies;

3. Equipment;

4. Records; and

5. Inmates' personal property.]

10A:31-[3.6]3.5 [Area for reception] **Reception and booking area; holding room**

(a) (No change.)

(b) There shall be a separate inmate entrance [(pedestrian and/or vehicle)] from a sally-port or safety vestibule into the receiving

area with a minimum of corridors or passageways. Stairs should be avoided.

(c) (No change.)

(d) A holding room for the confinement of inmates during their initial processing shall [provide adequate seating, toilets and wash basins for the holding room's rated capacity. Access to a telephone shall be provided. The holding room may also be used for the movement of inmates to and from the court. Single occupancy holding rooms shall have 70 square feet of floor area. Multiple occupancy holding rooms shall have a minimum of 100 square feet of floor area] **be provided.**

(e) **Single occupancy holding rooms shall have a minimum of 60 square feet of floor area.**

(f) **Multiple occupancy holding rooms shall have a minimum of 100 square feet of floor area.**

(g) **The holding room shall provide adequate seating for the capacity of the room and access to toilet and lavatory facilities without staff assistance.**

(h) **Access to a telephone shall be provided to inmates while confined in a holding room.**

(e) A sufficient number of weapons' lockers outside of the security area shall be provided. Weapons' lockers shall be equipped with individual compartments, each with an individual lock and key.]

(f)(i) A sufficient number of individual interviewing rooms shall be [provided for use in determining eligibility for diversion or other release programs, and in assessing classification and housing assignments] **available either in the booking area or in close proximity to the booking area.**

(g) Facilities shall have a secure vault or storage space for inmate personal property.

(h) Facilities shall have sufficient telephones to meet the needs of the inmate population.]

10A:31-[3.7]3.6 Minimum requirements for housing units[, including cell] and [dayrooms] **dayroom areas**

(a) Artificial lighting of at least 30 foot candles of illumination shall be provided in all living areas and 100 foot candles in all work study areas of the adult county correctional facility. Windows within the living areas shall be provided. Night lighting in these areas shall be sufficient to give good visibility for purposes of supervision, but not so bright that sleep is hindered. Within the security perimeter which includes inmate living areas, light fixtures shall be security tamper-proof recessed type protected by laminated tempered glass or break-resistant plastic lens.

(b) Heating and ventilation systems shall be provided to maintain human comfort in accordance with the Guide Book for the American Society of Heating, Refrigeration and Air Conditioning Engineers, incorporated herein by reference.

(c) The noise levels should not interfere with normal human activities. A range of 65 to 70 decibels in daytime and 40 to 45 decibels at night for residential areas is recommended.

(d) All single occupancy cells and rooms shall not be less than 70 square feet in area and have at least 560 cubic feet of air space.]

(a) **All single occupancy cells shall contain a minimum of 35 square feet of unencumbered floor space.**

(b) **All multiple occupancy sleeping units shall contain a minimum of 25 square feet of unencumbered floor space per inmate.**

(c) **Partitions are required if more than four inmates are housed in one multiple occupancy sleeping unit.**

(e)(d) Each single occupancy cell or multiple occupancy sleeping unit shall be equipped with the following:

1. A steel detention type bunk **for each occupant** which is securely fastened to the floor or wall or both and is capable of accommodating a standard [30 by 76 inch type] fire retardant mattress;

2. A detention type toilet[lavatory combination unit,] **and lavatory with drinking font [(stainless steel is recommended)], serviceable from outside the cell or multiple occupancy sleeping unit;**

3. A steel shelf[, approximately eight inches by eight inches, of minimum 12 gauge steel, flanged down at each side, with the rear

turned up and securely anchored to the wall in a location where it does not protrude in the walk area; and] or storage area for personal items;

4. [A metal] An unbreakable mirror securely mounted with tamper-proof screws[.];

5. A writing surface affixed to the wall or floor with a proximate area to sit; and

6. Detention type ventilation and exhaust grills and registers.

[(f)](e) Depending on the size of the facility, one or more isolation [and/or], detention or segregation cells shall be constructed to detain violent and destructive inmates. [The isolation and/or segregation] These cell(s) [shall be located near the control center and] shall contain:

1. A minimum of 70 square feet in floor space area;

2. [A minimum of 560 cubic feet of air space;

3.] A metal bunk firmly affixed to the wall [or], floor or both which is capable of accommodating a standard fire retardant mattress;

[4.]3. [An inaccessible] A security tamper-proof recessed light; and

[5. A secure prison type toilet and washbowl with cold water operated by push-button; and

6. A water shutoff outside the cell.]

4. A stainless steel toilet and lavatory sanitary unit serviceable from outside the cell via a plumbing chase.

[(g)] Cell bars may be round or hexagonal, not more than four inch on centers, containing preferably a sliding barred door with food pass, and approved detention type paracentric lock. Other suitable and approved material which allows for full front vision into cell may be substituted for barred fronts.

(h) Cells shall contain detention types, preferably flush mounted, light, vent, and exhaust covers with tamper proof screws.]

[(i)](f) Cell and multiple occupancy sleeping unit walls shall be at least six inch reinforced concrete or eight inch concrete block containing vertical reinforcement rods with all voids filled with [cement and reinforcement rods] solid concrete.

[(j)] Cell ceiling may be pre-stressed concrete or reinforced concrete.]

(g) Cell and multiple occupancy sleeping unit ceilings shall be pre-cast concrete plank or reinforced concrete and shall be a minimum of eight feet in height.

[(k)] In those cases where maximum security cells are deemed unnecessary, single occupancy temporary detention rooms may be utilized. The temporary detention rooms shall be at least 70 square feet in area and have at least 560 cubic feet of air space. The temporary detention rooms shall be equipped in the same manner as the individual cells. Temporary detention rooms are recommended to provide separate housing for:

1. Civil prisoners;

2. Material witnesses;

3. Work releasees;

4. Minimum security inmates; and

5. Others requiring less security.]

[(l)](h) Dormitories in an existing facility shall have a minimum rated capacity of four inmates and a maximum capacity of 50 inmates. Dormitories shall have a minimum of [75] 25 square feet of unencumbered floor space per inmate, a minimum ceiling height of [10] eight feet and adequate space for lockers. [Dormitories shall be used only for inmates assigned to:

1. Work release;

2. Education release; or

3. Other partial custody status.

(m) For each eight inmates or fraction thereof, each dormitory shall contain:

1. One toilet;

2. One washbowl with hot and cold running water;

3. One metal mirror; and

4. One drinking fountain.

(n) There shall be at least one shower head available for every 15 inmates in the dormitory.]

(i) Doors of cells and multiple occupancy sleeping units shall be detention type hollow metal with a vision security glazing port and

secured with a detention type locking device. Where deemed appropriate, food passes shall be installed.

(j) The minimum ratio of toilets, wash basins and mirrors in multiple occupancy sleeping units shall be:

1. One toilet for every 12 inmates in male sleeping units (one half of these toilets may be urinals);

2. One toilet for every eight inmates in female sleeping units;

3. One operable wash basin with hot and cold running water for every 12 inmates; and

4. One unbreakable mirror per wash basin.

[(o)](k) All adult county correctional facilities shall have dayrooms. The dayroom areas shall contain 35 square feet of floor space per inmate [at facility capacity], exclusive of lavatories, showers and toilets, for the maximum number of inmates who can use the dayroom at one time. The dayroom area shall be separate and distinct from the sleeping area, but immediately adjacent and accessible therefrom. [Dayrooms shall be located in each housing area and shall serve individual groups of eight to 16 inmates, where possible.] Exterior light and view shall be provided. [The dayroom should avoid a corridor-like proportion and be conducive to the conduct of various program activities.]

[(p)] Each inmate shall be provided a minimum of two square feet of table space and a minimum width of 24 inches of table and seating space in the dayroom.

(q) For each eight inmates or fraction thereof, dayrooms shall contain:

1. One toilet;

2. One washbowl with hot and cold running water; and

3. One securely mounted metal mirror.]

(l) Dayrooms shall provide sufficient seating, writing, and eating surfaces for every inmate using the dayroom at one time. Dayroom furnishings shall be consistent with the custody level of the inmates assigned.

(m) A qualified inmate with a disability shall be housed in a manner that provides for his or her safety, security and accessibility to facility programs or activities. Rooms, sleeping units, or housing units shall be designed for use by qualified inmates with disabilities.

10A:31-[3.8]3.7 Showers, drinking fountains, shutoff valves and drains [in cell areas]

(a) There shall be at least one operable shower with temperature controlled hot and cold water available for every [15] 16 inmates [in every housing area] and the shower shall be accessible to inmates without the necessity of leaving the immediate housing area.

(b) Drinking fountains shall be located in areas of the correctional facility to ensure that drinking water will be available. [In existing facilities, if water from the wash basin faucet is drinkable, drinking fountains need not be provided.]

(c) Each [cell] toilet, wash basin, and shower shall be equipped with an individual water shutoff valve tied into a master valve [which will secure the entire line of cells]. The master valve and individual shutoff valves shall be located in secure plumbing chases which are readily accessible.

(d) Floor drains shall be provided in all inmate areas. In those housing units containing sleeping units, the floor drain shall be [and] located outside of the actual [cell] sleeping unit in order to reduce the incidence of malicious tampering and flooding. Drain covers shall be securely anchored in place with tamper resistant security screws.

10A:31-[3.9]3.8 Exercise areas

(a) (No change.)

(b) The indoor and outdoor exercise area shall be proportionate to the size of the facility and the number of inmates housed.

(c) The indoor exercise area may be coupled with any other multipurpose room as long as the design and furnishings do not interfere with scheduled exercise activities. This area shall provide sufficient space to allow a moderate amount of physical activity and [have a] the minimum clearance height [of 18 feet] should be appropriate for the activities to be performed.

10A:31-[3.10]3.9 (No change in text.)

10A:31-[3.11 Medical examination rooms] **3.10 Health care facilities and equipment**

(a) [There shall be a minimum of one fully equipped medical examination room in every adult county correctional facility with a daily rated capacity of more than 30 inmates.] **Health care space, equipment, supplies and material at a correction facility shall be as determined by the county appointed health authority.**

(b) (No change.)

[(c) The medical examination room shall be designed in consultation with the designated physician for his or her use in conducting intake medical examinations of inmates prior to assignment to housing, and in diagnosing serious illness or treating minor illnesses.]

10A:31-[3.12] **3.11 Space for hair cutting**

Space [in a multipurpose room] and suitable equipment shall be provided in all adult county correctional facilities for hair cutting and hair dressing.

10A:31-[3.13] **3.12 Inmate commissary**

[(a) There shall be provision made for inmates to purchase items such as:

1. Food;
2. Tobacco products;
3. Toilet articles;
4. Stationary supplies; and
5. Reading materials.

(b) An area shall be provided for [the secure storage of] a commissary [item stock] **or provisions shall be made for a commissary service.**

10A:31-[3.14] **3.13** (No change in text.)10A:31-[3.15] **3.14 Visiting and [attorney interviews] interview areas**

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

(d) **The visiting area should be designed to permit appropriate screening and searching of both visitors and inmates.**

(e) **Storage space should be provided for visitor's coats, handbags, and other personal items not permitted into the visit area.**

10A:31-[3.16] **3.15 Janitor closet**

(a) A secure [janitor] **janitorial** closet containing a mop sink and sufficient area for the storage of cleaning implements shall be provided within the security area of every adult county correctional facility.

(b) **The janitorial closet shall be accessible to the living and activity areas of inmates.**

[10A:31-3.17 Storage rooms

(a) One or more sufficient and secure storage rooms shall be provided for the storage of

1. Evidence;
2. Supplies;
3. Personal clothing of inmates;
4. Personal property of inmates;
5. Records; and
6. Institutional clothing and bedding.]

10A:31-[3.18 Administration] **3.16 Administrative and staff areas**

(a) Provision shall be made to provide [appropriate employee] space for administrative, custody, professional [and], clinical **and clerical** staff [including] use, **which includes, but is not limited to, the following:**

1. Conference rooms;
2. An employee lounge **to include shower facilities;**
3. (No change.)
4. A public lobby; and
5. Toilet facilities **for staff use only.**

10A:31-[3.19] **3.17 Security perimeter**

(a) Provision shall be made for a security perimeter which includes, but is not limited to:

1. (No change.)
2. Electrically operated and interlocking vehicle sally-port **entrances and gates;**

3. A **separate** prisoner entrance[, controlled from the intake control];

4. [Visitors'] **Separate visitor** and delivery entrances; [and]

5. **Perimeter surveillance; and**

[5.]6. Other considerations which enhance security within and surrounding the adult county correctional facility.

10A:31-[3.20] **3.18 Arsenal**

The adult county correctional facility [arsenal] shall **have a secure, adequately ventilated arsenal** [be located outside the security perimeter and be] **which is outside the housing units and activity areas**, inaccessible to all unauthorized persons, but readily accessible to **authorized** staff members.

10A:31-[3.21 Fire alarm system] **3.19 Building and fire codes**

[(a) In addition to regulations promulgated by the State Fire Marshal there shall be an automatic fire alarm system approved by the State Fire Marshal in all adult county correctional facilities.

(b) The automatic fire alarm system shall be capable of alerting personnel at a central control point to the presence of fire and smoke in the facility.]

(a) **The correctional facility shall conform to all applicable Federal, State, and local building and fire codes.**

(b) **Conformance with the building and fire codes is indicated in the form of a letter or certificate issued by the appropriate code official.**

10A:31-[3.22 Audio and video monitoring] **3.20 Monitoring system**

[In all inmate living areas, there] **There** shall be an operable [two way audio or combination audiovisual] communication system which shall [be capable or alerting personnel stationed at a] **link the** central control station [so that personnel may respond to emergencies such as assaults, calls for assistance and attempted suicides] **with all housing areas, inmate and staff activity areas and supervisory officers.**

10A:31-[3.23] **3.21 Emergency power**

(a) Provision shall be made for a source of emergency power which is capable of providing minimal lighting [in housing units, activities areas, corridors, stairs and central control points] **throughout the facility.**

(b) The emergency power source should provide sufficient power to operate:

1. The security override for housing doors;
- 2.]1. The electrical [systems] **locking devices;**
- 3.]2. The communications systems; [and
- 4.]3. The alarm systems[.]; **and**
4. **Any other areas required by Federal, State, or local building and/or fire codes.**

10A:31-[3.24] **3.22 Plumbing and mechanical space**

(a) All plumbing space or any other mechanical space shall have an access door with a [prison type lock] **detention type locking device.** No opening shall remain uncovered that is in excess of four inches.

(b) **All ventilation ducts located within the security perimeter of the facility must contain security bars no more than four inches on center.**

10A:31-5.1 Training and Staff Development Program

(a) (No change.)

(b) The [facility's] **facility** Training and Staff Development Program[,] for all employees and all correction officers, subject to the Police Training Act (N.J.S.A. 52:17B-66 et seq.), shall be coordinated and supervised by a qualified training officer[, at a supervisory level].

10A:31-5.3 Orientation and training for employees

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

(g) County correction officers shall complete **the** Police Training Commission (P.T.C.) approved course at the **Thomas M. Cooper** Corrections [Officers] **Staff** Training Academy [and Staff Development Center], New Jersey Department of Corrections or at an alternative P.T.C. approved school (see N.J.S.A. 52:17B-66 et seq.).

10A:31-17.8 Correction officer assignment to Disciplinary Detention

Correction officers shall not be assigned to a Disciplinary Detention Unit for longer than a six month period.]

10A:31-17.8 Recreation

The facility shall provide inmate recreation outside the cells for at least five hours per week, unless security or safety considerations dictate otherwise.

10A:31-22.5 Initial classification

(a) (No change.)

(b) Wherever possible, inmates shall initially be assigned to an intake area [for a two week period which will allow sufficient time for inmates to be] until appropriately classified and medically screened pursuant to N.J.A.C. 10A:31-13.9.

10A:31-25.6 Inmates [inappropriate] ineligible for Work Release Program participation

(a) The following circumstances shall make an inmate [inappropriate] ineligible for participation in the Work Release Program:

1.-2. (No change.)

3. Previous convictions for sex or arson offenses, even if the current conviction is for an offense(s) rather than sex or arson; [or]

4. [Current convictions for the sale and/or distribution of controlled dangerous substance (CDS) solely for profit.] Any crime involving the manufacture, transportation, sale or possession, with the intent to sell or distribute, of a controlled dangerous substance or a controlled dangerous substance analog;

5. Any crime endangering the welfare of children or incompetents which concerns sexual conduct which would impair or debauch the moral of the child or an incompetent, as set forth in N.J.S.A. 2C:24-4 and 24-7; or

6. Any crime involving the use of force or the threat of force upon a person or property including: armed robbery, aggravated assault, kidnapping, arson, manslaughter and murder.

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

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Sharing of Information with Other Insurance Departments

Proposed New Rule: N.J.A.C. 11:1-1.3

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

Authority: N.J.S.A. 17:1C-6, 17:1-8.1, 17:17-1 et seq.; 17B:17-1 et seq.; and 47:1A-1 et seq.

Proposal Number: PRN 1995-247.

Submit comments by May 31, 1995 to:

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

The agency proposal follows:

Summary

The Department of Insurance ("Department") proposes a new rule to clarify and confirm the authority of the Commissioner of Insurance ("Commissioner") to share information regarding the financial condition of insurers with other insurance regulators and the National Association of Insurance Commissioners ("NAIC"), including information not subject to public inspection or copying pursuant to the "Right-to-Know" law, N.J.S.A. 47:1A-1 et seq., provided the receiving entity agrees to hold such information confidential to the same extent as required by New Jersey law.

Solvency is a major concern of the Department because it directly affects an insurer's ability to satisfy its contractual obligations to policyholders. Obviously, the negative impact on the market and policyholders resulting from insurer insolvencies crosses state lines. Further, to a great extent, each state relies on the domiciliary jurisdiction to monitor the solvency and financial condition of their domestic insurers. In order to help ensure that each state has adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs, along with necessary resources to carry out that authority, in 1990 the NAIC began a formal program by which state insurance departments would be accredited if they met certain minimum statutory and regulatory practices and procedures. This Department was accredited in December, 1994.

The standards for accreditation established in the NAIC Financial Regulations and Accreditation Program are dynamic and subject to change. Since, as noted above, each state relies to a great extent on the domiciliary jurisdiction to monitor insurers domiciled in that state, it is important that state insurance regulators cooperate with one another and share information in their possession with their counterparts in other jurisdictions regarding the financial condition of insurers. In this way, insurance regulators may become aware of "troubled" insurers earlier than otherwise may be the case, thus better enabling regulators to take appropriate action to help avoid any further deterioration in an insurer's financial condition.

Apparently, however, some insurance regulators have been reluctant to share information on the grounds that such information is "confidential," and that the other state could not guarantee that the information received would be held confidential to the same extent as required under the domiciliary jurisdiction's requirements. There is a concern that if information indicating that an insurer may be in a hazardous financial condition or otherwise "troubled" were made public, a "run on the bank" would likely result, further deteriorating the insurer's condition and impeding the ability of regulators to address the situation.

In order to address this concern, the NAIC has required as part of its accreditation standards effective January 1, 1996 that each state allow for the sharing of otherwise confidential information with other states' insurance regulators, provided that those officials are required under their law to maintain such information as confidential.

The Department notes that it has never failed to cooperate or share information with other state insurance regulators. Moreover, under existing law, the Department may share information and otherwise hold information confidential in conformity with the new NAIC standard. The "Right-to-Know" law, at N.J.S.A. 47:1A-2 provides:

"Except as otherwise provided in this act or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor, all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State or of any political subdivision thereof or by any public board, body, commission or authority created pursuant to law by the State or any of its political subdivisions, or by any official acting for or on behalf thereof . . . shall, for the purposes of this act, be deemed to be public records. (Emphasis supplied.)

Accordingly, the Commissioner may currently hold information received from other state insurance regulators as confidential and not subject to public inspection or copying pursuant to the "Right-to-Know" law as there is no requirement under the law that other state insurance regulators or the NAIC file information with the Department. N.J.S.A. 47:1A-3 further provides that investigations in progress and information pertaining thereto are not subject to public inspection under the "Right-to-Know" law, but that the Commissioner may make such records public if otherwise not prohibited by law. There is no statute that specifically prohibits the Commissioner from making investigations in progress public regarding the financial condition of insurers. In fact, there are numerous statutes which provide that while certain information is to be kept confidential and not subject to public inspection and copying pursuant to the "Right-to-Know" law, the Commissioner may nevertheless release such information to other insurance regulators or other officials of any other state or the Federal government. See for example, N.J.S.A. 17:17-16; 17:23-24e(2); 17:27A-6; 17:51A-4; 17B:18-70 and

17B:32A-11. Also see Executive Order No. 9(1963), which specifically provides that records not subject to public inspection or copying pursuant to the "Right-to-Know" law maybe used or made available by the appropriate State official for any purpose for which the records are filed or maintained, or may otherwise be examined by any person who demonstrates a legitimate reason for doing so provided the State official does not find such examination contrary to the public interest or causes undue interference with the operation of the agency. Accordingly, the Commissioner currently has the authority to release information to other state insurance regulators with respect to investigations in progress, and may hold information received from other states as confidential.

However, the Department proposes this new rule to confirm the Commissioner's authority under existing law with respect to sharing information and the ability of the Commissioner to hold information received from other state insurance departments or regulators as confidential to provide a level of comfort to other state regulators as well as ensure compliance with NAIC accreditation requirements.

Social Impact

The proposed new rule clarifies and confirms the Commissioner's authority to share any information regarding the financial condition of insurers with the NAIC or any insurance commissioner or department of another state or territory, and to hold any information received from such body as confidential to the same extent required by that entity's laws or requirements. This rule should therefore ensure compliance with the NAIC accreditation standards effective January 1, 1996, and further provide a degree of "comfort" to other state insurance regulators and the NAIC with respect to the Commissioner's ability to hold information received from those entities as confidential and to share otherwise confidential information. Nevertheless, as discussed in the proposal Summary above, the Department believes that it currently possesses the requisite authority to share information regarding the financial condition of insurers and to hold information received from other states and the NAIC as confidential pursuant to the "Right-to-Know" law and insurance laws of this State.

The proposed rule, to the extent it facilitates the sharing of information among the state insurance regulators, will further assist the Department in its evaluation of all insurers doing business in this State, thereby better enabling the Department to respond in a timely and consistent manner to potentially "troubled" insurers. This should help reduce the likelihood that delinquency proceedings will have to be instituted against an insurer, thus avoiding the costs and disruptions associated with such proceedings. This, in turn, should benefit insurers, policyholders, the market, and the public generally.

Economic Impact

The proposed new rule will have no direct economic impact on the Department, insurers or the public. The proposed new rule merely clarifies and confirms existing authority with respect to sharing and holding information between this Department and other state insurance regulators and the NAIC. To the extent the proposed new rule provides a greater level of comfort to the other departments which, in turn, results in an increase in the dissemination of information from other states, the Department may be in a better position to determine an insurer's current condition and problems associated with an insurer, thus better enabling the Department to, either independently or in conjunction with other state insurance regulators, determine appropriate action to reverse any negative trend or hazardous financial condition and help prevent insurer insolvency. This, in turn, will help eliminate costs and other disruptions associated with such conditions, thus benefiting the Department, insurers, the market, and the public.

Executive Order No. 27 Statement

An Executive Order No. 27 Analysis is not required because this rule merely clarifies and confirms the Commissioner's authority with respect to sharing and receiving information on insurers pursuant to State law, relates to the business of insurance, and is not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed new rule imposes no reporting, recordkeeping, or other compliance requirements on "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As set forth above, the proposed new rule merely clarifies and confirms the Commissioner's authority with respect to sharing information with other state insurance regulators and the NAIC, and receiving such information from those entities, in accordance with existing law.

Full text of the proposed new rule follows:

11:1-1.3 Sharing of information with other insurance departments

(a) The Commissioner may share any information regarding the financial condition of insurers, including information that is not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., with the National Association of Insurance Commissioners or any insurance regulator of another state or U.S. territory, provided that such agency agrees to hold such information confidential to the same extent as is provided under the laws of this State.

(b) The Commissioner may enter into an agreement with the National Association of Insurance Commissioners or any insurance regulator of any state or U.S. territory by which the Commissioner shall hold any information received from such agency as confidential and not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., to the same extent such information is required to be held confidential pursuant to that agency's laws or other requirements.

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Admission Requirements for Foreign and Alien Property and Casualty Insurers

Proposed Amendment: N.J.A.C. 11:1-10.4

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

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:32-1 et seq., and P.L. 1994, c.156.

Proposal Number: PRN 1995-256.

Submit comments by May 31, 1995 to:
Donald Bryan, Assistant Commissioner
Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The proposed amendment implements P.L. 1994, c.156, which provides that the Commissioner of Insurance ("Commissioner") may waive the "five year seasoning requirement" in order to obtain a certificate of authority to transact business in this State. N.J.S.A. 17:32-1 et seq. sets forth specific requirements by which foreign and alien insurers may be admitted to transact property/casualty insurance in this State. Admission requirements for foreign and alien insurers seeking to transact property/casualty insurance in the State are also set forth in N.J.A.C. 11:1-10. These rules set forth the filing requirements for insurers seeking admission and other standards for the Commissioner's approval of applications for admission. Among these requirements is that the applicant must have been, under its present control, authorized by its domiciliary jurisdiction to engage in the kinds of insurance business for which it seeks a certificate of authority and has, in fact, been actively engaged in such business for a period of at least five years prior to the date of the application for certificate of authority in this State (hereafter referred to as the "five year seasoning requirement"). See N.J.A.C. 11:1-10.4(a)5i and ii. The rule also provides that the Commissioner may, upon the request of an applicant, and on a case-by-case basis, waive

or reduce the five year seasoning requirement in a particular case if the applicant satisfies one of the five criteria set forth in the rule. See N.J.A.C. 11:1-10.4(a)5iii(1) through (5). These waiver provisions relate to the ability of the applicant to demonstrate, in lieu of through years of operation, that the applicant's condition and methods of operation are not such as would be hazardous to its policyholders or the public in this State. For example, the Commissioner may waive the seasoning requirement if the applicant obtains a parental guaranty from its parent, or obtains a surety bond for the protection of its New Jersey policyholders. These waiver provisions, however, do not specifically address the kind of business the applicant seeks to transact.

P.L. 1994, c.156, enacted December 9, 1994, provides that the Commissioner may waive the five year seasoning requirement if the applicant satisfies all other requirements for admission to this State upon finding that the "line or lines of insurance for which the . . . [applicant] has applied for a certificate of authority are presently underserved in the State." The apparent purpose of this statute is to encourage insurers to seek admission to transact underserved lines of business in this State by permitting the Commissioner to waive any perceived barrier to entry and thus expedite admission into New Jersey to provide coverage for underserved lines of business, while continuing to safeguard policyholders by requiring that insurers satisfy all other requirements for admission.

Accordingly, the Department proposes to amend N.J.A.C. 11:1-10.4 to provide that the Commissioner may grant a waiver from the five year seasoning requirement if the applicant demonstrates to the Commissioner that a line or lines of insurance for which it is seeking authority is underserved in this State at the time the request for waiver is made. Although the statute refers to "line" or "lines" of insurance, "line" is a technical term that includes a broad scope of coverages. It is doubtful that an applicant could demonstrate that an entire line of insurance was underserved in this State. Accordingly, in order to give effect to the statute and the legislative intent, the Department is construing the statute to mean sub-lines or categories of business within the line (for example, environmental performance bond coverage within the general line of fidelity and surety; coastal homeowners coverage within the general lines of authority required to transact homeowners insurance, etc.)

The proposed amendment also sets forth the information that must be included in any request for a waiver. Essentially, applicants shall be required to demonstrate: (1) that there is, in fact, a market for the type of coverage involved in the request; (2) that it is presently underserved; and (3) that the applicant will serve that market.

A showing that the coverage is presently listed on the Exportable List promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43 and N.J.A.C. 11:1-34 will be deemed to demonstrate that the coverage is presently underserved in this State. For the applicant to show that it will serve the market for which it is applying the applicant must also document that it possesses the underwriting, managerial and financial capability and expertise to write the particular business involved in the request, if the original application for admission does not so demonstrate. The proposed amendment requires that the applicant acknowledge in the request that its authority to transact business shall be limited to the type of coverage involved in the request, and that the applicant may not write any other business so long as it does not satisfy the seasoning requirement set forth in N.J.A.C. 11:1-10.4(a)5. However, this does not limit the ability of an applicant to request that the Commissioner remove the restriction upon a showing that it satisfies the seasoning requirement. The Department believes that this implements the intent of the Legislature, which is to permit insurers to enter the New Jersey market to service underserved "lines" while not only avoiding the potential for abuse, but also maintaining the protection to policyholders that is otherwise provided by the existing seasoning requirement.

Social Impact

The proposed amendment implements P.L. 1994, c.156 by amending N.J.A.C. 11:1-10.4(a)5 to provide a waiver from the five year seasoning requirement if the line(s) of insurance for which the applicant has applied to transact business is presently underserved in this State. The proposed amendment also sets forth the specific information to be contained in any request for such a waiver.

To the extent the proposed amendment encourages insurers to enter the New Jersey market to provide coverage for underserved markets, the market for such coverage will be expanded, thereby increasing competition. This, in turn, will benefit policyholders and the market generally. Insurers transacting business under such a waiver must

nevertheless satisfy all other requirements for admission and the authority to transact business will be limited only to those coverages subject to the waiver request. Accordingly, the policyholders of this State will continue to be afforded the safeguards of the general admission requirements for insurers set forth in N.J.A.C. 11:1-10.

Economic Impact

As noted in the Social Impact statement above, to the extent the proposed amendment encourages insurers to enter the New Jersey market to provide coverage which is presently underserved, the markets for those coverages will be expanded, thereby increasing competition. This, in turn, should benefit policyholders and the market generally.

Applicants seeking a waiver of the five year seasoning requirement pursuant to the proposed amendment will be required to bear any costs associated with compiling and filing the information and documentation required. The Department, however, does not believe that any negative economic impact should be imposed in that the information required should be readily available. Moreover, the proposed amendment applies only to applicants seeking a waiver from the five year seasoning requirement pursuant to P.L. 1994, c.156. Accordingly, to the extent any additional costs are associated with requesting a waiver pursuant to the proposed amendment, the decision whether to incur those costs is within the applicant's discretion. Applicants for admission will continue to be required to incur any costs associated with the existing admission requirements set forth in N.J.A.C. 11:1-10, including, but not limited to, the \$1,000 application fee.

The Department will be required to incur any costs associated with the review and evaluation of requests for a waiver of the five year seasoning requirement pursuant to the proposed amendment. The Department does not believe that any adverse economic impact should be imposed through this additional review, and that any costs should be defrayed by the existing application fee.

Executive Order No. 27 Statement

An Executive Order No. 27 Analysis is not required because the proposed amendment relates to the business of insurance, and is not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment applies solely to foreign or alien insurers seeking admission to transact business in this State and a waiver from the five year seasoning requirement otherwise imposed. Accordingly, the proposed amendment does not impose any requirements on insurers domiciled or "resident" in New Jersey.

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

11:1-10.4 General eligibility requirements

(a) In order for a foreign or alien company engaged in the business of property and casualty insurance to be admitted to transact the business of insurance in the State of New Jersey, the requirements in this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1.-4. (No change.)

5. The insurer shall satisfy the following seasoning requirements:

i.-ii. (No change.)

iii. The Commissioner may, upon the request of an applicant, on a case by case basis, waive, in the case of (a)5iii(1), (2), (3) [and], (5) and (6) below, or reduce, in the case of (a)5iii(4) below, the five year seasoning requirement required by (a)5i and ii above. In determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisfied, and, in addition, whether any one of the applicable requirements provided in (a)5iii(1) through [(5)] (6) below have been satisfied. These requirements include:

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

(5) Whether the applicant obtains a surety bond or bonds issued by an insurance company or insurance companies approved by the Commissioner and authorized in the State of New Jersey, in an

amount to be determined by the Commissioner, with a minimum requirement of \$5,000,000 and issued for a period of time as shall be determined by the Commissioner, but which shall not exceed five years. The Commissioner shall exercise his or her discretion in setting an amount for a surety bond upon consideration of the factors noted in (a)5iii(4)(D) above. This bond shall be prepared in such a way as to meet the requirements of the Department concerning the protection of New Jersey policyholders, claimants and creditors of the applicant insurance company; or

(6) Whether the applicant demonstrates to the Commissioner that a line or lines of insurance in this State for which the applicant is seeking authority is underserved in this State at the time the request for waiver is made. For purposes of this provision "line of insurance" shall be construed to mean a sub-line of business or category of business within the line, and shall not be construed to mean an entire line of business. Any applicant seeking a waiver of the five year seasoning requirement set forth in (a)5i and ii above pursuant to this provision shall submit a written request for such waiver which shall include the following:

(A) Such information and documentation as may be necessary to demonstrate to the Commissioner that there is no reasonable or adequate market among authorized insurers for the type of insurance coverage involved. In making this showing, the applicant shall demonstrate that there is, in fact, a market for the type of coverage involved in the request, that it is presently underserved, and that the applicant will serve that market. A showing that the coverage is presently listed on the Exportable List promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43 and N.J.A.C. 11:1-34 shall be deemed to demonstrate that the coverage is presently underserved in this State;

(B) Documentation that the applicant possesses the requisite underwriting, managerial and financial capability and expertise to write the particular business involved in the request, to the extent the original application for admission does not so demonstrate; and

(C) A certification that the applicant acknowledges that if the request is granted and the applicant is admitted to transact business under such waiver, the applicant's authority to transact business shall be limited only to the type of coverage involved in the request, and that the applicant may not write any other business so long as it does not satisfy the seasoning requirements set forth (a)5i and ii above or any waiver therefrom set forth in (a)5iii (1) through (5) above. This shall not be construed to limit the ability of the applicant to request that the Commissioner remove the restriction upon a showing that it satisfies the seasoning requirements pursuant to (a)5i and ii above, or waiver therefrom set forth in (a)5iii(1) through (5) above, and that it is otherwise qualified to write such business pursuant to law, including, but not limited to, this subchapter.

6. (No change.)

(b) (No change.)

(a)

LIFE AND HEALTH DIVISION

Dental Services

Proposed Readoption: N.J.A.C. 11:10

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:48D-1 et seq., and P.L. 1983, Chapters 142-145 (17B:26-44.4 et seq., 17:48D-9.1 et seq., 17:48C-18.1 et seq., and 17B:27-51.10a et seq.).

Proposal Number: PRN 1995-272.

Submit comments by May 31, 1995 to:
Donald Bryan, Assistant Commissioner
Division of Regulatory Affairs
Department of Insurance
20 West State Street
CN - 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 11:10 expires on July 15, 1995. As required by the Executive Order, the Department of Insurance (Department) has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Dental Plan Organization Act, N.J.S.A. 17:48D-1 et seq., became effective on June 1, 1980. The Act required the Commissioner of Insurance (Commissioner) to regulate persons and corporations who offer plans for the prepayment or postpayment of dental services, and to promulgate rules to effectuate the purposes of the Act. Accordingly, subchapter 1 of N.J.A.C. 11:10, entitled "Dental Plan Organizations," was readopted and became effective on July 12, 1990.

The rules provided in subchapter 1 have had the effect of exposing and weeding out criminal activity, self-dealing and other undesirable practices in the marketplace. For example, misuse of a capitated program by a dental plan organization (DPO), when it is also a provider, occurs through misrepresentation of its usual, customary and reasonable fee schedule thereby effecting illegal reimbursement of coinsurance under a service and indemnity plan. Without these rules, such practices which are contrary to public policy would not have been easily identified. Most significantly, these rules have helped bring a degree of order to the marketplace with the result that effective dental programs are offered under prepayment plans so that individual consumers are receiving basic comprehensive dental care more economically in a risk sharing context. Another result has been to reduce overall costs to employers. The existence of the Act and these rules have permitted the Department to identify DPOs experiencing financial problems and to interact in a meaningful way so as to avoid ongoing financial jeopardy or insolvency. N.J.A.C. 11:10-1.13, which sets forth procedures to be followed and forms to be submitted by a DPO in order to renew its Certificate of Authority, was adopted on March 24, 1994 and became effective on April 18, 1994.

Public Law 1983, chapters 142 through 145, was enacted on April 20, 1983 to supplement the Dental Plan Organization Act and the Dental Service Corporation Act of 1968 and other insurance laws relating to individual and group health insurance. The supplementary statutes apply to every employer or other organization which has 25 or more employees or members and contributes to a dental contract requiring covered persons to obtain dental services from a single provider or limited number of providers. These statutes require that such persons also be offered the option of selecting alternate coverage which permits dental services to be obtained from any licensed dentist. The new statutes required the Commissioner to promulgate rules necessary to effectuate the purpose of the act, including procedures for appropriate notice to covered persons, employers and other organizations. Accordingly, subchapter 2 of N.J.A.C. 11:10, entitled "Employee's Dental Benefit Plans: Alternate Coverage," was adopted on March 19, 1984 and became effective April 2, 1984. Clarifying amendments were adopted on April 15, 1985 and became effective May 6, 1985.

The rules provided in subchapter 2 prescribe the means for employers and organizations to notify covered persons of their rights under the statutes, including requirements specifying the time of notice and that the notice is to be in writing. Inquiries received periodically by the Department indicate that the intended purposes of these provisions are being effectively achieved.

The Department is considering several amendments to the Dental Plan Organizations rules at subchapter 1 which will be formally proposed at a later date. No modifications to the chapter are required at the present time in connection with this readoption.

Social Impact

The compliance efforts of all DPOs are facilitated by the rules set forth in subchapter 1 which clarify the requirements of the Act. The specific standards prescribed ensure that the purposes of the Act are fulfilled and that enrollees being served are protected. For example, the rules stipulate minimum requirements that must be met in contracts with dentists including assurance of quality dental care. These contracts are reviewed by the Department on initial filing and at time of modification so that systematic problems are identified and appropriate changes made. Quarterly financial statements are reviewed for financial solvency and factors or arrangements which may indicate abuse of the program.

These rules have helped bring order into the marketplace. Criminal activity and financial arrangements which are clearly contrary to public policy are more easily identified and eliminated. Abuses are prevented

but where they exist, remedies are provided. The consuming public has benefited from the oversight that now exists as to the propriety of financial arrangements, the soundness of financial practices and the appropriateness of dental care coverages. Without these rules, some undesirable practices would undoubtedly reenter the marketplace.

Subchapter 2 ensures that persons entitled to select alternate coverage are notified of their option to choose dental care coverage which permits them to use any licensed dentist. The subchapter addresses the responsibilities of health insurers, DPOs, dental service corporations, and employers and other organizations having 25 or more employees or members to which a dental plan contract has been or is to be issued.

Economic Impact

The costs incurred by DPOs in complying with the rules in subchapter 1 are not appreciably more than the costs required to comply with the provisions of the Act. To the extent that these rules impose fees regarding a DPO's renewal of its certificate of authority, these costs are limited to those reasonable and necessary for the Department to determine whether a particular DPO's certificate of authority will be renewed.

The economic impact these rules have on DPOs and persons served by them can best be understood in terms of the Department's regulatory role which includes:

1. Monitoring the DPOs generally and their arrangements for producing services in particular;
2. Examining contract filings and subsequent modifications including rates;
3. Responding to consumer complaints; and
4. Reviewing quarterly financial statements and annual reports.

The result of such activity is to assure financial solvency, eliminate fraudulent or illegal activity and other abuses and to produce order in the marketplace.

Readoption of subchapter 2 will have little economic effect on the health insurers, DPOs or dental service corporations to which it applies. The cost of complying with required notice provisions is negligible since the companies affected already send premium and other notices to the insured groups. No additional expense will be incurred by the Department.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because this chapter includes rules that implement various sections of the insurance laws of this State set forth in Title 17 and 17B of the Revised Statutes regarding the providing of dental services, and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

Some of the DPOs presently authorized to operate in New Jersey and which are affected by this proposed readoption are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Reporting, recordkeeping and compliance requirements of these rules are substantially set forth in the statutes on which these rules are based. In instances where this is not the case, the requirements are minimal and simply reflect good business practices. Included in this category are requirements that DPOs prepare and submit quarterly reports and reduce their agreements with participating dentists to writing. Small business DPOs will additionally be required to bear any costs associated with complying with the requirements of these rules, specifically the fee for a DPO's renewal of its certificate of authority. However, the Department has limited this fee to an amount it has determined to be reasonable and necessary. Individual dentists who capitate their services are exempt from the requirements of subchapter 1.

The notice requirements of subchapter 2 are not considered burdensome since the businesses subject to these requirements already send premium and other notices to the insured group.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:10.

LABOR

(a)

DIVISION OF EMPLOYMENT SECURITY AND JOB TRAINING

Workfare

Proposed Readoption with Amendments: N.J.A.C. 12:35

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

Authority: N.J.S.A. 34:1-20, 34:1A-3(c) and 44:8-114.

Proposal Number: PRN 1995-275.

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

Wednesday, May 24, 1995
10:00 AM. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

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

Submit written comments by May 31, 1995 to:

Deirdre L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
CN 110

Trenton, New Jersey 08625-0110

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

The agency proposal follows:

Summary

N.J.A.C. 12:35 provides rules which implement the State's General Assistance Employability Program (GAEP) or "Workfare" established by N.J.S.A. 44:8-114 and sets forth the appropriateness of worksite assignments. These rules apply to each person eligible to receive public assistance from a municipality. Specifically, they require that employable persons who receive general assistance from a municipal welfare department perform public work at appropriate worksites. Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:35 expires on July 16, 1995. The Department of Labor has reviewed these rules with the assistance of the Department of Human Services, General Assistance Program Unit, and has determined that they are necessary for the purposes for which they were originally promulgated. To ensure the continuation of these rules, the Department proposes to readopt these rules with amendments.

N.J.A.C. 12:35-1 sets forth the general provisions of the GAEP or Workfare rules. N.J.A.C. 12:35-1.3 concerning registration and reporting requirements is proposed to be amended to clarify that each employable general assistance recipient must register for the GAEP unless they are exempted by the municipal welfare department due to participation in the work training requirements of the Family Development Program. N.J.A.C. 12:35-1.4 concerning workers' compensation coverage requirements is proposed to be amended to provide that GAEP participants may not be assigned to worksite activities until the Employment Service has received Form NJES-1A and the signed municipal worksite agreement. The heading of N.J.A.C. 12:35-1.5 is proposed to be amended to indicate that the section concerns worksite assignments and agreement forms. This section is also being amended to correctly identify the forms used for worksite notices and to clarify who is responsible for preparing Individual Worksite Agreement Forms and Individual Training Worksite Agreement Forms and to whom such forms must be distributed. Subsection (c) is being deleted to eliminate redundant language. N.J.A.C. 12:35-1.6 concerning worksite assignment evaluations is being amended to clarify the responsibility of the worksite agent to monitor assignments. N.J.A.C. 12:35-1.7 concerning attendance and worksite activity and monitoring is being amended to indicate the individual (the worksite agent) who is responsible for onsite supervision of GAEP participants and for maintaining time and attendance reports.

N.J.A.C. 12:35-2 sets forth the locations where worksite activity may be established. N.J.A.C. 12:35-2.5 is proposed to be amended to enable a municipality to enter an agreement with another municipality to develop a worksite in cases where a worksite is not available in the municipality where the GAEP participant receives his or her public assistance.

N.J.A.C. 12:35-3 sets forth the procedures for scheduling worksite assignments. N.J.A.C. 12:35-3.1 concerning hours of work or training is proposed to be amended to delete language which requires a notice of hours of work or training be prepared for each training worksite participant and be signed by the participant, an Employment Service representative and the municipal welfare director. This language is being deleted because the requirement exists elsewhere under these rules. N.J.A.C. 12:35-3.2 is proposed to be amended to clarify the method for establishing a wage rate for worksite assignments, permitting Employment Services, in cases where there are no beginning regular employees similarly employed, to assign a wage rate equal to the State minimum wage rate or to contact the local labor market analyst and determine the prevailing wage rate for that particular worksite assignment.

N.J.A.C. 12:35-4 sets forth the types of work allowable under worksite activities. Based on advice from the Attorney General, N.J.A.C. 12:35-4.2 concerning the prohibition against GAEP participants replacing or displacing regular employees is proposed to be amended to clarify that GAEP participants cannot be assigned work ordinarily and actually performed by regular employees on a permanent or temporary basis.

N.J.A.C. 12:35-5 sets forth the actions or behavior that constitute a failure to comply with the requirements of N.J.S.A. 44:8-114. N.J.A.C. 12:35-5.1 concerning patterns of behavior is proposed to be amended to include a registrant's refusal of a suitable training worksite or job search orientation assignment without good cause as a pattern of behavior which constitutes a failure or refusal to participate in the General Assistance Employment Program. N.J.A.C. 12:35-5.2 concerning notification of failure to comply is proposed to be amended to specify the method for notifying the municipal welfare director that a registrant has failed or refused to participate. Subsection (c) is also being amended to reflect that the Division of Economic Assistance has been renamed the Division of Family Development.

Finally, the Department has revised Appendix 1, Municipal Worksite Agreement, to reflect that the New Jersey Department of Labor and Industry is now the Department of Labor and to delete the Department's name from the signature line for Employment Service Manager. Appendix 2, Individual Worksite Agreement, is being revised to delete notation of the hours worked per month from the form. The Department is also adding Appendix 3, Training Worksite Agreement, and Appendix 4, Individual Training Worksite Agreement. In light of these additions, the Editor's Note at the end of Appendix 2 is being deleted. These appendices are in accordance with N.J.A.C. 1:30-2.8.

Social Impact

The proposed readoption with amendments has a positive social impact in that the rules implement the State's GAEP or "Workfare" program which requires employable persons who receive public assistance from a municipal welfare department to perform public work assigned by either the Department of Labor's Division of Field Operations or a municipal welfare department. The proposed amendments clarify the standards for appropriate worksite assignments for GAEP participants. General assistance recipients who participate in GAEP or "Workfare" gain valuable work experience that may help them find permanent jobs. Those who are able to obtain such jobs may improve their quality of life and eliminate their need for public assistance.

Economic Impact

By providing an opportunity for GAEP participants to obtain work experience which may lead to employment, the proposed readoption with amendments has a positive economic impact. Although the aim of GAEP is to require employable general assistance recipients to perform public work, such recipients gain valuable work experience that may help them obtain permanent jobs which enable them to discontinue public assistance. The proposed amendments represent a continuation of the statutory responsibilities imposed on the Department of Labor's Division of Field Operations, municipal welfare departments and individuals participating in GAEP. They merely clarify existing standards for appropriate work assignments. The proposed amendments do not require any additional professional services to comply with these rules.

Executive Order No. 27 Statement

The proposed readoption with amendments does not exceed standards or requirements imposed by Federal law. The rules set forth at N.J.A.C. 12:35 provide rules which implement the requirements of the GAEP or "Workfare" law codified at N.J.S.A. 44:8-114. This State law requires employable persons who receive public assistance from a municipal welfare department to perform public work assigned by the Department of Labor's Division of Field Operations, or a municipal welfare department. As a result, a Federal standard exceedance analysis is not required.

Regulatory Flexibility Statement

The proposed readoption with amendments does not place any book-keeping, 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. These rules simply impose requirements on the Department of Labor's Division of Field Operations, municipal welfare departments and individuals participating in the GAEP or Workfare. As a result, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:35.

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

12:35-1.3 Registration and reporting requirements

(a) Each **employable general assistance recipient not specifically exempted by the municipal welfare department from workfare due to participation in the work training requirements of the Family Development Program in accordance with N.J.A.C. 10:86** shall register for workfare at his or her municipal welfare department. The recipient shall complete Form NJES-1A which is available at the municipal welfare department.

[(b) Each employable general assistance recipient not specifically exempted by the municipal welfare department from workfare shall report to municipal worksites only after the Employment Service is in receipt of Form NJES-1A and the municipal worksite agreement from the municipal welfare department. General assistance recipients may not be assigned to worksite activities until the Employment Service has received both Form NJES-1A and the signed municipal worksite agreement (See the GA Manual at N.J.A.C. 10:85-3.1(g)).]

Recodify existing (c)-(e) as (b)-(d) (No change in text.)

12:35-1.4 Workers' Compensation coverage requirements

(a) (No change.)

(b) The municipal welfare director, the worksite agent and a representative of the Employment Service shall sign the municipal worksite agreement. **General assistance recipients may not be assigned to worksite activities until the Employment Service has received Form NJES-1A and the signed municipal worksite agreement (see the GA Manual at N.J.A.C. 10:85-3.2(g)).**

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

12:35-1.5 Worksite assignments; [notices] agreement forms

(a) The Employment Service shall prepare [a notice] **an Individual Worksite Agreement form** [in duplicate] for each worksite participant. (See Appendix 2.) [Each notice] **The form shall be completed by the municipal welfare director or the Employment Service GAEP representative. Copies shall be distributed to the participant, the Municipal Welfare Director and the Employment Service. The form shall contain the following information:**

1.-8. (No change.)

(b) [One copy of the worksite notice shall be retained by the participant; the other shall be kept in the participant's welfare department case folder] **An Individual Training Worksite Agreement shall be prepared by the Employment Service for each training worksite participant, in accordance with N.J.A.C. 12:35-2.3, Establishment of training worksites (See Appendix 4). Copies shall be distributed to the participant, the municipal welfare director and the Employment Service.**

[(c) Municipal welfare directors shall forward an additional copy of the notice to the appropriate Employment Service office for evaluation for any worksite assignments made.]

12:35-1.6 Worksite Assignments; evaluations

- (a) Worksite assignments shall be [made and] evaluated by the Employment Service based on the following criteria:
 - 1.-3. (No change.)
 - (b) (No change.)

12:35-1.7 Attendance and worksite activity; monitoring

Attendance and worksite activity shall be monitored by the agency that develops the municipal worksite agreement and makes the individual worksite assignments. **This shall be accomplished through coordination with the worksite agent. The worksite agent shall have the authority for conducting onsite supervision of the participant and for maintaining time and attendance reports.**

12:35-2.5 Worksites in appropriate municipality

- (a) Efforts by either the Employment Service or municipal welfare director will be made to develop worksites in the municipality where the employable general assistance recipient receives his or her public assistance grant.
- (b) **A municipality that is unable to provide a worksite location within the municipality may enter a formal agreement with another municipality to arrange for a worksite.**

12:35-3.1 Hours of work or training

- (a) (No change.)
- (b) Persons assigned to a training worksite shall participate in accordance with the scheduling procedures of the training agency itself. [A notice in duplicate will be prepared for each training worksite participant and will be signed by the participant, a representative from the Employment Service and the municipal welfare director.]
- (c) (No change.)

12:35-3.2 Determination of prevailing wage rate

In cases where there are no beginning regular employees similarly employed the Employment Services **shall assign a wage rate equal to the minimum wage rate of the State**, or shall contact the local labor market analyst and determine the prevailing wage rate for that particular worksite assignment.

12:35-4.2 Prohibition on replacing or displacing regular employees

Worksite assignments will not result in [either the replacement or displacement of regular employees] **employable general assistance recipients replacing or displacing regular employees through assignment to work ordinarily and actually performed by regular employees on a permanent or temporary basis.**

12:35-5.1 Patterns of behavior

- (a) The following actions or patterns of behavior shall constitute a failure or refusal to participate in the General Assistance Employment Program and will result in the Employment Service making a GA disqualification request to the municipal welfare department:
 - 1. (No change.)
 - 2. **A registrant refuses a suitable municipal worksite, training worksite or job search orientation assignment without good cause;**
 - 3.-8. (No change.)

12:35-5.2 Notification of failure to comply

- (a) [Notification of noncompliance is established] **When a determination of failure or refusal to participate is made, the Employment Service shall, within five days of such determination, forward written notification, through the use of the Interagency Report (NJES-1A), to the municipal welfare director.**
- (b) (No change.)
- (c) Participants determined [in noncompliance] **to have failed or refused to participate** by the municipal welfare director shall be denied all general assistance according to regulations developed by the Division of [Economic Assistance] **Family Development.**

APPENDIX 1

GENERAL ASSISTANCE EMPLOYABILITY PROGRAM
Municipal Worksite Agreement

The State of New Jersey Department of Labor [and Industry], and the Department of Human Services, agree to establish the following worksite:

Municipality _____
 Occupational Classification _____
 (DOT CODE OR JOB TITLE)
 Hourly Wage Rate _____
 Public Works Project Agent _____
 (Agency for whom public works project is performed)
 Number of General Assistance Employable
 Recipients to be Assigned _____

This worksite is established in accordance with P.L. 1979, Chapter 267.

Signed,
 Date _____
 _____ [New Jersey Department of Labor]
 Employment Service Manager
 _____ Municipal Welfare Director
 _____ Public Works Project Agent

APPENDIX 2

INDIVIDUAL WORKSITE AGREEMENT

Date _____
 Case No. _____
 Name _____
 Social Security Number _____
 Municipality _____
 DOT Code or Job Title _____
 Job Description _____
 _____ Divided By _____ Requires _____ [Hours
 Participant's Hourly Per Month]
 grant on a Worksite Wage
 You are to report to (name) _____
 (address) _____
 on (date) _____ at (time) _____

I have been informed of the purpose and regulations of the General Assistance Employability Program (G.A.E.P.), my scheduled hours on the Worksite, and the hourly wage. I understand that I am working off my welfare grant, and that failure to report to the worksite, substandard work performance, or poor attitude may result in termination of my grant.

 Participant's Signature

 MWD/GAEP
 Representative

[Editor's Note: Appendix 3, Training Worksite Agreement, cited in N.J.A.C. 12:35-3.2, was not filed as a part of these rules. For information on this item, write:
 Division of Employment Services
 CN 058
 Trenton, N.J. 08625]

APPENDIX 3

GENERAL ASSISTANCE EMPLOYABILITY PROGRAM
TRAINING WORKSITE AGREEMENT

The State of New Jersey Department of Labor, and the Department of Human Services, agree to establish the following worksite:

Municipality _____

Worksite Activity _____
(GED, ESL, Drug Rehabilitation ...)

Training Project Agent _____
(Agency in which training/counseling is undergone)

Number of General Assistance Employable Recipients to be Assigned _____

This worksite is established in accordance with P.L. 1979, Chapter 267.

Signatures:

Participating Municipal Welfare Director(s) _____

Department of Labor Employment Service Manager _____

Training Project Agent _____

Date _____

APPENDIX 4

GENERAL ASSISTANCE EMPLOYABILITY PROGRAM
INDIVIDUAL TRAINING WORKSITE AGREEMENT

DATE: _____

CASE NO.: _____

NAME: _____

SOCIAL SECURITY NUMBER _____

MUNICIPALITY _____

TRAINING DESCRIPTION: _____

PARTICIPATION IN THIS TRAINING SITE REQUIRES _____ HOURS PER MONTH

YOU ARE TO REPORT TO (NAME) _____

(ADDRESS) _____

ON (DATE) _____ AT (TIME) _____

I HAVE BEEN INFORMED OF THE PURPOSE AND REGULATIONS OF THE GENERAL ASSISTANCE EMPLOYABILITY PROGRAM (G.A.E.P.) AND MY SCHEDULED HOURS ON THE WORKSITE. I UNDERSTAND THAT I AM WORKING OFF MY WELFARE GRANT, AND THAT FAILURE TO REPORT TO THE WORKSITE, SUBSTANDARD WORK PERFORMANCE, OR POOR ATTITUDE MAY RESULT IN TERMINATION OF MY GRANT.

PARTICIPANT'S SIGNATURE _____

MWD/GAEP REPRESENTATIVE _____

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Criminal History Record Information

Proposed New Rule: N.J.A.C. 13:35-3.13

Authorized By: State Board of Medical Examiners, Kevin B. Earle, Executive Director.

Authority: N.J.S.A. 45:9-2; 45:1-21(f) and 53:1-7, and N.J.A.C. 13:59.

Proposal Number: PRN 1995-257.

Submit written comments by May 31, 1995 to:

Kevin B. Earle
Executive Director
New Jersey State Board of Medical Examiners
140 East Front Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

On December 5, 1994, the Division of State Police, with the approval of the Attorney General, adopted new regulations as amendments and a new rule at N.J.A.C. 13:59 authorizing the Division of State Police to provide New Jersey Criminal History Record Information (CHRI) to all governmental entities of this State for official purposes, including licensing. See 26 N.J.R. 4782(a). As a result of these regulations, the Board of Medical Examiners may access CHRI for purposes of licensing.

N.J.S.A. 45:1-21(f) provides for the disqualification of prospective licensees or for the revocation or suspension of existing licensees premised upon convictions of crimes involving moral turpitude or which relate adversely to the activities regulated by the Board. Prior to the adoption of the new regulations, the Board did not have a reliable means of enforcing the aforementioned statutory disqualifier. In most instances, the Board has been required to rely upon the truthfulness of applicants in their responses to questions concerning the existence of prior criminal convictions. Therefore, the new regulations provide the Board with a valuable tool for determining the eligibility of persons for licensure pursuant to the established statutory criteria.

The proposed new rule at N.J.A.C. 13:35-3.13 requires that the Board obtain criminal history record checks of all applicants for initial licensure to practice medicine and surgery in this State. The rule provides that such criminal history record checks shall be obtained, processed and maintained in accordance with the procedures established by the Division of State Police in accordance with the recently adopted regulations. The fees for criminal history record checks shall be paid by applicants for licensure in conformity with the rules of the Division of State Police. Pursuant to these rules, the Board may obtain CHRI premised either upon a name search check at a fee of \$15.00 per check or a fingerprint check at a fee of \$25.00 per check. The Board intends to utilize name search identification checks and, therefore, the applicable fee will be \$15.00.

The proposed rule provides that in addition to evaluating an application for initial licensure, the Board may also obtain criminal history record information from the Division of State Police for any other purpose authorized by statute or regulation.

Social Impact

The proposed new rule implements the regulations recently adopted by the Division of State Police authorizing governmental entities to procure criminal history record information for purposes of licensing. N.J.S.A. 45:1-21(f) provides that persons who have been convicted of crimes involving moral turpitude or crimes which relate adversely to the activities regulated by the Board are disqualified from holding a valid license. Disqualification of persons who have been convicted of crimes involving moral turpitude or those whose convictions adversely impact upon the activities regulated by the Board is consistent with the Board's continuing obligation to promote the public welfare.

Economic Impact

The proposed new rule will have an economic impact upon those who apply for initial licensure to practice medicine and surgery in the State of New Jersey. However, it is anticipated that the new rule will not be

an undue financial burden on initial licensees since a \$15.00 fee for a name check is not onerous. Routinely, the fee will be paid only upon initial licensing and is, therefore, a one time expense. The Board believes that the benefits derived from the receipt of accurate criminal history checks to the public and to the medical profession strongly weigh in favor of the rule.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the procedure that the Board is establishing here is in accordance with a regulation promulgated by the State Police and is not subject to Federal requirements or standards.

Regulatory Flexibility Analysis

Assuming for purposes of the Regulatory Flexibility Act, N.J.S.A. 51:14B-16 et seq., that the practice of medicine and surgery is deemed a "small business", the following is applicable.

N.J.S.A. 45:1-21(f) mandates the disqualification of prospective licensees who have been convicted of crimes involving moral turpitude or crimes which relate adversely to the activities regulated by the Board. The only reliable means of ascertaining the existence of such disqualifying convictions is by obtaining criminal history record information from the Division of State Police. Without obtaining this information the Board is not able to ensure that prospective licensees have not been convicted of crimes which disqualify persons from being licensed. Therefore, the rule is necessary to implement the statutory criterion for licensing.

As noted in the Summary, the Board will rely upon name search identification checks at a cost of \$15.00, rather than fingerprint checks at a cost of \$25.00. This will result in a savings of \$10.00 per applicant.

Significantly, the fees for criminal history record checks are fixed by statute and regulation (see N.J.S.A. 53:1-20.6 and N.J.A.C. 13:59-1.3) and the Board does not have the authority to reduce the prescribed fees.

The Board does not anticipate any adverse economic impact on small businesses because the cost of compliance represents a negligible component of the total costs of engaging in the practice of medicine and surgery.

Full text of the proposed new rule follows:

13:35-3.13 Criminal history record information

The Board shall require a criminal history record check by the Division of State Police of all applicants for initial licensure to practice medicine and surgery in this State. Such criminal history record checks shall be obtained, processed and maintained in accordance with the procedures established by the Division of State Police pursuant to P.L. 1994, c.60 (N.J.S.A. 53:1-20.5 et seq.) and N.J.A.C. 13:59. Such criminal history records shall be disseminated in strict accordance with the limitations established by the Division of State Police pursuant to N.J.A.C. 13:59-1.6 and are not public records within the meaning of the Right to Know Law, P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.). Fees for criminal history record checks shall be paid by applicants for licensure in conformity with P.L. 1994, c.60 (N.J.S.A. 53:1-7) and N.J.A.C. 13:59-1.3 and 1.4. In addition to its use in evaluating an application for initial licensure, the Board may obtain criminal history record information from the Division of State Police for any other purpose authorized by statute or regulation.

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MEDICAL EXAMINERS

First Assistants in Major Surgery

Proposed Amendment: N.J.A.C. 13:35-4.1

Authorized By: State Board of Medical Examiners, Kevin B. Earle, Executive Director.

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1995-258.

Submit written comments by May 31, 1995 to:

Kevin B. Earle
Executive Director
New Jersey State Board of Medical Examiners
140 East Front Street, 2nd Floor
Trenton, NJ 08608

The agency proposal follows:

Summary

By this amendment, the Board of Medical Examiners is expanding the category of individuals permitted to act as first assistants in major surgical procedures to include qualified registered nurse first assistants and qualified physician assistants. In connection with the re-adoption of the rules of the Board of Medical Examiners in August of 1994, the Board received 23 comments urging the amendment of this rule. Commenters pointed out that many other states already utilize qualified registered nurses and physician assistants as first assistants, and that it has proved to be a safe and cost effective practice. Other commenters pointed to the difficulty posed by the shortage of physicians available to act as first assistants making effective utilization of operating suite time problematic, and causing stress to staff, patients and families involved in delayed operative procedures. Commenters pointed to educational programs and national credentialing bodies available to ensure the competency of non-physician first assistants. Finally, one commenter urged the Board to exercise caution in considering requests to expand the role of non-physicians in order to ensure patient safety.

The amended rule will permit only those registered nurses and physician assistants who are determined to be qualified by the credentialing process of a hospital or other licensed health care facility to act as first assistants. The operating surgeon maintains discretion under the rule to determine whether to utilize a non-physician first assistant. It is anticipated that the primary surgeon is in the best position to choose an appropriate first assistant considering factors such as the complexity of the procedure; risk of complications during the operation; and expected effect of the assistant on morbidity and mortality.

The amendment will not permit operating surgeons to absent themselves from a procedure leaving the non-physician first assistant to substitute. Even when the operating surgeon becomes incapacitated or unavailable during the procedure, the non-physician first assistant's role is strictly limited to maintaining the status of the patient absent imminent life threatening circumstances.

Amendments have also been made for purposes of clarification. For example, in N.J.A.C. 13:35-4.1(a)1, the term "non-diagnostic" has been added to clarify the type of endoscopic procedure which only requires the presence of a first assistant in the operating suite, and the term "first assistant" is substituted for "assistant surgeon" as it more accurately describes the expanded category of individuals who may assist in such procedures under the amended rule. N.J.A.C. 13:35-4.1(e) has been amended to clarify that the rule contemplates major surgical procedures are being performed not only in hospitals, but also in other facilities licensed by the Department of Health.

