RSEY ISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 26 NUMBER 20

October 17, 1994 Indexed 26 N.J.R. 4121-4244

(Includes adopted rules filed through September 23, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 15, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 19, 1994

RULEMAKING IN THIS ISSUE

(Continued on next page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **November 16, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

RULEMAKING IN THIS ISSUE—Continued

PUBLIC NOTICES

Filing Deadlines

November 21 issue:
Proposals .... **October 20**
Adoptions .... **October 27**
December 5 issue:
Proposals .... **November 1**
Adoptions .... **November 9**
December 19 issue:
Proposals .... **November 16**
Adoptions .... **November 23**

NEW JERSEY REGISTER

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

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $125 ($215 by First Class Mail); back issues when available, $15 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 23(1994)
Designation of State's Natural Resource Trustee

Issued: September 15, 1994.
Effective: September 15, 1994.
Expiration: Indefinite.

WHEREAS, the State of New Jersey borders many navigable waters of the United States, which contain valuable fisheries, wildlife and other natural resources and provide for the effective movement of commerce into and through the State; and

WHEREAS, in the past those navigable waters and their valuable natural resources have been damaged by oil spills; and

WHEREAS, the Federal Oil Pollution Act of 1990 codified at 33 U.S.C.A. 2701 et seq. (Oil Pollution Act) established a means of compensating those parties damaged by oil spills in the navigable waters of the United States by creating a complementary scheme of Federal, state and international laws; and

WHEREAS, the prompt and effective cleanup of oil spill incidents and the restoration of damaged natural resources is of vital importance and requires close cooperation between the State and other state and Federal agencies; and

WHEREAS, the Oil Pollution Act specifically requires that the Governor of each State designate a State official who may act on behalf of the public as its trustee for natural resources; and

WHEREAS, the Commissioner of the New Jersey Department of Environmental Protection acts in a similar capacity under the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and a variety of State laws and is thus the appropriate State official to serve as New Jersey's Natural Resource Trustee under the Oil Pollution Act;

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

The Commissioner of the New Jersey Department of Environmental Protection is hereby designated ex-officio as the State's Natural Resource Trustee for the purposes outlined in Section 2706(b)(3) of the Oil Pollution Act.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW
Special Hearing Rules
Department of Environmental Protection Cases
Proposed New Rules: N.J.A.C. 1:7A-1.1 and 8.1

Authorized By: Jeff S. Masin, Acting Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1994-539.

Submit comments by November 16, 1994 to:
Jeff S. Masin, Acting Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 1:1-8.1(a) requires agencies to file contested cases with the Office of Administrative Law (OAL) within 30 days after the parties have complied with all pleading requirements. During that 30-day period, the agency may conduct settlement efforts. The Department of Environmental Protection (DEP) is developing a program to resolve certain disputes through mediation. The DEP believes that the mediation program may resolve a number of cases which are not currently subject to the OAL settlement efforts.

Proposed new rule N.J.A.C. 1:7A-8.1 provides for a 30-day extension of the period of settlement discussion, upon notice to the parties, if mediation efforts are ongoing. As with the current procedure, an extension of the settlement discussion period may occur only with the consent of the parties.

The proposed new rule will permit the agency sufficient time to determine that mediation is appropriate and schedule and conduct mediation. Any extension will only be with the parties' consent and on notice to them. Thus, the proposed new rule should permit the agency sufficient opportunity to conduct its mediation without prejudicing the parties by an undue consumption of time.

Proposed new rule N.J.A.C. 1:7A-1.1 establishes the applicability of the new chapter to DEP contested case hearings.

Social Impact

Proposed new rule N.J.A.C. 1:7A-8.1 permits the DEP to retain a contested case for continued mediation efforts where the parties consent. The proposed new rule should permit an opportunity to conduct a fruitful mediation process and result in increased settlements of contested matters. The proposed new rule may result in a minimal delay of transmittal of cases to the Office of Administrative Law for hearing. Such delay will occur only with the consent of the parties.

Economic Impact

If the mediation increases the settlement of contested matters there may be a related reduction in litigation costs.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses. The proposed new rules would simply establish an extension of the period of discussion for mediation purposes if both parties agree. Therefore, the regulatory flexibility analysis as defined by N.J.S.A. 52:14B-16 et seq. is not required.

Full text of the proposed new rules follows:

CHAPTER 7A
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUBCHAPTER 1. APPLICABILITY

1:7A-1.1 Applicability

The rules in this chapter shall apply to contested case hearings arising in the Department of Environmental Protection. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the UAPR, these rules shall apply.

SUBCHAPTERS 2 THROUGH 7. (RESERVED)

SUBCHAPTER 8. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

1:7A-8.1 Agency filing with the Office of Administrative Law; settlement efforts

Contested cases filed with the Department of Environmental Protection shall comply with the filing and transmission requirements of N.J.A.C. 1:1-8.1, provided however, upon written notice from the Department of Environmental Protection to all parties stating that the agency is attempting to resolve the matter through mediation and that all parties agree to continue the mediation efforts, the 30-day period provided by N.J.A.C. 1:1-8.1(b) shall be extended for an additional 30 days. At the conclusion of that 30-day extension, unless all parties agree to continue settlement efforts, the matter shall either be filed with the Office of Administrative Law or retained by the agency under the provisions of N.J.S.A. 52:14F-8.

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS
Net Worth
Proposed Amendments: N.J.A.C. 3:38-1.1, 1.10, and 5.3

Authorized By: Elizabeth Randall, Commissioner, New Jersey Department of Banking.
Authority: N.J.S.A. 17:1-8 and 17:11B-13(a).
Proposal Number: PRN 1994-546.

Submit comments by November 16, 1994 to:
Rule Comments
Attn: Elaine Ballai
Regulatory Officer
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend its rules concerning the net worth requirement for mortgage bankers to permit specified non-profit corporations to be licensed to make mortgage loans, in urban enterprise zones, with a lower net worth. Current law requires a mortgage banker to have a net worth of $250,000 and a mortgage banker non-servicing to have a net worth of $150,000. To allow more non-profit corporations to make mortgage loans in enterprise zones, the Department proposes to lower the net worth requirement to $50,000 for such entities. To qualify for the lower net worth requirement, the non-profit corporation must be located in an enterprise zone, and must originate at least 50 percent of all of its mortgage loans in enterprise zones. The non-profit corporation must also demonstrate to the satisfaction of the

Commissioner by substantial proof, such as executed contracts, that it has sufficient ability to fund mortgage loans through warehouse agreements, table funding agreements, State or Federal programs or otherwise.

In addition, the Department proposes to narrow the definition of solicitor. Current rules define a solicitor as any person who is employed as a solicitor by one, and not more than one, licensee, who is subject to the direct supervision and control that licensee, and who solicits, provides or accepts mortgage loan applications, or assists borrowers in completing mortgage loan applications. It has been the experience of the Department over the past two years that this definition is requiring registration of persons such as clerical staff who were not initially intended to be covered. Accordingly, it is proposed that, to constitute a solicitor, the compensation of the person must also in some way be based on the dollar amount or volume of mortgage loan applications, mortgage loan closings or other mortgage loan activity. It is also proposed that the registration fee be increased from $25.00 to $50.00 to more closely approximate the administrative cost of registration. Further, the rule permits the registrant to obtain a duplicate certificate for $10.00 in the event the original is lost or destroyed. The amendments to N.J.A.C. 3:38-5.3 also clarify that a solicitor who changes employing mortgage banker or broker within the two-year registration period must again register by filing a new registration form with the $50.00 fee.

Finally, the proposed amendments indicate that the registration certificate contains the name of the solicitor, the name of the employing licensee, and the address of the principal office of the employing licensee. Further, the rule specifies that it is not necessary for a licensee to return the registration certificate of a solicitor who changes from one branch location of the licensee to another branch office of that licensee.

Current rules require the Department to grant approval when a solicitor seeks to work for more than two licensees in any one calendar year. This requirement is removed. However, pursuant to the proposal, the Commissioner shall refuse to register any person who changes affiliation two or more times in a year if the Commissioner determines the change is for the purpose of evading the licensing requirements of the Act.

Social Impact

The proposed amendments would have the positive social impact of increasing the credit availability in enterprise zones. It is expected that this will benefit the residents of those areas.

The amendments to N.J.A.C. 3:38-1.10 and 5.3 are economic in nature although it is intended to result in fewer clerical staff being registered as solicitors.

Economic Impact

Increasing the cost of registering solicitors from $25.00 to $50.00, and charging $10.00 for duplicate registration forms, will have a negative economic impact on mortgage bankers, and a corresponding positive economic impact on the Department. However, it is expected that this will be offset to a large degree by the narrowing of the definition of solicitor. In other words, although the cost per solicitor will increase, licensees will need to register fewer solicitors.

Allowing specificed non-profit corporations to be licensed as mortgage bankers in urban enterprise zones with a net worth of $50,000, rather than $250,000, will have the positive economic impact of making credit more available to residents of those areas. It is expected that this will occur because it will be easier for non-profit corporations to obtain a license.

Regulatory Flexbility Analysis

Most licensees under the Act are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. By reducing the net worth requirement for non-profit corporations, the Department is reducing the compliance requirements for such persons. In addition, the Department proposes to remove the prior approval requirement for solicitors who change employment more than twice in a year, thereby also reducing the compliance requirements.

The amendments increase the registration charge from $25.00 to $50.00, and impose a $10.00 fee for duplicate registration forms. No differentiation is made based on business size because this increase is necessary for the Department to recoup its administrative costs.

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

3:38-1.1 Definitions

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

. . .

"Solicitor" means any person not licensed as a mortgage banker or mortgage broker who is employed as a solicitor by one, and not more than one, licensee, who is subject to the direct supervision and control of that licensee, and who solicits, provides or accepts mortgage loan applications, or assists borrowers in completing mortgage loan applications**, and whose compensation is in any way based on the dollar amount or volume of mortgage loan applications, mortgage loan closings or other mortgage loan activity.**

. . .

3:38-1.10 Net Worth/Insolvency

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

(k) A nonprofit corporation may obtain a license as a mortgage banker and may maintain a license with a minimum of $50,000 tangible net worth so long as:

1. All principal and branch offices are located in an enterprise zone as defined in N.J.S.A. 52:27H-62(a);

2. The non-profit corporation originates each calendar year at least 50 percent of all of its mortgage loans to consumers secured by residential real property located in enterprise zones as defined in N.J.S.A. 52:27H-62(a); and

3. The non-profit corporation demonstrates to the satisfaction of the Commissioner by substantial proof, such as executed contracts, that it has sufficient ability to fund mortgage loans through warehouse agreements, table funding agreements, State or Federal programs or otherwise.

3:38-5.3 Registration of solicitors

(a) (No change.)

(b) To register a solicitor, the prospective employing licensee shall send the following to the Department of Banking:

1. (No change.)

2. A [$25.00] **$50.00** registration fee which is payable every two years upon renewal. **A solicitor who changes employing mortgage banker or broker within the two-year registration period must reregister by filing a new registration form with the $50.00 fee. A registrant may obtain a duplicate certificate for $10.00 in the event the original certificate is lost or destroyed.**

(c) (No change.)

(d) **The registration certificate shall contain the name of the solicitor, the name of the employing licensee, and the address of the principal office of the employing licensee.** The employing licensee shall display the registration certificate at the office or work station of the solicitor.

(e) Within 30 calendar days after a solicitor ceases his or her affiliation with a licensee, the licensee shall return the registration certificate to the Department. **It is not necessary for a licensee to return the registration certificate of a solicitor who changes from one branch location of the licensee to another branch office of that licensee.**

(f) [No person shall be employed as a solicitor for more than two licensees in any one calendar year without prior express written approval from the Department. The Department shall grant such approval upon receipt of proof, satisfactory to the Department, that the multiple employment does not constitute an attempt to evade the licensing requirement of the Act.] **The Commissioner shall refuse to register any person who changes affiliation two or more times in the calendar year if the Commissioner determines that the change is for the purpose of evading the licensing requirements of the Act.**

PERSONNEL

(a)

COMMISSIONER OF PERSONNEL

Voluntary Furlough Program

Reproposed Amendments: N.J.A.C. 4A:3-4.6; 4A:4-2.15 and 5.2; 4A:6-1.2, 1.3, 1.5 and 2.4; and 4A:8-2.4

Reproposed New Rule: N.J A.C. 4A:6-1.23

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

Authority: P.L. 1993, c.297.

Proposal Number: PRN 1994-560.

A **public hearing** on the reproposed amendments and new rule will be held on:

Thursday, November 3, 1994, at 5:30 P.M.
Office of Administrative Law
Building 9, Quakerbridge Plaza
Hamilton Township (Mercer County), New Jersey

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

Submit written comments by November 16, 1994 to:

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

The agency proposal follows:

Summary

In accordance with P.L. 1993, c.297, the Commissioner of Personnel published a proposed new rule and amendments to establish a voluntary furlough program for State employees in the June 6, 1994 New Jersey Register (see 26 N.J.R. 2179(a)). A total of 168 comments were received on or before July 6, 1994 on the proposed new rule and amendments: 24 individuals presented comments at the public hearing held on June 23, 1994 before Henry Maurer, who served as the hearing officer; and 164 individuals submitted written comments (including 20 of the 24 individuals who presented comments at the public hearing). Mr. Maurer recommended adoption of the original proposed amendments and new rule with technical changes; however, the Commissioner decided to proceed with the instant reproposal. The hearing record may be reviewed by contacting Janet Share Zatz, Director of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, New Jersey 08625.

The vast majority of commenters objected to the 30-day limit on voluntary furloughs, arguing that this limit interfered with their ability to maintain their careers while fulfilling family care responsibilities or continuing their education. Following review of these comments and discussions with the Communications Workers of America (CWA), the Commissioner has decided to withdraw the pending proposal and publish for comment a revised rule and amendments which address these concerns. As more fully described below, the revised proposal provides for furlough extension leave for up to 60 days, during which employees would not lose seniority but must pay for health benefits.

The reproposed new rule at N.J.A.C. 4A:6-1.23(a) would continue to provide that employees in the career, senior executive and unclassified services be permitted to take up to 30 unpaid furlough days in a calendar year, while continuing to accrue leave time and seniority.

At N.J.A.C. 4A:6-1.23(b), the reproposed new rule would provide that a local appointing authority may establish a voluntary furlough program with the approval of the Commissioner of Personnel. In response to comments submitted by Alan Feit, City Manager, Asbury Park, the reproposed rule states a local voluntary furlough program may differ in detail but must be consistent with the purpose of this reproposed rule.

The reproposed rule at N.J.A.C. 4A:6-1.23(c) continues to set forth the same procedures and conditions for participation in the voluntary furlough program. Voluntary furloughs may consist of shorter work days, intermittent days off or consecutive work days, and remain limited to the equivalent of 30 work days in a calendar year.

A new subsection (d) provides that beyond voluntary furlough days, an employee may be granted up to 60 days' furlough extension leave in a calendar year. However, the furlough extension must be approved by the Department of Personnel as well as the employee's appointing authority. Further, such furlough extension may be used only for family care or educational reasons. With regard to health benefits, a furlough extension leave will be treated like other leaves without pay and therefore the employee must prepay the employee's share in order to continue health benefits. For this reason, the furlough extension can only be taken in blocks of 10 work days.

Subsection (e) (formerly proposed subsection (d)) will now provide that an employee on voluntary furlough or on furlough extension leave will continue to accrue leave time as if in pay status. Similarly, subsections (f) and (g) (formerly proposed subsection (e) and (f) will now provide that voluntary furlough and furlough extension leave will not affect an employee's anniversary date or seniority. Subsection (h) (formerly proposed subsection (g)) states that an employee serving in a working test period will have the period extended for the length of time the employee is on voluntary furlough or furlough extension leave. Subsection (i) (formerly proposed subsection (h)) will now provide that an employee on voluntary furlough or furlough extension leave on the day before a holiday shall receive pay for the holiday as long as he or she is in pay status during the pay period in which the holiday falls.

N.J.A.C. 4A:6-1.23(j) (formerly proposed subsection (i)) contains a corrected cross-reference to regulations of the State Health Benefits Commission governing health benefits during a voluntary furlough.

N.J.A.C. 4A:6-1.23(k) (formerly proposed subsection (j)) has been revised to incorporate the concept of furlough extension leave. The revised subsection provides that leaves without pay beyond a voluntary furlough or furlough extension leave shall be treated as a leave without pay in accordance with N.J.A.C. 4A:6-1.10.

Amendments are also reproposed to N.J.A.C. 4A:3-4.6 (anniversary dates), 4A:4-2.15 (rating of examinations), 4A:6-1.2 (vacation leave), 4A:6-1.3 (sick leave), 4A:6-1.5 (vacation and sick level adjustments), 4A:6-2.4 (holidays) and 4A:8-2.4 (seniority in layoffs) to indicate that the voluntary furloughs or furlough extension leave would not affect those areas. A reproposed amendment to N.J.A.C. 4A:4-5.2 would provide that a working test period would be extended for the period of time equal to the voluntary furlough or furlough extension leave.

Social Impact

The reproposed new rule at N.J.A.C. 4A:6-1.23, as well as the reproposed amendments to other related rules, will assist State and local appointing authorities to avoid the disrupting effects of a layoff. Moreover, State employees and employees of participating local governments will be able to take up to 30 days off from work per calendar year without pay, but with the incentive that health benefits and seniority continue. Those employees who need additional time off work for family care or educational reasons may seek furlough extension leave for up to 60 additional days, to be used in blocks of 10 work days, during which time seniority accrues while health benefits may continue at the option and cost of the employee.

Economic Impact

It is anticipated that the voluntary furlough program will continue to provide appointing authorities with a means of achieving budgetary savings, and thereby lessen the need for reductions in force. During Fiscal Year 1994, the State saved $7.4 million in salary expenditures due to employee participation in the voluntary furlough pilot program. With regard to the impact of the 30-day limit, 67 percent of the salary savings were derived from those who took 30 days or less combined with the first 30 days' furlough of those who took more than 30 days. Thus, if the pilot program had been limited to 30 days per employee in Fiscal Year 1994, the State would have still saved over $4.9 million in salary expenditures. It is anticipated that the furlough extension leave established by this reproposal will bring salary savings close to the levels achieved under the pilot program.

Since participation in the program is voluntary, the direct economic impact of lost salary will be felt only by those employees who choose to take furloughs. However, all employees, including those not participating, should benefit due to the reduction in the likelihood of layoffs.

Regulatory Flexibility Statement

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

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

4A:3-4.6 Anniversary date change when employee is in non-pay status: State service

(a) (No change.)

(b) The following periods of non-pay status shall not be deducted from earned time for purposes of calculating anniversary dates:

1.-5. (No change.)

6. Leave without pay while receiving workers' compensation benefits; [and]

7. Leave without pay under a voluntary alternative to layoff program;

8. Voluntary furlough; and

9. Furlough extension leave.

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

4A:4-2.15 Rating of examinations

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

(d) In calculating seniority for promotional examinations, **voluntary furloughs and** the following types of leaves shall not be deducted from seniority.

1. All leaves with pay including sick leave injury (SLI);

2. Military, educational, gubernatorial appointment, personal sick, disability, family, **furlough extension** and voluntary alternative to layoff leaves of absence without pay; and

3. In local service, leave without pay to fill elective office.

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

4A:4-5.2 Duration

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

(e) An approved leave of absence **including a furlough extension leave or a voluntary furlough** shall extend the completion of the working test period for a period of time equal to that leave **or voluntary furlough**.

1. (No change.)

4A:6-1.2 Vacation leave

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

(c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction without actual interruption due to resignation, retirement or removal.

1. (No change.)

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, **furlough extension leave and voluntary furlough**, shall not be included in calculating years of continuous service.

(d)-(i) (No change.)

4A:6-1.3 Sick leave

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

(c) Paid sick days shall not accrue during a leave of absence without pay or suspension **but shall continue to accrue during a voluntary furlough or furlough extension leave**.

(d)-(i) (No change.)

4A:6-1.5 Vacation and sick leave adjustments: State service

(a) (No change.)

(b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, **except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected**. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

1.-2. (No change.)

(c) In State service, intermittent days off without pay **other than voluntary furlough or furlough extension days** shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay **other than voluntary furlough or furlough extension days** equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

(d)-(g) (No change.)

4A:6-1.23 Voluntary furlough program

(a) The purpose of a voluntary furlough program is to lessen the need for reductions in force by allowing employees in the career, senior executive or unclassified services to take up to 30 days off from work without pay in a calendar year, with accrual of leave time, anniversary dates and seniority treated as if the employee is in pay status.

(b) In local service, an appointing authority may establish a voluntary furlough proram which may differ in detail but which shall be consistent with the purpose of these rules, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner, through the appropriate regional office, a voluntary furlough program proposal no later than 30 days before the planned implementation of the program. The proposal shall specify departments to be affected, employees or titles to be affected, include a summary of consultations with affected negotiations representatives concerning the program and name the voluntary furlough program administrator for the appointing authority.

2. The appointing authority shall not implement a voluntary furlough program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved voluntary furlough program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the voluntary furlough program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.

(c) An employee who wishes to participate in the program shall request, in writing, approval for such participation from the appointing authority.

1. The employee shall not be permitted to take the voluntary furlough until the employee has received approval by the appointing authority.

2. The manner in which the employee proposes to use the voluntary furlough shall be contained in the request, may be the equivalent of no more than 30 work days in a calendar year, and may consist of one or more of the following:

i. Shorter work days;

ii. Intermittent days off; or

iii. Consecutive days off.

3. An appointing authority may deny an employee the opportunity to participate in the program if it determines that such participation would be detrimental to the public health, safety or welfare or would result in increased costs to the appointing authority due to increased overtime, the need to appoint additional employees or the loss to that appointing authority of anticipated revenue.

4. An employee shall not be permitted to use a voluntary furlough for any of the following purposes:

i. As sick leave;

ii. As a leave without pay due to disability; or

iii. To seek or engage in alternate employment.

5. When an employee uses voluntary furlough or furlough extension leave for a purpose covered by the New Jersey Family Leave Act (FLA) or the Federal Family and Medical Leave Act (FMLA) and the employee is eligible for coverage under the FLA or FMLA, the voluntary furlough or furlough extension leave shall be recorded as FLA leave, FMLA leave, or both, as appropriate.

(d) An employee who wishes to extend a voluntary furlough beyond 30 days may request up to 60 days' furlough extension leave without pay. This furlough extension leave shall be taken in blocks of 10 work days, which need not be consecutive.

1. During furlough extension leave, accrual of leave time, anniversary dates and seniority shall be treated as if the employee

is in pay status. The employee may continue health benefits by paying the employee's share for the furlough extension's days in accordance with the regulations of the State Health Benefits Commission.

2. Furlough extension leave may be used for education or family care needs only.

3. Requests for furlough extension leave are subject to the approval of the appointing authority and the Department of Personnel.

(e) An employee on a voluntary furlough or furlough extension leave shall continue to accrue leave time as if the employee is in pay status. See N.J.A.C. 4A:6-1.2 (vacation leave), 4A:6-1.3 (sick leave) and 4A:6-1.5 (vacation and sick leave adjustments).

(f) In State service, the anniversary date of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:3-4.6.

(g) The seniority of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:4-2.15 (seniority in rating of examinations) and N.J.A.C. 4A:8-2.4 (seniority in layoffs).

(h) An employee serving in a working test period who is participating in the program shall have the working test period extended for the period of time equal to the voluntary furlough or furlough extension leave. See N.J.A.C. 4A:4-5.

(i) In State service, an employee on a voluntary furlough or furlough extension leave on the day before a holiday shall receive pay for the holiday as long as he or she is in pay status during the pay period in which the holiday falls. See N.J.A.C. 4A:6-2.4.

(j) See N.J.A.C. 17:9-4.2, 8.3 and 9.1 for State health benefits coverage during a voluntary furlough.

(k) Once an employee has used the equivalent of 30 days for a voluntary furlough and the equivalent of 60 days for a furlough extension leave in a calendar year, the employee shall not be permitted to take a leave without pay unless it is approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10.

1. For any leave without pay approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10 after the employee has taken a voluntary furlough and furlough extension leave, the rules on leave time, anniversary dates and seniority with respect to leaves without pay shall apply. See N.J.A.C. 4A:6-1.2 (vacation leave), 1.3 (sick leave), 1.5 (vacation and sick leave adjustments); 4A:3-4.6 (anniversary dates); and 4A:4-2.15 (seniority in rating of examinations) and 4A:8-2.4 (seniority in layoffs).

4A:6-2.4 Holidays: State service

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

(d) Employees who are in pay status on the day immediately before an authorized holiday shall receive pay for the holiday. **An employee on a voluntary furlough or a furlough extension leave on the day before a holiday shall receive pay for the holiday as long as the employee is in pay status during the pay period in which the holiday falls.**

4A:8-2.4 Seniority

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

(c) [The] **Voluntary furloughs and the** following types of leaves shall not be deducted from seniority calculations: all leaves with pay including sick leave injury (SLI); military, educational, gubernatorial appointment, personal sick, disability, family, **furlough extension** and voluntary alternative to layoff leave without pay; and, in local service, leave to fill elective public office. Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.

(d)-(g) (No change.)

COMMUNITY AFFAIRS

(a)

LOCAL FINANCE BOARD

Local Authorities

Proposed Readoption: N.J.A.C. 5:31

Authorized By: Local Finance Board, Beth Gates, Chair.
Authority: N.J.S.A. 40A:5A-1 et seq. (P.L. 1983, c.313).
Proposal Number: PRN 1994-561.

Submit written comments by November 16, 1994 to:
Doris Windle, Executive Secretary
Local Finance Board
Department of Community Affairs
CN 803
Trenton, New Jersey 08625-0803

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Local Authority rules, N.J.A.C. 5:31, are scheduled to expire on December 1, 1994. The Local Finance Board has reviewed these rules and finds that they continue to be necessary for the regulation of local authority budgets, accounting and financial reporting procedures and practices.

Under the rules, the Director, Division of Local Government Services, reviews and approves all local authority budgets. The rules also regulate budget preparation, capital budget and capital programs, introduction, adoption, later approval and adoption and amendment by local authorities, as well as providing for a temporary budget.

Additionally, the rules encompass legal depositories, payments from authority monies, required check signatures, surety bonds, accounting principles and policies, annual audit, audit by Director, audit standards, auditors confidential report, the audit report and the annual financial report.

The system which has been in place since 1985 has provided continued oversight of authority financial practices and enhanced the fiscal integrity of these independent agencies. N.J.S.A. 40A:5A-10 and 15 authorize the Local Finance Board to adopt and maintain rules. Readoption is necessary to insure the continued financial oversight of these agencies in the public interest. The Board has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, N.J.A.C. 5:31 is proposed for readoption without change.

Social Impact

Readoption of the rules will ensure the continued fiscal integrity of local government units. Affected by the rules are over 220 local authorities and 188 fire districts of the State and the respective municipalities and counties that created these entities.

Failure to readopt these rules would have an adverse social impact since it would eliminate the system of regulating authority budgets; the system of budgetary and accounting controls that enforces and protects the fiscal integrity of the local authorities and the local units who create, join or contract with them; and the budgetary and fiscal practice controls that safeguard public funds.

The rules are intended to protect the citizens of the State by overseeing the financial activities of the agencies conducting public business on their behalf. The rules are part of the basic foundation of State oversight of local government unit fiscal integrity.

Periodically, a public entity is mismanaged or is damaged by corrupt officials. While an uncommon occurrence, the existence of the rules promulgated by the Local Finance Board in this and other chapters have a salutary influence, and acts as a preventative and precautionary vehicle against mismanagement and corruption in public agencies.

As these procedures have been in place for many years, the readoption will cause little or no impact on the regulated community or the public. The agencies have worked with them and understand their purposes. Little, if any comment, either positive or negative is anticipated, as there is little impact on the parties.

Economic Impact

Ultimately the public pays the costs of the rules through fees and taxes charged the public agencies. Because the rules have been in effect for many years, these costs are part of the basic operating practices of the agencies.

Continuing the existing rules will add no additional costs to local authorities, as complying with the existing rules is an administrative cost element at present. As fiscal integrity and credibility is important to the investment community, failure to continue the rules could negatively affect local authority credit worthiness and add to local authority financing costs.

There is no statistical data that relates to these rules and their readoption, nor is there an impact on funding sources. However, as they are a part of the regulatory scheme of the State's oversight of local units, their cost is determined to be necessary for protection of the public interest.

Because there are no fees being established or continued, nor new procedural or technical requirements being imposed, there will be no economic changes as a result of the readoption of these rules. While compliance with the rules may involve costs to the taxpayers, those costs are overshadowed by the resulting fiscal security. Failure to readopt the rules would remove many of the procedures that now protect New Jersey taxpayers against fiscal mismanagement of local tax dollars.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules affect only the regulation of local government units.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:31.

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES

Veterinary Public Health

Proposed Readoption with Amendments: N.J.A.C. 8:23

Proposed Recodification with Amendments: N.J.A.C. 8:23-3, 5 and 6 as N.J.A.C. 8:23A

Authorized By: Len Fishman, Commissioner, Department of Health, and the Public Health Council, John Slade, M.D., Chairperson.

Authority: N.J.S.A. 26:1A-7; 26:4-79, 80 and 81; 4:19-15.14 and 15.16A; and 4:19A-11.

Proposal Number: PRN 1994-544.

A public hearing concerning this proposal will be held at 1:15 P.M. on November 14, 1994 at:

Department of Health
Room 106 (Auditorium)
Health/Agriculture Building
John Fitch Plaza
Trenton, N.J. 08625

Submit written comments by November 16, 1994 to:

Annette M. Hirsch, Program Manager
Biological Services Program
Division of Epidemiology, Environmental and Occupational Health Services
New Jersey Department of Health
CN 369
Trenton, N.J. 08625-0369

The agency proposal follows:

Summary

The Department of Health proposes to readopt, with amendments, N.J.A.C. 8:23, which is scheduled to expire December 13, 1994, pursuant to Executive Order No. 66(1978). The rules in N.J.A.C. 8:23-1.1 to 1.6 and 8:23-4.1 are proposed for readoption under the authority of the Public Health Council pursuant to N.J.S.A. 26:1A-7 and 26:4-79, 80 and 81. They are to be differentiated from N.J.A.C. 8:23-3.1, 5.1 to 5.5, and 6.1 and 6.2 which are proposed for readoption pursuant to N.J.S.A. 4:19-15.14 and 15.16A and 4:19A-11 and which will be recodified into N.J.A.C. 8:23A. N.J.A.C. 8:23-2.1 and 2.2 are to be deleted.

The Department proposes amendments to N.J.A.C. 8:23, because of outdated rules that are no longer necessary, changes in statute and changes in acceptable rabies control protocols.

N.J.A.C. 8:23-1 sets forth the requirements for the importation of dogs; health certification requirements; reporting of cases of rabies in animals; transportation of quarantine animals; quarantine, testing and transportation of quarantine birds of psittacine family; records of dealers in birds of psittacine family, and herd testing program.

N.J.A.C. 8:23-1.1(b), which requires the owner of a dog imported into the State to forward the health certificate to the local health department, is being repealed since it has been deemed an unnecessary administrative practice.

N.J.A.C. 8:23-1.3 requires that permission be obtained from the local health department in order to transport animals confined under N.J.S.A. 26:4-84 (to prevent spread of rabies). This rule has been amended to include animals confined under N.J.S.A. 26:4-82 (animal bitten by another) and 83 (animal has attacked or bitten person). No other amendments have been made to this subchapter.

N.J.A.C. 8:23-2 sets forth the requirements for the importation of rabbits and the permit process. Since the Department of Environmental Protection and Energy has jurisdiction over wildlife, these rules are duplicative and have been deleted.

N.J.A.C. 8:23-3 is being recodified as N.J.A.C. 8:23A-1 and is discussed later in this Summary.

N.J.A.C. 8:23-4 sets forth the requirements for the sale and distribution of live turtles. No substantive change has been made to the rule other than Subchapter 4 is being recodified as N.J.A.C. 8:23-2.

N.J.A.C. 8:23-5 and 8:23-6 are being recodified as N.J.A.C. 8:23A-2 and 3, and will be discussed later in this Summary.

As previously mentioned, it is proposed that N.J.A.C. 8:23-3, 5 and 6 be recodified in order to differentiate them from the rules that are promulgated under the Public Health Council's authority. These recodified rules have a separate authority and are being recodified to N.J.A.C. 8:23A for clarity. The recodified rules are summarized below.

N.J.A.C. 8:23-3 is recodified as N.J.A.C. 8:23A-1 and sets forth the requirements for the sanitary operations of kennels, pet shops, shelters and pounds. Several amendments to these rules have been made to establish definitions; reflect statutory changes and acceptable practices as defined by the American Veterinary Medical Association's Panel on Euthanasia concerning animal euthanasia; establish practices for the maintenance and disposal of animal carcasses; clarify disease control and isolation requirements; and establish maintenance standards for animals in confinement.

N.J.A.C. 8:23A-1.1 requires the certification of inspection be prominently displayed at the facility; that new facilities undergo plan review and approval by local health authorities; and that facilities show evidence of satisfactory fire safety inspections.

N.J.A.C. 8:23A-1.2 sets standards for the storage and disposal of animal carcasses, and requires hot and cold water washing facilities and access to toilet facilities.

N.J.A.C. 8:23A-1.3 requires that indoor facilities be provided for all animals. An exception is made for kennels housing animals which have been certified by a veterinarian to be acclimated to outdoor conditions. Screens must be provided to control the entrance of insects and indoor caging must be maintained at a temperature of at least 50 degrees Fahrenheit. Sewage disposal systems must meet local and State codes.

N.J.A.C. 8:23A-1.4 requires that the surfaces of outdoor facilities' enclosures of shelters, pet shops, pounds and boarding kennels be impervious to moisture and capable of being cleaned and disinfected. In kennels where animals are housed solely outdoors, shelter shall be provided with a windbreak at the entrance of the shelter.

N.J.A.C. 8:23A-1.5 requires that primary enclosures have no sharp points or edges that may cause injury to the animals; that animals of different species not be housed together; that enclosures be cleaned and disinfected between resident animals; that animals showing signs of contagious disease be isolated; that grid type flooring is not injurious to the animal's paws, requires a minimum space standard for cats; that cat litter for excrement be provided; that dogs maintained in spaces that are less than double the standard requirement be exercised in runs at least twice per day or leash walked for at least 20 minutes per day; and

that suspect rabid animals be held in caging that prevents contact with neighboring animals, with a warning sign displayed.

N.J.A.C. 8:23A-1.6 specifies feeding requirements for juvenile animals; the maintenance and care of feeding utensils; and that potable water be provided at all times.

N.J.A.C. 8:23A-1.7 requires cages, floors and enclosures to be disinfected daily.

N.J.A.C. 8:23A-1.8 provides for certification by a veterinarian that a disease control program has been established; zoonotic diseases being reported to health departments; a separate isolation room to house animals with clinical signs of disease; the specification for an isolation area; and the maintenance of the cleaning utensils in the isolation area.

N.J.A.C. 8:23A-1.9 delineates the management protocol for biting animals and suspect rabid animals; rabies specimen preparation and delivery to a laboratory; and increases the minimum time frame for public access to impoundment facilities.

N.J.A.C. 8:23A-1.10 delineates acceptable and unacceptable methods of euthanasia and requires that all persons administering euthanasia be certified by a veterinarian.

N.J.A.C. 8:23A-1.11 specifies temperature and ventilation requirements for the transportation of animals.

N.J.A.C. 8:23A-1.12 addresses records and administration. No significant changes have been made.

N.J.A.C. 8:23-5 is recodified as N.J.A.C. 8:23A-2 and sets forth the requirements for Animal Control Officer's Certification. The rules include definitions, and pertain to approved course of study, course approval, certification, and mandatory compliance. No amendments have been made to this subchapter.

N.J.A.C. 8:23-6 is recodified as N.J.A.C. 8:23A-3. The rules establish pilot low cost spaying and neutering clinic surgery fees. No amendments have been made to this subchapter.

Social Impact

The rules in N.J.A.C. 8:23 and N.J.A.C. 8:23A protect the citizenry from diseases transmissible from animals to man; establish licensure standards for the sanitary operation of kennels, pet shops, shelters and pounds; provide for the certification and training of individuals responsible for the capture and maintenance of domestic animals; and set the fees for the low cost domestic dog and cat spay/neuter clinic. The readoption of the existing rules will continue to provide the standards necessary to protect the health of the community.

The recodified rules at N.J.A.C. 8:23A-1, which set forth the minimum standards for the sanitary operations of kennels, pet shops, shelters and pounds, are necessary for the control of diseases of animals, such as rabies. The impoundment of stray and abandoned animals during a rabies epidemic poses a significant health threat to both non-infected animals and people, particularly animal caretakers. Hence, the requirements which address disease control practices, will benefit both the animals and people. The other amendments are reflective of statutory changes or to clarify existing rules. Several statutory changes regarding euthanasia in N.J.S.A. 4:22-1 et seq. necessitate changes in the rules for consistency purposes. The provision for limiting the transportation of suspect rabid animals has been expanded to include animals confined under the provisions of N.J.S.A. 26:4-82, 83.

Economic Impact

The economic impact of the rules contained in proposed N.J.A.C. 8:23 and 8:23A is derived from costs of compliance with the physical facility, equipment and staffing requirements contained in these two chapters. Such costs can vary enormously, depending upon the choices made by the facility involved, for example, whether to rent or to purchase a facility and/or equipment. The reporting requirements are the minimum required to assure that the Department possesses adequate data for monitoring compliance. The readopted rules will cause no change in economic impact. Any changes caused by amendments are enumerated in the following paragraphs.

N.J.A.C. 8:23-1.1 is proposed for readoption with amendments and imposes costs on dog owners for the veterinary examination and certification of dogs brought into the State.

N.J.A.C. 8:23-1.1(b) is being deleted and should result in a decrease in cost to municipal and State government through savings on clerical time, mailing and postage.

N.J.A.C. 8:23-1.2 requires the reporting of rabid or suspect rabid animals to the local board of health and incurs cost of personnel time and follow-up activities.

N.J.A.C. 8:23-1.3 requires that animals confined by the presence of rabies or as a result of exposure to rabies or due to a biting incident not be relocated without written permission from the local health department. Costs are associated with the administration of the confinement process but no additional costs are anticipated with these amendments.

N.J.A.C. 8:23-1.4 requires that birds suspected to be infected with psittacosis be quarantined, tested and, in the presence of disease, follow treatment regimes. The cost associated with the testing as well as the treatment to prevent the spread of the disease to the general public are borne by the owner of the birds. The readoption of this rule imposes no additional costs.

N.J.A.C. 8:23-1.5 requires the maintenance of records of psittacine birds to permit tracking of zoonotic disease and quarantine infected sources. Costs are incurred in the maintenance and recording, but are the same as necessary for good business practices.

N.J.A.C. 8:23-1.6 requires that dairy herds be tested for brucellosis, the cost of which is borne by the owner. No additional costs are anticipated with the readoption of this rule.

N.J.A.C. 8:23-4, recodified as N.J.A.C. 8:23-2, bans the sale of turtles to the general public unless the turtles can be certified as being free of salmonella. Costs associated with testing for salmonella are borne by the seller. No additional costs are associated with this rule.

N.J.A.C. 8:23-3, recodified as N.J.A.C. 8:23A-1, will impose costs for those facilities which have not been following generally accepted disease control practices. For example, those facilities which have not been providing separate rooms for isolation of diseased animals will be required to establish a room within the facility for this specific purpose. This may entail renovation and construction costs for those facilities.

N.J.A.C. 8:23A-1 sets forth the standards for the licensure of animal facilities. Such applicants incur costs in terms of time and expense associated with complying with the standards, recording of the intake and disposition of animals and other administrative functions associated with the industry. Regulatory agencies expend considerable time in monitoring and enforcing compliance. Such impacts will continue with the readoption of these rules. No additional costs are imposed in the recording or filing activities associated with the adoption of the unchanged or amended rules.

N.J.A.C. 8:23-5, recodified as N.J.A.C. 8:23A-2, provides for the certification of animal control officers, the cost of which is borne by individuals seeking certification through tuition and registration. The Department incurs minimal costs through the maintenance of the certification registry and issuance of certificates.

N.J.A.C. 8:23-6, recodified as N.J.A.C. 8:23A-3, sets forth fees for the spaying and neutering clinic. The fees charged to the public for these services are far below the average charge by private veterinarians and therefore provides a cost saving to the public.

Regulatory Flexibility Analysis

Both N.J.A.C. 8:23 and N.J.A.C. 8:23A impose recordkeeping and other compliance requirements upon animal facilities. The Department estimates there are approximately 540 kennels, pet shops, shelters and pounds in the State which require licensure by local municipalities. Most of the facilities regulated by N.J.A.C. 8:23 and 8:23A would qualify as a "small business" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., although no data are available to reveal precisely how many facilities meet the statutory requirement. Statutes require kennels, pet shops, shelters and pounds to maintain records on the source and disposition of animals in their facilities for the purpose of owner reclamation, disease tracking and to prevent the disposition of previously owned animals to research facilities. The rules imposed on these kennels, pet shops, shelters and pounds all pertain primarily to the protection of the public health, specifically with regard to the prevention and control of zoonotic and other disease among animals housed together in these facilities. The rules are necessary for the protection of the public, to ensure that stray pets reclaimed from pounds, pets picked up from boarding kennels, and animals adopted or purchased from such facilities are healthy and as free from diseases transmissable to people as is possible. Most of the animals dealt with in these facilities will have frequent and regular contact with people in their homes. The costs described in the Economic Impact are considered essential to improve sanitation and maintain disease control and animal housing standards. To exempt these small businesses from this requirement would not be in the best interest of the public. Without the required information, municipalities could not monitor their contracts with impoundment facilities; the tracking of rabid animal/human contacts would be impossible, and stray animals would not be reunited with their owners. Thus, small businesses are not exempted from the requirements, and there are no differing standards based on business size offered.

Full text of the proposed readoption and new rules may be found in the New Jersey Administrative Code at N.J.A.C. 8:23.

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

CHAPTER 23
[VETERINARY PUBLIC HEALTH]
RABIES REPORTING; ANIMAL AND BIRD IMPORTATION, TESTING AND QUARANTINE

SUBCHAPTER 1. ANIMALS AND BIRDS IMPORTATION, QUARANTINE, AND HERD TESTING PROGRAM

8:23-1.1 Importation of dogs; certification requirements

[(a)] Dogs shall not be brought into this State excepting when in transit or for breeding, laboratory, or exhibition purposes unless accompanied by a health certificate issued by a licensed veterinarian of the state or nation of the dog's origin indicating that the dog is free from rabies and other communicable disease and had not recently been exposed to any such disease. This certificate shall also state the breed, sex, age, point of origin, point of destination, the name and post office address of the consignee or owner and the consignor or seller and if the dog has been vaccinated, the type and date of vaccination.

[(b) The owner or his authorized agent shall, upon arrival of the dog at its destination in this State, immediately forward the above-mentioned certificate to the health officer or board of health of the municipality or district wherein the dog is located and that health officer or board, upon review and notation thereof, shall forward the same to the State Department of Health.]

8:23-1.3 Transportation of [quarantined] **confined** animals

Animals confined [by quarantine established] by provisions of N.J.S.A. 26:4-**82, 83, or** 84[, as the result of the presence of rabies in any area within this State,] shall not be transported from [a quarantined area] **confinement** unless permission therefor shall be granted by the health officer of the municipality [or district] in this State into which such animal or animals are to be transported under conditions which may be prescribed by the Department. In the event the destination of a [quarantined] **confined** animal is beyond the boundaries of this State, permission must be obtained from the Department of Health.