Social Impact

It is anticipated that the proposed amendment will have the salutary effect of alleviating the shortage of qualified physicians to assist in major surgery, while maintaining the safety of such procedures. The amendment will permit better utilization of qualified physician assistants and registered nurses as they will be able to perform functions for which they are trained, and which they are already allowed to perform in other states.

Economic Impact

The proposed amendment should reduce health care costs as it will increase the efficiency of scheduling operating suite time which has been reported as problematic at present due to frequent unavailability of a physician to first assist, and because non-physician first assistants are less costly.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the practice standards affected by this rule amendment do not involve Federal standards or requirements.

Regulatory Flexibility Analysis

The proposed amendment imposes reporting, recordkeeping and other compliance requirements upon hospitals and other facilities licensed by

the Department of Health. The following analysis applies to any licensed facility employing fewer than 100 individuals.

The hospital credentials committee in conjunction with the chairman or chief of the appropriate committee and the chairman or chief of the appropriate department or division must determine the qualifications an individual shall have in order to act as first assistant in a major surgical procedure. The medical staff must promulgate rules that determine which procedures will be considered major surgery and the credentials required of each individual qualified to act as first assistant for any major surgical procedure. Both the medical staff and the hospital board of trustees must assure that first assistants comply with this rule and the rules of the licensed facility. The administrative cost of compliance with such requirements will be borne by the subject hospitals. No outside professional services need be employed in order to comply.

If, for the purposes of the Regulatory Flexibility Act, individual practicing physicians, nurses and physician assistants are deemed to be small businesses, the following analysis applies: A non-physician first assistant must comply with subsection (g) of the proposed amendment by limiting, except in a dire emergency, his or her functions in the event of incapacity or unavailability of the operating surgeon during the procedure. No costs to non-physician first assistants are inherent in such compliance.

Because the proposed amendments are intended to provide for the health and safety of a patient undergoing a major surgical procedure, the amendments must apply without exception to all licensed health care facilities and qualified first assistants.

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

13:35-4.1 Major surgery; qualified first assistant

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

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

2. A procedure performing a major amputation;

3. A procedure performed where the locality, the condition, the difficulty or the length of time required to operate would constitute a direct hazard to the life of the patient.

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

(c) **In addition to those individuals listed in (b) above who may act as qualified first assistants, in a health care facility licensed by the Department of Health, a duly qualified registered nurse first assistant (RNFA) or a duly qualified physician assistant may so act.**

[(c)](d) A duly qualified surgeon, duly qualified assistant physician, [and] duly qualified resident, **duly qualified registered nurse first assistant or duly qualified physician assistant** shall be determined by the hospital credentials committee in conjunction with the chairman or chief of the appropriate committee in conjunction with the chairman or chief of the appropriate department or division consistent with the requirements of law or applicable rule.

[(d)](e) It shall be the responsibility of each medical staff to promulgate appropriate rules to fully and carefully implement the requirements of (b), [and] (c), **and (d)** above by determining which procedures shall be considered major surgery in accordance with (a) above, and determining the credentials of each [physician] **individual** qualified to act as first [assisting physician] **assistant** for any given major surgical procedure. The medical staff and hospital board of trustees shall assure compliance by the individual [physicians] **first assistants** with this rule of the Board and the rules of the hospital **or other facility licensed by the Department of Health.**

(f) **In all instances in which a registered nurse first assistant or a physician assistant may act as first assistant pursuant to (c) above, the operating surgeon shall have discretion to determine whether to utilize such an individual as a first assistant, despite the fact that they are permitted to so act pursuant to this rule.**

(g) **In the event of incapacity or unavailability of the operating surgeon during a major surgical procedure, the functions of a first assistant who is not a physician shall be limited to maintaining the status of the patient while a substitute operating surgeon is summoned, except in matters of dire emergency. "Dire emergency" shall include only those circumstances posing a significant risk of imminent death or serious bodily injury to the patient, such as uncontrolled bleeding.**

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MEDICAL EXAMINERS

Procedures for the Pronouncement and Certification of Death

Proposed Amendment: N.J.A.C. 13:35-6.2

Authorized By: State Board of Medical Examiners, Kevin B.

Earle, Executive Director.

Authority: N.J.S.A. 26:6-8 and 45:9-2.

Proposal Number: PRN 1995-260.

Submit written comments by May 31, 1995 to:

Kevin B. Earle

Executive Director

New Jersey State Board of Medical Examiners

140 East Front Street

Trenton, N.J. 08608

The agency proposal follows:

Summary

The State Board of Medical Examiners is proposing an amendment to N.J.A.C. 13:35-6.2 that makes clear to licensees that a certificate of death must be completed within 24 hours of the time that a pronouncement was made. This amendment merely codifies in the Medical Board rules the requirement appearing at N.J.S.A. 26:6-8. The amendment also clarifies the meaning of the terms "attending physician," "certificate of death," "covering physician" and "pronouncement of death."

Social Impact

It is anticipated that the proposed amendment will have little or no social impact since the vast majority of physicians are already aware that the task of completing a death certificate needs to be handled expeditiously. Moreover, most physicians, recognizing the strain on the family of the decedent, attend to this responsibility as soon as practicable.

Economic Impact

The rule will have no economic impact, since licensees are already required to perform this task within 24 hours.

Executive Order No. 27 Statement

An Executive Order No. 27 statement is not required because this rule neither involves nor implicates any Federal standards or requirements.

Regulatory Flexibility Statement

Assuming, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that licensees are small businesses, the proposed amendment does not require any additional reporting, recordkeeping or compliance. The amendment merely codifies an existing statutory requirement for the benefit of Board licensees.

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

13:35-6.2 Pronouncement of death

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

"Attending physician" means any Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) who, prior to the person's death, had attended, supervised or directed ongoing medical treatment of the patient as a primary care physician or as a specialist undertaking to treat a significant chronic medical illness which could lead to death. A physician providing such ongoing treatment, who has issued or renewed a prescription issued to the person within the six month period preceding the death, will be deemed to be an attending physician, regardless of whether the physician has personally examined the person within that six month period.

"Certificate of death" means the official document prepared for filing pursuant to N.J.S.A. 26:6-6 et seq. which is signed by a physician and sets forth the information pertaining to a person's last sickness, immediate and contributing causes of death and burial and the identity of the medical personnel who made the pronouncement of death.

"Covering physician" means any physician who has assumed the responsibility for providing care and treatment to an attending physician's patients during his or her unavailability. A covering physician shall also bear a responsibility to exercise his or her best medical judgment when making a pronouncement of death or drawing the conclusions called for in completing the certificate of death.

"Pronouncement of death" means the act of conducting an inquiry concerning the circumstances of a death, checking for vital signs, ascertaining pertinent history and, where appropriate, performing a complete external examination of the unclothed body and providing an opinion as to conclusion and cause(s) of the death.

(a) The official pronouncement of a death is a medical determination and the primary responsibility of the decedent's attending physician or designated covering physician.

(b) A Certificate of Death shall be prepared and completed by a physician. The factual data set forth in the Certificate shall be based to the greatest extent possible, upon the personal knowledge of the physician preparing the Certificate. The physician may, however, exercise reasonable professional judgment and incorporate in the Certificate factual assertions ascertained by another health care professional, as set forth below.]

(b) Every physician licensed by the Board and engaged in the active practice of medicine in this State shall ensure that he or she meets the obligations set forth in this section. If the physician is unavailable, he or she shall arrange for another physician to assume these responsibilities.

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

(g) A certificate of death shall be prepared and completed by a physician within a reasonable period of time, not to exceed 24 hours after the pronouncement of death. The factual data set forth in the certificate shall be based, to the greatest extent possible, upon the personal knowledge of the physician preparing the certificate. The physician shall provide an immediate cause of death as well as such contributing causes as the physician can best determine from the medical history obtained from other health care professionals, family or friends of the decedent, from observation of the condition of the body when pronounced and the circumstances known concerning the death. If the physician lacks sufficient information to provide an immediate cause of death, he or she may indicate an underlying potentially fatal medical condition which in the professional judgment of the physician may, or is likely to, have caused death.

[(g)](h) (No change in text.)

(a)

STATE BOARD OF MEDICAL EXAMINERS
Notice of Comment Period Extension and Extension
of License Expiration Date
Fee Schedule
Proposed Amendments: N.J.A.C. 13:35-6.13

Take notice that the State Board of Medical Examiners has extended the public comment period on proposed amendments to N.J.A.C.

13:35-6.13 published in the February 21, 1995 New Jersey Register at 26 N.J.R. 640(a) through May 8, 1995 in response to a commenter's request for additional information on the proposed amendments. The Board has obtained more detailed financial information concerning the need for proposed fee increases, which has been distributed to all who submitted comments on or before April 12, 1995, as well as to all individuals and entities on the Board's distribution list. The information will additionally be made available to any interested member of the public at the offices of the State Board of Medical Examiners. The comments period has been accordingly extended to provide time for commenters to review the additional information and to provide time for meaningful comment.

Take further notice the State Board of Medical Examiners has extended the expiration date of all presently outstanding valid licenses held by licensees (M.D.s, D.O.s and acupuncturists) as well as C.D.S. registrations held by physicians from June 30, 1995 through July 31, 1995.

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Duty To Report Changes In Status
Proposed New Rule: N.J.A.C. 13:35-6.19

Authorized By: State Board of Medical Examiners, Kevin B. Earle, Executive Director.

Authority: N.J.S.A. 45:9-2 and 45:9-19.7.

Proposal Number: PRN 1995-261.

Submit written comments by May 31, 1995 to:

Kevin B. Earle
 Executive Director
 New Jersey State Board of Medical Examiners
 140 East Front St., 2nd Floor
 Trenton, New Jersey 08608

The agency proposal follows:

Summary

The State Board of Medical Examiners is proposing a new rule that requires licensees to provide current and accurate information to the Board. The rule is based on the statutory obligation of practitioners to notify the Board in writing, within 21 days, of any changes, additions or deletions in the information provided on the biennial renewal application, N.J.S.A. 45:9-19.7(b).

Proposed subsection (a) defines certain terms for purposes of the rule. Subsection (b) requires licensees to update information concerning names and addresses of all practice locations; the names of all practitioners directly associated with the practice (or practice names for larger group practices); the names of health care facilities or health maintenance organizations with which the licensee is affiliated; the name of the licensee's medical malpractice insurer, if any; and the name and address of health care service entities in which the licensee or a member of the licensee's family has a financial interest, the date such interest was acquired, and whether the licensee refers patients to that service.

Subsection (c) requires the licensee to update information concerning the initiation, pendency or conclusion of any criminal or disciplinary proceedings. Current information is also sought concerning actions taken by health care facilities, state licensing authorities, state or Federal agencies including Medicaid, Medicare, and Drug Enforcement Agency and medical malpractice insurers. Reporting such proceedings is required even if predicted on a no contest, *nolo contendere* plea or other voluntary agreement or resignation.

Subsection (d) addresses the licensee's obligation to notify the Board of changed circumstances pertaining to drug and alcohol dependence or treatment for such dependency. The rule specifies that any such notice containing this information shall not be deemed to be a public record within the meaning of the Right to Know Law, N.J.S.A. 47:1A-1 et seq. Accordingly, this information in subsection (d) shall remain confidential. Provision is made for a Fifth Amendment claim pursuant to subsection (e). The rule also makes clear that those who have already disclosed a medical condition status change to the Board's Impairment Review Committee through participation in the Alternative Resolution Program

("ARP"), established pursuant to N.J.A.C. 13:35-11, need not file a separate report pursuant to this rule. In that way, the confidentiality protection afforded to ARP participants will be preserved.

Subsection (f) requires a licensee to state the effective date of any changes and provide an explanation consistent with N.J.S.A. 45:9-19.7(b).

Subsection (g) requires that notice be made within 21 days of the change in information. Failure to comply may be deemed professional misconduct, within the meaning of N.J.S.A. 45:1-21(e).

Social Impact

It is anticipated that this proposed new rule will have a positive social impact. The Board of Medical Examiners is charged with considering all factors relevant to initial and continued licensure of physicians, podiatrists, bioanalytical laboratory directors, physician assistants, certified nurse midwives, acupuncturists and hearing aid dispensers. In fulfilling this duty, it is essential that it have complete and accurate information on which to make appropriate evaluations as to a licensee's ability to provide professional services to his or her patients. Actions, whether criminal, civil or administrative, taken by state or Federal authorities based on a licensee's conduct, as well as information relating to substance abuse or other impairments resulting from medical conditions, must necessarily be examined by the Board to assure that the public is adequately protected. The public will be better served if the Board receives information concerning these actions contemporaneously with their occurrence, so that appropriate inquiry can be initiated and corrective measures directed, if necessary.

Economic Impact

The proposed new rule will have virtually no economic impact on licensees. The Board will provide forms for corrections, additions and deletions of information contained on the biennial renewal form. Licensees are obligated to provide that information to the Board within 21 days of the change. It is expected that the licensee will incur only the nominal costs associated with the mailing or delivery of the required form.

The Board itself may recognize substantial savings through the direct receipt of timely information which at present it may obtain, if at all, only through costly investigative techniques.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the obligations established pursuant to this rule involve no Federal standards or requirements.

Regulatory Flexibility Statement

Assuming, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that licensees are small businesses, the rule does require reporting of changes, additions, corrections and deletions to information submitted by licensees in their biennial renewal forms. The rule, however, is based on the licensee's statutory obligation to notify the Board of changes and, as such, it imposes no new reporting requirements.

Full text of the proposed new rule follows:

13:35-6.19 Duty to report changes in status

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

"Ability to practice" means and is construed to include all of the following:

i. The cognitive capacity to make appropriate clinical diagnoses and exercise reasoned medical judgments and to learn and keep abreast of medical developments;

ii. The ability to communicate those judgments and medical information to patients and other health care providers, with or without the use of aids or devices, such as voice amplifiers; and

iii. The physical capability to perform medical tasks such as physical examination and surgical procedures, with or without the use of aids or devices, such as corrective lenses or hearing aids.

"Affiliation" means a professional relationship, including an employment relationship, a position as an independent contractor or the grant of privileges by a health care facility or health maintenance organization in this State or any other jurisdiction.

"Alternative Resolution Program" refers to the program established pursuant to N.J.A.C. 13:35-11 by which licensees suffer-

ing from medical conditions or chemical dependency may confidentially enter into a rehabilitation and monitoring program, under the sponsorship of an approved professional assistance program, subject to the periodic submission of coded status reports and continuing confidential review by the Board's Impairment Review Committee. To be deemed a participant in the Alternative Resolution Program, the licensee must be accepted by the Impairment Review Committee and assigned a code number.

"Biennial renewal form" means the form provided to a licensee by the Board, which must be completed in order to renew and keep current a license to practice in this State.

"Chemical substances" is to be construed to include alcohol, drugs or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber's direction, as well as those used illegally.

"Conviction" means a judgment of conviction entered following plea agreement or trial on an arrest, indictment, accusation or bill of particulars in a state or Federal criminal proceeding, or the resolution of such charges, whether by a plea of no contest or *nolo contendere* or by pre-trial diversion program.

"Directly associated" means a professional relationship including an employment relationship, partnership arrangement or a shareholder status in a professional service corporation or general business corporation. "Directly associated" does not include any relationship established pursuant to preferred provider agreements, IPA's or other provider panels.

"Disciplinary order" means a disposition suspending or revoking licensure privileges or imposing civil penalties or ordering the restoration of money or ordering corrective action or medical or other professional treatment or monitoring, or censuring or reprimanding a licensee.

"Financial interest" means a monetary interest of any amount held by a practitioner personally or through immediate family, as defined at N.J.S.A. 45:9-22.4 et seq.

"Health care facility" means a facility or institution, whether public or private, engaged in providing medical services, including diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, health maintenance organizations, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, boarding home for the sheltered care of adult persons, and bio-analytical laboratory or central services facilities serving one or more such institutions but excluding institutions that provide healing solely by prayer.

"Health care service entity" means a business entity which provides on an inpatient or outpatient basis: testing for a diagnosis or treatment of human disease or dysfunction; or dispensing of drugs or medical devices for the treatment of human disease or dysfunction. Health care service entity includes, but is not limited to, a bio-analytical laboratory, pharmacy, home health care agency, rehabilitation facility, nursing home, hospital, home infusion company, or facility which provides radiological or other diagnostic imagery services, physical therapy, ambulatory surgery, or ophthalmic services.

"Health maintenance organization" means any entity licensed by the State Department of Health which directly or through contracts with providers furnishes health care services on a prepaid basis to enrollees.

"Illegal use of controlled dangerous substances" means the use of controlled dangerous substances obtained illegally (for example, heroin or cocaine) as well as the use of controlled dangerous substances which are not obtained pursuant to a valid prescription or not taken in accordance with the directions of a licensed health care practitioner.

"Licensee" means any person licensed or authorized to engage in the health care profession regulated by the Board of Medical Examiners.

"Licensing authority" means any professional or occupational licensing board charged with granting, suspending or revoking licensure or certification privileges.

"Medical condition" includes physiological, mental or psychological conditions or disorders, such as, but not limited to, orthopedic, visual, speech, or hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional or mental illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism.

"Practice location" means the actual physical site of the office and business address from which the licensee provides professional services and where relevant books and records are or should be maintained.

"Practice name" means the title under which a group practice of five or more practitioners is conducted.

"Practitioner" means physician or podiatrist licensed by the Board.

(b) A licensee shall provide notice to the Board in writing, on such forms as the Board may require and within 21 days, of any changes, additions or deletions pertaining to the following information last provided by the licensee on the biennial license renewal form:

1. The name and address of all practice locations;
2. The name of all practitioners directly associated with the practice, or the practice name if five or more practitioners are offering professional services through the same practice entity;
3. The name and address of each licensed health care facility and health maintenance organization with which the licensee has an affiliation;
4. The name and address of the licensee's medical malpractice insurer, if any; and
5. The name and address of any health care service entity in which the licensee or any member of his or her immediate family has acquired a financial interest, the date on which that interest was acquired and whether the licensee refers patients to that service.

(c) A licensee shall provide notice to the Board in writing of any changes in circumstances which would alter the response last provided by the licensee to questions on the biennial renewal form eliciting information pertaining to pending or finalized actions, including those predicated on a no contest or *nolo contendere* plea or other consensual or voluntary agreement, or a surrender or resignation of license or of privileges or a consent to limitations on practice which occurred in the face of an investigation or of pending action. Reporting of the following actions is required:

1. Actions by criminal authorities for violations of law or regulation;
2. Actions by a health care facility or health maintenance organization grounded, in whole or in part, upon patient care concerns which actions condition, curtail, limit, suspend or revoke privileges;
3. Disciplinary actions by state licensing authorities;
4. Actions by the Department of Health;
5. Actions by the Drug Enforcement Administration or any state drug enforcement agency;
6. Actions by Medicaid, Medicare, CHAMPUS, or other governmental insurance program;
7. Actions by professional review organizations or utilization review organizations; or
8. Actions by a medical malpractice insurance carrier declining coverage or a continuation of coverage, assessing a surcharge based on claims experience, imposing new limitations or restrictions on practice, or requiring remedial education or office monitoring.

(d) A licensee, who is not already known to the Board's Impairment Review Committee through participation in the Alternative Resolution Program, shall provide notice to the Board in writing of any changes in circumstances which would alter the response last provided by the licensee to questions on the biennial renewal form pertaining to medical conditions and use of chemical substances which in any way impair or limit the licensee's ability to practice with reasonable skill and safety. Licensees shall provide notice to the Board of any hospitalization, in-patient treatment or participation in supervised rehabilitation programs relating to these medical

conditions. Licensees shall notify the Board of any leave of absence taken from a health care facility or health maintenance organization for reasons related to these medical conditions. (Parental leaves need not be reported.) Any notices received by the Board pursuant to this subsection shall be retained by the Board in a confidential manner and shall not be deemed to be public records within the meaning of N.J.S.A. 47:1A-1 et seq.

(e) To the extent that a required disclosure may relate to the illegal use of controlled dangerous substances or other criminal activity which may give a licensee reasonable cause to believe he or she is exposed to the possibility of criminal prosecution, the licensee may assert, on the form provided by the Board, the Fifth Amendment privilege against self-incrimination. Any claim of Fifth Amendment privilege must be made in good faith, and does not relieve the licensee from making disclosures not implicating criminal liability. The Board may make follow-up inquiries and the licensee may later be directed by the Attorney General to make a disclosure of information previously withheld on the basis of the Fifth Amendment, provided that the Attorney General first grants immunity afforded by statutory law. N.J.S.A. 45:1-20.

(f) For each change, addition or deletion in the foregoing information, the licensee shall further indicate the effective date of the change, addition or deletion and provide an explanation therefor.

(g) Failure by a licensee to provide the Board with notice of any information required pursuant to this section within 21 days of the change or the event necessitating the filing of the notice may be deemed professional misconduct within the meaning of N.J.S.A. 45:1-21(e).

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Board of Professional Engineers and Land Surveyors Rules

Proposed Readoption with Amendments: N.J.A.C. 13:40

Authorized By: State Board of Professional Engineers and Land Surveyors, Arthur Russo, Executive Director.

Authority: N.J.S.A. 45:8-27 et seq.

Proposal Number: PRN 1995-262.

Submit comments by May 31, 1995 to:

Arthur Russo, Executive Director
State Board of Professional Engineers and Land Surveyors
Post Office Box 45015
Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:40 is scheduled to expire on August 3, 1995. The State Board of Professional Engineers and Land Surveyors has reviewed the current rules proposed for readoption and has found them to be necessary, reasonable, understandable and responsive to the purposes for which they were originally promulgated. However, the Board believes some changes are necessary in subchapters 1 through 4, 6, 8 and 10 in order to clarify the language and to reflect current Board practice.

Following is a summary of all the subchapters together with any amendments and clarifications, if applicable, and the rationale therefor.

Subchapter 1 concerns title blocks and sales for professional engineers and land surveyors.

N.J.A.C. 13:40-1.1 governs the sealing of documents. A proposed amendment addresses what documents have to be signed and sealed, and the responsibility carried with that signature and seal. A proposed clarifying amendment would require that all sealing of documents be done with an impression-type seal.

N.J.A.C. 13:40-1.2 requires all professional engineers and land surveyors to provide a title block on all drawings and states the required form and manner in which the title block shall appear on the drawing.

A proposed clarifying amendment would prohibit any person from removing a title block from any print or reproduction for any reason.

N.J.A.C. 13:40-1.3 lists what each title block must contain. A proposed clarifying amendment would require that "professional engineer" and/or "land surveyor" be spelled out in the title block.

N.J.A.C. 13:40-1.4 states that a licensee may submit a proposed form of title block to the State Board of Professional Engineers and Land Surveyors for approval.

N.J.A.C. 13:40-1.5 states that where a project contains the work of a professional engineer and land surveyor, an individual licensed in both professions may use the title "professional engineer" and "land surveyor" in one title block. A clarifying amendment would require that "professional engineer" and "land surveyor" be spelled out.

N.J.A.C. 13:40-1.6 requires that where a project contains the work of a licensed professional not under the immediate supervision of the licensee in responsible charge of the project, the subtitle block of the licensed professional must appear on all plans involving that profession.

Subchapter 2, which deals with application requirements, establishes various rules regarding the application and examination process.

N.J.A.C. 13:40-2.1 requires that all applications be typewritten and notarized.

N.J.A.C. 13:40-2.2 governs deadlines for the submission of applications and all supplemental documents. A proposed clarifying amendment states that failure to meet the prescribed deadlines results in denial of the application for the examination; however, the application would be considered for the next scheduled examination.

A proposed amendment to N.J.A.C. 13:40-2.3 would set out the minimum curriculum requirements for professional engineers and land surveyors. This proposed amendment would provide necessary guidance to all prospective licensees in the State by informing them as to what courses they would need to take in order to become licensed. This section further explains what procedures applicants with non-United States degrees must follow in order to have their curriculum reviewed and accepted by the Board.

N.J.A.C. 13:40-2.4 addresses the language comprehension testing requirements for applicants from non-English speaking countries, or from countries where the primary language spoken is other than English. A proposed clarifying amendment would require an applicant to achieve a minimum score of 220 on the Test of English as a Foreign Language (TOEFL). In keeping with the national standard the required minimum score has been raised from 200 to 220. The applicant for licensure must also pass the Test of Spoken English (TSE) with a minimum score of 575. The required minimum score for the TSE has remained unchanged. The TSE must have been taken within two years of applying for licensure. Another proposed amendment would permit the Board to exempt from the language requirement an applicant who is an American citizen at the time of obtaining his or her undergraduate degree in a non-English speaking country, or a country wherein the primary language is other than English.

A proposed clarifying amendment to N.J.A.C. 13:40-2.5 sets out the professional experience requirements an applicant for an engineering license must have in order to take the engineering principles and practices exam, and the experience an applicant for a land surveying license must possess. It also requires that all experience be gained under the immediate supervision of a licensed professional engineer and/or a licensed land surveyor. This proposed clarification is consistent with the Board's policy of requiring prospective licensees to have meaningful, hands-on experience performed under the tutelage of a licensed professional engineer and/or land surveyor prior to becoming licensed to practice in New Jersey.

N.J.A.C. 13:40-2.6 identifies reference requirements for applicants applying for a professional engineer and/or land surveyor license. A proposed amendment clarifies the reference requirements by further stating that the experience requirements in N.J.A.C. 13:40-2.5 be performed while the applicant is under the responsible charge of a licensed professional engineer and/or land surveyor. The responsible charge requirement is consistent with Board policy in that it ensures that all applicants for licensure would receive the highest quality experience under the direct supervision of a licensed professional in the field, prior to licensure. It has concerned the Board in the past that co-workers were acting as references for prospective licensees instead of true supervisors. Applicants would also be required to furnish the references with copies of the applicant's experience form so the reference could verify the accuracy, extent and complexity of the experience listed by the applicant to the Board.

N.J.A.C. 13:40-2.7 deals with comity licensure. One amendment, which would clarify a recently passed law, states that comity licensure will be granted provided the requirements of the jurisdiction in which the applicant became initially licensed were comparable to New Jersey's at the time of the applicant's initial licensure in that other jurisdiction. N.J.A.C. 13:40-2.6(c) was recodified to subsection (c) of this section. The recodified subsection would permit the submission of a record book from the National Council of Examiners for Engineering and Surveying (NCEES) to the Board by the applicant for comity licensure. To be consistent with N.J.A.C. 13:40-2.6, references over one year old will not be accepted. Before being recodified, the Board would accept references contained in a NCEES record book up to six months old. For consistency purposes, six months has been changed to a year.

N.J.A.C. 13:40-2.8 governs waiver of the fundamentals of engineering portion of the exam provided that the applicant had 15 years of experience in the field. A proposed clarification would require that at least two years of the required 15 years of experience be original engineering design experience demonstrating increased responsibility over time, and that all of the 15 years of experience be gained under the immediate supervision of a licensed professional engineer.

Proposed clarifying amendments to subsection (a) of N.J.A.C. 13:40-2.9 help explain under what circumstances an application to take the required examinations for licensure will be cancelled. This would occur when the applicant has failed the same part of any of the required exams with a score of 65% or below on the last three examinations taken.

N.J.A.C. 13:40-2.10 governs applicant review of his or her engineering and/or land surveying examination scoresheet and explains the procedure that an applicant must follow in order to review his or her score.

Subchapter 3, Misconduct, enumerates prohibited acts and prescribes the procedure for reporting incidents of professional misconduct.

N.J.A.C. 13:40-3.1 lists 12 acts that are to be construed as misconduct in the practice of professional engineering or land surveying. Some of these prohibited acts include: not acting as a faithful agent of one's client, unsubstantiated advertising, conflicts of interest, failure to identify one's client before commencing work. Two proposed amendatory prohibitions include rendering professional services and/or opinions when not qualified by education, training and experience, and engaging in activities that result in the suspension, revocation or surrender of the individual's license or certification in another jurisdiction.

N.J.A.C. 13:40-3.2 states that if a licensee knows or has reason to know of any violation by another licensee of any statute or rule administered by the Board, the licensee must report the information to the Board.

Subchapter 4, General Provisions, describes procedures for notification of change of address and also covers service of process.

A proposed amendment to N.J.A.C. 13:40-4.1 would require licensees to provide street names and numbers in all change of address notifications. A post office box number without a street name and number would not be acceptable. This amendment is proposed in response to the Board's experience of not being able to locate licensees after moving their place of business and leaving a post office box number on file as their last address. The section further provides that service of an administrative complaint to a licensee's current address on file at the Board is adequate notice.

Subchapter 5, Land Surveyors: Preparation of Land Surveys, sets forth rules for the practice of land surveying. This subchapter was not amended or clarified.

Subchapter 6 sets forth the fee schedule for professional engineers and land surveyors in N.J.A.C. 13:40-6.1. Some of the fees covered include: application fees, examination fees, licensing and renewal fees. Clarifying amendments to the fee schedule includes a late renewal fee and a reinstatement fee for a Certificate of Authorization.

Subchapter 7, Permissible Division of Responsibility in Submission of Site Plans and Major Subdivision Plans, provides that the definitions used in the Municipal Land Use Act, N.J.S.A. 40:55D et seq., apply to this subchapter. This subchapter allocates responsibility for site plans and major subdivision plans among engineers, planners, architects and land surveyors.

Subchapter 8, Maintenance of Project Records, sets forth the standards for the maintenance and release of project records.

A proposed amendment to N.J.A.C. 13:40-8.1 would permit the licensed engineer or land surveyor to sign, but not seal, copies of documents to be sent to clients upon their request, where data may have changed after the project has been completed. In addition, the licensee would be required to put a disclaimer on the copies sent to the client stating that data used in the documents might have changed.

Subchapter 9 is entitled "Responsible Charge of Engineering or Land Surveying Work."

N.J.A.C. 13:40-9.1 establishes standards for the supervision of subordinates and requires maintenance of records of adequate supervision. This section also lists acts reflecting inadequate supervision.

Subchapter 10 is entitled "Contracts to Provide Professional Services; Certification of Authorization."

A proposed amendment to N.J.A.C. 13:40-10.1 would provide that a corporation that does not employ a licensed professional engineer and/or licensed land surveyor which offers professional engineering and/or land surveying services must have a contract with a licensed professional engineer and/or licensed land surveyor before rendering such services, in addition to obtaining a certificate of authorization pursuant to N.J.S.A. 45:8-56. Likewise, the licensed professional engineer and/or licensed land surveyor must first have a contract with the corporation before he may perform engineering and/or land surveying services. Another proposed amendment includes a penalty provision for any corporation that renders or offers to render services without obtaining the proper Certificate of Authorization.

Social Impact

The rules proposed for readoption will continue to have a positive effect on the consumer; the rules will enable the Board to continue orderly operation and to provide for examination and licensure of applicants in order to ensure that truly qualified individuals are licensed to practice professional engineering and land surveying. Because the purpose of the rules is to ensure the provision of quality professional engineering and land surveying services to the public, in addition to maintaining a high level of professionalism within the practice, this readoption will have a positive social impact.

The following analysis applies to the proposed readoption with amendments and the social impact the proposal will have if adopted.

The proposed amendment to N.J.A.C. 13:40-1.1 spells out what documents must be signed and sealed by professional engineers and/or land surveyors, the effect of affixing such sign and seal, and the responsibility carried with it. This amendment effectively educates the professional as well as the public regarding the signing and sealing of documents and the effect thereof. The amendment also helps to protect the public by ensuring that the licensed professional who has signed and sealed the document takes professional responsibility for the work contained in the document.

N.J.A.C. 13:40-1.6 requires other licensed professionals who perform work on a project while not under the immediate supervision of the licensed professional engineer and/or land surveyor, to place their subtitle block on the plan. This is beneficial to the public in that they are made aware of all persons who have performed work on the project, including those persons who were not under the immediate supervision of the hired professional engineer and/or land surveyor.

N.J.A.C. 13:40-2.3 governs the curriculum requirements for potential engineers and land surveyors. A proposed amendment details the course requirements that the Board will accept for licensure. In addition to benefitting the applicant by informing him/her as to the specific requirements for licensure, the public will be ensured that all licensed professional engineers and land surveyors in New Jersey will have met all the educational requirements needed to perform their trades as effectively as possible. The curriculum requirements will educate all applicants for licensure in the most current technologies used in the practice of engineering and land surveying. This benefit will be passed on to the public in the form of only the most qualified and well educated engineers and land surveyors applying their trade for the public.

N.J.A.C. 13:40-2.5 establishes professional experience requirements that an applicant for licensure must have before sitting for the principles and practices section of the engineering exam, and before the granting of a land surveying license. The proposed amendment would require that all professional experience be gained under the immediate supervision of a licensed professional engineer and/or land surveyor. This further ensures the public that work performed by licensed professional engineers and/or land surveyors in New Jersey will be of the highest standard due to both, the rigorous and comprehensive education requirements, and the necessary experience gained before licensure.

The proposed amendment to N.J.A.C. 13:40-2.6 requires that every applicant for licensure provide at least five references to the Board, three of which must be licensed professional engineers and/or land surveyors who had knowledge of the applicant's training and experience. Required references include those licensed professionals who were in responsible

charge of the applicant during the required years of experience spelled out in N.J.A.C. 13:40-2.5. These requirements protect the public by providing verification that upon licensure, professional engineers and land surveyors in New Jersey possess the necessary experience and training, in addition to the required education, needed to perform their professions at the very highest level of quality and professionalism.

Two proposed amendments to N.J.A.C. 13:40-3.1 would act to further protect the public by prohibiting professional engineers and/or land surveyors from rendering services when not qualified by education, training and experience, and from engaging in activities that result in suspension, revocation or surrender of one's license in another jurisdiction.

N.J.A.C. 13:40-3.2 protects the public by requiring licensees who have knowledge of, or have reason to know of any violation by another licensee of any statute or rule, to report said violation to the Board.

N.J.A.C. 13:40-8.1 provides for the release of copies of records to clients from engineers and/or land surveyors relating to projects performed by clients. This provision allows for clients to review the professional's work, in addition to having the records for the client's future use, if needed. A proposed amendment would permit the licensed engineer and/or land surveyor to sign, but not seal copies of documents to be sent to clients upon their request, where data may have changed, after the project has been completed. In addition, the licensee would be required to put a disclaimer on the copies sent to the client stating that data used in the documents might have changed.

N.J.A.C. 13:40-9.1 provides further protection for the public by setting standards for the supervision of subordinates by licensees, and requiring recordkeeping of such supervision.

A proposed amendment to N.J.A.C. 13:40-10.1 would require a corporation which does not employ a licensed professional engineer or land surveyor to contract with an outside licensee before rendering any engineering and/or land surveying services, in addition to obtaining a certificate of authorization pursuant to N.J.S.A. 45:8-56. This requirement would protect the public from unlicensed persons attempting to do work they are not trained to do.

Economic Impact

The rules proposed for readoption will have an economic impact upon licensees and/or potential licensees who must pay application fees, examination fees, license fees, renewal fees, reinstatement fees and certificate of authorization fees. The Board points out that all the fees will remain the same. The Board believes that the economic impact upon licensees and potential licensees is outweighed by the benefits these rules provide in maintaining professional practice standards that serve to ensure responsible and effective service and products. The Board also notes that failure to readopt the current fee structure would endanger the Board's operation, which is required by law to be funded entirely by licensing fees and penalties.

Potential licensees will incur costs associated with becoming educated in the fields of engineering and land surveying. Although the cost of schooling can be significant, it is the Board's belief that the long term benefits that one receives from becoming a licensed professional engineer and/or land surveyor far outweigh the cost associated with school tuition. In addition the public is benefitted by having the most qualified and well educated professional engineers and land surveyors applying their trades.

Applicants for licensure who receive undergraduate degrees from non-English speaking countries, or countries where the primary language is other than English are required to take two language-related tests. The combined cost to take these two tests, (TOEFL and TSE) is \$155.00. An exemption from these requirements shall be granted by the Board in the case of an American citizen who receives his/her undergraduate degree from a non-English speaking country or a country wherein the primary language is other than English.

Potential licensees may incur a minimal cost in having to furnish their references with a copy of their experience form so that the reference can verify to the Board the experience listed by the potential licensee. The benefits of ensuring qualified practitioners in the fields of engineering and land surveying greatly outweighs the minimal costs incurred by the potential licensees with regard to this requirement.

Minimal postage charges will accrue for licensees who change their work address. N.J.A.C. 13:40-4.1 requires licensees to notify the Board of any change of address within 30 days of the change.

Pursuant to N.J.A.C. 13:40-8.1, the public (client) will incur a cost when a client requests copies of records from a licensed professional

engineer and/or land surveyor relating to work the licensed professional did for that client. The client is responsible for the reasonable costs of research and reproduction for copies of records released.

The amendments to this proposed readoption will have no significant adverse impact on the general public because these are largely "housekeeping" amendments intended to clarify, correct and update Board rules that do not impose direct costs on the public.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements pertaining to the proposed readoption are governed by N.J.S.A. 45:8-27 et seq. and 45:1-3.2, and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Board to give a description of the types and an estimate of the number of small businesses to which the proposed readoption with amendments will apply. At present there are approximately 5,000 engineers-in-training, and 20,142 licensed professional engineers and land surveyors. If for the purposes of the Regulatory Flexibility Act, the aforementioned professional engineers and land surveyors are deemed "small businesses," the following analysis shall apply.

Compliance requirements include the following: Professional engineers and/or land surveyors must sign and seal documents including, maps, plats, reports, descriptions, plans, design specifications, and certifications. If the document includes the work of more than one professional, each must sign and seal the document clearly referencing the work that was done by each individual. Likewise, incomplete and/or all draft plans, documents and sketches must be identified conspicuously, may be signed, but must not be sealed. Compliance costs associated with the signing and sealing of documents will be minimal. The only cost incurred will be that required to purchase an impression-type seal.

Every licensed professional engineer and/or land surveyor is required to place his or her title block on all drawings. Likewise, no person shall remove a title block from any print or reproduction. Title blocks must contain the spelled out title "professional engineer" and/or "land surveyor."

N.J.A.C. 13:40-2.1 requires all applicants for licensure to submit only typewritten and notarized applications to the Board. The minimal expense associated with having an application typewritten and/or notarized by a notary public is greatly outweighed by the efficient manner with which the Board can process neat, typewritten applications, as opposed to those that are handwritten. Another compliance requirement relates to the submission of applications. An applicant must submit his application on time in order for the application to be reviewed for the immediate scheduled examination. However, if the application is submitted after the deadline, it would be considered for the next scheduled exam.

In order to obtain licensure, professional engineers and land surveyors are required to take Board approved coursework, an outline of which appears in N.J.A.C. 13:40-2.3. By publishing the Board approved curriculum, applicants now will know what courses have to be taken in order to be eligible for licensure. Compliance costs associated with this section will be the cost of schooling. For applicants who obtain their degrees outside the United States, they will be required to have their degree reviewed by a service approved by the Board. The cost incurred would be that charged by the review service to review the degree. Reporting requirements would include the sending of transcripts to the Board for its approval in the licensure process.

N.J.A.C. 13:40-2.4 requires an applicant for licensure, who is not an American citizen, and who receives his/her undergraduate degree from a non-English speaking country to take language comprehension tests. The compliance cost incurred by the applicant here would be approximately \$155.00, the cost to take both examinations. Reporting requirements would include notification of the Board of the examination results.

N.J.A.C. 13:40-2.5 requires an applicant for a professional engineering license who is applying to sit for the principles and practices exam to obtain four years of professional experience under the immediate supervision of a licensed professional engineer prior to sitting for the exam. For land surveyors, it is required that they obtain three years of professional experience under the immediate supervision of a licensed land surveyor prior to licensure. Reporting requirements would include furnishing the Board with proof of the required experience.

With regard to reference requirements, professional engineer and land surveyor applicants must have at least three references who are licensed

professional engineers or licensed land surveyors in the United States and who have direct personal knowledge of the applicant's training and experience. In addition, the applicant's references must include those licensed professional engineer(s) or licensed land surveyor(s) who were in responsible charge of the work being claimed by the applicant as the professional experience required for licensure in N.J.A.C. 13:40-2.5. The applicant must also provide those references with a copy of the applicant's experience form so that the reference(s) can verify the work experience listed by the applicant. The cost to comply with this section is minimal. It would be the expense of furnishing the references with a copy of the experience form, and a postage paid envelope addressed to the Board so the reference could easily mail the verified form to the Board for its review.

Licensees are required to notify the Board of any change of address not later than 30 days after the change pursuant to N.J.A.C. 13:40-4.1. The cost incurred with this requirement would be the minimal cost of reporting the change to the Board.

In order for the Board to operate effectively and efficiently, the fees listed in N.J.A.C. 13:40-6.1 must be paid by licensees and potential licensees when applicable. Since these fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act, to minimize adverse economic impact has been implemented. In addition, no capital costs will be incurred by any licensee in complying with these rules.

In N.J.A.C. 13:40-8.1, licensees are required to put a disclaimer on copies of documents that they furnish to their clients. The disclaimer states that the data used in the original design of the document might have changed and may not show current conditions (as of the date the client receives his/her copy of the document).

N.J.A.C. 13:40-9.1 requires licensees who are in responsible charge of a project to exercise regular and effective supervision over those individuals performing services which affect the quality of the work rendered by the licensee, and to maintain records of such supervision.

N.J.A.C. 13:40-10.1 requires business corporations that do not employ a licensed professional engineer and/or licensed land surveyor to enter into a contract with a licensee before offering or rendering engineering or land surveying services, in addition to obtaining a certificate of authorization pursuant to N.J.S.A. 45:8-56. Likewise, a licensed professional engineer and/or licensed land surveyor is prohibited from offering or rendering professional services on behalf of a corporation unless he/she is employed by the corporation or has entered into a contract with the corporation.

The Board views this proposed readoption with amendments to be necessary to promote and protect the public welfare; thus an exemption for small business is neither feasible nor desirable. Furthermore, the Board does not anticipate the need for any professional services not already mentioned in order to comply with the regulations.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:40.

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

SUBCHAPTER 1. TITLE BLOCKS AND SEALS FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

13:40-1.1 Sealing documents

(a) All sealing of documents [must] **shall** be done with an impression-type seal. A rubber stamp facsimile of the seal [may] **shall** not be used.

(b) **The application of a signature and/or seal to documents relating to the practice of professional engineering and/or land surveying shall indicate that the licensee has provided regular and effective supervision to those individuals performing services which directly and materially affect the quality and competence of the engineering or land surveying work rendered.**

1. The following documents shall be signed and sealed:

i. **Maps, plats, reports, descriptions, plans, design specifications, certifications or similar documents; and**

ii. **Shop drawings for the construction of buildings, structures and related equipment, or for other purposes, the preparation of which requires engineering calculations and/or engineering input. Catalog**

information and standard product information shall be exempt from the requirements of this section.

(c) The signature and/or seal signifies that the licensee takes professional responsibility for the document based upon the accepted standards of practice in place at the time the documents were sealed.

(d) Where the document includes the work of more than one professional, each professional shall sign and seal the document with clear reference to the work that he/she has performed. See N.J.A.C. 13:40-1.6 for title block requirements.

(e) A licensee shall not affix a signature and/or seal to documents constituting the practice of the profession regulated which have been prepared by another person unless such work was performed under the direction and supervision of the licensee.

(f) Incomplete and/or all draft plans, documents and sketches, whether advanced or preliminary copies, shall be conspicuously identified and may be signed but shall not be sealed.

13:40-1.2 Title block on drawings; forms; removal

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

(e) No person shall remove a title block from any print or reproduction for any reason.

13:40-1.3 Title block contents

(a) The title block shall contain:

1-3. (No change.)

4. The title "professional engineer" and/or "land surveyor" spelled out;

5. (No change.)

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

13:40-1.5 Title block use for professional engineer and land surveyor work project

In the event the project contains the work of both a professional engineer and land surveyor, any individual licensed in both professions may use the title "professional engineer and land surveyor" which shall be spelled out in one title block.

SUBCHAPTER 2. APPLICATION REQUIREMENTS

13:40-2.2 Deadlines

(a) (No change.)

(b) Failure to meet prescribed deadlines shall result in the denial of the application and [rescheduling for a following examination] said application will be considered for the next scheduled examination.

13:40-2.3 Education

(a) (No change.)

(b) Engineering curriculum shall not be accepted for licensure unless approved by the Board and shall consist of the following minimum requirements:

1. 128 semester hours, 80 of which shall consist of:

i. 32 semester hours of a combination of mathematics and basic sciences;

ii. 32 semester hours of engineering sciences;

iii. 16 semester hours of engineering design.

2. For purposes of conversion, one semester hour equals 1.5 quarter hour credits.

(c) Engineering technology curriculum shall not be accepted for licensure unless approved by the Board and shall consist of the following minimum requirements:

1. 124 semester hours which shall consist of:

i. 48 semester hours of technical science courses in the specialty section, for example, mechanics, strength materials, hydraulics, engineering graphics, surveying, soils and foundations, computer technology, engineering materials;

ii. 24 semester hours of basic science and mathematics inclusive of the following courses: physics, including the appropriate laboratory exercises; analytical chemistry, including the appropriate laboratory exercises; analytical geometry; applied differential and integral calculus; thermodynamics; and

iii. The balance of hours shall be designed to achieve an integrated and well rounded technology degree, including design se-

quences in a major technology area appropriate to bachelor degree program needs, that is, electrical, mechanical, construction/civil technology degrees.

(d) Land surveying curriculum shall not be accepted for licensure unless approved by the Board and shall consist of the following minimum requirements:

1. 128 semester hours shall consist of:

i. 45 semester hours in surveying and mapping science and practice;

ii. The following topics shall be incorporated in the surveying and mapping science requirements: field surveying/data collection, instrumentation and methods, measurement data reduction and data adjustment (least squares), geodesy, geodetic positioning/orientation and GPS, GSI/LIS, photogrammetry and remote sensing, map projection and coordinate systems;

iii. The following topics shall be incorporated in the surveying and mapping practice requirements and shall constitute a minimum of 15 of the required 45 semester hours. Of these required 15 semester hours, a minimum of nine semester hours shall be spent on design and field exercises in the above mentioned course materials, legal systems and legal research. A minimum of six semester hours shall be spent on cadastral or boundary surveying;

iv. 24 semester hours of math, statistics and general science; and

v. Nine semester hours of communication (writing and/or speech).

2. For purposes of conversion, one semester hour equals 1.5 quarter hour credits.

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

(g) Transcripts shall be sent directly from the applicant's school and shall contain an official registrar's seal.

13:40-2.4 Language comprehension requirement

(a) An applicant for licensure as a professional engineer or land surveyor who [is] received his or her undergraduate degree from a non-English speaking country or a country wherein the primary language is other than English, prior to taking the examination shall submit to the Board a TOEFL (Test of English as a Foreign Language) certificate with a minimum score of 575 and a TSE (Test of Spoken English) with a minimum score of [200] 220 or its equivalent). This test shall have been taken within two years of application. An applicant who has received a B.S. from a foreign country wherein the primary language is English shall be exempted from this requirement.

(b) An applicant who is an American citizen at the time of obtaining his or her undergraduate degree from a non-English speaking country, or a country wherein the primary language is other than English shall be exempted from this requirement.

13:40-2.5 Experience

[(a) An applicant who has received an engineering degree from a college or university not located in the United States must have gained two years of professional engineering experience acceptable to the Board which has been gained in the United States to be eligible to sit for the fundamentals of engineering exam.]

[(b)](a) Pursuant to N.J.S.A. 45:8-35, an applicant for a professional engineering license who is applying to sit for the principles and practices exam must have four years of professional experience acceptable to the Board which shall be gained under the immediate supervision of a licensed professional engineer.

1. [two] Two years of [which must have been] said experience shall be gained in the United States; and

2. Two years of said experience shall be original engineering design experience demonstrating increased responsibility over time, that is of a character acceptable to the Board.

(b) An applicant for a land surveying license shall obtain at least three years of experience which shall be original land surveying experience demonstrating increased responsibility over time, that is of a character acceptable to the Board. All experience shall be gained under the immediate supervision of a licensed land surveyor.

(c) Experience prior to graduation from a Board approved program will be evaluated by the Board on a case-by-case basis if experience is gained under the immediate supervision of a licensed

professional engineer or a licensed land surveyor, and if the applicant has passed the appropriate technical courses needed to perform the work experience.

(d) All reference information submitted to the Board shall be legible and placed on forms provided by either the Board or the NCEES in the case of comity applications.

13:40-2.6 References

(a) (No change.)

(b) References shall be provided as follows:

1. (No change.)

2. Professional engineer applicants: [Of the five references required,] A minimum of five references shall be required, of which at least three [must] shall be licensed professional engineers in the United States [and have] having direct personal knowledge of the applicant's experience or training. The professional references for that portion of the applicant's experience constituting the minimum experience required for licensure shall be professional engineers who were in responsible charge of that minimum experience. If the number of experience engagements necessary to constitute the minimum experience requires more than three professional references to confirm such experience, such additional professional references shall be required. Special circumstances may be considered by the Board at the time of application in such cases where a licensed professional engineer in responsible charge of the work being claimed by the applicant is not available.

3. Professional land surveyor applicants: [Of the five references required,] A minimum of five references shall be required, of which at least three [must] shall be licensed professional land surveyors in the United States [and have] having direct personal knowledge of the applicant's experience or training. The professional references for that portion of the applicant's experience constituting the minimum experience required for licensure shall be licensed professional land surveyors who were in responsible charge of that minimum experience. If the number of experience engagements necessary to constitute the minimum experience requires more than three professional references to confirm such experience, such additional professional references shall be required. Special circumstances may be considered by the Board at the time of application in such cases where a licensed professional land surveyor in responsible charge of the work being claimed by the applicant is not available.

[(c) The Board shall accept a National Council of Engineering Examiners record book for transcript and reference documents only.

1. This booklet must be labeled with the application number.

2. References over six months old will not be accepted.

3. Transcripts that are illegible or do not contain a visible official registrar's seal will not be acceptable.

4. All professional experience, listing of documents and education received must be typed according to format provided in the application.]

13:40-2.7 Comity

(a) Comity licensure pursuant to N.J.S.A. 45:8-35(1) shall be granted provided that education, experience, and examination requirements for licensure by the issuing agency are comparable to current requirements of the State of New Jersey at the time of the applicant's initial licensure.

(b) (No change.)

(c) A record book from the National Council of Examiners for Engineering and Surveying (NCEES) shall be acceptable to the Board only if it is sent directly to the Board office from the National Council of Examiners for Engineering and Surveying. The applicant shall complete the personal data portion of the Board application form in its entirety. The record book shall meet the following requirements:

1. The book shall be labeled with the application number;

2. References over one year old will not be acceptable; and

3. All references and transcripts shall be submitted to the Board in conformance with N.J.A.C. 13:40-2.3 and 2.5.

13:40-2.8 Waiver

(a) The Board may waive the fundamentals of engineering portion of the exam provided that, in addition to the education requirements at N.J.A.C. 13:40-2.3, the applicant has a specific record of an additional 15 years or more of experience at the time of application in engineering work of a character satisfactory to the Board. Eight of the 15 years of experience must have been gained in the United States or must have been acquired while working for a United States based firm. At least two years of experience gained in the United States shall be original engineering design experience demonstrating increased responsibility over time. All experience shall be gained under the immediate supervision of a licensed professional engineer.

(b) (No change.)

13:40-2.9 Cancellation of applications

(a) Any applicant for [any eight hour section of the] examinations given for professional engineering or land surveying who fails [any] the same part, with a score of 65 percent or below [on three consecutive occasions] on the last three examinations taken shall have said application cancelled.

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

13:40-2.10 Review of examination

(a) An applicant who has taken the fundamentals of engineering exam, fundamentals of land surveying exam, or principles and practices of engineering and/or land surveying and the New Jersey L.S. exam, may request a handscore and score tabulations of each exam taken. The applicant may not personally review the exams.

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

SUBCHAPTER 3. MISCONDUCT

13:40-3.1 Enumeration of prohibited acts

(a) Misconduct in the practice of professional engineering or land surveying shall include, without limitation:

1. Acting for his or her client or employer in professional matters otherwise than as a faithful agent or trustee; accepting any remuneration other than his or her stated recompense for services rendered.

2. Disregarding the safety, health and welfare of the public in the performance of his or her professional duties: preparing or signing and sealing plans, surveys or specifications which are not of a safe design and/or not in conformity with accepted standards. If the client or employer insists on such conduct, the licensee shall notify the proper authorities and withdraw from further service on the project.

3.-4. (No change.)

5. Affixing his or her seal to any plans, specifications, plats or reports or surveys which were not prepared by him or her or under his or her supervision by his or her employees or subordinates.

6. Failure to comply with [federal] Federal, state or local laws, rules or regulations [governing] relating to the practice of the profession.

7.-11. (No change.)

12. Rendering engineering or land surveying services and/or professional opinions when not qualified by training, education, and experience in the specific discipline of professional engineering and/or land surveying that is involved.

13. Engaging in any activity which results in suspension, revocation or surrender of a professional license or certification in another jurisdiction.

SUBCHAPTER 4. GENERAL PROVISIONS

13:40-4.1 Notification of change of address; service of process

(a) A licensee of the Board of Professional Engineers and Land Surveyors shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, not later than 30 days following the change of address.

1. All addresses of licensees shall contain street names and numbers. Post office box numbers without street addresses shall not be acceptable.

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

SUBCHAPTER 6. FEES

13:40-6.1 Fee schedule

(a) (No change.)

(b) For a Certificate of Authorization issued pursuant to P.L. 1989, c.276, general business corporations offering to provide engineering or land surveying services in New Jersey shall pay a fee of \$120.00 for a biennial period, or \$60.00 per year. **The late renewal fee for Certificate of Authorization is \$50.00. The reinstatement fee for Certificate of Authorization is \$125.00.**

SUBCHAPTER 8. MAINTENANCE OF PROJECT RECORDS

13:40-8.1 Release of project records

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

(c) The client of a professional engineer or land surveyor shall be entitled to complete copies of all records generated for the engineering and/or land [surveyor] surveying project within a reasonable period of time after forwarding a written request to the professional engineer or land surveyor and upon payment of such proportion of fees as reflect the extent of all services performed.

1. Such copies may be signed but shall not be sealed where data utilized as the basis for the preparation of same may have changed since the date the documents were originally prepared.

2. A disclaimer shall be put on said documents which indicates that the data utilized in the documents may have changed. The disclaimer shall read as follows:

"This drawing/map/plat reflects conditions as of (insert place, date of the original drawing/map/plat) and may not show current conditions as of (insert the present date)."

(d) (No change.)

SUBCHAPTER 10. CONTRACT TO PROVIDE PROFESSIONAL SERVICES; CERTIFICATION OF AUTHORIZATION

13:40-10.1 Contract requirement

(a) [Any corporation, firm, partnership or association which does not have an executive officer, if a corporation, or a member, if a firm, partnership or association, who is licensed to practice engineering or land surveying in this State and which offers or performs engineering or land surveying services pursuant to N.J.S.A. 45:8-27 shall, prior to the offer or performance of said services, have a written contract with a New Jersey licensed professional engineer or land surveyor. Such contract shall require the licensed professional engineer or land surveyor to be in responsible charge of the engineering or surveying work contracted for and shall be consistent with the Board's enabling legislation (N.J.S.A. 45:8-27 et seq.) and all rules adopted pursuant thereto.] **Any business corporation which does not have an officer or full time employee who is licensed as a professional engineer and/or land surveyor in this State and which offers or renders such services shall, prior to the offer or rendering of any such service, have a written contract with a New Jersey licensed professional engineer or land surveyor, and have obtained a certificate of authorization pursuant to N.J.S.A. 45:8-56. Such written contract shall clearly indicate the licensee to be in responsible charge of the engineering or land surveying services.**

(b) A licensed professional engineer or a licensed land surveyor rendering engineering or surveying services for a [corporation, firm, partnership or association covered by this section shall not perform such services unless the written contract required by this section is present.] **business corporation which is required to obtain a certificate of authorization pursuant to N.J.S.A. 45:8-56 shall not perform such services unless he or she is an officer or a full time employee of the corporation or has a written contract with the corporation prior to rendering professional services and is listed as being in responsible charge on the corporation's certificate of authorization.**

(c) **Any corporation that offers or renders engineering and land surveying services without a Certificate of Authorization or with a lapsed Certificate of Authorization shall be subject to civil penalties**

as authorized by N.J.S.A. 45:1-25. This subsection shall not apply to a professional service corporation established pursuant to the "Professional Service Corporation Act," N.J.S.A. 14A:17-1 et seq.

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
Psychologists Licensing Examination
Passing Score**

Proposed Amendment: N.J.A.C. 13:42-5.1

Authorized By: State Board of Psychological Examiners, Paul Brush, Executive Director.

Authority: N.J.S.A. 45:14B-13.

Proposal Number: PRN 1995-259.

Submit written comments by May 31, 1995 to:

Paul Brush, Executive Director

New Jersey State Board of Psychological Examiners

P.O. Box 45017

Newark, New Jersey 07101

The agency proposal follows:

Summary

In an effort to keep regulations current and conform regulations to legal trends, the Board of Psychological Examiners has proposed two amendments. These include an amendment to correct the name of the organization that administers the Examination for Professional Practice in Psychology and an amendment to update New Jersey's standards for a passing score on the psychologists' licensing examination.

N.J.A.C. 13:42-5.1 has been proposed for amendment to conform to other states' current standards for a passing score on the Examination for Professional Practice in Psychology. The Board has decided to change the criteria for a minimum passing score from one standard deviation below the national mean of all doctoral candidates taking the examination on a given date to 70 percent of the questions answered correctly. The proposed change would take place after the effective date of this rule. In addition, the name of the organization which administers the test has also been revised in the proposed regulation amendment to reflect the name change of that organization from the American Association of State Psychology Boards to the Association of State and Provincial Psychology Boards.

Social Impact

The proposed amendment to N.J.A.C. 13:42-5.1, which will raise New Jersey's passing grade on the written licensure examination and update the name of the organization sponsoring the examination, will conform New Jersey's standards to those in a majority of states. A positive social impact should obtain from:

1. Increased uniformity in testing standards for determination of accepted examination performance. Uniformity is desirable in order to promote higher standards of scholarship, ethics and clinical skills in the profession;
2. A higher standard of professionalism which is currently enjoyed in the majority of states which employ the higher minimum standards of acceptable examination performance;
3. More comprehensive knowledge and skills on the part of licensees;
4. Increased efficiency in grading and returning graded examinations;
5. Increased likelihood of New Jersey's participation in efforts to expedite state reciprocity in licensure; and
6. Increased mobility for New Jersey licensed psychologists and improved marketability for New Jersey licensees.

Economic Impact

The proposed amendment to N.J.A.C. 13:42-5.1 will not directly impact consumers, but has the potential to economically impact applicants for licensure. Those foreclosed to practice, and the financial rewards of professional practice, by their inability to meet increased standards of competence will experience a negative economic impact as a result of the amended regulation. Conversely, a positive economic impact will result for those who meet new minimum standards. Successful applicants for licensure will find themselves more marketable in the states which already require higher minimum standards on the licensing examination.

Successful candidates will also benefit from new markets made available to them because of a probable increase in state licensure reciprocity with New Jersey. Finally, an economic benefit may result for all State licensees brought about by an enhanced public confidence in the profession engendered by higher mandated standards of competence in the practice of psychology.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for this proposed amendment because the practice requirements set forth in this amendment involve no Federal standards or requirements. Instead, the amendment finds its authority solely in the power to make board regulations conferred by N.J.S.A. 45:14B-13.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Board to give a description of the types and the number of small businesses to which the proposed amended rules may apply. If, for the purposes of this Act, the 2,576 individual practicing psychologists and the approximately 400 permittees are deemed small businesses, the following analysis applies:

The amendment to N.J.A.C. 13:42-5.1, which corrects the name of the organization sponsoring the psychologists' licensing examination, will not result in any additional compliance requirements. The other amendment to N.J.A.C. 13:42-5.1, which upgrades minimum acceptable performance standards on the examination, will exact additional compliance requirements from permittees in the form of requiring permittees to meet higher standards of competence evidenced by a higher minimum passing score on the exam. There are no additional compliance costs or reporting or recordkeeping requirements on the part of licensees or permittees.

Generally, the proposed amendment requires no professional services beyond existing professional office staff to comply with the amended rule. No exemption is provided for small businesses because to do so would defeat the purpose of the amendment which is to protect the health, safety and welfare of citizens of the State.

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

13:42-5.1 Board-approved written examination; oral examination

(a) A candidate who has been admitted to sit for examination shall take the Examination for Professional Practice in Psychology sponsored by the [American] Association of State and Provincial Psychology Boards. [A satisfactory score is defined minimally as one standard deviation below the national mean of all doctoral candidates taking the examination on a given date]. A passing score shall require 70 percent of the question items to be answered correctly.

1. This passing grade applies to all examinations taken on and after the effective date of this amendment.

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

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF SOCIAL WORK EXAMINERS**

Rules of Practice

**Proposed New Rules: N.J.A.C. 13:44G-9, 10,
11 and 12**

Proposed Amendment: 13:44G-4.1

Authorized By: State Board of Social Work Examiners, Leslie

G. Aronson, Executive Director.

Authority: N.J.S.A. 45:15BB-11(e).

Proposal Number: PRN 1995-255.

Submit written comments by May 31, 1995 to:

Leslie G. Aronson, Executive Director
State Board of Social Work Examiners
Post Office Box 45033
Newark, NJ 07101

The agency proposal follows:

Summary

The Social Workers Licensing Act of 1991, P.L. 1991, c.134, N.J.S.A. 45:15BB-1 et seq. ("the Act") established qualification standards for education and training, and experience standards for persons seeking to practice as social workers and required all individuals engaged in the practice of social work, except those specifically exempt, to be licensed or certified under the Act. The proposed new rules are part of the continuing statutory obligation to provide standards for social workers' professional conduct in an effort to protect the health, safety and welfare of New Jersey's citizens. The new rules establish general obligations of licensees and certificate holders in business practices, professional conduct, advertising and recordkeeping. The proposed rules also establish parameters for determining what practices constitute the unlicensed practice of social work. The Board also clarifies by amendment to N.J.A.C. 13:44G-4.1 that the supervised clinical experience that an applicant for licensure as a clinical social worker needs to demonstrate must be obtained subsequent to earning a master's degree in social work.

As indicated above, the proposed amendment to N.J.A.C. 13:44G-4.1 clarifies Board policy that the two years of supervised clinical social work experience necessary to qualify as a licensed clinical social worker must be accrued subsequent to earning a master's degree in social work. In its initial proposal, appearing at 25 N.J.R. 3081(1993), this requirement was clear in the section outlining requirements for licensure without examination (N.J.A.C. 13:44G-5). The Board has always required the supervised clinical experience to be acquired post-master's degree. This proposed amendment clarifies that Board requirement.

Subchapter 9. General Obligations of Licensees and Certificate Holders; Unlicensed Practice

Proposed N.J.A.C. 13:44G-9 outlines general obligations of licensees and certificate holders. Included in these responsibilities is the duty to notify the Board in writing within 30 days of a change of address. N.J.A.C. 13:44G-9.1 provides that service of any inquiry or disciplinary proceeding to the address on file will be deemed adequate notice to the social worker. It further requires the social worker to notify the Board within 30 days of disciplinary action being taken in another jurisdiction.

N.J.A.C. 13:44G-9.2 outlines acts and practices considered to be the unlicensed practice of social work. These acts include: offering or rendering social work services by a person not certified or not licensed or not exempt from licensure requirements, and providing social work services that are not within the social worker's scope of practice; engaging in the independent practice of clinical social work for a fee when not appropriately licensed; and using a title, professional designation, or professional abbreviation intended to mislead the public. Exemptions to the Licensing Act are set forth at N.J.S.A. 45:15BB-5 and N.J.A.C. 13:44G-1.3.

Subchapter 10. Business Practices; Professional Conduct

Proposed N.J.A.C. 13:44G-10 covers subjects related to business practice and professional conduct.

N.J.A.C. 13:44G-10.1 directs social workers to display two professional notices in a waiting room or some area equally visible to clients. The first notice advises consumers that the Board of Social Work Examiners regulates the practice of social work and explains where consumers may direct service complaints. The second notice pertains to a client's right to receive fee information on request.

N.J.A.C. 13:44G-10.2 governs financial arrangements with clients. This subchapter directs that fees cannot be excessive and provides criteria for determining a reasonable fee for services.

N.J.A.C. 13:44G-10.3 directs that once a social worker arrives at a reasonable schedule of fees, those fees must be maintained as a written list and must be given to clients on request. The list of fees must also reflect the social worker's policies toward accepting various forms of payment such as Medicare, Medicaid, third party payor plans and special fee categories such as special senior citizens rates. This section also directs that before entering into a clinical relationship, a social worker must assist clients to understand the financial arrangements associated with treatment. This information shall include, but not be limited to: the basis for determining fees and/or the fee to be charged; whether installment payments, excluding deductible, will be accepted; the extent to which insurance reimbursement is accepted as full payment; that insurance may not reimburse the client in all circumstances; and the financial consequences of missed sessions.

N.J.A.C. 13:44G-10.4 through 10.7 deal with issues that arise from a professional relationship with a social worker. N.J.A.C. 13:44G-10.4 forbids clinical social workers and social workers from providing services where a conflict of interest could limit his or her objectivity and directs a social worker to terminate the relationship if a conflict develops.

N.J.A.C. 13:44G-10.5 prohibits the social worker from providing services while under the influence of alcohol or drugs. This section also addresses the social worker's responsibility to explain the nature and scope of services to a client and the social worker's duty to determine whether or not to limit other professional and/or scientific activities if it is foreseeable that those other activities are likely to lead to inadequate service to the client. If the social worker does conduct research, this section instructs that the social worker must observe research requirements consistent with accepted standards of practice. If the ability to provide competent service becomes questionable, the social worker must seek competent professional assistance to help him or her determine action to correct the situation.

N.J.A.C. 13:44G-10.6 directs that if a social worker decides to terminate service for conflict reasons or if services must be terminated for any reason, the social worker shall not abandon the client without making reasonable arrangements for care continuation, if required. A social worker who anticipates interrupting or terminating service must notify the client promptly and seek the transfer, referral or continuation of service depending upon the client's need.

N.J.A.C. 13:44G-10.7 contains the prohibition concerning sexual or intimate relationships with clients. A social worker may not accept as a client anyone who has been the social worker's sexual partner within the last 24 months. Nor can a social worker maintain a sexual relationship with a current client, a current student, a current supervisee, supervisor or research participant, or a former client where psychotherapeutic services were rendered within the last 24 months. Although these are the bright line standards, they represent a floor but not a ceiling for prohibited conduct. A prohibition would extend indefinitely if the former client is or should be recognized by the social worker as clearly vulnerable by reason of some emotional or cognitive disorder. Moreover, sexual harassment or other types of harassment and discrimination, which are defined in this subsection, are all strictly prohibited.

N.J.A.C. 13:44G-10.8 concerns professional conduct among social workers. This section sets forth an affirmative duty to report violations of other licensees. Pursuant to the proposed new rule, it is a social worker's duty to notify the Board promptly when another social worker demonstrates an impairment, gross incompetence or unprofessional conduct. If, however, a social worker receives information on the violative conduct of another social worker from a client, the social worker must obtain authorization from the client in order to release the information. If through treatment of one social worker by another the information is obtained, the treating social worker bears no obligation to notify the Board if the treating social worker reasonably believes that the improper conduct ceased and that the treatment will prevent the occurrence of future misconduct; or if the client-social worker receives, concurrent with treatment, professional supervisory assistance or further education to prevent future misconduct.

N.J.A.C. 13:44G-10.9 addresses a prohibition on solicitation and unethical kickbacks. A social worker may not work for an agency and solicit clients for his or her private practice for the same goods or services that the agency provides. A social worker cannot sell or lease goods or services to a client without advising the client that he or she has an ownership interest in the goods or services. Nor can the social worker pay or receive compensation for a referral for himself or for services in which the social worker or his or her family has a financial interest as defined in the Health Care Cost Containment Act, N.J.S.A. 45:9-22.4 et seq. Moreover, a social worker is prohibited from dividing professional service fees among anyone other than social workers engaged in a bona fide partnership or professional service corporation or employment relationship.

N.J.A.C. 13:44G-10.10 prohibits excessive fees and establishes the factors used in determining whether a fee is excessive. Those factors include: the time and effort required to perform the service or treatment; the skill required to properly perform the service or treatment; the nature and length of the professional relationship with the client; the nature and circumstances under which services are provided; and whether the fee was set by an institution or agency.

Subchapter 11. Advertising

Proposed N.J.A.C. 13:44G-11 contains rules regarding social worker advertising. N.J.A.C. 13:44G-11.1 defines terms used in subchapter 11. N.J.A.C. 13:44G-11.2 through 11.7 discuss the substantive requirements of the advertising. These provisions include what may and not be included in the text, guidelines for advertising fees, use of testimonials and prohibited advertising methods.

Generally, as N.J.A.C. 13:44G-11.2 outlines, a social worker must be able to substantiate advertising claims. If the social worker is a principal, partner or officer of a firm or entity identified in an advertisement, that social worker bears responsibility for the form and content of any advertisement disseminated by or on behalf of the firm. In addition, the social worker must be able to assure that an advertisement does not misrepresent, suppress, omit or conceal material facts. Indirectly obscuring a fact that a social worker knows or should know would prevent a potential client from making an informed judgment is also prohibited.

As N.J.A.C. 13:44G-11.3 sets forth, advertisements must meet minimum content requirements. The name of the social worker, identification of licensure or certification standards, street address and telephone number of the practice location constitute the minimum requirements. Upon application to the Board for cause, a social worker may be relieved from including the practice address. This exception may be employed, for example, by social workers whose clients are battered women. As N.J.A.C. 13:44G-11.4 mandates, if the advertisement cites credentials, it must reflect the highest academic degrees received from accredited institutions related to the practice of social work. If the advertisement contains information on social work certification or diplomate status, that advertisement must include the full name of the agency that conferred the certification or diplomate status or the recognized name or abbreviation that signifies that status. If the social worker uses a professional abbreviation after his or her name, the only abbreviations considered acceptable are those that represent the highest academic degrees earned related to the practice of social work or certifications or licenses conferred by a Federal agency or social work certifications or diplomate status as defined in N.J.A.C. 13:44G-11.1. If the social worker chooses to list his or her credentials, this subsection also provides the order in which these letters or abbreviations must appear.

N.J.A.C. 13:44G-11.5 provides that an advertised description of fees must be limited to a fixed or stated range of fees for professional services. All relevant variables and possible additional services which may impact the ultimate cost of care must be included and clearly written so that they may be understood by a potential client. If the fee remains in effect for a limited period of time, that period of time must be included. In the absence of a time limit disclosure, advertised fees will be deemed effective for 30 days following the date of initial publication. Discussion of fees in an advertisement does not preclude the social worker from waiving the fee or charging less than the fee advertised.

Certain claims and disclosures prohibited in advertisements are described in N.J.A.C. 13:44G-11.6. The proposed rule states that a social worker may not guarantee satisfaction or cure. Advertisements may not identify a client without that client's consent. An advertisement may not proffer services the social worker cannot realistically perform. More generally, an advertisement must not appear to intimidate, pressure or unduly influence a prospective client.

Testimonials may be used in advertising but their use is regulated by the provisions of N.J.A.C. 13:44G-11.7. If they are used, this section directs that they must be based upon personal knowledge of the subject matter, they must be able to be substantiated and within the giver's ability to understand. Prior to using the testimonial, the social worker must obtain a notarized statement and release which indicates the testimonial giver's willingness, to have his statement used in the advertisement. The final advertisement must also include a statement, conspicuously located in the advertisement copy, which attests to compensation paid to the testimonial giver, if any has been provided.

N.J.A.C. 13:44G-11.8 requires the retention of documentation related to advertisements. A copy of any advertising copy, audio or video material must be kept for a period of three years following the date of initial publication or dissemination. A record must also be kept of the date and place of publication. If testimonials were used in the advertisement, the social worker must retain additional documentation regarding the testimonial. Included in the documentation must be the name, address and phone number of the testimonial giver, a record of any compensation paid and a copy of the notarized statement and release pursuant to N.J.A.C. 13:44G-11.7(b).

Subchapter 12. Client Records; Confidentiality

Proposed N.J.A.C. 13:44G-12 sets forth administrative requirements for keeping client records, special instructions for client records maintained on a computer, conditions and procedures for the release of client records, the necessity for preserving, client confidentiality, and circumstances when client confidences can be disclosed.

N.J.A.C. 13:44G-12.1, which deals with client record maintenance, requires that a social worker keep a contemporaneous, permanent client record for every client for at least seven years from the date of the last entry. At minimum, the following information must be recorded and periodically updated and reviewed notwithstanding an employer's recordkeeping requirements: client name, address and phone number; location and dates of services or treatment; identity of service or treatment provider; the presenting situation; significant social history; past and current client medications, when appropriate; social work assessment; a treatment or service plan; progress notes for every session; information on referrals to other professionals or reports provided by other professionals; and fees charged and paid. If a social worker provides clinical services, the client record must also include any significant medical and psychosocial history, a diagnostic assessment and a prognosis.

If a personal or other computer is used to maintain client records, N.J.A.C. 13:44G-12.2 requires a protocol to be followed. A write-protected program must be used which automatically creates a backup file and dates and time records each entry. The computer system must be designed so that the social worker can "sign" the entry by means of a confidential personal code ("CPC"). Each client must have two forms of identification in the client record. If a computer system does not meet the requirements of this section, modifications to bring it into compliance must be completed within one year from the effective date of this rule. In the interim, a hard copy of the entire client record must be printed after each visit and each page of that record, initialed by the social worker and retained as part of the client record. The confidentiality of client records must be maintained and the proposed rule mandates that social workers establish procedures to protect the confidentiality of those records in the event of a social worker's relocation, retirement or death. Although confidentiality of records remains a social worker's responsibility to secure, there are certain circumstances in which client records may be disclosed. N.J.A.C. 13:44G-12.3 delineates those circumstances.

N.J.A.C. 13:44G-12.3(a)1 states that records must be released as required by Federal law, state law or regulation. Records must also be disclosed if ordered by the Board or the Attorney General pursuant to an investigation or if ordered by a court of competent jurisdiction. The social worker may reveal client information if the social worker's failure to disclose would pose a clear and present danger to the health or safety of an individual. A limited release of records will also be permitted where a social worker is a party to a civil, criminal or disciplinary action arising from social work services provided. Records may also be released if the client waives the privilege; however, if more than one family member is receiving counselling with the same social worker, each family member must consent to waive the privilege before any client information can be disclosed. Finally, the confidentiality privilege would be unavailable if the patient or client is a defendant in a criminal proceeding and by the social worker's invoking the privilege, the defendant's right to compulsory process or the defendant's right to present testimony and witnesses to advance his or her defense would be violated.

If confidential records are to be released to a client or his or her guardian, N.J.A.C. 13:44G-12.4 sets out the procedure for the record's release. This section provides that a social worker has 30 days to produce the client record or a summary of the record to the client or the client's guardian upon request. If the social worker reasonably believes release of information would adversely affect the client's health or welfare, the social worker may, in good faith, withhold that portion of the client record. Pursuant to N.J.S.A. 9:17A-1 et seq., the social worker is not required to release to a minor client's parents or guardian information relating to the minor's sexually transmitted disease, termination of pregnancy or substance abuse. If a request is forwarded to the social worker from client's health insurance carrier only basic information shall be provided. That basic information, listed in N.J.A.C. 13:44G-12.4(a)2i through v, consists of: the client's name; age; sex; address; educational status; identifying number within the insurance program; date of onset of difficulty; initial consultation date; dates of sessions; diagnostic information; client status; assessment of client condition; and prognosis. If another licensed health care professional, hospital, nursing home, or

similar licensed institution which is or has been asked to provide service to the client, requests client information, the social worker may ask for the request in writing, may charge a reasonable fee calculated to recoup copying and transcription costs for the information, and need only provide a summary adequately reflecting the client's history and treatment. This section does not apply to social workers who, because of their agency affiliation, do not exercise control or authority over the client records.

Social Impact

The proposed amendment to N.J.A.C. 13:44G-4.1 and the proposed new rules will have a positive social impact by assuring that only the most competent and professional practitioners provide social work services. The proposed amendment governing professional conduct among clients and among social workers themselves will serve to protect the health, safety and welfare of New Jersey's residents, as well as provide the new licensee with a set of professional standards of conduct for the practice of social work. The regulation of business practice will help insure that better records are kept, that those records remain confidential, that harassment and discrimination are minimized and that the standards of professionalism will be maintained within the practice. The mandate that fees be reasonable and that they be communicated to clients on request will also help increase public confidence in social work practitioners. Regulation of advertising practices will contribute to public confidence in the profession. The amendments will also impact favorably on agencies and long term care facilities that will continue to employ individuals as certified social workers.

Economic Impact

The proposed new rules emphasize the importance of professionalism among social workers in the State and the need for fees to comport with the value of services. This proactive concern for clarity in the methods used in keeping client records and calculating fees should reduce litigation and maintain fees at a reasonable level. As a result, the economic impact of the new rules should be positive. Regulatory measures related to maintaining client confidentiality, as well as a regulatory prohibition on discrimination and harassment, carry no immediate economic impact; however, probable resulting goodwill may have a positive impact on future funding sources.

Although proposed advertising regulations in N.J.A.C. 13:44G-11 related to storing advertisement copy, as well as regulations requiring advertisement space for disclosures when testimonials are used, may exact a small cost on social workers who utilize advertising, this cost is projected to be both small and discretionary. As a result, it is unlikely that proposed changes in advertising requirements should cause fee increases to clients.

Similar to the proposed advertising regulations, enhanced recordkeeping requirements mandated by N.J.A.C. 13:44G-12 may exact small cost increases to social workers which may be reflected in client fees. It is unlikely that these negligible costs will have a noticeable impact on costs to consumers of social work services.

The potential costs related to computer software upgrades, required by N.J.A.C. 13:44G-12.2 if a social worker does not currently use a write-protected computer system, may have a slight impact on consumers. The resulting pass-through cost, if any, will depend on the cost to upgrade the computer. These costs are thought to be outweighed by the overwhelming benefit to consumers of ensuring the accuracy and confidentiality of client records.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for the proposed amendment and new rules because the practice requirements set forth in this proposal either involve no Federal standards or requirements or are consistent with such standards (for example, 42 C.F.R. par. 2, which discusses the confidentiality of certain client records). The proposed rules find their authority in the power to make Board regulations governing the practice of social work conferred by N.J.S.A. 45:15BB-1 et seq.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the approximately 12,000 individuals engaged in the practice of social work are deemed "small businesses" within the meaning of the statute, the following statements apply.

The proposed amendment to N.J.A.C. 13:44G-4.1, regarding educational requirements for social workers, does not alter the existing requirement to submit a supervisor's certification regarding the applicant's clinical experience. Therefore, there is no additional cost. Since the

proposed amendment only clarifies existing Board policy, there are no additional reporting, recordkeeping or other compliance requirements.

N.J.A.C. 13:44G-9, which directs a licensee or certificate holder, within 30 days, to notify the Board, in writing, of address changes or disciplinary actions taken against him or her in other jurisdictions, does demand that the social worker report to the Board if and when those situations arise. These requirements may utilize administrative resources but these resources are generally the lower cost services of office staff. Moreover, the Board believes that the nominal cost to a licensee or certificate holder is outweighed by the public benefit of keeping an accurate record of address for each licensee and a record of disciplinary actions taken against the social worker in other jurisdictions.

N.J.A.C. 13:44G-10, which mandates the reasonableness of fees for social work services and establishes guidelines for determining reasonableness, will positively impact New Jersey citizens by discouraging excessive fees within the profession. These proposed rules may, however, exact a compliance cost from the social worker, if the social worker employs the services of an accountant to determine his or her fee for services. The Board does not believe that generally accountant's services will be necessitated to comply with this section. The proposed rules may also require some administrative recordkeeping services to comply with the mandate that the social worker maintain a current fee schedule. Another cost associated with compliance with these rules may obtain from the time required of the social worker to explain financial arrangements with potential clients. It is the Board's belief that these potentially small costs are outweighed by the public benefit of reasonable fees and adequate fee disclosure to clients that these regulations secure.

Costs of compliance with N.J.A.C. 13:44G-10.4, where conflicts of interest are outlined, N.J.A.C. 13:44G-10.5, which provides guidelines for professional conduct, N.J.A.C. 13:44G-10.6, which outlines when and how service to clients should be terminated N.J.A.C. 13:44G-10.7, which prohibits accepting a client or continuing a client relationship with someone with which the social worker has engaged in sexual intimacies, and N.J.A.C. 13:44G-10.9 which prohibits unethical kickbacks are entirely dependent upon individual social worker circumstances. Therefore, due to their subjective nature, the cost of compliance for any of the above-mentioned sections cannot be estimated. N.J.A.C. 13:44G-10.4 may require recordkeeping in order to ascertain that no conflicts of interest exist within a social worker's client list, however, this would probably be managed by the social worker at little cost or burden to the social worker's business.

Compliance with N.J.A.C. 13:44G-10.10, which prohibits excessive fees, may require the advice of an accounting professional in order to determine whether fees are excessive; however, the Board anticipates that this determination could be made by the social worker without further assistance. Therefore, it is unlikely that this section should impose reporting, recordkeeping or compliance costs.

The proposed rules regarding advertising in N.J.A.C. 13:44G-11 will result in a small, but, because advertising is not mandatory, entirely discretionary economic impact on social workers. Therefore, the economic impact of these regulations will only affect social workers who advertise. This impact will be related to the recordkeeping cost of retaining advertising copy of any advertising media for a period of three years. Storage of this information may require administrative assistance. The proposed advertising rules will not require more costly professional services such as lawyers or accountants. Although compliance cost estimates are not available at this time, they are thought to be minimal and outweighed by the value of ensuring that the public is not misled by false claims or puffery.

An additional impact will result from occasions when paid testimonials are employed in advertisements. On those occasions, additional advertising space will be required for advertising copy to notify the public that the testimonial giver received compensation for his or her statements. The purchase of that additional advertising copy will result in a small cost increase to social workers who run this type of advertisement. Moreover, when testimonials are used a recordkeeping requirement will be triggered. The social worker must obtain a signed and notarized statement and release from the testimonial giver. As a result, both the professional services of a notary and probably some administrative staff to type and then file the statement will be required. Costs for notarization, typed statements and storage are anticipated to be minimal.

N.J.A.C. 13:44G-12 which concerns itself with client records may exact a small cost for administrative recordkeeping and costs for additional storage space to maintain client records for a period of seven years. To varying degrees, regulations regarding the maintenance of client records

will probably effect all social workers. The services of low cost administrative staff will likely be utilized to carry out the mandates of this section.

In addition, social workers who choose to use of a personal computer or other computer to maintain client records may require a software upgrade to comport with the requirements of the regulation within one year from the effective date of these rules. Since the use of a computer is not mandated, costs associated with using a computer are discretionary. If a computer is used, there will be a cost to obtain the necessary software if an upgrade is required to comply with this section, but estimates are not available at this time. Interim measures which direct a social worker using non-conforming software to print out a hard copy of the entire client record after each visit, will again, exact an increased cost for filing and storage. There are no direct costs to the public.

Generally, it can be stated that the rules proposed for promulgation rules require uniform applicability to all licensees and certificate holders without differentiation as to size of practice in order to protect the health, safety and welfare and would require little if any additional services beyond regular office staff. Any burden associated with compliance will be offset by the benefits of protection of the public health, safety and welfare.

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

SUBCHAPTER 4. APPLICANT QUALIFICATIONS; BOARD-APPROVED EXAMINATION

13:44G-4.1 Eligibility requirements; licensed clinical social worker

(a) (No change.)

(b) An applicant for licensure as a clinical social worker shall submit the following, on forms provided by the Board.

1.-3. (No change.)

4. A supervisor's certification, or the applicant's affidavit in lieu of supervisor's certification, indicating that, **subsequent to earning a master's degree in social work**, the applicant has engaged in full-time clinical social work under supervision for at least two years as defined in (a) above; and

5. (No change.)

SUBCHAPTER 9. GENERAL OBLIGATIONS OF LICENSEES AND CERTIFICATE HOLDERS; UNLICENSED PRACTICE

13:44G-9.1 Notification of change of address; service of process

(a) Each licensee and certificate holder shall notify the Board, in writing, within 30 days of any change in the address on file with the Board and shall specify whether the address is a residence or employment address.

(b) Service of an administrative complaint or other process initiated by the Board, the Attorney General or the Division of Consumer Affairs at the address on file with the Board shall be deemed adequate notice for the commencement of any inquiry or disciplinary proceeding.

(c) Each licensee and certificate holder shall, within 30 days of receiving a notice of disciplinary action taken against the licensee or certificate holder in another jurisdiction, report to the Board in writing his or her receipt of such notification.

13:44G-9.2 Unlicensed practice of social work

(a) The following acts or practices shall be deemed to be the unlicensed practice of social work:

1. Offering or rendering social work services by any person other than a licensed clinical social worker, a licensed social worker or a certified social worker or any person who is not exempt from licensure under the Social Workers' Licensing Act, N.J.S.A. 45:15BB-5.

2. The use by any person other than a licensed clinical social worker, a licensed social worker or a certified social worker of any title or designation that includes the words social worker or social work or that may mislead the public, such as, but not limited to, social worker, licensed clinical social worker, licensed social worker, certified social worker, medical social worker, social work technician; and any of the abbreviations SW, LCSW, LSW, CSW, SWT or

similar abbreviations. Licensed and certified social workers shall use only the title or designation corresponding to the license or certification held.

3. Engaging in the independent practice of clinical social work for a fee by any person other than a licensed clinical social worker.

4. Offering or rendering clinical social work services by a licensed social worker, unless the licensed social worker is under supervision pursuant to N.J.A.C. 13:44G-3.2 and 8.1.

5. Offering or rendering clinical social work services by a certified social worker.

SUBCHAPTER 10. BUSINESS PRACTICES; PROFESSIONAL CONDUCT

13:44G-10.1 Display of notice of licensure or certification; notification of availability of fee information

(a) All licensed or certified social workers employed in an agency setting and licensed clinical social workers conducting independent practice shall ensure that the following notices are prominently displayed in a waiting room or other area where they will be visible to the social worker's clients:

1. "Social workers are licensed or certified by the Board of Social Work Examiners, an agency of the Division of Consumer Affairs. Any member of the public may notify the Board of any complaint relative to the practice conducted by a social worker. The Board's address is Division of Consumer Affairs, Board of Social Work Examiners, Post Office Box 45033, 124 Halsey Street, Newark, New Jersey 07101."

2. "INFORMATION ON PROFESSIONAL FEES IS AVAILABLE TO YOU ON REQUEST."

13:44G-10.2 Financial arrangements with clients

(a) Fees for social work services shall be reasonable and commensurate with the status and experience of the social worker when compared with fees of social workers offering like services or treatment in the geographic area and shall be consistent with the provisions of N.J.A.C. 13:44G-10.10 prohibiting excessive fees.

(b) Where payment of the usual fee would be a hardship, a social worker shall refer the client to other sources for provision of needed services.

13:44G-10.3 Licensed clinical social worker; financial arrangements with clients

(a) A licensee providing clinical social work services shall prepare and maintain a written list of current fees for standard services and, upon request, shall provide the list to clients.

(b) The licensee shall include all of the following information on the list:

1. Whether Medicaid clients are accepted;
2. Whether Medicare clients are accepted and, if so, whether that assignment is taken on all billings;
3. Whether other third party payor plans are accepted;
4. The extent to which insurance payments (excluding deductible) are accepted as payment in full; and
5. Whether special fee categories are available, such as senior citizens or members of designated groups (for example, preferred provider plan members).

(c) Before engaging in the clinical relationship, a social worker shall assist clients to understand financial arrangements. The information provided to the client shall include, but not be limited to:

1. The fee for services or the basis for determining the fee to be charged;
2. Whether the licensee will accept installment payments or assignment of benefits from a third party payor;
3. That insurance coverage may not be available in all circumstances; and
4. The financial consequences, if any, of missed sessions.

13:44G-10.4 Conflicts of interest

(a) A social worker providing clinical social work services shall not enter into any relationship that would be expected to limit objectivity and impair professional judgment or increase the risk

of exploitation. Examples of such relationships include, but are not limited to, professional treatment of employees, tenants, students, supervisees, close friends or relatives.

(b) A social worker providing social work services shall not provide those services in circumstances that would be expected to limit the social worker's objectivity and impair professional judgment or increase the risk of exploitation.

(c) A social worker who has identified a conflict of interest shall notify the parties involved and shall take action to terminate the conflict.

13:44G-10.5 Professional interactions with clients

(a) A social worker shall advise the client, in terms the client can understand, of the nature and purposes of the services to be rendered and the limits and obligations associated with such services.

(b) A social worker shall not provide social work services while under the influence of alcohol or other mind altering drugs that impair delivery of services.

(c) A social worker shall obtain competent professional assistance in order to determine whether to voluntarily suspend, terminate or limit the scope of the social worker's professional and/or scientific activities which are foreseeably likely to lead to inadequate performance or harm to a client, colleague, student or research participant. However, a social worker need not seek professional assistance if the social worker independently suspends professional activities for the reasons set forth above.

(d) When interacting with a research subject, a social worker shall observe research requirements consistent with accepted standards of practice.

13:44G-10.6 Termination of services

(a) A social worker shall terminate services to a client when the services are no longer required or no longer meet the client's needs or interests.

(b) A social worker shall not abandon or neglect a client in need of professional services without making reasonable arrangements for the continuation of such care or offering to help the client find alternative sources of assistance.

(c) A social worker who anticipates the termination or interruption of services to a client shall notify the client promptly and seek the transfer, referral or continuation of service in relation to the client's needs and preferences.

13:44G-10.7 Sexual conduct, harassment; discrimination

(a) A social worker shall not accept as a client an individual who, within the immediately preceding 24 months, was the social worker's sexual partner.

(b) A social worker shall not participate in a sexual relationship or engage in sexual intimacies with a current client, a former client to whom psychotherapeutic or concrete services were rendered within the immediately preceding 24 months, a current student, a supervisee or supervisor or a research participant; however, the 24 month limitation shall not apply, and the prohibition shall extend indefinitely, in circumstances where the former client is or should be recognized by the social worker as clearly vulnerable by reason of emotional or cognitive disorder to exploitive influence by the social worker.

(c) A social worker shall not condone or engage in sexual harassment. For the purposes of this section, sexual harassment is defined as deliberate or repeated comments, contacts or gestures which are sexually demeaning, suggestive or seductive.

(d) A social worker shall not condone or engage in any form of harassment. For the purposes of this section, harassment is defined as deliberate or repeated comments, contacts or gestures which are based upon the following and which have the purpose or effect of intimidating or offending: an individual's race, religion, color, national origin, marital status, sexual orientation, physical or mental disability or any other preference or personal characteristic, condition or status.

(e) A social worker shall not condone or engage in any form of discrimination on the basis of an individual's race, age, religion,

color, national origin, marital status, gender, sexual orientation, physical or mental disability or any other preference or personal characteristic, condition or status.

13:44G-10.8 Reporting of violations of other licensees

(a) A social worker shall promptly notify the Board when in possession of information which reasonably indicates that another licensee or certificate holder has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to a client or to the public health, safety or welfare.

1. When the information is obtained in the course of a professional or consulting relationship with a client, and the client is unwilling or unable to make the report, the social worker shall report the information only with the written permission of the client.

2. When the information is obtained in the course of treating a client-social worker, the treating social worker shall not be obligated to notify the Board if:

i. The treating social worker reasonably believes that the improper conduct has ceased and that the treatment is preventing a recurrence of the impairment, incompetence or professional misconduct; or

ii. The treating social worker has reasonable cause to believe that the client-social worker is currently receiving professional supervision and pursuing education to correct the deficiency.

13:44G-10.9 Prohibition on solicitation; unethical referrals and kickbacks

(a) A social worker who provides services to an agency shall not solicit, for his or her private practice, the agency's clients for the same services the agency provides.

(b) A social worker shall not refer a client to a service in which the social worker or his or her immediate family has a financial interest, as defined in the Health Care Cost Reduction Act, N.J.S.A. 45:9-22.4 et seq., including an equity or ownership interest in a practice or in a commercial entity holding itself out as offering a health care service.

(c) A social worker shall not prescribe goods or devices which the social worker sells or leases to the client unless the social worker advises the client of the ownership or other interest in the goods or devices.

(d) A social worker shall not pay, offer to pay or receive any fee or other form of compensation for referral of a client for professional services or for the purchase of goods.

(e) A social worker shall not permit the division of fees for professional services other than among social workers engaged in a bona fide partnership or professional service corporation or employment relationship.

13:44G-10.10 Prohibition on excessive fees

(a) A social worker shall not charge an excessive fee for services. Factors which the Board may consider in determining whether a fee is excessive include, but are not limited to, the following:

1. The time or effort required to perform the service or treatment;
2. The skill required to properly perform the service or treatment;
3. The nature and length of the professional relationship with the client;
4. The experience, reputation and ability of the social worker performing the services;
5. The nature and circumstances under which services are provided; and
6. Whether the fee was set by an institution or agency.

SUBCHAPTER 11. ADVERTISING

13:44G-11.1 Definitions

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

"Advertisement" means an attempt, directly or indirectly by publication, dissemination or circulation in print, electronic or other media, to induce any person or entity to purchase or enter into an agreement to purchase social work services, treatment or goods related thereto.

"Certified" or "certifications" means that a social worker shall have fulfilled all requirements of the agency granting certification and shall have earned a certificate upon satisfactory completion of a program directly related to social work.

"Diplomate" means that a social worker shall have satisfactorily completed a program approved by the American Board of Examiners in Clinical Social Work or shall have had diplomate status conferred by the National Association of Social Workers.

"Electronic media" include, but are not limited to, radio, television, telephone and other electronic means of communication. The term does not include communications made by sound equipment from a motor vehicle or other promotional media.

"Print media" include, but are not limited to, business cards, newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, signs, direct mail, matchcovers and other items disseminated by means of the printed word. The term shall not include aerial displays.

"Professional service" means a service which a social worker or professional association performs or lawfully authorizes a person under supervision to perform.

"Range of fees" means a statement of fees containing an upper and lower limit on the fees charged for services or goods offered by a social worker.

13:44G-11.2 Advertising; general requirements

(a) A social worker shall be able to substantiate the truthfulness of any material, objective assertion or representation set forth in an advertisement, when requested by the Board to do so.

(b) A social worker who is a principal, partner or officer of a firm or entity identified in an advertisement as offering social work services or goods shall be responsible for the form and content of any advertisement disseminated by or on behalf of a social worker affiliated with the firm.

(c) A social worker shall assure that an advertisement does not misrepresent, suppress, omit or conceal a material fact. Omission, suppression or concealment of a material fact includes directly or indirectly obscuring a material fact under circumstances where the social worker knows or should know that the omission is improper or prohibits a prospective client from making a full and informed judgment on the basis of the information set forth in the advertisement.

13:44G-11.3 Minimum content

(a) A social worker shall include the following in all advertisements and professional representations (other than an office entry sign), including advertisements in a classified directory, business cards and professional stationery:

1. Name, identification of licensure or certification status; and
2. Street address and telephone number of the practice location.

(b) A social worker may petition the Board for waiver of the requirement to list street address for good cause. A social worker shall submit a request for a waiver in writing which shall detail the reason(s) for the request which may include, but is not limited to, the maintenance of personal or client safety.

13:44G-11.4 Use of professional credentials and certifications

(a) A social worker shall accurately and objectively represent his or her competence, education, training and experience.

(b) An advertisement that includes information on professional credentials shall contain the highest academic degrees attained related to the practice of social work and shall refer only to degrees obtained from accredited academic institutions.

(c) An advertisement that includes information on social work certification or diplomate status shall include the full name of the agency conferring the certification or diplomate or the recognized name or abbreviation of the certification or diplomate.

(d) In addition to the information required to appear pursuant to N.J.A.C. 13:44G-11.3, letters or abbreviations that may appear immediately adjacent to the social worker's name shall be limited to those representing the following:

1. The highest academic degrees earned related to the practice of social work;

2. Social work certifications or diplomate status as defined in N.J.A.C. 13:44G-11.1; and

3. Other licenses or certifications issued by another state or Federal agency.

(e) Letters or abbreviations appearing immediately adjacent to the social worker's name shall appear in the following order only: highest academic degrees earned; licensure or certification status; social work certifications or diplomate status. For example, [Name], MSW, LCSW, BCD.

(f) Nothing in this section shall preclude any truthful and non-deceptive statement in regard to education or experience in a particular area of social work.

13:44G-11.5 Advertisements regarding fees; required disclosures

(a) Advertisements regarding fees shall be limited to those which contain a fixed or a stated range of fees for specifically described professional services.

(b) A social worker who advertises a fee or range of fees shall include the following disclosures in any such advertisement:

1. All relevant and material variables and considerations which are ordinarily included in the advertised services so that the fee will be clearly understood by prospective clients. In the absence of such disclosures, the stated fees shall be presumed to include everything ordinarily required for the advertised services;

2. The additional services contemplated and the fee to be charged therefor. In the absence of such disclosures, the social worker shall be prohibited from charging an additional fee for the advertised service; and

3. The period during which the advertised fee will remain in effect. In the absence of such disclosure, the advertisement shall be deemed to be effective for 30 days from the date of its initial publication.

(c) The advertisement of a fee shall not preclude the social worker from adjusting the fee downward or waiving a fee in individual circumstances.

13:44G-11.6 Prohibited types or methods of advertising

(a) A social worker shall not guarantee that satisfaction or a cure will result from the performance of professional services.

(b) A social worker shall not communicate information that may identify a client without the client's written consent.

(c) A social worker shall not offer a professional service which the social worker knows or should know is beyond his or her ability to perform.

(d) A social worker shall not advertise any technique or communication which appears to intimidate, exert undue pressure or unduly influence a prospective client.

13:44G-11.7 Use of testimonials

(a) An advertisement containing a lay or an expert testimonial shall be based upon the testimonial giver's personal knowledge or experience obtained from a provider relationship with the social worker or upon the testimonial giver's direct personal knowledge of the subject matter of the testimonial.

(b) Prior to using the testimonial, the social worker shall obtain a signed, notarized statement and release indicating the testimonial giver's willingness to have his or her testimonial used in the advertisement.

(c) A layperson's testimonial shall not attest to any technical matter beyond the layperson's competence to comment upon.

(d) 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.

(e) A social worker shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Board, may be deemed professional misconduct.

(f) Where a social worker directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a legible and readable manner in any advertisement in the following language or its substantial equivalent:

COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL

13:44G-11.8 Retention of advertisements

(a) The social worker shall retain, for a period of three years from the date of initial publication or dissemination, a copy of every advertisement appearing in print media as well as a video or audio tape of every advertisement communicated by electronic media. The social worker shall indicate on all advertisements in his or her possession the date and place of publication.

(b) Documentation relating to the use of testimonials shall be retained for a period of three years from the date of last use of the testimonial. Documentation shall include, but not be limited to:

1. The name, address and telephone number of the testimonial giver;

2. The type and amount or value of compensation; and

3. The notarized statement and release required pursuant to N.J.A.C. 13:44G-11.7(b).

SUBCHAPTER 12 CLIENT RECORDS; CONFIDENTIALITY

13:44G-12.1 Preparation and maintenance of client records

(a) A social worker shall prepare and maintain separately for each client a contemporaneous, permanent client record that accurately reflects the client contact with the social worker whether in an office, hospital or other treatment, evaluation or consultation setting.

(b) A social worker shall include at least the following information in the client record:

1. The client name (on each page of the record), address and telephone number;

2. The location and dates of all treatment, evaluation or consultation settings;

3. The identity of each provider of treatment, evaluation or consultation and the supervisor, if any;

4. The presenting situation;

5. Significant social history;

6. Past and current medications, when appropriate;

7. A social work assessment;

8. A treatment or service plan;

9. Progress notes for each session;

i. A social worker may dictate progress and session notes for later transcription provided the transcription is dated and identified as preliminary pending the social worker's final review and approval;

10. Information regarding referrals to other professionals and reports and records provided by other professionals; and

11. Fees charged and paid unless a separate financial record is kept.

(b) A social worker providing clinical services shall include in the client record the following information, in addition to the information required pursuant to subsection (a) above:

1. Significant medical and psychosocial history;

2. A diagnostic assessment; and

3. Prognosis.

(c) The social worker shall periodically review and update the treatment or service plan.

(d) The social worker shall retain the permanent client record for at least seven years from the date of last entry, unless otherwise provided by law.

(e) All social workers shall comply with this section notwithstanding an employer's recordkeeping requirements.

13:44G-12.2 Use of personal or other computer to prepare client records

(a) A licensee who prepares a client record maintained solely on a personal or other computer shall use a write-protected program which:

1. Contains an internal permanently activated date and time recordation for all entries;

2. Automatically prepares a back-up copy of the file; and

3. Is designed in such manner that, after the social worker "signs" by means of a confidential personal code ("CPC"), the entry cannot be changed in any manner.

(b) The social worker shall include in the client record at least two forms of identification; for example, name and record number or any other specific identifying information.

(c) The social worker shall finalize or "sign" the entry by means of a CPC. Where more than one individual is authorized to make entries into the computer file of any client record, the social worker responsible for the practice shall assure that each such person obtains a CPC and uses the program in the same manner.

(d) A social worker wishing to continue a system of computerized client records that does not meet the requirements of this section shall promptly initiate arrangements for modification of the system. The modification must be completed by (insert date—one year from the effective date of this rule). In the interim, the following shall apply:

1. On the date of the first treatment, evaluation or consultation subsequent to (insert date—the effective date of this rule), and after each visit continuing to the date of the changeover, the social worker shall:

- i. Print out a hard copy of the entire computer recorded client record; and
- ii. Date and initial each page of the printout.

2. The social worker shall retain all hard copies as a permanent part of the client record.

13:44G-12.3 Confidentiality

(a) A social worker shall preserve the confidentiality of information obtained from a client in the course of the performing social work services for that client, except in the following circumstances:

1. Disclosure is required by Federal or state law or regulation, such as, but not limited to, N.J.S.A. 2A:62A-17, and 42 C.F.R. Part 2.

2. Disclosure is required by the Board or the Office of the Attorney General during the course of an investigation.

3. Disclosure is required by a court of competent jurisdiction pursuant to an order.

4. The social worker's failure to disclose the information presents a clear and present danger to the health or safety of an individual.

5. The social worker is a party defendant to a civil, criminal or disciplinary action arising from the social work services provided, in which case a waiver of the privilege accorded by this section shall be limited to that action.

6. The patient or client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses on that person's behalf.

7. The patient or client agrees to waive the privilege accorded by this section. In circumstances when more than one person in a family is receiving social work services, each family member must agree to the waiver. Absent a waiver from each family member, a social worker shall not disclose any information received from any family member.

(b) A social worker shall establish and maintain a procedure to protect the client record from access by unauthorized persons.

(c) The social worker shall establish procedures for maintaining the confidentiality of client records in the event of the social worker's relocation, retirement or death and shall establish reasonable procedures to assure the preservation of client records in the event of the social worker's separation from a group practice.

13:44G-12.4 Release of client record

(a) At the request of the client or authorized representative, a social worker shall provide the client record or a summary thereof, within 30 days of the request directly to:

1. The client or the client's guardian, except that:

i. A social worker may withhold information contained in the client record from a client or the client's guardian if, in the reasonable exercise of his or her professional judgment, the social worker believes release of the information would adversely affect the client's health or welfare; and

ii. Pursuant to N.J.S.A. 9:17A-1 et seq. the social worker shall not be required to release to a minor client's parent or guardian

records or information relating to the minor's sexually transmitted disease, termination of pregnancy or substance abuse.

2. The client's health insurance carrier. Only the following basic information shall be provided. The information provided shall be marked "Confidential" and forwarded to the attention of a specific individual if identified by the client or authorized representative.

i. The client's name, age, sex, address, educational status, identifying number within the insurance program, date of onset of difficulty, date of initial consultation, dates and character of sessions (individual or group) and fees;

ii. Diagnostic information, defined as therapeutic characterizations of the type found in the current version of the DSM or in another professionally recognized diagnostic manual;

iii. Status of the client (voluntary or involuntary; inpatient or outpatient);

iv. The reason for continuing social work services, limited to an assessment of the client's current level of functioning and level of distress. Each aspect shall be described as "none," or by the term mild, moderate, severe or extreme; and

v. Prognosis, limited to an estimate of the minimal time during which treatment might continue.

3. Another licensed health care professional, hospital, nursing home or similar licensed institution which is providing or has been asked to provide treatment to the client.

(b) A social worker may require a record request to be in writing.

(c) A social worker may elect to provide a summary of the client record, as long as the summary adequately reflects the client's history and treatment, unless otherwise required by law.

(d) A social worker may charge a reasonable fee for the reproduction of the client record or the preparation of a summary. The fee shall be no greater than an amount reasonably calculated to recoup the costs of copying or transcription.

(e) A social worker shall not charge a fee for completion of health insurance claim forms.

(f) A social worker may charge a reasonable fee for completion of reports required for third party reimbursement of client treatment expenses.

(g) When a report is needed to enable a client to receive ongoing care by another practitioner or for use in judicial proceedings, a social worker shall not require advance payment as a condition for releasing the report; except that a social worker may require advance payment for release of a report prepared by the social worker as an expert witness.

(h) This section shall not apply to a social worker in an agency setting who does not, by agency policy, have control over or authority to release client records.

TRANSPORTATION

(a)

DIVISION OF SUPPORT SERVICES BUREAU OF RECORDS, SERVICES, AND WAREHOUSING

Records Management

Proposed Readoption with Amendments: N.J.A.C. 16:1

Authorized By: W. Dennis Keck, Deputy Assistant
Commissioner for Planning & Development.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-27 and 47:1A-1 et seq.
Proposal Number: PRN 1995-273.

Submit comments by May 31, 1995 to:

Renee Rapciewicz
Deputy Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:1, Records Management, will expire on October 1, 1995. These rules outline the procedure to be followed in records management and sale of public records within the Department. It provides the public with a definition of a Department public record and the procedure for obtaining copies.

The rules were reviewed and analyzed by the Department's staff of the Bureau of Records, Services, and Warehousing and were found to be necessary, reasonable, and proper for the purpose of which they were originally promulgated, along with amendments. The Department therefore proposes to readopt N.J.A.C. 16:1 with amendments.

Subchapter 1 outlines the manuals and regulations applicable to the operation of the records management program, and where they may be inspected by the public.

Subchapter 2 provides the procedure to be followed in the issuance and sale of New Jersey Department of Transportation public records.

As indicated below, the proposed amendments effect administrative changes, updating the rules to comply with reorganizations within the Department.

N.J.A.C. 16:1-1.3 has been amended to identify the Bureau's new name and address, and to conform section references to current code standards.

N.J.A.C. 16:1-2.2(c), (e), and (f) have been amended to incorporate new position name designations.

N.J.A.C. 16:1-2.2(f)4 has been amended to incorporate new fee structure outlined in N.J.S.A. 47:1A-2.

N.J.A.C. 16:1-2.2(g) has been amended to incorporate new fee structure outlined in N.J.S.A. 47:1A-2.

N.J.A.C. 16:1-2.2(i) has been added to outline the fees the Department charges for black line plans and supplementary specifications sold for non-departmental purposes.

N.J.A.C. 16:1-2.2(i) and (j) have been recodified as subsection (j) and (k).

N.J.A.C. 16:1-2.3 has been amended to incorporate new position name designations and a new bureau name.

Social Impact

The proposed readoption with amendments will continue to outline the procedure to be followed in records management and sale of public records within the Department. It provides the public with a definition of a Department public record and the procedure for obtaining copies. Availability of this information complies with statutory requirements regarding the ability of the public to access information of particular interest to them.

Economic Impact

The proposed readoption with amendments continues the procedure for obtaining copies of Department public records. The rules provide for fees, unless specified elsewhere in rule, regulation, or law, for copies of public records. The fees are \$.75 per page for the first 10 pages, \$.50 per page for the eleventh to twentieth pages, and \$.25 per page thereafter. The rules also make special provision for the public to use their own copying equipment, under specified circumstances. This fee shall not be less than \$10.00 per day nor more than \$50.00 per day. The proposed amendments to the rules reflect administrative changes in the Department. The fees charged by the Department for plans and supplementary specifications sold for non-departmental purposes have been included in the rules at N.J.A.C. 16:1-2.2(i), ranging from \$12.00 for sets of plans of 50 sheets or less to \$67.00 for sets of plans of 251 to 300 sheets (with a \$13.00 fee per 50 (or less) sheets thereto).

Executive Order No. 27 Statement

The rules at N.J.A.C. 16:1 are dictated by State statutes and are not subject to Federal requirements or standards.

Regulatory Flexibility Analysis

The proposed readoption with amendments provides the public with a definition of a Department public record and the procedure for obtaining copies. Members of the public may be considered small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the Department does not feel that any differentiation should be made in the rules based upon business size, since the fee requirements are not onerous and simply cover the costs of the service provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:1.

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

16:1-1.3 Inspection of manuals and regulations

Copies of all manuals and regulations cited in [section 1 ([N.J.A.C. 16:1-1.1, Enumeration of State documents]), and section 2 ([16:1-1.2, Enumeration of United States documents]) of this subchapter] may be inspected at the offices of the Bureau of Records [and], Services, and Warehousing, Department of Transportation [Bldg.], 1035 Parkway Avenue, Trenton, New Jersey 08625.

16:1-2.2 Requirements; accessibility and sale of public records

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

(c) The records listed below shall not be deemed NJDOT public records but may be made available for inspection, examination, and copying only by an individual who demonstrates to the satisfaction of the Custodian of Records, Director, Division of Support Services, in conjunction with the manager, [regional engineer] **executive director of regional operations** or higher level having custody of such records, that the citizen has a legitimate beneficial interest in such record or the protection of his or her property rights or the protection of any interest the citizen may have in any matter affecting the citizen to which said record is relevant. Availability may be limited to that part of the record which is particularly relevant to the citizen. Such records include all those which are made, maintained or kept on file by the NJDOT relating to:

1.-14. (No change.)

(d) (No change.)

(e) To safeguard the interest of the NJDOT as well as the general public in the release of records, the bureau [chief] **manager**, [regional engineer] **executive director of regional operations**, or higher level having custody of the records shall, where uncertainty exists, contact the authorized person from the appropriate bureau for approval prior to releasing the requested information.

(f) If a citizen of this State wishes to copy more than 100 pages of NJDOT public records, the bureau [chief] **manager**, [regional engineer] **executive director of regional operations**, or higher level having custody of the records may permit the citizen to use the citizen's own photographic process providing:

1.-3. (No change.)

4. The citizen is willing to pay the fee which shall be established by the custodian after considering the equipment and time involved (such fee shall not be less than [\$5.00] **\$10.00** nor more than [\$25.00] **\$50.00** per day).

(g) N.J.S.A. 47:1A-2 of "The Present New Jersey Right to Know Law" requires that if a price for a public record has not been established by a New Jersey statute, New Jersey legislative resolution, New Jersey Governor's executive order, rule of court, Federal law, regulation or order, or any New Jersey regulation, the following fees are in effect:

1. First page to 10th page, [\$0.50] **\$0.75** per page;
2. Eleventh page to 20th page, [\$0.25] **\$0.50** per page;
3. All pages over 20, [\$0.10] **\$0.25** per page.

(h) (No change.)

(i) **The charge for each set of black line plans and specifications sold for non-departmental purposes shall be in accordance with the following schedule:**

	Standard Size (22 x 36)
1. Sets of plans of 50 sheets or less	\$12.00
2. Sets of plans of 51 to 100 sheets	23.00
3. Sets of plans of 101 to 150 sheets	34.00
4. Sets of plans of 151 to 200 sheets	45.00
5. Sets of plans of 201 to 250 sheets	56.00
6. Sets of plans of 251 to 300 sheets	67.00
7. For each additional multiple of 50 sheets or part thereof, an additional charge of	13.00

- 8. For advertised work not requiring construction plans, a charge shall be made for the key sheets, supplementary specifications, etc., in the amount of 7.00
- 9. A charge shall be made for supplementary specifications unaccompanied by construction plans in the amount of 3.00
- 10. If copies of the supplementary specifications are not available subsequent to the award of the contract, photocopies shall be made at 10 cents per page.

Recodify existing (i)-(j) as (j)-(k) (No change in text.)

16:1-2.3 Procedure for obtaining NJDOT public records
 (a) A private citizen, in person or in writing, may obtain a NJDOT public record directly from a manager, [regional engineer] executive director of regional operations, or higher level upon conferring with the Custodian of Records, Director, Division of Support Services.

(b) A private citizen who does not know where a particular NJDOT public record may be obtained should contact, in person or in writing, the:

Official Custodian of Records
 Division of Support Services
 New Jersey Department of Transportation
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625
 Attn: Manager, Bureau of Records [and], Services, and Warehousing

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
 BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits
 Route N.J. 129**

Hamilton Township and City of Trenton in Mercer County

Proposed New Rule: N.J.A.C. 16:28-1.82

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.
 Proposal Number: PRN 1995-253.

Submit written comments by May 31, 1995 to:
 William E. Anderson
 Manager
 New Jersey Department of Transportation
 Bureau of Traffic Engineering and Safety Programs
 1035 Parkway Avenue
 CN 613
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation is proposing a new rule at N.J.A.C. 16:28-1.82 to establish a 40 miles per hour "speed limit" zone along Route N.J. 129 in Hamilton Township and the City of Trenton in Mercer County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a directive from William E. Anderson, Manager of the Bureau of Traffic Engineering and Safety Programs, requesting that a "speed limit zone" be established for the newly constructed Route N.J. 129, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that establishing a 40 miles per hour "speed limit" zone along Route N.J. 129 in Hamilton Township and the City of Trenton in Mercer County, was warranted.

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

Social Impact

The proposed new rule will establish a 40 miles per hour "speed limit" zone along Route N.J. 129 in Hamilton Township and the City of Trenton in Mercer County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

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

Full text of the proposed new rule follows:

16:28-1.82 Route N.J. 129

(a) The rate of speed designated for the certain parts of State highway Route N.J. 129 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. In Mercer County:

i. In Hamilton Township and Trenton City:

(1) 40 mph between Lambertson Road and Route U.S. 1 (approximate mileposts 0.00 to 2.41).

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
 BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits
 Route N.J. 157**

City of Absecon, Atlantic County

Proposed Amendment: N.J.A.C. 16:28-1.99

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.
 Proposal Number: PRN 1995-250.

Submit comments by May 31, 1995 to:

William E. Anderson
 Manager
 New Jersey Department of Transportation
 Bureau of Traffic Engineering and Safety Programs
 1035 Parkway Avenue
 CN 613
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.99 to revise certain "speed limit" zones along Route N.J. 157 in the City of Absecon, Atlantic County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a memorandum received July 5, 1994 from Mr. G. Sellner, Special Projects Coordinator of the New Jersey Department of Transportation, and a subsequent memorandum dated July 22, 1994, from the Project Engineer of District S-2 of the Bureau of Traffic Engineering and Safety Programs, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that revising certain "speed limit" zones along Route N.J. 157 in the City of Absecon, Atlantic County, were warranted.

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

Social Impact

The proposed amendment will establish a revised "speed limit" zone along Route N.J. 157 in the City of Absecon in Atlantic County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

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

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

16:28-1.99 Route 157

(a) The rate of speed designated for the certain part of State highway Route 157 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In the City of Absecon, Atlantic County:

(1) (No change.)

(2) Zone 2: [45]40 mph between East Faunce Landing Road and Route U.S. 9 (**approximate** mileposts [0.45]0.44 to 0.91).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 124

Springfield Township, Union County

Proposed Amendment: N.J.A.C. 16:28A-1.69

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

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

Proposal Number: PRN 1995-249.

Submit comments by May 31, 1995 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.69 to establish time limit parking restrictions on Route N.J. 124 in Springfield Township, Union County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system. This amendment is being proposed at the request of the local government of the Township of Springfield, County of Union, in a Resolution adopted on January 24, 1995, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of time limit parking restrictions along Route N.J. 124 in Springfield Township, Union County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish time limit parking restrictions along Route N.J. 124 in Springfield Township, Union County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

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

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

16:28A-1.69 Route 124

(a) (No change.)

(b) The certain parts of State highway Route 124 described in this section shall be designated and established as "no parking" zones where stopping and standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in Springfield Township, Union County:

i.-iii. (No change.)

[iv. Along the southerly (eastbound) side:

(1) In the four lane sections of the route within the corporate limits of Springfield Township except Sundays from 7:00 a.m. to 12 Midnight between Walnut Court and Caldwell Place.]

Recodify existing v. as iv. (No change in text.)

2. (No change.)

(c) **The certain parts of State highway Route 124 described in this section shall be designated and established as "time limit" parking zones where parking is limited and in accordance with N.J.S.A. 39:4-198, permission is hereby granted to erect appropriate signs at the following established time limit parking zones:**

1. In Union County:**i. In Springfield Township:**

(1) Along the eastbound (southerly side) beginning at a point 65 feet east of the easterly curb line of Caldwell Place to a point 165 feet easterly therefrom.

(2) Along the eastbound (southerly side) beginning at a point 35 feet east of the easterly curb line of Center Street to a point 115 feet easterly therefrom.

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Limited Access Prohibition**Route N.J. 55 Freeway****Proposed Amendment: N.J.A.C. 16:30-7.3**

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

Authority: N.J.S.A. 27:1A-1, 27:1A-5, 27:1A-44, 39:4-197(b), 39:4-81 and 39:4-199.1.

Proposal Number: PRN 1995-251.

Submit comments by May 31, 1995 to:
William E. Anderson, Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:30-7.3 to permit the use of bicycles along Route N.J. 55 Freeway in the following counties and municipalities: Maurice River Township, Millville City and Vineland City in Cumberland County; Pittsgrove Township in Salem County; and Franklin Township, Clayton Borough, Elk Township, Glassboro Borough, Harrison Township, Mantua Township, Pitman Borough and Deptford Township in Gloucester County (approximate mileposts 20.0 to 60.85).

This amendment is being proposed upon direction, in writing, from Frank J. Wilson, Commissioner of the Department of Transportation, in a letter dated January 19, 1995, in which the Commissioner directed the Bureau of Traffic Engineering and Safety Programs to repeal all references to bicycles on Route N.J. 55 Freeway.

The current restriction in the use of bicycles on Route N.J. 55 is viewed by the bicycle community as contrary to the Department's goals to promote bicycling as a viable mode of transportation, both for recreational and utilitarian purposes. Based on the opposition from the bicycle community and the fact that the Route has 12 foot shoulders and is considered an ideal bicycle facility, the Department is, therefore, proposing to amend the rule to allow for the use of bicycles along Route N.J. 55 Freeway.

Social Impact

The proposed amendment will establish the use of bicycles along Route N.J. 55 Freeway. The existing facility is the shortest route and is considered the best road to accommodate bicycle travel in the region. Finally, the route has been identified as being more suitable for bicycling than others. Appropriate signs will be erected to advise the motoring and bicycling public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procure-

ment. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

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

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

16:30-7.3 Route N.J. 55 Freeway

(a) The use of the completed parts of Route N.J. 55 Freeway in both directions shall be limited to certain classes of traffic, beginning at milepost 20.00 in Maurice River Township to include the corporate limits of Millville City and Vineland City in Cumberland County, Pittsgrove Township in Salem County, Franklin Township, Clayton Borough, Elk Township, Glassboro Borough, Harrison Township, Mantua Township, Pitman Borough and Deptford Township in Gloucester County, ending at milepost 60.85. The use of the aforesaid sections of the Route N.J. 55 Freeway by the following classes of traffic is prohibited:

- 1.-2. (No change.)
3. Non-motorized vehicles, **except bicycles.**

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Mid-block Crosswalk**Route N.J. 45****Salem City, Salem County****Proposed New Rule: N.J.A.C. 16:30-10.17**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1995-252.

Submit comments by May 31, 1995 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation is proposing a new rule at N.J.A.C. 16:30-10.17 to establish a "mid-block crosswalk" on Route N.J. 45 in Salem City, Salem County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request of the local government of Salem City by Resolution No. 94-298 adopted on August 17, 1994, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that establishing a "mid-block crosswalk" along Route N.J. 45 in Salem City, Salem County, was warranted.

Appropriate signs shall be erected, where required, to advise the motoring public of the "mid-block crosswalk."

Social Impact

The proposed new rule will establish a "mid-block crosswalk" on Route N.J. 45 in Salem City, Salem 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 of the "mid-block crosswalk."

Economic Impact

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

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

Full text of the proposed new rule follows:

16:30-10.17 Route 45

(a) The certain parts of State highway Route 45 described in this subsection shall be designated as a mid-block crosswalk:

1. In Salem County:

i. In the City of Salem:

(1) Beginning at a point 400 feet north of the northerly curb line of Route N.J. 49 (Broadway) to a point six feet northerly therefrom.

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

**U.S. Common and Preferred Stocks and Issues
Convertible into Common Stocks**

Permissible Investments

Proposed Amendment: N.J.A.C. 17:16-41.1

Authorized By: State Investment Council, Roland M. Machold,
Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1995-274.

Submit comments by May 31, 1995 to:

Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290

Trenton, New Jersey 08625-0290

The agency proposal follows:

Summary

The proposed amendment permits Common Pension Fund A, which is the vehicle for investment by the pension funds in domestic stocks, to invest in stocks of certain international companies that are also included in the S&P's 500. Common Pension Fund A is currently restricted to stocks of domestic companies, and international stocks are held in Common Pension Fund D. However, the S&P's 500 is a widely used benchmark for domestic stock portfolios, and for comparability the Council has decided that Common Pension Fund A should be permitted to invest in those international stocks that are included in the S&P's 500.

Social Impact

There is no material social impact of the proposed amendment. The proposed amendment would slightly improve the comparability of the returns of the domestic stock portfolio of the pension funds to a widely accepted market benchmark.

Economic Impact

There is no material economic impact of the proposed amendment. A broader range of investment opportunities could provide higher returns and greater diversification for the State administered pension funds.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the investment policy regulations of the Division of Investment are under the auspices of the State Investment Council, and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendment has no effect on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

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

17:16-41.1 Permissible investments

(a) The stock shall be issued by a company or bank incorporated or organized under the laws of the United States or any State thereof or of the District of Columbia, **or by any international company that is included in the S&P 500 Composite Index.**

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

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Gaming Equipment

Rules of the Games

Caribbean Stud Poker

Proposed Amendments: N.J.A.C. 19:40-1.2;

19:45-1.1, 1.11, 1.12, 1.15, 1.20 and 1.25;

19:46-1.17, 1.18 and 1.19

Proposed New Rules: N.J.A.C. 19:45-1.39B and 1.52;

19:46-1.13G and 19:47-16

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-5, 63(c), 69(e), 70(f), 99(a) and 100.

Proposal Number: PRN 1995-264.

Submit written comments by May 31, 1995, to:

Barbara A. Mattie, Manager
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

This proposal would permit a variation of the game of poker, known as "caribbean stud poker," to be played in Atlantic City casinos.

Caribbean stud poker would be played with one 52-card deck, using a layout similar to a blackjack table. It is based upon the card rankings used in five card stud poker; however, the players bet against the dealer instead of each other. To begin the game, the players place their initial wagers in the betting areas marked "ante" in front of their positions. Each player, plus the dealer, receives five cards dealt one at a time face down except that the dealer's last card is dealt face up. Players may then pick up their cards and decide if they wish to bet or fold. If the player wishes to bet, the "bet" shall be exactly twice the "ante" (that

is, a \$5.00 ante means a \$10.00 bet). A player who wishes not to bet shall fold and forfeit the ante. Once all players have made their decision to bet or fold, the dealer exposes the remaining four dealer's cards. The dealer shall only "qualify to play" by receiving a poker hand of ace/king or better. If the dealer qualifies, the dealer then compares his or her cards to each player's hand. If a player's hand beats the dealer's, the player shall receive even money (1 to 1) on the "ante," and a bonus amount on the "bet": 2 to 1 for two pair; 3 to 1 for three-of-a-kind; 4 to 1 for a straight; 5 to 1 for a flush; 7 to 1 for a full house; 20 to 1 for a four-of-a-kind; 50 to 1 for a straight flush up to the maximum payout; and 100 to 1 for a royal flush up to the maximum payout. If the dealer's hand and player's hand tie, the ante and bet wagers are both pushes. If the dealer's hand does not qualify, all "ante" wagers are paid 1 to 1 odds and all "bet" wagers are a push. The cards shall be reshuffled after each round of the play. (See N.J.A.C. 19:47-16.4.)

In addition to the table play aspect of the game of caribbean stud poker, there is a progressive payout feature. After making the "ante" bet, a player may deposit a \$1.00 gaming chip into the designated acceptor device in the table. In exchange for depositing this gaming chip, the player receives a chance at the progressive payout. Progressive payout hands are limited to the following: flush; full house; four-of-a-kind; straight flush; and royal flush. A progressive payout is awarded irrespective of the rank of the dealer's hand. So long as the player has a progressive payout hand and the \$1.00 progressive wager was placed, the player wins as follows: 100 percent of the progressive meter for a royal flush; 10 percent of the progressive meter or a set payout of \$5,000 for a straight flush; \$500.00 for a four-a-kind; \$100.00 for a full house; and \$50.00 for a flush. The rules governing a progressive payout are set forth in new rule N.J.A.C. 19:45-1.39B. New rule N.J.A.C. 19:45-1.52 and the amendment to N.J.A.C. 19:45-1.15 set forth the minimum standards for the procedures for payment of a progressive payout wager. Further, amendments to N.J.A.C. 19:40-1.2 and 19:45-1.1 and 1.25 permit a progressive payout wager to be paid with a casino check.

With the exception of the progressive payout, this game would also have a payout limit of \$5,000 per hand. (See N.J.A.C. 19:47-16.12.) The limitation would be conspicuously printed on the table layout, and signage approved by the Commission would be required at each table, explaining the payout limit and its ramifications. N.J.A.C. 19:46-1.13G.

Proposed new rule N.J.A.C. 19:46-1.13G contains the requirements for the table that would be used in the game; amendments to N.J.A.C. 19:46-1.17, 1.18 and 1.19 set forth the card and shoe requirements, respectively. The amendments to N.J.A.C. 19:45-1.11 and 1.12 address the requirements for supervision and an amendment to N.J.A.C. 19:45-1.20 requires the gaming chips inside the table return device referenced in N.J.A.C. 19:46-1.13G to be placed into the table inventory container.

New rules N.J.A.C. 19:47-16 contain the rules of play for the proposed game, including the payout odds and the aforementioned payout limit. N.J.A.C. 19:47-16.9(g) includes two proposed alternatives. Under Alternative A, the dealer exposes the top card of the dealer's hand, whereas Alternative B proposes that the dealer expose the bottom card of the dealer's hand.