[SUBCHAPTER 2. IMPORTATION OR RELEASE OF RABBITS IN THIS STATE

8:23-2.1 Importation of rabbits

Hereafter rabbits may only be imported or otherwise received for release in the State from November 15 to March 1, the period of least ectoparasite harborage.

8:23-2.2 Permit

Prior to importing or otherwise receiving rabbits in this State, a permit shall first have been obtained from the Division of Fish and Game of the Department of Environmental Protection. Said permit shall indicate with respect to rabbits being shipped into this State, their place of origin, point of shipment, route of shipment, point of destination in the State and anticipated date of arrival.]

Agency Note: N.J.A.C. 8:23-3 is recodified as N.J.A.C. 8:23A-1.

SUBCHAPTER [4]**2**. SALE OR DISTRIBUTION OF LIVE TURTLES

8:23-[4.1]**2.1** (No change in text.)

CHAPTER 23A
ANIMAL FACILITY OPERATION; ANIMAL CONTROL OFFICER CERTIFICATION; PILOT SPAY/NEUTER CLINIC FEES

SUBCHAPTER [3]**1**. SANITARY OPERATION OF KENNELS, PET SHOPS, SHELTERS AND POUNDS

8:23A-1.1 Definitions

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

"Adult dog or cat" means a dog or cat over the age of seven months or which possesses a set of permanent teeth.

"Animal" means any animal subject to rabies or other diseases of dogs.

"Disinfection" is any process, chemical or physical, by means of which pathogenic agents or disease producing microbes are destroyed, but not necessarily resistant bacterial spores.

"Euthanasia" is the act of inducing painless death.

"Impervious surface" means a surface that does not permit the absorption of fluids. Such surfaces are those that can be thoroughly and repeatedly cleaned and disinfected, which will not retain odors, and from which fluids bead up and run off or can be removed without their being absorbed into the surface material.

"Primary enclosure" means any structure used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage or compartment.

8:23A-[3.1]**1.2** Compliance

(a) Kennels, pet shops, shelters and pounds shall comply with the provisions of these rules [and regulations] in the maintenance and care of all animals subject to rabies and other diseases of dogs, as well as rules, regulations and ordinances enacted by the appropriate agency or governing body of the municipality wherein they are located.

[(b) The term "animal" as used in these regulations means any animal subject to rabies and other diseases of dogs.]

(b) A certificate of inspection, issued for the current licensing year by the local health authority indicating compliance with these rules, shall be prominently displayed at the facility in an area visible to the public.

(c) Any facility constructed or renovated after (the enactment of these amended regulations) shall first undergo plan review and approval by the local health authority. This review shall be completed within 60 days by the local health authority.

(d) Facilities shall show evidence of satisfactory inspection on a yearly basis by local fire officials.

8:23A-[3.2]**1.3** Facilities (general)

(a) Housing facilities for animals shall be [structurally sound and shall be] maintained in good repair, to protect the animals from injury, to contain the animals, to restrict the entrance of other animals; and location, construction, arrangement and operation shall not constitute a nuisance.

(b) Reliable and adequate electric power, if required to comply with other provisions of these rules and regulations, and adequate potable water shall be available. **Facilities not receiving water from a municipal water supply system shall meet the standards of the Public Noncommunity Drinking Water Standard (N.J.A.C. 7:10-1.1 through 12.43).**

(c) (No change.)

(d) Provisions shall be made for the removal and disposal of animal and food wastes, bedding, dead animals and debris. Disposal facilities shall be provided and operated as to [minimize] **control** vermin infestation, odors and disease hazards. **In facilities having no refrigeration in which to store carcasses, carcasses shall be removed from the premises within 12 hours, in ambient temperatures of 45 degrees Fahrenheit and above. Carcasses being stored on the premises shall be placed in tightly closed containers to prevent the entry of insects, vermin or other animals.**

(e) Facilities, such as washroom, basins or sinks, shall be provided **in the facility** to maintain cleanliness among animal caretakers[.];

hot and cold water, soap, and towels shall be provided. Toilet facilities shall be provided in the facility or nearby on the premises.

(f) Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in these rules and regulations. Premises shall remain free of accumulations of trash **and the overgrowth of vegetation up to the property line or within 20 feet of the facility.** Insects, ectoparasites, and avian and mammalian pests shall be controlled effectively.

8:23A-[3.3]**1.4** Facilities (indoor)

(a) Indoor animal facilities shall be provided for all pet shops, shelters and pounds. Kennels must also have indoor facilities, except for animals which **the supervising veterinarian certifies** are acclimated **to the climatic conditions in New Jersey.**

(b) Indoor housing facilities for animals shall be sufficiently heated when necessary to protect the animals from cold, and to provide for their health and comfort. [In the case of dogs or cats, the] **The** ambient temperatures shall not be allowed to fall below 50 degrees Fahrenheit[, unless the animals are acclimatized to lower temperatures] **in any indoor primary enclosures where animals are housed.**

(c) Indoor housing facilities for animals shall be adequately ventilated to provide for the health and comfort of the animals at all times. Such facilities shall be provided with fresh air either by means of windows, doors, vents or air conditioning and shall be ventilated so as to minimize drafts, odors and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or air conditioning, shall be provided when the ambient temperature is 85 degrees Fahrenheit or higher. **Windows and doors used for ventilation (except for guillotine doors) shall be screened to control the entrance of insects.**

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

(f) The interior building surfaces of indoor housing facilities shall be constructed and maintained so that they are [substantially] impervious to moisture and may be readily cleaned.

(g) A suitable method shall be provided to eliminate [rapidly] excess water from indoor housing facilities. Drains, when used, shall be properly constructed and kept in good repair to avoid foul odors **and back-up** therefrom. [Closed drainage systems when used, shall be equipped with traps and so installed so as to prevent any back-up of sewage onto the floor of the room.] **Facilities which are not connected to a municipal sewerage system shall have a system for the disposal of animal excrement that meets applicable local and State codes.**

8:23A-[3.4]**1.5** Facilities (outdoor)

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

(c) **In kennels where animals are housed solely outdoors,** [Shelter] **shelter** shall be provided when the atmospheric temperature falls below 50 degrees Fahrenheit. Sufficient clean bedding material or other means of protection from the weather elements shall be provided when the ambient temperature falls below that temperature to which an animal is acclimated. **Each shelter shall be provided with a windbreak at its entrance.**

(d) (No change.)

(e) Surfaces of outdoor enclosures of pet shops, shelters, pounds and boarding kennels should be constructed and maintained so that they are impervious to moisture and may be readily cleaned and disinfected; run off from outdoor enclosures shall be disposed of adequately, in accordance with N.J.A.C. 8:23A-1.3(g).

8:23A-[3.5]**1.6** Primary enclosures

[(a) A primary enclosure is any structure used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage or compartment.]

[(b)]**(a)** Primary enclosures shall be structurally sound and maintained in good repair so as to:

1. Contain the animals[,];
2. Protect animals from injury[,];
3. Keep predators out[,];
4. Enable animals to remain dry and clean[,];
5. Permit animals convenient access to food and water as required in these rules [and regulations,];
6. Provide sufficient space for each animal to turn about freely and to stand, sit and lie in a comfortable normal position; **and**
7. **Have no sharp points or edges accessible to the animals that could cause injury.**

[(c)]**(b)** In addition to the other provisions of this [Section] **section** each dog in any primary enclosure shall be provided a minimum square footage of floor space equal to the mathematical square of the sum of the length of the dog in inches, as measured from the tip of its nose to the base of its tail, plus six inches, expressed in square feet.

[(d)]**(c)** Animals housed in the same primary enclosure shall be maintained in compatible groups, with the following additional restrictions:

1. Females [in season (estrus)] shall not be housed in the **same** primary enclosure with **sexually intact** males, except for breeding purposes, unless otherwise requested by the owner.

2.-3. (No change.)

4. **Animals of different species shall not be housed in the same primary enclosures.**

(d) Animals shall not be placed in empty primary enclosures previously inhabited by other animals unless the enclosure has first been cleaned and disinfected.

(e) Animals showing signs of contagious illness shall be removed from rooms and enclosures containing healthy animals and housed in a separate isolation room.

(f) The floors of primary enclosures shall be constructed so as to protect the animals' feet and legs from injury. Enclosures may have grid-type flooring, provided that the grid material is of adequate gauge to prevent sagging under the weight of the animals and that the mesh is small enough to prevent their feet from passing through or to cause cutting injuries to the foot pads.

(g) Each adult cat housed in a primary enclosure for longer than 15 days shall be provided a minimum of seven cubic feet of cage space. A receptacle containing sufficient litter shall be provided to contain excreta.

(h) Adult dogs confined in cages of less than double the minimum standard size as stated in (c) above shall be exercised in runs at least twice a day or walked on a leash for at least 20 minutes per day.

(i) Suspect rabid animals shall be held in caging that is impermeable to the dissemination of saliva to animals housed on either side of it, with a warning sign prominently posted on the enclosure.

8:23A-[3.6]**1.7** Feeding and watering

(a) (No change.)

(b) The food shall be free from contamination, wholesome, palatable, and of sufficient quantity and [nutritive] **nutritional** value to meet the normal daily requirements for the condition and size of the animals.

(c) Immature animals shall be fed in accordance with generally accepted procedures; **those animals under three months of age shall be fed three times daily; those three to six months of age shall be fed twice daily.**

(d) (No change.)

(e) Feeding pans shall be durable, [and kept] cleaned **and disinfected daily.**

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

(h) [If potable water is not accessible to the animals at all times, potable water shall be offered to animals at least twice daily, for periods of not less than one hour except as might otherwise be required to provide adequate care.] **Potable water must be accessible to animals at all times.** Receptacles for such purposes shall be kept clean at all times.

8:23A-[3.7]**1.8** Sanitation

(a) Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to [reduce] **control** disease hazards and odors. When a hosing or flushing method is used for cleaning, any animal contained therein shall be removed from such enclosures during the cleaning process, and adequate measures shall be taken to protect the animals in other such enclosures from being contaminated with water and other wastes.

(b) Primary enclosures for animals shall be physically cleaned often enough to prevent an accumulation of debris or excreta and to reduce to a practical minimum, agents injurious to **the** health of animals or humans.

(c) [At least once every two weeks cages] **Cages, floors,** [rooms] and hard surfaced pens or runs shall be [sanitized] **disinfected at least once per day** by washing them with hot water (180 degrees Fahrenheit) and soap or detergent as in a mechanical cage washer, or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with live steam. [Pens or runs using gravel, sand or dirt shall be cleaned by removing the soiled gravel, sand or dirt and replacing it as necessary.]

(d) Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and disease, to facilitate the prescribed sanitary practices as set forth in these rules [and regulations], and to prevent nuisances.

(e) (No change.)

8:23A-[3.8]**1.9** Disease control

(a) Progams of disease control and adequate health care shall be established and maintained under the supervision and assistance of a doctor of veterinary medicine. **A form, developed by the State Department of Health, indicating that such a program is in effect at the facility, shall be signed and dated yearly by the attending veterinarian and kept on file at the facility for inspection by State and local health officials.**

(b) Each animal shall be observed daily by the animal caretaker in charge, or by someone under his **or her** direct supervision. Sick, diseased, injured **or** lame [or blind] animals shall be provided with **at least basic** veterinary care **(that is, to alleviate pain and suffering) and not offered for sale or adoption until deemed by the attending veterinarian to be fit for sale or adoption** or [humanely disposed of] **euthanized,** unless such action is inconsistent with the purposes for which the animal was obtained and is being held; provided, however, that this provision shall not affect compliance with N.J.S.A. 4:19-15.16, which requires the holding for seven days of all stray [dogs] **animals. Euthanized animals that have bitten a human within 10 days previous to euthanasia shall be examined for rabies at the State Health Department Laboratory.**

(c) Any animal under [quarantine] **confinement for,** or [treatment for] **with signs of,** a communicable disease shall be separated from other **healthy** animals **and placed in an isolation area** in order to minimize dissemination of such disease. **Caretakers shall wash their hands after handling these animals and follow procedures which control the dissemination of disease as recommended by the supervising veterinarian.**

(d) The isolation area shall be a separate room (with ceiling to floor walls and door) from the holding area of the general animal population, not to be used for any purposes other than the segregation of animals with signs of communicable disease.

(e) The isolation area shall have an exhaust fan or system which creates air movement from the isolation area to an area outside the premises of the facility. Removal of exhaust air from the isolation area may be accomplished by the use of existing heating and air conditioning ducts provided that no exhaust air from the isolation area is permitted to enter or mix with fresh air for use by the general animal population.

(f) Cleaning utensils for the isolation area shall be separate from those used for cleaning the general animal population area; such utensils shall either be washed separately from, or after, those used for the general population.

(g) The veterinarian supervising the facility's disease control programs shall report the diagnosis of zoonotic diseases in animals at the facility to the local board of health.

[(d)]**(h)** Any person operating or employed at a kennel, pet shop, shelter or pound who observes an animal which he **or she** suspects of being rabid shall at once notify by telephone [or telegraph the executive officer of] the local [board of] health **department** or the State Department of Health and segregate such animal [for a period of ten days unless examined and released on the written statement of a veterinarian]. **Dogs and cats suspected of having rabies shall be held for 10 days, unless examined and released on the written statement by a veterinarian, or, shall be humanely euthanized and tested for rabies provided that this does not affect compliance with N.J.S.A. 4:19-15.16. Other animals shall be handled accordingly as per recommendatinos of the State Department of Health.**

8:23A-[3.9]**1.10** Holding and receiving of animals

(a) Steps in the protection of the public from rabies infection include:

1. Impounded animals must be kept alive for seven days to give opportunity for rabies disease surveillance and opportunity for owners to reclaim. (See Reg. 9.2) (N.J.S.A. 4:19-15.16)].

2. A dog or cat which has been bitten a human may be kept alive and observed for [ten] **10** days following the bite, if the owner of the animal so desires.

3. Unowned or unwanted dogs or cats which have bitten a human shall either be held for rabies observation for 10 days following the bite or euthanized for laboratory examination for rabies, provided that this provision shall not affect compliance with N.J.S.A. 4:19-15.16 which requires the holding for seven days of all stray animals.

4. **Other biting animals should be euthanized for rabies examination; if unowned, they shall be euthanized upon recommendations of the State or local health department.**

[3.]**5.** [A dog or cat that is not wanted, or any other animal which has bitten a human should be sacrificed for laboratory examination for rabies.] The specimen to be submitted **for laboratory examination** is the head of a small animal such as a dog, cat or mouse, the brain of a large animal such as a horse, cow or sheep, or an entire bat. **The specimen shall be carefully packaged so as to maintain refrigeration temperatures during delivery and to prevent the leakage of any body fluids to the exterior of the package.** The specimen should be delivered by messenger to the State Department of Health Laboratory[, Health-Agriculture Building, John Fitch Plaza, Trenton].

[4.]**6.** Animals brought in for elective destruction [may] **shall** not be [killed] **euthanized** until the person in charge of the facility has determined the animal is not a stray, and that the person requesting the animal's [destruction] **euthanasia** is its owner or a representative **with written authorization** of the owner and the animal has not bitten a human within ten days or evidenced other aggressive tendencies compatible with symptoms suspicious of rabies. If the animal has bitten a human being within [ten] **10** days, **the** appropriate specimen shall be delivered to the laboratory [under the provisions of regulations 9.1c].

[5.]**7.** The person in charge of the facility shall keep a record of evidence submitted in support of [paragraph] **(a)**6 **above** for a period of one year.

(b) Each shelter or pound shall post a sign establishing specific hours during which persons will be permitted to enter the facility to look at animals and records for the purpose of seeking animals that are missing:

1. The sign [must] **shall** be clearly visible from the outside.

2. The hours/[must] **for public access shall** be at least [one] **two** hours each business day **Monday through Friday and two hours Saturday or Sunday, excluding legal holidays. All shelter and impoundment facilities shall make available to contracting municipalities a telephone number where residents may call to report lost animals or receive information on animals found; this telephone number shall also be listed on the posted facility sign.**

3. The person who is searching for [a] **his or her** missing animal shall identify himself **or herself** by presenting a driver's license or other acceptable identification document.

4. The person who is searching for [a] **his or her** missing animal shall furnish to the shelter or pound a written description of [the] **his or her** animal and a license **or other proof of ownership** [for any dog which has attained the age of seven months or which possesses a set of permanent teeth, or a bill of sale or other proof of ownership of a younger dog or other animal].

5. The person who is searching for [a] **his or her** missing animal shall abide by all reasonable security measures required by the shelter or pound to prevent the spread of disease.

6. In the case of claimed dogs which are unlicensed, the name and address of the owner, and a description of the dog, shall be forwarded within 30 days to the person or agency designated to enforce the licensing of dogs in the municipality of the dog owner's residence.

7. Any impoundment facility accepting a stray animal found in a municipality not under contract with that facility shall notify, within 48 hours, the animal control officer of the municipality where the animal was found, as to the species, sex and other identifying features of the animal.

8:23A-[3.10]**1.11** Euthanasia

[(a) Euthanasia is the act of inducing painless death.]

[(b)]**(a)** No animal being [disposed of] **euthanized** shall be allowed to make physical contact with another animal [while in any apparatus designed to kill] unless pretranquilized to the extent that they are not capable of aggressive actions dangerous to humans or animals. [The milling, fighting, biting and clawing that take place when several animals are put to death together, unless pretranquilized, are inhumane and cannot be defended. Avoidance of such aggressive physical contact may also be achieved by disposing of animals singly or by the use of a chamber with compartments so constructed that the animals cannot make contact with each other. Excitable and apprehensive animals shall be given a tranquilizer prior to being killed. Carcasses must be removed prior to reuse of the equipment with other live subjects. Whatever method is used, the operator must be carefully trained and know the equipment and how to use it. The equipment should be periodically checked by someone mechanically competent with regard to the specific method of euthanasia. The oeprator must be motivated to want to dispose of animals with a minimum of suffering and pain.]

(b) Where standard methods of restraint are impractical or impossible (such as zoo animals, animals in severe pain from trauma, or animals that are intractable for other reasons) or where manual capture and restraint may cause pain and injury through struggling and anxiety, the use of immobilizing drugs are acceptable, except neuromuscular blocking agents as determined by N.J.S.A. 4:22-1 et seq.

(c) The acceptable methods of euthanasia include the following:

1. The primary recommended method is an **intravenous** injection of a barbiturate**; however, an intrathoracic or intracardiac injection may be made where intravenous injection is impractical, as in the very small animal, or in the comatose animal with depressed vascular function**.

[i. It is recommended that this method be limited to use by a veterinarian or personnel directly under the supervision of a veterinarian.

ii. Intravenous injection is preferred; intrathoracic or intracardiac injection may be made where intravenous injection is impractical,

iii. Some animals, because of nervousness or viciousness, should be quieted by prior oral or parenteral administration of a tranquilizer or sedative.]

[2. Inhalation of carbon monoxide by animals confined in a chamber.

i. Safeguards must be observed to prevent discomfort to animals and hazard to personnel.

ii. Personnel using CO must be instructed thoroughly in its use and understand the hazards and limitations.

iii. The CO generator and chamber must be located in a well ventilated environment, preferably out of doors.

iv. The lethal chamber must be equipped with internal lighting and viewports which allow direct visual surveillance of collapse and death of animals within the chamber.

v. The gas generation process should be adequate to achieve a CO concentration throughout the lethal chamber of at least five per cent within no more than 20 minutes after animals are put in the chamber.

vi. If chemical generation through the use of sodium formate and sulfuric acid is used, the generated CO must have the irritating acid vapors filtered out be passing it through a ten per cent solution of sodium hydroxide prior to its entry into the lethal chamber.

vii. If CO generation is by combustion of gasoline in a engine:

(1) The engine must be maintained in good operating condition and carefully tuned.

(2) The engine must be operated only at idling speed with the richest fuel-air mixture the choke will permit.

(3) Prior to entry into the lethal chamber the exhaust gas must be cooled so that it does not exceed 125 degrees Fahrenheit (51.7 Centigrade).

(4) The chamber must be equipped with accurate temperature gauges monitored by attendants to assure that internal temperature of the chamber does not exceed 110 degrees Fahrenheit (41.3 Centigrade).

(5) Prior to its entry into the lethal chamber the exhaust gas must be passed first through an adequate water filtration process and subsequently through a cloth filtration process to remove irritants and carbon particles.]

2. Administration of injectable solutions approved for use in dogs and cats.

[3. Hypoxia induced by rapid decompression.

i. Equipment must be properly constructed, maintained and operated.

4. Hypoxia induced by nitrogen piped into a chamber from a cylinder until all of the air is displaced.]

[5.]**3.** Administration of [inhalantanesthetic] inhalant anesthetics:

i. Ether, [chloroform,] halothane, **isoflurane, enflurane,** or methoxyflurane may be used. **Nitrous oxide shall only be used in conjunction with other inhalant anesthetics.**

ii. Acceptable for small animals such as birds, rodents, and young cats and dogs. Not recommended for larger animals.

iii. Precautions shall be taken to protect personnel and other animals **from inhalant anesthetic gases**. Ether is flammable and [expensive] **explosive**. [Chloroform, halothane and methoxyflurane are potentially harmful by large dose or repeated exposure.] **Occupational exposure to inhalant anesthetics constitutes a human health hazard.**

[6. Inhalation of high concentration of carbon dioxide by animals in a chamber.

i. acceptable only for very small animals such as mice, rats, guinea pigs and rabbits.]

[7.]**4.** Intravenous injection of combinations of chloral hydrate, magnesium sulfate and pentobarbital[.]

[i.Acceptable] **is acceptable** for large animals, such as horses.

[8. Injection of neuromuscular blocking agents.

i. Where standard methods of restraint are impractical or impossible (such as zoo animals, animal in severe pain from trauma, or animals that are intractable for other reasons) or where manual capture and restraint may cause pain and injury through struggling and anxiety, the use of immobilizing drugs such as curare, succinylcholine and other neuromuscular blocking agents is acceptable.

ii. Because the immobilized animal is fully conscious and subject to death by suffocation, euthanasia by other means should be accomplished without delay.]

[(d)]**(c)** Methods not acceptable for euthanasia include the following:

1. Hydrogen cyanide gas[.]**;**
2. Injection of chloral hydrate[.]**;**
3. Injection of magnesium sulfate[.]**;**
4. Strychnine in any form[.]**;**
5. Injection of hydrocyanic acid[.]**;**
6. Electrocution[.]**;**
7. Shooting and captive bolt pistol[.]**;**
8. Drowning[.]**;**
9. Exsanguination[.]**;**
10. **Decompression chambers;**
11. **Nitrous oxide, when used as the sole euthanasia agent;**
12. **Chloroform; or**
13. **Chambers using any gas that is not an anesthetic.**

(d) All persons administering euthanasia shall be a New Jersey licensed veterinarian or be certified by a licensed veterinarian in

the approved euthanasia technique or techniques used at the facility. Such documentation shall state the euthanasia substances and techniques certified for use there with, shall be signed by the certifying veterinarian, and shall be kept on file at the facility for inspection by State or local Health authorities.

8:23A-[3.11]**1.12** Transportation

(a) Vehicles used in transporting animals shall [be mechanically sound] **have a current inspection sticker** and be equipped to prevent hazards to the health of the animals being transported **and to the driver and all human passengers of the vehicle**.

(b) (No change.)

(c) Primary enclosures used to transport animals, such as compartments or transport cages, cartons or crates, shall be well constructed and well ventilated and designed to protect the health and insure the safety of the animals. Such enclosures shall be constructed or positioned in the vehicle in such a manner that:

1. Each animal in the vehicle has access to sufficient fresh air for normal breathing **and ventilation is sufficient to prevent the onset of heat prostration. The temperature within such enclosures shall not be allowed to exceed 85 degrees Fahrenheit or fall below 45 degrees Fahrenheit for a period of more than four hours, provided, however, that at no time may an animal be transported for longer than one hour at a temperature of more than 95 degrees Fahrenheit or less than 35 degrees Fahrenheit**.

2. (No change.)

3. The animals are afforded adequate protection from the elements. [The temperature within such enclosures shall not be allowed to exceed 85 degrees Fahrenheit or fall below 45 degrees Fahrenheit for a period of more than four hours, provided, however, that at no time may an animal be transported for longer than one hour at a temperature of more than 95 degrees Fahrenheit or less than 35 degrees Fahrenheit.]

(d)-(h) (No change.)

(i) Primary enclosures used to house animals temporarily during the transport process (that is, holding facilities) shall meet the standards set forth in N.J.A.C. 8:23A-1.3, 1.5 and 1.7. No animal shall be held for more than 24 hours during transport.

8:23A-[3.12]**1.13** Records and administration

[(a) Each person in charge of a kennel, pet shop, shelter or pound shall be responsible for compliance with these rules and regulations.]

[(b)]**(a)** There shall be kept at each kennel, pet shop, shelter or pound a record of all animals received and/or disposed of. Such record shall state the date each animal was received, description of animal, license number, breed, age and sex; name and address of person from whom acquired; date [killed] **euthanized** and method, or name and address of person to whom sold or otherwise transferred.

[(c)]**(b)** These records shall be kept at the premises for 12 months after the date the animal is [killed] **euthanized** or removed from the establishment and shall be available to any agent of the municipal government, the local board of health or the State Department of Health.

[(d)]**(c)** Except as otherwise provided in this [Section] **section**, no kennel, pet shop, shelter or pound shall, within one year from the making thereof, destroy or dispose of any books, records, documents or other papers required to be maintained under these rules [and regulations].

[(e)]**(d)** The records required to be maintained under these rules [and regulations] shall be held for such period in excess of the one year period specified in [subsection (c)] **(b)** above [of this Section] as may be required to comply with any Federal, State or local law. When the local board of health, or local regional health department, or the State Department of Health notifies a kennel, pet shop, shelter or pound in writing that specified records shall be retained pending completion of an investigation or proceeding, such facility shall hold such records until their disposition is authorized by the local or regional agency or the State Department of Health.

[(f)]**(e)** A licensee shall promptly notify the licensing agency of any change in his **or her** name and address, or any charge in his operations which may affect his **or her** status.

SUBCHAPTER [5.]**2.** ANIMAL CONTROL OFFICER CERTIFICATION

8:23A-[5.1]**2.1** Definitions

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

"Certified Animal Control Officer" means a person 18 years of age or older who has satisfactorily completed a course of study on the control of animals approved by the Commissioner of Health or who has been employed in the State of New Jersey in the capacity of, and with similar responsibilities to, those required of Certified Animal Control Officers pursuant to the provisions of N.J.S.A. 4:19-15.1 et seq., for a period of three years.

"Certification" means the process whereby an individual who has successfully completed an approved course of study and/or up to January 17, 1987, has been employed in the State of New Jersey in the capacity of, and with similar responsibilities to, those requires of a Certified Animal Control Officer for a period of three years which is attested to by a written statement of the employer, shall be certified by the Commissioner of Health as meeting the training or experience standards as prescribed and is authorized to perform the functions and duties of an Animal Control Officer.

Recodify existing 8:23-5.2 as **8:23A-2.2** (No change in text.)

8:23A-[5.3]**2.3** Course approval

(a) An accredited New Jersey college or university may submit a course outline and description covering the subject areas mentioned in N.J.A.C. [8:23-5.2] **8:23A-2.2** to the Department of Health, Biological Services, Trenton, N.J. 08625.

(b) Upon review and acceptance of the course outline and description, the Department will issue written approval to the college or university.

Recodify existing 8:23-5.4 and 5.5 as **8:23A-2.4 and 2.5** (No change in text.)

SUBCHAPTER [6.]**3.** PILOT LOW COST SPAYING AND NEUTERING CLINIC SURGERY FEES

Recodify existing 8:23-6.1 and 6.2 as **8:23A-3.1 and 3.2** (No change in text.)

(a)

DIVISION OF HEALTH FACILITIES EVALUATION
Plan Review Fee Schedule
Proposed Readoption: N.J.A.C. 8:31

Authorized By: Len Fishman, Commissioner, Department of Health (with approval of the Health Care Advisory Board).
Authority: N.J.S.A. 26:2H-5.
Proposal Number: PRN 1994-545.

Submit comments by November 16, 1994 to:
Kenneth A. Hess, Director
Health Facilities Construction Services
Division of Health Facilities Evaluation & Licensing
New Jersey Department of Health
300 Whitehead Road, CN 367
Trenton, N.J. 08625-0367

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:31 expires on January 16, 1995. The Department has reviewed this rule and has found it to be necessary, reasonable and proper for the purpose for which it was promulgated, and proposes to essentially readopt this rule. The only changes proposed are the postal zip code and program name.

N.J.A.C. 8:31-1 contains architectural and mechanical fee requirements for the review of applications for construction or modification of health care facilities. The Department of Health, through the Health Facilities Construction Services Unit within the Division of Health Facilities Evaluation and Licensing, has the responsibility for the review and approval of all architectural and mechanical plans and specifications for all health facility construction projects and assesses fees for this purpose.

The Department has been designated by the Department of Community Affairs as the sole plan review agency for all health care facility construction projects. In addition to enforcing N.J.A.C. 5:23, the Uniform Construction Code, the Department evaluates the facilities for compliance with N.F.P.A. Life Safety Code 101 and the United States Public Health Service Standards (A.I.A. Guidelines for Construction and Equipment of Hospitals and Medical Facilities), in accordance with the requirements of N.J.A.C. 5:23. Reviews include evaluations of the plans by staff architects and engineers, as well as nursing and other Health Department staff, as needed, on a consultation basis.

In accordance with this chapter, no health care facility will be issued a building permit to commence construction until the Department of Health, through the Office of Health Facilities Construction Services, has stamped and approved the plans for the project.

This unit has maintained a balanced budget for each of the last three fiscal years and the readoption of this subchapter should enable the program to effectively continue to function in a professional and efficient manner.

Social Impact

The proposed readoption of this chapter will protect the health, safety and welfare of the citizens of New Jersey by assuring that all health care facility construction is adequate and is maintained to uniform construction standards.

Economic Impact

The proposed readoption of this chapter will have an economic impact on applicants requesting plan approval for health facility construction projects throughout the State, as they will continue to be charged a fee based upon the fees established in N.J.A.C. 5:23-4.20. However, the Department has been designated by the Department of Community Affairs as the sole plan review agency for all health care facility construction projects, and therefore must perform this function. The revenues generated by the fees are used to fund this evaluation function in its entirety. If such fees were not assessed, the Department would be required to support the evaluation function through its current operating budget, thereby creating a budget deficit.

The Department has investigated the use of an outside contractor to perform this review service. However, upon investigation, the Department has not found any single contractor capable of meeting the administration and enforcement process addressed in Subchapter 2 of the Uniform Construction Code as well as the enforcing agency duties, powers and procedures addressed in Subchapter 4 of the Uniform Construction Code. In order to meet these requirements, it would be necessary to use multiple contractors for the review process, which would not provide for consistent review and would complicate the process for those facilities involved in a review. Therefore, the Department has concluded that the current system is the most efficient and cost effective way of meeting the Uniform Construction Code regulations.

Regulatory Flexibility Analysis

The rule regulates health care facilities and sponsors of health facility construction projects, some of whom can be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. The sponsors and facilities are all health care facilities licensed by the State of New Jersey which range in size from general hospital facilities, nursing homes, and intermediate care facilities which employ over 100 people to small health centers and clinics which may employ under 10 people.

The rule requires the payment of a fee for the review of plans. It is not possible to estimate the costs of compliance for an individual applicant, as each project differs in complexity and size. However, the basis for the fees assessed is contained in N.J.A.C. 5:23-4.20. The fees received during the past year totalled approximately $800,000.

The fees, as based upon the fees established by N.J.A.C. 5:23-4.20, assess differing amounts upon the projects, generally depending upon the size and complexity of the proposed project. This factor allows for differentiation between small and large businesses.

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

8:31-1.1 Architectural and mechanical plan review fee

(a) The Department of Health shall charge a fee to sponsors of health facility construction projects for the review of architectural and mechanical plans for such projects. The fee shall be 20 percent of the local municipality fees established by N.J.A.C. 5:23-4.20, multiplied by 3.0.

(b) All checks for fees shall be made payable to "Treasurer, State of New Jersey" and forwarded to:

Health Facilities Construction Services
Division of Health Facilities Evaluation **and Licensing**
New Jersey Department of Health
300 Whitehead Road, CN 367
Trenton, N.J. 08625-**0367**

(c) No health care facility shall be issued a building permit until the plans for that facility have been reviewed, approved and stamped by the Office of Health Facilities Construction **Services.**

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Services

Proposed Amendments: N.J.A.C. 10:51-1.6, 2.6 and 4.6

Proposed Repeal and New Rules: N.J.A.C. 10:51-1.23, 2.21 and 4.22

Proposed New Rules: N.J.A.C. 10:51, Appendix E

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

Authority: N.J.S.A. 30:4D-6b(6), 7, 7a, b and c; 30:4D-12; 30:4D-20, 22, 24. P.L. 1994 c.67.

Proposal Number: PRN 1994-549.

Submit comments by November 16, 1994 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26
CN 712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The proposed amendments, repeals and new rules apply to both Title XIX (Medicaid) and Pharmaceutical Assistance to the Aged and Disabled (PAAD).

In January 1979, DMAHS implemented a EMC incentive payment for pharmacies. Pharmacies are paid $0.05 per claim for every claim submitted electronically. The purpose of the EMC incentive was to encourage providers to submit claims electronically. The incentive program accomplished its intended goal, which was to encourage pharmacy providers to submit pharmacy claims electronically to the Medicaid and PAAD programs. Currently, approximately 97 percent of Medicaid approved pharmacy providers now submit their claims electronically.

The Division proposes to discontinue the payment for the Electronic Media Claims (EMC) incentive program. Currently, providers who use EMC billing are reimbursed in accordance with the provisions of N.J.A.C. 10:51-1.23. Under the Division's new policy, there will be no longer any additional payment by the Division when pharmacy claims are submitted electronically.

N.J.A.C. 10:51-1.23, 2.21 and 4.22 are being proposed for repeal and replacement with new rules which describe how the pharmaceutical service provider can submit claims via EMC. The new sections on "Electronic Media Claims (EMC) Submission" are, to some extent, a re-write of subsection (e) in the current rules. The Division simply added "... diskette, or modem transmission and ... vendor of EMC services" where appropriate. The Division also added N.J.A.C. 10:51-1.23(c), which describes a requirement for use of a submitter identification number and a need for submitters to comply with any EMC requirements established by the Division. These statements do not reflect any policy changes and are intended to round-out the section and lend support to EMC processing of pharmacy claims. The EMC Manual, developed by the Division and the fiscal agent, is incorporated by reference on Appendix E.

Under the current reimbursement scheme, payments for drug costs may be reduced by a regression factor. The regression factor ranges from zero to six percent, depending on the total prescription volume of the pharmacy. A higher total volume equates to a higher regression factor. The regression factor is not currently applied for drugs costing more than $24.99.

The Division is removing the cost ceiling of $24.99 since the requirement initially adopted was intended to minimize the impact of the regression calculation on providers for high-cost prescription drugs. This rationale is no longer applicable.

Social Impact

The proposed new rules and amendments do not impact on Medicaid recipients or PAAD beneficiaries who require pharmaceutical services. The proposed amendments impact on pharmaceutical service providers who have traditionally received Electronic Media Claims (EMC) incentive payments and have experienced a $24.99 drug cost ceiling related to the calculation of a pharmacy regression by the New Jersey Medicaid and Pharmaceutical Assistance to the Aged and Disabled (PAAD) programs.

Medicaid recipients and PAAD beneficiaries will still be able to get necessary services because the total pharmacy provider enrollment is not expected to drop.

Economic Impact

There is no economic effect on Medicaid recipients as a result of the proposed new rules and amendments because there is no cost to Medicaid recipients to receive necessary pharmaceutical services. PAAD beneficiaries are required to pay $5.00 co-payment per prescription. The proposed amendments and new rules do not change this requirement.

This is an initiative of the Division of Medical Assistance and Health Services, as a result of funding limits in the State Fiscal Year 1995 Appropriations Act, P.L. 1994 c.67, which anticipates these changes in reimbursement for Medicaid and Pharmaceutical Assistance to the Aged and Disabled (PAAD) pharmacy services.

The changes, as proposed, will result in a savings of $7 million under the Medicaid and PAAD programs. The State share of this savings is equal to $4.7 million and the Federal share of this savings is equal to $2.3 million.

Given that many pharmacies participate in networks that require a higher discount, it is believed that most pharmacies will continue to participate in the Medicaid and PAAD programs. However, the financial impact may be significant on certain individual pharmacies, who may choose to no longer participate in the Medicaid and/or PAAD programs. However, it is not anticipated that there will be any significant drop in pharmacy provider participation (in the aggregate) because both the Medicaid and PAAD programs reimburse for pharmacy services in an amount consistent with other third party payor programs.

Regulatory Flexibility Analysis

The proposed amendments do not impose additional reporting, recordkeeping, or other compliance requirements on pharmaceutical service providers, which may be considered to be small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

All Medicaid providers are required (see N.J.S.A. 30:4D-12) to record the name of the recipient to whom the service was rendered, the date of the service, the nature and extent of the service rendered, and any additional information as required by rule. For pharmaceutical service providers, these proposed new rules and amendments do not change the responsibility of providers with regard to reporting, record keeping, or other compliance requirements.

Pharmacies will continue to submit claims for both Medicaid and PAAD in the specified time frame and using the same claim forms. Pharmacies can also bill via EMC. The change(s) relates to the Division's reimbursement methodology for claims submitted. There should be no capital costs associated with this proposal.

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

10:51-1.6 Regression (discount) categories

(a) (No change.)

(b) The pharmacy provider shall submit, in writing, an annual report on form FD-70 (See Appendix C, Pharmacy Provider Certification Statement) certifying its prescription volume. The Division shall determine a provider's total prescription volume, which includes all prescriptions filled (both new and refills), including nursing facility prescriptions, for private patients, Medicaid, PAAD, and other third party recipients for the previous calendar year. Failure to submit this report annually shall result in the provider being placed in the maximum discount category (category VI) for the year of non-compliance, or until the required report is received.

1.-6. (No change.)

7. The appropriate calculated discount shall be automatically deducted, **regardless of prescription cost,** by the fiscal agent, from the cost of each covered drug or device during claim processing by the New Jersey Medicaid Management Information System (NJMMIS).

[8. For covered drugs or devices with an average wholesale price (AWP) of more than $24.99, there shall be no discount from the AWP.]

10:51-1.23 Electronic Media Claims (EMC) [Incentive Program] **submission**

[(a) An incentive payment instituted January 1, 1979, is available to approved pharmacies which submit Medicaid claims electronically. Incentive payments shall be made when the total volume of paid electronic media Medicaid/PAAD claims, submitted by pharmacy providers as a whole, equals or exceeds 20 percent of the total volume of paid Medicaid/PAAD claims.

(b) The reimbursement for incentive payments is based on the following schedule:

"Percent of total Medicaid/ PAAD Paid Claims"	"Amount of Incentive Payment"
20-29 percent	two cents/tape claim
30-39 percent	three cents/tape claim
40-55 percent	four cents/tape claim
over 55 percent	five cents/tape claim

(c) Claims volume figures shall be reviewed and averaged quarterly. The claim volume totals for the previous quarter shall determine the amount of incentive for the subsequent quarter. If the volume of paid tape claims is less than 20 percent of the total, no incentive payments shall be made. A pharmacy provider shall be eligible for incentive payments beginning with the month subsequent to the month in which the volume of tape claims reaches 20 percent of the total paid claims volume. A qualified EMC submitter shall receive payment on their Remittance Advice (RA) Statement for all electronic claims paid during the preceding month.

1. Incentive payment for a voided claim(s) shall be deducted from the subsequent month's total incentive payment, which follows the month in which the claim(s) was voided.

(d) The incentive payment for tape claims is an additional fee increment over and above the dispensing fee allowed by the New Jersey Medicaid program.

(e) In order to be eligible to submit magnetic tape claims for the Medicaid and/or PAAD programs, a pharmacy provider shall complete the "New Jersey Medicaid Provider Electronic Billing Agreement," submit the completed agreement to the fiscal agent, and receive approval by the Division of Medical Assistance and Health Services.]

(a) In order for a pharmacy provider to be eligible to submit electronic media claims, including magnetic tape, diskette, or modem transmission, to the Medicaid and/or PAAD programs, a pharmacy provider or vendor of EMC services shall complete the "New Jersey Medicaid Provider Electronic Billing Agreement."

(b) The completed agreement shall be submitted to the fiscal agent and approved by the Division of Medical Assistance and Health Services.

(c) The pharmacy provider or vendor of EMC services shall submit electronic media claims under an approved submitter identification number and comply with EMC requirements contained in the EMC Manual, Appendix E, incorporated herein by reference.

10:51-2.6 Regression (discount) categories

(a) (No change.)

(b) The pharmacy provider shall submit, in writing, an annual report on form FD-70 (see Appendix C, Pharmacy Provider Certification Statement) certifying its prescription volume. The

Division shall determine a provider's total prescription volume, which includes all prescriptions filled (both new and refills), including nursing facility prescriptions, for private patients, Medicaid, PAAD, and other third party recipients for the previous calendar year. Failure to submit this report annually shall result in the provider being placed in the maximum discount category (category VI) for the year of noncompliance, or until the required report is received.

1.-6. (No change.)

7. The appropriate calculated discount shall be automatically deducted, **regardless of prescription cost,** by the fiscal agent, from the cost of each covered drug or device during the claim processing by the New Jersey Medicaid Management Information System (NJMMIS).

[8. For covered drugs or devices with an average wholesale price (AWP) of more than $24.99, there shall be no discount from the AWP.]

10:51-2.21 Electronic Media Claims (EMC) [incentive program] **submission**

[(a) An incentive payment instituted January 1, 1979, is available to approved pharmacies which submit Medicaid claims electronically. Incentive payments shall be made when the total volume of paid electronic media Medicaid/PAAD claims, submitted by pharmacy providers as a whole, equals or exceeds 20 percent of the total volume of paid Medicaid/PAAD claims.

(b) The reimbursement for incentive payments is based on the following schedule:

"Percent of total Medicaid/ PAAD Paid Claims"	"Amount of Incentive Payment"
20-29 percent	two cents/tape claim
30-39 percent	three cents/tape claim
40-55 percent	four cents/tape claim
over 55 percent	five cents/tape claim

(c) Claims volume figures shall be reviewed and averaged quarterly. The claim volume totals for the previous quarter shall determine the amount of incentive for the subsequent quarter. If the volume of paid tape claims is less than 20 percent of the total, no incentive payments shall be made. A pharmacy provider shall be eligible for incentive payments beginning with the month subsequent to the month in which the volume of tape claims reaches 20 percent of the total paid claims volume. A qualified EMC submitter shall receive payment on their Remittance Advice (RA) Statement for all electronic claims paid during the preceding month.

1. Incentive payment for a voided claim(s) shall be deducted from the subsequent month's total incentive payment, which follows the month in which the claim(s) was voided.

(d) The incentive payment for tape claims is an additional fee increment over and above the dispensing fee allowed by the New Jersey Medicaid program.

(e) In order to be eligible to submit magnetic tape claims for the Medicaid and/or PAAD programs, a pharmacy provider shall complete the "New Jersey Medicaid Provider Electronic Billing Agreement," submit the completed agreement to the fiscal agent, and receive approval by the Division of Medical Assistance and Health Services.]

(a) In order for a pharmacy provider to be eligible to submit electronic media claims, including magnetic tape, diskette, or modem transmission, to the Medicaid and/or PAAD programs, a pharmacy provider or vendor of EMC services must complete the "New Jersey Medicaid Provider Electronic Billing Agreement."