Social Impact

The proposed amendments and new rules are not expected to have any social impact beyond that created by the authorization of a game which is compatible with the public interest. The amendments and new rules do not reflect any social judgments made by the Commission. The implementation of this game may generate patron interest in the game, but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City casinos as a result of the introduction of caribbean stud poker.

Economic Impact

The implementation of any game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs may be offset by increased casino revenues generated by the game. Moreover, to the extent that the game does generate increased casino revenues, senior and disabled citizens of New Jersey would benefit from the additional tax revenues that would be collected. But, as noted above, any attempt to quantify the effects of the introduction of caribbean stud poker on casino revenue would be highly speculative at this time.

The proposed amendments and new rules will also require the Commission and Division of Gaming Enforcement to incur some costs in testing and preparing to regulate the game. However, these costs are

necessary to review, introduce and test the game, and the costs will be borne by the game's sponsors and the casino licensees which have agreed to test the game, as required by N.J.A.C. 19:47-8.4(b).

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the amendments and new rules contained in this proposal are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed amendments and new rules would only affect casino licensees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:40-1.2 Definitions

(a) (No change.)

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

...

"Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k) in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), or for winnings from slot machine [or], simulcasting wagering payoffs, or **table game progressive payouts** and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine [or], simulcast wagering payoffs, or **table game progressive payouts**.

...

19:45-1.1 Definitions

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

...

"Table game win or loss" means the amount of gaming chips and plaques and cash won from patrons at gaming tables less the amount of gaming chips, plaques and coins won by patrons at gaming tables other than poker tables **and the amount paid to patrons in cash or by casino check for progressive payout wagers in accordance with N.J.A.C. 19:45-1.39B and 1.52**. The table game win or loss is determined by adding the amount of cash, coupons, the amount recorded on the Closer, the totals of amounts recorded on the Credits, and issuance copies of Counter Checks removed from a drop box, and subtracting the amount recorded on the Opener [and], the total of amounts recorded on Fills removed from a drop box, **and the amount of any progressive payout wagers paid pursuant to N.J.A.C. 19:45-1.39B and 1.52**.

...

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter and shall be responsible for the operation and conduct of the following games:

i.-ix. (No change.)

- x. Pai gow poker; [and]
 - xi. Poker, except as otherwise authorized by (g) below[.]; and
 - xii. Caribbean stud poker.**
 - 5.-10. (No change.)
 - (c)-(g) (No change.)
- 19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines
- (a) (No change.)
 - (b) The following personnel shall be used to operate the table games in an establishment:
 - 1. (No change.)
 - 2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, sic bo, big six, pai gow, pai gow poker, **caribbean stud poker** and poker table to directly operate and conduct the game.
 - 3.-4. (No change.)
 - 5. Floorperson shall be the second level supervisor assigned the responsibility for directly supervising the operation and conduct of a craps game, and the first level supervisor assigned the responsibility for directly supervising the operation and conduct of a baccarat, blackjack, roulette, sic bo, minibaccarat, red dog, pai gow, pai gow poker, big six, **caribbean stud poker** or poker game.
 - 6. Pit boss shall be the third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a craps game and the second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a blackjack, roulette, minibaccarat, big six, sic bo, red dog, pai gow, pai gow poker, **caribbean stud poker** or baccarat game.
 - 7.-9. (No change.)
 - (c) Each casino licensee shall maintain the following standard levels of staffing:
 - 1. (No change.)
 - 2. One dealer shall be assigned to each blackjack, roulette, minibaccarat, sic bo, red dog, pai gow, pai gow poker, big six, **caribbean stud poker** and poker table;
 - 3.-4. (No change.)
 - 5. One floorperson shall supervise:
 - i. Not more than four blackjack, roulette, pai gow poker, minibaccarat, sic bo, red dog, **caribbean stud poker** or big six tables, or any combination thereof; or
 - ii.-iv. (No change.)
 - 6. (No change.)
 - (d)-(j) (No change.)
- 19:45-1.15 Accounting controls for the cashiers' cage, satellite cages, master coin bank and coin vault
- (a)-(b) (No change.)
 - (c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:
 - 1. General cashiers shall operate with individual imprest inventories of cash and, at the discretion of the casino licensee, slot tokens, and such cashiers' functions shall include, but are not limited to, the following:
 - i.-xiii. (No change.)
 - xiv. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40[.]; and]
 - xv. Receive slot tokens from, and transmit slot tokens and prize tokens to, the master coin bank in exchanges supported by proper documentation[.]; and
 - xvi. **The preparation of forms for the completion of payments for table game progressive payout wagers pursuant to N.J.A.C. 19:45-1.52.**
 - 2.-6. (No change.)
 - (e)-(f) (No change.)
- 19:45-1.20 Table inventories
- (a) Whenever a gaming table in a casino or casino simulcasting facility is opened for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table

- inventory" and no casino licensee shall cause or permit gaming chips, coins or plaques to be added to, or removed from, such table inventory during the gaming day except:
- 1.-4. (No change.)
 - 5. In conformity with N.J.A.C. 19:47-3.3 and 7.3, coin may be used for the purpose of marking baccarat vigorish; [and]
 - 6. In conformity with N.J.A.C. 19:47-14.14, the rake collected from patrons playing the game of poker shall always be placed in the table inventory container[.]; and
 - 7. In conformity with a table inventory return device utilized in the game of caribbean stud poker pursuant to N.J.A.C. 19:46-1.13G, the gaming chips wagered on the progressive payout shall always be placed in the table inventory container.**
 - (b)-(c) (No change.)
- 19:45-1.25 Procedure for exchange of checks submitted by gaming or simulcast wagering patrons; repurchase of cash equivalents
- (a)-(e) (No change.)
 - (f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino licensee which issued the check and shall verify the following information:
 - 1.-4. (No change.)
 - 5. That the check represents:
 - i.-ii. (No change.)
 - iii. The winnings from slot machine payoffs; [or]
 - iv. The winnings from simulcast wagering[.]; or
 - v. The winnings from table game progressive payouts.**
 - (g) Each casino licensee shall maintain a casino check log.
 - 1. (No change.)
 - 2. A general cashier of the New Jersey casino which issued the casino check shall provide the information required by (f) above to the casino licensee accepting such check, and shall indicate that verification was requested by notating in the casino check log the following information:
 - i.-vi. (No change.)
 - vii. The reason for the check as either:
 - (1)-(2) (No change.)
 - (3) The winnings from slot machine payoffs; [or]
 - (4) The winnings from simulcast wagering[.]; or
 - (5) The winnings from table game progressive payouts.**
 - (h)-(p) (No change.)
- 19:45-1.39B Table game progressive payout wagers**
- (a) **This section shall apply to any table game with a progressive payout wager approved by the Commission. If a casino licensee offers a table game with a progressive payout wager, it may be offered individually at each gaming table or the casino licensee may connect the progressive wager among two or more tables so that the progressive amount increments for all wagers at these two or more tables.**
 - (b) **Each table which offers a progressive payout wager shall have the following features:**
 - 1. **A mechanical, electrical or electronic device to be known as an "in-meter" that continuously and automatically counts the number of gaming chips wagered by patrons on the progressive payout;**
 - 2. **A mechanical, electrical or electronic device to be known as a "progressive meter," visible from the front of the gaming table, which increments at a set rate of progression when gaming chips are wagered and accepted for the progressive payout and which prominently displays the amount which can be won if the outcome which awards the entire progressive payout is achieved;**
 - 3. **A mechanical, electrical or electronic device to be known as a "progressive payout meter" that continuously and automatically records the number of times each progressive payout wager is won;**
 - 4. **A separate key and key switch to reset or alter the amount on the "progressive meter" or such other separate mechanism as may be approved by the Commission; and**

5. A separate key locking the compartment housing the component which operates the progressive meter or other means by which to preclude any unauthorized or unintentional alterations to the progressive meter.

(c) Notwithstanding (b)2 above, if a casino licensee elects to connect two or more tables to a progressive payout wager pursuant to (d) below, more than one gaming table may be connected to a common progressive display unit if the unit is visible to all patrons at such tables.

(d) If a casino licensee elects to connect two or more tables for a progressive payout wager, the following shall be required:

1. The same denomination gaming chip shall be wagered at all gaming tables connected;

2. The same number of gaming chips shall be wagered to entitle a player to a chance at winning the progressive payout wager, and each gaming chip shall increment the meter by the same rate of progression at all tables connected;

3. The same progressive payouts shall be offered and the probability of hitting those payouts be the same at the connected tables; and

4. A device which shall either automatically or manually lockout all progressive meters if a patron has won a progressive payout wager.

(e) No table game with a progressive payout wager shall be placed in a casino or casino simulcasting facility until the casino licensee has submitted and obtained Commission approval of the following:

1. The authorized game and outcome which will award the progressive payout wager;

2. The initial and reset amounts at which the progressive meter will be set;

3. The proposed rate of progression for each progressive meter and the procedure by which any change to the rate of progression will be made which shall include, at a minimum, prior notice to, and approval by, the Commission;

4. The procedures governing the reset switch or mechanism referenced in (b) above which shall, at a minimum, preclude the dealer from resetting or altering the amount on the progressive meter;

5. The procedures for operating all the equipment associated with the table game progressive wager including the lockout feature referenced in (d) above; and

6. Such other procedures or features that may be required by the Commission as a result of the operation of the specific table game progressive wager.

(f) No progressive meter shall be turned back to a lesser amount unless:

1. The amount has been actually paid to a winning patron;

2. The progressive payout amount won by the patron has been recorded in accordance with an approved system of internal controls;

3. The time limit for the progressive payout established pursuant to (g) below has expired; or

4. The change is necessitated by a table or meter malfunction, in which case an explanation must be entered on the Table Game Progressive Summary required in (i) below and the Commission shall preapprove the resetting in writing.

(g) When a casino licensee decides to permanently remove the offer of a table game progressive payout, with approval from the Commission, a time limit of not less than 30 days shall be established and notice of the time limit shall be provided at each table. Upon the expiration of such time limit, the casino licensee may remove the gaming table from the casino or casino simulcasting facility or establish another time limit of not less than 30 days.

(h) Once the time limit in accordance with (g) above has expired, the amount on any progressive meters shall be documented in accordance with procedures approved by the Commission. The initial or reset amount may be retained by the casino licensee and deducted from the ending amount on any meters and the remaining portion shall be paid to the Casino Revenue Fund.

(i) The amount indicated on the "progressive payout meter," "progressive meter" and "in-meter" on each gaming table offering a progressive payout wager shall be recorded on a Table Game

Progressive Summary, at a minimum, once each gaming day and each summary shall be signed by the preparer. Supporting documents shall be maintained to explain any reduction in the registered amount from the previous entry and shall indicate the date, number of the table, the amount of the reduction and the reason for the reduction. On a daily basis, a copy of this summary shall be forwarded to casino accounting.

(j) Except as otherwise authorized by this section, any gaming table offering a progressive payout wager may only be removed from the casino or casino simulcasting facility for a period not to exceed five gaming days. The amount on the progressive meter upon the return or replacement of the gaming table shall not be less than the amount of the progressive meter at the time of removal. Any time limit for the offering of a progressive payout pursuant to (g) above shall be extended by the number of days during which the progressive payout was not offered as the result of any action by a casino licensee pursuant to this subsection.

(k) Each gaming table offering a progressive payout wager shall have such other devices, equipment, features and capabilities as may be required by the Commission for the game after the prototype model is examined by the Commission.

19:45-1.52 Payment of table game progressive payout wagers

(a) Whenever a patron wins a table game progressive payout pursuant to N.J.A.C. 19:45-1.39B, the casino licensee may either:

1. Pay the wager from the gaming chips in the table inventory container;

2. Issue a receipt to the patron which may be exchanged for payment at the cashiers' cage; or

3. Bring the payment to the patron at the table from the cashiers' cage.

(b) If the casino licensee elects to pay the wager pursuant to either (a)2 or 3 above, the casino licensee shall submit for review and approval internal control procedures governing the payment to the patron. At a minimum, the procedures shall provide for the following:

1. Documentation prepared by a floorperson or supervisor thereof which records the configuration of the winning hand and the amount of the payment, with a copy deposited into the drop box attached to the table and a copy given to the patron;

2. A multi-part form which is prepared by the general cashier or cage supervisor which documents the issuance of the payment to the patron or a casino security department representative for transportation to the patron;

3. Procedures of the casino accounting department for verifying the payment of the table game progressive payment which shall include verifying the meter readings required by N.J.A.C. 19:45-1.39B; and

4. Procedures for the adjustment to the Master Game Report and the proper reporting of table game win/loss.

(c) All forms used for the payment of table game progressive payouts shall be serially prenumbered forms, each series of which shall be used in sequential order, with the series of numbers of all forms received by the casino being accounted for by employees independent of the cashiers' cage and the table games department. All voided forms shall be marked "VOID" and shall require the signature of the preparer.

(d) All forms used for the payment of table game progressive payouts shall be clearly identified as forms used for such purpose.

(e) All table game progressive payments shall be made in the presence of a casino supervisor.

(f) Prior to the payment of a table game progressive payout, a casino supervisor shall record the amount on the progressive meter in a manner as approved by the Commission.

19:46-1.13G Caribbean stud poker table; physical characteristics

(a) Caribbean stud poker shall be played on a table having betting positions for six or seven players on one side of the table and a place for the dealer on the opposite side.

(b) The cloth covering a caribbean stud poker table (the layout) shall be approved by the Commission and shall have imprinted thereon, at a minimum, the following:

1. The name or trade name of the casino licensee;
2. A separate designated betting area at each betting position for the placement of "ante" wagers;
3. A separate designated betting area located immediately behind each ante betting area for the placement of "bet" wagers; and
4. The inscriptions "Payout Limit of \$5,000 per Hand on Bet Wagers" and "Bet Wager Void Unless Dealer has Ace/King or Better."

(c) A sign shall be posted at each caribbean stud poker table that explains, in a manner approved by the Commission, the details of the \$5,000 payout limit authorized by N.J.A.C. 19:47-16.12.

(d) Each caribbean stud poker table shall have a drop box and a tip box attached to it on the same side of the table as, but on opposite sides of the dealer, in locations approved by the Commission.

(e) Each caribbean stud poker table shall have for each betting position a separate acceptor device for the placement of a progressive wager mounted directly in front of the respective "ante" betting area. Each acceptor device shall have a light which shall illuminate upon insertion and acceptance of a gaming chip.

(f) Each caribbean stud poker table shall have a table controller panel located in an area of the table as approved by the Commission. The table controller panel shall be equipped with a "lock-out" button which, once activated by the dealer as set forth in N.J.A.C. 19:47-16.7, will prevent any player from depositing a gaming chip in the acceptor device.

(g) Each caribbean stud poker table shall be equipped with a mechanical, electrical or electronic table inventory return device which shall permit all gaming chips deposited into the acceptor devices referenced in (e) above to be collected and immediately returned to a designated area within the table inventory container prior to the dealing of a hand. The table inventory return device shall be designed and constructed to contain any feature the Commission may require to maintain the security and integrity of the game. The procedures for the operation of all functions of the table inventory return device shall be submitted to and approved by the Commission.

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat, minibaccarat, pai gow poker, pokette, red dog, poker, caribbean stud poker and double down stud shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck. Notwithstanding the foregoing, decks of cards used to play pai gow poker shall include one additional card, a joker, which shall be identical in size and shape to every other card in such deck.

(b)-(j) (No change.)

19:46-1.18 Cards; receipt, storage, inspections, and removal from use

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

(g) Any cards which have been opened and placed on a gaming table shall be changed at least every 24 hours. In addition:

1. (No change.)
2. Cards opened for use on a pai gow poker table or caribbean stud poker table and dealt from a dealing [show] shoe shall be changed at least every eight hours;
3. Cards opened for use on a pai gow poker table or caribbean stud poker table and dealt from the dealer's hand shall be changed at least every four hours; and

4. (No change.)

(h)-(m) (No change.)

(n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the casino security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. (No change.)

2. The casino licensee shall also inspect:

i.-ii. (No change.)

iii. All cards used for pai gow poker or caribbean stud poker;

iv.-v. (No change.)

3.-9. (No change.)

(o)-(q) (No change.)

19:46-1.19 Dealing shoes; automated shuffling devices

(a) (No change.)

(b) Cards used to game at blackjack, pai gow poker, minibaccarat, red dog, caribbean stud poker and double down stud shall be dealt from a manual or automated dealing shoe which shall be secured to the gaming table when the table is open for gaming activity and secured in a locked compartment when the table is not open for gaming activity. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment when the table is not open for gaming activity. Notwithstanding the foregoing, cards used to game at pai gow poker, and double down stud may be dealt from the dealer's hand in accordance with N.J.A.C. 19:47-11.8A and 17.8, respectively.

(c) A device which automatically shuffles cards may be utilized at the game of blackjack, pai gow poker, minibaccarat, red dog, caribbean stud poker and double down stud in addition to a manual or automated dealing shoe, provided that the automated card shuffling device and the procedures for shuffling and dealing the cards through the use of the device are submitted to and approved by the Commission.

(d)-(g) (No change.)

SUBCHAPTER 16. CARIBBEAN STUD POKER

19:47-16.1 Definitions

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

"Ante wager" means the initial wager placed prior to any cards being dealt in order to participate in the round of play.

"Bet wager" means an additional wager made by a player, in an amount double the player's ante wager, after all cards for the round of play have been dealt but before the dealer's hole cards are exposed.

"Fold" means the withdrawal of a player from a round of play by discarding his or her hand of cards after all cards have been dealt and prior to placing a bet wager.

"Hand" means the five card hand dealt to each player and the dealer.

"Hole card" means any of the four cards which are dealt face down to the dealer.

"Progressive payout hand" means a flush, full house, four-of-a-kind, straight flush or royal flush, as defined in N.J.A.C. 19:47-16.5 and 16.11.

"Push" means a tie, as defined in N.J.A.C. 19:47-16.10.

"Qualifying hand" means the dealer's hand as defined in N.J.A.C. 19:47-16.10, with a rank of ace, king, four, three and two or better.

"Rank" or "ranking" means the relative position of a card or group of cards as set forth in N.J.A.C. 19:47-16.5.

"Round of play" or "round" means one complete cycle of play during which all players then playing at the table have been dealt a hand, have folded or wagered upon it, and have had their wagers paid off or collected in accordance with the rules of this subchapter.

"Stub" means the remaining portion of the deck after all cards in the round of play have been dealt.

"Suit" means one of the four categories of cards: club, diamond, heart or spade, with no suit being higher in rank than another.

19:47-16.2 Cards; number of decks

(a) Except as provided in (b) below, caribbean stud poker shall be played with one deck of cards with backs of the same color and design, one additional solid yellow or green cutting card and one additional solid yellow or green card to be used in accordance with the procedures set forth in N.J.A.C. 19:47-16.4. The deck of cards used shall meet the requirements of N.J.A.C. 19:46-1.17.

(b) If an automated card shuffling device is used, a casino licensee shall be permitted to use a second deck of cards to play the game, provided that:

1. Each deck of cards complies with the requirements of (a) above;

2. The backs of the cards in the two decks are of different color;
3. One deck is being shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game;
4. Both decks are continuously alternated in and out of play, with each deck being used for every other round of play; and
5. The cards from only one deck shall be placed in the discard rack at any given time.

19:47-16.3 Opening of the table for gaming

(a) After receiving a deck of cards at the table in accordance with N.J.A.C. 19:46-1.18, the dealer shall sort and inspect the cards, and the floorperson assigned to the table shall verify that inspection.

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread out according to suit and in sequence.

(c) After the first player is afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Once the cards have been stacked, they shall be shuffled in accordance with N.J.A.C. 19:47-16.4.

(d) If a casino licensee uses an automated card shuffling device to play the game and two decks of cards are received at the table pursuant to N.J.A.C. 19:46-1.18 and 19:47-16.2, each deck of cards shall be separately sorted, inspected, verified, spread, inspected, mixed, stacked and shuffled in accordance with the provisions of (a) through (c) above.

(e) All cards opened for use at the caribbean stud poker table shall be changed at least once every eight hours. Procedures for compliance with this section shall be submitted to the Commission for approval.

19:47-16.4 Shuffle and cut of the cards

(a) Immediately prior to the commencement of play and after each round of play has been completed, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or device shall place the deck of cards in a single stack; provided, however, that nothing in this section shall be deemed to prohibit the use of an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a dealing shoe.

(b) After the cards have been shuffled and stacked, the dealer shall:

1. If the cards were shuffled using an automated card shuffling device, deal or deliver the cards in accordance with the procedures set forth in N.J.A.C. 19:47-16.7, 16.8 or 16.9; or

2. If the cards were shuffled manually, cut the cards in accordance with the procedures set forth in (c) below.

(c) If a cut of the cards is required, the dealer shall, using one hand, cut the deck by taking a stack at least 10 cards from the top of the deck and place them on top of the cover card. The dealer shall place the cards remaining in the deck on top of the stack of cards which were cut. Thereafter, the dealer shall remove the cover card and place it in the discard rack. The dealer shall then deal the cards in accordance with the procedures set forth in N.J.A.C. 19:47-16.7, 16.8 or 16.9. The cover card shall always be placed in front of the deck of cards prior to the cut of the cards by the dealer.

(d) Whenever there is no gaming activity at a caribbean stud poker table which is open for gaming, the cards shall be spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once a player arrives at the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in N.J.A.C. 19:47-16.3(c) shall be completed.

19:47-16.5 Caribbean stud poker rankings

(a) The rank of the cards used in caribbean stud poker, for the determination of winning hands, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, nine, eight, seven, six, five, four,

three and two. Notwithstanding the foregoing, an ace may be used to complete a "straight flush" or "straight" formed with a two, three, four and five.

(b) The permissible poker hands at the game of caribbean stud poker, in order of highest to lowest rank, shall be:

1. "Royal flush" is a hand consisting of an ace, king, queen, jack and 10 of the same suit;

2. "Straight flush" is a hand consisting of five cards of the same suit in consecutive ranking, with king, queen, jack, 10 and nine being the highest ranking straight flush and ace, two, three, four and five being the lowest ranking straight flush;

3. "Four-of-a-kind" is a hand consisting of four cards of the same rank, with four aces being the highest ranking four-of-a-kind and four twos being the lowest ranking four-of-a-kind;

4. "Full house" is a hand consisting of "three-of-a-kind" and a "pair," with three aces and two kings being the highest ranking full house and three twos and two threes being the lowest ranking full house;

5. "Flush" is a hand consisting of five cards of the same suit;

6. "Straight" is a hand consisting of five cards of consecutive rank, regardless of suit, with an ace, king, queen, jack and 10 being the highest ranking straight and an ace, two, three, four and five being the lowest ranking straight; provided, however, that an ace may not be combined with any other sequence of cards for purposes of determining a winning hand (for example, queen, king, ace, two, three);

7. "Three-of-a-kind" is a hand consisting of three cards of the same rank, with three aces being the highest ranking three-of-a-kind and three twos being the lowest ranking three-of-a-kind;

8. "Two pairs" is a hand containing two "pairs," with two aces and two kings being the highest ranking two pair and two threes and two twos being the lowest ranking two pair; and

9. "One pair" is a hand containing two cards of the same rank, with two aces being the highest ranking pair and two twos being the lowest ranking pair.

(c) When comparing two hands which are of identical poker hand rank pursuant to the provisions of this section, or which contain none of the hands authorized in this section, the hand which contains the highest ranking card as provided in (a) above which is not contained in the other hand shall be considered the higher ranking hand. If the hands are of identical rank after the application of this subsection, the hands shall be considered a push.

19:47-16.6 Wagers

(a) All wagers at caribbean stud poker shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate betting areas of the table layout. A verbal wager accompanied by cash shall not be accepted.

(b) All ante wagers shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedure in N.J.A.C. 19:47-16.7, 16.8 or 16.9. Except as provided in N.J.A.C. 19:47-16.7, no wager shall be made, increased, or withdrawn after the dealer has announced "No more bets."

(c) Upon placing an ante wager, a player may, at his or her discretion, place a progressive payout wager by depositing a \$1.00 gaming chip into the acceptor device designated for that player. Each player shall be responsible for verifying that his or her respective acceptor light has been properly illuminated.

(d) A "bet" wager shall be made in accordance with N.J.A.C. 19:47-16.10.

(e) A player shall not be permitted to play more than one hand per round of play.

19:47-16.7 Procedure for dealing the cards from a manual dealing shoe

(a) If a casino licensee chooses to have the cards dealt from a manual dealing shoe, the dealing shoe shall meet the requirements of N.J.A.C. 19:46-1.19 and shall be located on the table in a location as approved by the Commission. Once the procedures required by N.J.A.C. 19:47-16.4 have been completed, the stacked deck of cards shall be placed in the dealing shoe either by the dealer or by an automatic shuffling device.

(b) Prior to dealing the cards and once all ante and progressive payout wagers have been placed, the dealer shall then announce "No more bets" and press the "lock-out" button on the table controller panel. Once the "lock-out" button has been pressed, if any wagers have been placed on the progressive wager, the dealer shall remove these wagers from the table inventory return device, and on the layout in front of the table inventory container, verify that the number of gaming chips wagered equals the number of lights illuminated on the acceptor devices, and place the gaming chips into the table inventory container in accordance with N.J.A.C. 19:45-1.20.

(c) Each card shall be removed from the dealing shoe with the hand of the dealer that is closest to the dealing shoe and placed on the appropriate area of the layout with the opposite hand.

(d) The dealer shall deal the first card, face down, to the player farthest to the left of the dealer and then, moving clockwise around the table, deal each remaining player a card, face down. The dealer shall then deal one card face down to an area directly in front of the table inventory container designated for the dealer's hand. This procedure shall be repeated until all players have received five cards face down; provided, however, the dealer's fifth card shall be dealt face up. The cards shall be dealt to each player directly on top of that player's preceding card.

(e) After five cards have been dealt to each player and the area designated for the hand of the dealer, the dealer shall remove the stub from the manual dealing shoe and, except as provided in (f) below, place the stub in the discard rack without exposing the cards.

(f) The dealer shall be required to count the stub at least once every five rounds of play in order to determine that the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

1. If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

2. If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards have been misdealt (a player or the area designated for the placement of the dealer's hand has more or less than five cards) but 52 cards remain in the deck, all hands shall be void pursuant to N.J.A.C. 19:47-16.13. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18.

19:47-16.8 Procedures for dealing the cards from the hand

(a) Notwithstanding any other provisions of N.J.A.C. 19:46 or this chapter, a casino licensee may, in its discretion, permit a dealer to deal the cards used to play caribbean stud poker from his or her hand.

(b) If a casino licensee chooses to have the cards dealt from the dealer's hand, the following requirements shall be observed:

1. The casino licensee shall use an automated shuffling device to shuffle the cards.

2. Once the procedures required by N.J.A.C. 19:47-16.4 have been completed, the dealer shall place the stacked deck of cards in either hand.

i. Once the dealer has chosen the hand in which he or she will hold the cards, the dealer shall use that hand whenever holding the cards during that round of play.

ii. The cards held by the dealer shall at all times be kept in front of the dealer and over the table inventory container.

3. The dealer shall then announce "No more bets" and press the lock-out button in accordance with N.J.A.C. 19:47-16.7 prior to dealing any cards. The dealer shall deal each card by holding the deck of cards in the chosen hand and using the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout.

(c) The dealer shall deal the first card, face down, to the player farthest to the left of the dealer and then, moving clockwise around the table, deal each remaining player a card, face won. The dealer shall then deal one card face down to an area directly in front of

the table inventory container designated for the dealer's hand. This procedure shall be repeated until all players have received five cards face down; provided, however, the dealer's fifth card shall be dealt face up. The cards shall be dealt to each player directly on top of that player's preceding card.

(d) After five cards have been dealt to each player and the area designated for the placement of the dealer's hand, the dealer shall, except as provided in (e) below, place the stub in the discard rack without exposing the cards.

(e) The dealer shall be required to count the stub at least once every five rounds of play in order to determine that the correct number of cards are still present in the deck. The dealer shall count the stub in accordance with the provisions of N.J.A.C. 19:47-16.7.

19:47-16.9 Procedures for dealing the cards from an automated dealing shoe

(a) Notwithstanding any other provision of N.J.A.C. 19:46 or this chapter, a casino licensee may, in its discretion, choose to have the cards used to play caribbean stud poker dealt from an automated dealing shoe which dispenses cards in stacks of five cards, provided that the shoe, its location and the procedures for its use are approved by the Commission.

(b) If a casino licensee chooses to have the cards dealt from an automated dealing shoe, the following requirements shall be observed:

1. Once the procedures required by N.J.A.C. 19:47-16.4 have been completed, the cards shall be placed in the automated dealing shoe.

2. The dealer shall then announce "No more bets" and press the lock-out button in accordance with N.J.A.C. 19:47-16.7.

(c) The dealer shall deliver the first stack of cards dispensed by the automated dealing shoe face down to the player farthest to his or her left who has placed a wager in accordance with N.J.A.C. 19:47-16.6. As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed a wager in accordance with N.J.A.C. 19:47-16.6. The dealer shall then deliver a stack of five cards face down to the area designated for the dealer's hand.

(d) After each stack of five cards has been dispensed and delivered in accordance with this subsection, the dealer shall remove the stub from the automated dealing shoe and, except as provided in (e) below, place the cards in the discard rack without exposing the cards.

(e) The dealer shall be required to count the stub at least once every five rounds of play in order to determine that the correct number of cards are still present in the deck. The dealer shall count the stub in accordance with the provisions of N.J.A.C. 19:47-16.7.

(f) Notwithstanding the provisions of (f) above, the counting of the stub shall not be required if an automated card shuffling device is used that counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are still present. If the automated card shuffling device reveals that an incorrect number of cards are present, the deck shall be removed from the table in accordance with the provisions of N.J.A.C. 19:46-1.18.

ALTERNATIVE A

(g) The dealer shall then expose the top card of the dealer's hand, and the round of play shall proceed in accordance with N.J.A.C. 19:47-16.10.

ALTERNATIVE B

(g) The dealer shall then expose the bottom card of the dealer's hand, and the round of play shall proceed in accordance with N.J.A.C. 19:47-16.10.

19:47-16.10 Bet wagers; procedure for completion of each round of play; collection and payment of wagers

(a) After the dealing procedures required by N.J.A.C. 19:47-16.7, 16.8 or 16.9 have been completed but before the dealer exposes the hole cards, each player shall, after examining his or her cards, either place a bet wager in the designated betting area or fold and forfeit the ante wager. If a player folds, the entire ante wager shall be

collected by the dealer and placed in the table inventory container. A folded hand shall then be immediately collected by the dealer and placed in the discard rack.

(b) Each player who makes a bet wager shall be responsible for his or her own hand and no other person other than the dealer may touch the cards of that player. Each player shall be required to keep the five cards in full view of the dealer at all times. Once each player has examined his or her cards and placed the five cards face down on the appropriate area of the layout, the player shall not touch the cards again.

(c) No player may exchange or communicate information regarding his or her hand prior to the dealer revealing the hole cards. Any violation shall result in a forfeiture of all wagers on that round by the players communicating.

(d) After all players have either placed a bet wager or folded, the dealer shall turn over and reveal the dealer's hole cards and set the highest ranking poker hand.

(e) Except as otherwise provided in (g) below after the hole cards are revealed, the dealer shall, starting with the player farthest to his or her right, turn over the player's cards and if the dealer has a qualifying hand:

1. All losing wagers shall immediately be collected by the dealer and placed in the table inventory container. All losing hands shall then be immediately collected by the dealer and placed in the discard rack. Ante and bet wagers made by a player shall lose if the qualifying hand of the dealer has a hand rank which is higher than the hand of that player.

2. If the hand of the player ties with that of the dealer's qualifying hand, the hand of the player shall be a push. The dealer shall not collect or pay the wagers, but shall immediately collect the cards of that player after all losing wagers and hands have been collected.

3. After all losing wagers and pushes have been settled, all winning wagers shall be paid. All winning hands shall remain face up on the layout until all winning ante, bet wagers and, if applicable, progressive payout wagers are paid. Winning wagers shall be paid in accordance with the payout odds listed in N.J.A.C. 19:47-16.12. The dealer shall pay all winning wagers beginning with the player farthest to the right of the dealer and continuing counterclockwise around the table. Any wager made by a player shall win if the hand of the player has a hand rank higher than that of the dealer's qualifying hand. After paying all winning ante and bet wagers, the dealer shall immediately collect the cards of all winning players and place them in the discard rack, together with the remaining cards in the deck used for that round of play; provided, however, if a player has won a progressive payout which is not being paid from the table inventory container, the cards of that player shall remain on the table until the necessary documentation has been completed pursuant to N.J.A.C. 19:45-1.52.

(f) Except as provided in (g) below, after the hole cards are revealed, if the dealer does not have a qualifying hand:

1. It shall be the option of the casino licensee whether or not the dealer shall turn over the player's cards. If the casino elects not to turn over all the player's cards, the dealer shall be required to turn over the cards of any player who has made a progressive wage pursuant to N.J.A.C. 19:47-16.11;

2. The dealer shall immediately announce "No hand" and shall pay all ante wagers at payouts odds of 1 to 1. The dealer shall pay all ante wagers beginning with the player farthest to the right of the dealer and continuing counterclockwise around the table;

3. All bet wagers shall be considered void and the dealer shall neither collect nor pay said wagers; and

4. After paying all ante wagers, the dealer shall immediately collect the cards of all players and place them in the discard rack, together with the remaining cards in the deck used for the round of play; provided, however, if a player has won a progressive payout which is not being paid from the table inventory container, the cards of that player shall not be collected until the necessary documentation has been completed pursuant to N.J.A.C. 19:45-1.52.

(g) All cards collected by the dealer shall be picked up in order and placed in the discard rack in such a way that they can be readily

arranged to reconstruct each hand in the event of a question or dispute.

19:47-16.11 Progressive payout

(a) A progressive payout wager shall be paid pursuant to the payout table listed in N.J.A.C. 19:47-16.12, the procedures approved pursuant to N.J.A.C. 19:45-1.52 and prior to the collection of the cards by the dealer.

(b) Prior to paying a progressive payout hand, the dealer shall:

1. Verify that the hand is a winning hand;
2. Verify that the appropriate light on the acceptor device has been illuminated; and
3. Have a casino supervisor validate the progressive payout pursuant to approved internal control procedures.

(c) Any winning progressive payout wager shall be paid irrespective of the rank of the hand of the dealer or even if the dealer does not have a qualifying hand or has a higher ranking hand.

19:47-16.12 Payout odds; rate of progression; payout limitation

(a) The payout odds for winning wagers at caribbean stud poker printed on any layout or in any brochure or other publication distributed by a casino licensee shall be stated through the use of the word "to" or "win," and no odds shall be stated through the use of the word "for."

(b) A casino licensee shall pay out winning ante wagers at payout odds of 1 to 1.

(c) Subject to the payout limitation in (d) below, a casino licensee shall pay off each winning wager at the game of caribbean stud poker at no less than the odds listed below:

WAGER	PAYOUT ODDS
Royal Flush	100 to 1
Straight Flush	50 to 1
Four-of-a-kind	20 to 1
Full House	7 to 1
Flush	5 to 1
Straight	4 to 1
Three-of-a-kind	3 to 1
Two Pair	2 to 1
One Pair or less	1 to 1

(d) Notwithstanding the payout odds in (c) above, the pay out limit on each bet wager for any hand shall be \$5,000.

(e) A casino licensee shall payout winning progressive payouts at no less than the amounts listed below:

HAND	PAYOUT
Royal Flush	100 percent of progressive jackpot
Straight Flush	Either 10 percent of progressive jackpot or \$5,000, as designated in the casino licensee's approved system of internal controls
Four-of-a-kind	\$500.00
Full House	\$100.00
Flush	\$ 50.00

(f) The rate of progression for the progressive meter used for the progressive payouts in (e) above shall be no less than 70 percent. The initial and reset amount shall be established by each casino licensee and approved pursuant to N.J.A.C. 19:45-1.39B.

(g) Winning progressive payout hands shall be paid in accordance with the amount on the meter when it is the player's turn to be paid in accordance with N.J.A.C. 19:47-16.11; provided, however, if more than one player at a table has a royal flush progressive payout hand, each player shall share equally in the amount on the progressive meter when the first player with a royal flush is to be paid.

19:47-16.13 Irregularities

(a) If a hole card is exposed prior to the dealer announcing "No more bets" pursuant to N.J.A.C. 19:47-16.7, all hands shall be void.

(b) A card that is found face up in the shoe or the deck while the cards are being dealt shall not be used in the game and shall

be placed in the discard rack. If more than one card is found face up in the shoe or the deck during the dealing of the cards, all hands shall be void and the cards shall be reshuffled.

(c) A card drawn in error without its face being exposed shall be used as though it was the next card from the shoe or the deck.

(d) If any player is dealt an incorrect number of cards, that player's hand shall be void. If the dealer is dealt four cards of the five card hand, the dealer shall deal an additional card to complete the hand. Any other misdeal to the dealer shall result in all hands being void and the cards shall be reshuffled.

(e) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle, or fails to complete a shuffle cycle, the cards shall be reshuffled in accordance with procedures approved by the Commission.

(f) If an automated dealing shoe is being used and the device jams, stops dealing cards, or fails to deal all cards during a round of play, the round of play shall be void and the cards shall be removed from the device and reshuffled with any cards already dealt, in accordance with procedures approved by the Commission.

(g) Any automated card shuffling device or automated dealing shoe shall be removed from a gaming table before any other method of shuffling or dealing may be utilized at that table.

(a)

CASINO CONTROL COMMISSION

Casino Licensees

Casino Hotel Facility Requirements

Operation Certificate

Movement of Gaming Equipment

Proposed Amendments: N.J.A.C. 19:40-1.2;

19:43-6.2, 7.1, 7.3, 7.4, 7.5, 7.6 and 7.7; 19:45-1.14,
1.32, 1.34, 1.37 and 1.38; 19:46-1.6, 1.13E and 1.20

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-35, 63c and i, 64, 69, 70h, i and j, 76,
83i, 96, 99, 100 and 194.

Proposal Number: PRN 1995-263.

Submit written comments by May 31, 1995 to:

Leonard J. DiGiacomo, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The Casino Control Act (Act) enjoins the New Jersey Casino Control Commission (Commission) from imposing criteria or requirements regarding the contents of an approved hotel that are in addition to the criteria or requirements expressly specified in the Act. See N.J.S.A. 5:12-83i. Although the Act authorizes the Commission to prescribe minimum security standards, including security personnel structure, alarm and other electrical and visual security measures, N.J.S.A. 5:12-70j, the Commission is mindful that the judicious and balanced exercise of that authority will best accomplish the purposes of the Act. Thus, this proposal will eliminate or modify several casino hotel facility requirements that were recently adopted as part of the codification of several standard conditions that the Commission routinely imposed upon the granting of operation certificates to casino licensees. (See 26 N.J.R. 2463(a).)

In particular, the following provisions are being deleted, amended or added:

1. N.J.A.C. 19:43-6.2(a)2ii is deleted (required an alarm device to signal the security podium whenever a door to the slot machine repair room is opened);

2. Those portions of N.J.A.C. 19:43-6.2(a)3ii and 7.7(f)3, 19:45-1.14(c)2 and (f)3, 1.32(b)2ii and iii, and 1.34(b)3 that required an

alarm or other electrical system to audibly or visually notify the Division of Gaming Enforcement (Division) in certain specified circumstances are deleted;

3. N.J.A.C. 19:43-6.2(a)4 is amended to provide greater flexibility in the type of facility that can be used to detain those persons that are taken into custody; and

4. N.J.A.C. 19:43-6.2(b) is added to make clear that upon the issuance or renewal of a casino license an approved hotel must satisfy the facilities requirements in the Act and the Commission's rules throughout licensure and during any conservatorship.

Throughout the Commission's rules, the terms "blueprint" and "floor plan" are used interchangeably. To the extent that the dictionary defines a "floor plan" as a "scale diagram of a room or building drawn as if seen from above," *American Heritage Dictionary*, Second College Edition (1985), whereas "blueprint" can have a more specialized meaning as a "photographic reproduction, as of architectural plans or technical drawings, rendered as white lines on a blue background," *Ibid.*, the rules are being amended to refer consistently to "floor plan" rather than "blueprint."

The proposal also amends several sections in the subchapter on operation certificates. In some instances those changes are necessitated by recent amendments to the Act. P.L. 1995, c.18, §34.

For example, N.J.A.C. 19:43-7.1(b)3 will be changed to reflect the Legislature's determination that it is no longer the Commission's responsibility to ensure that casino and simulcasting personnel are properly trained for the efficient performance of their respective responsibilities. Also reflecting recent statutory amendments, N.J.A.C. 19:43-7.1(c)1 will be deleted and the remaining paragraphs in that subsection will be recodified.

N.J.A.C. 19:43-7.3(a) is being amended to conform to current practice by requiring a casino licensee to obtain approval of its floor plans depicting the casino, casino simulcasting facility or any restricted area prior to amending an operation certificate. Further, N.J.A.C. 19:43-7.3(b) is being amended to permit those floor plans to be drawn to one-eighth inch scale or such other scale as the Commission may approve. N.J.A.C. 19:43-7.3(c) is being amended so that a casino licensee may commence gaming or simulcast wagering operations without first obtaining confirmation that a copy of its floor plans were received by an authorized person at the several locations enumerated in the regulation.

Subsection (d) is being added to N.J.A.C. 19:43-7.5 in order to make clear that each casino licensee is obligated to operate its casino and casino simulcasting facility strictly in accordance with the terms of its operation certificate and approved floor plans, and that any change to an item covered by the operation certificate can only be made in accordance with the Act and the Commission's regulations after obtaining any required amendment to the operation certificate.

N.J.A.C. 19:43-7.6 and 7.7 establish procedures for amending operation certificates. In all instances covered by those sections, Commission approval is required prior to implementing the change and is granted or denied within three business days of filing a request for an amendment to an operation certificate. However, the regulations are susceptible to being interpreted as requiring approval from the Division also.

The Commission and the Division each have the authority to review requests to amend operation certificates. N.J.S.A. 5:12-96c. However, the Commission has the ultimate authority for the issuance, revocation, suspension or amendment of operation certificates. N.J.S.A. 5:12-35, 64, 70h, and 96a and d. Typically, the Commission acts on requests to amend operation certificates through delegation to its staff.

Although the Commission, from time to time, has solicited the Division's position when a casino licensee requests an amendment to its operation certificate, recent amendments to the Act make it clear that the Commission and Division are to ensure that there is no duplication of duties and responsibilities between the agencies. P.L. 1995, c.18, §§14 and 20. Consequently, the proposed amendments leave no doubt that it is the Commission alone that is responsible for processing and approving requests to amend operation certificates, for approving statements regarding a slot machine's win meters (N.J.A.C. 19:45-1.37(a)4v), for approving secure areas for the storage of certain gaming chips and plaques (N.J.A.C. 19:46-1.6(c)3 and (d)3), for approving the design of poker tables (N.J.A.C. 19:46-1.13E(a)) and for approving gaming and simulcast wagering equipment (N.J.A.C. 19:46-1.20(a)).

Of course, the Commission, as the ultimate regulatory authority for determining whether to grant a request to amend an operation certificate, is empowered to act on such requests, directly or by delegation, regardless of whether the Division conducts a review of the request or even

objects to it. In those instances where the Commission staff acts on delegated authority, the Division remains free to seek review before the full Commission pursuant to N.J.A.C. 19:40-2.5(d). Consequently, those provisions remain that require casino licensees to notify the Division of proposed operation certificate amendments.

Editorial changes are also being proposed to N.J.A.C. 19:43-7.6(d) to make clear that the Commission will inspect the completed physical changes to ensure that they conform to the floor plans on which those changes are depicted and to the description of those changes that was originally submitted with the application for approval, along with any approved amendments to the application.

When the Commission adopted the operation certificate rules, it specifically rejected a comment advocating that bill changers need not be noted on the floor plans. The commenter had argued that floor plans are not required to specify the asset number uniquely assigned to each slot machine and bill changer, but rather depict, through a series of location numbers, the authorized locations at which slot machines and bill changers may be located. However, the Commission rejected the comment at that time for the sake of consistency with N.J.A.C. 19:45-1.38(a), which was not the subject of the operation certificate adoption but which requires slot machines and bill changers to be noted on floor plans by location number.

The Commission has now determined that the earlier rejected comment on bill changers has merit and therefore is proposing to amend N.J.A.C. 19:45-1.38 and 19:43-7.3(b)10 and 11, consistent with that comment. Specifically, floor plans will now be required to depict the authorized slot machine location number and slot zone location letter or number for the locations where slot machines and bill changers may be located. Bill changer locations need not appear on the floor plan, but must be included on the Slot Machine Master List. The list adequately serves regulatory purposes and ameliorates the necessity of requiring casino licensees to produce new and expensive floor plans each time a bill changer is moved, as frequently occurs.

Due to recent statutory amendments (P.L. 1995, c.18, §137), N.J.A.C. 19:43-7.4 and 19:45-1.38 are being amended to allow casino licensees, without prior approval, to move gaming tables, slot machines and bill changers into, out of and within a casino or a casino simulcasting facility, as applicable, so long as they provide at least 24-hour prior written notice of the move and, after its completion, supply the Commission with the current location of the equipment. Of course, casino licensees will continue to be obligated to obtain prior approval for the authorized locations where the gaming tables, slot machines or bill changers may be located.

N.J.A.C. 19:43-7.4 is also being amended to require the Slot Machine Master List to include the state seal number assigned to a slot machine.

N.J.S.A. 5:12-43.1 and N.J.A.C. 19:40-1.2 include "cashier's cage" among those areas that are considered restricted casino areas. However, throughout the Commission's rules the phrase that is used is "cashiers' cage." Consequently, the definition of restricted area in N.J.A.C. 19:40-1.2 is being amended to reflect the term that is used throughout the Commission's rules. The definition is also being amended to include as restricted areas all simulcast counters, rooms for storing or destroying dice and cards, areas designated and approved for the possession and maintenance of gaming equipment (such as computers) that support the conduct of gaming, as well as those areas designated by a casino licensee as restricted in its internal controls. Of course, certain restricted areas will apply only to a particular licensee, as made clear by the amendments.

Social Impact

The Commission does not anticipate that the proposed amendments will have any overall social impact. The amendments affect only the casinos and are not expected to change any aspect of the casinos' interaction with the customers.

Economic Impact

Although the Commission anticipates that any overall economic impact from these amendments will be minimal, casino licensees may experience a reduction in costs as a result of the elimination of the requirement that they amend their floor plans each time that they relocate a bill changer. Casino licensees may experience further cost-savings with the elimination of some of the specific requirements for detention facilities, and because they will no longer be required to maintain alarm devices between the slot machine repair room and the security podium, or between various locations throughout the facility and the Division's offices.

Executive Order No. 27 Statement

An Executive Order No. 27 (1994) analysis and certification are not required because the rulemaking requirements of the Commission for this proposal are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

No regulatory flexibility analysis is required because the proposed amendments will only affect the operation of New Jersey casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:40-1.2 Definitions

(a) (No change.)

(b) The following words and terms, when used in the rules of the Commission, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Restricted areas" or "restricted casino areas" means the [cashier's] **cashiers' cage**, the soft count room, the hard count room, the slot booths and runway areas, the interior of table game pits, the surveillance room and catwalk areas, the slot machine repair room, **the simulcast counter, the specific areas designated and approved pursuant to N.J.S.A. 5:12-100b for the possession and maintenance of gaming equipment (such as computers) that supports the conduct of gaming in the casino or casino simulcasting facility, the areas used for storing or destroying dice or cards, any additional area that a casino licensee designates as restricted in its internal controls,** and any other area specifically designated by the Commission as restricted elsewhere in the rules of the Commission or in a **particular** casino licensee's operation certificate.

...

19:43-6.2 The casino hotel

(a) No casino license shall be issued or renewed unless the casino and, if applicable, the **casino simulcasting facility**, are located within an approved hotel as defined in sections 27 and 83 of the Act, and unless the [proposed] facilities conform to the facilities requirements in sections 1, 6, 27, 83, 84e, 98, 100, 103 and 136 of the Act and the rules of the Commission, including, without limitation, the following:

1. (No change.)

2. [Secure] **Restricted** areas shall be designated for the inspection, repair and storage of gaming equipment which, in the case of each slot machine repair room, shall include, at a minimum[:

i.], CCTV coverage of the room; [and

ii. An alarm device, approved by the Commission, that is connected to each door to the room and that audibly signals, at a minimum, the security podium whenever a door to the room is opened;]

3. Each emergency exit from the casino floor or, if applicable, from the casino simulcasting facility, shall be equipped with [:

i. An] **an** audible alarm system, approved by the Commission, that produces a loud warning sound, discernible in the vicinity of the exit, whenever the emergency door is opened and that can only be deactivated and reset by a key maintained and controlled by the casino security department; [and

ii. An electrical system, approved by the Commission, which audibly and visually notifies the Division at its offices in the approved hotel whenever each emergency door is opened;]

4. The casino licensee shall maintain adequate [enclosed] facilities for the detention of individuals taken into custody by its security department, the Division or any authorized law enforcement agency, which facilities shall include, at a minimum, [the following:

i. Separate detention areas for male and female detainees;

ii. A metal door with a one-way mirror;

iii. A] **a** bench or other [sitting] apparatus which is permanently affixed to the [enclosed] facility and to which the person in custody can be handcuffed with as little discomfort to that person as is reasonably possible under the circumstances;

[iv. Adequate lighting and a fire extinguisher, each of which is inaccessible to the person in custody; and

v. A secured toilet facility that provides reasonable privacy and safety.]

5.-6. (No change.)

(b) Notwithstanding anything in (a) above to the contrary, each approved hotel containing a casino and, if applicable, a casino simulcasting facility for which a casino license is issued or renewed shall satisfy the facilities requirements enumerated in (a) above throughout the duration of the license and during the period of any applicable conservatorship.

19:43-7.1 Operation certificate; standards for issuance

(a) (No change.)

(b) To obtain an operation certificate, each casino licensee shall establish to the satisfaction of the Commission that:

1.-2. (No change.)

3. The casino and simulcasting personnel are [properly trained and] licensed for the [efficient] performance of their respective responsibilities; and

4. (No change.)

(c) Each operation certificate granted by the Commission to a casino licensee shall include, at a minimum, the following information:

[1. A statement that such casino licensee has complied with N.J.S.A. 5:12-96a and with (b) above;]

Recodify existing 2.-3. as 1.-2. (No change in text.)

19:43-7.3 Operation certificate; [blueprints] **floor plans** of the casino floor, casino simulcasting facility and any restricted areas

(a) Prior to the issuance **or amendment** of an operation certificate and the commencement of gaming or simulcast wagering, each casino licensee shall obtain Commission approval for the [blueprints] **floor plans** of its casino floor, casino simulcasting facility, if any, and any restricted areas.

(b) Each [blueprint] **floor plan** required by (a) above shall be filed with the Commission and served on the Division, shall be drawn to one-eighth inch scale **or such other scale approved by the Commission**, shall be certified by an architect licensed to practice in New Jersey and shall depict, at a minimum, the location of the following:

1.-9. (No change.)

10. Each slot zone, noting its slot zone location letter or number and the total number of authorized slot machine locations within that slot zone;

[10.]**11. Each authorized slot machine[,] location, which location shall contain no more than one slot machine and bill changer at a time, noting its slot machine location number and any slot zone location letter or number;**

[11. Each bill changer, noting its location number;]

12.-20. (No change.)

(c) Each casino licensee, after obtaining Commission approval of its [final blueprints] **floor plan**, shall not commence gaming or simulcast wagering **in the areas depicted on the floor plan** until a copy [of such blueprints] **thereof** has been delivered to[, and receipt thereof acknowledged by an authorized person at,] each of the following:

1.-3. (No change.)

[4. The Division's office in the establishment;

5. The Division's Casino Operation Section in Atlantic City;]

4. The Division;

Recodify existing 6.-7. as 5.-6. (No change in text.)

19:43-7.4 Operation certificate; master lists of approved slot machines and table games; **movement of gaming equipment; amendments of operation certificates upon filing of updated master lists**

(a) Prior to the issuance of an operation certificate and the commencement of gaming or simulcast wagering, each casino licensee shall file with the Commission, at the office of the Commission's principal inspector in the establishment, and serve on the Division, at [its office in the establishment,] **a location it has designated for that purpose, comprehensive [list] lists of [the];**

1. The table games in its casino and casino simulcasting facility, if any (the Table Games Master List)[, and similarly shall file and serve a list of the]; and

2. The slot machines and bill changers in its casino (the Slot Machine Master List).

(b) At a minimum, each Slot Machine Master List shall **consecutively** list each slot machine [consecutively] **and any accompanying bill changer** by location number and shall contain the following information:

1.-3. (No change.)

4. A cross reference for each slot machine by zone and serial number; [and]

5. The number from the state seal affixed to the slot machine pursuant to N.J.A.C. 19:46-1.24; and

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

(c) (No change.)

(d) [Each casino licensee, after obtaining permission to alter, modify or reconfigure its casino floor or casino simulcasting facility and the authorized games therein, shall file and serve, in accordance with (a) above, updated master lists of its table games and slot machines to reflect the changes that the Commission has approved.] **Whenever a casino licensee proposes that gaming tables, slot machines or bill changers be brought into, removed from or moved within a casino or casino simulcasting facility, as applicable, the casino licensee shall first:**

1. Obtain any amendment to its operation certificate required by N.J.A.C. 19:43-7.6 or 7.7; and

2. Provide an authorized agent of the Commission with written notice at least 24 hours prior to the actual movement of each gaming table, slot machine and bill changer.

(e) **Immediately after each gaming table, slot machine and bill changer is brought into, removed from or moved within a casino or casino simulcasting facility, as applicable, the casino licensee completing the move shall file and serve, in accordance with (a) above, updated master lists of its table games and slot machines to the extent that the move causes a change in the information contained on the most recent version of the applicable list on file with the Commission.**

(f) **The number of each type of authorized game included in the casino licensee's operation certificate or any approved amendments thereto shall be amended, upon the filing of an updated Table Games Master List or Slot Machine Master List, to conform to the correct number of each type of authorized game that is specified in the applicable list.**

19:43-7.5 Operation certificate; effective date; duration

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

(c) The continued effectiveness of each [such] operation certificate shall be a prerequisite for the casino or casino simulcasting facility to which it applies to remain open to the public for the conduct of gaming or simulcast wagering.

(d) Each casino licensee to which an operation certificate is issued shall operate its casino or casino simulcasting facility strictly in accordance with the terms of its original operation certificate and the approved floor plans submitted in support thereof, and shall not change any of the items to which the operation certificate applies except in accordance with the Act and the rules of the Commission and after obtaining any required amendments to its operation certificate.

19:43-7.6 Operation certificate; amendment to conform to approved [alterations] **changes**

(a) Each casino licensee shall file with the Commission and serve on the Division, in a manner and in a format prescribed by the Commission, [a description of each proposed] **an application to amend its operation certificate whenever the casino licensee proposes to make a physical [alteration] change to [its] the casino [or], casino simulcasting facility [which relates to the continued effectiveness of] or a restricted area that requires Commission approval in order for its original operation certificate [and] or any approved amendments thereto[, including,] to continue in force and effect. Any amendment to the application shall be processed in**

accordance with this section. The application shall include, without limitation, [a description of proposed changes to any of] the following:

1. [The] A description of any proposed changes in the number of authorized games, by category, to be played in the casino [and] or casino simulcasting facility [, if any] ; provided, however, that the filing of an application pursuant to this section shall not preclude that casino licensee from obtaining amendments to its operation certificate pursuant to N.J.A.C. 19:43-7.4(f);

2. [The configuration or] A revised floor plan of the casino [or], casino simulcasting facility; and] or restricted area reflecting the proposed change, which revised floor plan shall be:

i. Filed with the Commission at the office of its principal inspector in the establishment; and

ii. Submitted in a format consistent with the requirements of N.J.A.C. 19:43-7.3;

3. [Any restricted area;] If applicable, a comparison showing the authorized square footage of the casino room or casino simulcasting facility:

i. Immediately prior to initiating the proposed change; and

ii. That will result if the proposed change is made;

4. A clear delineation of any proposed change to the perimeter of the casino room or, if applicable, the casino simulcasting facility; and

5. A narrative from the architect who is certifying the floor plan that clearly describes the change to be made by the proposal, noting with particularity any such change to the perimeter of the casino floor or of the casino simulcasting facility.

(b) Within three business days of a casino licensee filing [a description of a proposed change] an application governed by (a) above, or any amendments thereto, the Commission [and the Division] shall review [such] the proposed change set forth in the application or any amendments thereto for compliance with the Act and the rules of the Commission. Unless the Commission notifies the casino licensee in writing that the proposed change is disapproved, the casino licensee, after obtaining all approvals required by federal, state or local government officials and providing a copy or other acceptable written evidence of such approvals to the Commission [and the Division], may begin implementing such change upon the earlier of the following:

1. The expiration of [such] the three-day period; or

2. (No change.)

(c) [Each] The casino licensee[,] that submitted an application governed by (a) above shall notify the Commission in writing upon final completion of any proposed change [to its facility governed by (a) above, shall notify the Commission and the Division thereof by filing, at a minimum, a revised blueprint] set forth in the application or any amendment thereto and for which the casino licensee is prepared to seek approval pursuant to (d) below; provided, however, that a notice shall be filed upon final completion of all proposed changes. A floor plan that depicts the actual changes made shall accompany the notice and be filed in the manner prescribed by N.J.A.C. 19:43-7.3(c). Each such [blueprint] floor plan shall be in a format consistent with N.J.A.C. 19:43-7.3 and, in addition to depicting the change that is made to the applicable items enumerated in N.J.A.C. 19:43-7.3(b), shall include [the following]:

1. A comparison showing:

i. The authorized square footage of the casino room and any applicable casino simulcasting facility in effect immediately prior to initiating any change for which approval is sought; and

ii. The change made to such square footage after giving effect to the proposal for which approval is sought;

2. A clear delineation of the change, if any, made to the perimeter of the casino room and of the casino simulcasting facility, if any; and

3. A narrative from the architect who is certifying the blueprints that clearly describes the change being made by the proposal, noting with particularity any such change to the perimeter of the casino floor or of the casino simulcasting facility] updates, based on the actual changes made, for each item required to be included in the application pursuant to (a) above and described in the notice;

provided, however, that a floor plan of the entire casino or casino simulcasting facility that depicts all changes proposed in the application and any amendment thereto shall accompany the notice of final completion.

(d) [The] Promptly after the filing of a notice pursuant to (c) above, the Commission [and the Division] shall inspect the physical [change depicted on the blueprint] changes actually made to the casino, casino simulcasting facility and any restricted area to ensure that [it conforms] those changes conform to the [blueprint] floor plan accompanying the notice and [to] the description previously submitted [description of such proposed change and] to the Commission, as modified by any properly filed amendments thereto. Following such inspection, the Commission shall notify the casino licensee in writing as to which physical change is approved and which is rejected, whereupon [the]:

1. The casino licensee, in the event any change is rejected, shall either:

i. Correct any rejected change to conform with the floor plan accompanying the notice and the description previously submitted to the Commission, as modified by any properly filed amendments thereto, which correction shall be completed and inspected pursuant to this section;

ii. Submit for approval, pursuant to (a) above, a new application for the proposed change; or

iii. Take such other action as the Commission may direct to ensure that the currently approved floor plan accurately depicts the physical layout of the casino, the casino simulcasting facility, if any, and any restricted area; and

2. The operation certificate shall be amended to conform to [the] each inspected and approved physical change.

(e) (No change.)

19:43-7.7 Operation certificate; temporary amendments for alternate pit configurations

(a) Except as otherwise provided in this section or in N.J.A.C. 19:43-7.4(f), each casino licensee shall configure the pits in its casino or casino simulcasting facility, as to types, number and location of games, strictly in accordance with the [blueprints provided to the Commission and the Division and] floor plans approved by the Commission at the time the operation certificate originally was issued or as amended pursuant to N.J.A.C. 19:43-7.6.

(b) Each casino licensee may temporarily reconfigure[, for an initial period not to exceed 30 days,] one or more pits by filing with the Commission, at the office of its principal inspector in the establishment, an application for a temporary operation certificate to permit an alternate configuration for each [such] pit [with the Commission and the Division] specified in the application, which shall be filed at least three business days prior to implementing such alternate configuration. Within that three-day period the Commission shall notify the casino licensee whether the alternate configuration is approved or rejected.

(c) [The] In accordance with the specific terms of any temporary operation certificate issued by the Commission [shall issue a temporary certificate of operation authorizing, for an initial period of no more than 30 days, each approved alternate pit configuration], the casino licensee to which the temporary operation certificate is issued shall implement the alternate configuration for an initial period of no more than 30 consecutive days, renewable upon application to the Commission for one additional period of no more than 30 consecutive days, which shall immediately follow the conclusion of the initial period. Each such alternate pit shall not:

1.-2. (No change.)

[(d) Each casino licensee, upon application in accordance with this section, may obtain one extension of no more than 30 days for each temporary certificate of operation issued hereunder.]

[(e)](d) (No change in text.)

[(f)](e) Each pit operating under an approved configuration shall have an electrical system, approved by the Commission, which enables a pit clerk or a pit supervisor to transmit a signal that is audibly and visually reproduced in each of the following locations whenever there is an emergency in the pit:

1. The monitoring rooms required by N.J.A.C. 19:45-1.10; and

2. The casino security department[; and
3. The Division's office in the casino hotel].

19:45-1.14 Cashiers' cage; satellite cages; master coin bank; coin vaults

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

(c) The cage shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein; such design and construction shall be, at a minimum, as effective as the following:

1. (No change.)

2. Manually triggered silent alarm systems for the cage, its ancillary office space and any related casino vault, which systems shall be connected directly to the monitoring rooms of the closed circuit television system[,] and the casino security department office[, and the Division office];

3.-4. (No change.)

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

(f) Each coin vault shall be designed, constructed and operated to provide maximum security for the materials housed and activities performed therein, and shall include at least the following:

1.-2. (No change.)

3. An alarm device that signals the monitors of the casino licensee's close circuit television system [and the Division's on-site office] whenever the door to the coin vault is opened; and

4. (No change.)

(g)-(h) (No change.)

19:45-1.32 Count rooms; characteristics

(a) (No change.)

(b) The count room shall be designed and constructed to provide maximum security for the materials housed therein and for the activities conducted therein. Each casino licensee shall design and construct a count room with, at a minimum, the following security measures:

1. (No change.)

2. Each entrance and exit door shall be equipped with:

i. (No change.)

ii. An alarm device, approved by the Commission, which audibly signals the monitoring rooms required by N.J.A.C. 19:45-1.10[,] and the casino security department [and the Division's office in the approved hotel] whenever a door to the count room is opened at times other than those times for which the casino licensee has provided prior notice pursuant to N.J.A.C. 19:45-1.33(b) or 1.43(b); and

iii. A light system, approved by the Commission, which illuminates one or more lights in the monitoring rooms required by N.J.A.C. 19:45-1.10, [in the Division's office in the approved hotel,] at each count room door, and at such other locations as the Commission may require, for purposes of maintaining constant surveillance on whether each count room door is open or closed;

3.-5. (No change.)

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

19:45-1.34 Slot booths

(a) (No change.)

(b) Each slot booth shall be designed and constructed to provide at all times maximum security for the materials housed therein and for the activities performed therein. At a minimum, each slot cashier window shall be equipped with an electrical system, approved by the Commission, which enables a slot cashier or other authorized person in the booth to transmit a signal that is audibly and visually reproduced in each of the following locations whenever an emergency exists:

1. The monitoring rooms required by N.J.A.C. 19:45-1.10; and

2. The casino security department of the casino licensee; and

3. The Division's office in the casino hotel].

19:45-1.37 Slot machines and bill changers; identifications; signs, meters

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1.-3. (No change.)

4. A display on the front of the slot machine that provides fair notice of the following:

i.-iv. (No change.)

v. If the slot machine is equipped with multiple hoppers and has the win meter permitted by (b)4ii below and N.J.A.C. 19:46-1.26(c)5, a statement, approved by the Commission [in consultation with the Division], that reasonably explains to patrons the information disclosed by the win meter.

5.-7. (No change.)

(b)-(i) (No change.)

19:45-1.38 Slot machines and bill changers; [location] authorized locations; movements

(a) Each [casino licensee shall file with the Commission a floor plan of the casino which identifies each slot machine and bill changer on the casino floor by a location number in accordance with N.J.A.C. 19:45-1.37(a)7. Any alterations to such floor plan shall not become effective until approved in writing by a Commission inspector. A revised floor plan containing such alterations shall be filed with the Commission within 24 hours of the alteration.] **slot machine that is on a casino floor shall be:**

1. Placed at an authorized location identified on a casino floor plan approved by the Commission pursuant to N.J.A.C. 19:43-7.3 or 7.6; and

2. Identified on the Slot Machine Master List required by N.J.A.C. 19:43-7.4(b).

(b) No slot machine or bill changer shall be removed from or returned to [a] **an authorized slot machine** location in the casino or moved from one **authorized slot machine** location to another [without the prior written approval of the Commission] **except in accordance with the requirements of N.J.A.C. 19:43-7.4.**

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

19:46-1.6 Receipt of gaming chips or plaques from manufacturer or distributor; inventory, security, storage and destruction of chips and plaques

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

(c) If any of the gaming chips or plaques received from such manufacturer or distributor are to be held in reserve and not utilized for active gaming either at the gaming tables or in the cashiers' cage, they shall be recorded in the chip inventory ledger as reserve chips or plaques and shall be stored in separate locked compartments in:

1.-2. (No change.)

3. A comparable secure area, approved by the Commission [after consultation with the Division], which is adjacent to and accessible exclusively from the casino.

(d) Any gaming chips received from such manufacturer or distributor that are part of the secondary set of chips shall be recorded in the chip inventory ledger as such and shall be stored separately from the value and non-value reserve chips in locked compartments in:

1.-2. (No change.)

3. A comparable secure area, approved by the Commission [after consultation with the Division], which is adjacent to and accessible exclusively from the casino.

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

19:46-1.13E Poker table; physical characteristics

(a) Poker shall be played on a table which is oval in shape and which has places for up to 11 players and a dealer. The design of each poker table shall be approved by the Commission [after consultation with the Division]. Each poker table shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game. The cloth or nylon covering for the poker table shall have contained thereon the name or trade name of the casino licensee in a manner approved by the Commission.

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

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

(a) Each casino licensee shall submit to the Commission, for its review, inspection and approval [after consultation with the

Division], each piece of gaming and simulcast wagering equipment, and any other related device, prior to its use, whether initially or following any modification thereto or replacement or movement thereof, in a casino, casino simulcasting facility or hub facility. Each such item, including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, count room equipment and counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices, card reader devices, slot tokens, prize tokens, data processing equipment, slot machines and slot bases (see N.J.A.C. 19:41-9.6(b) and N.J.A.C. 19:46-1.28), pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines and totalisators, shall be subject to review, inspection and approval for, at a minimum, quality, design, integrity, fairness, honesty and suitability.

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

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Gaming Chips; Issuance and Use; Physical

Characteristics Applicable to All Gaming Chips

Value Chips; Denominations; Physical

Characteristics

Non-value Chips; Physical Characteristics; Permitted Uses; Inventory and Impressionment

Gaming Plaques; Issuance and Use; Denominations; Physical Characteristics

Reproposed Amendments: N.J.A.C. 19:40-1.2;

19:45-1.1; 19:46-1.1, 1.2 (recodified as 1.4) and 1.5

Reproposed Repeal: N.J.A.C. 19:46-1.4

Proposed New Rules: N.J.A.C. 19:46-1.1A, 1.1B and 1.2

Proposed Amendments: N.J.A.C. 19:45-1.15; 19:46-1.3 and 1.6

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69, 70i, l and m, 99a(15), and 100d and k.

Proposal Number: PRN 1995-265.

Submit written comments by May 31, 1995 to:
Leonard J. DiGiacomo, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

On April 4, 1994, the New Jersey Casino Control Commission (Commission) published in the New Jersey Register a reproposed repeal, new rule, and related amendments regarding, among other things, the physical characteristics of gaming chips. 26 N.J.R. 1441(b). The reproposed amendments required gaming chips to have a diameter, weight and thickness within manufacturing tolerances approved by the Commission.

The Commission received comments on the reproposal expressing concern about the method for establishing the manufacturing tolerances for the design characteristics of gaming chips. Given that gaming chips have been manufactured and used for many years under rules establishing a set diameter for the chips but without requiring a specific dimension for their weight and thickness, the Commission is again republishing the proposal in order to address the commenters' concerns.

In doing so, the Commission has recodified several subsections of N.J.A.C. 19:46-1.1 as separate sections in order that the various topics involving value chips and non-value chips would be grouped in a more logical and straightforward manner. For instance, N.J.A.C. 19:46-1.1

describes the physical characteristics applicable to all gaming chips, whereas the specific characteristics of value chips and non-value chips are now dealt with separately in N.J.A.C. 19:46-1.1A and 1.1B, respectively.

As for the commenters' specific concerns, the amendments reproposed herein do not impose any requirements for the weight and thickness of a gaming chip because those dimensions are not of any significant regulatory interest. However, the reproposal (N.J.A.C. 19:46-1.1(d)), consistent with the existing rules, requires the diameter of gaming chips to be a uniform one and 9/16ths inches, except for value chips in denominations of \$1,000 or \$5,000, which, as discussed in greater detail below, will have uniform diameters of one and 11/16ths inches.

The earlier reproposal incorporated the then existing Commission practice of requiring complete and integrated samples to accompany the submission of design specifications. The Commission anticipated that the length of the approval process would be shortened because, once the design specifications were approved, the Commission and the Division of Gaming Enforcement (Division) would immediately have had available for review a sample chip or plaque.

In commenting on the earlier reproposal, Paul-Son Dice and Card, Inc. stated that, in seeking preliminary approval of its chips, it historically has submitted design specifications accompanied by a sample chip without an "inlay," and sought inclusion of that method in the regulations. To permit chip manufacturers to continue that and similar practices, the Commission, with this reproposal, is abandoning the earlier suggested amendments that would have required the simultaneous submission of design specifications and a sample chip or plaque. Nevertheless, submission and approval of a complete and integrated sample of each gaming chip and plaque, manufactured in accordance with its approved design specifications, is ultimately required by this reproposal as well as its predecessors. N.J.A.C. 19:46-1.1(b) and 1.4(b).

The reproposal, based on comments from Paul-Son, now makes clear that the three anti-counterfeiting measures required for value chips of \$25.00 or higher are in addition to the requirements specified elsewhere in the rules for what has to appear on a value chip. (See N.J.A.C. 19:46-1.1A(j).)

The previous reproposal had required value chips and non-value chips to contain on each face in the identical manner certain identifying characteristics specific to each type of chip. However, this reproposal eliminates the requirement that those characteristics appear in the identical manner on each face without otherwise modifying the characteristics themselves. (See N.J.A.C. 19:46-1.1A(e) and 1.1B(c).)

Another Paul-Son comment to the earlier reproposal concerns the unique center shape required on each gaming chip. The Division practice that has evolved during its review of value chips has resulted in Commission approval of center shapes that are unique to specific denominations and, at the Division's request, unique to the specific manufacturer of the chip, albeit the latter requirement is not found in the current regulations.

Indirectly, there is a regulatory benefit from requiring the center shape to be "manufacturer-specific" because it allows a casino licensee, based on a sight inspection of the chip, to have an additional means of determining that counterfeit chips are being passed in its facility, which is particularly significant for those value chips where the risk of loss is especially great, that is, value chips of \$25.00 or more. Given the Division's focus on the chip manufacturer, the need to require in all instances a unique shape corresponding to the chip denomination is greatly diminished, and the risk of loss attributable to counterfeiting chips under \$25.00 does not justify the expense associated with requiring lower denomination chips to have a specific center shape of any type.

Thus, the reproposed amendments, for value chips under \$25.00, provide casino licensees with greater flexibility to select the design for the center of the face of those chips. The reproposal nevertheless requires, for value chips of \$25.00 or higher, that they have a design or other identifying characteristic somewhere on each face that is specific to the manufacturer of the chip. N.J.A.C. 19:46-1.1A(f).

Further, the reproposal allows casino licensees, through the sample approval process, to seek and obtain approval for different samples of the same high denomination value chip. Thus, for example, a casino licensee could have an approved sample for its "everyday" \$100.00 chip, and an approved sample with a completely different face design and style for the same denomination chip which is "themed" to a particular promotion or marketing strategy such as New Year's Eve.

However, the reproposal requires that the casino licensee have in active use at any one time only those high denomination value chips

that correspond to a single approved sample, and that it notify the Commission and the Division whenever it removes from active play the high denomination chips of one approved sample in favor of the chips of another approved sample. N.J.A.C. 19:46-1.3(e) and (f). Thus, before the casino licensee put the \$100.00 New Year's Eve chip in active use, the reproposal requires that it remove from active gaming all everyday \$100.00 chips, which, under the existing rules, would no longer be accepted at gaming tables and could only be redeemed at the cashiers' cage. (See N.J.A.C. 19:46-1.5(a).)

Although this reproposal, like its immediate predecessor, permits a primary color to be used as a secondary color on a value chip of a different denomination, that use on a chip's edge will only be allowed if it is not reasonably likely to create confusion as to the denomination of the chip when only its edge is visible. N.J.A.C. 19:46-1.1A(c).

The Division, in its comments on the earlier reproposal, identified a perceived inconsistency regarding whether a value chip's edge spots were required to be unique to the chip or to the casino licensee issuing the chip. In response to the Division's concerns, the reproposal provides that the secondary colors comprising the edge spots of a casino licensee's value chips need not be unique to each denomination of value chip issued by that casino licensee, which will, however, have the exclusive right to use that particular combination of those secondary colors for the edge spot on that denomination chip. N.J.A.C. 19:46-1.1A(h).

This reproposal also eliminates an ambiguity in the earlier republication in order to make clear that casino licensees are allowed to select secondary colors, including those used as edge spots on value chips, that are not constrained by the tolerances specified for primary colors. N.J.A.C. 19:46-1.1A(g)2ii and 1.1B(c)4 and (d)2.

The Division also expressed its concern regarding the extent to which the earlier reproposal required edge spots on non-value chips to contain certain unique identifying characteristics. To address the Division's concerns, this reproposal, unlike its predecessor, does not require a unique edge spot for each color of non-value chip in a set with the same face design. N.J.A.C. 19:46-1.1B(d).

The previous reproposal had required a gaming chip's edge spot to be clearly visible on the chip's edge. Although all approved edge spots appear, obviously, on the chip's edge, some extend onto the chip's faces. Accordingly, this reproposal provides that an edge spot must be clearly visible on the chip's edge and, to the extent required by the Commission, on its faces also. N.J.A.C. 19:46-1.1A(g)1i and 1.1B(d)1i.

The current regulation provides a specific method for a casino licensee to designate the "buy-in" value of non-value chips, N.J.A.C. 19:46-1.1(j), whereas the earlier reproposal contained a more generic means for determining the value assigned to non-value chips during their use in gaming. This reproposal recodifies but maintains the more specific requirements from the current regulation. N.J.A.C. 19:46-1.2(b).

The recent statutory amendment (P.L.1995, c.18, §37) to N.J.S.A. 5:12-100k that raises the threshold, from \$25.00 to \$100.00, above which a casino licensee must honor a patron's request to exchange value chips for a casino check is codified in the Commission's rules at N.J.A.C. 19:46-1.5(g).

With minor variations, and consistent with the overall recodification scheme discussed earlier, the remainder of the reposed repeal, new rules and related amendments are as originally reposed. Thus, amendments are again being reposed to N.J.A.C. 19:40-1.2 and 19:45-1.1, which reorganize the definitions of gaming chips and plaques while adding the definitional cross-references for "value chips" and "non-value chips." Also reposed are amendments to N.J.A.C. 19:46-1.2, recodified as N.J.A.C. 19:46-1.4, which are intended, where appropriate, to conform the provisions on gaming plaques with those on gaming chips.

Like their predecessor, the reposed amendments prohibit a casino licensee from using chips or plaques if it knows, or reasonably should know, that they are materially different from their approved samples. N.J.A.C. 19:46-1.1(e) and 1.4(g). In this way, use of the actual chip must await the approval of the sample, and thereby regulatory resources are conserved because the sample, rather than each chip or plaque, is reviewed for compliance with the Act and the Commission's rules. Conversely, if a casino licensee finds a chip or plaque that is in any material respect different from its approved sample, that chip or plaque is no longer fit for casino use and must be removed from circulation.

As with the earlier reproposal, the Commission has again abandoned the attempt to classify gaming chips by the categories "one-piece," "two-piece" or "flat surface" as appeared in the original proposal published at 25 N.J.R. 3111(a). Accordingly, those concepts do not appear in the reproposal, which imposes no requirements based solely thereon.

The Commission is also republishing these amendments without modifying N.J.A.C. 19:46-1.1A(g) and 1.1B(d) to make "edge spot" plural. N.J.A.C. 19:40-1.4(a)3.

When the gaming chip rules were originally written, roulette was the only game at which "non-value" chips could be used. Pokette has been added to that list, and there are other games which, if authorized by the Commission, would also require "non-value" chips, that is, chips which have no specific denomination but which are assigned, on a per-player basis, a value depending upon the "buy-in" of that player, who is entitled to use those chips only at that one game, and then only on that occasion.

In the main, however, the gaming chip rules treat roulette as the only game where "non-value" chips are necessary, and create somewhat unwieldy exceptions thereto in order to deal with the new games, variations or composites at which "non-value" chips are also used. As with the earlier proposals, the reposed amendments, upon adoption, will also simplify the procedures that will need to be followed in the event the Commission authorizes other games at which "non-value" chips are used. (See N.J.A.C. 19:46-1.2.)

As earlier mentioned, the reproposal attempts to reorganize the general structure of the chip rules, but does so in a broader fashion than that contained in the prior proposals. Nevertheless, the reposed amendments, to the greatest extent possible, incorporate existing requirements and make no substantive changes in the standards that apply to gaming chips. For that matter, the reposed amendments, as previously mentioned, relax in some instances the requirements for the design of gaming chips, provided the chips continue to meet strict security standards.

For example, those provisions on the impressment and inventory of non-value chips and on their permitted uses are removed from the existing section describing a gaming chip's physical characteristics (N.J.A.C. 19:46-1.1), and are transferred to a new N.J.A.C. 19:46-1.2, which in its current form is being amended and recodified as N.J.A.C. 19:46-1.4 to deal with gaming plaques. Existing N.J.A.C. 19:46-1.4 is being repealed.

Additionally, those provisions on the exchange of non-value chips are being moved from the section which describes the physical characteristics of chips to where they more properly belong in N.J.A.C. 19:46-1.5 on the nature and exchange of chips. Minor technical changes are also being made to that section to make clear that non-value chips may only be redeemed from patrons for value chips.

Under the current rules, the Commission may approve value chips in denominations of \$1,000 or \$5,000 that do not meet any of the requirements set forth in the rules, provided that, in doing so, the control, security and integrity of the chips, and the operation of the games, are not affected. The Commission has exercised that authority to approve high denomination chips which have a larger diameter than the diameter of chips of lower denominations. Given the Commission's limited exercise of that authority in the past, the reposed amendments permit the Commission, as an exception to the general requirement that gaming chips have a uniform diameter of one and 9/16ths inches, to approve high denomination value chips that have a uniform diameter of one and 11/16ths inches in diameter, provided those chips comply with all other applicable standards. N.J.A.C. 19:46-1.1A(i).

Included with this reposal are newly proposed amendments to N.J.A.C. 19:45-1.15 and 19:46-1.6 which, as to the former, add the correct cross-references to that section that are occasioned by the reposed amendments recodifying several subsections of N.J.A.C. 19:46-1.4 and, as to the latter, add the appropriate references to value and non-value chips throughout that section.

This reposal on gaming chips supersedes the earlier gaming chip reposal that was published at 26 N.J.R. 1441(b). Accordingly, any comments received in response to the prior reposal will not be considered in connection with this reposal unless those comments are timely submitted in writing during the current comment period. Of course, the commenters to the earlier reposal, and any other interested persons, are welcome to submit additional written comments, provided that they do so timely, in accordance with this reposal.

Social Impact

There will be no social impact beyond the casino industry as a result of the reposal, which only specifies the design characteristics for gaming chips and plaques, makes technical amendments, or reorganizes already existing requirements on non-value chip inventory and impressment, and the permitted uses thereof.

Economic Impact

The Commission anticipates that the additional costs, if any, to casino licensees seeking to comply with the proposed amendments will be minimal.

Of course, if there is an increase in competition among chip manufacturers as a result of the proposed amendments, then the Commission anticipates those companies which are unable to compete effectively may suffer adverse economic consequences. However, any such negative consequences are a product of the marketplace, rather than a direct result of the proposed amendments.

Executive Order No. 27 Statement

An Executive Order No. 27(1994) analysis and certification are not required because the rulemaking requirements of the Commission for this reproposal are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

Under the Commission's existing rules, casino service industries, some of which may be a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are required to be licensed in order to provide goods and services, such as gaming chips and plaques, to casino licensees. The proposed amendments do not modify those licensing requirements.

Further, casino service industries which supply gaming chips or plaques to casino licensees are currently required to adhere to existing standards on the design and manufacture of those items.

Accordingly, no regulatory flexibility analysis is required because the proposed amendments impose no additional reporting, record-keeping or other compliance requirements on any such casino service industries, and because none of the casino licensees which will be directly affected by the proposed amendments is a small business.

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

19:40-1.2 Definitions

(a) (No change.)

(b) The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise:

... "Gaming chip" is defined in N.J.A.C. 19:46-1.1.

... "Gaming plaque" is defined in N.J.A.C. 19:46-1.4.

... "Non-value chip" is defined in N.J.A.C. 19:46-1.1B.

... "Value chip" is defined in N.J.A.C. 19:46-1.1A.

19:45-1.1 Definitions

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

... ["Gaming chips and plaques" is defined in N.J.A.C. 19:46-1.1 and 19:46-1.2, respectively, of the Gaming Equipment Regulation.]

19:45-1.15 Accounting controls for the cashiers' cage, satellite cages, master coin bank, and coin vaults

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

(c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash and, at the discretion of the casino licensee, slot tokens, and such cashiers' functions shall include, but are not limited to, the following:

i.-v. (No change.)

vi. Receive gaming plaques from patrons in exchange for cash or Customer Deposit Forms in accordance with an approved system of accounting as required by N.J.A.C. 19:46-[1.2(e)]1.4(b);

vii.-xv. (No change.)

2. (No change.)

3. Chip bank cashiers shall not have access to currency or cash equivalents, but shall operate with a limited inventory of \$0.50 and \$0.25 cent coins which may only be used to facilitate odds payoffs or vigorish bets. Such cashiers' functions shall include, but are not limited to, the following:

i. (No change.)

ii. Receive gaming plaques removed from gaming tables from a security department member in exchange for the issuance of a credit in accordance with an approved system of accounting as required by N.J.A.C. 19:46-[1.2(e)]1.4(b);

iii. Receive Requests for Fills in exchange for the issuance of a Fill, the dispersal of gaming chips and coin to a security department member and the dispersal of gaming plaques to a security department member in accordance with an approved system of accounting as required by N.J.A.C. 19:46-[1.2(e)]1.4(b);

iv.-v. (No change.)

4.-5. (No change.)

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

19:46-1.1 Gaming chips; [value and non-value;] issuance and use; physical characteristics applicable to all gaming chips

(a) For the purposes of this chapter:

1. Each of the two surfaces of a gaming chip across which the diameter of the chip can be measured shall be known as a "face;" and

2. The surface of a gaming chip across which its thickness can be measured in a perpendicular line from one face to the other shall be known as its "edge."

(b) No gaming chip shall be issued by a casino licensee or utilized in a casino or casino simulcasting facility unless and until:

1. The design specifications of the proposed gaming chip are, prior to the manufacture of the gaming chip, submitted to and approved by the Commission, which submission shall include a detailed schematic depicting the actual size and, as appropriate, location of the following:

i. Each face, including any indentations or impressions;

ii. The edge; and

iii. Any colors, words, designs, graphics or security measures contained on the gaming chip; and

2. A sample gaming chip, manufactured in accordance with its approved design specifications, is submitted to and approved by the Commission.

(c) Each gaming chip issued by a casino licensee shall be designed and manufactured with sufficient graphics or other security measures, including, at a minimum, those items specifically required to appear on the face or edge of a gaming chip pursuant to N.J.A.C. 19:46-1.1A or 1.1B, so as to prevent, to the greatest extent possible, the counterfeiting of the gaming chip.

[(a)](d) Each gaming chip issued by a casino licensee shall be [round] in [shape, be 1⁷/₁₆] the form of a disk and, except as otherwise provided in N.J.A.C. 19:46-1.1A, shall have a uniform diameter of one and ⁷/₁₆ths inches [in diameter and have clearly and permanently impressed, engraved or imprinted thereon the name of the casino issuing it and the specific value of the chip except that a casino may issue gaming chips without a value impressed, engraved or imprinted thereon for the purpose of gaming at roulette. Gaming chips with a value contained thereon shall be known as "value chips" and gaming chips without a value contained thereon shall be known as "non-value chips."]

(b) Value chips may be issued by a casino licensee in denominations of \$.50, \$1.00, \$2.50, \$5.00, \$20.00, \$25.00, \$100.00, \$500, \$1,000 and \$5,000. It, however, shall be within the discretion of the casino licensee to determine which of these denominations will be utilized in its casino or casino simulcasting facility and what amount of each denomination will be necessary for the conduct of gaming operations.

(c) Each denomination of value chip shall have a different primary color from every other denomination of value chip. The primary color to be utilized by each casino licensee for each denomination of value chip shall be:

1. \$0.50—"Mustard Yellow" which shall mean that color classified as 5Y 7/6 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

PROPOSALS

Interested Persons see Inside Front Cover

OTHER AGENCIES

	Upper Limits	Lower Limits
Hue	H+ 7.5Y 7/6	H- 2.5Y 7/6
Value	V+ 5Y 8/6	V- 5Y 6/6
Chroma	C+ 5Y 7/8	C- 5Y 7/4

2. \$1.00—"White" which shall mean that color classified as N 9/ on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Value	V+ N9.4/ to V- N8.75/	
Chroma	5R 9/1 5YR 9/1 5Y 9/1	5G 9/0.5 5B 9/0.5 5P 9/0.5

3. \$2.50—"Pink" which shall mean that color classified as 2.5R 6/10 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 3.75R 6/10	H- 1.25R 6/10
Value	V+ 2.5R 6.75/10	V- 2.5R 5.75/10
Chroma	C+ 2.5R 6/12	C- 2.5R 6/8

4. \$5.00—"Red" which shall mean that color classified as 2.5R 4/12 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 3.75R 4/12	H- 1.25R 4/12
Value	V+ 2.5R 4.5/12	V- 2.5R 3.5/12
Chroma	C+ 2.5R 4/14	C- 2.5R 4/10

5. \$20.00—"Yellow" which shall mean that color classified as 5Y 8.5/12 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 7.5Y 8.5/12	H- 2.5Y 8.5/12
Value	V+ 5Y 8.75/12	V- 5Y 8/12
Chroma	C+ 5Y 8.5/14	C- 5Y 8.5/10

6. \$25.00—"Green" which shall mean that color classified as 2.5G 5/12 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 3.75G 5/12	H- 1.25G 5/12
Value	V+ 2.5G 5.5/12	V- 2.5G 4.5/12
Chroma	C+ None	C- 2.5G 5/9

7. \$100.00—"Black" which shall mean that color classified as N2/ on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Value	V+ N2.3/ to V- N1.5/	
Chroma	5R 2/0.5 5Y 2/0.5 5G 2/0.5	5B 2/0.5 5P 2/0.5

8. \$500.00—"Purple" which shall mean that color classified as 2.5 P 4/10 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 3.75P 4/10	H- 1.25P 4/10
Value	V+ 2.5P 4.5/10	V- 2.5P 3.5/10
Chroma	C+ None	C- 2.5P 4/8

9. \$1,000.00—"Fire Orange" which shall mean that color classified as 8.9R 5.9/18.5 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ .15YR 5.9/18.5	H- 7.64R 5.9/18.5
Value	V+ 8.9R 6.4/18.5	V- 8.9R 5.4/18.5
Chroma	C+ 8.9R 5.9/20.5	C- 8.9R 5.9/16.5

10. \$5,000.00—"Gray" which shall mean that color classified as N 5/ on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Value	V+ N 5.5/ to V- N 4.5/	
Chroma	5R 5/0.5 5Y 5/0.5 5G 5/0.5	5B 5/0.5 5P 5/0.5

11. Chip colors shall fall within the above tolerances when such chips are viewed both in daylight and under incandescent light. In conjunction with the aforementioned primary colors, each casino licensee shall utilize contrasting secondary colors for the edge spots on each denomination of value chip. Unless otherwise approved by the Commission, no casino licensee shall use a secondary color on a specific denomination of chip identical to the secondary color used by another casino licensee on that same denomination of chip.

(d) Each denomination of value chip utilized in a casino or casino simulcasting facility shall, unless otherwise authorized by the Commission:

1. Have its center portion, which contains the value of the chip and the name or trade name of the casino licensee issuing it, of a different shape for each denomination of chip;
2. Have the name, trade name, or other approved identification of the casino licensee issuing it and the denomination of such chip molded into the outer rim of the chip;
3. Have its circumference so designed so as to be able to determine on closed circuit black and white television the specific denomination of such chip when placed in a stack of chips of other denominations; and
4. Be designed, manufactured and constructed so as to prevent, to the greatest extent possible, the counterfeiting of such chips.

(e) Notwithstanding the above, the Commission shall have the discretion to approve a value chip in the denomination of \$1,000.00 or \$5,000.00 at variance with the requirements of this section provided that any variation is specifically identified as such by the casino licensee and approved as an acceptable alternative by the Commission and provided further that said variation does not affect control, security or integrity of said chips or the operation of the games.

(f) Each non-value chip utilized in a casino or casino simulcasting facility shall be issued solely for the purpose of gaming at roulette. The non-value chips at each roulette table shall:

1. Have the name or trade name of the casino licensee issuing them molded into the center of such chip;
2. Contain a design, insert or symbol differentiating those chips from the non-value chips being used at every other roulette table in the casino or casino simulcasting facility;
3. Have "Roulette" impressed in the rim; and
4. Be designed, manufactured and constructed so as to prevent, to the greatest extent possible, the counterfeiting of such chips.

(g) Each casino licensee shall utilize contrasting secondary colors or designs for the edge spots on non-value chips.

(h) Nothing in this section shall preclude a casino licensee from using non-value chips approved for use in roulette at the game of pokette.

(i) Non-value chips issued at a roulette or pokette table shall only be used for gaming at that table and shall not be used for gaming at any other table in the casino or casino simulcasting facility nor shall any casino licensee or its employees allow any patron to remove non-value chips from the table from which they were issued.

(j) No person at a roulette or pokette table shall be issued or permitted to game with non-value chips that are identical in color and design to value chips or to non-value chips being used by another person at the same table. When a patron purchases non-value chips, a chip of the same color shall be placed in a slot or receptacle attached to the outer rim of the roulette wheel or, for pokette, in such other device as approved by the Commission. At that time, a marker button denoting the value of a stack of 20 chips of that color shall also be placed in the slot, receptacle or other device.

(k) Non-value chips shall only be presented for redemption at the table from which they were issued and shall not be redeemed or

exchanged at any other location in the casino or casino simulcasting facility. When so presented, the dealer at such table shall exchange them for an equivalent amount of value chips which may then be used by the patron in gaming or redeemed as any other value chips.

(l) Each casino licensee shall have the discretion to permit, limit or prohibit the use of value chips in gaming at roulette and pokette provided, however, that it shall be the responsibility of the casino licensee and its employees to keep accurate account of the wagers being made at roulette and pokette with value chips so that the wagers made by one player are not confused with those made by another player at the table.

(m) An impressment of each roulette table on the gaming floor shall be completed at least once a week. A casino licensee shall not complete a roulette table impressment unless it provides at least one-half hour prior notice to the Commission. The casino licensee shall record the results of such impressment in the Chip Inventory Ledger and shall utilize a "Non-Value Roulette Chip Impressment" form to perform such impressments as follows:

1. A casino department supervisor shall complete the "Non-Value Roulette Chip Impressment" form to record missing and excess chips and shall deliver the form and excess chips to the main bank or fill bank;

2. Upon receipt of the "Non-Value Roulette Chip Impressment" form a main bank cashier or fill bank cashier shall immediately prepare the chips needed to impress the table; and

3. The casino department supervisor shall then deliver, directly to the appropriate table, the chips needed to impress that table.

(n) The completed "Non-Value Roulette Chip Impressment" form shall be maintained by the Accounting Department and shall contain, at a minimum, the following:

1. Date and time of preparation;
2. Design schematic of the chip and the applicable table number;
3. Signature of the casino department supervisor who completes the "Non-Value Roulette Chip Impressment" form and the roulette table impressment; and
4. Signature of the main bank cashier or fill bank cashier preparing the impressment.

(o) Each casino licensee shall submit to the Commission and Division a monthly summary of the non-value chip inventory for each table/design by color which shall include, at a minimum, the following:

1. The balance on hand at the beginning of the month;
2. The number of non-value chips distributed to the gaming tables during the month;
3. The number of non-value chips returned to inventory during the month; and
4. The balance on hand at the end of the month.

(p) No casino licensee shall issue or cause to be utilized in its casino or casino simulcasting facility any value or non-value chips unless and until such chips are approved by the Casino Control Commission. In requesting approval of such chips, a casino licensee, prior to having any such chips manufactured, shall first submit to the Commission a detailed schematic of its proposed chips which shall show the front, back and edge of each denomination of value chip and each non-value chip and the design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear both as to size and location, on the actual chip. Once the design schematics are approved by the Commission, no value or non-value chip shall be issued or utilized until and unless a sample of each denomination of value chip and each color of non-value chip is also submitted to and approved by the Commission.

(e) No casino licensee shall issue, use or allow a patron to use in its casino or casino simulcasting facility any gaming chip that it knows, or reasonably should know, is materially different from the sample of that gaming chip approved by the Commission pursuant to this section.

(q)(f) No casino licensee or other person licensed by the Commission shall manufacture for, sell to, distribute to or use in any casino outside of Atlantic City, any [value or non-value] gaming chips

having the same edge spot and design specifications as those approved for use in Atlantic City casinos and casino simulcasting facilities.

19:46-1.1A Value chips; denominations; physical characteristics

(a) Each gaming chip which contains a denomination on each face thereof shall be known as a "value chip."

(b) Each casino licensee shall be authorized to issue and use value chips in denominations of \$.50, \$1.00, \$2.50, \$5.00, \$20.00, \$25.00, \$100.00, \$500, \$1,000 and \$5,000, and in such quantities as the casino licensee may deem appropriate to conduct gaming or simulcast wagering in its casino or casino simulcasting facility.

(c) Each denomination of value chip issued by a casino licensee shall contain a predominant color unique to that denomination to be known as the "primary color." A "secondary color" on a value chip is any color, other than that chip's primary color, that the Commission authorizes a casino licensee to include on the face or edge of the chip as a contrast to the chip's primary color, except that no primary color shall be used as a secondary color on a value chip of another denomination where such use on the edge is reasonably likely to cause confusion as to the chip's denomination when the edge alone is visible.

(d) A primary color, when viewed either in daylight or under incandescent light, shall be within the tolerances established in this subsection, as follows:

1. \$0.50—"Mustard Yellow" which shall mean that color classified as 5Y 7/6 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 7.5Y 7/6	H- 2.5Y 7/6
Value	V+ 5Y 8/6	V- 5Y 6/6
Chroma	C+ 5Y 7/8	C- 5Y 7/4

2. \$1.00—"White" which shall mean that color classified as N9/ on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

Value	V+ N9.4/	to	V- N8.75/
Chroma	5R 9/1		5G 9/0.5
	5 YR 9/1		5B 9/0.5
	5Y 9/1		5P 9/0.5

3. \$2.50—"Pink" which shall mean that color classified as 2.5R 6/10 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 3.75R 6/10	H- 1.25R 6/10
Value	V+ 2.5R 6.75/10	V- 2.5R 5.75/10
Chroma	C+ 2.5R 6/12	C- 2.5R 6/8

4. \$5.00—"Red" which shall mean that color classified as 2.5R 4/12 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 3.75R 4/12	H- 1.25R 4/12
Value	V+ 2.5R 4.5/12	V- 2.5R 3.5/12
Chroma	C+ 2.5R 4/14	C- 2.5R 4/10

5. \$20.00—"Yellow" which shall mean that color classified as 5Y 8.5/12 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 7.5Y 8.5/12	H- 2.5Y 8.5/12
Value	V+ 5Y 8.75/12	V- 5Y 8/12
Chroma	C+ 5Y 8.5/14	C- 5Y 8.5/10

6. \$25.00—"Green" which shall mean that color classified as 2.5G 5/12 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 3.75G 5/12	H- 1.25G 5/12
Value	V+ 2.5G 5.5/12	V- 2.5G 4.5/12
Chroma	C+ None	C- 2.5G 5/9

7. \$100.00—"Black" which shall mean that color classified as N2/ on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

Value	V+ N2.3/	to	V- N1.5/
Chroma	5R 2/0.5		5B 2/0.5
	5Y 2/0.5		5P 2/0.5
	5G 2/0.5		

8. \$500.00—"Purple" which shall mean that color classified as 2.5 P 4/10 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ 3.75P 4/10	H- 1.25P 4/10
Value	V+ 2.5P 4.5/10	V- 2.5P 3.5/10
Chroma	C+ None	C- 2.5P 4/8

9. \$1,000.00—"Fire Orange" which shall mean that color classified as 8.9R 5.9/18.5 on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

	Upper Limits	Lower Limits
Hue	H+ .15YR 5.9/18.5	H- 7.64R 5.9/18.5
Value	V+ 8.9R 6.4/18.5	V- 8.9R 5.4/18.5
Chroma	C+ 8.9R 5.9/20.5	C- 8.9R 5.9/16.5

10. \$5,000.00—"Gray" which shall mean that color classified as N 5/ on the Munsell System of Color Coding which shall be reproduced to within the following tolerances:

Value	V+ N 5.5/	to	V- N 4.5/
Chroma	5R 5/0.5		5B 5/0.5
	5Y 5/0.5		5P 5/0.5
	5G 5/0.5		

(e) Each value chip issued by a casino licensee shall contain certain identifying characteristics that appear at least once on each face of the gaming chip and are applied in a manner which ensures that each such characteristic shall be clearly visible and remain a permanent part of the gaming chip. These characteristics shall, at a minimum, include:

1. The denomination of the value chip, expressed in numbers;
2. The name, trade name, or other approved identification of the casino licensee issuing the value chip; and
3. The primary color of the value chip.

(f) In addition to the characteristics specified in (e) above, each value chip in a denomination of \$25.00 or more shall contain a design or other identifying characteristic that is unique to the chip manufacturer which makes the chip. Upon approval of the design or characteristic by the Commission, the chip manufacturer shall thereafter have the exclusive right to use that design or characteristic on that denomination of value chip and be precluded from using that same design or characteristic on any other denomination of value chip which it manufactures. An example of the application of this rule is as follows:

1. If a hexagon is approved for use by Manufacturer A on a \$100.00 value chip, a hexagon can be used by Manufacturer A on any \$100.00 value chip that it makes for any casino licensee, but Manufacturer A cannot use a hexagon on any other denomination of value chip that it manufactures; but

2. Manufacturer B could use a hexagon on any value chip with a denomination of less than \$25.00 and on any value chip with a denomination of \$25.00 or more, other than a \$100.00 chip, provided that no other manufacturer has been granted approval by the Commission to use a hexagon on the same particular value chip with a denomination of \$25.00 or more.

(g) Each value chip issued by a casino licensee shall contain an identifying characteristic, to be known as an "edge spot," which shall:

1. Be applied in a manner which ensures that the edge spot shall:
 - i. Be clearly visible on the edge and, to the extent required by the Commission, on each face of the value chip; and
 - ii. Remain a permanent part of the value chip;

2. Be created by using:

- i. The primary color of the chip; and
- ii. One or more secondary colors; and

3. Include a design, pattern or other feature that a natural person with adequate training could readily use to identify, when viewed through the CCTV system of the casino licensee, the denomination of the particular value chip when placed in a stack of gaming chips, in the table inventory or in any other location where only the edge of the value chip is visible; provided, however, that the design, pattern or feature created by the primary and secondary colors required by (g)2 above shall be sufficient by itself to satisfy the requirements of this paragraph if approved for that purpose by the Commission.

(h) When determining the secondary colors to be used to make the edge spot on a particular denomination of value chip, a casino licensee shall, unless otherwise approved by the Commission, use only those secondary colors that are reasonably likely to differentiate its value chip from the same denomination of value chip issued by any other casino licensee.

1. If an approved value chip uses a single secondary color, no other casino licensee shall use that identical secondary color as the sole secondary color on the same denomination of value chip unless it is used in a different pattern or design approved by the Commission pursuant to (g)3 above.

2. If an approved value chip uses a combination of two or more secondary colors, no other casino licensee shall use that identical combination of secondary colors on the same denomination of value chip unless it is used in a different pattern or design approved by the Commission pursuant to (g)3 above.

(i) Notwithstanding the provisions of N.J.A.C. 19:46-1.1(d) to the contrary, any value chip issued in a denomination of \$1,000 or \$5,000 shall have a uniform diameter of one and ¹¹/₁₆ths inches.

(j) Each value chip with a denomination of \$25.00 or more shall contain at least three anti-counterfeiting measures in addition to those items specifically required to appear on the face or edge of a value chip by this section.

19:46-1.1B Non-value chips; physical characteristics

(a) Each gaming chip which does not contain a denomination on either face thereof shall be known as a "non-value" chip.

(b) Each non-value chip utilized in a casino or casino simulcasting facility shall be issued solely for the purpose of gaming at roulette, pokette or any other authorized game that the Commission determines is appropriate for the use of non-value chips.

(c) Each non-value chip issued by a casino licensee shall contain certain identifying characteristics that appear at least once on each face of the gaming chip and shall be applied in a manner which ensures that each such characteristic shall be clearly visible and remain a permanent part of the gaming chip. These characteristics shall, at a minimum, include:

1. The name, trade name or other approved identification of the casino licensee issuing the non-value chip;

2. A design, insert or symbol that will permit a set of non-value chips being used at a particular gaming table to be distinguished from the non-value chips being used at every other gaming table in the casino or casino simulcasting facility;

3. The name of the particular authorized game at which the non-value chip shall exclusively be used; provided, however, that a casino licensee may use a non-value chip which otherwise complies with the applicable provisions of this section but contains the word "Roulette" on the faces thereof at any authorized game that the Commission determines is appropriate for the use of non-value chips; and

4. Such color combinations as the Commission may approve so as to readily distinguish the non-value chips of each player at a particular gaming table from:

- i. The non-value chips of every other player at the same gaming table; and

ii. The value chips issued by any casino licensee.

(d) Each non-value chip issued by a casino licensee shall contain an identifying characteristic, to be known as an "edge spot," which shall:

1. Be applied in a manner which ensures that the edge spot shall:
 - i. Be clearly visible on the edge and, to the extent required by the Commission, on each face of the non-value chip; and
 - ii. Remain a permanent part of the non-value chip;
2. Be created by using the colors approved for the face of the particular non-value chip pursuant to (c)4 above in combination with one or more other colors that provide a contrast with the color on the face of the chip and that enable it to be distinguished from the non-value chips issued by any other casino licensee; and
3. Include a design, pattern or other feature approved by the Commission that a natural person with adequate training could readily use to identify, when viewing the non-value chip through the CCTV system of the casino licensee, the player to whom the non-value chip has been assigned when the non-value chip is placed in a stack of gaming chips or in any other location where only the edge of the non-value chip is visible; provided, however, that the design, pattern or feature created by the colors required by (d)2 above shall be sufficient by itself to satisfy the requirements of this paragraph if approved for that purpose by the Commission.

(Agency note: The current N.J.A.C. 19:46-1.2 is recodified herein with amendments as N.J.A.C. 19:46-1.4.)

19:46-1.2 Non-value chips; permitted uses; inventory and impressment

(a) Each non-value chip shall be assigned to a particular gaming table and shall be issued and used for gaming at that table only. No casino licensee or any employee thereof shall allow any patron to remove a non-value chip from the gaming table at which it was issued.

(b) No patron at a gaming table shall be issued or permitted to game with non-value chips that are identical in color and design to any non-value chip issued to any other patron at the same table. When a patron purchases non-value chips for use at a gaming table:

1. A non-value chip of the same color and design shall be placed, as follows:
 - i. If purchased for use at a roulette table, in a slot or receptacle attached to the outer rim of the roulette wheel; or
 - ii. If purchased for use at any other authorized game, in a device approved by the Commission for such purpose; and
2. A marker button denoting the value of a stack of 20 non-value chips of the same color and design shall be placed in the slot, receptacle or other device (for example, a marker button with "100" imprinted on it would be placed in the receptacle to designate that, during the patron's play on that occasion only, the non-value chips of that color and design are each worth \$5.00).

(c) An impressment of the non-value chips assigned to each gaming table shall be completed at least once every seven days. A casino licensee shall not perform a non-value chip impressment unless it provides at least one-half hour prior notice to the Commission. The casino licensee shall record the results of the impressment in the chip inventory ledger required pursuant to N.J.A.C. 19:46-1.6 and shall perform the impressment as follows:

1. A casino department supervisor shall complete a "Non-Value Chip Impressment" form to record missing or excess chips and shall deliver the form and any excess chips to the main bank or chip bank;
2. Upon receipt of the "Non-Value Chip Impressment" form, a main bank cashier or chip bank cashier shall, if appropriate, immediately prepare any chips needed to impress the table; and
3. The casino department supervisor shall then, if applicable, deliver the non-value chips needed to restore the impress to the appropriate gaming table.

(d) The completed "Non-Value Chip Impressment" form shall be maintained by the accounting department and shall contain, at a minimum, the following:

1. The date and time of preparation;
2. The design schematic of the chip and the applicable table number;

3. The signature of the casino department supervisor who completes the "Non-Value Chip Impressment" form and the impressment for such table; and

4. The signature of the main bank cashier or chip bank cashier who reviewed the form and, if necessary, prepared the chips to restore the impressment.

(e) Each casino licensee shall record in the chip inventory ledger required by N.J.A.C. 19:46-1.6 and submit to the Commission and Division, a monthly summary of the non-value chip inventory for each gaming table. This monthly summary shall include, at a minimum, the following information for each non-value chip color and design:

1. The balance on hand at the beginning of the month;
2. The number of non-value chips distributed to the gaming table during the month;
3. The number of non-value chips returned to inventory during the month; and
4. The balance on hand at the end of the month.

19:46-1.3 Primary, secondary and reserve sets of gaming chips

(a) Unless otherwise authorized by the Commission, each casino licensee shall have a primary set of gaming chips, a separate secondary set of value chips and a reserve non-value chip which shall conform to the color and design specification contained in N.J.A.C. 19:46-1.1B.

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

(e) Whenever the primary set of chips is removed from active play, or a particular value chip that is subject to the provisions of (f) below is removed from active play pursuant thereto, the casino licensee shall notify immediately [a representative of] the Commission and Division of this fact and the reasons for such occurrence.

(f) If a casino licensee has obtained Commission approval of two or more different samples for a particular denomination of value chip with a value of \$25.00 or more, each such value chip that the casino licensee places in active use at any given time shall correspond to one, and only one, of the approved samples for that particular denomination of value chip.

19:46-[1.2]1.4 Gaming plaques; issuance and use; denominations; physical characteristics

(a) In addition to the issuance of gaming chips, a casino licensee may issue gaming plaques in denominations of \$5,000, \$10,000, \$25,000, \$50,000 and \$100,000.]

(b) [Unless authorized by the Commission, each] Each gaming plaque issued by a casino licensee shall be a solid, one-piece object constructed entirely of plastic or any other substance approved by the Commission and shall have no more than six, and at least two, smooth, plane surfaces. At least two of the plane surfaces, each to be known as a "face," shall be opposite and parallel to each other and identical in shape, which shall be either a square, [rectangular or oval in shape and no smaller than three inches in length by two inches in width which, in the case of oval gaming plaques, shall be measured at the points of greatest length and width.] rectangle or ellipse. All other surfaces of a gaming plaque shall be known collectively as the "edge."

(b) No gaming plaque shall be issued by a casino licensee or utilized in a casino or casino simulcasting facility unless and until:

1. The design specifications of the proposed gaming plaque are, prior to the manufacture of the gaming plaque, submitted to and approved by the Commission, which submission shall include a detailed schematic depicting the actual size and, as appropriate, location of the following:
 - i. Each face;
 - ii. The edge; and
 - iii. Any colors, words, designs, graphics or security measures contained on the gaming plaque;
2. A sample gaming plaque, manufactured in accordance with its approved design specifications, is submitted to and approved by the Commission; and
3. A system of internal procedures and administrative and accounting controls, governing the distribution, redemption, receipt

and inventory of gaming plaques, by serial number, is submitted and approved pursuant to N.J.A.C. 19:45-1.3.

(c) Each face of a square gaming plaque shall measure no smaller than nine square inches. Each face of a rectangular or elliptical gaming plaque shall measure no smaller than three inches in length by two inches in width. In the case of an elliptical gaming plaque, the length and width of the plaque shall be measured at its axes.

(d) Each gaming plaque issued by a casino licensee shall be designed and manufactured with sufficient graphics or other security measures so as to prevent, to the greatest extent possible, the counterfeiting of such gaming plaque.

(e) Each casino licensee shall be authorized to issue and use gaming plaques in denominations of \$5,000, \$10,000, \$25,000, \$50,000 and \$100,000, and in such quantities as the casino licensee may deem proper to conduct gaming in its casino or casino simulcasting facility. Each gaming plaque of a specific denomination [of gaming plaque] utilized by a casino licensee shall be [of a different] in a shape and of a size, as approved by the Commission, which is identical to the shape and size of all other gaming plaques of that denomination issued by that casino licensee. The size and shape of each denomination of gaming plaque issued by a casino licensee shall be readily distinguishable from the size and shape of every other denomination of gaming plaque issued by that casino licensee.

[(c)](f) Each gaming plaque [shall have clearly and permanently imprinted, impressed or engraved thereon the specific value of the plaque in numerals] issued by a casino licensee shall contain certain identifying characteristics which shall appear at least once on each face of the gaming plaque and shall be applied in a manner which ensures that each such characteristic shall be clearly visible and remain a permanent part of the gaming plaque. These characteristics shall, at a minimum, include:

1. The denomination of the gaming plaque, expressed in numbers of no less than three-eighths inch in height[, and the];
2. The name, trade name, or other approved identification of the casino licensee issuing [it] the gaming plaque; and [a]
3. A unique serial number.

[(d)] No casino licensee shall issue or cause to be utilized in its casino or casino simulcasting facility any gaming plaques unless and until such plaques are approved by the Casino Control Commission or its authorized designee. In requesting approval of such plaques, a casino licensee, prior to having any such plaques manufactured, shall first submit to the Commission a detailed schematic of its proposed plaques which shall show the front, back and edge of each denomination of plaque and the design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear, both as to size and location, on the actual plaque. Once the design schematics are approved by the Commission, no plaque shall be issued or utilized until and unless a sample of each denomination of plaque is also submitted to and approved by the Commission or its authorized designee.

(e) No gaming plaque shall be issued until the casino licensee has submitted to the Commission and the Commission has approved a system for accounting for gaming plaques by serial number. Such system shall include the receipt and inventory of the gaming plaques and cage procedures.]

(g) No casino licensee shall issue, use or allow a patron to use in its casino or casino simulcasting facility any gaming plaque that it knows, or reasonably should know, is materially different from the sample of that gaming plaque approved by the Commission pursuant to this section.

[19:46-1.4 Submission of gaming chips, plaques and match play coupons for review and approval

A casino licensee shall submit to the Commission a sample of each denomination of gaming plaque, a sample of each value and non-value chip in its primary and secondary sets, and a sample of each match play coupon, and shall not utilize such chips, plaques or coupons for gaming purposes until approved by the chairman.]

19:46-1.5 Nature, [and] exchange and redemption of gaming chips, plaques and match play coupons

(a) All wagering on authorized games, other than slot machines, in a casino or casino simulcasting facility shall be conducted with gaming chips or plaques; provided however, that match play coupons shall be permitted for use in wagering at authorized games in accordance with N.J.A.C. 19:45-1.18 and 19:45-1.46. [Gaming] Value chips previously issued by a casino licensee which are not in active use by that casino licensee shall not be used for wagering at authorized table games or casino simulcasting, and shall not be accepted nor exchanged for any purpose at a gaming table or a casino simulcast counter. Such chips shall only be redeemed at the cashiers' cage pursuant to [(e)] (g) below.

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables [and]. Gaming plaques and value chips shall only be redeemed at the cashiers' cage; provided, however, that [gaming] value chips may be exchanged by a patron at the slot booths or with changepersons for currency, coin or slot tokens to play the slot machines, and may be used for simulcast wagering.

(c) Non-value chips shall be presented for redemption only at the gaming table from which they were issued and shall not be redeemed or exchanged at any other location within the casino or casino simulcasting facility. When non-value chips are presented for redemption, the dealer shall accept them in exchange for an equivalent amount of value chips which may then be used by the patron in gaming or simulcast wagering or redeemed in the same manner as any other value chips.

(d) Each casino licensee shall have the discretion to permit, limit or prohibit the use of value chips in gaming at roulette or any other authorized game which the Commission determines is appropriate for the use of non-value chips; provided, however, that it shall be the responsibility of the casino licensee and its employees to keep an accurate account of the wagers being made with value chips at any such game so that the wagers being made by each player are readily distinguishable from those being made by every other player at the table.

[(c)](e) Except as provided in [(h)] (j) below and as otherwise may be specifically approved by the Commission, each casino licensee shall redeem its gaming chips and plaques only from its patrons and shall not knowingly redeem its gaming chips and plaques from any non-patron source.

[(d)](f) Each gaming chip and plaque is solely evidence of a debt that the issuing casino licensee owes to the person legally in possession of the gaming chip or plaque, and shall remain the property of the issuing casino licensee, which shall have the right at any time to demand that the person in possession of the gaming chip or plaque surrender the item upon the casino licensee exercising its right of redemption in accordance with [(f)] (h) below.

[(e)](g) Each casino licensee shall redeem promptly its own genuine gaming chips and plaques, except when the gaming chips or plaques were obtained or being used unlawfully. A casino licensee shall redeem its [gaming] value chips or gaming plaques by exchanging them for an equivalent amount of cash or, upon request by a patron who surrenders [gaming] value chips or gaming plaques in any amount over [\$25.00] \$100.00, for a casino check of that casino licensee in the amount of the chips or plaques surrendered and dated the day of such redemption.

[(f)](h) Each casino licensee shall have the right to demand the redemption of its gaming chips or plaques from any person in possession of them and such person shall redeem [said] any such value chips or gaming plaques upon presentation by the casino licensee of cash in an equivalent amount or, in the case of non-value chips, upon presentation by the casino licensee of an equivalent amount of value chips in accordance with (c) above. Any person who is not legally in possession of gaming chips and plaques shall, to the extent allowed by law, be subject to having those chips or plaques confiscated without payment.

[(g)](i) (No change in text.)

[(h)](j) Each casino licensee shall redeem promptly its own genuine [gaming] value chips and gaming plaques presented to it by any other legally operated casino licensee upon the representation that such chips and plaques were received or accepted unknowingly, inadvertently or in error or were redeemed from patrons. Each casino license shall submit to the Commission for approval a system for the exchange, with other legally operated casino licensees, of [gaming] value chips and gaming plaques:

1.-2. (No change.)

[(i)](k) (No change in text.)

19:46-1.6 Receipt of gaming chips or plaques from manufacturer or distributor; inventory, security, storage and destruction of chips and plaques

(a) (No change.)

(b) After checking the gaming chips or plaques received, the casino licensee shall cause to be recorded in a chip inventory ledger the denomination of the value chips and gaming plaques received, the number of each denomination of value chip and gaming plaque received, the number and description of all non-value chips received, the date of any such receipt and the signatures of the individuals who checked any such chips and plaques.

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

(e) Whenever any gaming chips or plaques are taken from or returned to either the reserve chip or plaque inventory or the secondary set of chips, [this shall be accomplished in the presence of] at least two individuals **shall be present**, and the [denominations, number and amount of chips or plaques so taken or returned] **following information** shall be recorded in the chip inventory ledger together with the date and signatures of the individuals [carrying out this process] **involved**:

1. **The number and dollar amount for each denomination of value chip or gaming plaque removed or returned; and**

2. **The number and description of the non-value chips removed or returned.**

(f) At the end of each gaming day, a casino licensee shall compute and record in the **chip inventory ledger** the unredeemed liability for each denomination of value chips and gaming plaques[, and shall cause to be made, at least on]. **On a monthly basis, [an] at a minimum, each casino licensee shall inventory [of] the value chips and gaming plaques in its possession that are in circulation and in reserve and shall [cause] record the result of such inventory [to be recorded] in the chip inventory ledger.** The procedures to be utilized to compute the unredeemed liability and to inventory value chips and gaming plaques in circulation and reserve shall be submitted to the Commission for approval. A physical inventory of value chips and gaming plaques in reserve shall only be required annually if the inventory procedures incorporate the sealing of the locked compartment.

(g)-(h) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Casino Licensee's Organization

Cashiers' Cage, Main Bank and Master Coin Bank

Proposed Amendments: N.J.A.C. 19:45-1.11, 1.14 and 1.15.

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69, 70j, l and m, and 99.

Proposal Number: PRN 1995-266.

Submit written comments by May 31, 1995 to:

Leonard J. DiGiacomo, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments would permit casino licensees to operate a cashiers' cage without a master coin bank, provided that the functions of the master coin bank and its cashiers are performed by the main bank.

Under the current rules of the New Jersey Casino Control Commission (Commission), a casino licensee's cashiers' cage consists of five types of cashiers. (See N.J.A.C. 19:45-1.15(c).) The master coin bank cashiers are housed in the master coin bank, which is either located within the cashiers' cage or in a separate physical structure outside the cage as approved by the Commission. (See N.J.A.C. 19:45-1.14(b).)

Over the years many casino licensees, through their approved internal controls, routinely have had a master coin bank operated by master coin bank cashiers. In 1991, the Commission formally incorporated those procedures into its rules. (See 23 N.J.R. 1455(a).) In doing so, the Commission required the master coin bank and its cashiers to be physically segregated by personnel and function from the remaining cashiers in the cage.

The Commission has determined that the continued separation of the master coin bank from the main bank is no longer necessary. Thus, the proposed amendments, upon adoption, would give casino licensees the option of operating the master coin bank through the main bank. Although the main bank cashiers, in such circumstances, would assume the duties of the master coin bank cashiers, they of course would continue to be segregated from the remaining cashiers in the cage, as would the master coin bank cashiers of any casino licensee which did not avail itself of the option. Further, casino licensees that elect to operate a separate slot machine cage, as an independent department or otherwise (N.J.A.C. 19:45-1.11(b)8iv and 9), must maintain a master coin bank and therefore the option set forth in this proposal will not be available to them.

Social Impact

The Commission does not anticipate that the proposed amendments will have any overall social impact, given that their scope is limited to the internal functioning of a casino licensee's cashiers' cage.

Economic Impact

Although the Commission anticipates that any overall economic impact from these amendments will be minimal, casino licensees may experience a reduction in costs as a result of the elimination of the requirement that they maintain a master coin bank.

Executive Order No. 27 Statement

An Executive Order No. 27(1994) analysis and certification are not required because the rulemaking requirements of the Commission for this proposal are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

No regulatory flexibility analysis is required because the proposed amendments will only affect the operation of New Jersey casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-7. (No change.)

8. A casino accounting department supervised by a casino key employee holding a license endorsed with the position of controller. The supervisor of the casino accounting department may be responsible for the operation and conduct of the simulcast counter and, except as otherwise provided in (b)9 below, shall also be responsible for the control and supervision of the [cashier's] **cashiers'** cage and any satellite cages. The casino accounting department shall be responsible for, without limitation, the following:

i.-iii. (No change.)

iv. The [cashier's] cashiers' cage, which shall be supervised by a casino key employee holding a license endorsed with the position of cage manager. The supervisor of the [cashier's] cashiers' cage shall report to the supervisor of the casino accounting department and shall be responsible for the control and supervision of cage and slot cashiers, changepersons and casino clerks. The cashiers' cage may be separated into independent operations for table games and slot machines. If a casino licensee elects to operate both a table games cage and a slot machine cage, the provisions of N.J.A.C. 19:45-1.14(i) shall not apply so that the casino licensee must have a master coin bank, and each independent cage operation shall be supervised by a casino key employee holding a license endorsed with the position of cage manager and each cage manager shall report to the supervisor of the casino accounting department. The supervisor of an independent slot machine cage shall be responsible for the supervision of the master coin bank, slot cashiers, changepersons and coin impressment personnel. The supervisor of an independent table games cage shall be responsible for all remaining cashiers' cage functions. If a casino licensee elects to operate one or more satellite cages, each satellite cage shall be supervised by a casino key employee holding a license whose endorsement shall depend upon the functions performed by the satellite cage. The cashiers' cage shall be responsible for, without limitation, the following:

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

9. Notwithstanding [(b)8] (b)8iv above, a casino licensee which elects to operate independent table game and slot machine cages may, in its discretion, operate the independent slot machine cage as a separate department. If an independent slot machine cage is operated as a separate department, the provisions of N.J.A.C. 19:45-1.14(i) shall not apply so that the casino licensee must have a master coin bank, and the supervisor of the slot machine cage department shall report to a casino key employee approved by the Commission. The supervisor of a slot machine cage department shall be responsible for the supervision of the master coin bank, slot cashiers, changepersons and coin impressment personnel.

10. (No change.)

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

19:45-1.14 Cashiers' cage; satellite cages; master coin bank; coin vaults

(a) Each establishment shall have on or immediately adjacent to the gaming floor a physical structure known as a cashiers' cage ("cage") to house the cashiers and to serve as the central location in the casino for the following:

1. The custody of the cage inventory comprising currency including patrons[,], deposits, coin, patron checks, gaming chips and plaques, and of forms, documents, and records normally associated with the operation of a cage;

2-5. (No change.)

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

(i) Notwithstanding (b) above, each casino licensee may, with prior Commission approval, operate its cashiers' cage without the master coin bank specified by that subsection, provided that the main bank serves as the central location in the casino for the transactions enumerated in (b)1 through 5 above, and, provided further, that the references therein and elsewhere in the rules of the Commission to:

1. "Master coin bank cashiers" shall apply instead to the main bank cashiers assigned the duties and performing the functions that would otherwise be assigned to or performed by master coin bank cashiers; and

2. The "master coin bank" shall apply instead to the main bank, but only insofar as it is authorized to perform master coin bank functions.

19:45-1.15 Accounting controls for the cashiers' cage, satellite cages, master coin bank and coin vaults

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

(c) [The] Except as otherwise authorized by N.J.A.C. 19:45-1.14(i), the cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

1-3. (No change.)

4. Reserve cash ("main bank") cashiers' functions shall include, but are not limited to, the following:

i.-viii. (No change.)

ix. Be responsible for the reserve cash bankroll; [and]

x. Receive gaming chips, slot tokens and coupons from the simulcast vault or casino pari-mutuel cashiers; and

xi. Perform the functions enumerated in (c)5 below of master coin bank cashiers, but only to the extent that the casino licensee has obtained, pursuant to N.J.A.C. 19:45-1.14(i), prior Commission approval to operate its cashiers' cage without the master coin bank specified by N.J.A.C. 19:45-1.14(b);

5. (No change.)

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

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Slot Machines and Bill Changers; Identifications; Signs, Meters; Removal of Slot Drop Buckets; Slot Drop Boxes and Slot Cash Storage Boxes; Meter Readings; Computer Recordation and Monitoring of Slot Machines

Proposed Amendments: N.J.A.C. 19:45-1.37 and 1.42 Proposed Repeal: N.J.A.C. 19:45-1.44

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 70(j) and 99(a).

Proposal Number: PRN 1995-267.

Submit written comments by May 31, 1995 to:

Barbara A. Mattie, Manager
Casino Control Commission
Arcade Building

Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

N.J.A.C. 19:45-1.37 currently requires each bill changer to have a "change meter" that automatically counts the number of coins and slot tokens which are dispensed from a slot machine hopper to make change. The proposed amendments would replace the requirement that bill changers have a change meter with the requirement that bill changers have a "cash box" meter which records the total dollar value of all currency accepted by the bill changer. Alternatively, the amendments would permit the total dollar amount of all currency accepted by a bill changer to be determined by an approved computer system that receives data from the bill meters required by N.J.A.C. 19:45-1.37(e)2. Further, the method for reading meters in N.J.A.C. 19:45-1.44 has been incorporated into N.J.A.C. 19:45-1.42, and N.J.A.C. 19:45-1.44 is being repealed.

Social Impact

No social impact is anticipated as a result of the proposed amendments, since the changes affect only casino operation.

Economic Impact

Any economic impact would result from the initial cost for equipment. At this time, no economic impact is anticipated on the casinos, since those casinos choosing to use the computer system have already received approval and have been using the system.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this proposal are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

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

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

19:45-1.37 Slot machines and bill changers; identifications; signs; meters

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

(e) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall also be equipped with mechanical, electrical or electronic devices as follows:

1. [A "change meter," that continuously and automatically counts the number of coins or slot tokens that are vended from the slot machine's all-purpose hopper to make change for currency or coupons] **A "cash box" meter that continuously and automatically records the total dollar amount of all currency accepted by the bill changer or, as an alternative, a connection to a computer system approved by the Commission that determines the total dollar amount of all currency accepted by the bill changer from data supplied from the bill meters required by (e)2 below;**

2.-3. (No change.)

(f)-(i) (No change.)

19:45-1.42 Removal of slot drop buckets, slot drop boxes and slot cash storage boxes; unsecured currency; meter readings

(a)-(n) (No change.)

(o) Accounting department employees with no incompatible functions shall, at least once a week, read and record on a Slot Meter Sheet the numbers on the in-meter, drop meter, jackpot meter, manual jackpot meter, [change] **cash box meter, if applicable, and coupon meters in accordance with internal controls approved by the Commission. In lieu of manual meter readings, a casino licensee may have a computer system, as approved by the Commission, record any of the required meter readings. If a bill changer does not contain a cash box meter pursuant to N.J.A.C. 19:45-1.37(e)1, a casino licensee shall be required to read and record or have an approved computer system record the bill meter readings each time the slot cash storage box is removed.** Accounting department employees shall periodically read and record on a Slot Meter Sheet the numbers on the bill meters in accordance with a schedule established by the casino licensee and approved by the Commission, but in no event shall the casino licensee be required to read and record the bill meters more than once a week. These procedures shall be performed in conjunction with the removal and replacement of the slot drop buckets, slot drop boxes or slot cash storage boxes prior to opening the slot machines for patron play.