(b) The completed agreement must be submitted to the fiscal agent and approved by the Division of Medical Assistance and Health Services.

(c) The pharmacy provider or vendor of EMC services must submit electronic media claims under an approved submitter identification number and comply with EMC requirements contained in the EMC Manual, Appendix E, incorporated herein by reference.

10:51-4.6 Regression (discount) categories

(a) (No change.)

(b) The pharmacy provider shall submit, in writing, an annual report on form FD-70 (See Appendix C, Pharmacy Provider Certification Statement) certifying its prescription volume. The Division shall determine a provider's total prescription volume, which includes all prescriptions filled (both new and refills), including nursing facility prescriptions, for private patients, Medicaid, PAAD, and other third party recipients for the previous calendar year. Failure to submit this report annually shall result in the provider being placed in the maximum discount category (category VI) for the year of non-compliance, or until the required report is received.

1.-6. (No change.)

7. The appropriate calculated discount shall be automatically deducted, **regardless of prescription cost,** by the fiscal agent, from the cost of each covered drug or device during claim processing by the New Jersey Medicaid Management Information System (NJMMIS).

[8. For covered drugs or devices with an average wholesale price (AWP) of more than $24.99, there shall be no discount from the AWP.]

10:51-4.22 Electronic Media Claims (EMC) [incentive program] **submission**

[(a) An incentive payment instituted January 1, 1979, is available to approved pharmacies which submit PAAD claims electronically. Incentive payments shall be made when the total volume of paid electronic media Medicaid/PAAD claims, submitted by pharmacy providers as a whole, equals or exceeds 20 percent of the total volume of paid Medicaid/PAAD claims.

(b) The reimbursement for incentive payments is based on the following schedule:

"Percent of total Medicaid/ PAAD Paid Claims"	"Amount of Incentive Payment"
20-29 percent	two cents/tape claim
30-39 percent	three cents/tape claim
40-55 percent	four cents/tape claim
over 55 percent	five cents/tape claim

(c) Claims volume figures shall be reviewed and averaged quarterly. The claim volume totals for the previous quarter shall determine the amount of incentive for the subsequent quarter. If the volume of paid tape claims is less than 20 percent of the total, no incentive payments shall be made. A pharmacy provider shall be eligible for incentive payments beginning with the month subsequent to the month in which the volume of tape claims reaches 20 percent of the total paid claims volume. A qualified EMC submitter shall receive payment on their Remittance Advice (RA) Statement for all electronic claims paid during the preceding month.

1. Incentive payment for a voided claim(s) shall be deducted from the subsequent month's total incentive payment, which follows the month in which the claim(s) was voided.

(d) The incentive payment for tape claims is an additional fee increment over and above the dispensing fee allowed by the New Jersey Medicaid program.

(e) In order to be eligible to submit magnetic tape claims for the Medicaid PAAD program, a pharmacy provider shall complete the "New Jersey Medicaid Provider Electronic Billing Agreement," submit the completed agreement to the fiscal agent, and receive approval by the Division of Medical Assistance and Health Services.]

(a) In order for a pharmacy provider to be eligible to submit electronic media claims, including magnetic tape, diskette, or modem transmission, to the Medicaid and/or PAAD programs, a pharmacy provider or vendor of EMC services must complete the "New Jersey Medicaid Provider Electronic Billing Agreement."

(b) The completed agreement must be submitted to the fiscal agent and approved by the Division of Medical Assistance and Health Services.

(c) The pharmacy provider or vendor of EMC services must submit electronic media claims under an approved submitter identification number and comply with EMC requirements contained in the EMC Manual, Appendix E, incorporated herein by reference.

APPENDIX E
EMC MANUAL

AGENCY NOTE: The Electronic Media Claims (EMC) Manual is filed as an incorporated Appendix of this chapter/manual, but is not reproduced in the New Jersey Administrative Code. When revisions are made to the EMC Manual, replacement pages will be distributed to providers and copies will be filed with the Office of Administrative Law. For a copy of the EMC Manual, write to:

Paramax/Unisys
CN 4801
Trenton, N.J. 08650

(a)

DIVISION OF YOUTH AND FAMILY SERVICES
Manual of Requirements for Child Care Centers
Proposed Amendments: N.J.A.C. 10:122-2.4, 2.5, 4.5, 4.8, 5.2, 9.1, 9.2, 9.3, 9.4 and 9.5

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

Authority: N.J.S.A. 30:5B-1 to 15.

Proposal Number: PRN 1994-538.

Submit comments in writing by November 16, 1994 to:

Richard Crane, Chief
Bureau of Licensing
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

Pursuant to the State Child Care Center Licensing Law (N.J.S.A. 30:5B-1 to 15), amended by recent legislation (P.L. 1992, c.95), the Division of Youth and Family Services in the Department of Human Services recently adopted new rules for N.J.A.C. 10:122, the Manual of Requirements for Child Care Centers, concerning the licensing of child care centers serving six or more children below 13 years of age. The adopted rules govern both early childhood programs, which serve children below six years of age, and school-age child care programs, which serve children below 13 years of age when their school is not in session. Upon review of the adopted new rules, which were published in the New Jersey Register on May 16, 1994 at 26 N.J.R. 2100(a), the Division determined that several amendments are needed in order to clarify certain requirements and to ensure children's safety.

Specifically, the proposed amendments at N.J.A.C. 10:122-2.4(a) add to the provisions specifying the grounds for denying, suspending, revoking or refusing to renew a center's license or Certificate of Life/Safety Approval. The amendments clarify that grounds for such action may include a determination by the Division's Institutional Abuse Investigation Unit (IAIU) that children in the center are at risk of harm. The IAIU is the unit in the Division that investigates allegations of child abuse and neglect in out-of-home settings, including child care centers.

The proposed amendments at N.J.A.C. 10:122-2.4(a) through (e) indicate that the provisions for denying, suspending, revoking or refusing to renew a license also apply to such actions against a Certificate of Life/Safety Approval.

The proposed amendments at N.J.A.C. 10:122-2.5(a) delete the requirement for the Bureau to issue a directive ordering compliance before deciding to remove a center's license or Certificate of Life/Safety Approval. This rule duplicates the intent of N.J.A.C. 10:122-2.4(b). The proposed amendments to this section also indicate that the provisions for administrative hearings apply to centers with Certificates of Life/Safety Approval as well as to licensed centers.

The proposed amendments at N.J.A.C. 10:122-4.5 clarify the provisions for staff qualifications for school-age child care programs by adding an explanatory sentence before the chart of Requirements for Program Supervisor Qualifications.

The proposed amendments at N.J.A.C. 10:122-4.8(g) add to the provisions explaining what action may be taken by the Division's Bureau of Licensing when an allegation of child abuse or neglect by a center sponsor, director or staff member is substantiated. The adopted rules referred to termination of the person's employment at the center as a possible action in such cases. The proposed amendments indicate that denial, suspension, revocation or nonrenewal of the center's license or Certificate of Life/Safety Approval may also occur in such cases.

The proposed amendment at N.J.A.C. 10:122-5.2 contains only a technical correction. The proposed amendments at N.J.A.C. 10:122-9.1(c) delete the provisions for transporting children in private passenger vehicles, in order to move these provisions to N.J.A.C. 10:122-9.3(e).

The proposed amendments at N.J.A.C. 10:122-9.2 clarify the definitions of a Type I School Bus, Type II School Bus and Type II School Vehicle. The adopted rules defined such vehicles by capacity, that is, the maximum number of passengers indicated by the vehicle manufacturer. However, school-age child care programs may use vehicles of the same capacity as those listed, without being required to meet other school bus and school vehicle requirements, such as vehicle color, "S1" or "S2" license plates, and other equipment. Since school-age child care programs are primarily recreational in nature, they are not considered school-related or educational programs and are therefore not required to use vehicles designated as school buses or school vehicles by the New Jersey Division of Motor Vehicles (DMV). The proposed amendments limit the definitions of school buses and school vehicles to those specially equipped vehicles designated by the DMV.

The proposed amendments at N.J.A.C. 10:122-9.3 distinguish between vehicle requirements for all centers, those for early childhood programs and those for school-age child care programs. The adopted rules only addressed vehicle requirements for the Type I School Bus, Type II School Bus and Type II School Vehicle when used by early childhood programs. The vehicle requirements for school-age child care programs only referred to vehicles other than school buses or school vehicles. Although school-age child care programs are not required to use school buses or school vehicles, they may choose to do so, and would then be required to meet the same vehicle requirements as early childhood programs.

Accordingly, the proposed amendments indicate that certain requirements apply to all vehicles when used by any center (N.J.A.C. 10:122-9.3(a)); certain requirements apply to Type I and Type II School Buses and Type II School Vehicles, when used by any center (N.J.A.C. 10:122-9.3(b) through (d)); certain requirements apply to private passenger vehicles when used by any center (N.J.A.C. 10:122-9.3(e)); certain requirements apply to early childhood programs only (N.J.A.C. 10:122-9.3(f)); and certain requirements apply to school-age child care programs only (N.J.A.C. 10:122-9.3(g)). The amendments also delete unnecessary duplication and rearrange the order of some provisions in the adopted rules.

The proposed amendments at N.J.A.C. 10:122-9.3(e), which were moved there from their previous location at N.J.A.C. 10:122-9.1(c), expand the provisions for transporting children in private passenger vehicles. The adopted rules permitted parents and staff members to use such vehicles for field trips and other events if the driver has a valid New Jersey driver's license, the vehicle has a valid New Jersey vehicle inspection sticker, and the vehicle owner possesses vehicle liability insurance as required by New Jersey insurance law. However, in some centers the parent or staff member may reside in another state and have an out-of-State license and/or inspection sticker, and meet another state's vehicle insurance law. The amendments permit such out-of-State drivers and vehicles to be used to transport children under the same conditions as those permitted for New Jersey drivers and vehicles.

The proposed amendments at N.J.A.C. 10:122-9.3(f) permit early childhood programs to use chartered buses (other than a school bus or school vehicle) for field trips, outings or special events. Such buses, commonly known as coaches, come under the jurisdiction of the Department of Transportation when used by a center for school-related activities. These amendments are intended to parallel the Department of Education rules for chartered buses, as specified in N.J.A.C. 6:21-18.3(b).

The proposed amendment at N.J.A.C. 10:122-9.4 contains only a technical correction. The proposed amendments at N.J.A.C. 10:122-9.5(n) change the additional safety requirements for school-age child care programs that provide transportation. The amendment deletes the existing requirement for an adult in addition to the driver to be on each vehicle when 12 or more children are transported. The amendment adds requirements for the safe boarding and discharge of children when the center uses a vehicle other than a Type I or Type II School Bus. The center will be required to choose one of three options for boarding and discharging children: (1) having the child received by a parent or other authorized person who will supervise the child; (2)

boarding or discharging the child on the same side of the roadway as the child's destination or point of origin, so the child will not need to cross the street; or 3) having an adult in the vehicle (in addition to the driver) who will accompany children when crossing the street. The proposed new rules will not apply to centers that use a Type I or Type II School Bus, since such buses are equipped with warning lights to stop traffic while children cross the street.

Social Impact

The proposed new rules will have a positive social impact by clarifying procedures and grounds for removing a center's license or Certificate of Life/Safety Approval; clarifying actions the Bureau may take in case of child abuse or neglect at a center; clarifying transportation requirements for early childhood programs and school-age child care programs; and ensuring the safety of children transported by school-age child care programs. Early childhood programs and school-age child care programs will be more easily able to identify and understand the transportation requirements that apply to them. School-age children boarding or being discharged from a vehicle that does not have warning lights will either be supervised when crossing the street, or will not have to cross the street to reach their destination. These provisions are intended to protect children from hazards, such as heavy traffic, that might be encountered when boarding or leaving a vehicle. These provisions replace the existing requirement for a second adult on vehicles with 12 or more children.

Economic Impact

The proposed amendments at N.J.A.C. 10:122-2.4, 2.5 and 4.8 may have an economic impact on certain centers that are subject to enforcement action by the Division (denial of an application or suspension, revocation or nonrenewal of a license or Certificate of Life/Safety Approval), since such centers may be prohibited from operating. The amendments explicitly indicate that such action may be taken against centers in which an allegation of child abuse/neglect has been substantiated by the Division's Institutional Abuse Investigation Unit. The amendments also indicate that such action may be taken against centers that would be eligible for a Certificate of Life/Safety Approval instead of a license. However, there is no change in economic impact since there is no change in practice; rather, the amendments are intended to update the rules to reflect current practice. The Division is authorized by the State Child Care Center Licensing Act, (N.J.S.A. 30:5B-1 to 16) to take enforcement action against the centers noted above; the amendments clarify the scope of this authority. Such action is also consistent with the Division's authority under the State Child Abuse and Neglect Law (see N.J.S.A. 9:6-8 et seq.), which empowers the Division to protect children in cases of child abuse and neglect.

The proposed amendments at N.J.A.C. 10:122-4.5 and 5.2 will have no economic impact because they contain only minor technical corrections and additions to make the rules clearer. The proposed amendments at N.J.A.C. 10:122-9.1, 9.2, 9.3 and 9.4 may have an economic impact on centers that provide transportation. However, the amendments reflect current practice, and do not represent any change in economic impact. The amendments are intended to recodify existing requirements and to indicate more clearly the transportation requirements that centers must meet.

The proposed amendments at N.J.A.C. 10:122-9.5 will have a limited economic impact on some school-age child care programs that provide transportation. Those amendments are designed to minimize the economic impact by deleting the requirement for a second adult on vehicles transporting 12 or more children. The economic impact is further reduced by permitting center to choose one of three options to ensure children's safe boarding onto and discharge from vehicles. Two of these options will have no economic impact: discharging children to their parents, and boarding or discharging children on the same side of the road as their destination or point of origin. The other option, while potentially entailing some costs, will only affect centers that choose to provide a second adult on vehicles. Many centers already provide a second adult on vehicles, so they will incur no additional costs. Centers that do not wish to provide a second adult on vehicles may choose one of the other options at no cost. Centers that use a Type I or II School Bus or that do not transport school-age children will experience no economic impact from the proposed amendments.

Regulatory Flexibility Analysis

The proposed amendments affect child care centers, all of which fall within the definition of a small business, as defined in the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.). It is not appropriate or necessary to establish differential rules that would apply to larger or smaller entities, as all of the regulated entities are considered small businesses. The proposed amendments offer centers a choice among options for compliance, where appropriate, including options that can be implemented at no cost. No new recordkeeping requirements are proposed, and no capital expenditures or special professional services will be needed to enable centers to comply with the proposed amendments.

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

10:122-2.4 Denying, suspending, revoking or refusing to renew a license **or a Certificate of Life/Safety Approval**

(a) The Bureau may deny[,] **an application or** suspend, revoke or refuse to renew a license **or a Certificate of Life/Safety Approval** for good cause, including[, but not limited to,] the following, **as applicable**:

1. (No change.)

2. Violation of the terms and conditions of a license **or a Certificate of Life/Safety Approval**;

3. Use of fraud or misrepresentation in obtaining a license **or a Certificate of Life/Safety Approval** or in the subsequent operation of the center;

4.-6. (No change.)

7. Failure to provide developmental activities that meet the physical, social, emotional and cognitive needs of the children served; [or]

8. Failure by the sponsor to secure and maintain on file criminal conviction disclosures, as specified in N.J.A.C. 10:122-4.1(b) and (c)[.]**; or**

9. A determination by the Division's Institutional Abuse Investigation Unit that children in the center are at risk of harm.

(b) The Bureau shall provide written notice to the sponsor if it intends to deny[,] **an application or** suspend, revoke or refuse to renew [its application for] a license **or a Certificate of Life/Safety Approval**. The notice shall specify the Bureau's reasons for such action.

(c) If the Bureau suspends a center's license **or Certificate of Life/Safety Approval** to prevent the imminent risk of harm to children served by the center, the Bureau may reinstate the suspended license **or Certificate of Life/Safety Approval** upon the center's compliance with all applicable provisions of this manual.

(d) If the Bureau denies[,] **an application or** revokes or refuses to renew a center's license **or Certificate of Life/Safety Approval**, as specified in (a) above, the center shall be prohibited from reapplying for [licensure] **a license or a Certificate of Life/Safety Approval** for one year from the date of [license] **the** denial, revocation or refusal to renew. After the one-year period has elapsed, the center may submit to the Bureau a new application for a license **or a Certificate of Life/Safety Approval.**

(e) Each license **and each Certificate of Life/Safety Approval** issued by the Bureau to a center is the property of the State of New Jersey. If the Bureau suspends or revokes a license **or a Certificate of Life/Safety Approval**, the center shall return the license **or Certificate of Life/Safety Approval** to the Bureau immediately.

10:122-2.5 Administrative hearings

(a) [If a center fails to comply with all applicable provisions of this chapter, the Bureau shall issue a directive ordering compliance. Prior to] **Before** the Bureau's decision to deny[,] **an application or** suspend, refuse to renew or revoke a center's license **or Certificate of Life/Safety Approval becomes effective**, the Bureau shall afford the center an opportunity to request an administrative hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) (No change.)

10:122-4.5 Staff qualifications

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

(d) For school-age child care programs, the following shall apply:

1. The program supervisor shall meet the qualification requirements specified in one of the applicable options set forth in the chart below for education, training and experience, based on the center's licensed capacity:

REQUIREMENTS FOR PROGRAM SUPERVISOR QUALIFICATIONS

(No change.)

. . .

Recodify existing 1.-4. as **2.-5.** (No change in text.)

10:122-4.8 Special requirements to prevent child abuse and/or neglect

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

(g) Substantiation of the child abuse and/or neglect allegation by the Division's IAIU shall not, in itself, automatically result in the termination of the accused sponsor, director or staff member(s) from his or her position in the center, **or in the denial of the center's application or the suspension, revocation or non-renewal of the center's license or Certificate of Life/Safety Approval,** but shall constitute grounds for [possible termination] **such action if it is determined that** the person's continued employment at the center would place the children at risk. Such determination shall be made by the Bureau after considering information provided by the sponsor, the affected staff member(s), the IAIU and law enforcement authorities, as applicable and available.

10:122-5.2 Physical plant requirements

(a)-(l) (No change.)

(m) Fire prevention requirements are as follows:

1.-2. (No change.)

3. The center shall maintain on file a record of each fire drill, as specified in the NJUFC, which record shall include:

i.-iv. (No change.)

4. (No change.)

(n)-(t) (No change.)

10:122-9.1 Scope[; use of private passenger vehicles]

(a) (No change.)

(b) Each center, person or agency, as defined in (a) above, also shall comply with applicable provisions of New Jersey Division of Motor Vehicles **(DMV)** law, pursuant to N.J.S.A. 39:1-1 et seq., and the rules promulgated thereunder, as specified in N.J.A.C. 13.

[(c) The center may authorize staff members and/or parents of enrolled children to utilize their own private passenger vehicles to transport children from the center to and from scheduled center field trips, outings or special events (such as visits to the zoo, library, museum) or to transport children from the center to a hospital, clinic or office for medical treatment, pursuant to N.J.S.A. 18A:39-20.1. However, staff members and/or parents may be authorized to do so only if:

1. The vehicle has a capacity of eight or fewer persons;

2. The driver possesses a valid automobile driver's license issued by the New Jersey Division of Motor Vehicles, hereinafter referred to as DMV;

3. The vehicle has a valid motor vehicle inspection sticker issued by DMV;

4. The vehicle owner possesses vehicle liability insurance at least at the minimum amounts required by New Jersey State insurance law, pursuant to N.J.S.A. 17:28-1.1a;

5. The center maintains transportation records on every vehicle utilized for the above, as specified in N.J.A.C. 10:122-9.7(b); and

6. The center ensures that the driver and/or additional adults apply the safety practices, as specified in N.J.A.C. 10:122-9.5(a) through (d) and (g) through (m).]

10:122-9.2 Vehicle definitions

(a) A Type I School Bus means a bus with a capacity of 17 to 58 passengers, as indicated by the vehicle manufacturer, **which has been painted in the color of uniform national school bus yellow, and is required by DMV to have New Jersey school vehicle Type I, "S1" designated license plates.**

(b) A Type II School Bus means a bus with a capacity of 10 to 16 passengers, as indicated by the vehicle manufacturer, **which has been painted in the color of uniform national school bus yellow if the bus was manufactured after April 1, 1977, and is required by DMV to have New Jersey school vehicle Type II, "S2" designated license plates.**

(c) A Type II School Vehicle means a vehicle with a capacity of nine or fewer passengers, as indicated by the vehicle manufacturer, and a minimum of three side entry doors, **which is required by DMV to have New Jersey school vehicle Type II, "S2" designated license plates.**

10:122-9.3 Vehicle requirements

(a) [For early childhood programs, the following shall apply:

1. The following requirements shall apply to vehicles utilized by a center that provides or arranges for the] **The center shall ensure that each vehicle used to provide** transportation of enrolled children to and from the center, as specified in N.J.A.C. 10:122-9.1(a)[.], **including Type I School Buses, Type II School Buses, Type II School Vehicles, and all other vehicles except private passenger vehicles, is equipped with the following:**

1. Three triangular portable red reflector warning devices;

2. A fully charged fire extinguisher, with a gauge and with a minimum underwriters' rating of 2A 10BC, which shall be located at the front and securely mounted to the right of the driver in a way that does not constitute an obstruction or hazard to the passengers;

3. All-weather radial or snow tires from November 15 to April 1; and

4. A removable first-aid kit, which shall be located in an accessible place within the vehicle. A sign indicating its location shall be placed on the dashboard. The first-aid kit shall contain the following items:

i. Two single units, one inch by 2½ yards adhesive tape;

ii. Two single units, sterile gauze pads, three inch by three inch (12 per unit);

iii. One single unit, ¾ inch by three inch adhesive bandage (100 per unit);

iv. One single unit, two inch bandage compress (12 per unit);

v. One single unit, three inch bandage compress (12 per unit);

vi. Two single units, two inch by six yards sterile gauze roller bandage;

vii. Two single units, nonsterile triangular bandage, approximately 40 inch by 36 inch by 54 inch with two safety pins;

viii. Three single units, sterile gauze, 36 inch by 36 inch (U.S.P. 2428 count);

ix. Three single units, sterile eye pad (one per unit);

x. One pair of scissors;

xi. A pad and sharpened pencil;

xii. One mouth to mouth airway; and

xiii. One pair of latex gloves.

[2. Each] **(b) The center shall ensure that each** Type I School Bus [shall]:

[i. Be] **1. Is** equipped with school vehicle Type I, "S1" designated license plates and a valid School Bus inspection sticker issued by DMV; and

[ii. Meet] **2. Meets** the specifications for Type I School Buses prescribed by New Jersey Department of Education rules, as specified in N.J.A.C. 6:21-5, [and] that were applicable at the time the bus was manufactured.

[3. Each] **(c) The center shall ensure that each** Type II School Bus [shall]:

[i. Have] **1. Has** school vehicle Type II, "S2" designated license plates and a valid School Bus inspection sticker issued by DMV; **and**

[ii. For Type II School Buses manufactured prior to April 1, 1977, meet the specifications prescribed by New Jersey Department of Human Services rules that were applicable at the time the bus was manufactured; and

iii. For Type II School Buses manufactured after April 1, 1977, be painted in the color of uniform national school bus yellow and meet the specifications prescribed by New Jersey Department of Education rules, as specified in N.J.A.C. 6:21-5.]

2. Meets the specifications prescribed by either:

i. The New Jersey Department of Human Services rules that were applicable at the time the bus was manufactured, for buses manufactured prior to April 1, 1977; or

ii. The New Jersey Department of Education rules, as specified in N.J.A.C. 6:21-5, for buses manufactured after April 1, 1977.

[4. Each] **(d) The center shall ensure that each** Type II School Vehicle [shall]:

[i. Have] **1. Has** school vehicle Type II, "S2" designated license plates and a valid School Bus inspection sticker issued by DMV;

[ii. Have] **2. Has** a maximum seating capacity that does not exceed the number of seat belts installed;

[iii. Have] **3. Has** a minimum seat width allowance of 12 inches per child;

[iv. Have] **4. Has** seats and back rests securely fastened and facing forward;

[v. Allow] **5. Allows** exiting from any seat in the vehicle with minimum unobstructed clearance of 10 inches;

[vi. Have] **6. Has** no seat that requires the folding of any seat ahead of it in order to permit exiting. Seats that are not facing forward or that require the folding of any seat ahead of them in order to permit exiting shall be removed or bolted down;

[vii. Have] **7. Has** seats upholstered with springs or foam rubber;

[viii. Have] **8. Has** padding around exposed metal bars in the [vehicles] **vehicle** to prevent child impact; and

[ix. Have] **9. Has** an operable heater capable of maintaining a temperature of 50 degrees Fahrenheit[; and].

[5. Each vehicle used by a center to provide transportation of enrolled children to and from the center, as specified in N.J.A.C. 10:122-9.1(a), shall be equipped with the following:

i. Three triangular portable red reflector warning devices;

ii. A fully charged fire extinguisher, with a gauge and with a minimum underwriters' rating of 2A 10BC, which shall be located at the front and securely mounted to the right of the driver in a way that does not constitute an obstruction or hazard to the passengers;

iii. All-weather radial or snow tires from November 15 to April 1; and

iv. A removable, moisture-free and dust-proof first aid kit, which shall be located in an accessible place within the vehicle. A sign indicating its location shall be placed on the dashboard. The first-aid kit shall contain the following items:

(1) Two single units, one inch by 2½ yards adhesive tape;

(2) Two single units, sterile gauze pads, three inch by three inch (12 per unit);

(3) One single unit, ¾ inch by three inch adhesive bandage (100 per unit);

(4) One single unit, two inch bandage compress (12 per unit);

(5) One single unit, three inch bandage compress (12 per unit);

(6) Two single units, two inch by six yards sterile gauze roller bandage;

(7) Two single units, nonsterile triangular bandage, approximately 40 inch by 36 inch by 54 inch with two safety pins;

(8) Three single units, sterile gauze, 36 inch by 36 inch (U.S.P. 2428 count);

(9) Three single units, sterile eye pad (one per unit);

(10) One pair of scissors;

(11) A pad and sharpened pencil;

(12) One mouth to mouth airway; and

(13) One pair of latex gloves.]

(e) Any center may authorize staff members and/or parents of enrolled children to utilize their own private passenger vehicles to transport children from the center to and from scheduled center field trips, outings or special events (such as visits to the zoo, library, or museum) or to transport children from the center to a hospital, clinic or office for medical treatment, pursuant to N.J.S.A. 18A:39-20.1. However, staff members and/or parents may be authorized to do so only if:

1. The vehicle has a capacity of eight or fewer persons;

2. The driver possesses a valid Basic automobile driver's license issued by DMV, or a valid automobile driver's license issued by an approved out-of-State motor vehicle agency for the state in which the driver is a legal resident;

3. The vehicle has a valid motor vehicle inspection sticker issued by DMV or by an approved out-of-State motor vehicle agency for the state in which the vehicle is legally registered;

4. The vehicle owner possesses vehicle liability insurance at least at the minimum amounts required by New Jersey State insurance law, pursuant to N.J.S.A. 17:28-1.1a, or at least at the minimum amounts required by a state other than New Jersey in which the vehicle is legally registered;

5. The center maintains transportation records on each vehicle, as specified in N.J.A.C. 10:122-9.7(b); and

6. The center ensures that the driver and/or additional adults apply the safety practices, as specified in N.J.A.C. 10:122-9.5(a) through (d) and (g) through (n).

(f) For early childhod programs, the following shall apply:

1. The center shall use a Type I School Bus, Type II School Bus, or Type II School Vehicle at all times when transporting children, except when permitted to use a private passenger vehicle, as specified in (e) above, or a chartered autobus, as specified in (f)2 below.

2. Any center may use an autobus under the jurisdiction of the Department of Transportation when chartered for scheduled center field trips, outings or special events, provided that the driver and/or additional adults apply the safety practices, as specified in N.J.A.C. 10:122-9.5(a) through (e), (h), and (j) through (m).

[(b)]**(g)** For school-age child care programs, the following shall apply:

1. [Centers] **Any center** may use [vehicles] **a vehicle** other than [school buses or school vehicles] **a Type I School Bus, Type II School Bus, or Type II School Vehicle when transporting children,** provided that the [vehicles] **vehicle**:

i. [Have] **Has** a valid motor vehicle inspection sticker issued by DMV;

ii. [Transport] **Transports** no more children than the manufacturer's capacity specifications indicate and the maximum number of seat belts installed;

iii. [Have] **Has** seats and back rests securely fastened;

iv. [Have] **Has** padding around exposed metal bars in the [vehicles] **vehicle** to prevent child impact; **and**

v. [Have] **Has** an operable heater[; and].

[vi. Are equipped with the following:

(1) Three triangular portable red reflector warning devices;

(2) A fully charged fire extinguisher, with a gauge and with a minimum underwriters' rating of 2A 10BC, which shall be located at the front and securely mounted to the right of the driver in a way that does not constitute an obstruction or hazard to the passengers;

(3) All-weather radial or snow tires from November 15 to April 1; and

(4) A removable first-aid kit, which shall be located in an accessible place within the vehicle. A sign indicating its location shall be placed on the dashboard. The first-aid kit shall contain the items specified in (a)5iv above.]

10:122-9.4 Driver licensing requirements

(a) (No change.)

(b) For early childhood programs, the following shall apply:

1. If a center uses a Type II School Vehicle, the center shall:

i. (No change.)

ii. Ensure that each driver of such **a** vehicle possesses a valid CDL in at least Class C with a passenger endorsement, or an out-of-State equivalent license, as approved by the DMV.

(c) (No change.)

10:122-9.5 Vehicle-related safety practices

(a)-(m) (No change.)

(n) For school-age child care programs, [centers transporting 12 or more children shall have a minimum of one adult in addition to the driver on each vehicle.] **the following shall apply:**

1. When children are being transported in a vehicle other than a Type I School Bus or Type II School Bus, the center shall comply with one of the following options:

i. The center shall ensure that each child discharged from the vehicle is received by his or her parent or person designated by the child's parent;

ii. The center shall ensure that each child is boarded onto or

discharged from the vehicle on the same side of the roadway as the child's home or other destination or point of origin; or

iii. The center shall have one adult on the vehicle in addition to the driver who accompanies each child when crossing a roadway upon boarding or when being discharged from the vehicle.

CORRECTIONS

(a)

THE COMMISSIONER

Bureau of Parole

Proposed New Rules: N.J.A.C. 10A:26

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

Authority: N.J.S.A. 30:1B-6 and 30:1B-10 and P.L. 1993, c.246.

Proposal Number: PRN 1994-559.

Submit comments by November 16, 1994 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to P.L. 1993, c.246, parole officers employed by the New Jersey Department of Corrections, Bureau of Parole, are empowered to act as peace officers. The New Jersey Department of Corrections is therefore proposing these new rules in order to establish policies for the Bureau of Parole. A summary of the various provisions of the proposed new rules follows:

N.J.A.C. 10A:26-1 provides the purpose and scope of the new rules, the definitions, the forms used in conjunction with these new rules, and the written procedures requirement for the Bureau of Parole.

N.J.A.C. 10A:26-2 and 3 will be reserved for future rulemaking.

N.J.A.C. 10A:26-4 regulates the use of force while parole officers are on duty.

N.J.A.C. 10A:26-5 governs the use of personal firearms and the use of force while parole officers are off-duty.

N.J.A.C. 10A:26-6 regulates the search and urine monitoring of parolees and inmates.

N.J.A.C. 10A:26-7 governs the handling and disposition of contraband.

N.J.A.C. 10A:26-8 regulates the transportation of parolees and inmates in custody.

Social Impact

The proposed new rules at N.J.A.C. 10A:26 will serve to govern and help clarify the use of force by parole officers employed by the Bureau of Parole in the New Jersey Department of Corrections while on duty and while off duty; the use of personal firearms; the searching and urine monitoring of parolees and inmates; the control of contraband and its disposition; and the transportation of parolees and inmates. A positive social impact is expected as a result of these new rules in that the rules should help contribute to the safety of the parole officer, the affected parolee or inmate and the public at large.

Economic Impact

These proposed new rules require the purchasing of equipment such as weapons, holsters, and ammunition for training and for issuing to parole officers. Although it is impossible to obtain exact figures for this equipment, funds in the amount of $500,000, which are part of a supplemental appropriation by the State Legislature, have been allocated to the Bureau of Parole for this purpose. All other associated costs will be absorbed by the Department of Corrections' general operating budget.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the 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. 52:14B-16 et seq. The proposed new rules impact on parolees, inmates and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the proposed new rules follows:

CHAPTER 26
BUREAU OF PAROLE

SUBCHAPTER 1. GENERAL PROVISIONS

10A:26-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish policies and procedures regarding the use of force by parole officers, while on duty and off-duty;
2. Establish policies and procedures for the search and urine monitoring of inmates and parolees;
3. Define contraband and establish procedures for contraband seizure and disposal; and
4. Establish policies and procedures regarding the transportation of inmates and parolees.

10A:26-1.2 Scope

This chapter shall be applicable to the New Jersey Department of Corrections, Bureau of Parole, unless otherwise indicated.

10A:26-1.3 Definitions

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

"Bureau of Parole" means the agency within the Department of Corrections which is charged with the preparation, release, and supervision of those offenders who are paroled by the New Jersey State Parole Board; the supervision of parolees from other states who have been accepted under the terms of the Adult and Juvenile Compacts for the Supervision of Parolees and Probationers; the supervision and/or monitoring of inmates assigned to the Electronic Monitoring Program and Furlough Program; the supervision of certain Executive Clemency cases; and any other inmate community program such as the Work Release Program.

"Chemical agent" means an aerosol spray which may be used to subdue individuals who resist arrest or for the purpose of self-defense against an attack.

"Contraband" means any item, article or material found in the possession of, or under the control of, an inmate or parolee which is prohibited by conditions of parole and/or community release, or which is prohibited by the Criminal Code of the State of New Jersey.

"Deadly force" means force which is intended to cause, or is likely to cause, death or serious bodily harm.

"Detainer" means a warrant or formal authorization to detain or apprehend an inmate or parolee for prosecution or detention by a Federal, State or local law enforcement agency. Detainers may include, but are not limited to:

1. Adjudicated criminal charges for which sentence has been imposed;
2. Criminal charges resulting from indictment, for which there is no final disposition (open charges);
3. Warrants for violation of parole or probation or executive clemency; and
4. Immigration detainers.

"Electronic Monitoring Program (EMP)" means a program in which an inmate lives in the community and is monitored by an electronic monitoring device.

"Firearm" means any hand gun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectible ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances.

"Internal Affairs Unit" means the unit responsible for conducting investigations at the direction of the Commissioner, New Jersey Department of Corrections.

"Lawfully confined" means custodially confined in a detention facility or county correctional facility or a Department of Corrections' facility.

"Mechanical restraints" means restraining devices such as handcuffs, leg irons, and belly chains.

"Non-deadly force" means force used by the parole officer which is not likely to cause death or serious bodily harm.

"Parole Duty Desk" means the centralized communication center within the Bureau of Parole which coordinates communication functions on a 24 hour, seven day a week basis.

"Parolee" means any person who is subject to the parole jurisdiction of the New Jersey State Parole Board and has been released on parole, or placed under supervision by reason of Executive Clemency, or any person released from another state correctional facility who resides in New Jersey under the terms of the Adult Compact for the Supervision of Parolee and Probationers.

"Parole officer" means persons with the following New Jersey Department of Corrections, Bureau of Parole, titles that may be sworn as peace officers:

1. Chief, Bureau of Parole;
2. Assistant Chief, Bureau of Parole;
3. Supervising Parole Officer;
4. District Parole Supervisor;
5. Assistant District Parole Supervisor;
6. Supervisor, Parole Residential Facility;
7. Senior Parole Officer; and
8. Parole Officer Recruit.

"Probable cause" means a fair probability to believe that criminal activity is taking place.

"Reasonable suspicion" means a belief that an action is necessary based upon specific and articulable facts that, taken together with rational inferences from those facts, reasonably support a conclusion such as that a condition of parole has been or is being violated by a parolee.

"Serious bodily harm" means bodily harm which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

"Unlawful force" means force, including confinement, which is employed without the consent of the person against whom it is directed and the use of which is not permitted by law.

"Warrant" means a writ or precept from an authority in pursuance of law, directing the performance of a specified act, and addressed to a peace officer or person competent to perform the act.

"Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury.

10A:26-1.4 Forms

(a) The following forms related to the Bureau of Parole shall be reproduced from originals that are available by contacting the Standards Development Unit, New Jersey Department of Corrections:

1. 156-I OATH OF OFFICE;
2. 844-II INCIDENT REPORT—BUREAU OF PAROLE;
3. 172-II CONTINUITY OF EVIDENCE—URINE SPECIMEN.

(b) The following form related to the Bureau of Parole shall be reproduced from originals that are available by contacting the New Jersey Department of Corrections', Bureau of Parole:

1. F-19 CHRONOLOGICAL SUPERVISION REPORT.

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. USE OF FORCE WHILE ON-DUTY

10A:26-4.1 Parole officers authorized to carry firearms while on duty

(a) Prior to being permitted to carry a firearm on duty, parole officers shall:

1. Pursuant to N.J.S.A. 52:17B-66 et seq., have taken and successfully completed the Police Training Commission (P.T.C.) approved Basic Course for Parole Officers to include weapons training at the Correction Officers Training Academy and Staff Development Center of the New Jersey Department of Corrections;

2. Have qualified in the use and handling of approved on-duty weapons; and

3. Have been sworn as peace officers by taking the Oath of Office and completing Form 156-I OATH OF OFFICE.

10A:26-4.2 Firearms training, qualification and requalification

(a) As required by N.J.S.A. 2C:39-1 et seq., all parole officers shall be initially trained and shall qualify in the use and handling of approved on-duty and off-duty firearms.

(b) Parole officers shall requalify annually on a range approved by the Police Training Commission (P.T.C.).

(c) Only those parole officers who achieve and maintain a minimum score of 80 percent during range qualification and requalification shall be authorized to possess firearms while on-duty and off-duty.

10A:26-4.3 On-duty firearm

(a) The authorized on-duty firearm shall be the responsibility of the parole officer at all times.

(b) The parole officer shall not draw or exhibit his or her firearm except for one of the following circumstances:

1. For maintenance of the firearm;
2. To secure the firearm;
3. When commanded by the firearms staff during training exercises, range practice, qualification or requalification with the firearm; or
4. When circumstances create a reasonable belief that it may be necessary to use the firearm in the performance of the parole officer's duties.

(c) A parole officer while on-duty, shall carry his or her on-duty firearm on his or her person at all times. The firearm shall:

1. Remain in the holster while in a rest room; and
2. Not be left in a motor vehicle or other unauthorized location except under unusual or special circumstances, such as when a parole officer must remove his or her on-duty firearm and another authorized Bureau of Parole staff member is unavailable to take custody of the firearm. Under an unusual or special circumstance every effort shall be made to secret the firearm within the locked trunk or other locked compartment of the parole officer's motor vehicle.

(d) When off-duty, the parole officer shall be authorized to carry his or her on-duty firearm to and from work.

(e) The parole officer may elect to carry his or her on-duty firearm as his or her sole authorized off-duty firearm.

(f) The parole officer entering any residential or correctional facility of the Department of Corrections shall store his or her firearm at the main correctional facility or at an approved Department of Corrections authorized weapons storage unit.

10A:26-4.4 Use of force

(a) In any case when a parole officer uses force while on-duty, the parole officer shall only use that force that is objectively reasonable under the totality of the circumstances as known by the parole officer at the time the parole officer uses force.

(b) A parole officer may use the amount of force reasonably necessary to accomplish the law enforcement objective. If the suspect resists, the parole officer may increase the degree of force as necessary to accomplish the law enforcement objective but as soon as the suspect submits, the parole officer shall reduce the degree of force used.

10A:26-4.5 Non-deadly force; when justified

(a) The Department justifies the use of non-deadly force against persons only under the following circumstances:

1. To protect self or others against the use of unlawful force;
2. To protect self or others against death or serious bodily harm;
3. To prevent damage to property;
4. To prevent escape;
5. To prevent or quell a disturbance;
6. To prevent a suicide or attempted suicide;
7. To enforce conditions of parole; or
8. In situations where a supervisor with the title of Assistant District Parole Supervisor or above believes that failure to comply constitutes an imminent threat to security or safety.

(b) Non-deadly force includes the use of chemical agents, batons, and other weapons which are not likely to cause death or serious injury.

10A:26-4.6 Deadly force; when authorized

(a) Deadly force shall be used against persons, except as stated in (b) below, on order of the following:

1. The Commissioner;
2. The Chief of Staff;
3. The Assistant Commissioner, Division of Operations;
4. The Chief, Bureau of Parole; or
5. The Assistant Chief, Bureau of Parole.

(b) The parole officer shall use deadly force against persons when the parole officer reasonably believes that a lesser degree of force will be ineffective, and the person(s) presents an imminent threat of deadly force or serious bodily harm to the parole officer or a third party.

(c) Deadly force may be used in the following situations under limitations consistent with the provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq.:

1. When the parole officer reasonably believes that deadly force is imminently necessary to protect himself or herself against the use of unlawful force which the parole officer believes may result in death or serious bodily harm;
2. When the parole officer reasonably believes that deadly force is imminently necessary to protect another against the use of unlawful force which the parole officer believes may result in death or serious bodily harm. However, deadly force is not justifiable if the parole officer can otherwise secure the complete safety of the protected person;
3. When the parole officer reasonably believes that deadly force is immediately necessary to prevent or stop the suspect from committing or continuing a criminal offense which would endanger human life or inflict serious bodily harm upon another person unless the commission or the consummation of the crime is prevented;
4. When the parole officer is authorized to use deadly force to effect an arrest or to prevent the escape of a fleeing suspect if the parole officer has probable cause to believe that the suspect will pose an immediate threat of death or serious bodily harm to human life should the parole officer not take immediate action; and
5. Where the parole officer reasonably believes that deadly force is immediately necessary to prevent the escape of a person committed to a correctional facility for the detention of persons charged with, or convicted of an offense, provided that the parole officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons.

(d) Deadly force includes, but is not limited to, the use of hand guns and other lethal weapons.

(e) Where feasible, before using a firearm, the parole officer shall attempt to identify himself or herself as an officer and state his or her intent to shoot. Warning shots are not authorized.

(f) The parole officer shall not fire his or her firearm from, or at, a moving vehicle, nor engage in any vehicle contact action such as ramming, except as a last resort to prevent imminent death or serious injury to the parole officer or another person where deadly force would otherwise be justified.

(g) The parole officer shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

(h) Whenever feasible, the parole officer shall contact the local law enforcement authorities and district parole office to request assistance before engaging in any use of force that reasonably could result in serious bodily injury.

10A:26-4.7 Use of force against persons other than parolees and inmates

(a) Appropriate force may be used against persons other than parolees and inmates when the parole officer observes what the parole officer believes to be a violation of the law, and when there is also imminent peril of bodily harm to any individual or destruction of property.

(b) Whenever possible, the parole officer shall contact the local law enforcement authorities and district parole office to request assistance before engaging in any use of force.

(c) In situations where a violation of law is suspected, but no imminent danger is present, the parole officer shall immediately contact the local law enforcement authorities and the parole officer's supervisor.

(d) Non-deadly force may be used upon or toward persons other than inmates and parolees only under the following circumstances:

1. To protect self or others against the use of unlawful force;
2. To protect self or others against death or serious bodily harm;
3. To thwart the commission of a crime involving or threatening bodily harm or damage to property;
4. To prevent a suicide or attempted suicide;
5. To prevent an escape, or flight from arrest for a crime; and/or
6. To effect an arrest for any offense or crime.