(p) (No change.)

(q) Whenever there is a variance of \$25.00 or more between the **cash box meter reading [taken from the change meter and] that is recorded on the Slot Meter Sheet pursuant to [(f)] (o) above[,] or**

a reading from a computer system approved pursuant to N.J.A.C. 19:45-1.37(e)1 and the total amount of cash and coupons removed from the bill changer's slot cash storage box, the casino licensee's accounting department shall, as expeditiously as possible, read and record on a Slot Meter Sheet the bill meters and value coupon meter, and shall remove the slot cash storage box and count the contents in accordance with N.J.A.C. 19:45-1.33. The meter readings from the bill meters and value coupon meter shall be compared to the total amount of cash and coupons removed from the slot cash storage box for the period from the last date the bill meters and value coupon meter were read to verify the variance. The casino licensee shall be required to file an incident report with the casino controller, Commission and Division whenever [a] there is a variance [between the meter readings from the change meter and the cash and coupons removed from the slot cash storage box is] of \$25.00 or more. The incident report shall include, at a minimum, the following:

1.-7. (No change.)

19:45-1.44 [Computer recordation and monitoring of slot machines] **(Reserved.)**

[(a) In lieu of the requirements of N.J.A.C. 19:45-1.37(b) and (c), and N.J.A.C. 19:45-1.42(o), a casino licensee may have a computer connected to slot machines in the casino to record and monitor the activities of such machines.

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the functions relating to slot machine meters in the casino as follows:

1. Record the number and total value of coins or slot tokens placed in the slot machine for the purpose of activating play;

2. Record the number and total value of coins or slot tokens deposited in the slot drop bucket or slot drop box of the slot machine;

3. Record the number and total value of coins, prize tokens or slot tokens automatically paid by the slot machine as the result of a jackpot;

4. Record the number and total value of coins or slot tokens to be paid manually as the result of a jackpot;

5. Record the number and total value of coins or slot tokens vended from the slot machine all-purpose hopper to make change;

6. Record the total value of each denomination of currency accepted and stored in the slot cash storage box;

7. Record the total number and total dollar amount of all coupons accepted and stored in the slot cash storage box; and

8. Record, if applicable, the unique identification number on the corresponding slot cash storage box and the asset number of the slot machine in which the slot cash storage box was placed for the purpose of recording and determining which slot cash storage box was placed into which slot machine bill changer.

(c) The computer shall store in machine-readable form all information required by (b) above and such stored data shall not be susceptible to change or removal by any personnel.]

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETS

Agricultural Fairs

Adopted New Rules: N.J.A.C. 2:33

Proposed: February 21, 1995 at 27 N.J.R. 610(a).

Adopted: March 28, 1995 by Arthur R. Brown, Jr., Secretary, Department of Agriculture, and State Board of Agriculture.

Filed: April 4, 1995 as R.1995 d.226, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:8-121 et seq.

Effective Date: May 1, 1995.

Expiration Date: May 1, 2000.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency-Initiated Changes:

The proposal was approved by the State Board of Agriculture without the words "at one site" included. This phrase was inadvertently published in the N.J.R. Therefore, these words need to be removed from the rule.

The State Board of Agriculture was advised by counsel that the inclusion of the proposed wording in N.J.A.C. 2:33-1.1(a) which required each person, corporation or association certified as an "Official Agricultural Fair" shall hold, at one site, an agricultural exhibition . . . etc., was an interpretation that an approved association may hold a fair in only one location. In addition, the Board was advised that there appeared to be no agricultural purpose for this limitation. Moreover, it explicitly conflicted with the provisions of the enabling law. N.J.S.A. 5:8-123 states:

A licensee under the "Amusements Games Licensing Law" may conduct an amusement game or games at a place or places where any such approved association holds an agricultural fair and exhibition.

The amendments to the "Amusement Games Licensing Law", thus, specifically contemplate that there may be more than one place where any such approved association holds an agricultural fair and exhibition. In addition, it states that a licensee may conduct amusement games at such place or places.

The State Board of Agriculture, on that advice from counsel, did approve the new rule proposal at its January 23, 1995 meeting without the phrase "at one site" included in N.J.A.C. 2:33-1.1(a). However, the text which was submitted to the OAL had inadvertently retained the phrase in the proposal.

This administrative error necessitates the adoption of the new rule with substantial changes not requiring additional public notice and comment, in accordance with N.J.A.C. 1:30-4.3.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements pertaining to this chapter are dictated by N.J.S.A. 5:8-121 et seq., the Amusement Games Licensing Law, and are not subject to any Federal requirements or standards.

Full text of the adoption follows (deletion from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 33 AGRICULTURAL FAIRS

SUBCHAPTER 1. GENERAL PROVISIONS

2:33-1.1 Agricultural fairs: qualifications

(a) Each person, corporation or association certified as an "Official Agricultural Fair" shall hold*[, at one site,]* an agricultural exhibition, whose primary purpose is the development and promotion of several, or many, phases of agriculture or agribusiness in and of that county, by conducting educational programs, activities, demonstrations, contests and exhibitions.

(b) In addition to the requirements of (a) above, the fairs shall conduct two activities related to the following:

1. Manufacturing, commerce and industry;
2. Community development and improvement;
3. Promotion of products and services;
4. Public service events and projects;
5. County interest projects;
6. Cultural works and collections of art;
7. Any activity approved by the entire association for the benefit of the community; and/or
8. Recreational activities.

(c) No person, corporation or association shall operate a fair or exhibition in any county under the designation "Official Agricultural Fair" without obtaining a certificate to operate from the New Jersey Department of Agriculture.

2:33-1.2 Responsibilities of certified fair

(a) Each person, corporation or association certified as an "Official Agricultural Fair" shall:

1. Furnish annually a detailed fair status report on forms prescribed by the Department of Agriculture (see Appendix incorporated herein by reference);
2. Comply with all county and municipal health, fire, police and sanitation regulations; and
3. Furnish on request, a copy of the annual fair audit report.

(b) The New Jersey Secretary of Agriculture, or his or her designee, may enter the premises of any "Official Agricultural Fair" at reasonable times to determine compliance with this chapter.

2:33-1.3 Procedure for certification

(a) To receive certification as an "Official Agricultural Fair," all applicants must annually file their proposals with the Department of Agriculture by September 1 of the year preceding the one in which the fair is to be held. A copy shall be submitted to the County Board of Agriculture for its comment.

(b) The County Board of Agriculture shall submit any comments concerning the application to the Department of Agriculture on or before November 1 of the year preceding the fair.

(c) After consideration of the proposal, and any comments submitted by the County Board of Agriculture, the State Board of Agriculture shall either deny or approve certification of any proposed "Official Agricultural Fair", in accordance with the qualifications listed in N.J.A.C. 2:33-1.1(a) and (b).

Date _____

NEW JERSEY AGRICULTURAL FAIR REPORT 19____

Name of Fair _____

Date Held _____ Estimated Attendance _____

IMPORTANT: LIST ALL FEATURE/EVENTS WHICH IDENTIFY THIS AS AN AGRICULTURAL FAIR:

LIVESTOCK: PLEASE COUNT EACH ANIMAL

Beef _____	Horses _____	Poultry _____
Goats _____	Dairy _____	Swine _____
Rabbits _____	Sheep _____	Other _____

FAIRGROUNDS

Owned by Fair Association _____
Leased _____ From _____
Other (Specify) _____
Acres Total _____
Acres Used for Parking _____

ORGANIZATION

Is your Fair Association organized as a Non-Profit Corporation?
Yes _____ No _____
If not give organization _____

Accounts Audited Annually Yes _____ No _____

List Name and Address of Officers

Signature

Title

Return this form to:
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Attn: Richard Kuhn

EDUCATION

(a)

STATE BOARD OF EDUCATION

**Special Education
Least Restrictive Environment; Program Options
Adopted Amendments: N.J.A.C. 6:28-2.10 and 4.2**

Proposed: February 6, 1995 at 27 N.J.R. 416(c).
Adopted: April 5, 1995 by the State Board of Education, Leo
Klagholz, Secretary, State Board of Education and
Commissioner, Department of Education.
Filed: April 6, 1995 as R.1995 d.228, **without change.**
Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-2 et seq.,
18A:7C-1 et seq., 18A:39-1, 18A:48-8, U.S.P.L. 93-112, sec.
504, 94-142 and 99-457.

Effective Date: May 1, 1995.
Expiration Date: August 10, 2000.

Summary of Public Comments and Agency Responses:

The following is a summary of the comments received and the Department's responses. Each commenter is identified at the end of the comment by a number which corresponds to the following list:

- (1) Carlos Oberti, Parent
- (2) Renee Chin, Center for Outreach and Services for the Autism Community, Inc.
- (3) Joyce Powell, New Jersey Education Association
- (4) Diana Cuthbertson, Statewide Parent Advocacy Network
- (5) Barbara Rhodes, Parent Member of Children of Burlington County Special Services
- (6) Gaye Hasslinger, New Jersey Coalition for Inclusive Education

- (7) Brenda Considine, New Jersey Arc
- (8) Amy Learner, Parent
- (9) Arthur J. Ball, United Cerebral Palsy Associations of New Jersey
- (10) Jean Richmond, New Jersey Developmental Disabilities Council
- (11) Gerard M. Thiers, Association of Schools and Agencies for the Handicapped
- (12) Steven Krapes, State Special Education Advisory Council
- (13) Jean Paashaus, Interested person
- (14) Charles E. Bryant, New Jersey Association of Pupil Services Administrators
- (15) Theodore Kozlik, Westfield Public Schools
- (16) Joanne Bowman, Parent
- (17) Mark A. Esposito, Parent
- (18) Marge Esposito, Parent
- (19) John W. Lewis, Office of Education, Department of Human Services
- (20) Rosalind Monica, Catholic Community Services
- (21) Anita Holcomb, Catholic Community Services

1. COMMENT: Six commenters stated that the proposed amendment concerning least restrictive environment (LRE) draws directly from language used in the court decision regarding the three factors which must be considered when determining whether a student with disabilities can be educated satisfactorily in a regular classroom. The commenters supported the addition of the proposed language because it clarifies and strengthens the LRE mandate in the State. The commenters cited excerpts from the *Oberti* decision to explain the judge's position. Commenters (1), (4), (6), (7), (9), (10)

RESPONSE: The Department recognizes the importance of the support of the advocacy groups.

2. COMMENT: Three commenters stated that the proposed changes should not be incorporated into the rules because the *Oberti* decision is a specific case which may be overturned in the future. Commenters (2), (11), (12)

RESPONSE: The Department recognizes that regulations may require modification over time as circumstances change. The *Oberti* decision is the current standard for New Jersey regarding the implementation of the Federal regulations related to LRE. Modification to the proposed regulations would be required if the decision were to be appealed to the U.S. Supreme Court and the Court overturned the decision or if there were a major change in Federal law and regulation. The *Oberti* decision has not been appealed to the Supreme Court.

3. COMMENT: One commenter stated that additional regulation regarding LRE is not needed because special education is already over-regulated. Commenter (2)

RESPONSE: The *Oberti* decision is the standard for New Jersey regarding the implementation of the LRE mandate. Therefore, the requirements have been established by the court decision. The proposed amendments do not add unnecessary requirements. They reflect the requirements established by the court decision.

4. COMMENT: Three commenters expressed concern that the proposed regulations mean that regular education must be tried first, no matter what the parents and district representatives determine is an appropriate program and placement for the pupil. Commenters (3), (11), (12)

RESPONSE: The proposed amendment does not mean that placement in a regular classroom must be attempted regardless of the determination made by the parent and child study team. The phrase "reasonable efforts to accommodate" (N.J.A.C. 6:28-2.10(a)6i) has a broader meaning which includes serious discussion and thoughtful consideration, rather than actual placement in the regular classroom. It should be noted that most students are referred from regular classrooms where interventions have been attempted or should be attempted prior to identification. The full continuum of program options remains available as an appropriate alternative to meet the needs of individual pupils. The determination of an appropriate placement continues to be the responsibility of the child study team and the parent and is not abridged by this amendment.

5. COMMENT: Three commenters stated that the current rules regarding the potentially beneficial or harmful effects which a placement may have on the special needs student or the other students in the class should be deleted rather than including the other two factors. The Federal intent and the requirements of IDEA can be met without the additional proposed language and Federal concerns regarding LRE would be satisfied. Commenters (11), (12), (19)

RESPONSE: While it is correct that the U.S. Department of Education (USDOE) would be satisfied with the removal of the phrase "or

the other pupils in the class" (N.J.A.C. 6:28-2.10(a)6iii), the Department believes the addition of the other two factors provides a balanced approach and offers guidance to districts when making placement decisions. These factors are the standards to which districts will be held accountable, if the matter is disputed before a judge.

6. COMMENT: One commenter cited personal experiences regarding the value of special education and vocational programs in a special services school district. Commenter (5)

RESPONSE: The Department recognizes the value of these programs and the proposed amendments will not eliminate the availability of any program option, such as a vocational program in a special services school district.

7. COMMENT: One commenter supported the proposed changes to N.J.A.C. 6:28-4.2. The changes clarify the requirement that the same full continuum of placements available to students with disabilities aged five and over is made available to preschool children as New Jersey has a poor record in this area. Commenter (7)

RESPONSE: Comment accepted.

8. COMMENT: One commenter cited the personal experiences of her child as a successful example of receiving special education in an inclusive setting. Previous experiences in segregated settings were not as beneficial. Commenter (9)

RESPONSE: Comment accepted.

9. COMMENT: One commenter recommended that the present requirement to consider the ability of the program to implement the IEP be retained. This requirement should be combined with the requirement regarding the possible harmful effects to assess the effect of placement of pupils with disabilities in the regular classroom on the framework of regular education. Commenter (13)

RESPONSE: The Department has been directed by the USDOE to remove this requirement, which is currently at N.J.A.C. 6:28-2.10(a)6ii, because placement is based on the services specified in the pupil's IEP and districts must assure that all such services are either currently available or are made available in the placement. The Department believes that the intent of the regulation to consider the potentially harmful effects of placement in the regular class includes ongoing assessment on an individual basis. No further assessment is required.

10. COMMENT: Two commenters recommended that the definition of least restrictive environment include consideration of reasonable cost when making placement decisions. Commenters (14), (15)

RESPONSE: Based on its review of New Jersey's State plan, the USDOE directed the Department to address the *Oberti* decision as it related to LRE. In an effort to comply with the *Federal directive*, the Department has included the full context of the *Oberti* decision. The factor of reasonable cost was not included as one of the factors. Therefore, it is not included here.

11. COMMENT: Three commenters urged reconsideration of the proposed amendments because they would impact on what would be considered the least restrictive environment. Five commenters stated that alternatives to inclusion need to be available. Commenters (16), (17), (18), (20), (21)

RESPONSE: The proposed amendments have not changed the continuum of program options or the availability of program options. The placement decision, and therefore the determination of LRE, is made on an individual basis by the child study team and the parent. The process begins with consideration of whether education in the regular classroom can be achieved satisfactorily. Districts must address the issue of regular class placement to determine whether such placement is or is not appropriate. As a result of the process, the district may legitimately determine that regular class placement is not appropriate.

12. COMMENT: The requirement to consider the potentially beneficial or harmful effects on the pupil or other pupils in the class may be discriminatory since it could be interpreted to exclude any pupil with educational disabilities who poses an inconvenience. Examples were listed. Commenter (19)

RESPONSE: The phrase "harmful effects" (N.J.A.C. 6:28-2.10(a)6iii) is strong language which reasonable people would not interpret as a simple inconvenience. The requirement is intended to generate legitimate and thoughtful discussion when placement in the regular classroom is being considered for a pupil with disabilities.

Executive Order No. 27 Statement

As a requirement of the conditional approval of New Jersey's State Plan for Special Education, the United States Department of Education through OSERS has directed the New Jersey Department of Education to propose these specific amendments. The release of New Jersey's

Federal allocation of approximately \$77 million is dependent upon compliance with the Federal directive. These adopted amendments comply with the requirements specified by OSERS and do not exceed Federal regulations.

Full text of the adoption follows:

6:28-2.10 Least restrictive environment

(a) Each public agency of education shall ensure that:

1.-5. (No change.)

6. Consideration is given to:

i. Whether the school district has made reasonable efforts to accommodate the child in a regular classroom with supplementary aids and services;

ii. A comparison of the benefits provided in a regular class and the benefits provided in a special education class; and

iii. The potentially beneficial or harmful effects which a placement may have on the pupil with educational disabilities or the other pupils in the class.

7. When the individualized education program does not describe specific restrictions, the pupil is educated in the school he or she would attend if not educationally disabled; and

8. (No change.)

6:28-4.2 Program options

(a) A full continuum of alternative placements shall be available to meet the needs of pupils with educational disabilities ages three through 21. Educational program options include the following:

1.-8. (No change.)

9. An accredited nonpublic school which is not specifically approved for the education of pupils with educational disabilities according to N.J.A.C. 6:28-6.5;

10. Instruction in other appropriate settings according to N.J.A.C. 6:28-1.1(d) and (e); and

11. An early intervention program (which is under contract with the Department of Health) in which the child has been enrolled for the balance of the school year in which the child turns age three.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

Notice of Administrative Change

Modification of the Recreational Summer Flounder Season

Take notice that, pursuant to N.J.A.C. 7:25-18.1(n), the Commissioner of the Department of Environmental Protection, with the approval of the New Jersey Marine Fisheries Council, has modified the open recreational summer flounder fishing season of April 30 to October 30 to be open year round (January 1 to December 31). This modification results from the determination of the Atlantic States Marine Fisheries Commission (ASMFC) that a closed season for the recreational summer flounder fishery is not necessary. This action maintains New Jersey's compliance with the ASMFC fishery management plan for summer flounder.

The change will be reflected in the Division of Fish, Game & Wildlife rules at N.J.A.C. 7:25-18.1(c) as indicated below. As required by N.J.A.C. 7:25-18.1(n), notice of this modification to the open season for recreational summer flounder fishing has been published in the New Jersey Fish and Wildlife Digest and submitted by news release to the Division's outdoor writers' mailing list.

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

7:25-18.1 Size and possession limits

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

(c) A person angling with a hand line or with rod and line or spearfishing shall not take in any one day or possess more than the possession limit specified below for each species listed during the

open season except as may be provided elsewhere in this subchapter, and subject to the specific provisions in any such section. A person angling or spearfishing shall not possess any species listed below during the closed season for that species.

Species	Open Season	Possession Limit
Bluefish	No closed season	10
King Mackerel	No closed season	5
Spanish Mackerel	No closed season	10
Summer Flounder	[April 30-October 30] No closed season	8
Weakfish	No closed season	14
Winter Flounder	March 1-May 31 and September 15-December 31	No limit

(d)-(p) (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

**Notice of Administrative Correction
Marine Fisheries**

**Weakfish; Commercial Size Limit
Lobster Pots; Escape Vents**

N.J.A.C. 7:25-18.5, 18.12 and 18.14

Take notice that the Department of Environmental Protection has discovered errors in the amendments to N.J.A.C. 7:25-18 adopted effective February 6, 1995 at 27 N.J.R. 487(a).

As explained in the notice of adoption in the Department's Response to Comment 9 (27 N.J.R. 488), based upon notification by the Atlantic States Marine Fisheries Commission, and following public hearings and recommendations of the New Jersey Marine Fisheries Council's Weakfish Committee, the Department decided to revise the then-current 13 inch minimum size limit and 10 fish possession limit for the recreational weakfish fishery. In manifesting this decision, the Department amended upon adoption the minimum size and possession limits in N.J.A.C. 7:25-18.1(b) and (c) to 14 inches and 14 fish, respectively. This change had the unintended effect of also establishing 14 inches as the minimum size limit for the weakfish commercial fishery. As such was clearly not the Department's intention, as reflected in the Response to Comment 9, the Department has requested, and the Office of Administrative Law has agreed to permit, administrative corrections to N.J.A.C. 7:25-18.12(a)1 and 18.14(j)2 to clearly continue the 13 inch minimum size limit for weakfish.

In addition, the Department noted that the adopted text of N.J.A.C. 7:25-18.5(g)11v(2) includes, due to a typographic error, "0.3mm" as the metric equivalent of 2.375 inches. In the proposal, this equivalent was correctly published as "0.63 mm".

This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

7:25-18.5 General net regulations

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

(g) Individuals intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the Commissioner for a license and/or permit. To be eligible to purchase a 1992 license for a drifting, staked or anchored gill net the applicant shall have purchased a gill net license during 1990 or 1991 or a 1992 license prior to May 1, 1992 or provide documented proof of active military service within one year of application. An applicant who does not meet the above requirements must file an application, in person, with the Department in each of two consecutive years. Such an applicant shall be eligible for gill net licenses in the following calendar year. Beginning in the license year (January 1-December 31) 1993, an applicant for a gill net license must have possessed a gill net license in one of the two previous years. Failure to purchase a gill net license in one of the prior two years shall subject the applicant to the two year waiting period

(CITE 27 N.J.R. 1794)

described above. Availability of Delaware Bay Gill Net Permits shall be determined pursuant to N.J.A.C. 7:25-18.6 through 18.11. Upon receipt of the application, and the prescribed license fee, the Commissioner may, in his or her discretion, issue single season licenses and/or permits as specified for each net type for the taking of fish with nets only as follows:

1.-10. (No change.)

11. Lobster or fish pots may be used for the taking of all species except those specifically protected and shall be used only in the Atlantic Ocean, Delaware Bay, Raritan Bay, and Sandy Hook Bay except as provided in (g)11vii below.

i.-iv. (No change.)

v. Effective March 20, 1995, all lobster and fish pots set north of Barnegat Inlet (LORAN C 9960-Y-43300) must be constructed to include one of the following escape vents in the parlor section of the pot located in such a manner that it would not be blocked or obstructed in normal use by any portion of the pot, associated gear, or the sea floor;

(1) (No change.)

(2) Two circular portals with unobstructed openings not less than 2.375 inches [(0.3 mm)] **0.63 mm** in diameter.

vi.-x. (No change.)

12. (No change.)

(h) (No change.)

7:25-18.12 Commercial fishing seasons and quotas

(a) The following provisions are applicable to the commercial harvest of weakfish:

1. A person shall not possess, or land [any weakfish] by the gear specified below, during the respective open season specified below or as modified by the Commissioner pursuant to (d) below, **any weakfish less than 13 inches in length.**

2. (No change.)

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

7:25-18.14 Otter and beam trawls

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

(j) Special provisions applicable to a directed weakfish fishery are as follows:

1. (No change.)

2. A person shall not possess any weakfish less than 11 inches in length that have been harvested by otter or beam trawl during the period from September 1 through December 31. During the period of January 1 through August 31 the minimum size limit for weakfish harvested by otter or beam trawl is 13 inches in length pursuant to N.J.A.C. 7:25-[18.1(b)] **18.12(a).**

3.-4. (No change.)

(k)-(n) (No change.)

(b)

OFFICE OF AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Vehicular Fuels

Adopted Concurrent Amendments: N.J.A.C.

7:27-25.1, 25.3, 25.4 and 25.8

Proposed: February 21, 1995 at 27 N.J.R. 787(a).

Adopted: April 6, 1995 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: April 7, 1995 as R.1995 d.236, **without change.**

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically 26:2C-8.

DEP Docket Number: 05-95-02/518.

Effective Date: April 7, 1995.

Operation Date: June 5, 1995.

Expiration Date: Exempt.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting herein amendments to N.J.A.C. 7:27-25, entitled "Con-

trol and Prohibition of Air Pollution by Vehicular Fuels" and hereinafter referred to as "subchapter 25", proposed on February 21, 1995 at 27 N.J.R. 787(a).

The adopted amendments to N.J.A.C. 7:27-25.1 and 25.3(c) shorten the northern New Jersey control period for oxygenated gasoline from the current seven-month period (October 1 through the last day of April) to coincide with the four-month control period (November 1 through the last day of February) that applies for the State's southern area. During this four-month period, oxygenated gasoline will contain no less than 2.7 percent oxygen by weight. During the remainder of the year, gasoline will contain oxygenates at an average level of 2.0 percent by weight as required by the Federal Reformulated Gasoline (RFG) program set forth 40 CFR Part 80.

The adopted amendments at N.J.A.C. 7:27-25.3(a) and (h) modify the State's gasoline volatility requirements to exempt wholesale purchaser-consumers and gasoline retailers from these requirements during the month of May, so that only the volatility requirements imposed by the Federal RFG program will apply to these entities in May. The amendments to N.J.A.C. 7:27-25.4 and 25.8 provide for language consistency.

Based on a finding of imminent peril to public health, safety and welfare, certified by Governor Christine Todd Whitman, the Department adopted these amendments through emergency rulemaking on February 8, 1995. Notice of this adoption, as well as of the concurrent proposal of these amendments, was published in the New Jersey Register on February 21, 1995. Because emergency adoptions are temporary in nature and expire 60 days after adoption, it was necessary to also propose these amendments through the regular rulemaking process to assure their continuation beyond the 60-day period.

Background:

On October 5, 1992, the Department established the oxygenated fuels program as mandated by the Federal Clean Air Act by adopting amendments to N.J.A.C. 7:27-25. The purpose of the oxygenated fuels program is to reduce emissions of carbon monoxide (CO) from motor vehicles. Under Section 211(m)(2) of the Clean Air Act, the United States Environmental Protection Agency (EPA) establishes oxygen program control periods based on the portion of the year in which an area is "prone" to high ambient concentrations of CO. In accordance with EPA guidance, the Department established a seven-month control period for the northern oxygen program control area, which includes the northern counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren, and a four-month control period for the southern oxygen program control area, which includes the remainder of the counties in the State.

Section 211(m)(2) of the Clean Air Act provides further that the EPA can reduce an oxygen program control period if the State can demonstrate that a reduced control period will not result in exceedances of the national health standard for CO during the time periods no longer included in the reduced control period. By letter dated February 2, 1995, to EPA Administrator Carol Browner, Governor Whitman asked the EPA to shorten the oxygen program control period for northern New Jersey from seven months (October 1 through April 30) to four months (November 1 through the last day of February). New Jersey based this request on data which shows that there have been no exceedances of the national health standard for CO during the months of October, March and April in northern New Jersey since 1988. The EPA's response supported New Jersey's analysis and indicated that New Jersey does not need immediate EPA approval to shorten this control period. Furthermore, as the EPA has not yet approved New Jersey's State Implementation Plan (SIP) for carbon monoxide, the seven-month oxygen program control period is not Federally enforceable.

The Reid Vapor Pressure (RVP) program was originally established in 1989 as part of the State's efforts to control ground level ozone pollution by regulating the vapor pressure, or volatility, of gasoline. The State's RVP standards, previously approved by the EPA pursuant to Section 211(c)(4)(C) of the Clean Air Act, currently require that from May 1 through and including September 15 of each year, gasoline sold in New Jersey shall not have a RVP greater than 9.0 pounds per square inch. The Federal RFG program differs from New Jersey's program in that the Federal RVP limits apply at the refinery and importer level on May 1, but do not apply at the retail level until June 1; whereas the New Jersey limits would apply May 1 at the retail level. The amendments to the RVP program requirements contained herein would make consistent in time frames within which, and the parties to whom, the State and Federal volatility requirements apply.

The State has concluded that compliance with the RVP control period and standards set forth in the Federal RFG program will further New Jersey's effort to limit the emission of ozone precursors and is not expected to adversely affect New Jersey's efforts to attain and maintain attainment of the NAAQS for ozone.

A public hearing was held on March 17, 1995 to provide interested parties the opportunity to present testimony on the proposed amendments to Subchapter 25. Twenty-three members of the public attended the public hearing. The comment period closed on March 23, 1995. The Department received written and oral testimony on the proposed amendments to subchapter 25. Seven persons presented written testimony only. Ten persons presented oral comments only. One person presented both written and oral comments. The commenters were as follows:

1. James Benton, New Jersey Petroleum Council
2. Thomas Burrows, Oxy Busters of New Jersey
3. Deborah J. Campbell, Mobil Oil Corporation
4. Joseph Chiavarone
5. Steven Chiavarone/Barry Grossman, Oxy Busters of New Jersey
6. Marie Curtis, New Jersey Environmental Lobby
7. Eric DeGesero, Fuel Merchants Association of New Jersey
8. Douglas A. Durante/James E. Peeples, Cleans Fuels Development Corporation
9. Ed Griffith, ARCO Chemical Company/Oxygenated Fuels Association
10. William C. Holmberg, American Biofuels Association
11. Stephen Paul
12. Ed Rothschild, Citizens Fund
13. Conrad Simon, United States Environmental Protection Agency (EPA)
14. Linda Stansfield, American Lung Association of New Jersey
15. Dr. Bob Tardiff, ARCO Chemical Company/Oxygenated Fuels Association
16. R. Patrick Thompson, New York Mercantile Exchange (NYMEX)
17. Joseph VanDerVeken, Hands Across New Jersey

The number(s) in parentheses after each comment corresponds to the commenter numbers above to indicate the person(s) who submitted the comment. In addition, the following documents were submitted by commenters at the public hearing:

1. SAE Technical Paper Series #890216, *Are the Reductions in Vehicle Carbon Monoxide Exhaust Emissions Proportional to the Fuel Oxygen Content?* J.A. Gething, J.S. Welstand, and J.C. Horn, Chevron Research Company.
2. SAE Technical Paper Series #902130. Douthit Donerty
3. A handout of six tables:
 - mobile source emissions control program costs
 - MTBE blends have little effect on vehicle fuel economy (MPG)
 - fuel economy vs. % MTBE
 - expected seasonal decrease in fuel economy
 - 2-year comparison of gasoline sales in New Jersey, monthly sales
 - four month average CO levels, November-February
4. *MTBE as a Ground Water Contaminant*, Peter Garrett, Marcel Moreau, Maine Department of Environmental Protection, and Jerry D. Lowry, University of Maine.
5. Material Safety Data Sheets on n-hexane, tert-butyl formate, tert-butanol, isopropyl ether, acetaldehyde, toluene, tert-butyl methyl ether, tert-butyl ethyl ether, tert-amyl methyl ether and formaldehyde.
6. Two charts on effect of oxygenated gasoline on fuel economy.
7. Science experiment by Steven Chiavarone.
8. *MTBE Fact Sheet—Public Health and Worker Safety*, Rowan & Blewitt Incorporated.

N.J.A.C. 7:27-25.1 and 25.3(e)

1. COMMENT: The EPA has agreed that shortening the northern oxygen program control period for the current 1994-1995 oxygenated fuels program might be appropriate and does not object to New Jersey limiting its oxygenated fuels program to four months for this control season. The EPA is committed to achieving a long term solution prior to the onset of the 1995-1996 season, to be concurred with by New Jersey, as well as New York and Connecticut, both of which share the same oxygenated gasoline control area with New Jersey. Ambient air monitoring data shows the New York City CMSA has not recorded any exceedances of the carbon monoxide national ambient air quality standard (CO NAAQS) in the months of October, March and April since 1991. The lack of carbon monoxide exceedances in the New York City CMSA

indicates that a four-month wintertime oxygenated gasoline program may be appropriate to address the area's clean air goals for carbon monoxide control. (13)

RESPONSE: The Department thanks the EPA for its comments and support regarding these changes to New Jersey's vehicular fuels program.

2. COMMENT: Shortening the northern oxygen program control period is a good move. It will benefit New Jersey citizens by reducing the amount of costly oxygenate in the gasoline they use without compromising environmental standards. It is supported by the successful efforts of the past ten years to reduce carbon monoxide levels in the State as evidenced by recent ambient air monitoring. The gradual replacement of older cars with newer, cleaner-burning cars will continue to reduce carbon monoxide levels. In addition, reformulated gasoline probably is adequate to replace oxygenated fuels. (3, 6, 14)

3. COMMENT: The commenter commends the Department on the emergency adoption and concurrent proposal of this rule which ended the oxygenated fuel season statewide on February 28, 1995, and for providing for an open and deliberative process to finalize the rule. The technically accurate proposal is consistent with the commenter's expectations for this program. In particular, Commissioner Shinn deserves congratulations and thanks for his inclusive process and for his leadership in advocating this change. The shortened control period makes sense in light of the unclear relationship between the level of oxygenation and the level of CO emission reductions. Two technical papers presented by the Society of Automotive Engineers (SAE) and submitted at the hearing suggest that the CO-reducing effect varies from car to car, depending on the type of emission-control system of the car, as well as the volatility of the gasoline and the ambient air temperature. These studies suggest that oxygenated gasoline is much more effective in reducing CO emissions in pre-1981, non-feedback vehicles but is still effective on 1981-1989 vehicles on cold starts, and thus challenge the assumption that gasoline oxygenated to a level of 2.7 percent will result in a proportionately greater reduction in CO than gasoline oxygenated to 2.0 percent. The reduction of CO has been virtually insignificant. (1, 2)

4. COMMENT: A number of commenters generally supported or had no objection to the Department's proposal to shorten the northern oxygen program control period. (2, 9, 15, 17)

RESPONSE: The Department acknowledges and appreciates the commenters' support for its proposal to shorten the northern oxygen program control period. The Department believes oxygenation of gasoline is effective in reducing CO emissions but has determined, in light of the recently-implemented federal RFG program which also requires the oxygenation of gasoline sold in this State, that the State can achieve its Clean Air Act goals without the oxygen program control periods originally adopted by the Department.

5. COMMENT: The Department should adopt the concurrent proposal prior to April 9, 1995 to avoid a potential regulatory gap between April 9 and April 30, 1995. (1)

RESPONSE: The Department is adopting herein the concurrent proposal prior to April 9, 1995. However, because New Jersey's Air Pollution Control Act specifies that no regulation shall be effective until 60 days after adoption, the Department published a Notice of Temporary Vehicular Fuels Policy for N.J.A.C. 7:27-25 (Oxygenated Fuels) (see 27 N.J.R. 1479(a); April 3, 1995) to clarify that the Department will not take enforcement action against any person for failure to comply with the provisions of this subchapter to which the Department has adopted amendments whose effective date is delayed by operation of that Act. See N.J.S.A. 26:2C-8.

6. COMMENT: The petroleum industry remains committed to working with the Department and looks forward to participating in discussions regarding the future of the wintertime oxygenated fuel program in northern New Jersey. (1)

RESPONSE: The Department appreciates the support of the petroleum industry.

7. COMMENT: New York Harbor is the locus of a fungible market for unleaded gasoline served by New York Mercantile Exchange (NYMEX) contracts which affects not only New Jersey, but also New York and Connecticut. The Department should not adopt the proposed amendments without coordinating with New York, Connecticut and the EPA to avoid fragmenting this cash market. There is insufficient lead time to respond to the proposed shortening of the northern oxygen program control period by October 1995. Changes in gasoline specifications without adequate notice are disruptive to the gasoline cash and futures markets, ultimately costing consumers considerable amounts of

money. A change to New Jersey's regulations, at this late date, will impact parties to unleaded gasoline futures contracts which obligate market participants to deliver unleaded gasoline that has 2.7 percent oxygen by weight in October 1995 by altering the fundamental supply/demand factors for that product. These changes will affect the economics of open positions in October 1995 NYMEX unleaded gasoline options contracts impacting both options holders and those who have made commercial decisions based upon published prices. Reduced reliability of the market will result in a loss of economic efficiency which gets passed on to consumers. (16)

RESPONSE: The Department acknowledges the validity of these concerns. However, it should be noted that this shortening of the northern oxygen program control period does not mandate a lower oxygenation of gasoline but rather permits the petroleum industry to oxygenate gasoline to the lower RFG average oxygenation of a minimum of 2.0 percent. The industry may choose to continue to oxygenate at or close to the levels which it meets during the oxygen program control period, keeping the gasoline in New Jersey fungible with that in the New York Harbor, should New Jersey's oxygen control period not be identical to New York and Connecticut's oxygen program control periods. The Department, however, believes that the higher cost of oxygenates, relative to other components of gasoline, provides the petroleum industry significant incentive to reduce the average oxygen content of gasoline, if they are allowed to do so. Furthermore, the Department believes that the New Jersey petroleum industry is also sensitive to the health concerns that citizens have raised and will proceed to lower the oxygenate in gasoline in New Jersey.

The Department has been in discussions with the EPA, as well as representatives of the states of Connecticut and New York, concerning the oxygenated fuels program and the role of the program in the future air pollution control plans of the State and the region. The Department recognizes the need for advance notice of changes to its oxygenated gasoline program and will continue to consider this factor in planning future changes to the program.

8. COMMENT: New Jersey must take swift, final action with respect to oxygenated fuels in January 1996 and beyond. The Department should both adopt the instant proposal and settle any uncertainty about its intentions regarding continuation with the winter fuels program or the reformulated gasoline program as a whole. Early determination of policy and rule changes will avoid confusion in the regulated community, the respective state governments, the marketplace, exchanges and, most importantly, the motoring public. Because states have not finalized their environmental regulations for the approaching winter season, NYMEX has not yet listed unleaded gasoline contracts beyond December 1995. (1, 16)

RESPONSE: The Department is working closely with the EPA, New York, and Connecticut and other interested parties in exploring the options available to it in determining the CO-reducing strategies to employ during the winter months which best address public concerns with oxygenated fuels and welcomes input on this issue.

Imminent Peril

9. COMMENT: Several commenters criticized the Statement of Imminent Peril which was issued in support of the February 8, 1995 emergency adoption of these amendments. Those commenters questioned whether an imminent peril to the "public health, safety or welfare" existed to justify the use of emergency rulemaking procedures. The commenters stated that the sale of oxygenated fuels poses no such threat and that the emergency adoption created market disruption. Further, the commenters requested that the Department "rescind" the emergency rule and provide a fuller explanation of the reduction of the northern oxygen program control period to four months, November 1 through and including the last day of February. (8, 10, 12, 16)

RESPONSE: Like other states and counties around the country, New Jersey has been engaged for some time in discussions and deliberations with the EPA, the petroleum industry and other interested parties concerning the oxygenated fuels program, its effectiveness and need, the concerns of individuals who claim to experience adverse health reactions to certain oxygenates, and the cost of oxygenated fuels. Earlier this year, the fuels and commodities markets reacted to those ongoing deliberations in this State in such a way that fuel pricing and supplies were, or could have been, affected to the detriment of New Jersey's citizens. In response to this situation, the Department determined that immediate regulatory action was necessary to restore stability and predictability to the fuels market. The Department, therefore, used the emergency rulemaking procedures authorized by the New Jersey Administrative

Procedure Act, N.J.S.A. 52:14B-4, to address the serious economic consequences that would result from an unstable fuels market and the resulting negative impacts on the welfare of the State's citizens.

The Department has provided a full discussion of the reasons for reducing the northern control period to four months in the Summary and impact statements which accompanied the emergency rule and concurrent proposal. See 27 N.J.R. 787-789, February 21, 1995 New Jersey Register. There the Department explained that the State had not experienced an exceedance of the carbon monoxide National Ambient Air Quality Standard (NAAQS) in the months of October, March and April in northern New Jersey since 1988. The Department concluded that the absence of exceedances in these months, including in the three years prior to initiation of the oxygenated fuels program, justified a reduction of the period in which the program is implemented in northern New Jersey. The Department further concluded that reduction of the northern control period should not result in any exceedances of the NAAQS for CO since the federal Reformulated Gasoline (RFG) program, which requires that gasoline be oxygenated, began in New Jersey on January 1, 1995 and will be applicable year round. The Department, therefore, believes that its action in adopting the concurrent proposal is appropriate and fully supported in the record.

Tank Corrosion

10. COMMENT: A number of commenters raised concerns about the possibly corrosive effect of oxygenated and/or reformulated gasoline on gasoline storage tanks, as well as reports from the petroleum industry (Chevron and Texaco) that reformulated gasoline may be compromising the seals and gaskets on the fuel-delivery systems of higher mileage cars. Regarding bulk storage terminals, the Clean Air Act shows a determination to isolate tanks, piping, and pumps for reformulated gasoline, primarily MTBE. This is because it is highly corrosive. In steel tanks that have contained MTBE, the rust just peels off in sheets on the inside. Before MTBE there was some rust, but no peeling off in sheets. Some chemical reactions with added oxygen in the tanks might result in a higher rate of rust. (2, 11, 17)

11. COMMENT: There should be a study of the environmental impact of MTBE and other fuel oxygenates getting into our water supply. A spill in 1990 in Sullivan County, New York, resulted in contamination of the drinking water with MTBE, to which an increase in cancer has been attributed. We should be concerned about the potential for MTBE to permanently pollute our ground water. If MTBE is corrosive, this could create a greater tank leakage hazard, leading to an increase in groundwater contamination. If this were the case, the Department should consider the health effects of exposure not only to MTBE but also to the contaminating gasoline, which would otherwise have stayed in the tank. The EPA is creating a health advisory, which is the first step toward a drinking water standard for MTBE. (2, 4)

12. COMMENT: Commercial experience, tank manufacturers, and laboratory testing all indicate that there should be no material compatibility problems with MTBE-blended gasoline (15 percent by volume MTBE) or RFG (11 percent by volume MTBE) and fiberglass resin storage tanks. Fiberglass tank manufacturers contacted are approving the storage of gasoline blended with MTBE to levels of 20 percent by volume and warranting these tanks for 30 years. Laboratory data presented by the Sun Company shows no significant differences between the effects of nonoxygenated gasoline and MTBE blends on fiberglass tanks. This conclusion is also supported by evaluations of fiberglass made by the Oxygenated Fuels Association. (9)

RESPONSE: The Department has been concerned about the dangers of MTBE leaking into groundwater in this State for almost a decade, since MTBE has been used in premium and unleaded gasoline for at least that long. In response to this concern, the legislatively-established Drinking Water Quality Institute has recommended a human health-based drinking water standard for MTBE, which the Department anticipates promulgating this year. Such human health-based drinking water standards already exist for other common constituents of gasoline, such as benzene, toluene, ethyl benzene and xylenes. Furthermore, the Department and the EPA already regulate the storage of gasoline in New Jersey. These rules are found at N.J.A.C. 7:14B and 40 CFR Part 280, respectively. They provide generally for the prevention of any such leaking of gasoline into the ground, including the requirement that all new tanks provide corrosion protection. (See N.J.A.C. 7:14B-4 and 40 CFR 280 Subparts B and D.) The Department does not believe that the MTBE or any oxygenate in gasoline, however, is responsible for increased corrosion resulting in an increase of releases from underground

storage tanks. Nor is the Department aware of studies indicating that gasoline oxygenated to either 2.0 or 2.7 percent is more highly corrosive than conventional gasoline, but welcomes the submission to its Bureau of Underground Storage Tanks at 401 East State Street, CN-028, Trenton, New Jersey 08625-0028 of any such information or studies.

N.J.A.C. 7:27-25.3(a) and 25.3(h)

13. COMMENT: The EPA expects to approve the proposed modification of N.J.A.C. 7:27-25.3(h), which exempts wholesale purchaser-consumers and gasoline retailers from summertime Reid Vapor Pressure (RVP) requirements during the month of May. This change makes New Jersey's RVP rules consistent with Federal RVP requirements, and allows adequate transition time for wholesale purchaser-consumers and retailers to convert their gasoline stocks from wintertime gasoline blends to the lower RVP blends required to control emissions of ozone precursors and allows New Jersey's gasoline suppliers to compete on a more level playing field with suppliers in neighboring states. In particular, this should help those marketers in New Jersey who use alcohol blends such as ethanol as oxygenates who may have found it difficult to be in compliance with New Jersey's RVP standards. This change will adequately meet New Jersey's needs to limit the emission of ozone precursors and is an example of efforts to eliminate unnecessary standards that are inconsistent with Federal programs. (1, 3, 11, 13)

RESPONSE: The Department acknowledges and appreciates the commenters' support for its proposal to amend its gasoline volatility requirements for the month of May to be more consistent with the federal RFG requirements.

General comments on the continuation of the wintertime oxygenated fuels program

14. COMMENT: The Department should not only adopt the proposed amendments but should go further and repeal subchapter 25 in the context of the Federally-mandated reformulated gasoline (RFG) program. Subchapter 25 addresses oxygenated gasoline and volatility-controlled gasoline. Volatility-controlled gasoline is already addressed by the RFG program. As for the costly oxygenated gasoline program, it is not effective and should, therefore, be discontinued. From November 1988 to the beginning of the oxygen control program in late 1992 there were six days in which the national health standard for CO was exceeded during the wintertime months of November through February. In the three years since, using the same four-month control period, there have been four exceedances of the national health standard for CO. These results do not justify the cost of this program. The EPA's new-found flexibility regarding implementation of the Clean Air Act by various states suggests it may now be more receptive to New Jersey's taking such action. (7)

15. COMMENT: The Department should immediately consider discontinuing the wintertime oxygenated fuel program in northern New Jersey. This should be an open regional process, including the states of New York and Connecticut, EPA Region II, the petroleum industry and any other interested groups. Because all other states in the Northeast region that have considered oxygenated fuel programs are presently in the process of redesignating to carbon monoxide attainment status, we believe that for the 1995-1996 winter season, New York City, northern New Jersey, Fairfield County, Connecticut region will be the only area in the Northeast requiring 2.7 percent wintertime oxygenated fuel. (1, 16)

16. COMMENT: The wintertime oxygenated gasoline program should be replaced by RFG. A cost/benefit analysis does not support continuing with this program compared to the substantial benefits of year-round RFG and the immediate implementation of an enhanced automobile inspection and maintenance program. The State of New Jersey should advocate and initiate this change with its partners in New York State and Connecticut. (1)

17. COMMENT: The Department should not suspend the wintertime oxygenated fuels program in Northern New Jersey until there is adequate "proof" to justify such action. The controversy over RFG/MTBE is a function of efforts to discredit and then remove the oxygenate requirement in RFG by certain multinational oil companies; efforts by the Renewable Fuels Association, the "Oxy Busters" group and others to discredit MTBE and to alarm the public over its use; efforts by tetraethyl lead industry producers to raise alarm over the use of aromatics and oxygenates in gasoline as octane boosters in order to preserve overseas markets for leaded gasoline; and legitimate concerns by responsive governmental and political leaders determined to protect the health and well-being of the public. These forces are striving to eliminate any

significant challenge to the automotive fuels market by oxygenated, renewable and alternative fuels. This should not be allowed to happen. (10)

RESPONSE: The Department is working closely with the EPA, New York, and Connecticut and other interested parties in exploring the options available to it in determining the CO-reducing strategies to employ during the winter months which best address the needs and concerns of the public and welcomes input on this issue.

Miscellaneous comments

18. COMMENT: We support New Jersey's ongoing efforts to eliminate the oxygenated fuel program in the southern oxygen program control area. New Jersey is required to show attainment for the carbon monoxide standard by December 31, 1995 in the northern oxygen program control area. Failure to meet that attainment date may result in an EPA reclassification of the region as serious nonattainment. That designation would require the imposition of additional air control measures on the citizens, industry and businesses in northern New Jersey. Additionally, if the CMSA fails to meet the attainment deadline, New York State's oxygenated fuel rules include a contingency plan which mandates new lower vapor pressure fuel. This would require separate production and special segregated storage for the New York City market. We urge the Department to avoid these problems by submitting a redesignation request for northern New Jersey prior to the deadline of December 31, 1995. This attainment plan should include an improved, effective inspection and maintenance program, which, in conjunction with reformulated gasoline as a year-round fuel, will permit the region to attain and maintain the carbon monoxide standard to avoid any additional control programs in New Jersey and the regional area. We support the complete elimination of the wintertime 2.7 percent oxygenated fuel program and its replacement by reformulated gasoline and an effective improved inspection and maintenance program on a year-round basis. (1)

RESPONSE: The Department supports a strategy to request redesignation of the northern oxygen program control area at this time, but the necessary air quality data to support such a redesignation request is not yet available.

19. COMMENT: Gasoline itself is a major source of toxic air pollutants. Its combustion byproducts are a second major source of toxic air pollutants. All use of gasoline should be reduced. This can be accomplished by: one, increasing engine efficiency; two, increasing average car mileage; three, the use of alternatively-fueled vehicles; four, adoption of the low, ultra low, and zero emission vehicle programs; five, by the reduction of vehicle miles traveled; and six, by the enhanced inspection and maintenance program. The best solution, however, would be to use alternate fuels, such as electricity, solar power, compressed natural gas and propane. (6, 14)

RESPONSE: The Department supports the reduced use of gasoline-fueled motor vehicles since mobile sources are a significant contributor to the air quality problems in New Jersey. It is to this end that the New Jersey Department of Transportation has adopted and implemented the Employer Trip Reduction program. In addition, the Department has supported adoption of a Low Emission Vehicle Program, (either the "California car", or preferably, the "49-state car" program). Subject to enactment of the necessary enabling legislation, the State also anticipates adoption of the Enhanced Inspection and Maintenance (I/M) program. All of these programs, like the oxygenated fuel and reformulated gasoline programs, assist the State in moving away from the use of gasoline-fueled vehicles and/or help clean up the emissions from these vehicles.

20. COMMENT: People who called last year about the oxygenated fuel program indicated that the odor was part of what triggered their health symptoms. If the vapor-recovery system at the gasoline station is working, they should not smell it, unless there is a problem with vapors improperly leaking into the car's interior. To reduce public exposure to MTBE and gasoline vapors and to control volatile organic compounds which create the ozone pollution, we need increased vigilance, inspection and enforcement of the Stage II Vapor Recovery systems on all retail gasoline pumps. (14)

RESPONSE: The Department has enforcement authority which ensures that Stage II Vapor Recovery is effective in this State. The Department has responded to non-compliance with Stage II requirements with appropriate enforcement action. In addition to enforcement by the Department, most counties have agencies which perform inspections at gasoline stations for the Department under the County Environmental Health Act (CEHA). Gasoline stations are required to

perform a pressure blockage test to ensure that the system is working properly and that gasoline vapors are able to smoothly flow back into the underground storage tank. It should be noted, however, that Stage II Vapor Recovery is considered to only be 85 percent efficient; therefore, it can be expected that 15 percent of emissions are still released at the gasoline pumps. This may account for the occasional detection of gasoline odors, especially as MTBE is more readily detected than is gasoline which has not been oxygenated with MTBE. Furthermore, the proper functioning of Stage II Vapor Recovery is also dependent on how well the boot of the Stage II Vapor Recovery nozzle matches the shape of the car. A poor match can result in an incomplete seal when the car is being filled with gasoline. This may be the case in some cars, especially those designed prior to the implementation of the Stage II Vapor Recovery program in 1989. These instances are included in the overall expected 85 percent efficiency; the Stage II Vapor Recovery equipment itself is certified to be 95 percent efficient. The Department asks that anyone who sees a Stage II violation or is experiencing such odors at a gas station report this by calling the Office of Minor Source compliance at (609) 584-4240. The Department will have any such complaint investigated.

21. COMMENT: The Clean Air Act provides for the testing of motor vehicle emission control devices. It appears that oxygen sensors and catalytic converters are being damaged by oxygenated or reformulated gasoline, possibly in violation of the Clean Air Act. (2)

RESPONSE: The Department has no evidence that indicates that oxygenated or reformulated gasoline harm oxygen sensors or catalytic converters. All the major automobile manufacturers have approved the use of oxygenated and reformulated gasoline as fuel for their vehicles. Anyone with information suggesting that these fuels do indeed harm these devices is asked to forward such information to the Bureau of Transportation Control at (609) 530-4035.

Issues regarding use of MTBE and oxygenates

A number of commenters indicated that, based on health concerns, they are opposed to the use of MTBE as a fuel oxygenate. Some of these commenters objected to the use of any oxygenates in gasoline. Several other commenters disputed the claims that MTBE is a source of health problems, and supported its use in gasoline. These comments regarding MTBE, oxygenates, oxygenated gasoline and RFG are summarized below, followed by the Department's response.

22. COMMENT: One commenter, whose statement was read into the record at the hearing by another commenter, started Oxy-Busters of New Jersey because he, and others he knew or heard of, had experienced adverse health effects, such as headache, nausea, and sinus problems, which were sometimes severe and disabling. These were caused by MTBE, other components of gasoline, or gasoline combustion byproducts. More than 14,000 people have signed petitions calling for a ban on MTBE. Studies show that carbon monoxide levels have not improved when MTBE has been used. Hotline calls to the Oxy-Busters indicate no reduction in asthma, a condition aggravated by high carbon monoxide levels. (5)

23. COMMENT: A sixth grader's science project, based on newspaper articles, press releases, and interviews with gasoline station owners, concluded that MTBE causes health problems, has minimal effects on air quality, and should not be used in gasoline. The fact that some chemically-sensitive individuals react to the chemicals in gasoline may indicate that others are also suffering from exposure to these chemicals, but to a less obvious degree. The byproducts of the combustion of MTBE and ethanol, such as formaldehyde, may also cause cancer. The Clean Air Act has identified MTBE as a hazardous air pollutant. Also identified are formaldehyde and acetaldehyde, two combustion byproducts of all oxygenated fuels. The Clean Air Act requires testing for adverse health effects. MTBE has been tested by itself, but not in combination with the other chemicals in gasoline. (2, 5)

24. COMMENT: In many areas the EPA has failed to make adequate studies, and New Jersey should pursue the best policy for efficiency, public health, and the economy, even if the Federal government disagrees. EPA's rules seem contradictory, in that they restrict the use of some substances that emit formaldehyde but allow reformulated fuels, which create formaldehyde. In addition, the EPA promotes reformulated gas and MTBE to reduce benzene, but EPA studies of leaking storage tanks found very little benzene contamination. (17)

25. COMMENT: It is the responsibility of the oil companies, the EPA and the Department to protect consumers and the public from harmful

effects of gasoline, which should be treated as a consumer product. Any cost benefit analysis performed regarding the use of reformulated gasoline should include the health cost to the consumer (2)

26. COMMENT: The use of toxic substances as components of gasoline should not be permitted. We should be more concerned about limiting MTBE in gasoline than benzene, because unlike MTBE, benzene appears to break down in the soil in ten weeks, which suggests that MTBE is more toxic to our environment. Has the Department monitored the air for toxic air pollutants such as formaldehyde and acetaldehyde? (2)

27. COMMENT: MTBE is one of the most thoroughly tested components in gasoline and is one of the most tested products in the marketplace. Extensive toxicological and clinical testing has been performed on MTBE since 1969. In contrast, the anecdotal evidence regarding problems with MTBE are unsubstantiated by scientific review. Studies have found no difference in the number of headaches and other complaints resulting from exposure to oxygenated fuel as opposed to exposure to gasoline without MTBE. Studies where MTBE concentrations were higher than a consumer would experience still found none of the consequences that have been reported as related to MTBE. A medical school study of chemically-sensitive people showed no adverse reactions at normal concentrations of MTBE. Long term exposure to MTBE can only cause injury at extremely high doses, at levels much higher than experienced at gasoline pumps. Studies have found no adverse consequences across generations. The addition of MTBE to gasoline will not raise the cancer hazards of fuels, but will reduce exposure to toxins such as benzene. The EPA also supports the use of MTBE as safe. (9, 10, 15)

28. COMMENT: Because MTBE enhances the odor properties of gasoline, it is easier to detect and therefore makes people somewhat nauseated. On the other hand, being able to easily detect MTBE by its odor allows people to avoid exposure to it and gasoline fumes which they might not otherwise be able to detect. Injury from MTBE is so unlikely that its use as an oxygenate is by comparison good public health policy because of the reduction in air pollutants. Studies are ongoing to document the actual CO reductions caused by MTBE, and the reformulated gasoline currently available is a major step towards developing the safest gasoline possible. According to the EPA, MTBE-blended fuels represented over 70 percent of the market during the 1992-1993 winter season and exceedances of the national health standard for CO were reduced by 90 percent. In addition, use of RFG in 1995 will reduce the American public's exposure to fuel and automobile emissions by over two billion pounds, or the equivalent of taking eight million cars off the roads. (6, 9, 10, 15)

29. COMMENT: MTBE should not be singled out as a health hazard when gasoline contains known cancer-causing and toxic chemicals like benzene, xylene and toluene to meet octane needs that can be provided by MTBE and other oxygenates. If the Department requires health effects testing for fuel additives on the grounds of health risk, then it must also prohibit the gasoline now sold in New Jersey, which contains several additives already proven scientifically to cause cancer or damage to human organs. The EPA will issue regulations requiring health testing of all fuels and additives, and their emissions constituents. Regarding the combustion byproducts of MTBE, formaldehyde concentrations after the oxygenated fuels program began were about 10 percent higher, but still below the carcinogenicity threshold. This erodes the margin of safety, but it does not put individuals in a position of risk. (10, 12, 15)

30. COMMENT: The long term effects of carbon monoxide on the general population can be far more devastating than MTBE. While the legitimate concerns of the very small percentage of the population with multiple chemical sensitivity should be addressed, the citizens of the State should not be put into danger from CO pollution by trying to eliminate the MTBE problem, nor should these concerns be allowed to fuel media-induced hysteria and those who for other reasons oppose the use of MTBE. (6, 10, 12, 14)

31. COMMENT: The commenters are impressed with the results of oxygenated fuel use here in New Jersey. A recent report placed before the Northern Jersey Transportation Planning Authority shows a dramatic drop of CO levels for the winter months in 1992, when oxygenated fuel was used. Carbon monoxide is deadly, and it affects everyone when present in the air at unsafe levels. Public health protection is the primary objective. The commenters would only support the elimination of MTBE if it can be proved that there is another way to achieve the same

reductions in CO. Oxygenated fuel is convenient for citizens, and has been shown to be the most cost-effective strategy for reducing CO emissions from mobile sources. (6)

32. COMMENT: MTBE has been used extensively in gasoline for over 15 years, and has been used in air quality improvement programs since 1988, with no proven negative health effects. Yet there have been few similar complaints in other large metropolitan areas where MTBE is used. Therefore, there may be other explanations for the complaints in New Jersey, which should be investigated. We must continue to review and evaluate the data on MTBE and consider the motivations of the presenters of the studies. The Department is encouraged to make a determination as to which companies stand to benefit if certain oxygenates are prohibited in New Jersey and whether or not those companies are in any way involved in efforts to discredit RFG and MTBE. (8, 10, 12, 15)

33. COMMENT: Reduced fuel economy experienced with the use of oxygenated fuels is largely a result of reduced performance experienced in colder weather. Studies presented to the North Jersey Transportation Authority this winter documented minimal decrease in fuel economy. (6, 10)

34. COMMENT: Oxygenating gasoline reduces fuel economy. (17)

35. COMMENT: Reducing this country's dependence on imported oil by replacement with domestically-produced oxygenates and alternative fuels provides environmental and economic benefits to the nation. The higher cost of RFG compared to conventional gasoline cannot be attributed to the relatively insignificant price differential for MTBE and is likely resulting from other factors within the gasoline market. (10)

RESPONSE to MTBE comments: While it shares the concerns raised by public comment regarding MTBE and oxygenates, the Department is adopting the proposed amendments to shorten the northern oxygen program control period based on its determination that implementation of the Federal RFG program will provide sufficient CO emission reduction benefits without the need for a seven-month control period in the northern oxygen program control area. While the average oxygen content of gasoline formulated pursuant to the RFG rules is 25 percent less than gasoline that conforms with the oxygenated gasoline requirements, recent studies show that RFG achieves 80 to 90 percent of the CO reductions that would be achieved with oxygenated gasoline. (See, Coordinating Research Council, "Study of Winter Exhaust Emission Gasoline Oxygenate Blends," September 25, 1989, SAE 892091; and Helen Dougherty, Sun Oil Company, Technical Bulletin #902130, "The Effect of Oxygenate and Fuel Volatility at Seasonal Temperatures," October, 1990.)

The Department, as part of a national program, does monitor the presence of toxic air pollutants in ambient air. The Department has one monitoring site in Camden that is part of the national Urban Air Toxics Monitoring Program. An air sample from this site is collected every twelfth day and analyzed for selected toxic organic compounds and carbonyls. In addition, total non-methane organic compounds (NMOC) are monitored at two locations each summer because of their importance in ozone formation. As part of that effort, a subset of the samples is analyzed for toxic organic compounds. This program also includes carbonyl measurements (for example, formaldehyde).

The presence of benzene in gasoline is a health concern because it is known to cause cancer in animals and humans. It is classified by the EPA as a known human carcinogen. While there is some evidence that MTBE can also cause cancer in animals at very high dosages, it is currently classified by the EPA as a possible human carcinogen.

The Department continues to evaluate available studies regarding MTBE and health effects and to discuss this issue with the EPA. It is important to note, however, that N.J.A.C. 7:27-25 does not mandate the use of any particular oxygenate but rather sets the percentage oxygenation standard which fuel providers must meet during certain months of the year.

Summary of Hearing Officer's Recommendations and Agency Responses:

John Elston, Administrator of the Office of Air Quality Management in the Department, served as the hearing officer at the March 17, 1995, public hearing held at the Department of Environmental Protection Building in Trenton, New Jersey. After reviewing the oral testimony presented at the public hearing, the Hearing Officer made the following recommendations:

The Department should proceed to adopt the proposed amendments shortening the oxygen program control period for the northern oxygen

program control area and exempting retailers and wholesale-purchaser consumers from the volatility requirements of this subchapter during the month of May.

The Department accepts the recommendation.

The Hearing Officer's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of public hearing is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

ATTN: Docket #05-95-02/518
Janis E. Hoagland, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Executive Order No. 27 Statement

The amendments adopted herein do not impose standards on petroleum refiners, importers, blenders, distributors, wholesale purchaser-consumers, or retailers in New Jersey that exceed those contained in Federal rules under the Clean Air Act. Accordingly, Executive Order No. 27(1994) does not require a comparison with Federal law.

Full text of the adoption follows:

7:27-25.1 Definitions

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

...

"Oxygen program control area" means the entire geographic area within the State of New Jersey.

"Oxygen program control period" means the control period in New Jersey during which oxygen content standards set forth at N.J.A.C. 7:27-25.3 are applicable to gasoline.

...

7:27-25.3 General provisions

(a) Except as provided for use in (b) and (h) below, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade for use in New Jersey during the RVP control period each year, starting in 1989, gasoline having a RVP greater than 9.0 pounds per square inch.

(b) (No change.)

(c) Except as provided for at N.J.A.C. 7:27-25.9, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline for use in New Jersey, unless:

1. The oxygen content of the gasoline equals or exceeds 2.7 percent from November 1 through and including the last day of the following February; and

2. (No change.)

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

(f) Notwithstanding the provisions of (c) above, a refiner, importer, blender, or distributor may provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline which has an oxygen content less than 2.7 percent, provided that:

1. The gasoline is destined for one of the following uses:

i. Provision, sale, or exchange in trade to a retailer or wholesale purchaser-consumer at a facility located outside the oxygen program control area;

ii.-iv. (No change.)

2.-3. (No change.)

(g) (No change.)

(h) Wholesale purchaser-consumers and retailers shall be exempt from the RVP standard established in (a) above during the month of May.

7:27-25.4 Recordkeeping and compliance determinations

(a) Each refiner, importer, blender or distributor shall:

1. (No change.)

2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; that, during the RVP control

period, the gasoline has an RVP of 9.0 pounds per square inch or less; that, during the oxygen program control period, the gasoline conforms with the oxygen content requirements of this subchapter; the category of oxygenate, either alcohol or ether blends, being used in the gasoline; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

i.-ii. (No change.)

3. (No change.)

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

7:27-25.8 Labeling

(a) During any oxygen program control period in which the gasoline provided, offered for sale, sold, or otherwise exchanged in trade at a facility owned or operated by any retailer is subject to the oxygen content standards set forth at N.J.A.C. 7:27-25.3, the retailer shall label as specified in (b) through (d) below each fuel pump or other gasoline dispensing device.