(e) Deadly force may be used against persons other than inmates and parolees when the parole officer reasonably believes that the person presents an imminent threat of death or serious bodily harm.

10A:26-4.8 Use of mechanical restraints

(a) Authorization for the use of mechanical restraints, except handcuffs, shall be obtained from a supervisor with the title of Assistant District Parole Supervisor or above. If the safety of the parole officer or security is jeopardized, the parole officer, by reason of his or her experience and best judgment, may use mechanical restraints when authorization can not be obtained.

(b) Mechanical restraints may be used on parolees, inmates, and lawfully confined persons in the following instances:

1. When transporting or awaiting transport in custody;
2. When the person's history, behavior, present emotional state or current medical advice indicates the likelihood that bodily injury, damage to property or escape will occur;
3. To prevent self-inflicted injury or injury to others; or
4. To prevent property damage.

(c) At no time shall a person be left without proper supervision while in restraints.

(d) Mechanical restraints shall not be used as punishment, or in any way that causes unnecessary physical discomfort, inflicts unnecessary physical pain, or unnecessarily restricts blood circulation or breathing.

(e) Mechanical restraints shall be removed promptly when the reason for use has ceased to exist or has sufficiently abated.

10A:26-4.9 Use of chemical agents; storage

(a) Only Department of Corrections approved chemical agents shall be used by parole officers.

(b) Whenever chemical agents are used as a means of control the parole officer shall comply with the reporting procedure in N.J.A.C. 10A:26-4.12.

(c) A parole officer is not permitted to carry or use chemical agents unless he or she has received appropriate training and annual retraining in the use and effects of these chemical agents.

(d) After each instance of use, individuals who have been exposed to chemical agents will be provided with medical examination and treatment when necessary.

(e) Chemical agents shall be safely stored, legibly labeled to show the chemical name and expiration date, and properly inventoried to insure security and an adequate unexpired supply.

10A:26-4.10 Training

All parole officers shall annually receive training in proper methods and techniques of using force and in the legal aspects of using force. Training in proper methods and techniques of using force shall be provided as part of the Basic Course for Parole Officers to include weapons training, provided at the Correction Officers Training Academy and Staff Development Center of the New Jersey Department of Corrections and shall be repeated annually.

10A:26-4.11 Motor vehicle pursuits prohibited

Parole officers shall not become involved in motor vehicle pursuits.

10A:26-4.12 Reports

(a) The parole officer shall immediately contact his or her supervisor and shall write a special report when the parole officer participated in or witnessed an incident in which:

1. A firearm was discharged outside of the firing range;
2. A use of force resulted in death or serious bodily injury; or
3. A suspect alleged that a serious bodily injury had been inflicted.

(b) The report shall contain the following information:

1. A description of the events leading up to the use of force;
2. A description of the incident;
3. The type of force used;
4. The reason for employing force;
5. A list of all participants and witnesses to the incident;
6. A description of the injuries suffered, if any, and medical treatment given; and
7. Other relevant facts or comments about the incident or conduct of employees, parolees, inmates, witnesses or the public.

(c) The parole officer's supervisor shall fax, as soon as possible, all special reports to the Central Office Internal Affairs Unit and the Chief, Bureau of Parole for review.

(d) The Chief, Bureau of Parole or his or her designee shall immediately advise the Chief of Staff and the Office of Public Information, New Jersey Department of Corrections of the following:

1. A description of the incident;
2. The persons involved;
3. The action taken; and
4. A current assessment of the situation.

(e) In emergency situations, the parole officer's supervisor or his or her designee shall immediately notify the Chief of Staff, the Chief, Bureau of Parole, and the Office of Public Information of the New Jersey Department of Corrections.

(f) Within 10 working days following the incident in which force was used, the District Parole Supervisor or his or her designee shall prepare and submit Form 844-II INCIDENT REPORT—BUREAU OF PAROLE along with a copy of the written report from the staff member(s) to the Chief, Bureau of Parole, with copies to:

1. The Commissioner;
2. The Chief of Staff;
3. Assistant Commissioner, Division of Operations;
4. Central Office Internal Affairs Unit; and
5. The Director of Communications, Office of Public Information.

(g) Follow-up reports will be submitted to those persons listed in (f) above.

10A:26-4.13 Penalties for violation

(a) Parole officer or parole staff member action which does not conform to the provisions of this subchapter and any procedures implemented in connection with this subchapter may result in the following:

1. Disciplinary action pursuant to N.J.A.C. 4A:2;
2. Personal, civil or criminal liability;
3. Denial of indemnification; and/or
4. Refusal by the Office of the Attorney General to represent the parole officer or parole staff member.

(b) Decisions regarding (a)3 and 4 above will be made by the Attorney General after an investigation of the facts of the case.

SUBCHAPTER 5. USE OF PERSONAL FIREARMS AND USE OF FORCE WHILE OFF-DUTY

10A:26-5.1 Authorized off-duty firearm, ammunition and holsters

(a) Parole officers shall be authorized only one firearm for off-duty use.

(b) Prior to being permitted to carry a firearm off-duty, parole officers shall meet the following requirements:

1. Pursuant to N.J.S.A. 52:17B-66 et seq., have taken and successfully completed the Police Training Commission (P.T.C.) approved Basic Course for Parole Officers to include weapons training at the Correction Officers Training Academy and Staff Development Center of the New Jersey Department of Corrections.
2. Have qualified in the use and handling of approved off-duty firearms; and
3. Have been sworn as peace officers by taking the Oath of Office and completing Form 156-I OATH OF OFFICE.

(c) The firearm intended for use off-duty shall have been obtained and registered pursuant to State and local laws of the State in which the employee lives. Parole officers shall not loan or improperly transfer personal firearms.

(d) The firearm to be carried off-duty shall be approved and authorized by the New Jersey Department of Corrections.

(e) Ammunition for the off-duty firearm shall be approved and authorized by the New Jersey Department of Corrections.

(f) The off-duty firearm shall be carried in the approved holsters on the body. Only shoulder, waist and ankle holsters shall be used for off-duty use.

(g) Holsters shall hold the firearm firmly when inverted and have no internal clips.

(h) The waist holster is the only holster approved for use while qualifying with the firearm.

(i) A parole officer who elects to use a shoulder or ankle holster for off-duty use shall demonstrate proficiency in the use of that holster during firearms requalification but need not qualify while using the holster.

(j) No purse holsters or holstered firearms in purses are approved.

(k) When a firearm other than a Departmentally issued duty firearm is selected for off-duty use the parole officer shall be responsible for assuming the cost of the firearm, ammunition, holster and for maintaining his or her firearm in a safe and serviceable condition.

10A:26-5.2 Off-duty firearm

(a) The authorized off-duty firearm shall be the responsibility of the parole officer at all times.

(b) The parole officer shall not be authorized to carry his or her off-duty firearm to and from work unless the parole officer elects to carry his or her authorized on-duty firearm as his or her sole authorized off-duty firearm.

(c) The parole officer shall not draw or exhibit his or her firearm except for one of the following circumstances:

1. For maintenance of the firearm;
2. To secure the firearm;
3. When commanded by the firearms staff during training exercises, range practice, qualification, or requalification with the firearm; or
4. When circumstances create a reasonable belief that it may be necessary to use the firearm in conformance with this policy.

10A:26-5.3 Firearms training, qualification and requalification

(a) As required by the N.J.S.A. 2C:39-1 et seq., all parole officers shall be initially trained and shall qualify in the use and handling of approved on-duty and off-duty firearms.

(b) The parole officer shall requalify annually on a range approved by the Police Training Commission (P.T.C.).

(c) Only those parole officers who achieve and maintain a minimum score of 80 percent during range qualification and requalification shall be authorized to possess firearms while on-duty and off-duty.

(d) Once a parole officer has qualified on his or her approved personal firearm, the parole officer shall receive the official State of New Jersey, Firearms Unit Weapons Card. The off-duty firearm the parole officer carries shall be the same one identified on the weapons card. Parole officers authorized to carry an off-duty firearm shall be required to carry the weapons card, the official badge and photo identification card of the New Jersey Department of Corrections while carrying their off-duty firearm.

(e) Each Bureau of Parole district office supervisor or his or her designee shall be responsible for preparing and maintaining a current master list of each parole officer authorized to carry an off-duty firearm.

1. The master list shall be maintained by the Chief, Bureau of Parole, or his or her designee to indicate the parole officer's firearms qualification date (new or expired), model name and number, and serial number of the authorized off-duty firearm.

2. Each time the parole officer registers a firearm with the Chief, Bureau of Parole, or his or her designee, the Chief, Bureau of Parole, or his or her designee, is responsible for comparing the firearms qualification date, firearm model name and number, and firearm serial number contained on the master list against the State of New Jersey, Firearms Unit Weapons Card accompanying the personal firearm.

(f) Should the parole officer's authorized personal firearm become unusable, stolen or unserviceable and the parole officer selects a personal firearm different from the one originally qualified for use, the parole officer shall requalify on the different firearm before the weapon can be used. This qualification may be completed prior to the next annual firearms qualification period.

(g) Should a parole officer wish to change his or her authorized personal firearm as a matter of preference, the parole officer shall wait until the next annual firearms qualification period.

10A:26-5.4 Use of force while off-duty

(a) Although N.J.S.A. 2A:154-4 authorizes parole officers to exercise law enforcement powers, no parole officer is required to exercise these powers or to carry arms during off-duty hours.

(b) Parole officers, while off-duty, shall not become involved with routine law enforcement duties as they apply to local law enforcement agencies. When a parole officer observes what he or she believes to be a violation of the law, the parole officer may take note of the vehicle description(s), license plate number(s), identifying characteristics of person(s) involved, and other relevant information and report such information to the local law enforcement agency having jurisdiction and to the Parole Duty Desk of the New Jersey Department of Corrections.

(c) In cases where a parole officer has passed the qualifying firearms examination and does elect to carry a firearm off-duty, the utmost discretion shall be exercised by the parole officer to determine when and under what conditions to use reasonable force.

(d) Any use of force while off-duty shall be in accordance with the requirements of this subchapter.

(e) A parole officer shall be deemed to have acted within the scope of his or her employment or in the law and enforcement interest of the State of New Jersey if the parole officer exercises police powers in accordance with the provisions of this chapter.

10A:26-5.5 Use of non-deadly force while off-duty

(a) Whenever non-deadly force is used off-duty, the reasonable force possible under the circumstances shall be used.

(b) Non-deadly force may be used off-duty when the parole officer believes it to be immediately necessary in order to:

1. Protect self or others against the use of unlawful force;
2. Protect self or others against death or serious bodily harm;
3. Prevent a suicide or attempted suicide;
4. Thwart the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace;
5. Prevent an escape; or
6. Effect an arrest for any offense or crime under the laws of the State of New Jersey subject to (c) below.

(c) The use of non-deadly force to effect an arrest is only justifiable if:

1. The parole officer makes known his or her identity and the purpose of the arrest; or
2. The parole officer reasonably believes that his or her identity and purpose are otherwise known by, or cannot reasonably be made known to, the person to be arrested; and
3. When the arrest is made under a warrant, the warrant is valid or reasonably believed by the parole officer to be valid.

10A:26-5.6 Use of deadly force while off-duty

(a) Deadly force includes, but is not limited to, the use of firearms and other lethal weapons.

(b) Deadly force may be used in the following situations under limitations consistent with the provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq.:

1. When the parole officer reasonably believes that deadly force is imminently necessary to protect himself or herself against the use of unlawful force which the parole officer believes may result in death or serious bodily harm;
2. When the parole officer reasonably believes that deadly force is imminently necessary to protect another against the use of unlawful force which the parole officer believes may result in death or serious bodily harm. However, deadly force is not justifiable if the parole officer can otherwise secure the complete safety of the protected person;
3. When the parole officer reasonably believes that deadly force is immediately necessary to prevent or stop the suspect from committing or continuing a criminal offense which would endanger human life or inflict serious bodily harm upon another person unless the commission or the consummation of the crime is prevented;
4. The parole officer is authorized to use deadly force to effect an arrest or to prevent the escape of a fleeing suspect if the parole officer has probable cause to believe that the suspect will pose an immediate threat of death or serious bodily harm to human life should the parole officer not take immediate action; and
5. Where the parole officer reasonably believes that deadly force is immediately necessary to prevent the escape of a person committed to a correctional facility for the detention of persons charged with, or convicted of an offense, provided that the parole officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons.

(c) Where feasible, before using a firearm, the parole officer shall attempt to identify himself or herself as an officer and state his or her intent to shoot. Warning shots are not authorized.

(d) The parole officer shall not fire his or her firearm from, or at, a moving vehicle nor engage in any vehicle contact action, such as ramming, except as a last resort to prevent imminent death or serious injury to the parole officer or another person where deadly force would otherwise be justified.

(e) The parole officer shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

10A:26-5.7 Unauthorized use of personal firearms while off-duty

(a) A parole officer shall not be authorized to carry an off-duty firearm in the following instances:

1. Where N.J.S.A. 2C:39-7 (Persons Convicted of Certain Crimes) is applicable;
2. Where 18 U.S.C. 1202 Appx.—Appendix to the United States Code (Persons Convicted of Certain Crimes) is applicable;
3. When the Chief, Bureau of Parole, or a higher official of the Department of Corrections has suspended the parole officer from duty for any violation;
4. When there are pending charges or ongoing investigations of alleged incidents involving the misuse of a firearm; or
5. Any other situation where the Chief, Bureau of Parole, may exercise his or her authority to withdraw off-duty firearms privileges, subject to the review by the Chief of Staff of the Department of Corrections.

(b) In any of the instances in (a) above, the State of New Jersey, Firearms Unit Weapons Card shall be turned in to the Chief, Bureau of Parole or his or her designee.

10A:26-5.8 Possession of firearms within a casino or casino simulcasting facility

Pursuant to N.J.A.C. 19:45-1.13, a parole officer shall not possess or be permitted to possess a firearm within a casino or casino simulcasting facility.

10A:26-5.9 Motor vehicle pursuits prohibited

Parole officers shall not become involved in motor vehicle pursuits.

10A:26-5.10 Reporting incidents

(a) When an authorized off-duty firearm is believed to have been lost or stolen, the parole officer shall report this fact to the local law enforcement authorities and to the Parole Duty Desk of the New Jersey Department of Corrections within three hours from the time the parole officer is aware that the firearm is missing.

(b) When a State of New Jersey, Firearms Unit Weapons Card, official photo identification card or badge of the New Jersey Department of Corrections is believed to have been lost or stolen, the parole officer shall notify the local law enforcement authorities and the Chief, Bureau of Parole, or his or her designee as soon as practicable.

(c) Except as outlined in N.J.A.C. 10A:26-5.2(c), the parole officer shall immediately and without exception report to the local law enforcement authorities and the Chief, Bureau of Parole, any incident where the parole officer has displayed, drawn or fired his or her off-duty firearm, or any incident or injury which occurred from the use of the parole officer's firearm.

(d) On the next working day after any incident as described in (a), (b) or (c) above, the parole officer shall report in writing to the Chief, Bureau of Parole, the facts of the incident and identifying particulars of the incident. The Chief, Bureau of Parole, shall forward the report for review to the Chief of Staff, the Office of Public Information, and the Central Office Internal Affairs Unit of the New Jersey Department of Corrections.

(e) The parole officer shall, within three days, report to the Chief, Bureau of Parole, in writing whenever a registered authorized off-duty firearm has been sold or is no longer in use.

10A:26-5.11 Penalties for violation

(a) Parole officer actions which do not conform to the provisions of this subchapter and any procedures implemented in connection with this subchapter may result in the following:

1. Disciplinary action pursuant to N.J.A.C. 4A:2;
2. Personal, civil or criminal liability;
3. Denial of indemnification; and/or
4. Refusal by the Office of the Attorney General to represent the parole officer.

(b) Decisions regarding (a)3 and 4 above will be made by the Attorney General after reviewing the facts of the case.

SUBCHAPTER 6. SEARCH AND URINE MONITORING OF PAROLEES AND INMATES

10A:26-6.1 Search of parolees; when authorized

(a) Searches of parolees may be authorized by the New Jersey State Parole Board through the imposition of general or special conditions of parole.

(b) In addition to (a) above, a search of a parolee may be conducted at any time when there is a reasonable suspicion to believe that the search will produce contraband or evidence that the parolee is violating a condition of parole.

(c) Searches of parolees shall be carried out in a reasonable manner and shall be reasonably related to the purpose of parole and the function of the parole officer.

(d) The search of a parolee shall be conducted while the parolee is fully clothed and shall include, but is not limited to, the touching of the parolee's body through clothing, a thorough examination into pockets, cuffs and seams, the touching of the parolee's hair, and all personal property within the parolee's immediate control.

(e) A search of a parolee may be conducted by a parole officer of either sex.

(f) Parole officers are not authorized to conduct strip or body cavity searches.

(g) Parolees may be subject to a pat-down of the outer clothing to determine whether they are in possession of a weapon.

(h) Parolees shall be searched prior to being transported.

10A:26-6.2 Search of inmates

Search of inmates shall be conducted in accordance with the applicable provisions of N.J.A.C. 10A:3-5.

10A:26-6.3 Search of a parolee's residence; when authorized

(a) A parole officer may conduct a search of a parolee's residence when:

1. There is a reasonable suspicion to believe that evidence of a violation of a condition of parole would be found in the residence or contraband which includes any item that the parolee cannot possess under the conditions of parole is located in the residence; and
2. The search is approved by the parole officer's supervisor or circumstances exist which require immediate action.

(b) Where the residence is jointly owned or shared by a parolee and another person(s), the parole officer:

1. May search all objects that appear to be owned or possessed by the parolee;
2. May search any area of the residence or objects that are jointly shared by both the parolee and the other person, even if that person(s) objects to the search; and
3. May not search any area that is exclusively under the control of the other person(s) unless that person(s) voluntarily consents to the search.

(c) A parole officer shall not enter the home of a third party to search for a parolee without having a search warrant unless:

1. The parole officer reasonably believes that the parolee resides at that address; or
2. The home owner voluntarily consents to the search.

10A:26-6.4 Search of a motor vehicle; when authorized

(a) A parole officer may stop and conduct a search of a motor vehicle owned by a parolee or a motor vehicle not owned but driven by a parolee when there is a reasonable suspicion to believe that:

1. Evidence of a violation of a condition of parole would be found in the motor vehicle or contraband which includes any item that the parolee cannot possess under the conditions of parole is located in the vehicle; and
2. The search is approved by the parole officer's supervisor or circumstances exist which require immediate action.

(b) A parole officer may stop, but shall not conduct a search of a motor vehicle when the parolee is a passenger in a motor vehicle that is owned and driven by another person unless:

1. The parole officer has probable cause to believe that evidence or contraband is located in the motor vehicle or the owner of the motor vehicle voluntarily consents to the search; and
2. The search is approved by the parole officer's supervisor or circumstances exist which require immediate action.

10A:26-6.5 Search of objects in a motor vehicle

(a) In an authorized motor vehicle search, a parole officer may search all objects that appear to be owned or possessed by the parolee.

(b) In an authorized motor vehicle search, a parole officer may search all objects that are jointly shared by both the parolee and other person(s) in the motor vehicle even if that person(s) objects to the search.

(c) In an authorized motor vehicle search, a parole officer shall not search any objects that are exclusively owned or possessed by other person(s) in the motor vehicle unless:

1. The parole officer has probable cause to believe that contraband is contained within the property of the other person(s); or
2. The other person(s) voluntarily consents to the search.

10A:26-6.6 Reports

(a) The parole officer shall record incidents in which a search of a parolee, inmate, residence or vehicle was conducted on Form F-19 CHRONOLOGICAL SUPERVISION REPORT.

(b) Form F-19 shall contain a minimum of the following information:

1. A description of the events leading up to the search;
2. The parole officer's reasonable suspicion and basis for the search;
3. A description and the disposition of any items, articles, or materials determined to be contraband found as a result of the search; and
4. Any other relevant facts or comments about the search.

10A:26-6.7 Urine monitoring

(a) Urine monitoring shall be conducted for the purpose of deterring the use of, or to detect the presence of, opiates, methadone, barbiturates, amphetamines, cocaine, tranquilizers, darvon, marijuana, alcohol or any other drug not authorized for possession or use by the inmate or parolee.

(b) Inmates or parolees shall be required to submit urine for analysis when:

1. Mandated by special condition of the New Jersey State Parole Board or the Bureau of Parole of the New Jersey Department of Corrections; or

2. The parole officer believes, based upon his or her education and experience, that there is a reasonable factual basis to suspect the inmate or parolee of using drugs or alcohol.

10A:26-6.8 Collection, storage and analysis of urine samples

(a) Each time a urine specimen is collected for the reasons stated in N.J.A.C. 10A:26-6.7, Form 172-I CONTINUITY OF EVIDENCE—URINE SPECIMEN shall be completed and submitted with the urine sample to the parole officer's district parole office which is responsible for maintaining custody over the specimen until transfer to the testing facility.

(b) The inmate or parolee shall not be considered in violation of parole condition for refusal to provide a urine sample unless that inmate or parolee has been given a reasonable physical opportunity to comply with such order.

1. For the purposes of this section, a reasonable physical opportunity shall constitute a two hour period from the time of the initial order.

2. The inmate or parolee shall not be deemed to have complied with the order to submit a urine sample unless he or she voids the sample in the presence of the parole officer or parole staff member.

(c) Urine samples taken from parolees or inmates shall be voided directly into an approved specimen bottle in the presence of at least one parole officer or parole staff member of the same sex as the parolee or inmate.

1. A minimum of 50 milliliters (two ounces) must be voided in order to provide an adequate sample.

2. The specimen bottle shall immediately be closed, labeled and sealed in the presence of the parolee or inmate by the parole officer or parole staff member.

3. The label shall indicate the parolee's or inmate's name and number, the district parole office to which the parolee or inmate is assigned, the name of the parole officer or parole staff member who witnessed the voiding of the sample, the date and time of the sample, and any prescription medication that the parolee or inmate is currently taking, and the parolee's or inmate's signature.

(d) The parole officer or staff member who signs the label as witness shall, as soon as reasonably practicable:

1. Record on Form 172-I the date and time the parole officer or parole staff member received the sample, the parolee or inmate from whom the urine sample was received, and the date and time of the urine sample placement into a storage container and/or locked refrigerator or freezer;

2. Place the urine sample in a storage container and/or locked refrigerator or freezer; and

3. Deliver the urine sample to the district parole office which is responsible for maintaining custody over the specimen until transfer to the testing facility;

(e) The date and time of the removal of the urine sample from the district parole office as well as the date and time of urine sample receipt by the testing facility shall be noted on Form 172-I by the person(s) performing these functions.

(f) The Department of Corrections shall not proceed with testing any urine sample for drugs or alcohol unless the urine sample arrives at the laboratory in a sealed and approved specimen bottle.

(g) All urine monitoring shall be accomplished in a professional and dignified manner with maximum courtesy and respect being given to the parolee or inmate.

SUBCHAPTER 7. CONTRABAND AND DISPOSITION OF CONTRABAND

10A:26-7.1 Procedures for handling contraband upon discovery

(a) Whenever an item, article or material is determined to be contraband pursuant to N.J.A.C. 10A:3-6 for inmates or N.J.A.C. 10A:26-1.3 for parolees, the contraband shall immediately be seized.

(b) The parole officer making a seizure of contraband from a parolee shall submit the criminal contraband to the local law enforcement jurisdiction or county prosecutor's office.

(c) The parole officer making a seizure of contraband from an inmate shall do so in accordance with the applicable provisions of N.J.A.C. 10A:3-6.

(d) The parole officer shall record the incident including the type, amount and disposition of the contraband on Form F-19, CHRONOLOGICAL SUPERVISION REPORT.

(e) Precautions shall be taken to assure the continuity of possession of contraband in accordance with accepted legal procedures.

SUBCHAPTER 8. TRANSPORTATION OF PAROLEES AND INMATES IN CUSTODY

10A:26-8.1 Use of State owned and privately owned vehicles

(a) Inmates and parolees shall be transported in State owned vehicles, except in emergencies when no such vehicle is available.

(b) In emergencies when no state vehicle is available and the parole officer chooses to transport parolees in a privately owned vehicle, the parole officer shall secure prior approval to transport parolees or inmates in the privately owned vehicle from the Chief, Bureau of Parole, or his or her designee. If approval is granted, the parole officer shall be:

1. Made aware of Departmental policy regarding the use of private vehicles and the liability provisions currently applicable as established by the Division of Budget and Accounting of the New Jersey Department of the Treasury; and

2. Required to furnish proof that the privately owned vehicle is properly licensed, registered and insured.

(c) When escorting parolees or inmates the parole officer shall carry in his or her possession a valid drivers license.

10A:26-8.2 Transport of parolees and inmates in custody

(a) State owned vehicles used to escort parolees and inmates in custody shall be equipped with protective screening devices to separate parolees and inmates from the driver.

(b) Opening devices on the inner rear doors and windows of State owned passenger sedans shall be made inoperable for parolees and inmates.

(c) The rear door locking mechanism of the State owned vehicle shall be modified so that it is redirected, making it accessible to the parole officer only when the front door is open.

(d) The standard State owned passenger sedan or van shall be used only in lieu of more secure but unavailable vehicles.

(e) Vehicles used to transport parolees and inmates in custody shall be thoroughly searched for contraband by the transporting parole officer(s) before and after being used.

(f) Parole officers escorting parolees or inmates shall be provided with necessary mechanical restraints which shall be used in accordance with N.J.A.C. 10A:26-4.8.

(g) Parole officers escorting parolees and inmates in custody shall be armed with Department of Corrections' authorized weapons and ammunition. Any use of force shall be governed by N.J.A.C. 10A:26-4.

(h) When escorting parolees and inmates in custody, the ratio of escorting parole officers to parolees or inmates shall be two parole officers for one parolee or inmate, two parole officers for two parolees or inmates, and three parole officers for three parolees or inmates.

(i) When transporting parolees and inmates, at least one parole officer shall be of the same sex as the parolee(s) or inmate(s) being escorted. Additional parole officers may be assigned regardless of gender.

(j) Only properly trained parole officers shall transport parolees and inmates in custody. Such parole officers shall have been fully trained in the following areas:

1. Use of weapons and mechanical restraint equipment; and

2. Effective search for contraband of parolees and inmates, their personal property and transportation vehicles.

(k) Searches of parolees and inmates being transported shall be conducted in accordance with N.J.A.C. 10A:26-6.1.

10A:26-8.3 Escorting procedures for parolees and inmates

(a) The parolee(s) or inmate(s) shall be carefully guarded to prevent escape and receipt of contraband.

(b) No communication between the parolee(s) or inmate(s) and the public shall be permitted at any time during escort.

(c) A parolee's or inmate's special requests during escort not related to the purpose of the trip shall not be honored.

10A:26-8.4 Emergencies

(a) The parole officer shall immediately notify the Parole Duty Desk of the New Jersey Department of Corrections if an emergency arises during the transportation of a parolee or inmate.

(b) If time or other considerations make it impossible to contact the Parole Duty Desk, the local police authorities shall be notified by the parole officer without prior clearance.

10A:26-8.5 Medical transportation

(a) In emergency situations when a non-ambulatory parolee or inmate in custody is in need of hospitalization or treatment, the parolee or inmate shall be transported by ambulance, or by a State owned vehicle if an ambulance is unavailable. A State owned vehicle shall be used to transport an ambulatory parolee or inmate who is in need of hospitalization or treatment.

(b) When a parolee or inmate in custody is transported by ambulance, the parole officer shall accompany the parolee or inmate in the ambulance and another parole officer shall follow the ambulance in a backup car.

(c) When a parolee or inmate in custody is transported in a State owned vehicle, the ratio of escorting parole officers to parolees and inmates shall be governed by N.J.A.C. 10A:26-8.2.

(d) The use of mechanical restraints and equipment when transporting a parolee or inmate in custody for hospitalization or treatment shall be governed by N.J.A.C. 10A:26-4.8 and the nature of the illness or injury.

(a)

STATE PAROLE BOARD

Parole Board Rules

Proposed Readoption with Amendments: N.J.A.C. 10A:71

Proposed New Rule: N.J.A.C. 10A:71-6.10

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

Authority: N.J.S.A. 30:4-123.48(d), 30:4-123.51(g), 30:4-123.54(d), 30:4-123.59(c), 30:4-123.63, 30:4-123.64.

Proposal Number: PRN 1994-550.

Address comments by November 16, 1994 to:

Robert M. Egles
Executive Director
New Jersey State Parole Board
CN 862
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The State Parole Board is an autonomous agency housed, for logistical purposes only, within the Department of Corrections. The Board determines if, when and under what circumstances inmates subject to its jurisdiction may be released on parole or returned to an institution from parole following violation of parole terms or conditions. The Parole Act of 1979 (N.J.S.A. 30:4-123.45 et seq.) which became effective April 21, 1980, created a full time Board. The Board is presently comprised of nine Board members. Six Board members are assigned to function as two-member panels to review adult and young adult inmate cases and two Board members by Governor designation function as a panel to review juvenile inmate cases. The Chairman of the Board is empowered to function as a member of each panel. Since July, 1982 the Board has been legislatively mandated with the responsibility for parole jurisdiction in all cases of offenders committed to a county jail facility with terms in excess of 60 days.

The Parole Act of 1979 was enacted to serve as a companion measure to the New Jersey Code of Criminal Justice (N.J.S.A. 2C:1-1 et seq.). The Parole Act of 1979 established new standards for release in the cases of adult and juvenile inmates. In adult inmate cases, the standard stipulates that an adult inmate shall be released on parole at the time of parole eligibility unless the Board can demonstrate by a preponderance of the evidence developed during the hearing process that there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released on parole. In juvenile inmate cases, the standard stipulates that the juvenile inmate shall be released on parole when it shall appear that the juvenile inmate, if released, will not cause injury to person or substantial injury to property. The release standards do not imply, nor do they result in the automatic release of inmates after a prescribed period of incarceration. The fundamental concern for the Board is the risk evaluation of each offender's propensity toward continuing criminal activity and not appellate review of the punitive aspects of an inmate's sentence.

The Board is authorized by the Parole Act to promulgate reasonable rules and regulations, consistent with the Parole Act, as may be necessary for the proper discharge of its responsibilities. The Board's rules are specified in the New Jersey Administrative Code (N.J.A.C. 10A:71) and pursuant to Executive Order No. 66(1978) are scheduled to expire February 5, 1995. The Board has, therefore, reviewed its rules and proposes to readopt same with amendments and proposes for adoption a new rule (N.J.A.C. 10A:71-6.10). The Board's rules pertain to Board organization; general administrative provisions; parole release hearings; appeals; suspending or rescinding a parole release date; supervision; revocation of parole; and certificate of good conduct.

As a result of the review process, the Board proposes various revisions to the present rules and a new rule to effectuate a recent clarification of the Board's responsibility in the transfer of parole supervision to an out-of-State jurisdiction. Numerous revisions merely correct references to administrative code citations and merely clarify existing rules. The significant substantive and procedural revisions and the new rule are as follows:

1. The proposed amendment to N.J.A.C. 10A:71-1.2(a) authorizes the attendance of representatives of recognized victim groups at the Board's monthly formal Board meetings.

2. The proposed amendment to N.J.A.C. 10A:71-1.2(j) clarifies that a Board member must be present during the deliberation on a subject matter in order to participate in the vote taken on the subject matter.

3. Proposed amendments to N.J.A.C. 10A:71-1.3 provide for the scheduling of case reviews; provide for one Board member constituting a quorum of a Board panel; and provide for the conducting of an administrative review of the record by a third Board member, in lieu of reconvening the hearing, when a two-member Board panel cannot reach a unanimous decision.

4. The proposed amendment to N.J.A.C. 10A:71-1.5 clarifies that a Board member shall not participate in the deliberation or disposition of a case if the Board member has a personal prejudice or bias.

5. The proposed amendment to N.J.A.C. 10A:71-1.9 eliminates the requirement for the preparation and distribution of handbooks on the parole process.

6. The proposed amendment to N.J.A.C. 10A:71-2.1 establishes the confidentiality of all information, statements or testimony provided by a victim or nearest relative of a murder/manslaughter victim.

7. A proposed amendment to N.J.A.C. 10A:71-3.2(c) reflects the implementation of the June 21, 1994 determination of the New Jersey Supreme Court in *Booker v. New Jersey State Parole Board,* 136 *N.J.* 257 (1994). The Court determined that "gap time" awarded pursuant to N.J.S.A. 2C:44-5(b)2 reduces a subsequently imposed concurrent or consecutive term, with no mandatory-minimum, and that parole eligibility on the subsequently imposed term is based on one-third of the reduced term. The Court specified that its decision be given prospective application except for those inmates who had cases filed in the Appellate Division.

8. A proposed amendment to N.J.A.C. 10A:71-3.2(c) precludes time served in the Intensive Supervision Program as a credit in the computation of parole eligibility in the case of an offender returned to confinement. The amendment would be given prospective application.

9. The proposed amendment to N.J.A.C. 10A:71-3.3(c) establishes the present term involving unsuccessful adjustment to probation supervision as an additional factor to be considered in determining whether to increase the presumptive primary eligibility date in young adult inmate cases.

10. The proposed amendment to N.J.A.C. 10A:71-3.3(g) eliminates the restriction which precludes a young adult inmate from earning program participation credits during the service of the first six months of the established primary eligibility terms. The proposed amendment to N.J.A.C. 10A:71-3.6(b) deletes the reference to the now obsolete offender status classification process provided for in N.J.S.A. 30:4-123.51i.

11. The proposed amendment to N.J.A.C. 10A:71-3.7(d) requires the chief executive officer of an institution to provide in writing the reasons why a preparole report was not filed with the Board panel within 60 days of notice being provided of an inmate's eligibility for parole consideration. The proposed amendment also codifies the present practice of giving priority to the preparation of preparole reports in cases of inmates who are past eligible for parole consideration.

12. The proposed amendment of N.J.A.C. 10A:71-3.7(g) requires the chief executive officer of an institution to produce the institutional classification file at scheduled case reviews and hearings.

13. The proposed amendment of N.J.A.C. 10A:71-3.7(h) codifies the present practice of requiring the Department of Corrections to perform a supplemental psychological or psychiatric evaluation in certain inmate cases.

14. The proposed amendment of N.J.A.C. 10A:71-3.7(i) reflects that an inmate at his or her own expense may have an evaluation performed by a private psychologist or psychiatrist and may submit the evaluation report to the Board members. Scheduling such an evaluation must be made through the Department of Corrections and in accordance with the Department's regulations. The inmate must also at his or her own expense produce the examining psychologist or psychiatrist for an interview before the Board members upon request.

15. The proposed amendments to N.J.A.C. 10A:71-3.10 clarify that it is the Board panel members that determine whether in adult and young adult cases there is a substantial likelihood of future criminal activity and whether in the cases of inmates sentenced to and housed at the Adult Diagnostic and Treatment Center the inmate is capable of making an acceptable social adjustment in the community.

16. Proposed amendments to N.J.A.C. 10A:71-3.13 (release hearings), 5.8 (rescission hearings) and 7.15 (revocation hearings) provide in the case when the electronic recording device is not operational for the proceeding with the hearing without electronically recording same only upon the written waiver of the inmate. If the inmate does not wish to waive the electronic recording of the hearing, the hearing will be rescheduled on the next available hearing date in the case of a release hearing and within 14 days in the cases of rescission and revocation hearings. A proposed amendment to N.J.A.C. 10A:71-3.13 establishes the scheduled hearings to commence at 9:00 A.M.

17. The proposed amendment of N.J.A.C. 10A:71-3.13(k) reflects that the Board will adopt a professional code of conduct and parole hearings shall be conducted in accordance with said code. Amendments to N.J.A.C. 10A:71-4.1, 4.2 and 4.4 reflect that violation of the code of conduct is a basis for inmate appeal.

18. Proposed changes to N.J.A.C. 10A:71-3.14 and 3.15 add the term "case review" to include administrative reviews by hearing officers where in-person initial hearings are not required based on amendments to N.J.A.C. 10A:71-3.15(a) and (b) adopted September 14, 1994, effective October 17, 1994.

19. Proposed amendments to N.J.A.C. 10A:71-3.16 provide for two Board members to review any recommendation for parole release. Amendments to N.J.A.C. 10A:71-3.48, 3.49 and 3.51 and 6.6 are being made to reflect this change.

20. The proposed amendment to N.J.A.C. 10A:71-3.16(b)5 codifies the practice of providing notice of parole release decisions to the Prosecutor for the county of commitment.

21. The proposed amendment of N.J.A.C. 10A:71-3.16(e) provides for the processing of an inmate's case when the two Board members do not reach a unanimous decision on a hearing officer's recommendation for parole release. A technical change at N.J.A.C. 10A:71-3.17 is necessary due to the amendments at N.J.A.C. 10A:71-3.16.

22. The proposed amendment to N.J.A.C. 10A:71-3.18(b) requires the Board review of a Board panel's decision to establish placement in a half-way house as a pre-release condition; upon concurrence in the decision, requires the Board's referral of the case to the Department for the inmate's placement; requires the Department to provide the reasons for denying an inmate placement in a half-way house; and requires the Board panel to reevaluate the inmate's case when placement in a half-way house is denied. Full Board decisions for inmate placement in a half-way house is addressed in the proposed amendment to N.J.A.C. 10A:71-3.20(c).

23. The proposed amendments to N.J.A.C. 10A:71-3.18(e) and 3.20(d) extend the time periods for the issuance of a Board panel or Board decision, respectively, from 21 days to 30 days as authorized by statute and codifies the practice of providing notice of Board panel and Board decisions to the Prosecutor for the county of commitment.

24. The proposed amendment to N.J.A.C. 10A:71-3.19(a) deletes reference to referrals pursuant to N.J.A.C. 10A:71-16(c) which was deleted by amendments adopted September 14, 1994, effective October 17, 1994.

25. A proposed amendment to N.J.A.C. 10A:71-3.21(d) establishes that a third Board panel member will administratively review the records of the panel hearing and that the panel hearing will not be reconvened for the purpose of establishing an extended future parole eligibility date. Proposed amendments to the same section establish a 30 day time period in which the inmate may provide information to the Board panel or the Board for consideration when establishing an extended future parole eligibility term.

26. The proposed amendments to N.J.A.C. 10A:71-3.23 establish new presumptive parole release terms in the cases of juvenile inmates.

27. The term hearing officer is being deleted at N.J.A.C. 10A:71-3.37.

28. The proposed amendments to N.J.A.C. 10A:71-3.47 provide for the confidentiality of victim input and provide for the Board to forward a copy of the preparole report, excluding confidential material, to the victim upon request.

29. The proposed amendments to N.J.A.C. 10A:71-4.2 provide for additional criteria on which an appeal of the respective decision may be based; eliminates the appeal process for offender status classification; and permit an appeal of a decision not to refer a parolee's case for an assessment as to whether counsel shall be assigned to represent the parolee in the revocation hearing process.

30. The proposed amendment to N.J.A.C. 10A:71-4.3 requires that administrative appeals be filed in writing within 180 days of the inmate receiving notice of the action taken or decision rendered.

31. The proposed amendment to N.J.A.C. 10A:71-5.3(c) deletes references to repealed sentencing statutes.

32. The proposed amendment to N.J.A.C. 10A:71-5.8 eliminates reference to N.J.A.C. 10A:71-3.4 (infraction schedule). Upon rescission of a parole date, a future parole eligibility date will be established in accordance with N.J.A.C. 10A:71-3.21 (eligibility term schedule for denial of parole).

33. The proposed amendments to N.J.A.C. 10A:71-5.8(b) (rescission hearing process), 7.16 (revocation hearing process) and 7.16A (revocation hearing process) clarify that Board members shall not receive or consider any ex parte communications and that a decision shall be decided on the established record.

34. A proposed amendment to N.J.A.C. 10A:71-6.4(a) eliminates the general condition that a parolee not act as an informer for any agency which required the parolee to violate any condition of parole. Also it requires the payment of assessments and lab fees as a general condition of parole.

35. The proposed amendments to N.J.A.C. 10A:71-6.4(e) require the imposition of any special conditions imposed by the District Parole Supervisor, Assistant District Parole Supervisor or the designated representative of the District Parole Supervisor to be reviewed by the Board panel or Board and for the Board panel or Board to either vacate, modify or affirm the imposition of the additional special condition.

36. The proposed amendments to N.J.A.C. 10A:71-6.9 clarify the criteria for discharge of a parolee from supervision and establish a conditional discharge category.

37. The proposed new rule, N.J.A.C. 10A:71-6.10, establishes the procedure to be utilized in the administrative processing of the case of a parolee who wishes to have his or her parole supervision transferred to an out-of-State jurisdiction.

38. The proposed amendments to N.J.A.C. 10A:71-7.3 specify the categories of cases in which a Prosecutor or the Chief of the Bureau of Parole may submit applications for accelerated revocation; require the submission of additional information as part of the application; require that the decision to initiate the revocation hearing process be rendered by two Board members; require a representative of the prosecuting authority to be present at a preliminary or revocation hearing in order to present the State's case against the parolee; and clarify that it is the responsibility of the prosecuting authority to insure the attendance of witnesses at a hearing.

39. The proposed amendments to N.J.A.C. 10A:71-7.7 (preliminary hearing) and 7.14 (revocation hearing) would delete reference to representation by the Office of the Public Defender pursuant to N.J.S.A. 2A:158-5.1 et seq. due to the Legislature withholding since 1991 any appropriation to the Office of the Public Defender for the purpose of providing legal representation to indigent parolees at revocation hearings. The proposed amendments also establish criteria for the screening of cases to determine whether the parolee may be entitled to have counsel assigned from the list maintained in accordance with *R.*3:27-2.

40. The proposed amendments to N.J.A.C. 10A:71-7.16(p) and 7.16A(q) establish a 30 day time period in which an inmate and/or the inmate's attorney may provide information to the Board Panel or the Board for consideration when establishing an extended future parole eligibility date or in the case of a juvenile inmate a future parole release date after revocation of the inmate's parole status.

41. The proposed amendment to N.J.A.C. 10A:71-7.20 adds assessments and lab fees as payments which must be made in good faith by parolees.

Social Impact

The proposed readoption with amendments will affect the internal operations of the State Parole Board. Staff will need to be trained concerning the impact of "gap time" credit in the computation of parole eligibility and the non-application of time served in the Intensive Supervision Program in the computation of parole eligibility in the cases of offenders returned to confinement. In certain cases, Hearing Officers and Board members will be conducting administrative reviews in lieu of in person hearings. The appropriate Board panel members will be required to review recommendations for parole release; required to review the imposition of additional special conditions by Bureau of Parole personnel; required to review the cases of parolees for the formal transfer of parole supervision to an out-of-State jurisdiction; and required to review applications for accelerated revocation proceedings.

The readoption with amendments will impact on victims or nearest relatives of a murder/manslaughter victim in that all information, statements or testimony provided to the Board will be deemed confidential; that, upon request the Board will provide a copy of the preparole report, excluding confidential information; and that representatives of recognized victim groups will be permitted to attend formal Board meetings.

The Department of Corrections would be required upon the request of a Board panel or Board to conduct additional psychological/psychiatric evaluations in the cases of certain inmates and would be required to provide the reasons for denying the placement in a half-way house facility of inmates referred by the Board. Chief Executive Officers of institutions would be required to insure that institutional classification files are produced at all scheduled case reviews and hearings and required to provide a written statement to the Board panel when a preparole report in an inmate's case is not filed within 60 days of notice being provided by the Board.

Prosecutor offices would be required to include additional information in applications for accelerated revocation proceedings and required to be an active participant in the revocation hearing process. The readoption with amendments would also limit the discretion of a prosecuting authority to submit applications for accelerated revocation by the establishment of certain criteria for such applications.

The Bureau of Parole would be required to submit requests for transfers of parole supervision to out-of-State jurisdictions to the appropriate Board panel; imposition of special conditions by Bureau personnel will be reviewed by the appropriate Board panel members; the discretion of the Chief of the Bureau of Parole to submit applications for accelerated revocation would be limited by the establishment of certain criteria for such applications; the Bureau would be required to include additional information in applications for accelerated revocation or provide supervision reports to the Board in reference to such applications; and Bureau personnel would be required to comply with the criteria established when screening cases for the assignment of counsel to represent a parolee in the revocation hearing process.

The readoption with amendments will, of course, impact on inmates and parolees. The computation of parole eligibility will be impacted by "gap time" and by the non-application of time served in the Intensive Supervision Program as a credit. Insofar as the Board has assigned full-time Parole Counselors to each institution to calculate eligibility and to counsel inmates as to Board policy, practice and procedure, the Board would no longer be required to review, update, print and distribute handbooks to all inmates. Nevertheless, it is anticipated that handbooks will continue to be used as an effective means of communicating parole related information to certain segments of the inmate population. In the cases of young adult inmates, additional program participation credit may be earned during the first six months of the service of the primary eligibility term thereby advancing the primary parole eligibility date. In the cases of certain inmates, administrative reviews will be conducted in lieu of in person hearings. Inmates, at their own expense, may have psychological/psychiatric evaluations performed by non-Department of Corrections psychologist/psychiatrist and submit the evaluation to the Board panel or Board for consideration. Adult and young adult inmates who have their parole grant rescinded will be required to serve longer periods of incarceration before becoming eligible for parole consideration. Juvenile inmates will serve longer periods of incarceration prior to reaching their tentative parole release dates.

Parolees requesting transfer of their parole supervision to an out-of-State jurisdiction will have their cases reviewed by the appropriate Board panel for approval. Parolees involved in the revocation hearing process, who claim to be indigent, will have their cases evaluated in accordance with the established criteria to determine if they are eligible to have counsel assigned to represent them during the hearing process.

Time periods have been established for the submission of information by an inmate to a Board panel or the Board when consideration is being given to the establishment of an extended future parole eligibility term upon the denial or revocation of parole. A time period has also been established within which an administrative appeal of any action or decision must be filed.

Economic Impact

The economic impact of the proposed readoption with amendments is not readily identifiable. Though the readoption with amendments impacts on the Department of Corrections and the Bureau of Parole, the modification and/or clarification of certain procedures will not necessarily result in an economic impact. However, in the cases of certain adult and young adult inmates and juvenile inmates, the Department will be required to house said inmates longer than under current practice. The Department will, therefore, incur additional expenses to maintain the inmates in custody status for the additional time period. The additional expenses would, however, be ameliorated somewhat by the ability of young adult inmates to earn additional program participation credit and, thereby, advance their eligibility for parole consideration.

The conducting of case reviews, in lieu of in-person hearings, in certain inmate cases may permit the Board to advance the hearing dates in other inmate cases. The advancement of hearing dates may reduce the number of pending inmate cases past eligible for parole consideration and/or prevent inmate cases from becoming past eligible for parole consideration. If in suitable cases parole is granted and if parole can be effectuated at or shortly thereafter the respective inmate's parole eligibility date, the Department will benefit from the savings incurred by not having to house the inmates for an extended period beyond their parole eligibility dates.

Pursuant to the decision of the Supreme Court of New Jersey, "gap time" awarded in accordance with N.J.S.A. 2C:44-5(b)2 will now impact on the computation of parole eligibility in the cases of certain inmates. "Gap time" will result in the advancement of parole eligibility dates, which did not occur under prior case law, and the Department of Corrections should, over the years, recognize a significant cost savings. Though the Department of Corrections would be required to confine inmates returned from the Intensive Supervision Program for longer periods, the economic impact in such cases is believed to be negligible in comparison to the cost savings resulting from the impact of "gap time" on parole eligibility.

The cost of printing and distributing updated handbooks would be reduced by the elimination of the requirement for universal distribution.

A prosecuting authority will be required to be an active participant in the revocation hearing process when said process is implemented by the Board at the request of the prosecuting authority. A prosecuting authority may, therefore, incur an expenditure for extended work hours and possible travel costs.

Regulatory Flexibility Statement

The proposed readoption of existing rules, the proposed amendments and the new rule impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. The existing rules, amendments and new rule pertain to the Board's statutory responsibilities to grant, deny and revoke parole in the cases of adult, young adult and juvenile offenders. A regulatory flexibility analysis is, therefore, not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:71.

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

10A:71-1.2 Board meetings

(a) Formal Board meetings shall be any meetings where Board policy, rules and regulations are determined.

1. (No change.)

2. Formal Board meetings shall be open only to the Governor and the Governor's representatives, the Commissioner and the Commissioner's representatives, **representatives of recognized victim groups** and to such other persons as authorized by the Board.

(b)-(i) (No change.)

(j) **No Board members shall participate in any vote without being present for the deliberation on the subject matter.** If no majority decision is reached, no Board action shall result.

1.-2. (No change.)

10A:71-1.3 Parole **case reviews,** release hearings, board panel and board hearings

(a) The Chairperson shall establish the schedule of all parole **case reviews,** release hearings, Board panel and Board hearings.

(b) The Chairperson shall give reasonable notice of such **case reviews and** hearings to the Board panel members.

(c) (No change.)

(d) Except as provided in N.J.A.C. 10A:71-1.4, [two] **one** member[s] of the Board panel shall constitute a quorum of the panel.

(e) (No change.)

(f) When a Board panel hearing is conducted by two members, [such hearing shall be adjourned] **the inmate's case shall be referred to the third Board panel member** if **upon conclusion of the hearing** a unanimous decision on the case cannot be reached.

1. In such instances, the third Board panel member shall review all records of the hearing[, and the hearing shall be reconvened within 90 days] prior to the Board panel['s] **rendering a** final decision on the case.

2. (No change.)

10A:71-1.5 Disqualification or incapacity of Board members

(a) A Board member shall not participate in any Board or Board panel deliberations or disposition of any case in which the Board member has a personal interest**, prejudice or bias**.

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

10A:71-1.9 Published information

[(a)] As provided by law, the Board shall publish a yearly report detailing the operations, organization and procedures of the Board.

[(b) The Board will periodically review and update with appropriate amendments handbooks for distribution to all inmates subject to the jurisdiction of the Board detailing parole policies and procedures and shall request the chief executive officer of each state and county facility to make such handbooks available to all inmates subject to the jurisdiction of the Board.]

10A:71-2.1 Confidentiality of information and records

(a) The following information, files, documents, reports, records or other written material submitted to, prepared and maintained by or in the custody of the Board, any Board member or employee pertaining to parole and parole supervision are deemed confidential:

1.-7. (No change.)

8. A transcript, if prepared, of any proceeding of the Board; [and]

9. Such other information, files, documents, reports, records or other written materials as the Board may deem confidential to insure the integrity of the parole and parole supervision processes[.]**; and**

10. All information, statements or testimony provided by a victim or nearest relative of a murder/manslaughter victim.

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

10A:71-3.1 Definitions

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

...

"Primary eligibility date" shall mean the parole eligibility date established pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64, based upon the sentence imposed by the court or the Board schedules contained in N.J.A.C. 10A:71-3.3; [and] 7.16 **and 7.16A**. Such date may be altered pursuant to N.J.A.C. 10A:71-3.4, 3.5 and 3.21.

...

10A:71-3.2 Calculation of parole eligibility terms

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

(c) The parole eligibility terms for adult inmates shall be determined by the following:

1.-3. (No change.)

4. Where the inmate is serving a term and a concurrent or consecutive specific term, with no mandatory-minimum term, is subsequently imposed on or after June 21, 1994, the parole eligibility term on the subsequently imposed specific term shall be one-third of the balance of the specific term determined by reducing the specific term by credit awarded pursuant to N.J.S.A. 2C:44-5(b)(2).

[4.]**5.** Where the inmate is serving time due to a revocation of parole, the parole eligibility term shall be the future parole eligibility term set by the appropriate Board panel upon revocation of parole pursuant to N.J.A.C. 10A:71-7.16 **or 7.16A.**

Recodify existing 5. to 9. as **6. to 10.** (No change in text.)

11. If an inmate released to the Intensive Supervision Program on or after the effective date of this amendment is returned to confinement, the time served in the Intensive Supervision Program shall not be credited towards the service of the parole eligibility term.

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

(g) Credits shall reduce parole eligibility terms as follows:

1.-3. (No change.)

4. Upon the expiration of a parole eligibility term determined pursuant to (c)3 above, commutation credits and credits for diligent application to work and other assignments accrued during the service of the parole eligibility term determined pursuant to (c)3 above shall not reduce an adjusted parole eligibility date established pursuant to N.J.A.C. 10A:71-3.4 or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21, 3.46 [and], 7.16 **and 7.16A.**

(h) (No change.)

10A:71-3.3 Parole eligibility for young adult inmates

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

(c) The presumptive primary eligibility date established pursuant to (a) above may be increased by up to [ten] **10** months if the young adult Board panel or the hearing officer establishing the date determines that one or more of the following aggravating factors are present:

1.-2. (No change.)

3. The inmate has previously adjusted unsuccessfully to parole or probation supervision **or the present term involves unsuccessful adjustment to probation supervision.**

4.-7. (No change.)

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

(g) Except as provided herein, any primary eligibility date for a young adult offender established pursuant to this section or N.J.A.C. 10A:71-7.16 **or 7.16A** may be reduced through program participation by the inmate.

1.-4. (No change.)

[5. Notwithstanding the provisions of (g)1 through 4 above, no reduction of the primary eligibility date shall be made for the first six months of the inmate's primary eligibility term less jail credits.]

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

10A:71-3.6 Notice of parole eligibility; adult inmates

(a) (No change.)

(b) Upon such notification and within 90 days of the commencement of the sentence, the Board shall notify the inmate in writing of his or her primary parole eligibility date [and, when applicable, the classification of his or her offender status and the procedures to appeal such classification].

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

10A:71-3.7 Preparation of cases for parole hearings; adult inmates

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

(d) It shall be the responsibility of the chief executive officer to file a report concerning the inmate with the appropriate Board panel and the Bureau of Parole within [30] **60** days of the receipt of the Board's list. **If the report is not filed within the 60 day time period, the chief executive officer shall state the reasons therefor in writing and provide such statement in the report when the report is filed with the appropriate Board panel. In the case of an inmate identified by the Board's staff as being past eligible for parole consideration, the chief executive officer shall give priority to the preparation and filing of the report on the inmate with the appropriate Board panel.**

(e) Such report shall consist of the following information:

1.-9. (No change.)

10. An itemized account of the assessment, penalty, lab fee, fine and restitution amounts imposed by the sentencing court and the balance owed by the inmate on the respective monetary obligation.

(f) (No change.)

(g) It shall be the responsibility of the chief executive officer to produce the institutional classification file at all scheduled case reviews and initial parole, Board panel and Board hearings.

(h) In addition to any psychological or psychiatric evaluation report(s) submitted pursuant to (e) above, a Board panel or the Board may require the Department to perform a supplemental evaluation of an in-depth nature of the inmate.

(i) An inmate may submit to the Board panel or Board any evaluation report prepared in his case by a private psychologist or psychiatrist. The expense for the conducting of such an evaluation shall be the complete responsibility of the inmate. Arrangements for the scheduling of such an evaluation shall be made through the Department and shall be in accordance with Department regulations. If an inmate submits an evaluation report pursuant to this section, the inmate shall be required, upon the request of the Board panel or Board, to produce at his or her expense the examining psychologist or psychiatrist for an interview before the Board panel or Board.

10A:71-3.10 Purpose of parole hearing; adult inmates

(a) The [hearing officer or] Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of the State of New Jersey if released on parole.

(b) When inmates are sentenced to the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. **2A**:164-3[,] et seq., or when inmates are sentenced to and housed at the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-5, the [hearing officer or] Board panel shall determine whether the inmate, if released, is capable of making an acceptable social adjustment in the community.

(c) If an inmate is being considered for parole on sentences to both the Corrections Complex and to the Adult Diagnostic and Treatment Center, the [hearing officer or] Board panel shall make independent determinations required pursuant to both (a) and (b) above.

(d) (No change.)

10A:71-3.13 Parole hearing procedures; adult inmates

(a) (No change.)

(b) Parole hearings on a scheduled hearing date shall commence at 9:00 A.M. unless otherwise agreed to by the Board panel members.

Recodify existing (b) to (h) as **(c) to (i)** (No change in text.)

[(i)]**(j)** The hearing officer or presiding Board member shall record the hearing by an electronic recording device. **If the electronic recording device is not operational the hearing shall proceed only upon the inmate waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the inmate and shall be made a part of the inmate's records. If the inmate does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled for the next available hearing date.**

(k) The Board shall adopt a professional code of conduct and parole hearings shall be conducted in accordance with the professional code of conduct.

10A:71-3.14 Scheduling of initial parole hearing; adult inmates

(a) Upon the Board panel's receipt of the reports required pursuant to N.J.A.C. 10A:71-3.7, the Chairperson shall establish a schedule of **case reviews and** parole hearings to be conducted by a hearing officer assigned by the Chairperson.

(b) Except as provided in N.J.A.C. 10A:71-3.50, such **case reviews and** hearings shall be conducted at least 60 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the schedule of such **case reviews and** hearings at least seven days prior to the hearings.

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

10A:71-3.15 Initial hearing **and case review** notice of decision; adult inmates

(a) At the conclusion of the parole hearing **or case review**, the hearing officer shall:

1.-3. (No change.)

(b) (No change.)

(c) At the time of the hearing **or case review**, the hearing officer shall issue a written assessment to the inmate, the Department and the Board panel.

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

10A:71-3.16 Board member review; adult inmates

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign [a] **two** members of the appropriate Board panel to review such recommendation. [In cases of offenders serving terms for crimes of the first and second degree, such rcommendation shall be reviewed by two members of the appropriate Board panel.]

(b) If the assigned Board [member(s)] **members** concur[s] with the recommendation of the hearing officer, the [member(s)] **member** shall certify parole release as soon as practicable after the parole eligibility date by:

1.-4. (No change.)

5. Issuing a written decision within 21 days of **the** Board members' action to the inmate, the Department, [and] the Board **and the Prosecutor for the county from which the inmate was committed.**

(c) (No change.)

(d) If such Board [member(s) does] **members do** not concur with the recommendation of the hearing officer, the [member(s)] **members** shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the Department and the Board within seven days consisting of the reasons for the Board [member's] **members'** referral.

(e) If such Board members do not reach a unanimous decision, the Chairperson shall determine whether the case shall be referred to the appropriate Board panel for a hearing or whether the case shall be referred to a third Board panel member for review.

1. If the determination is rendered by the Chairperson that the case shall be referred to the appropriate Board panel for a hearing, a written decision shall be issued to the inmate, the Department and the Board within seven days consisting of the reasons for the referral.

2. If the Chairperson refers the case to a third Board panel member and upon review it is the majority vote of the Board panel members to concur with the recommendation of the hearing officer, parole release shall be certified pursuant to (b) above.

10A:71-3.17 Board panel hearing; scheduling for adult inmates

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.15 or by [a] Board members pursuant to N.J.A.C. 10A:71-3.16 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

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

10A:71-3.18 Board panel hearing; notice of decision for adult inmates

(a) (No change.)

(b) If the Board panel determines that the inmate shall be placed in a halfway house facility for a specified time period as a pre-release condition, the Board panel shall refer the matter to the Board for review. If the Board upon reviewing the record concurs that placement of the inmate in a half-way house facility for a specified time period is an appropriate pre-release condition, the Board shall refer the inmate's case to the Department for placement of the inmate in an appropriate half-way house facility. If the Department denies such placement, the decision and the reasons therefor shall be provided in writing by the Department to the Board. Upon receiving notice that placement has been denied, the Board panel shall determine whether the pre-release condition should be eliminated and the grant of parole affirmed or whether the inmate should be denied parole.

Recodify existing (b) to (c) as **(c) to (d)** (No change in text.)

[(d)]**(e)** Within [21] **30** days of the Board panel hearing, the Board panel shall issue a written notice to the inmate, the Department [and], the Board **and the Prosecutor for the county from which the inmate was committed.**

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

10A:71-3.19 Board hearing; scheduling for adult inmates

(a) A case referred to the Board [by Board members pursuant to N.J.A.C. 10A:71-3.16(c) or] by a Board panel pursuant to N.J.A.C. 10A:71-3.18[(b)]**(c)** shall be scheduled by the Chairperson for a hearing by the Board.

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

10A:71-3.20 Board hearing; notice of decision for adult inmates

(a) (No change.)

(b) If the Board establishes a parole release date based upon a projected eligibility date, the provisions of N.J.A.C. 10A:71-3.18[(b)] **(d)** shall apply.

(c) If the Board determines that the inmate shall be placed in a half-way house facility for a specified time period as a pre-release condition, the Board shall refer the inmate's case to the Department for placement of the inmate in an appropriate half-way house facility. If the Department denies such placement, the decision and the reasons therefor shall be provided in writing by the Department to the Board. Upon receiving notice that placement has been denied, the Board shall determine whether the pre-release condition should be eliminated and the grant of parole affirmed or whether the inmate should be denied parole.

[(c)]**(d)** Within [21] **30** days of the Board hearing, the Board shall issue a written notice to the inmate [and], the Department **and the Prosecutor for the county from which the inmate was committed**.

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

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

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

(d) A three-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

1. If, in the opinion of a two-member Board panel denying parole, the future parole eligibility date which would be established pursuant to (a) or (b) and (c) above is clearly inappropriate as provided herein, the two-member Board panel shall [adjourn the hearing for participation of] **refer the inmate's case to** the third Board panel member **upon conclusion of the hearing**. In such instances, the third Board panel member shall review all **the** records [and] **pertaining to** the hearing [shall be reconvened within 90 days for the purpose of establishing a future parole eligibility date].

2. The two-member Board panel shall, pursuant to N.J.A.C. 10A:71-3.18, notify the inmate in writing that parole has been denied, that a future parole eligibility date pursuant to (a) or (b) and (c) above has not been established and the reasons therefor, and that a three-member Board panel [hearing] **review** will [be scheduled] **occur** for the purpose of establishing a future parole eligibility term which differs from the provisions of (a) or (b) and (c) above.

3. The inmate shall have 30 days from the date notice is received to prepare and submit to the Board panel members a written statement. The statement may include any information the inmate may deem relevant to the evaluation of his case by the Board panel members.

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

7. The inmate shall have 30 days from the date notice is received pursuant to (d)6 above to prepare and submit a written statement containing any additional information which the inmate may deem relevant to the evaluation of his or her case by the Board.

[6.]**8.** The Board's establishment of a future parole eligibility date shall be based on the review of all records of the panel [hearing(s)] **hearing**. Upon disposition of the case, [which shall not occur earlier than 14 days from the date of the panel referral to the Board,] the Board shall state in writing to the inmate the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) or (b) and (c) above.

(e) The Board, upon the conclusion of a hearing conducted pursuant to N.J.A.C. 10A:71-[3.16(c) or] 3.18[(b)]**(c)**, may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

1. (No change.)

(f)-(i) (No change.)

10A:71-3.23 Establishment of tentative parole release dates; juvenile inmates

(a) **This subsection shall apply to juvenile inmates whose offenses were committed prior to (the effective date of the amendment to (b) below).** Except as provided herein, tentative parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive tentative parole release terms and ranges for tentative parole release terms.

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3(a) (1) or (2))	100	80-120
Murder (N.J.S.A. 2C:11-3(a)(3))	50	40-60
Crime of First Degree (except Murder)	20	16-24
Crime of Second Degree	16	12-18
Manufacturing, Distributing or Dispensing a Controlled Dangerous Substance second degree, Possession with Intent to Manufacture, Distribute or Dispense a Controlled Dangerous Substance second degree	12	10-14
Crime of Third Degree	10	8-12
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	1.5	1-2

(b) This subsection shall apply to juvenile inmates whose offenses were committed on or after (the effective date of the adopted amendment). Except as provided herein, tentative parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive tentative parole release terms and ranges for tentative parole release terms.

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3(a) (1) or (2))	100	100-180
Murder (N.J.S.A. 2C:11-3(a)(3))	40	40-120
Crime of First Degree (except Murder)	20	16-42
Crime of Second Degree	16	12-20
Manufacturing, Distributing or Dispensing a Controlled Dangerous Substance second degree, Possession with Intent to Manufacture, Distribute or Dispense a Controlled Dangerous Substance second degree	12	12-20
Crime of Third Degree	12	12-20
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	1.5	1-2

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

[(c)](**d**) The hearing officer, the juvenile Board panel member or the juvenile Board panel shall consider the following mitigating and aggravating factors in determining whether to alter the tenative parole release date from the presumptive term established pursuant to (a) **or (b)** above:

1.-2. (No change in text.)

[(d)](**e**) The juvenile Board panel may establish a tentative parole release date outside the range contained in the provisions of (a) **or (b)** above, if a tentative parole release date within the range is clearly inappropriate in view of the circumstances of the act of delinquency, the prior record of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4).

1. If, in the opinion of the hearing officer or juvenile Board panel member establishing the tenative parole release date, a date within the range contained in the provisions of (a) **or (b)** above is clearly inappropriate in view of the circumstances of the act of delinquency, the prior records of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4), the hearing officer or the juvenile Board panel member shall refer such a case to the juvenile Board panel.

2. The juvenile Board panel shall, upon disposition of the case, state in writing to the juvenile inmate, the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee, the reasons for the establishment of any tentative parole release date which is outside the range contained in the provisions of (a) **or (b)** above.

3. The decision of the juvenile Board panel to establish a tentative parole release date which is outside the range contained in the provisions of (a) **or (b)** above may be reconsidered pursuant to N.J.A.C. 10A:71-4.1 or appealed pursuant to N.J.A.C. 10A:71-4.2[(h)](**f**).

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

[(g) The prior provisions of (a) above shall apply to juvenile inmates whose offenses were committed prior to March 5, 1990 and shall continue in effect for that purpose. The amendments to (a) above shall apply to juvenile inmates whose offenses were committed on or after March 5, 1990.]

10A:71-3.37 Purpose of parole hearing; county inmates

[(a)] The [hearing officer or] Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of this state if released on parole.

10A:71-3.47 Victim input

(a) Any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/manslaughter victim shall be entitled to present a statement for the parole report, filed pursuant to N.J.A.C. 10A:71-3.7, to be considered during the parole hearing process, to present testimony to a senior hearing officer designated by the Board panel, to present testimony to the Board panel, or to present testimony to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, concerning the victim's harm. **Upon the request of a victim or a nearest relative of a murder/manslaughter victim or at the discretion of a Board panel or the Board, a copy of the parole report, except information, documents, reports, records or other written materials deemed confidential pursuant to N.J.A.C. 10A:71-2.1, prepared pursuant to N.J.A.C. 10A:71-3.7 shall be provided to the victim or the nearest relative of a murder/manslaughter victim.**

(b)-(n) (No change.)

(o) Any and all statements or testimony of the victim or nearest relative of a murder/manslaughter victim submitted to the Board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall [not] be deemed confidential and shall **not** be released to the inmate [unless the withholding of the statements or testimony is requested by the victim and the hearing officer, Board panel or Board determines that the release of the statements or testimony would endanger the safety of the person providing the statements or testifying. The Board on its own motion may for good cause identify all or part of the statements or testimony as confidential].

(p)-(r) (No change.)

10A:71-3.48 Informational hearing

(a)-(p) (No change.)

(q) The hearing scheduled pursuant to this section shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board [member(s)] **members**, Board panel or the Board rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

(r) Upon receipt of an application by the Chairperson or designee subsequent to the conducting of an initial parole hearing and prior to a decision being rendered in the inmate's case, the appropriate Board member[(s)], Board panel or the Board shall not render a decision in the inmate's case until a hearing(s) has been conducted and the written report(s) prepared and made a part of the Board's file.

(s) Upon receipt of an application by the Chairperson subsequent to the rendering of a decision certifying parole release, the appropriate Board [member(s)] **members**, Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-5.1 pending the completion of the hearing(s) and the submission of a report(s).

1. (No change.)

(t) (No change.)

10A:71-3.49 Conditions for parole release

(a) Release on a parole release date certified by [a] Board [member or] members is conditioned upon:

1. The completion of a parole plan approved by the Board [member or] members certifying parole release and acceptable to the Bureau of Parole; and

2. Satisfactory completion of any specific pre-release conditions established by the Board [member or] members certifying parole release pursuant to N.J.A.C. 10A:71-3.16(b)(3) or 3.18(a)(1)(iii); and

3. The continuance of good institutional conduct.

10A:71-3.51 Interstate corrections compact and serving time out-of-state (s.t.o.s.) cases

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

(j) Upon expiration of the 30 days time period, the Chairperson shall assign [a member(s)] **two members** of the appropriate Board panel to review the recommendation of the hearing officer. The assigned Board [member(s)] **members** shall comply with the provisions of N.J.A.C. 10A:71-3.16.

(k) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.15 or by [a] Board [member(s)]

members pursuant to N.J.A.C. 10A:71-3.16 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(l)-(r) (No change.)

10A:71-4.1 Requests by inmates for reconsideration

(a) Any action by a hearing officer, a Board member, a Board panel or the Board shall be appealable to the body rendering the original decision provided one of the following criteria is met:

1.-2. (No change.)

3. The hearing officer or a Board member has failed to comply with the Board's professional code of conduct.

10A:71-4.2 Appeals by inmates

(a) Any denial of parole by the special county, young adult or adult Board panel shall be appealable to the Board provided one of the following criteria is met:

1. The Board panel [failed to consider material facts or] failed to document that a preponderance of the evidence indicates a substantial likelihood that the inmate will commit a crime if released on parole.

2. (No change.)

3. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest **or demonstrated prejudice or bias** in the case which affected the decision.

4. A Board member participating in the deliberations or disposition of the case has failed to comply with the Board's professional code of conduct.

(b) Any failure to grant parole to a juvenile inmate by a Board member shall be appealable to the juvenile Board panel, or any failure to grant parole by the juvenile Board panel shall be appealable to the Board provided one of the following criteria is met:

1.-2. (No change.)

3. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest **or demonstrated prejudice or bias** in the case which affected the decision.

4. A Board member participating in the deliberations or disposition of the case has failed to comply with the Board's professional code of conduct.

(c) Any conditions of parole or pre-parole requirements established by a Board member or a Board panel shall be appealable to the appropriate Board panel or the Board, respectively, provided one of the following criteria is met:

1.-3. (No change.)

4. A Board member has failed to comply with the Board's professional code of conduct.

(d) Any rescission of a parole release date by a Board panel shall be appealable to the Board provided one of the following criteria is met:

1.-3. (No change.)

4. A Board member has failed to comply with the Board's professional code of conduct.

(e) Any revocation of parole by a Board panel shall be appealable to the Board provided one of the following criteria is met:

1.-3. (No change.)

4. A Board member has failed to comply with the Board's professional code of conduct.

[(f) A classification of offender status pursuant to N.J.S.A. 30:4-123.12 shall be appealable to the adult Board panel provided one of the following criteria is met:

1. The determination of offender status is based upon mistaken identity.

2. The institution of prior commitment is not a State or Federal penal institution within the meaning of N.J.S.A. 30:4-123.12.

3. The previous offense occurred prior to the inmate's 18th birthday and he or she was sentenced at that time as a juvenile.

4. The conviction causing the prior commitment has been vacated or reversed by a court.]

[(g) A classification of offender status pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.12 shall be appealable to the Board provided a showing is made that the adult Board panel's classification is contrary to written Board policy or procedure.]

[(h)]**(f)** The specific application of Board schedules pursuant to N.J.A.C. 10A:71-3.3, 3.4, 3.21, 3.23, 3.24 [or]**,** 7.16 **or 7.16A** shall be appealable to the Board or the appropriate Board panel, provided one of the following criteria is met:

1.-4. (No change.)

5. A hearing officer or Board member has failed to comply with the Board's professional code of conduct.

[(i)]**(g)** The computation of a parole eligibility date by the Board's staff shall be appealable to the Chairperson provided one of the following criteria is met:

1.-3. (No change.)

4. A staff member has failed to comply with the Board's professional code of conduct.

(h) A decision not to refer a parolee's case for an assessment as to whether the parolee is indigent and whether an attorney shall be assigned from the list maintained in accordance with R.3:27-2 to represent the parolee at a preliminary hearing or parole revocation hearing conducted pursuant to N.J.A.C. 10A:71-7.7 and 7.14 respectively shall be appealable to the Board.

10A:71-4.3 Appellate procedure

(a) All appeals submitted pursuant to N.J.A.C. 10A:71-4.1 and 4.2 shall be filed in writing **and within 180 days of written notice of action or decision being received by the inmate** and shall contain the reasons for the appeal and the criteria under which the appeal is submitted.

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

10A:71-4.4 Review of hearing officer, Board member or board panel decisions

(a) (No change.)

(b) A Board member who participated as a hearing officer or Board panel member in a case may request that the Board review any decision of the Board panel on such case.

1. Such a request may be made provided one of the following criteria is met:

i.-iv. (No change.)

v. A Board member failed to comply with the Board's professional code of conduct.

2.-5. (No change.)

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

10A:71-5.3 Alteration of parole eligibility

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

[(c) If an inmate receives an additional sentence pursuant to N.J.S.A 2A:113-4, N.J.S.A. 2A:164-17, or N.J.S.A. 2C:1-1(b), such inmate may request that the original parole release date be suspended.

1. If such request is made, the parole release date shall be suspended and the inmate permitted to aggregate sentences pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.10. Upon such aggregation, the inmate's case shall be considered pursuant to N.J.A.C. 10A:71-3.

2. If such request is not made, the original parole release date shall not be suspended; however, such inmate shall be permitted to aggregate sentences pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.10, and such inmate's case shall be considered on the additional sentence pursuant to N.J.A.C. 10A:71-3.]

10A:71-5.8 Parole rescission hearing; notice of decision

(a) The Board panel or hearing officer shall record the rescission hearing by an electronic recording device. **If the electronic recording device is not operational the hearing shall proceed only upon the inmate waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the inmate and shall be made a part of the inmate's records. If the inmate does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled within 14 days.**

(b) If the rescission hearing is conducted by a hearing officer, the hearing officer shall prepare a written summary of the rescission hearing.

1.-2. (No change.)

3. The Board panel members shall not receive or consider any ex parte communications. The inmate's case shall be decided on the basis of the established record.

(c) (No change.)

(d) If the Board panel rescinds parole, the written decision shall include any future parole eligibility date established pursuant to N.J.A.C. 10A:71-[3.4 or] 3.21.

10A:71-6.4 Conditions of parole

(a) The certificate of parole shall contain the following general conditions of parole:

1. (No change.)

[2. You are not to act as an informer for any agency which requires you to violate any condition of your parole.]

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

[9.]**8.** You are required to make payment to the Bureau of Parole of any **assessment,** fine [or], penalty, **lab fee** or restitution imposed by the sentencing court.

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

(e) Additional special conditions may be imposed by the District Parole Supervisor, an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor when, in the opinion of the District Parole Supervisor, an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor, such conditions would reduce the likelihood of recurrence of criminal or delinquent behavior. The parolee and the Board shall be given written notice upon the imposition of such additional conditions.

1. Upon notice being received by the Board, the appropriate Board panel or the Board shall review the parolee's case and determine whether to vacate, modify or affirm the additional special condition(s).

2. The Board panel or the Board shall notify the District Parole Supervisor of its determination within 30 days of receipt of notice of the imposition of the additional special condition.

3. The District Parole Supervisor shall notify the parolee in writing of the determination of the Board panel or Board and shall cause a written record of such notice to be made in the parolee's case file.

(f) If a parolee owes [a] **an assessment,** fine, penalty, **lab fee** or restitution, the District Parole Supervisor shall, unless otherwise ordered by the Board or members certifying parole release or the sentencing court, be responsible for specifying a reasonable schedule for payment of such **assessment,** fine, penalty, **lab fee** or restitution.

10A:71-6.6 Modification of conditions

(a) The certifying Board members or appropriate Board panel may modify a parolee's conditions of parole at any time for cause.

(b)-(g) (No change.)

10A:71-6.9 Discharge from parole

(a) The appropriate Board panel may grant any parolee a complete discharge from parole prior to the expiration of the maximum term for which he or she was sentenced, provided that;

1. (No change.)

2. Continued supervision is not required; [and]

3. The parolee has made full payment of any **assessment,** fine [or], penalty, **lab fee** or restitution **or the parolee has in good faith established a satisfactory payment schedule; or**[.]**; and**

4. In the opinion of the Board panel continued supervision is not warranted or appropriate based upon a review of the facts and circumstances considered pursuant to N.J.A.C. 10A:71-7.10, 7.11, 7.12, 7.15 and 7.16 or 7.16A.

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

(e) The appropriate Board panel may provide a conditional discharge from continued parole supervision:

1. In the case of a parolee who has received a non-custodial term for the commission of an offense and the parolee is to be under community supervision through a probation or parole agency in another jurisdiction; or

2. The parolee has clearly established that continued parole supervision under a community plan in this State or consideration of a formal transfer of supervision to another state would not be conducive to the timely continuation of the parolee's community reintegration.

[(e)]**(f)** If discharge **or conditional discharge** is granted, the appropriate Board panel shall issue a discharge certificate on the parolee.

10A:71-6.10 Transfer of parole supervision to out-of-State jurisdiction

(a) The appropriate Board panel may permit a parolee to reside outside the State pursuant to the provisions of the uniform act for out-of-State parolee supervision (N.J.S.A. 2A:168-14 et seq.) and the interstate compact on juveniles (N.J.S.A. 9:23-1 et seq.) if the Board panel is satisfied that such change will not result in a substantial likelihood that the parolee will commit an offense which would be a crime under the laws of this State.

(b) If a parolee seeks to transfer formal supervision of his or her case to another jurisdiction, the parolee shall notify his or her parole officer and complete the documents required by statutory or regulatory provisions.

(c) The District Parole Office shall forward to the Board the completed required documents, a copy of an up-to-date chronological supervision report on the parolee's case, an assessment of the parolee's community adjustment, a copy of the parole certificate and a copy of any other document deemed relevant to the parolee's case.

(d) Upon receipt of the material submitted pursuant to (c) above, the appropriate Board panel shall review the parolee's case and determine whether the parolee is a suitable candidate for the transfer of parole supervision to the designated out-of-State jurisdiction.

(e) If the Board panel determines that transfer of the supervision of the parolee's case to an out-of-State jurisdiction is appropriate, the Board panel shall submit the case materials to the Department's Office of Interstate Services. The Office of Interstate Services, pursuant to the relevant statutory and regulatory provisions, shall forward the parolee's request for transfer of parole supervision to the designated out-of-State jurisdiction for investigation.

(f) Upon the Board panel receiving the completed community investigation by the out-of-State jurisdiction, the Board panel shall review the community plan approved by the out-of-State jurisdiction. If the community plan is deemed acceptable by the Board panel, the Board panel shall notify in writing the Office of Interstate Services and the District Parole Office that supervision of the parolee's case may be transferred to the out-of-State jurisdiction. The Office of Interstate Services and/or the District Parole Office shall notify the parolee of the Board panel's decision and issue the necessary travel documents.

(g) The Board panel shall not authorize the transfer of parole supervision to an out-of-State jurisdiction when:

1. The out-of-State jurisdiction has determined not to accept supervision of the parolee's case; or

2. The parole plan approved by the out-of-State jurisdiction is substantially different from the original parole plan submitted and reviewed by the Board panel and the alternate parole plan is not deemed appropriate by the Board panel.

(h) If the Board panel upon reviewing the parolee's case pursuant to (d), (f) or (g) above determines to deny authorization for the transfer of the parolee's case to an out-of-State jurisdiction, the Board panel shall notify in writing the Office of Interstate Services and the District Parole Office of the determination. The District Parole Office shall notify the parolee of the determination of the Board panel.

10A:71-7.3 Motion for accelerated revocation

(a) (No change.)

(b) If the prosecuting authority or the Chief of the Bureau of Parole determines that the charges against the parolee are of a serious nature and the parolee otherwise poses a danger to public safety, the prosecuting authority or the Chief of the Bureau Parole may apply in writing to the Chairperson or his or her designated representative for the prompt initiation of revocation proceedings. [Such application shall include:]

1. Such application shall be limited to crimes of the first or second degree only. The prosecuting authority or the Chief of the

Bureau of Parole may, in special circumstances, submit an application for a crime of a lesser degree.

2. Such application shall include:

Recodify existing 1. to 4. as **i. to iv.** (No change in text.)

3. If the application is submitted by a prosecuting authority, such application shall also include:

i. A confidential, concise, comprehensive synopsis of the specific facts, statements or other evidence implicating the parolee in the commission of the alleged crime; and

ii. An affirmative representation that the case is not subject to any plea agreement which may result in the imposition of a noncustodial term or a custodial term of less than one year.

4. If the application is submitted by the Chief of the Bureau of Parole, such application shall also include an up-to-date chronological supervision report on the parolee's case.

(c) Upon receipt of an application from a prosecuting authority pursuant to (b) above, the Chairperson or his or her designee shall direct the Bureau of Parole to submit within three days for consideration an up-to-date chronological supervision report on the parolee's case.

[(c)](**d**) Upon review of the application **and chronological supervision report,** [and] a determination **shall be made by the Chairperson and a designated Board member or a designated two-member Board panel** as to whether the charges against the parolee are of a serious nature [and]**,** whether the parolee otherwise poses a danger to public safety[,] **and whether the revocation process shall be initiated.** [the] **The** Chairperson or his or her designated representative shall advise the prosecuting authority or the Chief of the Bureau of Parole and the District Parole Supervisor as to whether the revocation process shall **or shall not** be initiated.

[(d)](**e**) If the revocation process is initiated pursuant to this subsection, the Chairperson or his or her designated representative shall immediately [issue] **authorize the issuance of** a warrant for the arrest of the parolee.

[(e)](**f**) **If the revocation process is initiated at the request of a prosecuting authority, a representative of** [The] **the** prosecuting authority [may] **shall** appear at any preliminary and any revocation hearing [initiated pursuant to this subsection] in order to present evidence and/or testimony in regard to the parolee's alleged violation of parole conditions. **It shall be the responsibility of the prosecuting authority to insure the appearance of any witness(es) deemed necessary for the presentation of the case against the parolee.**

Recodify existing (f) to (g) as **(g)** to **(h)** (No change.)

10A:71-7.7 Preliminary hearing; notice of hearing

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

(c) Such notice shall inform the parolee of the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the possible action which may be taken as a result of revocation proceedings; and the following rights to which the parolee shall be entitled at the preliminary hearing:

1. (No change.)

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is **determined to be** indigent, the right to representation by an attorney [pursuant to N.J.S.A. 2A:158-5.1, et seq., and the rules and regulations of the Office of the Public Defender, Department of the Public Advocate.] **assigned from the list maintained in accordance with R.3:27-2, provided the parolee first makes such a request based on a timely and colorable claim that:**

i. The parolee did not commit the alleged violation of the specified parole condition(s); or

ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; and

iii. The parolee is not able to understand the violation(s) as charged; or

iv. The parolee is incapable of speaking effectively on his own behalf.

3.-8. (No change.)

10A:71-7.14 Revocation hearing; notice of hearing

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

(c) Such notice shall inform the parolee of the following: the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the name(s) of any witness(es) scheduled to appear at the hearing; and the following rights to which the parolee shall be entitled at the revocation hearing:

1. (No change.)

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is **determined to be** indigent, the right to representation by an attorney [pursuant to N.J.S.A. 2A:158-5.1, et seq., and the rules and regulations of the Office of the Public Defender, Department of the Public Advocate.] **assigned from the list maintained in accordance with R.3:27-2, provided the parolee first makes a timely and colorable claim that:**

i. The parolee did not commit the alleged violation of the specified parole condition(s); or

ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; and

iii. The parolee is not able to understand the violation(s) as charged; or

iv. The parolee is incapable of speaking effectively on his own behalf.

3.-8. (No change.)

10A:71-7.15 Record of the revocation hearing

(a) The hearing officer shall record the revocation hearing by an electronic recording device. **If the electronic recording device is not operational the hearing shall proceed only upon the parolee waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the parolee and shall be made a part of the parolee's records. If the parolee does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled within 14 days.**

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

10A:71-7.16 Board panel action—schedule of future parole eligibility dates upon revocation of parole for inmates who have violated parole prior to October 17, 1994

(a) This section applies to inmates who violated parole prior to October 17, 1994. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12[, and,]**. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record.** [if] **If** parole is revoked, the two-member Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

(b)-(o) (No change.)

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

1. (No change.)

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

3. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received to prepare and submit to the Board panel members a written statement on the inmate's behalf. The statement may include any information the inmate may deem relevant to the evaluation of his or her case by the Board panel members.

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

7. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received pursuant to (p)6 above to prepare and submit a written statement containing any additional information which the inmate and/or the inmate's attorney may deem relevant to the evaluation of his or her case by the Board.

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

(q)-(t) (No change.)

10A:71-7.16A Board panel action—schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after October 17, 1994.

(a) This section applies to inmates who violated parole on or after October 17, 1994. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. **The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record.**

(b)-(p) (No change.)

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

1. (No change.)

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

3. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received to prepare and submit to the Board panel members a written statement on the inmate's behalf. The statement may include any information the inmate may deem relevant to the evaluation of his or her case by the Board panel members.

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

7. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received pursuant to (q)6 above to prepare and submit a written statement containing any additional information which the inmate and/or the inmate's attorney may deem relevant to the evaluation of his or her case by the Board.

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

(r)-(t) (No change.)

10A:71-7.20 Revenue cases

(a) For violation of a condition of parole requiring the payment of any **assessment,** fine, penalty, **lab fee** or restitution, the appropriate Board panel shall revoke parole only for failure or refusal by the parolee to make a good faith effort to make such payment.

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

TRANSPORTATION

(a)

DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITY AND RAILROAD ENGINEERING
Public Utility Rearrangement Agreements
Proposed Readoption: N.J.A.C. 16:24

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.5 and 52:14B-1 et seq.

Proposal Number: PRN 1994-551.

Submit comments by November 16, 1994 to:
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, NJ 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:24, Public Utility Rearrangement Agreements, will expire on February 5, 1995. The rules were reviewed and analyzed by the Department's staff of the Bureau of Utility and Railroad Engineering and were found to be necessary, reasonable, and proper for the purpose of which they were originally promulgated.

The rules detail the Departmental process for developing railroad agreements, including Department execution, approval process, agreement contents, distribution, and grade and non-grade crossing procedures.

Social Impact

The proposed readoption will continue to provide a detailed Departmental process for developing railroad agreements. This information, which is a reflection of current practice, should be of assistance to railroads in dealing with the Department.

Economic Impact

The proposed readoption continues to set forth Departmental responsibilities regarding, and areas to be addressed in, railroad agreements. Railroad cost involved in arriving at the agreement and operating thereunder will vary with each project. However, railroad costs involved in the agreement portion of the project are such as would be incurred in the normal course of business. Departmental costs are incurred in the preparation and staff review of agreements required under the rules. These costs are part of the Department's administrative budget. No changes are being made to the rules; therefore, no additional economic impact is anticipated.

Regulatory Flexibility Statement

The proposed readoption does not place any bookkeeping, 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 rule primarily affects Department administrative and organizational issues in agreements with utilities.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:24.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route 57
Washington Borough, Warren County
Proposed Amendment: N.J.A.C. 16:28A-1.36

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.0, 39:4-138.1, 39:4-198 and 39:4-199.
Proposal Number: PRN 1994-553.