(b) The label shall, except as provided in (c) below, contain the text given below. This statement shall not be altered and no additional language shall be inserted within the text. However, a phrase indicating the dates of the oxygen program control period may be added before or after this text. If a label does not contain the dates of the oxygen program control period then that label shall be removed from the fuel pump or other gasoline dispensing device at the end of the oxygen program control period. This label shall state the following:

The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

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

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Administrative Correction Hospital Licensing Standards Anesthesia Staff; Qualifications for Administering Anesthesia

N.J.A.C. 8:43G-6.3

Take notice that the Department of Health has discovered an error in the text of recently adopted amendments to N.J.A.C. 8:43G-6.3(g)2iv as adopted at 27 N.J.R. 1290(a), 1298. The commas setting off the phrase "or doses after administration of the initial dose" are both grammatically and logically incorrect. Regardless of the number of supplemental doses, such must follow administration of an initial dose to be supplemental. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

8:43G-6.3 Anesthesia staff; qualifications for administering anesthesia

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

(g) Anesthetic agents used for conscious sedation shall be administered only by the following:

1. (No change.)

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.-iii. (No change.)

iv. For a supplemental dose[,] or doses after administration of the initial dose[,] by a credentialed physician who remains continuously in the procedure room, a registered nurse who is trained and experienced in the use of anesthetic agents; or

3. (No change.)

(h) (No change.)

(a)

**DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL,
AND OCCUPATIONAL HEALTH SERVICES**

**Notice of Administrative Correction
Immunization of Pupils in School
Rubella Vaccine
N.J.A.C. 8:57-4.13**

Take notice that the Department of Health has discovered an error in the text of N.J.A.C. 8:57-4.13(c) as recently adopted in the April 3, 1995 New Jersey Register at 27 N.J.R. 1417(a). The last word in the subsection as it appears in the published proposal (27 N.J.R. 270(a)) and adoption, "immunization," was intended by the Department to remain "immunity" as has been used since 1974. However, the original proposal document, PRN 1995-47, contained the word "immunization" instead; while not shown in the proposal as a change to the current rule text, the word substitution was published in both the proposal and adoption notices. Given the absence of appropriate symbolism in the proposal indicating the Department's intention for "immunity" to become "immunization," through this notice the word "immunization" will be changed back to the original and intended "immunity." This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

8:57-4.13 Rubella vaccine

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

(c) Rubella virus vaccine shall not be required of children who present documented laboratory evidence of rubella [immunization] **immunity**.

HUMAN SERVICES

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

DYFS Utilization of Family Day Care Providers

Readoption: N.J.A.C. 10:126A

Proposed: February 6, 1995 at 27 N.J.R. 432(a).

Adopted: April 3, 1995 by William Waldman, Commissioner,
Department of Human Services.

Filed: April 4, 1995 as R.1995 d.227, **without change**.

Authority: N.J.S.A. 30:4C-4.

Effective Date: April 4, 1995.

Expiration Date: April 4, 2000.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

In order for the State of New Jersey to receive Federal funds from the Child Care and Development Block Grant, 45 CFR 98.40(a)(2) requires that child care providers be registered in accordance with State law and 45 CFR 98.41(a) requires that the State must have requirements designed to protect the health and safety of children cared for by child care providers. The readoption of N.J.A.C. 10:126A contributes to New Jersey remaining in compliance with the Federal regulations, and does not exceed any applicable Federal standards.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:126A.

CORRECTIONS

(c)

THE COMMISSIONER

Inmate Discipline

**Inmate Prohibited Act; Refusal to Register as a Sex
Offender**

Adopted Amendment: N.J.A.C. 10A:4-4.1

Proposed: February 6, 1995 at 27 N.J.R. 436(a).

Adopted: April 7, 1995 by William H. Fauver, Commissioner,
Department of Corrections.

Filed: April 7, 1995 as R.1995 d.237, **without change**.

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

Effective Date: May 1, 1995.

Expiration Date: May 7, 1996.

Summary of Public Comments and Agency Responses:

The Department received a total of three timely written comments from the following individuals: Hugh J. Hammill, Adult Diagnostic and Treatment Center; William J. Lotwich Jr., Riverfront State Prison; and Mary C. Williams, Edna Mahan Correctional Facility for Women.

COMMENT: One commenter stated that there are indigent inmates who have been incarcerated for a number of years who have no place to go when they max out and authorities deem an inability to provide an address to be a "Refusal to Register." The commenter further stated that, "This is patently unfair, and exceeds the authority of the base statute, N.J.S.A. 2C:52-2." The commenter suggested that if a situation arises where an inmate is unable to provide an address, the institution should be responsible for assisting the inmate in securing an address so that he may register.

RESPONSE: P.L. 1994, c.133 supplementing Title 2C of the New Jersey Statutes and amending N.J.S. 2C:52-2 mandates a system of registration for sex offenders. A sex offender's address of legal residence and address of any current temporary residence are two of the requirements for registration. The intent of the Department of Corrections to add refusal to register as a sex offender to the list of prohibited acts is to comply with the law which clearly requires a system of registration for sex offenders. Hence, the addition of this prohibited act does not exceed the authority of the law, but rather supplements the law by creating a disciplinary procedure for managing those offenders who refuse to register. Since the law requires the offender's address of legal residence and any current temporary address, a person who must provide this information and does not do so will be deemed to have refused to register.

The Department of Corrections endeavors to ensure that offenders required to register receive assistance in their ability to provide registration information.

COMMENT: One commenter stated that the proposed amendment violates the ex post facto clause of the United States Constitution and incorporates a provision of criminally prosecuting a prisoner for failing, or refusing to comply with the proposed rule.

RESPONSE: The Department of Corrections disagrees that the addition of this prohibited act in and of itself violates the ex post facto clause. The addition of this prohibited act is an administrative regulation and supplements P.L. 1994, c.133 which mandates that a person who fails to register shall be guilty of a crime of the fourth degree.

COMMENT: One commenter indicated that "it is not clear as to when the Department of Corrections intends to write a prisoner a ".054" charge" [sic].

RESPONSE: The intent of the Department of Corrections to add ".054 refusal to register as a sex offender" to the list of prohibited acts at N.J.A.C. 10A:4-4.1(a) is not to reiterate the law found at P.L. 1994, c.133 but rather to comply with and supplement the law. For clarification purposes, reference is hereby made to section 1c(2) of the law which stipulates that a person confined in a correctional or juvenile facility or involuntarily committed who is required to register shall register prior to release.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for the adopted amendment because the rulemaking requirements of the Department of

Corrections are governed by N.J.S.A. 30:1B-6 and 30:1B-10. The adopted amendment is not subject to any Federal requirements or standards.

Full text of the adoption follows:

10A:4-4.1 Prohibited Acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions For Prohibited Acts).

*.001-.053 (No change.)

*.054 Refusal to register as a sex offender

.101-.803 (No change.)

(b) (No change.)

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Disclosure of Material Transactions

Adopted New Rules: N.J.A.C. 11:1-39

Proposed: March 6, 1995 at 27 N.J.R. 816(a).

Adopted: April 7, 1995 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: April 7, 1995 as R.1995 d.234, **without change.**

Authority: N.J.S.A. 17:1C-6, 17:1-8.1, 17:17-10, 17:23-1, 17:23-20 et seq., 17:44A-1 et seq., 17:48-1 et seq., 17:48A-1 et seq., 17:48C-1 et seq., 17:48D-1 et seq., 17:48E-1 et seq., 17B:18-42, 17B:21-1 and 17:51A-1 et seq.

Effective Date: May 1, 1995.

Expiration Date: January 31, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because these rules implement various sections of the insurance laws of this State set forth in Title 17 and 17B of the Revised Statutes regarding oversight of the financial condition of insurers, and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

SUBCHAPTER 39. DISCLOSURE OF MATERIAL TRANSACTIONS

11:1-39.1 Purpose and scope

(a) This subchapter requires that information be filed with the Commissioner by domestic insurers, fraternal benefit societies, dental plan organizations, hospital service corporations, medical service corporations, dental service corporations, and health service corporations regarding certain acquisitions and dispositions of assets, and nonrenewals, cancellations or revisions of ceded reinsurance agreements, and sets forth the specific information to be filed.

(b) This subchapter shall apply to all of the entities set forth in (a) above domiciled in this State.

11:1-39.2 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Insurer" means: any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance pursuant to subtitle 3 of Title 17 of the Revised Statutes or subtitle

3 of Title 17B of the Revised Statutes; any hospital service corporation operating pursuant to N.J.S.A. 17:48-1 et seq.; any medical service corporation operating pursuant to N.J.S.A. 17:48A-1 et seq.; any dental service corporation operating pursuant to N.J.S.A. 17:48C-1 et seq.; any dental plan organization operating pursuant to N.J.S.A. 17:48D-1 et seq.; and any health service corporation operating pursuant to N.J.S.A. 17:48E-1 et seq.

"NAIC" means the National Association of Insurance Commissioners.

11:1-39.3 Disclosure of transactions

(a) Every insurer domiciled in this State shall file a report with the Commissioner disclosing material acquisitions and dispositions of assets, or material nonrenewals, cancellations or revisions of ceded reinsurance agreements, unless such acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the Commissioner for review, approval or information purposes pursuant to other provisions of the Title 17 or Title 17B of the Revised Statutes, Title 11 of the New Jersey Administrative Code, or other requirements.

(b) The report required in (a) above shall be filed within 15 days after the end of the calendar month in which any of the transactions set forth in (a) above occur.

(c) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be separately filed with the Department and the NAIC.

1. Filings with the Department shall be mailed to the following address:

New Jersey Department of Insurance
Division of Financial Examinations
Attention: Disclosure of Transactions
20 West State Street
CN 325
Trenton, NJ 08625

2. Filings with the NAIC shall be made in the same manner as filings of financial statements with the NAIC.

(d) All reports obtained by or disclosed to the Commissioner pursuant to this subchapter shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the Commissioner, the NAIC, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer who would be affected thereby, notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part thereof in such manner as he or she may deem appropriate.

(e) This subchapter shall not be construed as limiting the Commissioner's authority to require any insurer to file any specific information or documents pursuant to law, including, but not limited to, copies of any reinsurance agreements.

11:1-39.4 Acquisitions and dispositions of assets; reporting requirements

(a) Acquisitions or dispositions of assets are not required to be reported, as otherwise required pursuant to N.J.A.C. 11:1-39.3, if the acquisitions or dispositions are not material.

1. For purposes of this subchapter, a material acquisition (or the aggregate of any series of related acquisitions during any 30 day period) or disposition (or the aggregate of any series of related dispositions during any 30 day period) is one that is non-recurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory annual statement filed with the Department.

(b) Asset acquisitions subject to this subchapter include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

(c) Asset dispositions subject to this subchapter include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.

(d) The following shall be disclosed and provided in any report of a material acquisition or disposition of assets required to be filed pursuant to this subchapter:

1. The date of transaction;
2. The manner of acquisition or disposition;
3. A description of the assets involved;
4. The nature and amount of the consideration given or received;
5. The purpose of, or reason for, the transaction;
6. The manner by which the amount of consideration was determined;
7. The gain or loss recognized or realized as a result of the transaction;
8. The name(s) of the person(s) from whom the assets were acquired or to whom they were disposed; and
9. A copy of all documents related to the acquisition or disposition (for example, purchase agreement, lease agreement, etc.).

(e) Insurers shall report material acquisitions and dispositions on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

11:1-39.5 Nonrenewals, cancellations or revisions of ceded reinsurance agreements; reporting requirements

(a) Nonrenewals, cancellations or revisions of ceded reinsurance agreements are not required to be reported, as otherwise required pursuant to N.J.A.C. 11:1-39.3, if the nonrenewals, cancellations or revisions are not material.

1. For purposes of this subchapter, a material nonrenewal, cancellation or revision is one that affects:

i. As respects property and casualty business, including accident and health business written by a property and casualty insurer:

(1) More than 50 percent of the insurer's total ceded written premiums; or

(2) More than 50 percent of the insurer's total ceded indemnity and loss adjustment reserves;

ii. As respects life, annuity and accident and health business, more than 50 percent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement; and

iii. As respects both property and casualty, and life, annuity, and accident and health business, either of the following events:

(1) An authorized reinsurer representing more than 10 percent of a total cession is replaced by one or more unauthorized reinsurers; or

(2) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than 10 percent of a total cession.

(b) No filing pursuant to (a) above shall be required if:

1. As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than 10 percent of its total written premium for direct and assumed business; or

2. As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than 10 percent of the statutory reserve requirement prior to any cession.

(c) The following shall be disclosed and provided in any report of a material nonrenewal, cancellation or revision of ceded re-

insurance agreements required to be filed pursuant to this subchapter:

1. The effective date of the nonrenewal, cancellation or revision;
2. A description of the transaction with an identification of the initiator thereof;
3. The purpose of, or reason for, the transactions;
4. If applicable, the identity of the replacement reinsurers; and
5. A copy of the revised provisions of the reinsurance agreement.

(d) Insurers shall report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

11:1-39.6 Penalties

Failure to comply with the requirements of this subchapter shall result in the imposition of penalties as authorized by law.

(a)

DIVISION OF PROPERTY AND CASUALTY

Private Passenger Automobile Insurance: Annual Premium Survey

Adopted New Rules: N.J.A.C. 11:3-45

Proposed: January 17, 1995 at 27 N.J.R. 289(a).

Adopted: April 6, 1995 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: April 7, 1995 as R.1995 d.235, with substantive and technical changes not requiring additional public Notice and Comment (N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e); 17:29A-1 et seq. and 39:6A-23.1.

Effective Date: May 1, 1995.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

During the comment period, which closed on February 16, 1995, the Department of Insurance ("Department") received one written comment regarding the above-captioned matter. This comment was submitted on behalf of New Jersey Manufacturers Insurance Companies.

COMMENT: While the commenter does not object to the annual automobile premium survey, it suggests that the operative date and filing date be changed to better accommodate the commenter's maximum permissible annual rate increase under N.J.S.A. 17:29A-55 (flex rate). The commenter notes that in the past it has implemented its flex rate effective on October 1 and therefore requests that the date be adjusted. The commenter also suggests the addition of other data into the survey. This would include information pertaining to multi-car discounts; surcharge and forgiveness programs; size of dividends, if any; eligibility restrictions; higher limits on PIP coverage and safety discounts.

RESPONSE: The value of this survey comes from the comparison by consumers of the current rates offered by all insurers. The Department recognizes that by October 1 of each year, most auto insurers have adjusted their rates pursuant N.J.S.A. 17:29A-44. The Department agrees that it would be reasonable to choose October 1 as the date for which rates are to be reported. Thus, October 1 of each year shall be established as the effective date for the survey information and the filing deadline for the surveys will be September 15 of each year. The survey information will be issued by the Department on or before September 1 of each year.

Regarding the other suggestions offered by the commenter, the Department notes that in the past information dealing with specific features of a particular insurer (such as dividends) has been handled as a footnote to the survey. As a result, the consumer has available the specific insurer

information referred to by the commenter without jeopardizing the standard survey format. The Department believes that this suggestion is meritorious but would be best dealt with by adding lines for "comments and footnotes" where insurers could add information they deem significant. The Department will then collate the specific data as appropriate in footnote fashion.

Summary of Agency-Initiated Changes:

Technical changes have been made to correct errors in printing and to add a "footnote and comment" section to the form found in the Appendix.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for the adopted new rules, as the subject of an annual premium survey for private passenger automobile insurance is not subject to any Federal requirements or standards.

Full text of the adoption follows (additions to proposed indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 45. INSURERS REQUIRED TO PROVIDE SURVEY INFORMATION

11:3-45.1 Purpose and scope

(a) The purpose of the subchapter is to implement N.J.S.A. 39:6A-23.1 by setting forth those procedures by which insurers shall annually submit to the Department current premium information.

(b) This subchapter shall apply to all auto insurers that have on file with the Department a current personal lines rating system for automobile insurance and which are not exempted from the obligation to insure, renew, or provide automobile insurance to eligible persons. Exempted insurers are listed in N.J.A.C. 11:3-40.3(b), (c) and (d).

11:3-45.2 Definitions

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

"Automobile insurance" means insurance for private passenger automobile including one or more of the following coverages: bodily injury liability and property damage liability, comprehensive and collision coverages, uninsured and underinsured motorist coverage, personal injury protection, additional personal injury protection coverage and any other automobile insurance required by law.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Auto insurer" means an entity authorized or admitted to write automobile insurance in New Jersey but does not include either any residual market mechanism implemented pursuant to N.J.S.A. 17:29D-1 et seq. or any other statute, or insurers which are exempted from the requirement to provide automobile insurance coverage to eligible persons in accordance with N.J.A.C. 11:3-40.3(b), (c) and (d).

"Survey information" means the data annually supplied by the Commissioner to the auto insurers from which they will then issue survey quotations. This information includes, but is not limited to, the prior driving experience of the insured*[*],* the nature and extent of coverages, the deductible, the composition of household*[*],* information regarding the proposed vehicle*[*],* and other pertinent information.

11:3-45.3 Annual premium survey filing

(a) Every *auto* insurer shall prepare and file *on or before September 15 of each calendar year,* with the Department, at the address set forth in (d) below, an annual premium survey reflecting premiums charged for specific automobile insurance coverage *[on or before August 15 of each calendar year]*.

(b) The filing shall reflect the annual premiums by coverage as of *[September]* *October* 1 of that calendar year and shall be predicated on survey information provided by the Commissioner to *auto* insurers by Bulletin on or before *[July]* *September* 1 of each calendar year.

(c) *[Insurers]* *Auto insurers* shall prepare and file the information required by this subchapter in accordance with the forms contained in the Appendix and incorporated herein by reference.

(d) Completed annual premium survey forms *[should]* *shall* be submitted to:

Department of Insurance
Division of Public Affairs
[10] *20* West State Street
CN 325
Trenton, NJ 08625
Attn. Automobile Premium Survey.

11:3-45.4 Penalties

Failure to comply with the provisions of this subsection shall result in the imposition of penalties as prescribed by law.

APPENDIX

New Jersey Automobile Insurance
Premium Comparison Survey

The sample premiums shall be calculated for each territory using the survey information provided by the Commissioner on or before *[July]* *September* 1 each year. The premium information submitted in these forms must be effective *[September]* *October* 1 of that year and must be calculated on an annual basis.

All of the forms in this Appendix shall be completed and filed with the New Jersey Department of Insurance, Division of Public Affairs NO LATER THAN *[AUGUST 15]* *SEPTEMBER 15* of the same year. Any questions regarding this survey may be directed to the Division of Public Affairs at (609) 292-5064.

If the data supplied herein is for more than one company, submit separate completed forms for each such company if different rates are on file with the Department.

- 1. Insurance Company Name: _____
- 2. NAIC Group # _____ NAIC Company # _____
- 3. Sample premiums must reflect split liability limits unless company only writes CSL. Choose one only:
Combined Single Limits of Liability? yes _____
Split Liability Limits? yes _____
- 4. Effective Date of Rates _____
- 5. Worksheets used to Calculate Rating Examples.
- 6. Individual collecting and submitting data:
Name: _____
Title: _____
Phone #: _____
(Include Area Code)

Insurance Co. Name: _____

NAIC Group #: _____ NAIC Company #: _____

COMPLETE A SEPARATE FORM FOR EACH COMPANY IN YOUR GROUP.

PREMIUM INFORMATION

Table with 5 columns: Territory, Example 1, Example 2, Example 3, Example 4. Rows 1-19.

Footnote: Companies should use the 27 territories set forth in the PAIP Manual.

Insurance Co. Name: _____

NAIC Group #: _____ NAIC Company #: _____

COMPLETE A SEPARATE FORM FOR EACH COMPANY IN YOUR GROUP.

Table with 5 columns: Territory, Example 1, Example 2, Example 3, Example 4. Rows 22-40.

Footnote: Companies should use the 27 territories set forth in the PAIP Manual.

Comments and Footnotes

* _____ *

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD Small Employer Health Benefits Program Board Structure and Meetings; Authorization of Assessments and Expenditures

Adopted Amendment: N.J.A.C. 11:21-2.5

Proposed: February 6, 1995 at 26 N.J.R. 438(a) (see also 27 N.J.R. 438(b)).

Adopted: March 29, 1995, by the New Jersey Small Employer Health Benefits Program Board, Kevin O'Leary, Executive Director.

Filed: March 29, 1995 as R.1995 d.223, without change.

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, P.L.1994, c.11, and P.L.1994, c.97.

Effective Date: May 1, 1995.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:

No comments received. Pursuant to N.J.S.A. 17B:27A-30, the Department of Insurance conducted a public hearing on the proposed amendment on March 15, 1995. No oral testimony was presented at the hearing. By letter of March 24, 1995, Drew Karpinski, Commissioner of Insurance, advised the Board of his approval of the amendment.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the assessments and expenditure of Program funds is dictated by N.J.S.A. 17B:27A-17 et seq., as amended, and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

11:21-2.5 Board structure and meetings

(a)-(l) (No change.)

(m) The affirmative vote of at least two-thirds of the Directors present at a meeting shall be required to authorize assessments and the expenditure of Program funds.

LABOR

(b)

DIVISION OF WORKPLACE STANDARDS

Notice of Administrative Correction Safety and Health Standards for Public Employees Standards on Toxic and Hazardous Substances

N.J.A.C. 12:100-4.2

Take notice that the Department of Labor has discovered an error in the text of N.J.A.C. 12:100-4.2(a)19. On February 2, 1987 at 19 N.J.R. 267(a), the Department proposed to delete the text of then N.J.A.C. 12:100-4.2(a)18, which incorporated 29 CFR Part 1910, Subpart Z—Toxic and Hazardous Substances as occupational health and safety standards for public employees, and to replace it with proposed new rules N.J.A.C. 12:100-7. The proposed changes to N.J.A.C. 12:100-4.2 were adopted effective October 19, 1987 at 19 N.J.R. 1909(a). It was noted in that notice of adoption the proposed new Toxic and Hazardous Substance Standards at N.J.A.C. 12:100-7 were still being considered and were not adopted at that time (they were, in fact, not ever adopted); inadvertently, the deletion of the existing Toxic and Hazardous Substances Standards incorporated by reference at N.J.A.C. 12:100-4.2(a)18 were shown as deleted in the adoption. This error was corrected through an Office of Administrative Law Note in a subsequent proposal, which Note reinserted N.J.A.C. 12:100-4.2(a)18 as paragraph (a)19 in the text of that proposal, which was adopted effective February 16, 1988. See 19 N.J.R. 2239(a) and 20 N.J.R. 403(a). Unfortunately, the reinsertion of paragraph (a)19 into the Administrative Code through the February 18, 1988 Code update inadvertently deleted the two components of 29 CFR Part 1910,

Subpart Z which were not adopted and incorporated by reference as health standards by the Department: 29 CFR 1910.1001, Asbestos, and 1910.1200, Hazard communication. Through this notice of administrative correction, those exceptions to the incorporation by reference are re-inserted into the Code. This notice is published in accordance with N.J.A.C. 1:30-2.7.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, with amendments published in the Federal Register through May 27, 1992 with certain exceptions noted in (b) and (c) below are adopted and incorporated herein by reference as occupational safety and health standards for the protection of public employees engaged in general operations and shall include:

1.-18. (No change.)

19. Subpart Z—Toxic and Hazardous Substances.

i. The standards contained in Subpart Z of 29 CFR Part 1910 are adopted except that the following health standards are not adopted:

(1) 1910.1001. Asbestos; and

(2) 1910.1200. Hazard communication.

[i.]ii. (No change in text.)

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

LABOR/HEALTH

(a)

ENVIRONMENTAL HEALTH SERVICES DIVISION OF WORKPLACE STANDARDS

Notice of Administrative Corrections Asbestos Licenses and Permits

Definitions

Adopted Amendments: N.J.A.C. 12:120-2.1 and 8:60-2.1

Take notice that the Department of Labor has discovered errors in the text of recently adopted definitions of "PCM (phase contrast microscopy)" and "TEM (transmission electron microscopy)" at N.J.A.C. 12:120-2.1 and 8:60-2.1, published in the April 3, 1995 New Jersey Register at 27 N.J.R. 1465(a).

In the definition of "PCM," the asterisked bracket ("*") marking the beginning of the proposed text deleted upon adoption should have appeared in the first sentence between the words "analysis" and "which"; the date of the 4th Edition of the NIOSH Manual of Analytical Methods should be August 15, 1994; and the spelling of the second NIOSH reference ("NIOSE") needs to be corrected. In the definition of "TEM," the asterisked bracket ("*") marking the beginning of the proposed text deleted upon adoption should have appeared in the first sentence between the words "analysis" and "whereby." These changes conform the adopted text to that contained in R.1995 d.193. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

12:120-2.1 (8:60-2.1) Definitions

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

...
"PCM" or "phase contrast microscopy" means the scientific method of air sampling analysis for the purpose of determining airborne asbestos fiber concentrations in fibers per cubic centimeter of air (f/cc). This analytical method is to be consistent with the National Institute of Occupational Safety and Health (NIOSH) method 7400 as referenced in the 4th Edition, August 15, [1995] 1994 with addenda of the [NIOSE] NIOSH Manual of Analytical Methods.
...

"TEM" or "transmission electron microscopy" means the scientific method of air sampling analysis for the purpose of definitively determining airborne asbestos fiber concentrations structures per cubic centimeter (s/cc) of air as well as the type of asbestos identified. This analytical method is to be consistent with the National Institute of Occupational Safety and Health (NIOSH) method 7402 as referenced in the 4th Edition, August 15, 1994 with addenda of the NIOSH Manual of Analytical Methods.
...

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service

Readoption with Amendments: N.J.A.C. 13:18

Adopted Repeals: N.J.A.C. 13:18-5 and 13:18-8

Proposed: February 21, 1995 at 27 N.J.R. 637(a).

Adopted: March 27, 1995 by C. Richard Kamin, Director, Division of Motor Vehicles, and C. Richard Kamin, Director, Division of Motor Vehicles, in consultation with Andrew J. Karpinski, Commissioner, Department of Insurance, as to N.J.A.C. 13:18-6.

Filed: March 28, 1995 as R.1995 d.218, **without change**.

Authority: N.J.S.A. 39:2-3, 39:3-4(e), 39:3-43, 39:3-84, 39:4-54, 39:5-30, 39:6-25, 39:6-86.1, 47:1A-1 et seq., 17:33B-41, 52:14B-3(1), 54:39A-8 and 54:39A-24.

Effective Date: March 28, 1995, Readoption;

May 1, 1995, Amendments and Repeals.

Expiration Date: March 28, 2000.

On March 27, 1995, C. Richard Kamin, Director of the Division of Motor Vehicles, pursuant to authority of N.J.S.A. 39:2-3, 39:3-43, 39:3-84, 39:4-54, 39:5-30, 39:6-25, 39:6-86.1, 47:1A-1 et seq., 52:14B-3(1), 54:39A-8 and 54:39A-24 and in accordance with the applicable provisions of the Administrative Procedure Act, readopted N.J.A.C. 13:18 with amendments and adopted the repeal of N.J.A.C. 13:18-5 and 13:18-8 as proposed in the Notice published on February 21, 1995 at 27 N.J.R. 637(a).

On March 27, 1995, C. Richard Kamin, Director of the Division of Motor Vehicles, in consultation with Andrew J. Karpinski, Commissioner, Department of Insurance, pursuant to authority of N.J.S.A. 39:3-4(e) and 17:33B-41 and in accordance with the applicable provisions of the Administrative Procedure Act, readopted N.J.A.C. 13:18-6 with amendments as proposed in the Notice published on February 21, 1995 at 27 N.J.R. 637(a).

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

23 U.S.C. §127 establishes the Federal overall gross maximum weight limitation of 80,000 pounds for vehicles using the system of interstate and defense highways. The Federal legislation sets forth certain exceptions:

... Provided, That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws ...

Section 127, therefore, authorizes exceptions to the maximum gross weight limitation for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws. N.J.S.A. 39:3-84(d) which establishes an overall gross maximum weight limitation of 80,000 pounds consistent with 23 U.S.C. §127 provides in part:

The Director of the Division of Motor Vehicles may promulgate rules and regulations, including the establishment of fees, for the issuance, at his discretion and if good cause appears, of a special written permit authorizing the applicant:

(1) To operate or move a vehicle or combination of vehicles or special mobile equipment, transporting one piece loads that cannot be dismembered, dismantled or divided in order to comply with the weight limitations set forth in this act . . .

In order for the Director to exercise discretion to issue a special written permit under N.J.A.C. 13:18-1 authorizing an exception to the 80,000 pound maximum weight limitation, "good cause" and "one piece loads that cannot be dismembered, dismantled or divided in order to comply with the weight limitation" are required. N.J.A.C. 13:18-1, pertaining to permits for overdimensional and overweight vehicles, is therefore consistent with Federal law and does not impose requirements which exceed Federal standards.

An Executive Order No. 27 analysis is not required for N.J.A.C. 13:18-4, Motor Fuels Use Tax Act, N.J.A.C. 13:18-6, Insurance Verification, N.J.A.C. 13:18-9, Uninsured Motorists or N.J.A.C. 13:18-11, Organization of the Division of Motor Vehicles, because the subject matters contained in those subchapters are authorized under State law (N.J.S.A. 54:39A-1 et seq., 17:33B-41, 39:3-4e, 39:6-25, 39:6-86.1, 47:1A-1 et seq. and 52:14B-3(1)) and are not subject to any Federal requirements or standards.

Full text of the readoption can be found on the New Jersey Administrative Code at N.J.A.C. 13:18.

Full text of the adopted amendments follows:

13:18-1.7 Exceptions; insurance certificate requirement

(a) (No change.)

(b) In such cases the provisions of the Compulsory Motor Vehicle Insurance Law (N.J.S.A. 39:6B-1 et seq.) and the Security-Responsibility Law (N.J.S.A. 39:6-23 et seq.) will apply.

13:18-4.14 Interest, assessments and refund recovery

(a) Interest, compounded annually at the end of each year, at the rate of three percentage points above the prime rate per month or fraction thereof shall accrue on all moneys due, whether from assessment or refund recovery, from the date on which the taxes were originally due, or when the refund was paid to the user, to the date said moneys due are paid.

(b) (No change.)

13:18-6.9 Return of surrendered registration plates to registrant

(a) In those instances in which a registrant has surrendered registration plates to the Division pursuant to N.J.S.A. 17:33B-41 and thereafter acquires motor vehicle liability insurance and furnishes proof of same to the Director as required by N.J.S.A. 17:33B-41 and this subchapter, the Division shall return to the registrant a valid set of replacement registration plates upon payment to the Division of the fee for the set of replacement plates as set forth in N.J.A.C. 13:20-34.5(b).

(b) If a registrant seeking the return of surrendered registration plates in accordance with (a) above desires plates which contain the same combination of letters and numbers as had been contained on the surrendered plates, he or she shall first be issued a set of replacement plates at the fee as set forth in N.J.A.C. 13:20-34.5(b). Upon receipt of the replacement registration plates, the registrant may apply to the Division for plates which contain the same combination of letters and numbers as had been contained on the surrendered plates. Plates which contain the specific combination of letters and numbers requested, unless already issued to another registrant or unless such issuance is prohibited by N.J.S.A. 39:3-33.5, shall be issued to the registrant upon payment to the Division of the fee for the set of such plates as set forth in N.J.A.C. 13:20-34.5(a)3.

13:18-11.2 Public information requests and submissions

(a) A member of the public may obtain information or make a submission or a request by writing to the Office of the Director, Division of Motor Vehicles, 225 E. State Street, 9th Floor, Trenton, New Jersey 08666.

(b) A member of the public seeking general information may telephone the Division of Motor Vehicles by calling 1-609-292-6500.

(a)

DIVISION OF STATE POLICE

Firearms and Weapons

Confidentiality of Background Investigations, Permits, Firearms Identification Cards, Licenses, Certifications, Certificates, Forms of Register, Registration Statements

Adopted Repeal and New Rule: N.J.A.C. 13:54-1.15

Proposed: January 17, 1995 at 27 N.J.R. 305(a).

Adopted: April 7, 1995 by Deborah T. Poritz, Attorney General of New Jersey.

Filed: April 7, 1995 as R.1995 d.233, 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. 47:1A-2 and Executive Order No. 9 (Governor Hughes, September 30, 1963).

Effective Date: May 1, 1995.

Expiration Date: November 18, 1996.

Summary of Public Comments and Agency Responses:

No comments were received. A technical change inserting an omitted comma is made to the first sentence of new rule.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis and certification are not required because there are no Federal standards or regulations on the confidentiality of firearms and weapons background investigations, permits, firearms identification cards, licenses, certifications, certificates, forms of register, or registration statements.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks *thus*):

13:54-1.15 Confidentiality of background investigations, permits, firearms identification cards, licenses, certifications, certificates, forms of register, registration statements and applications

Any background investigation conducted by the chief of police, the Superintendent or the county prosecutor, of any applicant for a permit, firearms identification card license, or registration, in accordance with the requirements of this chapter, is not a public record and shall not be disclosed to any person not authorized by law or this chapter to have access to such investigation, including the applicant. Any application for a permit, firearms identification card, or license, and any document reflecting the issuance or denial of such permit, firearms identification card, or license, and any permit, firearms identification card, license, certification, certificate, form of register, or registration statement, maintained by any State or municipal governmental agency, is not a public record and shall not be disclosed to any person not authorized by law or this chapter to have access to such documentation, including the applicant, except on the request of persons acting in their governmental capacities for purposes of the administration of justice.

(b)

DIVISION OF STATE POLICE

Boating Safety Course

Adopted New Rules: N.J.A.C. 13:61

Proposed: February 21, 1995 at 27 N.J.R. 642(a).

Adopted: April 7, 1995 by Colonel Carl A. Williams, Superintendent, Division of State Police.

Filed: April 10, 1995 as R.1995 d.238, without change.

Authority: N.J.S.A. 12:7-60.

Effective Date: May 1, 1995.

Expiration Date: May 1, 2000.

Summary of Public Comments and Agency Response:

No comments received. N.J.A.C. 13:61 expired March 5, 1995, 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.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis and certification are not required because there are no Federal standards or regulations on boating safety courses. Rulemaking requirements are dictated by N.J.S.A. 12:7-60.

Full text of the expired rules adopted herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:61.

Full text of the adopted amendments follows:

13:61-1.10 Administration

(a) Administrative files will be maintained by Marine Law Enforcement Bureau, Division of State Police and will include applications, copies of letters of Approval and Notices of Intent to Revoke/Revocation.

(b) The Division of State Police, Marine Law Enforcement Bureau will issue a laminated certificate to each person who attends and successfully completes an approved boat safety course.

(a)

VIOLENT CRIMES COMPENSATION BOARD

Filing of Claims

Adopted Amendment: N.J.A.C. 13:75-1.5

Proposed: January 17, 1995 at 27 N.J.R. 307(a).
Adopted: March 22, 1995 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: March 27, 1995 as R.1995 d.216, **without change**.
Authority: N.J.S.A. 52:4B-9.
Effective Date: May 1, 1995.
Expiration Date: July 5, 1999.

Summary of Public Comments and Agency Response:

No comments received.

Executive Order No. 27 Statement

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

Full text of the adoption follows:

13:75-1.5 Filing of claims

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

(e) At the time of filing the claim, the Board's Counseling Unit shall provide to the victim, counseling referral services as provided by N.J.S.A. 52:4B-25.

(b)

VIOLENT CRIMES COMPENSATION BOARD

Eligibility of Claims

Adopted Amendment: N.J.A.C. 13:75-1.6

Proposed: January 17, 1995 at 27 N.J.R. 307(b).
Adopted: March 22, 1995 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: March 27, 1995 as R.1995 d.217, **without change**.
Authority: N.J.S.A. 52:4B-9.
Effective Date: May 1, 1995.
Expiration Date: July 5, 1999.

Summary of Public Comments and Agency Response:

No comments received.

Executive Order No. 27 Statement

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

Full text of the adoption follows:

13:75-1.6 Eligibility of claims

(a) (No change.)

(b) In instances where the victim of the crime has died as a direct result thereof, the Board may award compensation to the following persons:

1. A surviving spouse, parent, or child of the deceased victim who has suffered economic loss;

2. Any relative of the deceased victim as defined in N.J.S.A. 52:4B-2 who was dependent upon the victim for support, or any person who has cohabitated with the victim/decedent and who can establish by a preponderance of evidence that a dependency existed at the time of death of the victim. In examining the issue of loss of support as it relates to this paragraph, the Board shall consider any factor it deems relevant;

3. (No change.)

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

TRANSPORTATION

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

**Grove Street-Haddonfield Road (under State jurisdiction)—Route N.J. 70 Connector Ramp
Cherry Hill Township, Camden County**

Adopted New Rule: N.J.A.C. 16:28-1.64

Proposed: February 6, 1995 at 27 N.J.R. 468(a).
Adopted: March 21, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: March 29, 1995 as R.1995 d.219, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.
Effective Date: May 1, 1995.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28-1.64 Grove Street-Haddonfield Road (under State jurisdiction)—Route N.J. 70 Connector Ramp, Cherry Hill Township, Camden County

(a) The rate of speed designated for the certain part of Grove Street-Haddonfield Road (under State jurisdiction) described in this section shall be the maximum legal rate of speed:

1. In Camden County:

i. In Cherry Hill Township:

(1) For both directions of traffic:

(A) Thirty miles per hour between Park Boulevard and Wynwood Avenue.

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Penn Avenue (under State jurisdiction)—Route N.J. 70 Connector Ramp

Cherry Hill Township, Camden County

Adopted New Rule: N.J.A.C. 16:28-1.65

Proposed: February 6, 1995 at 27 N.J.R. 468(b).

Adopted: March 21, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: March 29, 1995 as R.1995 d.221, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Effective Date: May 1, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28-1.65 Penn Avenue (under State jurisdiction)—Route N.J. 70 Connector Ramp, Cherry Hill Township, Camden County

(a) The rate of speed designated for the certain part of Penn Avenue (under State jurisdiction) described in this section shall be the maximum legal rate of speed:

1. In Camden County:

i. In Cherry Hill Township:

(1) For both directions of traffic:

(A) Thirty miles per hour between Park Boulevard and Route N.J. 70.

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Park Boulevard (under State jurisdiction)—Route N.J. 70 Connector Ramp

Cherry Hill Township, Camden County

Adopted New Rule: N.J.A.C. 16:28-1.71

Proposed: February 6, 1995 at 27 N.J.R. 469(a).

Adopted: March 21, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: March 29, 1995 as R.1995 d.220, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Effective Date: May 1, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28-1.71 Park Boulevard (under State jurisdiction)—Route N.J. 70 Connector Ramp, Cherry Hill Township, Camden County

(a) The rate of speed designated for the certain part of Park Boulevard (under State jurisdiction) described in this section shall be the maximum legal rate of speed:

1. In Camden County:

i. In Cherry Hill Township:

(1) For both directions of traffic:

(A) Thirty-five miles per hour between Penn Avenue and Grove Street (County Road 644).

(c)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Turn Prohibitions

Route N.J. 70

Cherry Hill Township, Camden County

Adopted New Rule: N.J.A.C. 16:31-1.37

Proposed: February 21, 1995 at 27 N.J.R. 643(b).

Adopted: March 28, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: March 29, 1995 as R.1995 d.222, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.

Effective Date: May 1, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:31-1.37 Route 70

(a) Turning movements on certain parts of State highway Route 70 described in this subsection are regulated as follows:

1. In Camden County:

i. In Cherry Hill Township:

(1) No left turn westbound at:

(A) Route 70 and Wexford Drive (approximate milepost 6.6).

(2) No "U" turn eastbound and westbound at:

(A) Route 70 and Wexford Drive-Birchwood Park Drive south (approximate milepost 6.6).

(a)

**DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF REGULATORY AFFAIRS AND OUTDOOR
ADVERTISING**

**Junkyards Adjacent to the Interstate and National
Highway Systems**

Readoption with Amendments: N.J.A.C. 16:43

Proposed: February 21, 1995 at 27 N.J.R. 644(a).

Adopted: March 27, 1995 by W. Dennis Keck, Deputy Assistant
Commissioner for Planning and Development.

Filed: April 6, 1995 as R.1995 d.229, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 27:5E-1 et seq.

Effective Date: April 6, 1995, Readoption;
May 1, 1995, Amendments.

Expiration Date: April 6, 2000.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

The readoption with amendments are the same standards required for the control, operation, establishment and maintenance of junkyards along the State's highway systems as mandated in the New Jersey Junkyard Control Act, the Federal Highway Beautification Act of 1965, and Title 23 of the Code of Federal Regulations, Part 751. The rules are being adopted in order to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve natural beauty.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:43.

Full text of the adopted amendments follow:

CHAPTER 43

**JUNKYARDS ADJACENT TO THE INTERSTATE
AND NATIONAL HIGHWAY SYSTEMS**

16:43-1.1 Declaration of policy

The intent of this chapter is to effectuate the purposes of the New Jersey Junkyard Control Act, N.J.S.A. 27:5E-1 et seq., which are to promote the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, and to foster the public policy of the State expressed by that Act, which is to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and national highway systems within the State; further to ensure New Jersey compliance with section 136 of Title II of the Federal Highway Beautification Act of 1965, and the provisions of Title 23 of the Code of Federal Regulations, Part 751, Junkyard Control and Acquisition.

16:43-1.2 Authority

(a) The Commissioner of Transportation is authorized pursuant to:

1. (No change.)
2. N.J.S.A. 27:5E-5, to screen junkyards lawfully in existence on the effective date of the Junkyard Control Act (July 24, 1970) which are located within 1,000 feet of, and are visible from, any interstate or national system highway, and which are located outside of zones and zoned industrial areas, and to acquire such lands, or interests in lands, as may be necessary to provide adequate screening to such junkyards;
- 3.-6. (No change.)
7. N.J.S.A. 27:5E-10, to enter into agreements with the United States Secretary of Transportation relating to the control of junkyards in areas adjacent to the interstate and national highway systems, and to take action in the name of the State to comply with the terms of such agreements; and
8. (No change.)

16:43-1.3 Definitions

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

...
"Nonconforming junkyard" means a junkyard which does not comply with N.J.S.A. 27:5E-4 and which was either:

1. (No change.)
2. Lawfully established after July 24, 1970, but later failing to comply with N.J.S.A. 27:5E-1 et seq. because of the construction, widening or relocation of national or interstate highways or other changed conditions not within the junkyard owner's control, including revisions in the applicable zoning ordinances.

...
"National system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the Commissioner of Transportation, and approved by the United States Secretary of Transportation, pursuant to the provisions of Title 23 of the United States Code.

**16:43-2.1 Establishment, operation and maintenance of illegal
junkyards**

(a) No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any interstate or national highway, except the following:

1. Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the interstate and national highway systems, or otherwise removed from sight;
- 2.-4. (No change.)

16:43-4.1 Location, construction and maintenance of screening

(a) Screening and fencing required by the Junkyard Control Act shall be located, planted, constructed and maintained in the following manner:

- 1.-3. (No change.)
4. The junkyard entrance on a national highway system must be consistent with the objectives of effective control. Any gate which provides access to a national system highway shall provide effective control when closed. Such a gate shall be closed when the junkyard entrance is not in use. A junkyard entrance on a national system highway may also be made through a baffle of screening arranged so as to provide effective control. Any junkyard entrance not on a national system highway but visible from the national or interstate system shall be closed when not in use or shall be screened through a baffle.

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

16:43-4.3 Surveillance

The interstate and national highway systems will be surveyed periodically to update the junkyard inventory. Each junkyard on the inventory will be reviewed for compliance with the provisions of the Junkyard Control Act and this chapter.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

Alternate Benefit Program

Enrollment Eligibility; Transfers

Adopted Amendment: N.J.A.C. 17:1-2.12

Adopted Repeal and New Rule: N.J.A.C. 17:1-2.10

Adopted Repeal: N.J.A.C. 17:1-2.11

Proposed: February 6, 1995 at 27 N.J.R. 469(b).

Adopted: March 21, 1995 by Margaret M. McMahon, Director,
Division of Pensions and Benefits.

Filed: March 27, 1995 as R.1995 d.215, **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:66-192 et seq.

Effective Date: May 1, 1995.

Expiration Date: May 1, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

A Federal exceedance analysis is not required, since the adopted rules are not governed by any Federal standard. The rules are governed by N.J.S.A. 18A:66-192 et seq.

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

17:1-2.10 Enrollment eligibility; general provisions

(a) Full-time faculty members, visiting professors and professional administrative staffs of the University of Medicine and Dentistry of New Jersey, Rutgers, the State University, the New Jersey Institute of Technology, the State colleges, the county colleges, the Commission of Higher Education and the Office of Student Assistance are eligible to participate in the Alternate Benefit Program under the provisions of N.J.S.A. 18A:66-167 et seq.

1. For the purposes of this subchapter, "professional administrative staff" means any employee whose minimum qualifications for hiring include a baccalaureate degree or its equivalent, but shall not include career service employees as defined by the Department of Personnel pursuant to the provisions of Title 11A of the New Jersey Revised Statutes.

2. For the purposes of this subchapter, "full-time" shall be defined as working 50 percent or more of the normal work week.

(b) Any eligible person who has been enrolled in the Alternate Benefit Program for at least one year may continue to be enrolled in the program, notwithstanding promotion or transfer to a position within the institution not otherwise eligible for the program.

(c) Employees meeting the following criteria shall not be eligible to participate in the Alternate Benefit Program:

1. Individuals temporarily within the United States under an F or J visa;

2. Temporary employees, with the exception of visiting professors, who are appointed for one school year, one semester or a lesser period of time. Any such full-time employee reappointed for a third consecutive semester may enroll within the Alternate Benefit Program;

3. Any employee receiving a retirement benefit from any pension system of the State of New Jersey, including an individual collecting an annuity or cash distribution from the Alternate Benefit Program; or

4. Individuals employed in a clerical or other non-professional position.

(d) Regarding questions arising concerning the application of this section, the Director of the Division of Pensions and Benefits shall

have responsibility to determine eligibility for participation in the Alternate Benefit Program in consultation with the employing institution.

1. If the Division of Pensions and Benefits declares a particular job title to be eligible, all personnel in the several institutions currently employed in that position will then become eligible for participation in the Alternate Benefit Program and must, if otherwise eligible, elect within 90 days to participate in either the Alternate Benefit Program or the Public Employees' Retirement System.

2. If an individual does not file an "Election of Retirement Coverage" form during this 90-day period, he or she must remain in, or, if he or she is a member of the Teachers' Pension and Annuity Fund transfer to the Public Employees' Retirement System.

17:1-2.11 (Reserved)

17:1-2.12 Interprogram transfers; transfer to the Alternate Benefit Program from another State retirement system by employees of the Commission of Higher Education or Office of Student Assistance

(a) If an Alternate Benefit Program participant terminates employment in a covered institution and becomes employed in an eligible position in another New Jersey public institution, the Division of Pensions will, upon the filing of the required forms with the division, continue all of the participant's rights and obligations in the New Jersey Alternate Benefit Program.

(b) Any individual employed by the Commission of Higher Education or Office of Student Assistance subsequent to July 1, 1994, but prior to ***[(the effective date of this amendment)]* *May 1, 1995*** shall be entitled to transfer to the Alternate Benefit Program ***[within a period of 120 days from (the effective date of this amendment)]* *until August 29, 1995***.

TREASURY-GENERAL/COMMERCE AND ECONOMIC DEVELOPMENT

(b)

DIVISION OF PURCHASE AND PROPERTY DIVISION OF DEVELOPMENT FOR SMALL BUSINESSES AND WOMEN AND MINORITY BUSINESSES

Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses

Joint Readoption: N.J.A.C. 12A:10 and 17:13

Proposed: January 3, 1995 at 27 N.J.R. 52(a).

Adopted: March 30, 1995 by Alan J. Steinberg, Assistant
Commissioner, Department of Commerce and Economic
Development and James Archibald, Deputy State Treasurer,
Department of Treasury.

Filed: March 30, 1995 as R.1995 d.224, **with portions of the
proposed amendments not adopted.**

Authority: N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17
et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13 and
Executive Order No. 84 (1993).

Effective Date: March 30, 1995, Readoption; May 1, 1995,
Amendments.

Expiration Date: March 30, 1998.

The Department of Commerce and Economic Development and the Department of Treasury have received substantive comments on some of the proposed amendments to N.J.A.C. 17:13(12A:10A), which they need to consider fully. However, to prevent the chapter from expiring, the Departments are adopting the current rules found at N.J.A.C. 17:13 and 12A:10. The full text of this chapter appeared as adopted rules in the New Jersey Register of Tuesday, January 3, 1995 (27 N.J.R. 129(a)).

The proposed amendments establishing an exclusion for professional services from the set-aside program and regarding the award of bids despite a good faith effort are currently under review and will not be

adopted. However, the Departments of Commerce and the Treasury plan to promptly publish a regulation which would affirm that professional service contracts be included in the set-aside program for contracts for the following agencies: 1. The Division of Purchase and Property; and 2. The Division of Building and Construction. Moreover, the Departments of Commerce and Treasury anticipate publishing proposed amendments which would establish a limited exclusion from the requirements of N.J.A.C. 17:13 and 12A:10 for professional service contracts for attorneys, financial consultants, and underwriters. Executive Order No. 26, executed by Governor Whitman on October 25, 1994, will continue to require that the State and its contracting agencies give "particular consideration" for minority-owned and women-owned firms in the award of certain professional service contracts, and will not be affected by the readoption of the regulations or any amendments thereto.

Summary of Public Comments and Agency Responses:

The State of New Jersey's Department of Commerce and Economic Development and its Department of Treasury are adopting N.J.A.C. 12A:10 and 17:13 as proposed, except for the professional services exclusion and award of bids despite a good faith effort. Other technical changes have been made to correct minor points of edification and to incorporate specific clarifications. These rules re-establish a set-aside program for the State's contracting agencies which bid and execute goods and services exclusive of construction-related contracts. These rules were proposed on Tuesday, January 3, 1995 at 27 N.J.R. 52(a).

Comments received during the comment period, which ended on February 2, 1995, are summarized and addressed hereinafter. Comments were received from:

1. L.A. Hernandez, New Jersey Highway Authority, Woodbridge
2. Avis Y. Yates, PC Pros, Inc., Mountainside
3. Lesley Borges-Carter, Mercer County Black Business Association, Trenton
4. Lynn Clator, President, Contract Compliance, Philadelphia
5. Georgina Jackson, Business Communications Group, Morristown
6. Wanda Webster Stansbury, Management Interventions, Inc., Trenton
7. Eileen Shrem, N.J. Association of Women Business Owners, Bridgewater
8. Suzanne Pease, N.J. Association of Women Business Owners, Bridgewater
9. Brenda B. Hopper, N.J. Small Business Development Centers, Newark
10. Ronald W. Brown, NJ United Minority Business Brain Trust, Inc., Plainfield
11. Senator Wynona Lipman, Senator, 29th District, Newark
12. Luis C. Aguero, P.E., Technical Associates, Inc., Union

COMMENT: Professional services should not be excluded from the set-aside program.

RESPONSE: Comments received on the proposed amendment establishing an exclusion for professional services from the set-aside program were found to have merit and, consequently, will not be adopted at this time. However, the Departments of Commerce and Treasury plan to publish a regulation which would affirm that professional service contracts be included in the set-aside program for contracts for the following agencies: 1) The Division of Purchase and Property; and 2) The Division of Building and Construction. Moreover, the Departments of Commerce and Treasury anticipate publishing proposed amendments which would establish a limited exclusion from the requirements of N.J.A.C. 17:13 and 12A:10 for professional service contracts for attorneys, financial consultants and underwriters.

COMMENT: Low bids that require but are absent of any good faith effort regarding this program should not be awarded such contract.

RESPONSE: This comment has merit and is not being adopted. The proposed text of the first sentence of N.J.A.C. 17:13-4.1(d)4 (12A:10-4.1(d)4), however, remains, "The award of any contract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a good faith effort to meet the set-aside goals."

COMMENT: N.J.A.C. 17:13 and 12A:10 are slated to expire three years from the new date of adoption, after which the program and data will be evaluated. It would be more effective to evaluate the program and its results at the end of each fiscal year.

RESPONSE: N.J.A.C. 17:13-5.3 (12A:10-5.3) of the rules already requires an annual review of and a report on the need for continuation

or modification of the small, minority and female business set-aside program.

COMMENT: Explain the rationale for the three-year time frame.

RESPONSE: The U.S. Supreme Court's decision in the *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) ("*Croson*") held that any race- and gender-based remedy in contracting must be narrowly tailored. The three-year time frame will enable data collection to be analyzed and, subsequently, recommendations to be made on the need for continuation or modification of the set-aside program.

COMMENT: N.J.A.C. 17:13-4.1 (12A:10-4.1) states "... to the bidder whose proposal meets or demonstrates a [genuine] good faith effort to meet the set-aside goals." Those so-called "good faith" efforts should be scrutinized and prime contractors should be called to task for not complying fully; if noncompliant, some type of penalty should be imposed.

RESPONSE: N.J.A.C. 17:13-4.1(d)2 (12A:10-4.1) of the rules already requires bidders to certify that they will comply with New Jersey laws or face existing criminal and civil penalties, including debarment, in the event of non-compliance.

COMMENT: N.J.A.C. 17:13-3 (12A:10-3) has been amended to not require small businesses to be certified.

RESPONSE: This statement is incorrect. Small businesses are not required to be certified in accordance with N.J.S.A. 52:27H-21.18.

COMMENT: All firms seeking State set-aside contracts should be required to become certified.

RESPONSE: Administrative rules cannot establish requirements that exceed the statutes on which those rules are based. There is no existing legislative requirement for certification of small businesses. Any such certification requirement would entail enabling legislation.

COMMENT: Rules should not require an entirely new certification package to be completed upon expiration of a firm's certification.

RESPONSE: These proposed rules refer to but do not govern the Unified Certification Program, which is governed by a different statute and set of rules (N.J.A.C. 12A:11).

COMMENT: Firms meeting all three categories (small and minority and women) should be eligible to be classified and listed under each category.

RESPONSE: Certification and registration procedures are set forth in N.J.A.C. 12A:11 and permit applicants to designate the category(ies) under which they prefer to be listed. They may be listed under all three categories, if eligible. Companies listed under the category selected by a State contracting agency would be eligible for that contract.

COMMENT: Contractors/vendors should be certified prior to the award of the contract to prevent any problems that could be caused by ineligibility of contractor/vendor.

RESPONSE: It is the policy of both the Department of Commerce and Economic Development and the Department of Treasury to encourage businesses to secure their registration and certification status independent of any specific contract or bid in order to ensure their eligibility well in advance of any procurement. So long as bidder has evidence of its registration or certification in its bid, the bid must be accepted.

COMMENT: Explain what fees are applicable to registration and certification and how often they are required.

RESPONSE: No fees currently exist for Certification, although N.J.S.A. 52:27 permits fees to be charged. The registration fee for vendors currently is \$30.00 annually.

COMMENT: List the fees that exist for other businesses doing business with the State of New Jersey.

RESPONSE: This comment is beyond the scope of this rule proposal.

COMMENT: N.J.A.C. 17:13-3.1(a) (12A:10-3.1(a)) requires that businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract. What happens if the questioned contractor and/or subcontractor has already completed its goods/services contract and now has been deemed ineligible to participate in the program?

RESPONSE: The issue of payment regarding this comment is not addressed in the scope of these rules. However, ineligible contractors/subcontractors would be subject to the existing penalties of misrepresentation that are defined in these rules.

COMMENT: Explain penalties to the contractor/vendor that might result due to the ineligibility of the contractor/vendor and failure to meet the contract's set-aside requirement.

RESPONSE: In addition to the penalties for misrepresentation that exist for small and women and minority businesses who apply for registration and/or certification, N.J.A.C. 17:13-4.1(d)2 (12A:10-4.1(d)2) describes bidder penalties in the event of noncompliance.

COMMENT: Please clarify the statement "Each state department served by the Department of Purchase and Property."

RESPONSE: The Division of Purchase and Property is a functional unit of the General Services Administration in the Department of the Treasury. The Division is the centralized contracting agency for the 17 departments of the Executive Branch of State Government. As such, the Division, through its Purchase Bureau, performs the bidding and contracting functions necessary for the State to conduct its business and accomplish its missions.

COMMENT: Subchapter 4. Exemptions from Set-Aside Program: Can this provision include procurement of goods and services on a sole-source basis from an 8(a) firm (a certified disadvantaged business under Federal law)?

RESPONSE: No. The exemptions referred to at N.J.A.C. 17:13-4.3 and (12A:10-4.3) relate to a situation wherein a State procurement is funded by Federal dollars, the expenditure of which requires compliance with Federal disadvantaged business requirements. Examples would include procurement funded through EPA, which may require compliance with affirmative action provisions which are different from those set forth in these rules. Approval as an 8(a) firm cannot establish the basis for a sole-source procurement.

Executive Order No. 27 Statement

These rules do not exceed any existing Federal requirements regarding set-aside contract programs.

Full text of readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:13 (12A:10).

Full text of the adopted amendments follows (deletions indicated in brackets with asterisks *[thus]*):

17:13-1.2(12A:10-1.2) Definitions

(a) The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

...
 ["Professional services" includes, but is not limited to, attorney, bond and financial counselors, accountants, public relations and advertising.]
 ...

17:13-2.3(12A:10-2.3) Right to hearing upon denial of contract

A bidder or contractor that is denied any contract or the right to bid on any contract because of a determination that it failed to make a good faith effort to solicit and award subcontracts to eligible minority and female businesses shall be entitled to an administrative hearing as provided by N.J.A.C. 17:12-3.1 through 3.6.

17:13-3.1(12A:10-3.1) Certification and registration procedures for small businesses, minority businesses and female businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract, or by December 1, 1995, the date established by the Department of Commerce when certification will be required for all minority and female businesses seeking set-aside contracts or subcontracts, whichever date comes first. In accordance with N.J.S.A. 52:27H-21.18, small businesses are not required to be certified.

(b) (No change.)

17:13-4.1(12A:10-4.1) Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least 15 percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible small businesses, at least seven percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible minority

businesses and at least three percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible female businesses, which shall be measured by the total dollar value of all such set-aside contracts in comparison to the total dollar value of all publicly advertised contracts awarded by the agency within a fiscal year.

1.-2. (No change.)

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

(d) When the State contracting agency has made a determination that a contract is suitable for sub-contract set-aside designation, the following provisions apply:

1.-3. (No change.)

4. The award of any contract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a good faith effort to meet the set-aside goals. *[A contract or subcontract, however, may be awarded to the lowest bidder despite the absence of such good faith efforts if the next lowest bid is either:

- i. \$100,000 or more higher than the lowest bid; or
- ii. Fifteen percent or more higher than the lowest bid.

(e) The term "contract" as used in this chapter shall not include contracts for professional services.]*

17:13-4.2(12A:10-4.2) Good faith efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a good faith effort to solicit and award subcontracts to eligible small businesses, minority businesses or female businesses, as established in the RFP:

1.-5. (No change.)

(b) (No change.)

17:13-5.2(12A:10-5.2) Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the Department of Commerce a report containing the following information prescribed by the Department.

1. The total number and dollar value of all contracts advertised and awarded, delineating which of these contracts and the percentages that were advertised and awarded as small business, minority business or female business set-aside contracts;

i. The State contracting agencies, in determining compliance with the set-aside goals for the three categories, shall count only those contracts awarded as a result of set-aside designations and only for the categories designated. For example, if an agency sets aside a contract for small businesses and the contract is awarded to a small business owned by a minority woman, that contract can be counted only as a small business award and not as a minority business or a female business award. If a registered small business, minority business or female business is awarded a contract that was not set aside, that contract cannot be counted as a set-aside award but shall be counted toward attainment of the agency's overall goal.

ii. (No change.)

2.-4. (No change.)

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

(a)

**DIVISION OF BUILDING AND CONSTRUCTION
DIVISION OF DEVELOPMENT FOR SMALL
BUSINESSES AND WOMEN AND MINORITY
BUSINESSES**

**Minority and Female Contractor and Subcontractor
Participation in State Construction Contracts**

**Joint Readoption with Amendments: N.J.A.C.
12A:10A and 17:14**

Proposed: January 3, 1995 at 27 N.J.R. 54(a).

Adopted: March 30, 1995 by Alan J. Steinberg, Esq., Assistant Commissioner, Department of Commerce and Economic Development and James Archibald, Deputy Treasurer, Department of Treasury.

Filed: March 30, 1995 as R.1995 d.225, with portions of the proposed amendments not adopted.

Authority: N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13 and Executive Order No. 84(1993).

Effective Date: March 30, 1995, Readoption;
May 1, 1995, Amendments.

Expiration Date: March 30, 1998.

Summary of Public Comments and Agency Responses:

The Department of Commerce and Economic Development and the Department of Treasury have received substantive comments on some of the proposed amendments to N.J.A.C. 17:14 (12A:10A), which they need to consider fully. To prevent the chapter from expiring, the Departments are adopting current rules found at N.J.A.C. 17:14 and 12A:10A. The full text of this chapter appeared as adopted rules in the New Jersey Register of Tuesday, January 3, 1995 (27 N.J.R. 135(a)).

The proposed amendments establishing an exclusion for professional services from the set-aside program and regarding the award of bids despite a good faith effort are currently under review and will not be adopted. However, the Departments of Commerce and the Treasury plan to promptly publish a regulation which would affirm that professional service contracts be included in the set-aside program for contracts for the following agencies: 1. The Division of Purchase and Property; and 2. The Division of Building and Construction. Moreover, the Departments of Commerce and Treasury anticipate publishing proposed amendments which would establish a limited exclusion from the requirements of N.J.A.C. 17:14 and 12A:10A for professional service contracts for attorneys, financial consultants, and underwriters. Executive Order No. 26, executed by Governor Whitman on October 25, 1994, will continue to require that the State and its contracting agencies give "particular consideration" for minority-owned and women-owned firms in the award of certain professional service contracts, and will not be affected by the readoption of the regulations or any amendments thereto.

Comments received during the comment period, which ended on February 2, 1995, are summarized and addressed hereinafter. Comments on the overall chapter readoption were received from:

1. L.A. Hernandez, New Jersey Highway Authority, Woodbridge
2. Georgina Jackson, Business Communications Group, Morristown
3. Suzanne Pease, N.J. Association of Women Business Owners, Bridgewater
4. Brenda B. Hopper, N.J. Small Business Development Centers, Newark
5. Luis C. Aguero, P.E., Technical Associates, Inc., Union
6. Lynn Clator, President, Contract Compliance, Philadelphia

COMMENT: Professional services should not be excluded from the set-aside program.

RESPONSE: Comments received on the proposed amendment establishing an exclusion for professional services from the set-aside program were found to have merit and, consequently, will not be adopted at this time. However, the Departments of Commerce and Treasury plan to publish a regulation which would affirm that professional service contracts be included in the set-aside program for contracts for the following agencies: 1) The Division of Purchase and Property; and 2) The Division of Building and Construction. Moreover, the Departments

of Commerce and Treasury anticipate publishing proposed amendments which would establish a limited exclusion from the requirements of N.J.A.C. 17:14 and 12A:10A for professional service contracts for attorneys, financial consultants and underwriters.

COMMENT: Low bids that require, but are absent of, any good faith effort regarding this program should not be awarded such contract.

RESPONSE: This comment has merit and is not being adopted. The proposed text of the first sentence of N.J.A.C. 17:14-4.1(d) (12A:10A-4.1(d)), however, remains, "The award of any contract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a good faith effort to meet the set-aside goals."