Submit comments by December 7, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.36 to establish handicapped parking on Route 57, in the Borough of Washington, County of Warren. This amendment is being proposed at the request of the local government of the Borough of Washington by Resolution No. 106-94, adopted on July 19, 1994 and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of handicapped parking along Route 57 was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish handicapped parking along Route 57 in Washington Borough, Warren County, for the benefit of those to whom Special Vehicle Identification Cards have been issued and in general enhancement of safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local 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.

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**):

16:28A-1.36 Route 57

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

(c) The certain parts of State highway Route 57 described in this subsection are designated and establish as a restricted parking space for use of persons who have been issued Special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

1. In the Borough of Washington, Warrren County:

i.-ii. (No change.)

iii. Along the south side:

(1) West Washington Avenue:

(A) Beginning at a point 166 feet east of the prolongation of the easterly curb line of Wanderling Avenue and extending 23 feet easterly therefrom.

(d) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route 71
Bradley Beach Borough, Monmouth County
Proposed Amendment: N.J.A.C. 16:28A-1.38

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid, Department of Transportation.
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 1994-552.

Submit comments by December 7, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.38 to establish no stopping or standing on Route 71 in Bradley Beach Borough, Monmouth County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Borough of Bradley Beach in a letter dated August 4, 1994 from Sgt. R. Ortiz, Traffic Safety Officer of Bradley Beach Police Department and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of no stopping or standing along Route 71 in Bradley Beach Borough was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing restrictions along Route 71 in Bradley Beach Borough to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local 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.

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**):

16:28A-1.38 Route 71

(a) The certain parts of State Highway Route 71 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing in Bradley Beach Borough, Monmouth County:

i. Along the easterly side:

(1) From the southerly curb line of Lake Terrace Avenue to a point 150 feet southerly therefrom;

(2) From the northerly curb line of Fifth Avenue to a point 86 feet northerly therefrom.

2.-9. (No change.)

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

16:30-3.9 Route I-80

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

(c) In the event the HOV lane is in operation, the drivers of all trucks with a gross vehicle weight rating (GVWR) as defined in N.J.S.A. 39:3-10.11 of 10,000 pounds or more shall not drive the truck in the left-most non-HOV lane, except when reasonably necessary in response to emergency conditions. This restriction applies to Route 80 between milepost 36.40 to milepost 43.30 eastbound and between milepost 35.30 to milepost 43.00 westbound during HOV lane operations.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Lane Usage
Route I-80

Proposed Amendment: N.J.A.C. 16:30-3.9

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:21, 39:4-6, 39:4-81, 39:4-88 and 39:4-197.

Proposal Number: PRN 1994-554.

Submit comments by November 16, 1994 to:
Renee Rapciewicz
Deputy Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:30-3.9 which designates a rush hour high occupancy vehicle (HOV) lane on Route I-80 in Morris County between Route 15 and the I-287 interchange.

The proposed amendment will restrict trucks, with a gross vehicle weight rating (GVWR), as defined in N.J.S.A. 39:3-10.11, of 10,000 pounds or more, from using the left-most non-HOV lane, except when reasonably necessary in response to emergency conditions.

Social Impact

The proposed amendment will restrict trucks, with a GVWR, as defined in N.J.S.A. 39:3-10.11, of 10,000 pounds or more, from using the left-most non-HOV lane, except when reasonably necessary in response to emergency conditions.

The Department believes this amendment will provide a safe and efficient flow of traffic when the HOV lane is in use.

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 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.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting or recordkeeping 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 proposed amendment follows (additions indicated in boldface **thus**):

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Interstate Highways

Proposed Amendment: N.J.A.C. 16:30-7.4

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-17, 27:7-21, 27:7-44.1, 27:7A-6, 39:4-34, 39:4-81, 39:4-85.1, 39:4-88, 39:4-91, 39:4-140, 39:4-183.6, 39:4-183.27, 39:4-198 and 39:4-208.

Proposal Number: PRN 1994-555.

Submit comments by November 16, 1994 to:
Renee Rapciewicz
Deputy Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

It has been found and determined that the health, safety and welfare of the public require that the use of all Interstate highways, whether existing or under construction and/or maintenance, in the State of New Jersey be limited to certain classes of traffic.

The Department adopted a rule concerning limited access on Interstate highways in 1978. This was originally adopted as part of the former Traffic Regulations for State Highways, N.J.A.C. 16:28-13.4, Interstate highways, and subsequently was recodified under Miscellaneous Traffic Rules, N.J.A.C. 16:30-7.4, Interstate highways. The original adoption was made pursuant to the authority of N.J.S.A. 39:4-94.1, which subsequently was repealed by P.L. 1989, c.32. The new authority citation is N.J.S.A. 27:7A-6.

Upon review of the existing rule, the Department has determined to make several clarifying and substantive changes. A new subsection (b) is added containing definitions of "Commissioner," "Interstate highway" and "pedestrian." In subsection (c) (formerly (b)), skateboards and rollerblades are added as examples of non-motorized vehicles, and snowmobiles and all terrain vehicles are added as motorized bicycle examples. Reference to highway sections specifically signed for use by certain classes of traffic is deleted. Permissive use of the interstate highways with advance permission by the Commissioner has been identified for bicycles and for tractors, rollers and agricultural or construction machinery, self-propelled or towed. In subsection (d) (formerly (c)), "repairs" is clarified as "maintenance operations," and an exemption is added for equipment involved in emergency operations. New subsection (e) adds a violation provision.

Social Impact

The rule as amended more clearly outlines the classes of traffic which are prohibited access on Interstate highways. The prohibitions effect various classes of traffic as outlined in the regulation. The proposed amendment should have no negative impact on any individual or group, since this rule has been in effect since 1977. However, the Department is proposing a violation provision in accordance with N.J.S.A. 27:7-44.1. The addition of a definitions subsection clarifies the intent of the rule and who it affects.

Economic Impact

The proposed amendment establishes a fine of $100.00 for each day of violation of the rule, and the costs of prosecution, to be recovered by a civil action in the name of the State before any court of competent jurisdiction, by the Commissioner. Fines paid shall be paid into the State Treasury to the credit of the funds available for construction, maintenance and repair of roads. Anyone violating this rule is subject to this provision.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, 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 rule primarily effects pedestrians and various classes of traffic.

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

16:30-7.4 Interstate highways

(a) It has been found and determined that the health, safety and welfare of the public require that the use of all Interstate [Highways] **highways** in the State of New Jersey be limited to certain classes of traffic.

(b) The following definitions are furnished to clarify the provisions of this rule:

"Commissioner" means the Commissioner of the Department of Transportation.

"Interstate highway" means, for purposes of this regulation, those highways constructed or being constructed within this State and approved by the Secretary of Transportation of the United States as an official portion of the National System of Interstate and Defense Highways pursuant to the provisions of Title 23, "Highways" of the United State Code, as amended. The traveled way and all land on both sides of the travelled way extending to an abutting owner's property lines is considered part of the Interstate highway.

"Pedestrian" means, for purposes of this regulation, persons walking, running, standing, sitting, or any form of loitering. (Individuals involved in Department approved Adopt-A-Highway Programs, Inmate Litter Pick-up Programs, or any other Department approved program are not considered pedestrians, for purposes of this rule.)

[(b)]**(c)** [Therefore, the] **The** use of the aforesaid [Highways] **Interstate highways** by the following classes of traffic is prohibited[, except on sections specifically signed for such use, or] unless permission therefor has been obtained in advance from the [State] Commissioner [of Transportation] **for the classes of traffic identified in (c)3 or (c)6 below**:

1. Pedestrians;
2. Animals led, ridden or driven;
3. Bicycles;
4. Non-motorized vehicles **(including, but not limited to, skateboards and rollerblades)**;
5. Motorized bicycles **including, but not limited to, snowmobiles and all terrain vehicles;**
6. Tractors, rollers and agricultural or construction machinery, self-propelled or towed[, unless a permit has been obtained in advance from the Commissioner].

[(b)]**(d)** [Provided, however, that the] **The** following traffic is exempt from the provisions of this regulation:

1. NJDOT equipment;
2. Equipment of contractors engaged by the NJDOT for construction or [repairs] **maintenance operations**;
3. Equipment of a public utility company as defined in N.J.S.A. 48:2-13[.]**;**
4. **Equipment involved in emergency operations.**

(e) Any person guilty of violating a provision of this chapter shall be liable to a fine of $100.00 for each day of such violation and the cost of prosecution to be recovered by a civil action in the name of the State before any court of competent jurisdiction, by the Commissioner of Transportation.

(a)

DIVISION OF TRANSPORTATION ASSISTANCE BUREAU OF FREIGHT SERVICES

Trucks

Proposed Repeals and New Rules: N.J.A.C. 16:32-1 and 3

Proposed Readoption with Amendments: N.J.A.C. 16:32 Appendices A, B and C

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:3-84, and P.L. 1991 c.115 (effective April 19, 1991).

Proposal Number: PRN 1994-556.

Submit comments by November 16, 1994 to:
Renee Rapciewicz
Deputy Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 16:32, Trucks, will expire on February 8, 1995. These rules outline the standards and procedures applicable to truck operations within the State of New Jersey in regard to permitted routes, width restrictions, length requirements, access to terminals and other facilities and appeal procedures. The Bureau of Freight Services has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated as required by the Executive Order; however, the Department wishes to recodify these rules into one subchapter and, therefore, is proposing to repeal the existing rules and replace them with new rules. The contents of the rules primarily remain the same. The Department is only combining Subchapters 1 and 3. The following shows the recodification:

Current Codification	New Codification
N.J.A.C. 16:32-1.1	N.J.A.C. 16:32-1.3
N.J.A.C. 16:32-1.2	N.J.A.C. 16:32-1.2(c)
N.J.A.C. 16:32-1.3(a)	N.J.A.C. 16:32-1.5(a)
N.J.A.C. 16:32-1.3(a)1	N.J.A.C. 16:32-1.1(in part)
N.J.A.C. 16:32-1.3(a)2	N.J.A.C. 16:32-1.5(b)
N.J.A.C. 16:32-1.3(b)	N.J.A.C. 16:32-1.5(c)
N.J.A.C. 16:32-1.4	N.J.A.C. 16:32-1.6
N.J.A.C. 16:32-3.1	N.J.A.C. 16:32-1.1
N.J.A.C. 16:32-3.2(a) and (b)	N.J.A.C. 16:32-1.2(a) and (b)
N.J.A.C. 16:32-3.2(c),(d) and (e)	N.J.A.C. 16:32-1.4(c), (d) and (e)
N.J.A.C. 16:32-3.3	N.J.A.C. 16:32-1.4(a) and (b)
N.J.A.C. 16:32-3.4	N.J.A.C. 16:32-1.5(d) and (e)
N.J.A.C. 16:32-3.5	N.J.A.C. 16:32-1.7
N.J.A.C. 16:32-3.6	N.J.A.C. 16:32-1.8

In addition to combining the subchapters, the Department wishes to include a definition for "double-trailer truck combination."

The proposed repeal and new rules will continue New Jersey's compliance with Federal regulations as mandated by 23 CFR Part 658. This final rule, dated June 1, 1990, was promulgated by the Federal Highway Administration (FHWA), and pertains to truck size and weight and reasonable access provisions for commercial motor vehicles with lengths and widths authorized by the Surface Transportation Assistance Act of 1982 (STAA), as amended.

Appendices A and B are proposed for readoption with amendments to the introductory paragraphs to reflect the recodification through the proposed new rules. Both Appendices list routes not designated as through routes for wide trucks. No amendments are proposed for Appendix C, also proposed for readoption, which further lists certain through routes for wide trucks.

Social Impact

The proposed repeal and new rules will have no impact beyond continuing to address safety concerns related to the use of 102-inch standard trucks and double-trailer truck combinations on specific highways and streets.

Economic Impact

The proposed repeal and new rules will economically benefit New Jersey shippers and motor carriers by continuing to permit them to use double-trailer truck combinations and 102-inch standard trucks on the previously established larger network. The Department does not expect that there will be any increase in highway construction and maintenance costs, because existing truck weight limits are not affected and the shippers and motor carriers most likely to use 102-inch standard trucks and double-trailer truck combinations are those moving "light and bulky" cargo which is normally well within legal weight limits.

Regulatory Flexibility Analysis

The proposed repeal and new rules do not place any reporting or recordkeeping requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, travel and size restrictions continue to be placed on truckers and household goods carriers, who may be small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Costs are as discussed in the Economic Impact above, and no need for professional services is anticipated. No differentiation in requirements, or exceptions, can be provided, as these requirements are imposed under Federal law and are related to public safety.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 16:32.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:32 Appendices A and B.

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

SUBCHAPTER 1. DESIGNATED ROUTES FOR DOUBLE-TRAILER TRUCK COMBINATIONS AND 102-INCH STANDARD TRUCKS

16:32-1.1 Definitions

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

"Double-trailer truck combination" means a truck tractor-semitrailer-trailer combination, and which meets the equipment length requirement as set forth in N.J.S.A. 39:3-84 and 23 CFR 658.13.

"Household goods carrier" means a vehicle being used to transport household goods and effects to or from a private residence or to or from a place of storage.

"102-inch standard truck" means a truck greater than 96 inches but not greater than 102 inches in width, exclusive of mirrors and other safety devices, and which meets the equipment length requirements as set forth in N.J.S.A. 39:3-84(3) and (4), as amended.

"Terminal" means any location where freight originates, terminates, or is handled in the transportation process and, when serviced by twin trailers, includes sufficient off-street area for ingress, egress, drop off or pick up and maneuvering of twin trailer combinations. Additionally, a motor carrier operating facility, a distribution center, or a rail, waterborne, or air terminal shall be considered the same as a terminal.

16:32-1.2 General provisions

(a) Double-trailer truck combinations and 102-inch standard trucks are permitted to operate in New Jersey only to the extent and under the conditions authorized by the rules in this chapter.

(b) For purposes of clarity, these rules do not supersede other State regulations, municipal ordinances and county resolutions which may otherwise restrict or control the movements of trucks or other vehicles. An example of such a restriction is a maximum weight posting.

(c) The maximum width permitted on the routes designated in N.J.A.C. 16:32-1.3 and N.J.A.C. 16:32-1.5(c) is 102 inches, exclusive of mirrors and other safety devices.

16:32-1.3 Designated routes for double-trailer truck combinations

(a) Except as provided in N.J.A.C. 16:32-1.5, Reasonable access to terminals and other facilities, double-trailer truck combinations may be operated in New Jersey only on the following routes;

1. Interstate highways;

2. New Jersey Turnpike;

3. Atlantic City Expressway;

4. Route 42, from Interstate Route 295 to the Atlantic City Expressway;

5. Route 81;

6. Route 130, from Route 322 at Bridgeport to Interstate Route 295;

7. Route 322, from the Commodore Barry Bridge to Route 130; and

8. Route 440, from the New Jersey Turnpike to Outerbridge Crossing.

(b) Double-trailer truck combinations operating on the New Jersey Turnpike and the Atlantic City Expressway are subject to the regulations of the New Jersey Turnpike Authority and the South Jersey Transportation Authority, respectively.

(c) Notwithstanding any other provisions of this chapter, double-trailer truck combinations shall enter and exit this State only on those specific routes designated for double-trailer truck combinations as authorized in this section.

16:32-1.4 Designated through routes for 102-inch standard trucks

(a) The following routes are designated as through routes for 102-inch standard trucks. 102-inch standard trucks may travel freely for all purposes on these routes:

1. All State and Interstate highway routes with the exception of those listed under Appendix A, incorporated herein by reference;

2. All county "500" series roads with the exception of those listed under Appendix B, incorporated herein by reference;

3. Those county "600" series roads listed under Appendix C, incorporated herein by reference; and

4. The New Jersey Turnpike, the Atlantic City Expressway and the Garden State Parkway south of Exit 105. Use of these routes is subject to the regulation of the New Jersey Turnpike Authority, the South Jersey Transportation Authority and the New Jersey Highway Authority, respectively.

(b) The routes as outlined in (a) above were selected on the basis of the following criteria:

1. They are State and Interstate highways, county "500" series roads or, in limited cases, county "600" series roads;

2. They connect at both ends with other through routes (although spur routes are possible for geographic or other reasons);

3. They have travel lane widths of 11 feet or greater for 90 percent or more of the segment length. For purposes of this rule, lanes which are only 10 feet wide are counted as 11 feet wide when located on four-lane divided highways with shoulders;

4. Within rural areas, as established by the Federal Highway Administration under the Federal-Aid Highway Program Manual, Volume 4, Chapter 6, Section 3, they may have 10-foot lane widths with an 8-foot shoulder for 90 percent or more of the segment length; and

5. The general criteria within this subsection may be superseded in particular instances by determinations made on the basis of engineering judgment.

(c) Designation of any route in this chapter as a through route for 102-inch standard trucks is a designation which pertains to permissible widths only. Such designation does not always guarantee free movement of all 102-inch standard vehicles. Some 102-inch standard vehicle movements may be restricted on a route because of route or bridge weight restrictions and/or vertical clearance restrictions.

(d) 102-inch standard trucks may be permitted to detour off the authorized routes only to the extent necessary to bypass road closings, and route restrictions such as weight or vertical clearance limits. 102-inch standard trucks shall return to the designated network as soon as practicable during a detour movement.

(e) Notwithstanding any other provisions of this chapter, 102-inch standard trucks shall enter and exit the State only on those specific

routes designated for 102-inch standard trucks as authorized in this section.

16:32-1.5 Reasonable access to terminals and other facilities

(a) Any person or terminal operator seeking reasonable access for double-trailer truck combinations, or other STAA authorized vehicles as defined in 23 CFR Part 658.5 and 658.13, or trucks wider than 96 inches but not more than 102 inches in width, from the system designated in N.J.A.C. 16:32-1.3, may do so by utilizing the route system as designated in N.J.A.C. 16:32-1.4, excluding the Garden State Parkway.

(b) Access from a designated route to a terminal should avoid areas considered residential as defined in N.J.S.A. 39:1-1 et seq.

(c) A double-trailer truck combination is permitted access from the system designated in N.J.A.C. 16:32-1.3 to facilities providing food, fuel, repairs and rest, within one mile roadway distance from the designated system except upon those roads, highways, streets, public alleys or other thoroughfares which cannot safely accommodate a double-trailer truck combination and are so designated by the Department.

(d) Unless otherwise prohibited, 102-inch standard trucks are permitted to travel up to two roadway miles from any through route designated in N.J.A.C. 16:32-1.4 for purposes of pickup and delivery and for access to facilities providing food, fuel, repairs and rest, except upon those roads, highways, streets, public alleys or other public thoroughfares which cannot safely accommodate a truck wider than 96 inches and are so designated by the Department. Truck movements which are made under the authority of this subsection must conform to all other State regulations and to any local "truck route" restrictions which have been adopted and posted as provided in N.J.S.A. 40:67-16.1 et seq.

(e) Unless otherwise prohibited as provided in (d) above, 102-inch standard trucks in the following categories are permitted free access to points of loading and unloading:

1. Household goods carriers; and
2. Truck tractor-semitrailer combinations in which the semitrailer has a length not to exceed 28½ feet and which generally operates as part of a double-trailer truck combination.

16:32-1.6 Reasonable access system review process

(a) The Department anticipates that from time to time requests for additions to the reasonable access system will be made. These requests will be investigated by taking into consideration items including, but not limited to:

1. Sight distance at intersections;
2. Traffic volumes;
3. Roadway geometrics;
4. Roadside development or environment;
5. Accident records;
6. The use of the route by other trucks to date; and
7. Alternate routings.

(b) Approval or denial of such requests will be issued based upon those criteria contained in N.J.A.C. 16:32-1.7.

(c) The Department will respond to requests for additions to the reasonable access system within 90 days of receipt of same. If the Department fails to respond to a request within the aforementioned 90 day period, approval for such request shall be deemed automatic.

(d) Requests should be sent to the Manager, Bureau of Traffic Engineering and Safety Programs New Jersey Department of Transportation, CN 613, 1035 Parkway Avenue, Trenton, New Jersey 08625. They should be specific as to the exact route or routes of access being requested.

16:32-1.7 Addition and deletion of through routes

(a) The Department anticipates that from time to time routes will be added to and deleted from the system of authorized routes set forth in N.J.A.C. 16:32-1.4. Additions and deletions will be proposed by the Department as amendments to these rules and will be based on:

1. Revised information on the geometric characteristics of specific roadways;
2. Roadway improvements;
3. Engineering investigations;
4. The need for suitable and adequate routes for through movements and access to points of loading and unloading;
5. Demonstrated safety problems;
6. Public comment;
7. The operating characteristics of 102-inch standard trucks; and
8. Any other factors the Department feels are relevant.

(b) The Department encourages interested parties to submit proposals for additions and deletions to the system. Submissions should be made in writing to the Manager, Bureau of Transportation Data Development, New Jersey Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625. Submissions should be as specific as possible in regard to:

1. Identification of routes proposed for addition or deletion;
2. Information bearing on the criteria for review set forth in (a) above; and
3. Any other information that the party making the submission believes will be helpful to the Department in reviewing the proposed addition or deletion.

(c) Routes may be proposed for addition or deletion regardless of whether the roadway is under the jurisdiction of the State, a county, a municipality or an independent authority. The Department will review every submission made under this subsection and will determine whether or not to propose any amendment to the rules based on that submission. The Department will notify the party making the submission of its determination. The Department's determination will be made on the written record only and will be final.

(d) This section is in addition to the provisions of N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, which entitle an interested person to petition the agency for a rule.

16:32-1.8 Maps

(a) The Department may, from time to time, prepare and distribute maps and graphic depictions of the designated through truck network. Any map or graphic depiction so prepared shall not be considered a regulatory description of the designated through truck network superseding or in lieu of the textual descriptions adopted in this chapter.

(b) Subject to their availability, maps and graphic depictions of the 102-inch standard truck designated through network may be obtained for a charge of $5.00 each from the Department. Requests should be submitted to the Manager, Bureau of Transportation Data Development, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625. Payments should be made to the New Jersey Department of Transportation.

APPENDIX A

The following State highway routes are not designated as through routes for wide trucks, although some of these routes may be usable by wide trucks under the access provisions of N.J.A.C. 16:32-[3.4] **1.5**:

Route	Description	Mileage Point
...	...	...

APPENDIX B

The following county "500" series routes are not designated as through routes for wide trucks, although some of these routes may be usable by wide trucks under the access provisions of N.J.A.C. 16:32-[3.4]**1.5**:

Route	Description	Mileage Point
...	...	...

TREASURY-GENERAL

(a)

DIVISION OF PURCHASE AND PROPERTY
Notice of Extension of Comment Period
Purchase Bureau
Proposed Readoption: N.J.A.C. 17:12

Take notice that the comment period for the proposed readoption of N.J.A.C. 17:12, as proposed August 15, 1994 at 26 N.J.R. 3248(a) (PRN 1994-461), has been extended to November 16, 1994. Written comments shall be submitted to:

Lana Sims, Director
Division of Purchase and Property
Department of the Treasury
33 West State Street, CN 230
Trenton, New Jersey 08625-0230

TREASURY-TAXATION

(b)

DIVISION OF TAXATION
Sales and Use Tax
Sales of Horses in Claiming Races
Proposed Amendment: N.J.A.C. 18:24-28.2

Authorized By: Richard D. Gardiner, Acting Director, Division of Taxation.
Authority: N.J.S.A. 54:32B-24(1).
Proposal Number: PRN 1994-557.

Submit comments by November 16, 1994 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646

The agency proposal follows:

Summary

This rule is being amended to conform with P.L. 1993, c.226, signed into law on August 6, 1993, effective November 1, 1993. The statute changes the method used to compute New Jersey sales tax in "claiming races" within this State. Previously the sales tax was due each time the horse was claimed, which resulted in multiple payments of tax on the same horse. The amended rule limits the sales tax on the sale of race horses through claiming races in the same calendar year to the portion of the total purchase price that exceeds the highest of any prior purchase price paid in the State in the same calendar year.

Social Impact

The proposed amendment will affect the purchasers of race horses in claiming races occurring at New Jersey race tracks. Since the proposed amendment will limit the amount of sales tax due on such transactions, the racing industry response should be favorable.

Economic Impact

The amended rule will have a positive impact on those affected, since it will reduce the amount of sales tax due when race horses are claimed. Since the sales tax is collected at the track at the time the transfer occurs, there are no additional administrative costs incurred by either the race track or the Division of Taxation.

Regulatory Flexibility Analysis

As they are responsible for collection and remission of sales tax on claimed horse purchases, the amended rule affects the reporting and recordkeeping practices of the race tracks in New Jersey, which are not considered small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. since they employ more than 100 people. The amendments may benefit purchasers of claimed horses by reducing the amount of sales tax due.

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

18:24-28.3 Claiming races

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

(c) For purposes of computing the sales tax due, [the purchase price of the claimed horse is the amount paid for the claim.] **if no previous purchases have been made within the calendar year, the full purchase price is subject to sales tax. If previous purchases have been made in the calendar year, the sales tax is imposed only on the portion of the total purchase price that exceeds the highest of any prior purchase prices paid for the same horse within the State in the same calendar year.** The sales tax is collected at the track at the time the claim is paid.

Example 1: Horse X is entered in a $10,000 claiming race at Monmouth Park. ABC Farms claims the horse. **Horse X has not been previously claimed in the same calendar year.** A taxable transaction has taken place and the tax due is [$500.00] **$600.00.**

Example 2: Same facts as Example 1, but Horse X had previously been claimed twice in the same calendar year for $3,000 and $5,000. A taxable transaction has taken place and the tax due is $300.00 ($10,000-$5,000 = $5,000; 6% of $5,000 = $300.00).

(c)

DIVISION OF TAXATION
Transfer Inheritance and Estate Tax
Proposed Amendments: N.J.A.C. 18:26-1.1, 2.2, 2.5, 2.12, 2.15, 3.2, 3.7, 3.8, 3.9, 3.10, 6.3, 6.6, 7.7, 7.12, 8.5, 8.6, 8.7, 8.8, 8.17, 8.18, 9.7, 9.13, 9.15, 10.5, 10.7, 11.1, 11.31, 12.2, 12.3, 12.4, 12.5, 12.6, 12.10 and 12.12
Proposed New Rules: N.J.A.C. 18:26-8.7 and 10.13
Proposed Repeal: N.J.A.C. 18:26-2.9
Proposed Repeal and New Rules: N.J.A.C. 18:26-8.22 and 12.9

Authorized By: Richard D. Gardiner, Acting Director, Division of Taxation.
Authority: N.J.S.A. 54:50-1.
Proposal Number: PRN 1994-537.

Submit comments by November 16, 1994 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
CN 269
Trenton, NJ 08646-0269

The agency proposal follows:

Summary

Changes and additions are proposed to transfer inheritance and estate tax rules for the primary purpose of establishing policies under which provisions of the Taxpayer Bill of Rights, P.L. 1992, c.175, will apply to the administration of the transfer inheritance and estate tax. N.J.S.A. 54:33-1 et seq. The Taxpayer Bill of Rights amended provisions of specific laws which apply to specific taxes to conform to the Bill of Rights provisions. However, no such amendments were made to the laws applicable to the transfer inheritance and estate taxes. Amendments are proposed to the transfer inheritance and estate tax rules to bring them into conformance with provisions of the Bill of Rights where those provisions do not conflict with or undermine transfer inheritance and estate tax statutory provisions. Certain other changes are proposed, described below, to bring the rules into conformance with applicable statutory provisions.

In the spirit of P.L. 1992, c.175, N.J.A.C. 18:26-3.2 and 8.8 are amended to incorporate the four year statute of limitations on assessments, adopted in P.L. 1992, c.175, into the transfer inheritance and estate tax rules, with certain exceptions such as a change in the Federal tax assessment. P.L. 1992, c.175 raises the State Tax Uniform Procedure Law period for refund claims from two to four years, but left in place the provision allowing shorter periods in the tax statutes to take precedence. The estate tax and inheritance tax refund periods are three years (N.J.A.C. 54:38-3 and 54:35-10), so no change is proposed for the statute of limitations for refund claims.

P.L. 1992, c.175 requires the Division to pay interest at the prime rate, compounded annually, on overpayments greater than one dollar which are not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return, or within six months after the return is filed, whichever is later. The interest must accrue from the later of the date of the refund claim, the date of payment of the tax, or the due date of the return. (N.J.S.A. 54:49-15 and 15.1.) The requirement of interest on overpayments is included as proposed N.J.A.C. 18:26-3.9 and 10.13. Proposed N.J.A.C. 18:26-10.13 states the Division's position that a refund claim must be filed in order for the interest on overpayment provision to apply, and the Division's intention to compound interest, if any, at the end of each calendar year.

P.L. 1992, c.175 amended N.J.S.A. 54:50-6 to require the Division to provide with assessment notices information on taxpayers rights, time limits to protest an assessment and appeal a final decision, refund claim procedures, and a statement of the correct payment and filing date. These requirements are incorporated into the transfer inheritance and estate tax rules in proposed N.J.A.C. 18:26-8.7.

The Division was required by P.L. 1992, c.175 to follow a "postmark rule" for the receipt of documents and returns. The transfer inheritance and estate tax statutes already contained a postmark rule at N.J.S.A. 54:35-3, and this rule is added to N.J.A.C. 18:26-9.13(a). Proposed N.J.A.C. 18:26-9.13(e) is added to reflect the existing provisions of N.J.S.A. 54:35-4.1, the requirement that tax on wrongful death awards be paid within 30 days of the receipt of the award or settlement. Proposed N.J.A.C. 18:26-9.13(f) adopts the requirements of N.J.S.A. 54:49-11(b), added by P.L. 1992, c.175, that the Director waive penalty and interest ruling from reliance on erroneous advice from the Division. The rule states that the advice must be in writing and erroneous, and places the burden on the executor, administrator, or trustee of showing that the reliance on the advice was reasonable.

P.L. 1992, c.175 amended N.J.S.A. 54:53-7 to allow the Division to compromoise the time for payment of liabilities, in effect permitting installment payment plans. The Transfer Inheritance Tax Branch may grant the installment payment plan option to estates, as noted in proposed N.J.A.C. 18:26-10.8, but interest will accrue on the unpaid balance at the rates set under the transfer inheritance tax statute.

N.J.S.A. 54:34-13 and 54:38-10 provided for appeals from transfer inheritance and estate tax assessments. N.J.A.C. 18:26-12.9 is repealed and replaced with a rule describing in greater detail Transfer Inheritance Tax Branch appeal procedures. The proposed rule incorporates provisions enacted by P.L. 1992, c.175 at N.J.S.A. 54:49-18 regarding when the Division may require security. Provisions related to the disclosure of information, enacted by P.L. 1992, c.175, N.J.S.A. 54:50-2.2, are added to N.J.A.C. 18:26-12.10, the rule on informal hearings. N.J.A.C. 18:26-12.12 is amended to incorporate Bill of Rights provisions on security and litigation costs in appeals.

Finally, certain other changes are proposed to bring the rules up to date with current administrative procedures and other statutory provisions. Division sections are now called "Branches" and the word "Bureau" is therefore changed to "Branch" in N.J.A.C. 18:26-1.1, 9.7, 11.31, 12.2, 12.3, 12.4, 12.5 and 12.6. The word "tax" is added to N.J.A.C. 18:26-2.2. N.J.A.C. 18:26-2.5(a) is deleted because the 15 year statute of limitations in which it was applicable has elapsed. N.J.A.C. 18:26-2.9 is repealed and N.J.A.C. 18:26-7.7 is amended because for a number of years the State's policy has been that it will not impose tax on escheats.

N.J.A.C. 18:26-3.8(c) is amended to indicate that the Transfer Inheritance Tax Branch will use its best efforts to expedite tax assessments. An amendment is added to N.J.A.C. 18:26-6.3 to incorporate statutory changes which eliminated the exemption for the interest of a spouse in real property by way of dower or curtesy. A statutory citation is corrected in N.J.A.C. 18:26-6.6. N.J.A.C. 18:26-7.12 has been amended to clarify that the deduction for real estate broker's commission may be taken only in the case of a sale by the executor or administrator, and not by a beneficiary of the estate. N.J.A.C 18:26-8.5 has been amended to indicate that the Division will no longer assess realty. N.J.A.C. 18:26-8.6 is amended to reference N.J.S.A. 54:43-12, which indicates that inheritance tax, in contrast to other State taxes, is not self-assessing, but rather a tax which is assessed by the Division. N.J.A.C. 18:26-8.17 and 8.18 are amended to bring the rules for valuing securities into conformance with Federal procedures. N.J.A.C. 18:26-8.22 is repealed and a new rule proposed to more clearly and accurately describe the valuation of life estates under N.J.S.A. 54:36-2. The bonding requirement for late payment of taxes due on wrongful death awards or settlements in N.J.S.A. 54:35-4.1 is added to N.J.A.C. 18:26-9.15. N.J.A.C 18:26-10.5 is amended to remove an outdated cross reference to N.J.A.C. 18:26-8.7 which was repealed in 1991 and to specify that a receipt is provided upon written request. N.J.A.C. 18:26-10.7 is amended to include the provisions of N.J.S.A. 54:49-12.1 on collection cost fees which was enacted by P.L. 1987, c.76. A sentence in N.J.A.C. 18:26-11.1(c)1 and (d)1 requiring the submission of letters testamentary is deleted because the Division does not require this submission.

Social Impact

The proposed amendments and new rules should have a beneficial social impact by helping to implement P.L. 1992, c.175, the Taxpayer Bill of Rights, which changed certain existing tax procedures and mandated new procedures, as outlined in the Summary above. The legislation did not specifically conform the transfer inheritance and estate taxes, however. The proposed rules will explain how the Division interprets the Bill of Rights provisions to apply to the transfer inheritance and estate taxes. The proposed amendments also bring the rules up to date with the transfer inheritance and estate tax statutes and current administrative practices of the Transfer Inheritance and Estate Tax Branch.

Reaction to the amendments and new rules should be positive because they inform members of the public involved with estate administration of the Division's desire to follow the spirit of the Bill of Rights, which was designed to expand the rights of taxpayers and improve the quantity and quality of information about the procedures that is available to the public.

The Taxpayer Bill of Rights was intended to protect taxpayers in their contacts with the Division, particularly when involved in controversies with the Division, and inform taxpayers of their rights, and conform New Jersey's tax procedures to the prevailing provisions in the majority of other states. The amendments and new rules, by explaining how the Division will interpret and administer the legislation as it applies to transfer inheritance and estate taxes, should expand and clarify the rights of decedents and estate administrators.

Economic Impact

The proposed amendments and new rules implement legislative changes to numerous tax procedures which have the potential to affect economically any estates with tax liabilities owed to the State of New Jersey. The Taxpayer Bill of Rights in particular addresses the time period for assessments, and requires the Division to generally pay interest on refunds paid more than six months late. The provision requiring payment of interest on late refunds would negatively affect revenues to the degree that the Division becomes late in responding to refund claims. At the same time, the provisions would have the effect of benefitting estates with refund claims by providing for interest on late refunds.

On the other hand, P.L. 1992, c.175 was predicted to have the potential effect of improving or helping to stabilize revenues by improving compliance with the tax laws. Taxpayers were meant to receive, through the Taxpayer Bill of Rights, a better understanding of their rights and responsibilities under the tax laws and the knowledge that the laws would be equitably administered. This knowledge was expected to make the public more likely to comply voluntarily with the tax laws, helping to keep tax rates from rising unnecessarily and the costs of tax administration down. The improvements in tax procedures and wider dissemination of information about tax procedures was also hoped to reduce costs of compliance to taxpayers. These aims should apply to estate administrators as well as taxpayers in general.

Regulatory Flexibility Analysis

The proposed rules and rule amendments interpret P.L. 1992, c.175, the Taxpayer Bill of Rights in the context of the transfer inheritance and estate tax statutes. P.L. 1992, c.175, caused changes to the State Tax Uniform Procedure Law, N.J.S.A. 54:49-1 et seq., which contains tax procedures potentially affecting most taxpayers, including small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the transfer inheritance and estate tax statutes and rules address issues related to the administration of the estates of decedents and are therefore not directly relevant to small businesses. Neither the proposed rules and amendments nor the legislation impose reporting or recordkeeping requirements or any annual compliance costs on small businesses.

The rules address a number of issues related to tax administration arising under the Taxpayer Bill of Rights and the transfer inheritance and estate tax statutes, as described in detail in the Summary above.

Small businesses and other taxpayers may wish to retain the services of accounting or legal professionals, charging at normal rates, to review the changes to the rules to determine if they are relevant to them for estate planning purposes. However, the modifications to administrative procedures brought about by the legislation were intended to make the procedures clearer by requiring the dissemination of information, to make the procedures more equitable, closer into line with those of other states and the Federal government. The proposed new rules and rule amendments bring existing rules into conformance with this legislation, to the extent possible under existing laws, and explain the Division's administrative procedures. The costs for professional services to interpret the rules and comply with them should ultimately be reduced as the proposals bring the rules up to date and make them easier to understand.

In general, P.L. 1992, c.175 was intended to expand the rights of taxpayers, including those of small businesses, in their contacts with the Division, and to disseminate information on how small businesses and other taxpayers may assert their rights and follow tax procedures. By construing the legislative provisions for estate planning and administration, the rule proposals may generally help to reduce the difficulty and cost of complying with State tax statutes.

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

18:26-1.1 Definitions

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

...

"Blanket waiver" means the general written consent of the Director issued by regulation permitting banks, trust companies, savings institutions, building and loan and savings and loan associations operating in this State, to transfer up to 50 percent of any shares held for or of the total funds on deposit to the credit of a deceased resident of this State, either individually as a co-depositor, trustee, agent, cestui que trust, or in any other capacity, prior to the final payment of the tax and in the absence of a formal waiver. The [Blanket Waiver] **blanket waiver** also authorizes the release of an amount in addition to the said 50 percent, called for by a check or checks made payable to the New Jersey Inheritance Tax [Bureau] **Branch**, in payment of transfer inheritance taxes chargeable.

...

18:26-2.2 Law at the time of death controls

The right of the State to the inheritance **tax** on transfers vests at the moment of a decedent's death so that the law prevailing at the time of death of a resident or nonresident controls the transfers subject to the tax and the rates thereon.

18:26-2.5 Rates for Class "A" transferree

[(a) In the case of a transfer to a Class "A" transferee where the decedent dies before July 1, 1978, the rates of tax are as follows:

1. On the amount in excess of—

$ 5,000 up to $ 15,000	1%
15,000 up to 50,000	2%
50,000 up to 100,000	3%
100,000 up to 150,000	4%
150,000 up to 200,000	5%
200,000 up to 300,000	6%
300,000 up to 500,000	7%
500,000 up to 700,000	8%
700,000 up to 900,000	9%
900,000 up to 1,100,000	10%
1,100,000 up to 1,400,000	11%
1,400,000 up to 1,700,000	12%
1,700,000 up to 2,200,000	13%
2,200,000 up to 2,700,000	14%
2,700,000 up to 3,200,000	15%
3,200,000	16%]

Recodify existing (b)-(g) as **(a)-(f)** (No change in text.)

18:26-2.9 [Escheat] **(Reserved)**

[In the case of decedent who dies intestate with no known heirs surviving the rate of tax is assessed against the transfer at the highest rate permissible to the State.]

18:26-2.12 Renunciation or disclaimer

(a) (No change.)

(b) A copy of the disclaimer or renunciation should be filed with the Transfer Inheritance Tax [Bureau] **Branch**.

18:26-2.15 Bond in lieu of payment

(a) (No change.)

(b) Upon the happening of the contingency or condition to which a transfer is subject, the executor, administrator, trustee or other proper representative shall notify the Transfer Inheritance Tax Branch of the date the occurrence took place and a computation of the tax due shall then be made. (See N.J.A.C. 18:26-[9.13] **9.16**).

(c) (No change.)

18:26-3.2 Amount and nature of tax

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

(e) No assessment of additional estate tax shall be made after the expiration of more than four years from the date of filing of an estate tax return except in the following cases:

1. The return is false or fraudulent with the intent to evade tax;

2. If before the expiration of the four year period prescribed in this subsection for the assessment of additional tax a taxpayer consents in writing that such period may be extended, the amount of such additional tax may be determined at any time within such period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period;

3. An additional or increased estate tax becomes payable as a result of a redetermination, or additional or corrected assessment of estate, inheritance, succession, or legacy taxes by the United States government or any state or territory of the United States, including the District of Columbia. (See N.J.A.C. 18:26-3.4 for requirement to notify the Division of a redetermination of estate tax by the Internal Revenue Service.); or

4. The Federal estate tax chargeable on final assessment has not been definitely determined.

(f) The taxes assessed pursuant to (e)3 and 4 above shall be made within four years from the date the additional or increased estate tax becomes payable or the Federal estate tax chargeable on final assessment is definitely determined and the Branch is properly notified pursuant to N.J.A.C. 18:26-3.4.

Statutory Reference
N.J.S.A. 54:38-1; **54:49-6(b)**

18:26-3.7 Payment; due date; interest; extension of time

(a) The New Jersey estate tax is due at the date of a decedent's death.[; provided, however,] **However,** if payment [may be made at any time] **is made** within nine months from the date of death, **no late penalty shall be imposed.**

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of death, shall bear interest at the rate of 10 percent per annum from the expiration of the said nine months until the date of actual payment, unless an extension of time to file the Federal estate tax return is granted, in which case the Director may reduce the interest rate to six percent per annum until the expiration of the extension. If the decedent was a member of the United States armed forces, the estate tax will not bear interest until the expiration of nine months after receipt of official notification of the decedent's death by the decedent's husband, wife, father, mother, or next of kin. **(For estates with date of death prior to March 1, 1992, the estate tax is payable within 18 months of the date of death, and estate tax not paid within 18 months from the date of death bears interest at the rate of six percent per annum from the expiration of the 18 months until the date of actual payment. If the Federal government has not determined the amount of estate tax due within such period of 18 months or there is a subsequent assessment of an additional or increased estate tax, the tax is payable within 60 days after receipt of notification from the Federal government stating the amount of the Federal estate tax and the credit for state death taxes allowable and the New Jersey estate tax shall bear interest at the rate of six**

percent per annum from the expiration of such 60 day period to the date of payment.)

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

18:26-3.8 Certificate of inheritance

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

(c) Proof of such payments can be submitted to the Internal Revenue Service after receipt by the estate of notice of final assessment, and allowance will be made at that time for credits properly established. [This Bureau] **The Transfer Inheritance Tax Branch** will **use best efforts to** expedite estate tax assessments [and an assessment in the average case can be levied within two or three days of the receipt of the necessary data].

18:26-3.9 Refunds

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

(c) For estate tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return, or within six months after the return is filed, or payment of the tax due thereon, whichever is later. See N.J.A.C. 18:26-10.13 for calculation of the interests.

Statutory Reference
N.J.S.A. 54:38-3; **54:49-15.1**

18:26-3.10 [Appeals] **Protests, hearings and appeals**

Any executor, administrator, trustee, person or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding or assessment of the Director, may appeal to the Tax Court of New Jersey for a review thereof within 90 days of the date of notice assessing the tax complained of, in accordance with pertinent provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:51A-13 et seq. **For protest procedures see N.J.A.C. 18:26-12.9, 12.10 and 12.12.**

18:26-6.3 Dower or curtesy

(a) In the case of an estate of a resident decedent dying, **prior to May 28, 1980,** intestate and seized of real property who is survived by a spouse and a child or children, the interest of the spouse in the real property by way of dower or curtesy provided under N.J.S.A. [3A-35-1 and 2] **3A:35-1 and 2** is not subject to the inheritance tax of this State; provided, however, that such spouse takes only his or her dower curtesy interest in the real property or has such interest set off or admeasured by way of election under the will or otherwise.

(b) (No change.)

(c) In the case of a resident decedent dying on or after May 28, 1980, there is no exemption for the interest of the spouse in real property by way of dower or curtesy unless both the real estate was purchased and the marriage took place prior to May 28, 1980.

Statutory Reference
N.J.S.A. 3A:25-1; 3A:35-2; 3B:28-2

18:26-6.6 Wrongful death action

Any sum recovered under Sections 1, 2, 3 and 4 of the New Jersey Death Act (N.J.S.A. [2A:32-1]**2A:31-1** et seq.) as compensation for wrongful death of a decedent is not subject to the New Jersey inheritance tax except as provided in [subsection (a) of Section 5.3 of this Chapter] **N.J.A.C. 18:26-5.3(a)**.

18:26-7.7 Estates subject to escheat

Estates subject to escheat containing claims for services rendered to the decedent or advances made to the decedent are held in abeyance pending a final determination made with respect thereto by the Attorney General's Office, Escheat Section. The representatives of the estate will be so notified [and the assessment will then be completed when the claim is settled].

18:26-7.12 Real estate broker's commissions

(a) No deduction is allowed for commissions paid or payable to a real estate broker or agent in connection with the sale of real estate of which a decedent dies seized except where:

1. (No change.)

2. [The executor is expressly directed to sell the real estate by the terms of the decedent's will; or] **The real estate is actually sold by the executor or administrator (the real estate must be sold by the representative of an estate and not the beneficiary(s) in order to qualify); or**

3. It is necessary in the administration of the decedent's estate to effect a sale of said real estate for the purpose of liquidating debts, or the payment of the expenses of administration of the estate, or for the payment of legacies[;].

[4. The executor or administrator is directed by the court of proper jurisdiction to effect the sale thereof.]

18:26-8.5 [Reassessment of realty; additional] **Additional** assessment

[(a) Once an assessment has been completed, any interested party may make an application for the reappraisal of realty which application is to be filed directly with the Inheritance Tax Bureau, and upon the facts and circumstances in each case, if it is determined that the application has been submitted within a reasonable time, the bureau will consent to refer the matter for reappraisal and determination.]

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

18:26-8.6 Final assessment

N.J.S.A. 54:34-12 provides for an assessment of the tax by the Division. Upon receipt of the return and payment of any applicable tax, the **Transfer Inheritance Tax** Branch will advise the estate representative as to whether the return filed by the estate and the tax calculation are accepted, in which case the Branch's notification will be the assessment. In the event that the Branch decides to further examine the return, it will subsequently notify the estate representative as to the amount of tax assessed.

18:26-8.7 [(Reserved)] **Assessment notices; required statements**

(a) Any assessment notice changing the tax as reported by the taxpayer shall contain the statements required pursuant to subsections a, b, and d of N.J.S.A. 54:48-6.

(b) An arbitrary assessment of tax made pursuant to the provisions of N.J.S.A. 54:49-5 shall include a statement of the reason for the assessment, the action or omissions of the taxpayer which require the assessment, or the nature of the documentary evidence, if any, which has prompted the assessment, including the following:

1. In the case of an underpayment or failure of payment, a statement of the corresponding alleged correct payment and the correct date of payment; and

2. In the case of a failure to file a return, a statement of the alleged filing date.

(c) The lack of any statement otherwise required to be included with a notice pursuant to (a) above, or the lack of any description otherwise required pursuant to (b) above, shall not invalidate such notice.

Statutory Reference
N.J.S.A. 54:50-6

18:26-8.8 Time limit for assessment

(a) Upon the expiration of a period of 15 years after the date of death of a decedent, no proceeding may be instituted to assess or collect any tax, interest or penalties due this State for Inheritance Tax purposes against any estate, executor, administrator, trustee, grantee, donee, vendee, devisee, legatee, heir, next of kin or beneficiary. However, this does not affect any rights to collection which this State has by reason of filing with the Clerk of the Superior Court, a Certificate of Debt, Decree of Judgment for the New Jersey Inheritance Tax, including any interest and penalties; nor does the period of limitation affect the rights of this State to assess and collect the New Jersey Inheritance Tax including any interest and penalties under the terms of a bond or their agreement securing the payment of such tax, interest and penalties.

(b) No assessment of additional inheritance tax shall be made after the expiration of more than four years from the later of the date of the filing of an inheritance tax return or payment of tax due thereon. However, the assessment period may be extended in the following cases;

1. The return is false or fraudulent with the intent to evade tax:

2. If, before the expiration of the period prescribed in the subsection for the assessment of additional tax a taxpayer consents in

writing that such period may be extended, the amount of such additional tax may be determined at any time within such period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period;

3. Tax on executory devises, contingent future interests and estates subject to a power of appointment is assessed pursuant to the provisions of N.J.A.C. 18:26-8.12, 8.21, 8.24 and 9.16;

4. If the inheritance tax return is amended by the taxpayer to include additional property of a decedent, the assessment of tax on the additional property shall not be made after four years from the date of the filing of the amended return;

5. The assessment of tax in an estate passing to a beneficiary discovered after the filing of an inheritance tax return shall not be made after four years from the date of the discovery of the beneficiary and receipt of notification by the Inheritance Tax Branch; or

6. If a decedent's interest in property, or the value thereof as of the decedent's date of death, has not been determined at the time of the filing of an inheritance tax return due to litigation or controversy, the assessment of tax shall be made within four years after the decedent's interest in the property, or the value thereof on the decedent's date of death, has been definitely established.

(c) Returns not falling into the six categories in (b) above shall be subject to the provisions of (a) above.

(d) For the purposes of (b) above, an inheritance tax return filed before the corresponding day of the eighth month following the decedent's date of death shall be considered as filed on that day.

Statutory Reference

N.J.S.A. 54:35-5.1, as amended by P.L. 1979, c.417; **54:49-6(b)**

18:26-8.17 Government bonds and securities

(a) Treasury bonds and similar negotiable obligations issued by the United States Government are valued at:

1. (No change.)

2. [Where the date of death occurs on a legal holiday the quotations for the previous day are used as a basis for appraisal] **If there were no sales of bonds or similar negotiable obligations issued by the United States Government on the date of death, either the mean between the highest and lowest selling price for the previous day, or the nearest trading day prior to the date of death, or the prorated value used for Federal estate tax purposes reflecting the mean between the highest and lowest selling price on the nearest trading dates prior to and subsequent to the date of death may be used. The Alternative Valuation Date method of valuing bonds for Federal estate tax purposes is, however, not acceptable for New Jersey transfer inheritance tax purposes. All of the assets must be valued using the same method;**

[3. Where the date of death occurs on a Saturday or Sunday, the quotations for the previous Friday are used as a basis for appraisal;]

[4.]**3.** (No change in text.)

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

18:26-8.18 Stocks, bonds, mutual funds and securities

(a) The value of stocks, bonds and securities listed on any stock exchange is appraised on the basis of the intermediate price between the low and high price prevailing on the date of death.

1. [Where the date of death occurs on a legal holiday, the quotations for the previous day shall be used as a basis for appraisal] **If there were no sales of stocks, bonds, and securities listed on a stock exchange on the date of death, either the mean between the highest and lowest selling price for the previous day, or the nearest trading day prior to the date of death, or the prorated value used for Federal estate tax purposes reflecting the mean between the highest and lowest selling price on the nearest trading dates prior to and subsequent to the date of death may be used. The Alternative Valuation Date method of valuing stocks and bonds for Federal estate tax purposes is, however, not applicable for New Jersey transfer inheritance tax purposes. All of the assets must be valued using the same method;**

[2. Where the date of death occurs on a Saturday or Sunday, the quotations for the previous Friday shall be used as a basis for appraisal;]

[3.]**2.** (No change in text.)

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

18:26-8.22 Estates for life or years

[(a) A life estate, annuity or estate for a term of years is valued in accordance with the American experience table of mortality, with interest at the rate of five per cent per annum for estates of decedents dying before January 1, 1978. This applies as well in cases where a beneficiary survives the decedent by only a short period.

(b) With respect to estates of decedents dying on or after January 1, 1978, the United States life tables, after December 31, 1970, Single Life. Male Six Per Cent and Single Life Female Six Per Cent, published by the United States Department of Health, Education and Welfare, Public Health Service, with interest at the rate of six per cent per annum, shall be used. This applies as well in cases where a beneficiary survives the decedent by only a short period.]

A life estate, annuity, or estate for a term of years is valued in accordance with the Federal Tables, effective after December 31, 1970, Table "A"(1) (single life male, six percent, showing the present worth of an annuity, of a life interest, and of a remainder interest) and Table "A"(2) (single life female, six percent, showing the present worth of an annuity, of a life interest, and of a remainder interest). These tables are identified as the United States Life Tables in N.J.S.A. 54:36-2. These tables apply as well in cases where a beneficiary survives the decedent by only a short period.

Statutory Reference

N.J.S.A. 54:36-2

18:26-9.7 Confidential nature of returns

(a) All transfer inheritance tax returns and data filed in connection therewith are considered privileged communications **pursuant to N.J.S.A. 54:33-8 and 54:50-8** and are not to be inspected or copied by any person other than:

1.-3. (No change.)

4. Photostatic copies of [record] **records** on file with the [Bureau] **Transfer Inheritance Tax Branch** may be obtained by authorized persons only upon proper application. Cost of photostatic [copy] **copies** shall be $.40 per page and check in payment thereof shall be drawn to the order of Treasurer, State of New Jersey. Authentication will cost $1.00 in addition to the charge per page.

18:26-9.13 Late payment; general provisions

(a) Any payment of the New Jersey inheritance tax after the expiration of the corresponding day of the eighth month following the date [of death] **on which it became due and payable** shall bear interest at the rate of 10 percent per annum on any unpaid portion of the tax, from the expiration of eight months **after the date on which it became due and payable** until the date of actual payment, unless payment was tendered by the taxpayer within the eight month period and is evidenced by the postmark **of the United States Postal Service** on the letter conveying the payment, **by a postmark made by other than the United States Postal Service (that is, metered mail) within the eight month period and the payment was received by the Inheritance Tax Branch within three days of the expiration of the eight month period,** or by other acceptable proof, but was not credited through no fault of the taxpayer, in which case no interest shall be charged, or unless by reason of any claims made upon the estate, necessary court litigation, or other unavoidable cause of delay, the decedent's estate or a part thereof, cannot be settled before the expiration of eight months from the date of death, in which event interest at the rate of only six percent per annum is to be charged from the expiration of eight months until the cause of delay is removed.

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

(e) Tax on any sum recovered as compensation for the death of a person caused by a wrongful act, neglect, or default must be paid within 30 days of the receipt of the award or settlement. Tax not paid within 30 days shall bear interest at the rate of 10 percent per annum from the expiration of eight months after the due date (the date of the award settlement) to the date of actual payment subject to the exceptions in (a) above.

(f) For returns due on or after July 1, 1993 the Director shall waive the payment of any part of any penalty or interest attributable

to the executor's, administrator's, or trustee's reasonable reliance on erroneous advice furnished to the taxpayer in writing on or after July 1, 1993 by an employee of the Transfer Inheritance and Estate Tax Branch acting in the employee's official capacity, provided that the penalty or interest did not result from the failure of the executor, administrator or trustee to provide adequate or accurate information. The executor, administrator, or trustee has the affirmative obligation to show that it was reasonable to rely on the written advice.

Statutory Reference

(a) N.J.S.A. 54:35-3; (e) N.J.S.A. 54:35-4.1; (f) N.J.S.A. 54:49-11(b)

18:26-9.15 Bond for failure to pay tax

(a) Where an executor, administrator, grantee, donee, vendee, or trustee fails to pay the tax due within eight months from the date of a decedent's death, such person is required to give a bond, on a form approved by the Director, to the State of New Jersey, in double the amount of the tax to secure payment of any tax and interest which may become due.

(b) In the case of tax due on any sum recovered as compensation for the death of a person caused by a wrongful act, neglect, or default, the bond shall be required within eight months of the due date (the date of the award or settlement) if the tax is not paid within 30 days of the receipt of the award or settlement.

Statutory Reference

N.J.S.A. 54:35-3, 54:35-4, **54:35-4.1,** 54:35-5.

18:26-10.5 Payment of tax collected; receipt

Within 30 days from the time an executor, administrator, or trustee has retained or received the amount due for inheritance taxes on the transfer of property, he is required to pay the same to the Director and **may, upon written request,** receive a receipt signed by the State Treasurer and countersigned by the Director, which represents a voucher in settlement of the account of the executor, administrator, or trustee[, except when filing under N.J.A.C. 18:26-8.7 when no receipt is issued].

18:26-10.7 Proceedings to compel payment of taxes; collection cost fees

(a) In the event the New Jersey Transfer Inheritance Tax which has accrued is not paid within the time provided by law, the Director shall notify the Attorney General of this State who shall institute an action to compel the payment of such tax in the name of the Director in the Superior Court of this State and any judgment cited in such action will have the same effect as other judgments entered in the Superior Court so as to constitute a lien which may be executed on any property of a decedent.

(b) In the event the New Jersey inheritance tax is not paid within the time prescribed by law, fees for the cost of collection shall be imposed as follows:

1. If a certificate of debt is issued pursuant to N.J.S.A. 54:49-12, the fee shall be five percent of the tax or $100.00, whichever is greater;

2. If the tax remains unpaid after the issuance of the certificate of debt and the matter is referred to the Attorney General, the fee shall be 10 percent of the tax or $200.00, whichever is greater; and

3. If a suit is instituted for the collection of the tax, the fee shall be 20 percent of the tax or $500.00, whichever is greater.

(c) The fees specified in (b) above shall be paid in addition to any interest or penalty, or both, otherwise provided by law.

Statutory Reference

N.J.S.A. 54:35-15, **54:49-12.1**

18:26-10.13 [(Reserved)] **Interest on refunds**

If the Inheritance Tax Branch takes more than six months to remit a valid refund after a refund application or written request is received by the Director, taxpayers have the right to receive interest on the refund. If interest must be paid, it will be calculated to accrue from the date of filing of a refund claim, the date of tax is paid in accordance with N.J.A.C. 18:26-8.6, or the due date of the return, whichever is later. Interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each calendar year, from the date that such interest commences to accrue to the date of the refund. This rule becomes effective for returns due on and after January 1, 1994. No interest will be paid on an overpayment of less than one dollar ($1.00), or on an overpayment refunded within six months after the last date prescribed or permitted by extension of time for filing the return, or within six months after the return is filed, whichever is later. No interest will be paid on an overpayment unless the taxpayer files a claim for refund.

Statutory Reference

N.J.S.A. 54:49-15.1

18:26-11.1 Consent to transfer; generally

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

(c) No waivers are required to be issued by the Director in the case of certain transfers to the surviving spouse of a New Jersey domiciled decedent who died on or after January 1, 1985. In order to satisfy a corporation (its transfer agent) including any banking institution, trust company organized under the laws of New Jersey, national bank operating in this State, building and loan or savings and loan association in New Jersey, or credit union chartered by the United States operating in this State that intangible assets may be released to the surviving spouse, an affidavit of waiver can be executed by the surviving spouse or the personal representative of the decedent's estate.

1. [Letters testamentary or of administration must be attached and made a part of the affidavit when executed by an executor or administrator; or, in any case where intangible assets are transferred to the spouse under a will or the law of intestate distribution.] If two or more executors or administrators qualify, the affidavit may be executed by one of them.

2.-5. (No change.)

(d) No waivers are required to be issued by the Director in case of certain transfers to the following Class "A" transferees in the estate of New Jersey domiciled decedent who died on or after July 1, 1988: a father, mother, grandparent, grandchild, a child or children of a decedent, including any stepchild of a decedent or child or children adopted by a decedent or the issue of any child or legally adopted child of a decedent. In order to satisfy a corporation (its transfer agent) including any banking institution, trust company organized under the laws of New Jersey, national bank operating in this State, building and loan or savings and loan association in New Jersey, or credit union chartered by the United States operating in this State that intangible assets may be released to the Class "A" transferee, an affidavit of waiver can be executed by the Class "A" transferee or the personal representative of the decedent's estate.

1. [Letters testamentary or of administration must be attached and made a part of the affidavit when executed by an executor or administrator; or in any case where intangible assets are transferred to the Class "A" transferee under a will or the law of intestate distribution.] If two or more executors or administrators qualify, the affidavit may be executed by one of them.

2.-5. (No change.)

(e) (No change.)

18:26-11.31 Notice

(a) The notice required by N.J.A.C. 18:26-11.30 is to be given by mailing Form 0-71 to the Division of Taxation, Transfer Inheritance Tax [Bureau] **Branch,** Trenton, New Jersey 08646 as soon as practicable after the death of the decedent, but in any event not later than [ten] **10** days after the whole or any part of the sum or sums required to be reported therein have been paid.

(b) (No change.)

18:26-12.2 Administration of Transfer Inheritance Tax and New Jersey Estate Tax

(a) The Act is administered by the Director through the Transfer Inheritance Tax [Bureau] **Branch** of the Division of Taxation in the Department of the Treasury.

1.-3. (No change.)

18:26-12.3 Information from [Bureau] **Transfer Inheritance Tax Branch**

(a) After a return has been filed all communications regarding the New Jersey transfer inheritance or estate tax are to be addressed to the Transfer Inheritance Tax [Bureau, P.O. Box 1919] **Branch, CN 249**, Trenton, New Jersey 08646 and should state the full name of the decedent, the date of death, and the name of the county where the decedent resided as of the date of death. **See N.J.A.C. 18:26-9.7 for confidential nature of communications with the Transfer Inheritance Tax Branch.**

(b) (No change.)

(c) No employee of the Transfer Inheritance Tax [Bureau] **Branch** is permitted to pass upon, or decide, any question involving the taxability of a transfer of any property under the terms of a decedent's will, deed of trust, annuity contract, agreement, contract or any other instrument prior to the date of a decedent's death, nor may an employee compute any hypothetical tax on any set of facts submitted for consideration.

18:26-12.4 Examination of records

For the purpose of administering the New Jersey inheritance and estate tax, the Director, whenever he deems expedient, may make or cause to be made through the Transfer Inheritance Tax [Bureau] **Branch** or any employee thereof engaged in the administration of such taxes, an examination or investigation of any tangible personal property and any books, records, papers, vouchers, accounts, and documents of any taxpayer. **See N.J.A.C. 18:26-12.6 for power of the Transfer Inheritance Tax Branch to issue subpoenas and interview witnesses.**

18:26-12.5 Hearings

The Director or his duly authorized employees in the Transfer Inheritance Tax [Bureau] **Branch** may conduct hearings, **subpoena documents,** administer oaths to, and examine under oath, any taxpayer as well as any directors, officers, agents and employees of a taxpayer in respect to any matter evident to the administration of the New Jersey Inheritance and Estate Tax.

18:26-12.6 Issuance of subpoenas

The Director, or his duly authorized employees[,] in the Transfer Inheritance Tax [Bureau] **Branch**, may by subpoena compel the attendance of witnesses and/or the production of any books, records, papers, vouchers, accounts or documents of any taxpayer or of any person who[,] the Director has reason to believe[,] has information pertinent to any matter under investigation by the Director or any such deputy at any hearing held pursuant to law. The fees of witnesses required to attend any such hearing are to be the same as those allowed to witnesses appearing in the Superior Court and shall be paid in the manner provided for the payment of other expenses incident to the administration of the New Jersey transfer inheritance tax or estate tax law.

18:26-12.9 Review

[(a) An application for the review of any assessment, appraisement, decision, or final determination of the Transfer Inheritance Tax Bureau, may be made within the 90 day period in which an appeal therefrom may be filed:

1. Where an objection is made to a determination by the Bureau and request made for a rehearing by submission of additional data during a period when an appeal may be taken such application shall toll the running of time until notice of the Bureau's final determination is given to the representative of the estate.

2. Where an application for a refund is made within three years from the date of payment of the tax, the period in which an appeal may be taken is 90 days after the denial of a refund is made.]

(a) In order to make a protest of a Transfer Inheritance and Estate Tax Branch assessment or finding within the 90 day period provided by N.J.S.A. 54:49-18, a written protest must be submitted to the Branch. The written protest must be signed by the estate representative, certified to be true, and contain the following data:

1. Whether a hearing or a review is requested;

2. The decedent's name, date of death, social security number, and county of residence;

3. The name, address, and telephone number of the estate representative the Branch should contact in connection with the protest;

4. A copy of the assessment or determination subject to the protest;

5. The specific amount of tax or interest under protest;

6. An explanation of the basis for the protest; and

7. The specific facts supporting the basis for the protest and a summary of evidence or documentation to be presented in support of the estate's position.

(b) A submission which does not include the information requested in (a)5 and 6 above will not be considered a valid protest and will not result in a hearing or review. In addition, the submission of an incomplete or invalid protest will not toll or otherwise extend the 90 day period for such protests to the Division of Taxation.

(c) The filing of any valid protest shall stay the right of the Director to collect the tax in any manner provided by law if the estate shall furnish security, within 90 days after the final determination, of the kind and in the amount determined as follows:

1. Security will not be required for amounts in controversy of less than $10,000, except in cases of arbitrary assessments under N.J.S.A. 54:49-5 or 54:49-7. Security may be required in contested amounts of $10,000 or more if it is determined that there is substantial risk that the estate will fail or be unable to pay a liability. In determining whether there is substantial risk of the estate's failure or inability to pay, the Division may consider the following:

i. The taxpayer's record of compliance;

ii. The estate's financial condition; and

iii. Any other information which the Director reasonably believes to be relevant to this determination.

(d) Hearings are scheduled whenever possible by telephone on a mutually acceptable date for both the estate representative and the Branch.

(e) When an application for a refund is made within three years from the date of payment of the tax, the period in which a protest may be submitted is 90 days after a denial of the refund is made.

(e) After the hearing or review of a protest is completed, the Branch will make a final determination confirming, modifying, or vacating the assessment, finding, or denial of a refund request. The estate representative will be notified of the Branch's determination by registered or certified mail. The estate has 90 days after the issuance of the final determination to appeal therefrom to the Tax Court.

Statutory Reference
N.J.S.A. 54:34-13, 54:38-10, 54:49-18

18:26-12.10 Informal hearing

(a) [A taxpayer] **An executor, administrator, trustee,** or other interested party may, at any time, request an informal conference with the [Bureau] **Transfer Inheritance Tax Branch** in order to present information or discuss any issues.

(b) A conference before the Transfer Inheritance Tax [Bureau] **Branch** may be conducted on an informal basis with or without representation on behalf of a taxpayer or other party in interest.

(c) An estate representative shall be provided, before or during a conference, an explanation of the audit process and the estate's rights under the audit process in the case of a conference relating to the determination of inheritance or estate tax, and shall be provided an explanation of the collection process and the estate's rights under the collection process in the case of a conference relating to the collection of inheritance or estate tax.

(d) Estate representatives have the right, upon giving 14 days advance notice to the Branch, to make a recording of any hearings or conferences with their own equipment and at their own expense; provided, however, that the Branch shall have the same right of recording.

Statutory Reference
N.J.S.A. **54:50-2.2**, 54:50-3, 54:1-16, 54:1-17

18:26-12.12 Appeal to Tax Court

(a) Any person aggrieved by any decision, order, finding or assessment of the Director or his deputies, through the Transfer

Inheritance Tax [Bureau] **Branch,** may appeal therefrom to the Tax Court within 90 days from the date a final determination is made. No such appeal shall stay the collection of the tax or the enforcement of the same by entry of judgment unless [by order of such court, and then only after the tax has been paid or a bond approved by the court in the amount of the tax assessed including any interest and cost is furnished by the court] **security, if required pursuant to the standards and subject to the exception of subsection b of N.J.S.A. 54:49-18, approved by the Director of the Division of Taxation has been furnished to the Director of the Division of Taxation.**

(b) A prevailing estate in a court proceeding in connection with the determination, collection, or refund of inheritance or estate tax, penalty, or interest may be awarded a judgment or settlement for reasonable litigation costs as set forth in N.J.S.A. 54:51A-22.

Statutory Reference
N.J.S.A. 54:33-2, **54:51A-15, 54:51A-22**

(a)

DIVISION OF TAXATION

Gross Income Tax
Commuter Transportation Benefits Reporting by Employer
Proposed New Rule: N.J.A.C. 18:35-1.28

Authorized By: Richard D. Gardiner, Acting Director, Division of Taxation.
Authority: N.J.S.A. 54A:9-17(a).
Proposal Number: PRN 1994-558.

Submit comments by November 16, 1994 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

This proposed new rule is a result of the amendment to N.J.S.A. 54A:7-2 which provides employee tax incentives for ridesharing programs. The new rule obligates employers to provide to employees a written statement, which may be set forth on the W-2 form, showing the cost of commuter transportation benefits paid by the employer to the employee. Pursuant to N.J.S.A. 54A:6-23, any such benefits, during the period from January 1, 1993 to January 1, 1994, which exceed the amount of $720.00 shall be includable in gross income of the employee. For taxable years following thereafter, the Director shall adjust the limit in proportion to the change in the average consumer price index for all urban consumers in the New York, northeastern New Jersey and Philadelphia areas.

Social Impact

The proposed new rule will assist the general public in understanding the commuter benefits available to them and encourage both employers and employees to avail themselves of such benefits.

Economic Impact

The proposed new rule should have no specific impact, since there is no gross income tax revenue loss because the employer provided benefits that would be taxable are not in the gross income tax base now. Thus, the exclusion which the rule would authorize would negate a potential increase in gross income tax revenues.

Regulatory Flexibility Analysis

The proposed new rule would have an impact on all businesses in the State of New Jersey, regardless of business size, in that it requires employers to provide written information statements to employees showing the benefits paid. The Division has provided no differentiation in this rule for small businesses, as the term is defined at N.J.S.A. 52:14B-16 et seq., since to do so would not be in compliance with the law governing commuter transportation benefits, N.J.S.A. 54A:9-17(a).

Full text of the proposed new rule follows:

18:35-1.28 Commuter transportation benefits reporting by employer

(a) Pursuant to N.J.S.A. 54A:7-2, an employer shall provide an employee with a written statement as prescribed by the Director in (b) below showing the cost of commuter transportation benefits paid by the employer to the employee. Should said benefits exceed the amount of $720.00 for the taxable year beginning on or after January 1, 1993, but before January 1, 1994, then the amount received by the employee in excess of $720.00 shall be includable in gross income of the employee. For taxable years following thereafter, the Director shall adjust the limit, rounded down to the nearest $5.00, in proportion to the change in the average consumer price index for all urban consumers in the New York and northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor, from calendar year 1993 to the calendar year ending before the taxable year. Amounts received by the employee not exceeding $720.00 shall not be included in the employee's gross income. Notice of the adjusted limit shall be published in the New Jersey Register.

(b) The written statement required to be provided by the employer to the employee as set forth in (a) above may be set forth on a W-2 form or other written information statement showing the amount of such benefits.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Complimentary Services or Items
Table Game and Slot Incentive Programs—Actual Loss
Proposed Amendment: N.J.A.C. 19:45-1.9

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j), 70(l), 99 and 102.
Proposal Number: PRN 1994-540.

Submit written comments by November 16, 1994 to:
E. Dennis Kell
Assistant General Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:45-1.9 would permit a casino licensee to issue cash complimentaries pursuant to a table game or slot machine complimentary incentive program based upon a predetermined schedule of a patron's actual loss. Currently, the amendment permits the issuance of such cash complimentaries based upon a predetermined schedule of theoretical win of a casino licensee from a patron. The actual loss of a patron is what the theoretical win of a casino licensee from the patron is projected to be. The predetermined schedule for the issuance of cash complimentaries could not exceed actual loss, as it currently cannot exceed theoretical win.

Social Impact

Minimal social impact is expected from this amendment. A casino licensee is already permitted to issue cash complimentaries pursuant to incentive programs based upon its theoretical win from a patron. This amendment would permit the issuance of such complimentaries based upon a patron's actual gaming losses.

Economic Impact

This amendment is expected to have little economic impact. To the extent that casino licensees elect to issue cash complimentaries based upon actual loss, increased cash complimentaries may be issued to patrons whose actual loss exceeds theoretical loss.

Regulatory Flexibility Statement

The proposed amendment 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**):

19:45-1.9 Complimentary services or items

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

(f) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a table game or slot machine complimentary incentive program shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if:

1.-2. (No change.)

3. Each participant in the program is issued complimentaries in accordance with a predetermined schedule as a result of his or her table game or slot play, which schedule shall, with regard to cash complimentaries, be based on and shall not exceed:

i. The theoretical win of the casino licensee from each participant **or the participant's actual loss** as reasonably determined from data maintained pursuant to the approved internal controls for the complimentary incentive program; or

ii. (No change.)

4. (No change.)

(g)-(i) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Personnel Assigned to the Operation and Conduct of Gaming and Slot Machines

Proposed Amendment: N.J.A.C. 19:45-1.12

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 1994-541.

Submit written comments by November 16, 1994 to:

Barbara A. Mattie
Manager
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Under the current provisions of N.J.A.C. 19:45-1.12, floorperson supervision is required for every two pai gow poker tables or a combination of one pai gow poker table and one other authorized gaming table excluding craps. The proposed amendments would permit a floorperson to supervise four pai gow poker tables or any combination of four pai gow poker, blackjack, roulette, minibaccarat, sic bo, red dog or big six tables.

The proposal also contains an unrelated amendment to N.J.A.C. 19:45-1.12. Specifically, N.J.A.C. 19:45-1.12(e)2 is being deleted. N.J.A.C. 19:45-1.12(e)2 relates to reduced staffing requirements. When the concept of reduced staffing was considered it was determined that due to the complexity of the game of craps and the necessity for close supervision over the game of baccarat due to patrons touching the cards, supervision should not be reduced for these games. N.J.A.C. 19:45-1.12(c) sets forth the minimum requirements for the staffing and supervision of authorized table games, and therefore, since N.J.A.C. 19:45-1.12(e)2 reiterates the requirements of N.J.A.C. 19:45-1.12(c)5ii and iii, this paragraph, is unnecessary and is being deleted.

Social Impact

No social impact is anticipated as a result of the proposed amendments beyond that of a floorperson being able to supervise a greater number of tables.

Economic Impact

The proposed amendments may result in some savings to casino licensees in the form of reduced wage expenditures because of the ability of the floorperson to supervise four pai gow poker tables instead of two pai gow poker tables.

Regulatory Flexibility Statement

The proposed amendments will only affect the operations of New Jersey Casino Licensees, none of which qualifies as a small business and, therefore, will not impact on any business protected under the Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

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

(c) Each casino licensee shall maintain the following standard levels of staffing:

1.-4. (No change.)

5. One floorperson shall supervise:

i. Not more than four blackjack, roulette, **pai gow poker,** minibaccarat, sic bo, red dog or big six tables, or any combination thereof; or

ii. Not more than two craps tables [or pai gow poker tables or a combination of one pai gow poker table and one other authorized gaming table excluding craps]; or

iii.-iv. (No change.)

6. (No change.)

(d) (No change)

(e) Notwithstanding the provisions of (c) above, a casino licensee may implement a plan for revised supervision by floorpersons or pit bosses. In any plan for revised supervision:

1. One floorperson may supervise not more than six blackjack, roulette, minibaccarat, sic bo, red dog or big six tables, or any combination thereof; [or] **and**

[2. One floorperson may supervise not more than two craps tables or not more than one baccarat table; and]

[3.]**2.** One pit boss may supervise not more than 24 gaming tables.

(f)-(j) (No change.)

(b)

CASINO CONTROL COMMISSION

Gaming Schools

License Requirement; License Standards; Persons Required to be Qualified; Employee License; Courses and Programs of Instruction; Facilities, Supplies and Equipment; Financial Stability, Insurance and Annual Budget and Audited Financial Statement; Surety Bond; Tuition, Fees and Other Charges; Refund Policy; Enrollment Agreement; Records

Proposed Recodification: N.J.A.C. 19:44 as 19:52

Proposed New Rules: N.J.A.C. 19:52-2.8, 3.4, 3.5, 4.3, 11.1 through 11.4, 12.10, 13.1, 16.3, 18.2 and 19.1 through 19.3

Proposed Amendments: N.J.A.C. 19:52-2.1, 2.2, 2.4, 2.6, 2.7, 3.1, 4.1, 5.1, 8.5, 9.6, 10.1, 11.2, 11.3, 13.1, 16.1, 16.2, and 18.1

Proposed Repeals: N.J.A.C. 19:44-10.2 through 10.4, 11.4 and 13.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63c, 69a, 70a-b, 70e, 86, 89, 90 and 92.
Proposal Number: PRN 1994-542.

Submit written comments by November 16, 1994 to:
Antonia Z. Cowan, Senior Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Act, N.J.S.A. 5:12-1 et seq. ("Act"), provides that schools which teach gaming shall be licensed in accordance with the provisions of the Act prior to the enrollment of any student or the offering of any course to the public, N.J.S.A. 5:12-92a. This proposal is a comprehensive review and recodification of N.J.A.C. 19:44, Gaming Schools, to N.J.A.C. 19:52. The proposed new gaming school chapter provides amendments of rules previously codified in Chapter 44 and new rules for clarification of several requirements, standards and procedures, and for cross-references and organizational changes which concern gaming school license requirements, standards, persons required to be qualified, surety agreements, enrollment agreements, records, courses, facilities, tuition, financial stability and refund policy. As part of the reorganization, some rules which had been codified in Chapter 44 are proposed to be repealed. Other subchapters and sections previously codified in Chapter 44 are recodified in Chapter 52 without any change in the text.

N.J.A.C. 19:44-2.1, definitions, is proposed to be recodified as N.J.A.C. 19:52-2.1 and amended by the addition of definitions of dismissal, enrollment, operating income and surety agreement.

N.J.A.C. 19:44-2.2, License; providing goods or services, and N.J.A.C. 19:44-2.4, Registration and qualifications; corporations, are proposed to be recodified as N.J.A.C. 19:52-2.2 and 2.4 and amended to include cross-references and minor changes to some terms for clarification.

N.J.A.C. 19:44-2.6 and 2.7 are proposed to be recodified as N.J.A.C. 19:52-2.6 and 2.7 and amended to add cross-references to the financial statements now required to be included in applications pursuant to new rule N.J.A.C. 19:52-2.8. N.J.A.C. 19:52-2.8 replaces N.J.A.C. 19:44-10.2, 10.3 and 10.4. The new rule eliminates the reporting of certain information and requires greater specificity for some of the information required regarding the annual budget, financial statements and the fiscal year of the gaming schools.

N.J.A.C. 19:44-3.1, Gaming school license standards, is proposed to be recodified as N.J.A.C. 19:52-3.1 and amended to include a cross-reference and other nonsubstantive changes.

N.J.A.C. 19:52-3.4, Financial stability, is a proposed new rule to codify the evidence required to demonstrate the licensing standard of financial stability by clear and convincing evidence. N.J.A.C. 19:52-3.5 is a new rule which codifies possible Commission action if a gaming school fails to demonstrate financial stability.

N.J.A.C. 19:44-4.1, Persons required to be qualified, is proposed to be recodified as N.J.A.C. 19:52-4.1 and amended to clarify that the same qualification requirement for individuals or agencies is necessary not only for an initial license but also for a renewal license.

N.J.A.C. 19:52-4.2, Notification of new owners, management personnel, supervisory personnel or other qualifiers, is a proposed new rule which places the responsibility with the gaming school licensee or applicant to notify regulators of changes in the persons or entities required to qualify pursuant to N.J.A.C. 19:52-4.1.

N.J.A.C. 19:44-5, 6 and 7 are proposed for recodification to N.J.A.C. 19:52-5, 6 and 7 without amendment.

N.J.A.C. 19:44-8.5, Standards, is proposed to be recodified as N.J.A.C. 19:52-8.5 and amended to provide specific guidelines for the criteria to be considered by the Commission in evaluating any course or program of instruction.

N.J.A.C. 19:44-8.6, Supervisory training course, is proposed to be recodified as N.J.A.C. 19:52-8.6 and amended to provide a cross-reference.

N.J.A.C. 19:44-9.6, Security, is proposed to be recodified as N.J.A.C. 19:52-9.6 and amended to codify the circumstances under which any gaming equipment previously identified as gaming school property may be sold or transferred by the gaming school.

N.J.A.C. 19:44-10.1, Insurance, is proposed to be recodified as N.J.A.C. 19:52-10.1 and amended for clarification and a nonsubstantive change.

N.J.A.C. 19:44-10.2, 10.3 and 10.4 are being repealed. However, the requirements found in these sections are reflected in the proposed new N.J.A.C. 19:52-2.8.

N.J.A.C. 19:44-11.1, 11.2, 11.3 and 11.4 are proposed to be recodified as N.J.A.C. 19:52-11.1, 11.2, 11.3 and 11.4 and amended to clarify the purpose and form of a surety agreement, the criteria considered in the determination of the amount of the surety agreement, and circumstances of default of a surety agreement.

N.J.A.C. 19:52-12.10, Failure to pay fees or tuition, is a proposed new rule which allows a school to refuse to certify the completion of a course or hours of instruction until fees or tuition owed pursuant to an enrollment agreement are paid.

N.J.A.C. 19:44-13.1, Refund policy; generally, is proposed to be repealed and replaced with a new rule, codified as N.J.A.C. 19:52-13.1, which provides specific refund requirements to assure that the school makes any refunds owed to students promptly and to establish a time limitation for the obligation of the school to make such a refund pursuant to these rules.

N.J.A.C. 19:44-14 and 15 are proposed for recodification to N.J.A.C. 19:52-14 and 15 without amendment.

N.J.A.C. 19:44-16.1 and 16.2, Enrollment agreement and Execution; avoidance, are proposed to be recodified as N.J.A.C. 19:52-16.1 and 16.2 and amended for clarification and to amend the time period allowed for avoidance.

N.J.A.C. 19:52-16.3, Withdrawal and dismissal, is a proposed new rule which provides the circumstances which establish withdrawal and dismissal and the notice required.

N.J.A.C. 19:44-18.1, Adequate records, is proposed to be recodified as N.J.A.C. 19:52-18.1 and amended to provide more specificity as to the information required in student records. N.J.A.C. 19:52-18.2, Reports on refunds and fees or tuition due, is a proposed new rule which requires reporting on certain amounts owed by the school or to the school in order to assure appropriate distribution or collection in the event a gaming school ceases operation.

N.J.A.C. 19:52-19.1, 19.2 and 19.3 are proposed new rules which require a gaming school, in the event it is ceasing operations, to provide notice to regulators, current and certain former students, and the public; to provide an opportunity for current students to complete ongoing courses or request a refund; and to provide certain records and reports to the Commission.

Social Impact

The rules in proposed N.J.A.C. 19:52 implement the legislative requirement that a gaming school be regulated in order to protect the interests of its students and the general public and to promote the purposes of the Act. The proposed recodification with amendments and new rules is not expected to significantly change the regulation of gaming schools nor the number of gaming school licenses. The amendments and new rules clarify existing regulatory requirements with greater specificity, eliminate some requirements and provide other rules to assure the protection of students and the general public.

Economic Impact

This proposal includes rules that are expected to improve a gaming school's ability to control cash flow and to minimize outstanding liabilities. Proposed new rule N.J.A.C. 19:52-12.10 allows schools to refuse to certify the completion of a course or hours of instruction until fees or tuition owed pursuant to an enrollment agreement are paid. The proposed amendment to N.J.A.C. 19:44-13.1 establishes specific student refund policy and limits the time during which a school is obligated to refund tuition or fees to a student pursuant to these rules. However, no provision is expected to significantly increase or decrease the licensing fees paid by gaming school licensees or employees, the fees collected by the regulatory agencies, the fees and tuition paid by students or the refunds paid to students.

Regulatory Flexibility Statement

The proposed amendments and new rules affect gaming school licensees and their employees, some of which may be "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While information required in financial reports is reduced, certain new rules require additional recordkeeping and reporting concerning outstanding debts owed to a school and refunds owed to students by the school. Another new rule allows a school to withhold certification of a course completion if fees and tuition are outstanding. These new rules are expected to benefit the school by allowing improved control of cash flow and outstanding liabilities which would offset any increase in administration necessary to implement the new rules. Most of the amended rules or remaining new rules do not require new procedures, but rather clarify previously established requirements. However, the amended rules and new rules in Subchapters 18, Records, and 19, Closing of a gaming school, codify reporting and notice procedures necessary in order to protect students and the general public in the event a gaming school ceases operation. Any modification of these proposed new rules to accommodate small business is not possible without compromising the protection afforded by the rules to the gaming school students and the general public.

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

CHAPTER [44] **52**
GAMING SCHOOLS

SUBCHAPTER 1. DEFINITIONS

[19:44-1.1]**19:52-1.1** Definitions

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

...

"Dismissal" means termination by a gaming school of the enrollment of a student.

"Enrollment" means acceptance of an individual as a student in at least one course in an approved gaming school.

...

"Operating income" means income before interest expense and taxes.

...

"Surety agreement" means a contract whereby a third party agrees to guarantee the obligation of a gaming school to its students and to the Commission, including, without limitation, a surety bond, a letter of credit, and any other form of guarantee approved by the Commission.

SUBCHAPTER 2. GAMING SCHOOL LICENSE REQUIREMENTS

Recodify existing 19:44-2.1 as **19:52-2.1** (No change in text.)

[19:44-2.2]**19:52-2.2** License; providing goods or services

(a) No gaming school shall, on a regular or continuing basis, provide any goods or services to or conduct any business whatsoever with a casino, a casino licensee, its employees or agents, whether or not said goods, services or business directly relate[s] to casino or gaming activity, unless a gaming school license shall have first been issued to the gaming school **in accordance with subsections 92a and b of the Act**.

(b) Any gaming school licensee which enters into an agreement with a casino licensee or [an] applicant [for a casino license] to provide any course or program of instruction, must file with the [commission] **Commission** and [division] **Division**, prior to the commencement of such training, a copy of said agreement. Each such agreement shall describe the training to be offered in sufficient detail to allow the [commission] **Commission** to properly evaluate that training[. This description shall include but need not be limited to] **including, without limitation, the following**:

1. The **specific** course or program title;
2. The [number of persons involved in such training, and the] maximum number of students that will be permitted to enroll in any one session of [such training] **each course offered;**
3. A description of the plan of instruction to be used **for each course offered**;
4. The tuition and other charges or costs to the persons trained and to [the parties to the agreement] **any other persons**;
5. The name, license number and **any other** employer of every instructor to be utilized for such training;
6. The name, license number and **any other** employer of any support personnel to be used in such training;
7. (No change.)
8. Any certificate or other documentation to be awarded to persons successfully completing such [training] **course or** program **of instruction**.

Recodify existing 19:44-2.3 as **19:52-2.3** (No change in text.)

[19:44-2.4]**19:52-2.4** Registration and qualifications; corporations

No corporation shall be eligible to apply for or hold a gaming school license unless each corporate and noncorporate holding company and intermediary company with respect thereto shall first register with the [commission] **Commission** and establish such qualifications as the [commission] **Commission** shall deem necessary.

Recodify existing 19:44-2.5 as **19:52-2.5** (No change in text.)

[19:44-2.6]**19:52-2.6** [Application for initial] **Initial** license application **and fees**

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

1.-2. (No change.)
3. The appropriate BED form in (a)1i or ii above for each holding company of the applicant; [and]
4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. [19:44-4.1] **19:52-4.1; and**
5. Forecasted annual financial statements for the two subsequent fiscal or calendar years in accordance with N.J.A.C. 19:52-2.8(b).