COMMENT: Contractors/vendors should be certified prior to the award of the contract to prevent any problems that could be caused by ineligibility of contractor/vendor.

RESPONSE: It is the policy of both the Department of Commerce and Economic Development and the Department of Treasury to encourage businesses to secure their registration and certification status independent of any specific contract or bid in order to ensure their eligibility well in advance of any procurement. So long as bidder has evidence of its registration or certification in its bid, the bid must be accepted.

COMMENT: N.J.A.C. 17:14-3.1(a) (12A:10A-1.4(a)) requires that businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract. What happens if the questioned contractor and/or subcontractor has already completed its goods/services contract and now has been deemed ineligible to participate in the program?

RESPONSE: The issue of payment regarding this comment is not addressed in the scope of these rules. However, ineligible contractors/subcontractors would be subject to the existing penalties of misrepresentation that are defined in these rules.

COMMENT: Explain penalties to the contractor/vendor that might result due to the ineligibility of the contractor/vendor and failure to meet the contract's set-aside requirement.

RESPONSE: In addition to the penalties for misrepresentation that exist for small and women and minority businesses who apply for registration and/or certification, N.J.A.C. 17:14-4.1(d)2 (12A:10A-4.1(d)2) describes bidder penalties in the event of noncompliance.

COMMENT: Explain what fees are applicable to registration and certification and how often they are required.

RESPONSE: No fees currently exist for Certification, although N.J.S.A. 52:27 permits fees to be charged. The registration fee for vendors currently is \$30.00 annually.

COMMENT: List the fees that exist for other businesses doing business with the State of New Jersey.

RESPONSE: This comment is beyond the scope of this rule proposal.

Executive Order No. 27 Statement

These rules do not exceed any existing Federal requirements regarding set-aside contract programs.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:14 (12A:10A).

Full text of the adopted amendments follows (deletions from proposal indicated in brackets with asterisks *[thus]*):

17:14-1.2 (12A:10A-1.2) Definitions

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

....
["Professional services" includes, but is not limited to, architects and engineers.]

....
"Remedial goals" means the statutorily determined percentages of contracts awarded by each State contracting agency to eligible minority and female businesses in order to eradicate the effects of past discrimination."

....

ADOPTIONS

17:14-2.3 (12A:10A-2.3) Right to hearing upon denial of contract

A bidder or contractor that is denied any contract or the right to bid on any contract because of a determination that it failed to make a good faith effort to solicit and award subcontracts to eligible minority and female businesses shall be entitled to an administrative hearing as provided by N.J.A.C. 17:12-3.1 through 3.6.

17:14-3.1 (12A:10A-3.1) Certification and registration procedures for small businesses, minority businesses and female businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract, or by December 1, 1995, when certification will be required for all minority and female businesses seeking set-aside contracts or subcontracts, whichever date comes first. In accordance with N.J.S.A. 52:27H-21.18, small businesses are not required to be certified.

(b) (No change.)

17:14-4.1 (12A:10A-4.1) Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least seven percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible minority businesses and at least three percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible female businesses, which shall be measured by the total dollar value of all such set-aside contracts in comparison to the total dollar value of all publicly advertised contracts awarded by the agency within a fiscal year.

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

(d) When the State contracting agency has made a determination that a contract is suitable for subcontract set-aside designation, the following provisions apply:

1.-3. (No change.)

4. The award of any contract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a good faith effort to meet the set-aside goals. *[A contract or subcontract, however, may be awarded to the lowest bidder despite the absence of such good faith efforts if the next lowest bid is either:

- i. \$100,000 or more higher than the lowest bid; or
- ii. Fifteen percent or more higher than the lowest bid.]*

17:14-4.2 (12A:10A-4.2) Non-remedial subcontracting target program and procedures

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

(c) The State contracting agency shall set separate target levels, to be no less than the remedial target levels, for the participation of minority and female business subcontractors for each construction contract awarded pursuant to this program. The target levels shall be set according to the following procedures:

1.-4. (No change.)

5. The total dollar value of the subcontractable elements with the greatest likelihood of participation by minority or female businesses shall be combined. The percentage of the total dollar value of the contract that this combined amount represents shall be used as a guide by the State contracting agency to set a reasonable target for overall minority business participation in subcontracted elements of the contract but in no event shall exceed 50 percent of the subcontracted elements.

6. (No change.)

(d) (No change.)

[(e) The term contract as used in this chapter shall not include contracts for professional services.]

Recodify (f)-(j) as (e)-(i) (No change in text.)

OTHER AGENCIES

17:14-4.3 (12A:10A-4.3) Good faith efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a good faith effort to solicit and award subcontracts to eligible minority and female businesses:

(b) (No change.)

17:14-5.2 (12A:10A-5.2) Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the Department of Commerce a report containing the following information prescribed by the Department:

1. The total number and dollar value of all contracts advertised and awarded, delineating which of these contracts and the percentages that were advertised and awarded as minority or female business set-aside contracts;

i. The State contracting agencies, in determining compliance with the set-aside goals for the two categories, shall count only those contracts awarded as a result of set-aside designations and only for the categories designated. For example, if an agency sets aside a contract for woman-owned business and the contract is awarded to a business owned by a minority woman, that contract can be counted only as a woman-owned business award and not as a minority business award. If a registered minority business, or female business was awarded a contract that was not set aside, that contract cannot be counted as a set-aside award but shall be counted toward attainment of the agency's overall goal.

2.-4. (No change.)

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

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Surveillance Employment Restrictions

Adopted Amendment: N.J.A.C. 19:45-1.10

Proposed: February 21, 1995 at 27 N.J.R. 654(a).

Adopted: April 5, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: April 7, 1995 as R.1995 d.231, **without change.**

Authority: N.J.S.A. 5:1-63(c), 69(a) and 70(j).

Effective Date: May 1, 1995.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

COMMENT: Harrah's Casino Hotel, Resorts International Hotel, Inc., TropWorld Casino and Entertainment Resort and William H. Hewitt of the TropWorld Surveillance Department support the proposed amendments as published.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement has indicated that it does not interpose an objection to the proposal.

RESPONSE: Accepted.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this adoption are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

19:45-1.10 Closed circuit television system; surveillance department control; surveillance department restrictions

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

(g) Surveillance department employees or agents of the licensee assigned to monitor the activities shall be independent of all other departments. In addition to any other restrictions contained in the Act and the rules promulgated thereunder, no present or former surveillance department employee shall accept employment as a

casino key employee or casino employee with the same casino hotel or prospective casino hotel in which the surveillance department employee was previously employed or within any other casino hotel or prospective casino hotel whose surveillance department is under the operational control of the same person who controlled the surveillance department in which the surveillance department employee had been previously employed, unless one year has passed since the former surveillance department employee worked in the surveillance department. Notwithstanding the foregoing, the Commission may, upon the filing of a written petition, waive this restriction and permit the employment of a present or former surveillance department employee in a particular position after consideration of the following factors:

1. Whether the former surveillance department employee will be employed in a department or area of operation that the surveillance department does not monitor;
2. Whether the surveillance and security systems of the casino licensee will not be jeopardized or compromised by the employment of the former surveillance department employee in the particular position; and
3. Whether the former surveillance department employee's knowledge of the procedures of the surveillance department would not facilitate the commission by any person of irregularities or illegal acts or the concealment of any such actions or errors.

(h)-(i) (No change.)

(a)

CASINO CONTROL COMMISSION
Accounting and Internal Controls
Patron Request for Suspension or Reinstatement of
Credit Privileges

Adopted Amendment: N.J.A.C. 19:45-1.27A

Proposed: February 21, 1995 at 27 N.J.R. 655(a).

Adopted: April 5, 1995 by the Casino Control Commission,
Bradford S. Smith, Chairman.

Filed: April 7, 1995 as R.1995 d.232, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(a) and 101(j).

Effective Date: May 1, 1995.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

COMMENT: Harrah's Atlantic City (Harrah's) supports the proposal, but also requests that the proposal be amended to provide that if a patron requests the suspension of his credit privileges in person at the Commission booth, the Commission inspector shall immediately notify the casino's credit department, so that the identification presented by the patron can be matched with the identification contained in the credit department's file.

RESPONSE: Accepted in part and rejected in part. Although the suggested change has merit, it is beyond the scope of this proposal, which is limited to permitting the filing of such requests by mail. The Commission will, however, instruct its inspection staff to notify casino's credit

department, to attempt to verify the identification with that contained in its credit file. This procedure will be implemented with respect to requests to reinstate as well as to suspend credit privileges.

COMMENT: The Division of Gaming Enforcement has indicated that it supports the adoption of the proposed amendment as published.

RESPONSE: Accepted.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this adoption are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

19:45-1.27A Patron request for suspension of credit privileges

(a) Any person may voluntarily suspend his or her credit privileges at all licensed casinos by submitting a written request to the Commission in accordance with this section.

1. Such request may be submitted in person at the offices of the Casino Control Commission, Employee License Information Unit, Arcade Building, 2nd Floor, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey, or at the Commission inspector's booth at any licensed casino. Any person requesting suspension of credit privileges in person shall present valid identification credentials containing the person's signature and either a photograph or a general description of that person.

2. Such request may also be submitted by mail addressed to the Director of the Compliance Division, Casino Control Commission, Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey 08401. Any request for suspension of credit privileges which is submitted by mail shall be signed before a notary public or other person empowered by law to take oaths and shall contain a certificate of acknowledgement by such notary public or other person attesting to the identity of the person making the request.

(b) A request for suspension of credit privileges shall be in a form prescribed by the Commission, which shall include the following:

1.-5. (No change.)

6. If the request for suspension of credit privileges is made in person:

i. The type of identification credentials examined containing the person's signature, and whether said credentials included a photograph or general description of the person; and

ii. The signature of a Commission employee authorized to accept such request, indicating that the signature of the person requesting suspension of credit privileges appears to agree with that contained on his or her identification credentials and that any physical description or photograph of the person appears to agree with his or her actual appearance; and

7. If the request for suspension of credit privileges is made by mail, a certificate of acknowledgement executed by a notary public or other person empowered by law to take oaths attesting to the identity of the person who is making the request for suspension of credit privileges.

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

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF ENVIRONMENTAL PLANNING

Amendment to the Sussex County and Upper Delaware Water Quality Management Plans

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed amendment to the Sussex County and Upper Delaware Water Quality Management (WQM) Plans. The amendment proposal has been submitted by the Sussex County Department of Planning and Development and the Musconetcong Sewerage Authority (MSA). This amendment would update the Byram Township and MSA Wastewater Management Plans (WMPs) to allow for expansion of the sewer service area of the MSA Water Pollution Control Plan (WPCP) to include portions of Byram Township. An initial allocation of 60,000 gallons per day (gpd) has been provided to Byram Township based on a temporary return of allocation from Stanhope Borough to the MSA. Wastewater treatment capacity at the MSA WPCP for Stanhope Borough was constructed with Federal grant funding awarded in 1988. The proposed reallocation of 60,000 gpd from Stanhope Borough to Byram Township, although envisioned as being temporary, does represent a division of Federally funded wastewater capacity.

This proposal amends the MSA WMP with regard to the projected wastewater flow for the MSA WPCP, which discharges to the Musconetcong River. The projected wastewater flow is increased from a maximum 30-day average of 5.79 million gallons per day (mgd) to a maximum 30-day average of 5.89 mgd. This increase provides for an additional 40,000 gpd allocation to Byram Township with the return of the 60,000 gpd allocation to Stanhope Borough. The increase to 5.89 mgd is contingent on Department approval of a rerating of the Phase I and IA combined MSA WPCP and modification of the MSA WPCP Discharge Allocation Certificate.

The initial 60,000 gpd allocation will be used by Byram Township primarily to serve the following: (a) existing commercial development along the Route 206 corridor, the Consolidated School, and the Municipal Complex all of which are served by on-site septic systems; (b) the Intermediate School, which is served by a WPCP discharging to Lubbers Run; and (c) the proposed 160,000 square foot Byram Plaza shopping center. The existing treatment systems will be abandoned upon connection to the MSA system. This proposal amends the Byram Township WMP to delete reference to a separate WPCP discharging to ground water to serve the proposed Byram Plaza shopping center. The additional 40,000 gpd allocation to Byram Township will allow for service of additional existing and new development within the delineated future sewer service area.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; environmental assessment requirements for a Discharge Allocation Certificate; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Sussex County and Upper Delaware WQM Plans. All information related to the Sussex County WQM Plan and the proposed amendment is located at the Sussex County Department of Planning and Development, Division of Environmental Resource Planning, County Administration Building, Plotts Road, P.O. Box 709, Newton, New Jersey 07860; and the Department, Office of Environmental Planning, CN418, 401 East State Street, Trenton, New Jersey 08625. All information related to the Upper Delaware WQM Plan and the proposed amendment is located at the Department address cited above. This information is available for inspection between 8:30 A.M. and 4:00

P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Office of Environmental Planning at (609) 633-1179 or the Sussex County Department of Planning and Development at (201) 579-0500.

Interested persons may submit written comments on the proposed Upper Delaware WQM Plan amendment to Dr. Daniel J. Van Abs, at the Department address cited above with a copy sent to Mr. Julius DiRenzo, Chairman, Musconetcong Sewerage Authority, P.O. Box 416, Stanhope, New Jersey 07874. All comments regarding the proposed amendment to the Upper Delaware WQM Plan must be submitted within 15 days following the Sussex County Board of Chosen Freeholders' public meeting identified below. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Department with respect to the amendment request.

Any interested persons may request in writing that the Department hold a nonadversarial public hearing on the Upper Delaware WQM Plan amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted to Dr. Van Abs at the Department address cited above within 15 days following the Sussex County Board of Chosen Freeholders' public meeting identified below. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment at which time all interested persons may appear and shall be given an opportunity to be heard. The public meeting will be held on Wednesday, June 14, 1995 at 2:00 P.M. in the Freeholder meeting room, County Administration Building, Plotts Road, Newton, New Jersey. Interested persons may submit written comments on the amendment to Mr. George Krauss, Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Dr. Daniel J. Van Abs, Office of Environmental Planning, at the Department address cited above. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the Department must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the Department during its review. Sussex County and the Department thereafter may approve and adopt this amendment without further notice.

(b)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Notice of Availability of Approved Budget for Fiscal Year 1996 and Most Recent Annual Audit

Take notice that, pursuant to N.J.A.C. 7:60-1.4(f), the approved budget and the results of the most recent annual audit are available from the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board (Board). On January 5, 1995, the Board approved the budget for Fiscal Year 1996, July 1, 1995 through June 30, 1996. On April 6, 1995, the Board determined in accordance with N.J.A.C. 7:60-1.4(c) that because of the funds available there is no need for an assessment for Fiscal Year 1996. However, the Board anticipates there will be a fee assessments in subsequent years. A copy of the approved budget and the results of the most recent annual audit may be obtained from the NJ Low-Level Radioactive Waste Disposal Facility Siting Board, CN-410, Trenton, N.J. 08625-0410, or call (609) 777-4247.

(a)

POLICY AND PLANNING**Notice of Public Hearing and Request for Public Comment****Review of Discrete Emission Reductions offered by Public Service Electric and Gas Company and Clean Air Action Corporation for a Pilot Emissions Trading Program**

Take notice that the Department of Environmental Protection (the Department) is soliciting comments on two companies' applications for verification of emission reductions so that they would be available for consideration as credits toward compliance with applicable air pollution control requirements. The two companies are Public Service Electric and Gas (PSE&G) and Clean Air Action Corporation (CAAC), referred to hereafter as the emission reductions generators.

The actions by PSE&G and CAAC herein under review are part of a pilot emissions trading initiative. The emission reductions under consideration are discrete emission reductions; that is, the reductions occurred during a specific finite period, and are not continuing reduction rates.

PSE&G is seeking approval of a total of 7,139 tons of oxides of nitrogen (NO_x) emission reductions. These reductions were generated at PSE&G's Hudson Unit-2 through the substitution of cleaner fuel during the summers of 1992 and 1993, and at PSE&G's Mercer Unit-2 through the substitution of cleaner fuel during the summer of 1992 and through the substitution of a cleaner fuel in conjunction with the use of selective non-catalytic reduction (SNCR) during the summer of 1993.

CAAC is seeking approval of a total of 42.26 tons of volatile organic compounds (VOC) emission reductions. These reductions were generated by the introduction, during the summers of 1993 and 1994, of gasoline sold in New Jersey with a lower Reid Vapor Pressure (RVP) than what was required for the gasoline distribution system. RVP is a measurement of gasoline volatility and thus an indicator of gasoline evaporation rate. Emissions from gasoline bulk storage, transfer and delivery operations, and ultimately the automobile can be decreased by reducing the RVP of the gasoline.

PSE&G's and CAAC's applications result from their participation in the Emission Reduction Credit Demonstration project (ERC Demonstration Project) sponsored by the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Region Air Management Association (MARAMA). This project was a cooperative effort between the NESCAUM/MARAMA states, EPA, industry representatives, and environmental advocates to explore the feasibility and potential mechanisms for creating and using emission reduction credits as an alternative means of complying with stationary and mobile source air pollution control requirements.

The emission reductions could be considered for use as a compliance tool by facilities in neighboring states, as well as by facilities in New Jersey, provided that such use was allowed by the laws and regulations of the State in which the facility was located and was in accordance with the applicable policies of the State and EPA.

The Department has reviewed the above protocols to verify that:

- 1) emission reductions did, in fact, occur;
- 2) the emission reductions were calculated in accordance with generally accepted practices for determining air contaminant emissions; and
- 3) at the time of creation, the emission reductions were a result of voluntary actions and were not required by any applicable air pollution control requirement contained in New Jersey's rules or in New Jersey's State Implementation Plan (SIP) for the attainment and maintenance of the ozone National Ambient Air Quality Standard (NAAQS).

The Department invites written comment and/or oral comment at the public hearing announced below on the protocols used to quantify these emission reductions. At the public hearing each emission reduction generator has the opportunity to present information showing the actions taken to reduce emissions of air pollution, the records made to document the reductions, and the protocols used to quantify the emission reductions.

The Department also seeks public input on the general concept of generating and using discrete emission reduction credits as an alternative compliance mechanism. Commentors may address such topics as the criteria that should be applied to determine if emission reductions from a given source are creditable, and the mechanisms, and processes by which generators should document, quantify and sell emission reductions. In addition, the Department seeks guidance on the method by which government agencies and/or appropriate third parties, as well as emission generators, verify, approve or certify such credits.

The Department has reviewed these two applications as part of its participation in the ERC Demonstration Project. The Department understands that these applications represent trial efforts to explore the practicalities and issues entailed in the creation and trading of discrete emission reductions. Any actions or determinations of the Department in respect to the two applications shall be of a trial nature and shall not bind the Department in any future actions or determinations with respect to the generation of emission reductions for credit. In the near future, the Department expects to hold public comment periods on proposals to use emission reduction credits and public hearings on rules which will govern both the creation and use of credits. At this time there are applications pending with the Department for five uses of these discrete emission reductions.

The **public hearing** will be held on Tuesday, May 16, 1995 at 10:00 A.M. at:

Department of Environmental Protection
Public Hearing Room
401 East State Street, First Floor
Trenton, New Jersey

Interested persons may submit written comments by May 22, 1995 to:

Kate Joyce, Ph.D.
Department of Environmental Protection
Air Quality Management CN 418
401 East State Street
Trenton, New Jersey 08625-0418

A copy of the proposed hearing agenda or the technical support documents may be requested from:

Ayesha Rahman or Linda O'Hara
Office of Air Quality Management
Phone: (609) 777-1345

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**Notice of Receipt of Petition for Rulemaking**

Petitioner: Monmouth Medical Center By: Frank Ciesla, Esq.,
Giordano, Halleran & Ciesla, PC.

Take notice that on March 23, 1995, the New Jersey Department of Human Services received a Petition for Rulemaking concerning N.J.A.C. 10:52-1.1 and 8.2, the rules for hospital reimbursement.

Petitioner is Giordano, Halleran & Ciesla, a law firm representing Monmouth Medical Center.

Petitioner requests that the New Jersey Department of Human Services amend N.J.A.C. 10:52-1.1 and 8.2(d) to require that eligibility determinations and the subsequent distribution of monies for the Hospital Relief Subsidy Fund (HRSF) are made based upon the most recent hospital data available.

In addition, the Petitioner requests the CHAMPUS program be excluded from the category of non-Federal payor.

The petition also included the requested regulatory changes and the justification therefore.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department/Division shall subsequently mail to the Petitioner, and file with the Office of Administrative Law, a notice of action on the Petition.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the March 6, 1995 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1995 d.1 means the first rule filed for 1995.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT FEBRUARY 21, 1995

NEXT UPDATE: SUPPLEMENT MARCH 20, 1995

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
26 N.J.R. 1555 and 1738	April 18, 1994	26 N.J.R. 4245 and 4470	November 7, 1994
26 N.J.R. 1739 and 1904	May 2, 1994	26 N.J.R. 4471 and 4720	November 21, 1994
26 N.J.R. 1905 and 2166	May 16, 1994	26 N.J.R. 4721 and 4856	December 5, 1994
26 N.J.R. 2167 and 2510	June 6, 1994	26 N.J.R. 4857 and 5138	December 19, 1994
26 N.J.R. 2511 and 2692	June 20, 1994	27 N.J.R. 1 and 262	January 3, 1995
26 N.J.R. 2693 and 2828	July 5, 1994	27 N.J.R. 263 and 410	January 17, 1995
26 N.J.R. 2829 and 3102	July 18, 1994	27 N.J.R. 411 and 606	February 6, 1995
26 N.J.R. 3103 and 3230	August 1, 1994	27 N.J.R. 607 and 790	February 21, 1995
26 N.J.R. 3231 and 3504	August 15, 1994	27 N.J.R. 791 and 966	March 6, 1995
26 N.J.R. 3505 and 3780	September 6, 1994	27 N.J.R. 967 and 1336	March 20, 1995
26 N.J.R. 3781 and 3916	September 19, 1994	27 N.J.R. 1337 and 1502	April 3, 1995
26 N.J.R. 3917 and 4120	October 3, 1994	27 N.J.R. 1503 and 1712	April 17, 1995
26 N.J.R. 4121 and 4244	October 17, 1994	27 N.J.R. 1713 and 1832	May 1, 1995

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1			
1:1-3.2, 14.10, 14.14	27 N.J.R. 609(a)		
1:1-19.1	27 N.J.R. 1343(a)		
1:6A	27 N.J.R. 4(a)	R.1995 d.176	27 N.J.R. 1179(a)
1:7A	26 N.J.R. 4124(a)	R.1995 d.184	27 N.J.R. 1399(a)
1:7A-1.1, 8.1	26 N.J.R. 4863(a)		
1:30-1.2, 3.1, 4.1	27 N.J.R. 414(a)		
1:30-1.9	27 N.J.R. 416(a)		

Most recent update to Title 1: TRANSMITTAL 1994-5 (supplement September 19, 1994)

AGRICULTURE—TITLE 2			
2:5	26 N.J.R. 1908(b)	R.1995 d.199	27 N.J.R. 1399(b)
2:24	27 N.J.R. 5(a)	R.1995 d.200	27 N.J.R. 1400(a)
2:32-2.22	27 N.J.R. 969(a)		
2:33	27 N.J.R. 610(a)	R.1995 d.226	27 N.J.R. 1791(a)
2:52	27 N.J.R. 1343(a)		
2:69-1.11	27 N.J.R. 1344(a)		
2:76-3.3, 3.5, 3.6, 3.9, 3.10, 3.12	27 N.J.R. 8(a)		
2:76-4.3, 4.5, 4.6, 4.9, 4.11	27 N.J.R. 10(a)		
2:76-6.2, 6.5, 6.6, 6.7, 6.9-6.18B	27 N.J.R. 13(a)		
2:90	27 N.J.R. 1506(a)		

Most recent update to Title 2: TRANSMITTAL 1995-2 (supplement February 21, 1995)

BANKING—TITLE 3			
3:1-6.6	26 N.J.R. 1560(b)		
3:1-6.7	27 N.J.R. 20(b)	R.1995 d.208	27 N.J.R. 1576(a)
3:2-1.2, 1.3, 1.4	27 N.J.R. 793(a)		
3:3-2, 3	27 N.J.R. 20(a)	R.1995 d.125	27 N.J.R. 877(a)
3:7-4	27 N.J.R. 793(a)		
3:11-7.8	27 N.J.R. 794(a)		
3:18-10.5	27 N.J.R. 20(b)	R.1995 d.208	27 N.J.R. 1576(a)
3:23-2.1	26 N.J.R. 4863(b)	R.1995 d.189	27 N.J.R. 1442(c)
3:24	26 N.J.R. 4863(b)	R.1995 d.189	27 N.J.R. 1442(c)
3:38-1.6	27 N.J.R. 20(b)	R.1995 d.208	27 N.J.R. 1576(a)
3:38-1.9	27 N.J.R. 1507(a)		
3:38-1.11, 2.1	27 N.J.R. 611(a)		
3:40-1.9	26 N.J.R. 4475(a)	R.1995 d.118	27 N.J.R. 877(b)
3:41-5.1, 6.1	27 N.J.R. 1507(b)		

Most recent update to Title 3: TRANSMITTAL 1995-1 (supplement January 17, 1995)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)

(CITE 27 N.J.R. 1820)

NEW JERSEY REGISTER, MONDAY, MAY 1, 1995

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:2-3.1	Performance evaluations	26 N.J.R. 3509(a)		
4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
4A:8	Layoffs	27 N.J.R. 482(a)		
4A:8	Layoffs	27 N.J.R. 612(a)		

Most recent update to Title 4A: TRANSMITTAL 1995-2 (supplement February 21, 1995)

COMMUNITY AFFAIRS—TITLE 5				
5:1	Standards of conduct for officers and employees of the Department	26 N.J.R. 4866(a)	R.1995 d.119	27 N.J.R. 877(c)
5:2	Organization of the Department	Exempt	R.1995 d.186	27 N.J.R. 1404(a)
5:10-1.10	Maintenance of hotels and multiple dwellings: inspections	27 N.J.R. 1345(a)		
5:14-1.4, 3.4-3.7, App. B, C, D, E	Neighborhood Preservation Balanced Housing Program	27 N.J.R. 1508(a)		
5:16	Local Housing Authority and Municipal Redevelopment Agency Training Program	26 N.J.R. 4867(a)		
5:17	Lead Hazard Evaluation and Abatement Code	27 N.J.R. 970(a)		
5:18	Uniform Fire Code	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18-1.5, 2.7, 2.8, 2.22, 3.3, 3.4, 3.5, 4.9, 4.13	Uniform Fire Code requirements	26 N.J.R. 4249(a)	R.1995 d.59	27 N.J.R. 891(a)
5:18-2.4A	Uniform Fire Code: overnight camps life hazard use category	26 N.J.R. 4254(a)	R.1995 d.57	27 N.J.R. 878(a)
5:18-2.11A	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:18A	Fire Code Enforcement	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18B	High Level Alarms	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18C	Standards for Fire Service Training and Certification	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18C-2.4	Fire service training facilities	26 N.J.R. 4249(a)	R.1995 d.59	27 N.J.R. 891(a)
5:22-1	Urban enterprise zone municipalities: exemptions from taxation for residential new construction, improvement and conversion	27 N.J.R. 794(b)		
5:23-1.4, 2.4, 2.7, 2.14, 2.15, 2.17A, 2.23, 4.18, 4.20	Lead Hazard Evaluation and Abatement Code	27 N.J.R. 970(a)		
5:23-2.9, 2.34-2.37, 4.40	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:23-3.4, 3.18	Uniform Construction Code: energy subcode	26 N.J.R. 4872(a)	R.1995 d.143	27 N.J.R. 1179(b)
5:23-3.9	Uniform Construction Code Element: issuance of bulletins	27 N.J.R. 1512(a)		
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)	R.1995 d.144	27 N.J.R. 1180(a)
5:23-3.14, 7	Barrier Free Subcode: correction of public hearing date	26 N.J.R. 3524(a)		
5:23-3.15	Uniform Construction Code: abandonment of septic systems	26 N.J.R. 4874(a)	R.1995 d.122	27 N.J.R. 894(a)
5:23-3.20	Uniform Construction Code: mechanical subcode	26 N.J.R. 4874(b)	R.1995 d.120	27 N.J.R. 894(b)
5:23-9.4	Uniform Construction Code: seismic zones	26 N.J.R. 4875(a)	R.1995 d.121	27 N.J.R. 894(c)
5:23-2.20, 4.5	Uniform Construction Code: heating equipment installation	27 N.J.R. 619(a)		
5:27	Rooming and boarding houses	27 N.J.R. 1346(a)		
5:34-7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 4724(a)	R.1995 d.142	27 N.J.R. 1189(a)
5:52	Volunteer Coaches' Safety Orientation and Training Skills Programs	27 N.J.R. 21(a)	R.1995 d.150	27 N.J.R. 1190(a)
5:80	New Jersey Housing and Mortgage Finance Agency rules	27 N.J.R. 265(a)		
5:80-33	Housing and Mortgage Finance Agency: low income housing tax credit qualified allocation plan	27 N.J.R. 986(a)		
5:100	Office of the Ombudsman for the Institutionalized Elderly: practice and procedure	27 N.J.R. 1348(a)		

Most recent update to Title 5: TRANSMITTAL 1995-2 (supplement February 21, 1995)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)

EDUCATION—TITLE 6				
6:3A	District equivalency and waiver process	27 N.J.R. 1377(a)		
6:5-2.4	Organization of the Department	Exempt	R.1995 d.64	27 N.J.R. 894(d)
6:11-3.2	Certification fees	27 N.J.R. 1380(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:28-2.10, 4.2	Special Education: least restrictive environment; program options	27 N.J.R. 416(c)	R.1995 d.228	27 N.J.R. 1792(a)
6:68	State Library assistance programs	27 N.J.R. 620(a)		

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7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1C	Ninety-day construction permits	27 N.J.R. 998(a)		
7:1C-1.5	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:1H	County Environmental Health Act rules: pre-proposal	26 N.J.R. 3526(a)		
7:1H	County Environmental Health Act rules: postponement of new rules proposal	27 N.J.R. 22(a)		
7:1L	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:2-17.1	State Park Service: Spring Meadow Golf Course fees	_____	_____	27 N.J.R. 1404(b)
7:5D	State Trails System	26 N.J.R. 1459(a)	R.1995 d.147	27 N.J.R. 1204(c)
7:7-1.3, 2.1, 2.2, 2.3, 4.2, 4.4-4.7, 4.10, 5.1, 7.1-7.4, App.	Coastal Permit Program	27 N.J.R. 1005(a)		
7:7A-16.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:7E	Coastal zone management	27 N.J.R. 417(a)		
7:9	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:9B	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:10-15.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:11-2.2, 2.3, 2.4, 2.10, 2.12	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System: sale of water	26 N.J.R. 4907(a)		
7:11-4.3, 4.4, 4.9, 4.13	Manasquan Reservoir Water Supply System: sale of water	26 N.J.R. 4910(a)		
7:13	Flood hazard area control	26 N.J.R. 1009(a)	R.1995 d.149	27 N.J.R. 1211(a)
7:14	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14-8.1, 8.3, 8.4, 8.15	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A-1.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:14A-1.8	NJPDES permit fees	27 N.J.R. 1028(a)		
7:14B-3.9	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:15	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:19	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
7:19-3.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:19A	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
7:19B	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
7:20	Dam safety standards	27 N.J.R. 795(a)		
7:22	Financial assistance programs for wastewater treatment facilities	27 N.J.R. 1536(a)		
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)	R.1995 d.117	27 N.J.R. 895(a)
7:25-4.18	Endangered and Nongame Species Advisory Committee: term limitations requirement	27 N.J.R. 797(a)		
7:25-18.1	Recreational summer flounder season: administrative change	_____	_____	27 N.J.R. 1793(a)
7:25-18.5, 18.12, 18.14	Marine fisheries: administrative corrections	_____	_____	27 N.J.R. 1794(a)
7:25-24.7, 24.9	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)	R.1995 d.202	27 N.J.R. 1405(a)
7:25A	Oyster management and harvest	27 N.J.R. 798(a)		
7:26-1.4, 3.4, 3.6, 4.3, 4.7	Solid waste management: intermodal container facilities	27 N.J.R. 801(a)		
7:26-3A.1, 4.1, 4A.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:26A-2.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:26B-1.10	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:26C	Contaminated sites remediation: Oversight Cost Formula rates	_____	_____	27 N.J.R. 1580(a)
7:27-8.1, 16.1, 17.1, 19.1, 21.1, 22.1, 23.2, 25.1	Definition of volatile organic compound: administrative correction	_____	_____	27 N.J.R. 1406(a)
7:27-8.11	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17, 16.18	Control and prohibition of air pollution by volatile organic compounds	26 N.J.R. 4478(a)		

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7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)	R.1995 d.214	27 N.J.R. 1581(a)
7:27-22	Air pollution control: facility operating permits	27 N.J.R. 1040(a)		
7:27-22.1, 22.31	Air Quality Regulation Program: facility operating permit fees	27 N.J.R. 22(b)		
7:27-24	Volatile organic compounds: control and prohibition from consumer and commercial products	27 N.J.R. 1077(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.4, 25.8	Oxygenated fuels program	27 N.J.R. 787(a)	R.1995 d.236	27 N.J.R. 1794(b)
7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-26	Low Emission Vehicles Program: extension of comment period	26 N.J.R. 4482(a)		
7:27A-3.2	Definition of volatile organic compound: administrative correction	_____	_____	27 N.J.R. 1406(a)
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)	R.1995 d.214	27 N.J.R. 1581(a)
7:27B-3.1	Definition of volatile organic compound: administrative correction	_____	_____	27 N.J.R. 1406(a)
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:28	Radiation protection	26 N.J.R. 4942(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:28-48.7	Registration fees for non-ionizing radiation producing sources: administrative correction	27 N.J.R. 498(b)		
7:29	Noise control	27 N.J.R. 1091(a)		
7:30-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:31-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:50-2.11, 3, 4, 5, 6.23, 6.84, 6.156, 7.3	Pinelands Comprehensive Management Plan revisions	27 N.J.R. 1557(a)		
7:50-6.48	Pinelands Comprehensive Management Plan: administrative correction regarding source discharges	_____	_____	27 N.J.R. 1410(a)
7:50-9	Pinelands Comprehensive Management Plan: acquisition of properties with limited practical use	27 N.J.R. 1572(a)		
7:60-1.2, 1.3, 1.4, 1.6	Assessment of generators for cost of siting and developing low-level radioactive waste disposal facility	26 N.J.R. 4946(a)	R.1995 d.130	27 N.J.R. 905(a)
7:62	Landscape irrigation contractors	27 N.J.R. 1098(a)		

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8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:7-1.11-1.18	Licensure of persons for public health positions	27 N.J.R. 267(a)		
8:19	Newborn Screening Program	27 N.J.R. 807(a)		
8:20	Birth Defects Registry	27 N.J.R. 269(a)	R.1995 d.182	27 N.J.R. 1410(b)
8:33I	Megavoltage radiation oncology services: certificate of need	26 N.J.R. 4875(b)	R.1995 d.146	27 N.J.R. 1287(a)
8:33P	Designation of Level I and II trauma centers: certificate of need requirements	27 N.J.R. 1350(a)		
8:39-2.2, 2.12	Long-term care facilities: application for licensure; add-a-bed	26 N.J.R. 4641(a)	R.1995 d.127	27 N.J.R. 937(b)
8:41-8.1, 10.1	Approved drug formulary for mobile intensive care units	27 N.J.R. 808(a)		
8:43E	Health care facilities: enforcement of licensure standards	26 N.J.R. 4527(a)	R.1995 d.198	27 N.J.R. 1411(a)
8:43F	Adult day health care facilities: standards for licensure	26 N.J.R. 4532(a)	R.1995 d.128	27 N.J.R. 939(a)
8:43G	Hospital licensing standards	26 N.J.R. 4537(a)	R.1995 d.124	27 N.J.R. 1290(a)
8:43G-5.1, 5.2	Hospital licensing standards: administrative change regarding smoke-free policy	_____	_____	27 N.J.R. 1615(a)
8:43G-6.3	Hospital licensing standards: administrative correction regarding anesthesia administration	_____	_____	27 N.J.R. 1800(a)
8:44	Operation of clinical laboratories	27 N.J.R. 626(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:45	Clinical laboratory services	27 N.J.R. 32(a)	R.1995 d.126	27 N.J.R. 941(a)
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8:57-5	Confinement of persons with tuberculosis	26 N.J.R. 3236(a)		
8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
8:57-6	Hepatitis Inoculation Fund (recodified as 8:57B)	27 N.J.R. 28(a)	R.1995 d.207	27 N.J.R. 1615(b)
8:57A	Cancer Registry	27 N.J.R. 629(a)		
8:60	Asbestos licenses and permits	27 N.J.R. 71(a)	R.1995 d.193	27 N.J.R. 1465(a)
8:60-2.1	Asbestos licenses and permits: administrative corrections			27 N.J.R. 1806(a)
8:66	Repeal (see 8:66A)	27 N.J.R. 274(a)	R.1995 d.183	27 N.J.R. 1420(a)
8:66A	Intoxicated Driving Program	27 N.J.R. 274(a)	R.1995 d.183	27 N.J.R. 1420(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a), 3715(b), 4387(a))	26 N.J.R. 1190(b)	R.1995 d.31	27 N.J.R. 355(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a), 4388(a))	26 N.J.R. 1821(a)	R.1995 d.33	27 N.J.R. 357(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b), 4388(b), 27 N.J.R. 355(b))	26 N.J.R. 1822(a)	R.1995 d.178	27 N.J.R. 1300(a)
8:71	Interchangeable drug products (see 26 N.J.R. 3720(a), 4386(a))	26 N.J.R. 2723(a)	R.1995 d.35	27 N.J.R. 359(a)
8:71	Interchangeable drug products (see 26 N.J.R. 4390(a), 27 N.J.R. 357(b))	26 N.J.R. 3583(a)	R.1995 d.179	27 N.J.R. 1302(a)
8:71	Interchangeable drug products	26 N.J.R. 4288(a)	R.1995 d.39	27 N.J.R. 351(b)
8:71	Interchangeable drug products	26 N.J.R. 4293(a)	R.1995 d.30	27 N.J.R. 354(a)
8:71	Interchangeable drug products (see 27 N.J.R. 351(c))	26 N.J.R. 4294(a)	R.1995 d.180	27 N.J.R. 1303(a)
8:71	Interchangeable drug products	27 N.J.R. 30(a)	R.1995 d.177	27 N.J.R. 1305(a)
8:71	Interchangeable drug products	27 N.J.R. 810(a)		

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9:4-1.7	Curriculum coordinating committee	26 N.J.R. 1751(a)		
9:4-1.9, 5, 6, 7	County community colleges: policies and procedures	27 N.J.R. 1387(a)		
9:4-1.9, 5, 6, 7	Community colleges: policies and procedures (recodify as 9A:7-1.1, 2, 3, 4)	27 N.J.R. 1388(a)		
9:6	State colleges	27 N.J.R. 1392(a)		
9:6	State colleges	27 N.J.R. 1395(a)		
9:6A	State college personnel	27 N.J.R. 1392(a)		
9:6A	State college personnel (recodify as 9A:6)	27 N.J.R. 1395(a)		
9:11	EOF Program (recodify as 9A:11)	27 N.J.R. 812(a)		
9:12	EOF Program (recodify as 9A:12)	27 N.J.R. 812(a)		
9A:11	Educational Opportunity Fund Program	27 N.J.R. 812(a)		
9A:12	Educational Opportunity Fund Program	27 N.J.R. 812(a)		

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10:19	Manual of Standards for Juvenile Detention Facilities	27 N.J.R. 1101(a)		
10:37-5.28-5.34	Repeal (see 10:37E)	26 N.J.R. 3608(a)		
10:37-5.46-5.51	Repeal (see 10:37F)	26 N.J.R. 4547(a)		
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
10:37F	Adult Partial Care Services for individuals with severe and persistent mental illness	26 N.J.R. 4547(a)		
10:37G	Division of Mental Health and Hospitals: client liaison services	27 N.J.R. 429(a)		
10:46A	Family Support Service System: administrative correction and extension of comment period	26 N.J.R. 3610(a)		
10:46C	Division of Developmental Disabilities: waiting list procedures for community services	26 N.J.R. 1752(a)	R.1995 d.197	27 N.J.R. 1652(a)
10:49-7.3	Medicaid program: third party liability benefits	27 N.J.R. 1512(b)		
10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)		
10:49-19	Repeal (see 10:74)	27 N.J.R. 853(a)		
10:51-1.11, 1.12	Pharmaceutical Services Manual: Medicaid coverage of non-legend drugs provided to children and adolescents	27 N.J.R. 1104(a)		
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52	Hospital Services Manual	26 N.J.R. 4551(a)	R.1995 d.123	27 N.J.R. 1660(a)

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10:52-10 10:55	Manual for Hospital Services: charity care eligibility Medicaid program: Prosthetic and Orthotic Services Manual	27 N.J.R. 656(a) 26 N.J.R. 4979(a)	R.1995 d.185	27 N.J.R. 1446(a)
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
10:60-1.1, 1.2, 1.4, 1.13, 4.2	Home Care Services: EPSDT private duty nursing services	27 N.J.R. 279(a)		
10:63-3, 4	Long-Term Care Services: nursing facility reimbursement	27 N.J.R. 281(a)	R.1995 d.174	27 N.J.R. 1307(a)
10:64-1.3	Hearing Aid Services: optional audiological examinations	27 N.J.R. 287(a)		
10:74	Managed health care services for Medicaid eligibles	27 N.J.R. 853(a)		
10:81-11.9	Public Assistance Manual: \$50 disregarded child support payment	26 N.J.R. 1937(a)		
10:85-3.1, 3.2, 3.3, 3.5, 5.1, 5.2, 5.7	General Assistance program: general nursing facility assistance	27 N.J.R. 1105(a)		
10:85-3.2	General Assistance program: fingerimaging procedures	27 N.J.R. 864(a)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:87-2.31 10:88	Food Stamp Program: applications in pending status Families First Program	26 N.J.R. 4298(a) 27 N.J.R. 1110(a)	R.1995 d.135	27 N.J.R. 916(a)
10:89	Home Energy Assistance Handbook	26 N.J.R. 4726(a)	R.1995 d.172	27 N.J.R. 1317(a)
10:89-2.3, 3.1	Home Energy Assistance program: income eligibility; automatic payments	Emergency (expires 4-17-95)	R.1995 d.145	27 N.J.R. 942(a)
10:121	Division Youth and Family Services: standards regarding adoptions	27 N.J.R. 1122(a)		
10:121A-1.5, 1.6, 1.7, 1.8, 3.3, 3.5, 3.6, 4.2, 4.4, 5.3, 5.4, 5.6, 5.8, 5.9	Division of Youth and Family Services: Manual of Requirements for Adoption Agencies	27 N.J.R. 661(a)		
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10:126-1.2, 1.3, 2.4, 4.6, 5.3, 5.7, 5.8	Family day care provider registration: child abuse central registry searches; registration denial appeal process	27 N.J.R. 1351(a)		
10:126A	Division of Youth and Family Services: utilization of family day care providers	27 N.J.R. 432(a)	R.1995 d.227	27 N.J.R. 1801(b)
10:129	Division of Youth and Family Services: child abuse and neglect cases	27 N.J.R. 1125(a)		
10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:130	Shelters for victims of domestic violence: standards	27 N.J.R. 1126(a)		
10:133A-1.7, 1.9, 1.10, 1.11, 1.12	Division of Youth and Family Services: initial reponse	26 N.J.R. 3355(a)	R.1995 d.188	27 N.J.R. 1464(a)
10:133F	Division of Youth and Family Services: collection of support monies and government benefits	27 N.J.R. 865(a)		
10:133G	Division of Youth and Family Services: client information	27 N.J.R. 38(a)		
10:133I	Division of Youth and Family Services: reasonable efforts; reasonable and diligent efforts; necessary activities to achieve a case goal	27 N.J.R. 433(a)		

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10A:4-4.1	Inmate prohibited acts: refusal to register as sex offender	27 N.J.R. 436(a)	R.1995 d.237	27 N.J.R. 1801(c)
10A:12-2	Inmate liaison committees	26 N.J.R. 4881(a)	R.1995 d.115	27 N.J.R. 916(b)
10A:22-2.10	Release of juvenile records	27 N.J.R. 436(b)	R.1995 d.213	27 N.J.R. 1618(a)
10A:32	Manual of Standards for Juvenile Detention Facilities (recodify as 10:19)	27 N.J.R. 1101(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	27 N.J.R. 288(a)		

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11:1-39	Insurer disclosure of material transactions	27 N.J.R. 816(a)	R.1995 d.234	27 N.J.R. 1802(a)
11:3-10.3	Automobile physical damage claims	27 N.J.R. 437(a)		
11:3-15.6	Private passenger automobile insurance: standard minimum premium quotation	27 N.J.R. 1354(a)		

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11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
11:3-16.7	Private passenger automobile insurance: rating programs for physical damage coverages	27 N.J.R. 1356(a)		
11:3-28.13, 28.16	Unsatisfied Claim and Judgment Fund: insurer's obligation to obtain recovery of paid medical expense benefit claims and paid benefits (UCJ claims)	26 N.J.R. 4595(a)		
11:3-45	Private passenger automobile insurance: annual premium survey	27 N.J.R. 289(a)	R.1995 d.235	27 N.J.R. 1803(a)
11:4-9	Personal lines insurance: prospective loss costs filing procedures	27 N.J.R. 1356(b)		
11:4-18.6	Individual health insurance policy forms: annual filings	27 N.J.R. 1513(a)		
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11:5-1.7	Real Estate Commission: preproposal concerning mass marketing and brokerage licensure requirement	26 N.J.R. 3110(a)		
11:5-1.43	Real Estate Commission: administrative corrections regarding Consumer Information Statement	_____	_____	27 N.J.R. 1191(a)
11:5-1.43	Real Estate Commission: administration correction regarding Consumer Information Statement	_____	_____	27 N.J.R. 1618(b)
11:13-7.4, 7.5	Commercial lines insurance: exclusions from coverage; refiling of policy forms	26 N.J.R. 3805(b)		
11:15-2	Joint insurance funds for local governmental units	26 N.J.R. 2725(a)		
11:15-2	Joint insurance funds for local governmental units: extension of comment period	26 N.J.R. 3592(a)		
11:16-5	Insurer's health fraud prevention/detection plan	26 N.J.R. 4882(a)		
11:17A-1.2, 1.7	Private passenger automobile insurance: standard minimum premium quotation	27 N.J.R. 1354(a)		
11:20-2.1, 6.4, 8.2, 9.2, 9.6, 13.3, 17.3, App. Exh. K	Individual Health Coverage Program: administrative changes	_____	_____	27 N.J.R. 1423(a)
11:20-3.1	Individual Health Coverage Program: out-network benefits and coinsurance levels	27 N.J.R. 1127(a)		
11:20-4.1, 12.5	Individual Health Coverage Program: administrative corrections	_____	_____	27 N.J.R. 1424(a)
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11:21-2.5	Small Employer Health Benefits Program: public hearing regarding Board membership	26 N.J.R. 4311(a)		
11:21-2.5	Small Employer Health Benefits Program: Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(a)	R.1995 d.223	27 N.J.R. 1805(a)
11:21-2.5	Small Employer Health Benefits Program: public hearing on Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(b)		
11:21-3.2	Small Employer Health Benefits Program: optional benefit riders	26 N.J.R. 4729(a)	R.1995 d.116	27 N.J.R. 918(a)
11:21-4.4, Exh. DD	Small Employer Health Benefits Program: policy forms; compliance and variability rider	27 N.J.R. 439(a)		
11:21-7.4	Small Employer Health Benefits Program: carriers acting as administrators for small employers	26 N.J.R. 3117(a)		
11:21-17.3, Exh. BB, EE	Small Employer Health Benefits Program: certification of promotional and marketing material	27 N.J.R.. 819(a)		
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12:16	Unemployment Compensation and Temporary Disability Insurance: contributions, records and reports	27 N.J.R. 61(a)	R.1995 d.138	27 N.J.R. 919(a)
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:19	Unemployment Insurance and Disability Insurance Financing: definitions used by Employment Security Agency and for special employment relationships	27 N.J.R. 1518(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:23-8	Workforce Development Partnership Program: reporting requirements for assessment of employment and training programs	27 N.J.R. 1131(a)		
12:61-1.3	Office of Wage and Hour: appeal of wage collection determination	27 N.J.R. 1520(a)		
12:100-4.2	Public employee safety and health: administrative correction regarding toxic and hazardous substances	_____	_____	27 N.J.R. 1805(b)

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12:102	Field sanitation for seasonal farm workers	27 N.J.R. 1133(a)		
12:120	Asbestos licenses and permits	27 N.J.R. 71(a)	R.1995 d.193	27 N.J.R. 1465(a)
12:120-2.1	Asbestos licenses and permits: administrative corrections			27 N.J.R. 1806(a)
12:195-1.9	Carnival-amusement rides: inspection fees	26 N.J.R. 2520(a)		

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12A:10A	Minority and female contractor and subcontractor participation in State construction contracts	27 N.J.R. 54(a)	R.1995 d.225	27 N.J.R. 1814(a)

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13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 4951(a)	R.1995 d.175	27 N.J.R. 1191(b)
13:4	Housing discrimination	26 N.J.R. 1942(a)		
13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)		
13:13	Housing discrimination	26 N.J.R. 1942(a)		
13:18	Division of Motor Vehicles: implementation of various statutory provisions	27 N.J.R. 637(a)	R.1995 d.218	27 N.J.R. 1806(b)
13:18-1.5–1.9, 1.12, 1.15	Division of Motor Vehicles: overweight oceanborne containers	26 N.J.R. 2521(a)	R.1995 d.139	27 N.J.R. 927(a)
13:18-11.4	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:19-10.3	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:19-12.1, 12.10, 12.11, 12.12	Division of Motor Vehicles: motor vehicle insurance surcharge	27 N.J.R. 1524(a)		
13:20-17.3, 34.5	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:21-9.3, 21.22	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:23-2.3, 2.6, 3.5, 3.7	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:25	Division of Motor Vehicles: motorized bicycles	27 N.J.R. 440(a)	R.1995 d.204	27 N.J.R. 1619(a)
13:29	Board of Accountancy rules	27 N.J.R. 1134(a)		
13:30	Board of Dentistry rules	27 N.J.R. 293(a)	R.1995 d.191	27 N.J.R. 1424(b)
13:33	Board of Ophthalmic Dispensers and Ophthalmic Technicians: professional practice standards	27 N.J.R. 298(a)	R.1995 d.192	27 N.J.R. 1428(a)
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:35-2B.2, 2B.13–2B.16, 6.13	Board of Medical Examiners: temporary licensure of physician assistants	27 N.J.R. 1526(a)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.13, 8.17, 9.6, 10.8	Board of Medical Examiners: licensee registration fees	27 N.J.R. 640(a)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	27 N.J.R. 1363(a)		
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
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13:40-6.1, 11	Board of Professional Engineers and Land Surveyors: continuing competency requirements for land surveyors	26 N.J.R. 4314(a)		
13:42-1.2, 1.3, 1.5, 2.1, 4.5, 7.1, 7.2A, 7.3, 7.5, 7.6, 9.9, 10.16	Board of Psychological Examiners: unlicensed practitioners	26 N.J.R. 4738(a)		
13:44-5.1	Board of Veterinary Medical Examiners: licensure fees	27 N.J.R. 1137(a)		
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13:44E-2.6	Board of Chiropractic Examiners: practice identification	26 N.J.R. 4964(a)		
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13:45B-15.1	Health care service firms: health care practitioner supervisor	27 N.J.R. 1366(a)		
13:46-1.1, 4.1, 4.16, 4.21, 8.25, 9.12, 10.1	State Athletic Control Board: boxing, wrestling and sparring events	27 N.J.R. 1138(a)		
13:46-4.6, 4.10, 4.25, 4.26, 4.29, 9.6, 9.17, 13.1, 15.2, 15.5, 15.13	State Athletic Control Board: taxes and fees	27 N.J.R. 1139(a)		
13:46-4.14, 5.15, 5.31, 7.7, 8.1, 8.18, 9.1, 11.1, 11.10, 18.2, 18.8, 19.3, 19.6, 22.1, 22.3	State Athletic Control Board: hearing procedures	27 N.J.R. 1141(a)		
13:46-8.14, 8.19	State Athletic Control Board: boxing three knockdown rule; tie rounds	27 N.J.R. 1144(a)		
13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: rules of practice	26 N.J.R. 3814(a)		
13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: extension of comment period concerning rules of practice	26 N.J.R. 4337(a)		
13:47A-3.1, 3.3, 3.4, 4.3, 12	Bureau of Securities: limited securities offerings	27 N.J.R. 303(a)		
13:47B-1.5	Weighing and measuring devices: type approval	26 N.J.R. 4966(a)	R.1995 d.140	27 N.J.R. 929(a)
13:47F	Weighing and measuring devices: fees for registration, inspection and testing	26 N.J.R. 4966(a)	R.1995 d.140	27 N.J.R. 929(a)
13:54-1.15	Division of State Police: confidentiality of firearms permits, ID cards, licenses, and background investigations	27 N.J.R. 305(a)	R.1995 d.233	27 N.J.R. 1807(a)
13:61	Division of State Police: boat safety course	27 N.J.R. 642(a)	R.1995 d.238	27 N.J.R. 1807(b)
13:62	Division of State Police: motor vehicle race track rules	27 N.J.R. 445(a)	R.1995 d.206	27 N.J.R. 1622(a)
13:70-4.22	Thoroughbred racing: collection and use of Social Security numbers by Racing Commission	27 N.J.R. 44(a)	R.1995 d.163	27 N.J.R. 1192(b)
13:70-6.5, 6.58	Thoroughbred racing: coupled horses; limitation of entries by trainers	27 N.J.R. 464(a)		
13:70-9.29, 9.31	Thoroughbred racing: apprenticed jockey weight allowances	27 N.J.R. 643(a)		
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-29.50	Thoroughbred racing: Daily Triple	27 N.J.R. 306(a)	R.1995 d.211	27 N.J.R. 1642(a)
13:71-3.3	Harness racing: State Steward and Board of Judges decisions	26 N.J.R. 4969(a)	R.1995 d.164	27 N.J.R. 1193(a)
13:71-7.37	Harness racing: collection and use of Social Security numbers by Racing Commission	27 N.J.R. 44(b)	R.1995 d.165	27 N.J.R. 1193(b)
13:71-16.5, 16.12	Harness racing: entries; limitations of entries by trainers	27 N.J.R. 466(a)		
13:71-19.6	Harness racing: safety vests	26 N.J.R. 4482(b)	R.1995 d.203	27 N.J.R. 1440(a)
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:71-27.54	Harness racing: Daily Triple	27 N.J.R. 306(b)	R.1995 d.212	27 N.J.R. 1643(a)
13:72-9.1, 9.3-9.6	Casino simulcasting: supervisors of mutuels and verifiers at hub facilities	27 N.J.R. 45(a)	R.1995 d.166	27 N.J.R. 1193(c)
13:75-1.5	Violent Crimes Compensation Board: victim counseling referral	27 N.J.R. 307(a)	R.1995 d.216	27 N.J.R. 1808(a)
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	27 N.J.R. 307(b)	R.1995 d.217	27 N.J.R. 1808(b)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for loss of earnings	27 N.J.R. 1527(a)		
13:75-1.27	Violent Crimes Compensation Board: award of additional counseling sessions	27 N.J.R. 467(a)	R.1995 d.210	27 N.J.R. 1643(b)
13:75-1.28	Violent Crimes Compensation Board: secondary victim eligibility	27 N.J.R. 1528(a)		
13:82-3.18	Boat Regulation Commission: personal flotation devices requirement on Round Valley Reservoir	27 N.J.R. 1144(b)		

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13:82-8.6, 8.13, 8.19, 9.1	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:85	Motorcycle Safety Education Program	27 N.J.R. 1145(a)		
13:86	Drunk Driving Enforcement Fund	27 N.J.R. 1367(a)		

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14:7	Natural gas pipelines	27 N.J.R. 870(a)		
14:11-8	Natural gas (recodify as 14:7-1)	27 N.J.R. 870(a)		
14:17-6.17	Office of Cable Television: scheduling hearings for public comment	27 N.J.R. 46(a)	R.1995 d.173	27 N.J.R. 1194(a)
14:18	Cable television	27 N.J.R. 873(a)		
14:25	Solar energy devices and systems: technical sufficiency standards for sales tax exemption	27 N.J.R. 307(c)	R.1995 d.151	27 N.J.R. 1194(b)
14:33	Energy Facility Review Board	26 N.J.R. 4484(a)		
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14:18	Railroads (recodify as 16:23)	27 N.J.R. 1155(a)		

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STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)

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16:5	Compensation to owners for income loss resulting from harvesting of standing crops	27 N.J.R. 822(a)		
16:23	Railroads: track safety and service requirements	27 N.J.R. 1155(a)		
16:28-1.6	School zone along U.S. 40 in Buena Vista	27 N.J.R. 1528(b)		
16:28-1.42	Speed limit zones along Route 152 in Somers Point City and Egg Harbor Township	27 N.J.R. 1369(a)		
16:28-1.62	Speed limits along connector roads to U.S. 202, U.S. 206, and Route 28 in Somerset County	27 N.J.R. 46(b)	R.1995 d.157	27 N.J.R. 1195(a)
16:28-1.64	Speed limit zone along Grove Street-Haddonfield Road-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(a)	R.1995 d.219	27 N.J.R. 1808(c)
16:28-1.65	Speed limit zone along Penn Avenue-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(b)	R.1995 d.221	27 N.J.R. 1809(a)
16:28-1.69	Speed limit zones along U.S. 130, including parts of I-295, U.S. 30 and U.S. 206, in East Windsor	27 N.J.R. 47(a)	R.1995 d.158	27 N.J.R. 1195(b)
16:28-1.71	Speed limit zone along Park Boulevard-Route 70 connector ramp in Cherry Hill	27 N.J.R. 469(a)	R.1995 d.220	27 N.J.R. 1809(b)
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.167	School zone along Route 181 in Jefferson Township	27 N.J.R. 1529(a)		
16:28A-1.21	Restricted parking and stopping along U.S. 130 in Hammonton	27 N.J.R. 1530(b)		
16:28A-1.33	No stopping or standing zone on Route 47 in Millville	27 N.J.R. 309(a)	R.1995 d.153	27 N.J.R. 1196(a)
16:28A-1.38	Parking restrictions along Route 71 in Asbury Park	27 N.J.R. 48(a)	R.1995 d.154	27 N.J.R. 1196(b)
16:28A-1.41	Bus stops along Route 77 in Bridgeton	27 N.J.R. 49(a)	R.1995 d.155	27 N.J.R. 1197(a)
16:28A-1.41	Restricted parking and stopping along Route 77 in Bridgeton	27 N.J.R. 1530(a)		
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood	27 N.J.R. 823(a)		
16:28A-1.51	Restricted parking and stopping along Route 168 in Audubon Park	27 N.J.R. 1531(a)		
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township: administrative correction and extension of comment period	26 N.J.R. 4487(a)		
16:28A-1.58	Parking restrictions along U.S. 206-94 in Newton	27 N.J.R. 49(b)	R.1995 d.156	27 N.J.R. 1197(b)
16:30-1.4	One-way access along U.S. 202 in Bernardsville	27 N.J.R. 50(a)	R.1995 d.159	27 N.J.R. 1198(a)
16:30-3.9	Truck lane-usage restriction along Route I-80 in Morris County	26 N.J.R. 4162(a)	R.1995 d.136	27 N.J.R. 934(a)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-3.14	Left turn lane along Route 154 in Cherry Hill	27 N.J.R. 51(a)	R.1995 d.160	27 N.J.R. 1198(b)
16:30-3.15	Left turn lane along Route 34 in Old Bridge	27 N.J.R. 51(b)	R.1995 d.161	27 N.J.R. 1198(c)
16:30-3.16	Left turn only lane on U.S. 206 in Lawrence Township	27 N.J.R. 1156(a)		

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16:30-11.3	Traffic and parking restrictions at I-295 scenic overlook in Hamilton Township	27 N.J.R. 825(a)		
16:31-1.22	Turn prohibition on U.S. 130 in Mansfield Township	27 N.J.R. 826(a)		
16:31-1.37	Turn prohibitions along Route 70 in Cherry Hill	27 N.J.R. 643(b)	R.1995 d.222	27 N.J.R. 1809(c)
16:41B	Newspaper boxes on State highway right-of-way	27 N.J.R. 1157(a)		
16:41D	Motorist service signing for non-urban Interstate and limited access highways	27 N.J.R. 1369(b)		
16:43	Junkyards adjacent to the Interstate and national highway systems	27 N.J.R. 644(a)	R.1995 d.229	27 N.J.R. 1810(a)
16:50	Employer Trip Reduction Program	27 N.J.R. 827(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		

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17:1-2.10, 2.11, 2.12	Alternate Benefit Program: enrollment eligibility; transfers from another State retirement system	27 N.J.R. 469(b)	R.1995 d.215	27 N.J.R. 1811(a)
17:12	Purchase Bureau rules: extension of comment period	26 N.J.R. 4166(a)		
17:13	Goods and services contracts for small businesses and female and minority businesses	27 N.J.R. 52(a)	R.1995 d.224	27 N.J.R. 1811(b)
17:14	Minority and female contractor and subcontractor participation in State construction contracts	27 N.J.R. 54(a)	R.1995 d.225	27 N.J.R. 1814(a)
17:25	Collection of debts owed to NJHEAA by public employees	27 N.J.R. 309(b)	R.1995 d.170	26 N.J.R. 1199(a)

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TREASURY-TAXATION—TITLE 18

18:1-1.9	Office of Criminal Investigation: training of Special Agents	27 N.J.R. 56(a)	R.1995 d.131	27 N.J.R. 935(a)
18:1-2.4	Issuance of warrants by Division of Taxation	26 N.J.R. 4975(a)	R.1995 d.132	27 N.J.R. 935(b)
18:7-1.9	Corporation Business Tax: doing business in New Jersey	27 N.J.R. 471(a)	R.1995 d.194	27 N.J.R. 1440(b)
18:7-3.6	Corporation Business Tax rates	27 N.J.R. 57(a)	R.1995 d.134	27 N.J.R. 935(c)
18:7-3.18, 3.20	Corporation Business Tax: priority of tax credits	27 N.J.R. 472(a)		
18:7-3.19	Corporation Business Tax: employer trip reduction program tax credit	26 N.J.R. 4976(a)	R.1995 d.148	27 N.J.R. 1201(a)
18:7-3.21	Corporation Business Tax: manufacturing equipment and employment investment credit	27 N.J.R. 838(a)		
18:7-3.22	Corporation Business Tax: new jobs investment credit	27 N.J.R. 840(a)		
18:7-3.23	Corporation Business Tax: research credit	27 N.J.R. 842(a)		
18:7-13.1, 13.8	Corporation Business Tax: assessment and reassessment; claims for refund	27 N.J.R. 645(a)		
18:22-5.5, 11.12, 14	Public Utility Tax: expression of tax rates; Municipal Purposes Tax Assistance Fund	27 N.J.R. 473(a)	R.1995 d.195	27 N.J.R. 1441(a)
18:24-9.13	Sales and Use Tax: student organization purchases	26 N.J.R. 4977(a)	R.1995 d.133	27 N.J.R. 936(a)
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