[19:44-2.7]**19:52-2.7** Renewal application **and fees**

(a) An application for renewal of a gaming school license shall consist of the fee specified in N.J.A.C. 19:41-9.8 and a completed original and one copy of the following:

1.-3. (No change.)
4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form-1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. [19:44-4.1] **19:52-4.1** who has not previously been found qualified; [and]
5. An Employee License Renewal Application as set forth in N.J.A.C. 19:41-14.3 for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. [19:44-4.1] **19:52-4.1** who has previously been found qualified;
6. Audited annual financial statements for the two prior fiscal or calendar years in accordance with N.J.A.C. 19:52-2.8; and
7. Forecasted annual financial statements for the two subsequent fiscal or calendar years in accordance with N.J.A.C. 19:52-2.8.

19:52-2.8 Financial reports

(a) Each application for a gaming school license shall include the following financial statements, which shall be prepared in accordance with generally accepted accounting principles:

1. For each application for initial issuance or renewal, a forecasted annual financial statement concerning all contemplated operations of the gaming school for the next two fiscal or calendar years; and
2. For each renewal application, financial statements concerning all existing operations of the gaming school's two prior fiscal or calendar years.

(b) Each financial statement in (a) above shall include, at a minimum, the following information:

1. A balance sheet as of the end of each year;
2. An annual income statement which includes the following:
i. Net revenue, by source and amount;
ii. Expenses, by source and amount;
iii. Operating income; and
iv. Net income; and
3. An annual statement of cash flows which includes the following:
i. Cash on hand at the beginning and end of each year;
ii. Cash flows generated from or used by operating activities, by source and amount;

iii. Cash flows generated from or used by investing activities, by source and amount; and

iv. Cash flows generated from or used by financing activities, by source and amount; and

4. Such other financial information as the Commission or Division shall deem material to a showing of financial stability for a particular gaming school applicant.

(c) The applicant shall, at its own expense, cause the annual financial statements in (a)2 above to be audited by an independent certified public accountant licensed to practice in the State of New Jersey.

SUBCHAPTER 3. GAMING SCHOOL LICENSE AND STANDARDS

[19:44-3.1] **19:52-3.1** Gaming school license standards

(a) No gaming school license shall be issued unless the qualifications of the gaming school enterprise shall have first been established in accordance with sections 86, 89 and 92b of the [act] **Act** and [regulations] **the rules** of the [commission] **Commission,** which qualifications shall include[but shall not be limited to], **without limitation, the following**:

1. Its financial stability, integrity and responsibility **in accordance with the Act and N.J.A.C. 19:52-3.4**;

2.-7. (No change in text.)

Recodify existing 19:44-3.2 and 3.3 as **19:52-3.2 and 3.3** (No change in text.)

19:52-3.4 Financial stability

(a) Each gaming school licensee or applicant shall establish its financial stability by clear and convincing evidence in accordance with sections 89b(1) and 92b of the Act and this subchapter.

(b) The Commission may consider any relevant evidence of financial stability, provided, however, that a gaming school licensee or applicant shall be considered to be financially stable if it establishes by clear and convincing evidence that it meets each of the following standards:

1. The ability to meet annual operating expenses essential to the maintenance of a continuous and stable gaming school operation, by demonstrating positive annual operating income;

2. The ability to pay, as and when due, all local, State and Federal taxes, and any fees and penalties imposed pursuant to the Act and Commission rules; and

3. The ability to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts. The Commission may require that a gaming school licensee or applicant advise the Commission and Division as to its plans to meet this standard with respect to any debts due and payable within the 12 months after the end of the license term.

19:52-3.5 Failure to demonstrate financial stability

(a) In the event that a gaming school fails to demonstrate financial stability, the Commission may take such action as is necessary to fulfill the purposes of the Act and to protect the public interest and the interest of its students, including, without limitation:

1. Issuing conditional licenses, approvals or determinations;

2. Establishing an appropriate period of time in which to cure any default or failure to comply with regulations;

3. Imposing additional financial reporting requirements;

4. Placing restrictions on the transfer of cash or the assumption of liabilities;

5. Requiring the maintenance of reasonable reserves or the establishment of dedicated or trust accounts;

6. Increasing the amount of the surety agreement provision required pursuant to N.J.A.C. 19:44-11.1; or

7. Denying licensure.

SUBCHAPTER 4. PERSONS REQUIRED TO BE QUALIFIED

[19:44-4.1] **19:52-4.1** Persons required to be qualified

(a) No gaming school license shall be issued **or renewed** unless the individual qualifications of[:]

[1. Each] **each** of the following persons or agencies shall have first been established in accordance with the casino key employee standards excluding New Jersey residency as set forth in sections 92b, 86 and 89 of the Act and the regulations of the Commission:

Recodify existing i.-vi. as **1.-6.** (No change in text.)

19:52-4.2 Notification of new owners, management personnel, supervisory personnel or other qualifiers

(a) Each gaming school licensee or applicant shall notify the Commission and Division, in writing, within five days of any change in the persons or entities required to qualify pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:44-4.1.

(b) It shall be the affirmative responsibility of each gaming school licensee or applicant to ensure that all persons or entities required by the Act and Commission rules to establish their qualifications in connection with an initial or renewal application for a gaming school license have filed any required application forms in accordance with this chapter.

Recodify existing 19:44-5, 6 and 7 as **N.J.A.C. 19:52-5, 6 and 7** (No change in text.)

SUBCHAPTER 8. COURSES AND PROGRAMS OF INSTRUCTION

Recodify existing 19:44-8.1 through 8.4 as **19:52-8.1 through 8.4** (No change in text.)

[19:44-8.5]**19:52-8.5** Standards

(a) No course or program of instruction shall be approved by the Commission unless the Commission shall have first been satisfied that **such course or program of instruction affords each student an adequate opportunity to master the subject matter and affords the gaming school an adequate opportunity to determine the student's progress by testing or observation. In reviewing a course or program of instruction the Commission shall consider, without limitation, the following:**

1. [the student] **Student**-teacher [ratio], **teacher-table and table-student ratios;**

2. [physical] **Physical** facilities[,]; **and**

3. [equipment and] **Equipment,** classroom and laboratory space [shall be such as to afford each student an adequate opportunity to master the subject matter and to afford the gaming school an adequate opportunity to determine the student's progress by testing, observation or performance].

[19:44-8.6]**19:52-8.6** Supervisory training course

(a) (No change.)

(b) For purposes of N.J.A.C. [19:44-8.4] **19:52-8.4,** no student shall be deemed to have satisfactorily completed a supervisory training course pursuant to (a) above unless he or she:

1.-2. (No change.)

SUBCHAPTER 9. FACILITIES, SUPPLIES AND EQUIPMENT

Recodify existing 19:44-9.1 through 9.5 as **19:52-9.1 through 9.5** (No change in text.)

[19:44-9.6]**19:52-9.6** Security **of gaming equipment**

(a) Each gaming school shall provide adequate security [of its premises] for [the protection of] its **gaming** equipment.

(b) No [such] **gaming** equipment shall be removed from the premises of [the] **a gaming** school [or sold or transferred to any person] without the prior approval of the [commission] **Commission** [; provided, however,] **except** that gaming chips and plaques may be removed by students for practice purposes [without the necessity of any approval of the commission].

(c) Upon the prior approval of the Commission and prior written notice to the Division, a gaming school may sell or transfer its gaming equipment provided that all serial numbers or other identi-

fying markings pursuant to N.J.A.C. 19:52-9.4(b) have been removed from such gaming equipment.

Recodify existing 19:44-9.7 and 9.8 as **19:52-9.7 and 9.8** (No change in text.)

SUBCHAPTER 10. FINANCIAL STABILITY, INSURANCE [AND ANNUAL BUDGET] AND AUDITED FINANCIAL STATEMENT

[19:44-10.1]**19:52-10.1** Insurance

No gaming school certificate of operation shall be issued unless the [commission] **Commission** shall have first been satisfied that the said gaming school has insurance adequate to protect its financial interest[, to maintain its solvency] **in the physical facilities** in the case of loss by fire or other causes and to afford it reasonable protection in instances of personal and public liability.

[19:44-10.2 Annual budget

(a) An annual budget covering all existing and contemplated operations of the gaming school in a form as shall be specified and approved by the commission and the division shall accompany each application for a gaming school license and shall include, but need not be limited to, the following items:

1. Anticipated income for the two-year period year, identified by source and amount, which shall include the following:

i. Cash on hand at beginning of year;

ii. Income, actual or anticipated, by source and amount for the year; and

iii. Total anticipated income.

2. Anticipated expenditures which shall include the following categories:

i. Administration: A list of all administrative personnel by name, position and proposed salary, including living quarters, automobile and attendant services to be furnished by the school. Other expenses of administration are to be listed by purpose and amount;

ii. Instruction: A list of all instructional personnel, actually under contract or anticipated, by name, position and proposed salary, including living quarters, automobile and attendant services to be furnished by the school. Included also shall be an estimate of moneys to be expended for textbooks, library services and other expenses of instruction;

iii. Miscellaneous and auxiliary services: A list of proposed expenditures by category for health services, food services, student body activities, summer school, evening extension services, recreation and community services.

iv. Transportation expenditures: The cost of equipment or contract services for vehicle maintenance and operation or transportation and insurance;

v. Operation of school: The cost for care of buildings and grounds, heat, utilities, supplies and other expenses.

vi. Maintenance of plant: The cost for repair of buildings, grounds and equipment, replacement of equipment and other expenses;

vii. Fixed charges: The expenditures for the rental of land and buildings, old age survivors insurance, insurance for buildings and equipment, workman's compensation and liability insurance; and

viii. Capital outlay: The proposed expenditures for new buildings, remodeling buildings, additions to buildings, sites, site development and equipment.]

[19:44-10.3 Financial statements

An annual audited financial statement in a form as shall be specified and approved by the commission certified by a certified public accountant licensed to practice in the State of New Jersey shall accompany each application for a gaming school license.]

[19:44-10.4 Fiscal year

Each gaming school shall operate for financial reporting purposes on the basis of a fiscal year beginning on July 1 and ending on June 30 unless otherwise permitted by the commission.]

SUBCHAPTER 11. SURETY [BOND] **AGREEMENT**

[19:44-11.1]**19:52-11.1** Surety [bond] **agreement; expiration**

(a) In order to provide for the faithful performance of all agreements and contracts with the students enrolled in a gaming school and the payment of any fees and penalties pursuant to the Act and Commission rules, [No] **no** gaming school certificate of operation shall issue to other than a governmental agency unless the gaming school shall have first [posted] **filed** with the [commission] **Commission** a surety [bond with a responsible surety company] **agreement** acceptable to the [commission] **Commission** [in an amount to be determined by the commission conditioned for the faithful performance of all agreements and contracts with the students enrolled therein and for payment of any and all fees imposed pursuant to these regulations] **in accordance with the requirements of this subchapter.**

(b) The Commission may suspend a gaming school certificate of operation unless, at least 30 days before the expiration of the previous agreement, the gaming school shall:

1. Provide notice that the existing agreement will be renewed without material modification on or before its expiration date; or

2. File a new or modified surety agreement which will be acceptable to the Commission and effective on or before the expiration of the existing agreement.

[19:44-11.2] **19:52-11.2** Amount of surety [bond] **agreement**

[The commission shall consider the maximum potential liability of the gaming school to the students enrolled therein in determining the required amount of the surety bond.]

(a) In determining the initial amount of the surety agreement required by N.J.A.C. 19:52-11.1, the Commission shall consider, without limitation:

1. The potential liability of the gaming school to the students enrolled therein; and

2. The liability of the gaming school for the payment of all fees due pursuant to the Act and the regulations.

(b) The Commission may, at any time during the operation of a gaming school, require that the amount of the surety agreement required by N.J.A.C. 19:52-11.1 be increased based on (a) above or the following, without limitation:

1. The imposition of a monetary penalty upon the gaming school by the Commission for a violation of the Act or Commission rules, or a complaint filed by the Division against the gaming school which may result in such a monetary penalty;

2. The reasonable likelihood that the gaming school will cease operations under circumstances which will result in administrative expense to the Commission or Division; or

3. The reasonable likelihood that the gaming school will be unable to demonstrate its qualifications pursuant to the Act and N.J.A.C. 19:52-3.1.

[19:44-11.3]**19:52-11.3** Notice, form of surety [bond] **agreement**

[The] **(a)** Any surety [bond] **agreement filed with the Commission pursuant to N.J.A.C. 19:52-11.1** shall be [drawn] **issued** in favor of the "New Jersey Casino Control Commission" [on bond forms provided or approved by the commission which contain a provision requiring the surety company to provide both the commission and the gaming school at least 30 days notice in writing before withdrawing as surety on the bond or modifying materially any term or condition of the bond. In the event of any such withdrawal by the surety company, a failure of the said gaming school to post a new surety bond prior to the expiration of the said 30 day period shall be grounds for suspension of its gaming school certificate of operation.] **and contain the following:**

1. The period of time for which the form of surety agreement is effective;

2. The amount of the surety agreement;

3. A requirement that, at least 30 days before the expiration of the surety agreement by its terms, the issuer of the surety agreement shall provide to the Commission and the gaming school one of the following:

i. Notice that the surety agreement will be renewed without a material modification on or before its expiration date; or

ii. Notice that the surety agreement will not be renewed;

4. A requirement that the obligation created by the surety agreement shall become immediately due and payable upon demand by the Commission, without verification by the issuer, and shall not be subject to refutation, denial or contest in the event of default by the gaming school pursuant to N.J.A.C. 19:52-11.4; and

5. A provision specifying the following:

i. The Commission will hold and distribute funds required for the satisfaction of any claims pursuant to N.J.A.C. 19:52-11.1;

ii. If the Commission determines that less than the face amount of the surety agreement is sufficient to satisfy any claims, the Commission may demand payment of the lesser amount; and

iii. Any failure by the Commission to demand part or all of the face amount of the surety agreement shall not relieve the issuer's obligations upon subsequent demand of the Commission at any time prior to the expiration date of the surety agreement.

[19:44-11.4 Exemptions

The Commission may exempt any gaming school from the requirements of this section in any instance in which it is satisfied that a gaming school has provided other financial assurances which adequately guarantees its faithful performance of all agreements and contracts with the students enrolled therein and for payment of any and all fees unpaid pursuant to these regulations.]

19:52-11.4 Default by the gaming school

(a) A gaming school shall be deemed to be in default of its obligations to its students and to the Commission in the event of the following:

1. Revocation or denial by the Commission of the gaming school license;

2. Suspension by the Commission of the gaming school license or certificate of operation for a period of more than 120 days;

3. Failure by the gaming school to apply for a renewal of its gaming school license in accordance with Commission rules;

4. The gaming school's intent to cease operations, as evidenced by notice of intent pursuant to N.J.A.C. 19:52-19 or other evidence of such intent;

5. A determination by the Commission that the gaming school has failed to perform agreements and contracts with the students enrolled in the gaming school;

6. A determination by the Commission that the gaming school has failed to pay fees or monetary penalties due pursuant to the Act and Commission rules; or

7. A determination by the Commission that the gaming school has failed to fulfill the purposes of the Act by failing to protect the public interest or the interests of its students.

SUBCHAPTER 12. TUITION, FEES AND OTHER CHARGES

Recodify existing 19:44-12.1 through 12.9 as **19:52-12.1 through 12.9** (No change in text.)

19:52-12.10 Failure to pay fees or tuition

Notwithstanding that a student has otherwise satisfactorily completed a course or program of instruction, a gaming school may withhold certification pursuant to N.J.A.C. 19:52-8.4 until the student's fees or tuition are paid in full, provided that such student is notified by hand-delivery or by certified mail, return receipt requested.

SUBCHAPTER 13. REFUND POLICY

[19:44-13.1]**19:52-13.1** Refund policy[; generally]

[(a) In the event of student withdrawal or dismissal prior to the completion of a course or program of instruction, the following refund policy shall apply except that the school may determine its refund policy on a more liberal basis:

1. The school may retain all or part of the registration fee;

2. The school may require that all books, equipment and tools purchased by the student be retained by the student; and

3. The school may retain a pro rata portion of the tuition calculated on a weekly basis.]

(a) Each gaming school licensee shall, within 30 days of the date that any course or program of instruction is cancelled or discontinued prior to completion, provide a full refund of all fees and tuition paid for each student enrolled in such course or program of instruction.

(b) Each gaming school licensee shall provide a full refund of all fees and tuition paid for any student within 30 days of the receipt of notice from such student that his or her enrollment is void pursuant to N.J.A.C. 19:52-16.2.

(c) Each gaming school shall provide a refund of paid tuition on a pro rata basis within 30 days of the date that a student withdraws or is dismissed prior to completion of a course or program of instruction.

(d) The obligation of any gaming school licensee to make a refund pursuant to this section shall not extend beyond two years from the date of the cancellation, dismissal or notice of voiding or withdrawal provided that the gaming school exercises due diligence in attempting to make the refund, as evidenced by records maintained pursuant to N.J.A.C. 19:52-18.1(a)6.

[19:44-13.2 Discontinuance of course or program

In the event of discontinuance of a course or program of instruction by the school, the school may be required by the commission to refund to the student in full or in part any fee paid by the student for the course or program of instruction.]

Recodify existing 19:44-14 and 15 as **N.J.A.C. 19:52-14 and 15** (No change in text.)

SUBCHAPTER 16. ENROLLMENT AGREEMENT

[19:44-16.1]**19:52-16.1** Enrollment agreement

(a) Each gaming school shall use an enrollment agreement which shall be the contract between the school and the student [and shall:]. **Such agreement shall be**

[1. Be] prepared in duplicate[,] **and** dated and signed by the student and a designated representative of the school[; the student shall be furnished a copy of the agreement immediately upon execution;] **, and shall contain, at a minimum, the following information:**

[2.]**1.** [Contain the] **The** name, address and telephone number of the school;

[3.]**2.** [Contain pertinent information on the] **The** name, number and length of the course or program of instruction, the tuition and other costs **including any registration or application fee** and the methods of payment;

[4.]**3.** [Contain information regarding the] **The** scheduled hours of instruction, the date of the start of the program and the approximate completion date;

[5.]**4.** [Contain a statement of registration fee and the] **The school's** refund policy in the event **that a course or program of instruction is cancelled or discontinued or** a student [does not start the course or discontinues] **withdraws or is dismissed** prior to completion **of the course or program of instruction**;

[6.]**5.** [Contain a] **A** statement of the school policy regarding [termination] the basis for dismissal [of enrollment] of students or a specific reference to the location in the school bulletin where such policy is enumerated;

[7.]**6.** [Contain] **The following statement, which shall be printed** on the first page in 14 point boldface print or larger [the following statement]: "Graduation from this School does not assure the graduate that he or she will be licensed by the New Jersey Casino Control Commission. All individuals must meet the Commission's standards to work in a Casino. Any questions or problems concerning this school which have **not** been satisfactorily answered or resolved by the institution should be directed in writing to the Casino Control Commission";

[8.]**7.** [Contain] **The following statement, which shall be printed** immediately above the student's signature in 14 point boldface print or larger [the following statement]: "This agreement may be voided by the student within [four] **three** business days after receipt by [him] **the student** of a copy thereof executed by an authorized school official by notifying the school in writing[,] within [that time period,] **the three business days** of his **or her** intent not to be bound by the agreement"; and

[9.]**8.** [Contain] **The following, which shall be printed** on the same page that the student's signature is required [, the]:

i. The total financial obligation [that the student shall incur] **incurred** upon enrollment, in numbers or letters or both which are of larger print than the rest of the agreement[.]**;**

ii. The source of payment for the financial obligation and, if such source of payment is a loan or a third party, any amount to be retained by the student for specified expenses;

iii. Any payment or installment payment plan;

iv. The date when all fees are due and payable; and

v. The school's policy regarding the failure of a student to meet his or her financial obligation or a specific reference to the location in the school bulletin where such policy is set forth.

[19:44-16.2]**19:52-16.2** [Execution;] **Effective date;** avoidance

(a) [The] **An** enrollment agreement [may be executed at the school, the home or by mail. The agreement] shall [not] become binding [until] **upon** receipt by the student of **the following:**

1. [a] **A** copy [thereof] **of the agreement,** executed by an authorized school official[.]**; and**

2. A written receipt for any downpayment, specifying the fees or expenses included therein.

(b) Notwithstanding (a) above, an [The] enrollment agreement[, however,] shall be void if the student, within [four] **three** business days after his **or her** receipt of the executed copy thereof, notifies the school in writing **by hand delivery or by certified mail, return receipt requested,** of his **or her** intent not to be bound by such agreement.

19:52-16.3 Withdrawal; dismissal

(a) A student may withdraw from a course or program of instruction at any time by providing written notice to the gaming school by hand delivery or by certified mail, return receipt requested.

(b) If a student fails to attend four consecutive classes or 20 class hours without notifying the gaming school, the school may presume an intent to withdraw effective the next business day, provided that the gaming school provides written notice of withdrawal to the student by hand delivery or by certified mail, return receipt requested.

(c) A gaming school may dismiss a student for failure to pay any fees for tuition due pursuant to his or her enrollment agreement, or for any conduct which is described in the official school bulletin as grounds for dismissal provided that the gaming school provides written notice of dismissal to the student by hand-delivery or by certified mail, return receipt requested.

Recodify existing 19:44-17 as **N.J.A.C. 19:52-17** (No change in text.)

SUBCHAPTER 18. RECORDS

[19:44-18.1]**19:52-18.1** Adequate records

(a) The schools shall maintain, for at least five years, in a place secure from theft or destruction, adequate records which shall be made available to the [commission] **Commission** or [division] **Division** upon request. These records shall include:

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

4. Records for each student [showing] **which include a signed and dated enrollment agreement, daily hours of** attendance[, absence] **and absences,** [progress,] **test** grades, **and the starting and** completion [date] **dates of each** course or program of instruction [and such placement information as is known at the time of completion of course or program];

5. A personnel file on each employee of the school, including sales representatives; **and**

[6. Enrollment agreements and applications for enrollment;]

[7.]**6.** A financial record for each student [showing the]**, including students who are dismissed or withdrawn or whose enrollment has been cancelled, which record shall be signed by the official of the school with primary responsibility for the maintenance of financial records, and which shall include the following information:**

i. The full name and date of birth of the student;

ii. The course title and number for each course or program of instruction in which the student was enrolled, the starting date and the date of completion, cancellation, dismissal or withdrawal for each such course or program;

iii. Any downpayment made for the student and a description of the specific fee or expense included therein;

iv. The amount of money due from [him for his tuition and other charges and any refunds due or paid to him] **the student for tuition, any application or registration fees, and the date, amount and method of payment made to the school;**

v. If payment is on an installment plan, the schedule for payments and the date, amount and balance owed;

vi. If any amount due is paid by any party other than the student, the name of the payor, the dates and amount of any payments made directly to the school or to the student and any obligation for repayment by the student;

vii. Any efforts made by the school to collect any amount which is past due; and

viii. For any refund pursuant to N.J.A.C. 19:52-13.1, the date of cancellation, withdrawal or dismissal; the amount of prorated tuition owed to the student; the date, check number and amount of the refund check and the date and description of any unsuccessful refund efforts.

[8. Records for each year showing the total number of students applying for entry, total number of students accepted in each course or in each program and the total number of students graduated from each course or program.]

(b) (No change.)

19:52-18.2 Reports on refunds and fees or tuition due

(a) Each gaming school shall file the following information with the Commission within 10 days of the end of each calendar quarter:

1. The total prorated tuition refunds owed by the school to all students;

2. The total outstanding fees or tuition owed to the school by all students whose enrollment has been withdrawn or dismissed; and

3. The following for each student in (a)1 or 2 above:

i. Name of student;

ii. Title and number of courses in which enrolled;

iii. Start and completion dates and number of class hours for each such course or program of instruction;

iv. Total application, registration and tuition fees pursuant to his or her enrollment agreement;

v. The amount paid and the amount due; and

vi. Date of the withdrawal, cancellation, or dismissal, the reason therefor, and the hours of instruction received prior to withdrawal, cancellation, or dismissal.

SUBCHAPTER 19. CLOSING OF A GAMING SCHOOL

19:52-19.1 Notice of intent to cease operations

(a) Each gaming school shall immediately notify the Commission and the Division, in writing, as soon as it intends to cease operation. Such notice shall specify the anticipated closing date of the school and the date on which the last class will be conducted.

(b) Any gaming school which intends to cease operation pursuant to (a) above shall immediately provide the following information, by regular or certified mail, to each currently enrolled student and any former student who is owed a refund from the gaming school or who owes the school fees or tuition:

1. Notice of the date of closing; and

2. The refund policy of the gaming school.

(c) In addition to any other notice provided pursuant to this section, a gaming school shall provide general notice of its intent to cease operation by, at a minimum, the following:

1. One notice in each of the following publications with distribution in the county where the gaming school is located:

i. A daily newspaper;

ii. A weekly newspaper; and

iii. A monthly gaming industry journal; and

2. Posting such notice in public view on the school premises.

19:52-19.2 Cancellation of courses

(a) Upon notice of closing pursuant to N.J.A.C. 19:52-19.1 above, a gaming school may cancel any course or program of instruction that is not currently in session.

(b) For any course or program of instruction that is currently in session, the gaming school shall provide a 60-day period within which each student enrolled therein may either complete the course, or withdraw from the course and request a refund of a prorated portion of their paid tuition in accordance with N.J.A.C. 19:52-13.1(c).

19:52-19.3 Reporting and recordkeeping

(a) Within 10 days of the date of closing, a gaming school shall file a report in accordance with N.J.A.C. 19:52-18.2 for the last quarter or any portion of the quarter in which the school was operating through the last day of operation.

(b) Within 10 days of the date of closing, a gaming school shall submit to the Commission all student records maintained in accordance with N.J.A.C. 19:52-18.1(b) for the five-year period immediately preceding the closing. The records of any student who has requested but not yet received a refund pursuant to N.J.A.C. 19:52-19.2(b)2, or who is eligible for, but has not yet requested, such a refund, shall be submitted in a separate, alphabetical file designated as "Outstanding Claims."

(a)

CASINO CONTROL COMMISSION

Taxes

Proposed Readoption: N.J.A.C. 19:54

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 70e, 144a and f and 144.1c.

Proposal Number: PRN 1994-543.

Submit written comments by November 16, 1994 to:
Mary S. LaMantia, Senior Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:54, Taxes, is scheduled to expire on December 15, 1994. N.J.A.C. 19:54-1 was originally adopted by the Casino Control Commission ("Commission") in 1978. See 10 N.J.R. 210(c), 10 N.J.R. 305(f). The rules implement provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., which impose an eight percent tax upon the gross revenue of operating casinos. N.J.S.A. 5:12-144. The proceeds of this tax are deposited into the Casino Revenue Fund, and are used to fund various programs that benefit senior citizens and disabled persons. The rules enable the Commission to assure that the gross revenue tax is computed, collected, verified and enforced in an efficient and reliable manner. Subchapter 1 was readopted without amendment in 1983.

In 1984, rules concerning the investment alternative tax obligations of casino licensees under subsections 144b through i of the Act were adopted as Subchapter 2.

A new Subchapter 3 was adopted in 1986. These rules implement the Commission's obligation to provide a standard upon which a casino licensee may petition the Casino Reinvestment Development Authority for a deferral of an investment obligation under a claim of "extreme financial hardship." See N.J.S.A. 5:12-144.1c.

In 1988, the Commission readopted Chapter 54 without amendment. The chapter was again readopted in 1993, with amendments to conform to legislative amendments to the Act. See 25 N.J.R. 280(a); 25 N.J.R. 1524(a). Among other things, Subchapter 1 was amended to reflect the Legislature's transfer of tax enforcement responsibilities from the State Treasurer to the Commission. Rules in Subchapter 2 regarding the investment alternative tax were repealed, since in 1986 the responsibility for implementing such provisions was transferred to the Casino Reinvestment Development Authority. The rules in Subchapter 3 were recodified as Subchapter 2. In addition, the Commission established an early expiration date of December 15, 1994, as part of an ongoing revision of its readoption schedule for Title 19.

The Commission has continued to review Chapter 54. A recent proposal would amend N.J.A.C. 19:54-1.6 to clarify the definition of taxable revenue consistent with the Casino Control Act. The proposal requires casino licensees to count as part of gross revenue the face value of "prize tokens" found in all-purpose hoppers, slot drop buckets or slot drop boxes. The proposal also clarifies that for purposes of the gross revenue tax, invalid counter checks are to be treated as cash received from gaming operations. 26 N.J.R. 2872(a).

These rules have provided an efficient and effective mechanism for the enforcement of the tax obligations imposed by the Act. In that these rules have continued to be reviewed since their recent readoption, the chapter is proposed for readoption at this time without amendment.

Social Impact

The Act imposes an annual tax of eight percent on the gross revenues of operating casinos. Such moneys are deposits in the Casino Revenue Fund, and are used to fund reductions in property taxes and utilities and other programs for senior citizens and disabled persons in New Jersey. The rules in Chapter 54 have assured the proper and effective verification and collection of the tax revenues utilized for these programs. The failure to readopt these rules would seriously impair the programs which rely on the proper collection of the gross revenue tax by the Commission.

Economic Impact

The rules in Chapter 54 facilitate efficient and accurate assessment and collection of the gross revenue tax obligations imposed upon casino operators by the Act. The Commission, as well as each casino operator, incur the costs of implementing and enforcing these standards and procedures. Nonetheless, the rules in Chapter 54 are an effective, essential mechanism for the enforcement of tax obligations pursuant to the Act. The failure to readopt these rules could potentially jeopardize the numerous social programs that the Legislature has chosen to fund with moneys deposited in the Casino Revenue Fund.

Regulatory Flexibility Statement

The rules proposed for readoption affect only the operations of casino licensees, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:54.

RULE ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

NEW JERSEY HISTORIC TRUST

Historic Preservation Grant Program

Readoption: N.J.A.C. 7:4A

Proposed: August 1, 1994 at 26 N.J.R. 3105(a).
Adopted: September 14, 1994 by the New Jersey Historic Trust, Arijit De, Chair.
Filed: September 16, 1994 as R.1994 d.521, **without change**.
Authority: N.J.S.A. 13:1B-15.111.
DEP Docket Number: 32-94-06/128.
Effective Date: September 16, 1994.
Expiration Date: September 16, 1999.

Summary of Public Comments and Agency Responses:

The New Jersey Historic Trust received one written comment from the commenter listed below during the public comment period.

1. Charles P. Newcomb, Assistant Director, Office of State Planning, Department of Treasury

A summary of the comment, timely submitted, and the Trust's response follows:

COMMENT: The commenter expressed concern that the goals and strategies set forth in the New Jersey State Development and Redevelopment Plan, dated June 12, 1992, be included as part of the review and ranking criteria used by the Trust in awarding grants under this program.

RESPONSE: The Trust recognizes the need for consistency and cooperation with other State programs addressing historic preservation throughout the State. However, the rules being readopted here are for a grant program for which all competitive grant award decisions have been made. No new ranking decisions will be made under the program. This readoption of the operating rules for this program remains necessary as it will be several years before all grants made under this program are completed. However, the Trust will consider these issues in the rulemaking setting forth ranking criteria for its new grant program. The new rules N.J.A.C. 7:4C were proposed on August 15, 1994 at 26 N.J.R. 3253(b).

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:4A.

(b)

DIVISION OF PUBLICLY FUNDED SITE REMEDIATION

Notice of Administrative Correction

New Jersey Pollutant Discharge Elimination System Permit-by-rule Authorization for Ground Water Discharges Necessary for Remediation of Contaminated Sites

N.J.A.C. 7:14A-2.15

Take notice that the Department of Environmental Protection has discovered a typographic error in the text of N.J.A.C. 7:14A-2.15(a)1 adopted effective September 6, 1994 at 26 N.J.R. 3709(a). The term "in site biotreatability studies" should be "in situ biotreatability studies." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:14A-2.15 Permit-by-rule authorization for ground water discharges necessary for remediation of contaminated sites

(a) When the Department is remediating a contaminated site as defined at N.J.A.C. 7:26C-1.3, or an owner or operator of a contaminated site is conducting remediation under Department oversight pursuant to the rules at N.J.A.C. 7:14B implementing the Underground Storage of Hazardous Substances Act, the requirements of the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq., as amended), the requirements of the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11), or the Procedures for Department Oversight of the Remediation of Contaminated Sites at N.J.A.C. 7:26C, and is in receipt of a notification of authorization by the Department as specified in (b) below, the following ground water discharges are authorized by permit-by-rule.

1. Discharges from pilot treatment plants for the purpose of obtaining engineering design data where the discharge will not last more than 90 days from the first date of discharge, except for discharges related to [in site] **in situ** biotreatability studies where the discharge will not last more than 180 days from the first date of discharge;

2.-4. (No change.)

(b) (No change.)

(c)

OFFICE OF LAND AND WATER PLANNING

Statewide Water Quality Management Planning

Readoption: N.J.A.C. 7:15

Proposed: August 1, 1994 at 26 N.J.R. 3106(a).
Adopted: September 20, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Filed: September 20, 1994 as R.1994 d.525, **without change**.
Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and 58:11A-1 et seq.
DEP Docket Number: 34-94-6/469.
Effective Date: September 22, 1994.
Expiration Date: September 22, 1999.

The Department of Environmental Protection (Department) on August 1, 1994 proposed to readopt the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15) without change to ensure continuity of the water quality management planning program required by the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.). In the Summary to the proposal, the Department also stated its intention to develop extensive modifications to the rules to reduce administrative complexity and shorten review schedules while increasing the environmental benefits of water quality management planning, the role of water quality and wastewater management planning agencies and the public, and the connection between these rules and the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A which are also being revised.

Six comments were received by the Department in response to the proposed readoption without change. The comments are summarized below with Department responses. The Department is hereby providing public notice that the Statewide Water Quality Management Planning rules have been readopted without change. The Department intends and will attempt to propose the modifications to these rules in early 1995, at or about the same time that it proposes the revised NJPDES rules, to allow the public to review and comment upon both proposals at the same time. The Department thanks the agencies and others who commented on this readoption for their time and interest in water quality management planning, and will continue to consider their comments and those received regarding the Interested Party Review document of February 1994 as it formulates the modifications to N.J.A.C. 7:15 for a future proposal.

Summary of Public Comments and Agency Responses:

The following persons submitted written comments within the public comment period, which closed on August 31, 1994:

1. Jon Berry, Skylands CLEAN, Inc. (Ringwood)
2. Abigail Fair, Association of New Jersey Environmental Commissions
3. William Neil, New Jersey Audubon Society
4. Russell Nerlick, Western Monmouth Utilities Authority
5. Constance Stroh, Upper Rockaway River Watershed Association
6. Nancy Wittenberg, New Jersey Builders Association

1. COMMENT: The Department should not propose to simply readopt N.J.A.C. 7:15 without any changes. The Department held meetings in the spring of 1994 and outlined some interim changes it led the public to believe would be made. None of these changes were in the proposal. The rules should be amended to include the following provisions:

- A requirement for environmental assessment in the water quality, wastewater management **planning** phase rather than the permitting phase.
- Required consideration of alternatives based on analysis of critical environmental factors.
- Incorporation of the policies protecting natural resources established under the State Development and Redevelopment Plan, so that DEP staff will have a base for evaluating alternatives analysis, and to provide applicants as well as staff and the public with information they will need to evaluate environmental assessments.
- Policies to address water resource conflicts (such as where water supply issues may conflict with wastewater discharge or nonpoint source pollution issues) so that staff may deal consistently with these potential conflicts. The policies should include prohibiting transfer of water between watersheds and prohibiting promotion of development that would exceed natural water supply capacities.
- Provision of public notice of proposed amendments to Water Quality Management Plans in the New Jersey Register and the DEP Bulletin as well as in area newspapers, to give the public adequate chance to participate in these important planning processes.

Without these changes, the readoption prevents DEP staff from requiring that municipalities or sewer authorities pay adequate attention to environmental protection and cumulative impacts when planning wastewater infrastructure. The readoption actually reduces opportunities for meaningful public participation in wastewater infrastructure planning contrary to the Clean Water Act, because without consideration of alternatives and selection of the alternative that is least environmentally damaging, the public has little opportunity to participate meaningfully to the water quality protection and wastewater planning process. (2)

RESPONSE: The Department appreciates the concern expressed by the commenter regarding readopting the existing rules instead of modifying them. The interest party review held early in 1994 was part of an ongoing effort to solicit public comments and ideas that the Department should consider during its development of modifications to the existing rules. However, there was too little time between the time of the public meetings and the expiration date of this chapter pursuant to Executive Order No. 66(1978). Therefore, the rules are being readopted while the Department continues its work on the new provisions. While this sequence of events is not optimal, it is preferable to having the existing rules lapse.

2. COMMENT: The commenter expressed strong concern that the Department chose not to adopt modifications to the Statewide Water Quality Management Planning rules at this time that would implement the State Development and Redevelopment Plan. The two years since the passage of the State Planning Act has been sufficient time to incorporate the values of the state plan, especially those that proposed taxpayer savings by preventing inappropriate infrastructure extension to rural sensitive environments. The proposal of the existing regulations for readoption, without any reference to the State Development and Redevelopment Plan planning areas, is possibly in violation of former Governor Florio's Executive Order No. 114, issued in January of 1994, which required each executive agency to take actions within their jurisdictions to implement the Plan.

The commenter was troubled by the rationale expressed in the proposal Summary, that is, that the Department chose to deal with a backlog of WQMP amendments submitted by regional and local planning agencies and by private section interests. Are all of these requests appropriate to protect watershed areas of the Highlands from growth in sensitive environmental areas. Language should be drafted which would prevent WQMP amendments from being grandfathered into Planning Area 5, the most sensitive one created under State Plan guidelines, until the new rules can thoroughly incorporate the proposed protective features of the State Plan values into the actual binding regulations. Otherwise, the five years of effort by the State Planning Commission to achieve cross acceptance of the State Plan will be compromised. (3)

RESPONSE: The Department recognizes the importance and value of the State Development and Redevelopment Plan, adopted June 12, 1992 by the State Planning Commission. In ongoing discussions with the Office of State Planning, the Department is exploring methods for incorporating appropriate policies, standards and use of the planning areas into the Statewide Water Quality Management Planning rules. However, the rules would have lapsed unless readopted at this time. The Department determined that continuing the current rules in effect is in the best interests of the State and that policies regarding the State Development and Redevelopment Plan should be addressed at the same time as other critical issues. It was for this reason that the Department determined that the Executive Order No. 144(January 1994) would best be served by continuing the rule development process while simultaneously readopting the current rules. Regarding pending proposed amendments to Areawide Water Quality Management Plans, these proposals will be reviewed according to the rules in place at the time of their receipt in a form complete for review by the Department. The Department has some latitude within the existing rules to consider environmental impacts similar to those highlighted by the State Development and Redevelopment Plan and will work to ensure that the Areawide Water Quality Management Plans do not work conflict with goals of the State Development and Redevelopment Plan to the extent possible. Modification of the rules at this time to incorporate the prohibition of amendments within Planning Area 5 would be too substantive a change to be made on adoption under the Rules on Agency Rulemaking, N.J.A.C. 1:30.

3. COMMENT: The commenter recognized that the Department is proposing to readopt N.J.A.C. 7:15 without change at this time because it is developing a proposal which will include revisions to these rules in the near future. The commenter submitted comments regarding the Interested Party Review document issued in February 1994 and consequently is not submitting specific comments on this proposed readoption without change. (6)

RESPONSE: The Department acknowledges receipt of the comments regarding the February 1994 Interested Party Review document and is considering them along with all other comments submitted as it develops modifications to the rules.

4. COMMENT: The proposed readoption violates the Clean Water Act and the Executive Order for agency consistency with the State Development and Redevelopment Plan. The regulation should be amended to provide new criteria to evaluate wastewater management plan amendments, including consistency with the State Development and Redevelopment Plan and cumulative impacts to water quality. Federal grant regulations require environmental impact assessments and fiscal analyses; they require consideration of potential degradation to critical environmental features, secondary impacts and project cost-effectiveness. New Jersey's regulations should be minimally equivalent to Federal regulations. Additionally, the regulations should provide that plan amendments are consistent with Federal facility grant constraints. (1)

RESPONSE: The Department's rules are consistent with all Federal regulations regarding environmental impact assessment and facility grant constraints, as evidenced by continued support from the U.S. Environmental Protection Agency of the Department's annual grant requests for program implementation. That is not to say, however, that the process cannot be and should not be improved both in terms of environmental benefits and program administration. For this reason, the Department does intend to modify at a later date its environmental assessment requirements within these rules and to incorporate the environmental assessment provisions of the NJPDES rules (regarding Discharge Allocation Certificates). The Department intends to increase the number of objective environmental policy statements within the rules to reduce environmental impacts of WQMP amendments, while reducing requirements for information that has little or no relevance to environmental management. The responses to Comments 1 and 2 provide more detail on the reasons the Department is readopting N.J.A.C. 7:15 without change at this time.

5. COMMENT: The commenter questioned the Department's decision to delay rule changes and to focus on reducing existing backlogs of Wastewater Management Plans and amendments to Water Quality Management Plans. Is it the intention of the Department to grandfather such backlogged plans from the environmental review requirements of the anticipated that will include significant amendments to the existing rules? If the Department intends to allow these plans to go forward

without more exacting environmental impact analyses, then the readoption will have severe secondary impacts which will effectively contribute to the destruction of natural resources of the Highlands, much of which is designated Planning Area 5 in the State Development and Redevelopment Plan. Unless the Department requires NEPA-type environmental impact analyses of expansions of sewer service areas and sewer plants for Wastewater Management Plans in the Highlands area, the Department will be responsible for the multitude of secondary impacts that result from the continuation of suburban sprawl. (5)

RESPONSE: The Department has stated its strong support for the long-term protection of the Highlands area so that the natural resources of the area are sustained for both public and private uses. The anticipated changes to the Statewide Water Quality Management Planning rules will reflect this commitment. Regarding the grandfathering for existing plans and amendments, the Department's response to Comment 2 addresses this issue.

6. COMMENT: The Department should use the proposed readoption to make minor changes in the rules which would significantly reduce the workload of the Department and eliminate the need for what are now considered to be changes in the Wastewater Management Plans. The rules should be amended to eliminate the current distinction between septic tank areas (discharges to ground water less than 2,000 gallons per day) and on-site wastewater disposal areas (for discharges to ground water greater than 2,000 gallons per day, since both types of wastewater disposal facilities results in the discharge from individual projects into the ground water, the planning document should not distinguish between them. If a project of a commercial or industrial nature is in an area presently designated for septic service and the applicant decides to propose installation of a treatment plant with ground water disposal, under the current regulations the Department requires an amendment to the Wastewater Management Plan, a process that generally requires a year to complete. The Department could reduce delays currently imposed on minor projects by adopting a rule change such that minor projects, say up to 8,000 gallons per day, could be built utilizing treatment units rather than simple septic tanks in areas currently designated as either on-site disposal or septic tank areas. This simple change in the rules would make it possible for many small projects throughout the State to proceed without the need for a Wastewater Management Plan Amendment, thus reducing the costs of the project and increasing economic activity within the State. (4)

RESPONSE: The Department believes that any modification to address the current requirement to differentiate between septic systems and major discharges to ground water is best considered in the context of the broader rule modifications being developed. The Department will take the suggestion under advisement, and consider it in light of the requirements of the Treatment Works Approval rules, the New Jersey Pollutant Discharge Elimination System rules and the Statewide Water Quality Management Planning rules. Although this issue does arise periodically, the number of cases affected in any year is not so large that the delay in addressing the issue will significantly affect the Department's WQMP amendment workload.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:15.

(a)

AIR QUALITY REGULATION PROGRAM

Notice of Administrative Change
Air Pollution Control
Operating Permits
Applicability
N.J.A.C. 7:27-8.2

Take notice that the Department of Environmental Protection has requested, and the Office of Administrative Law has agreed to permit, an administrative change to N.J.A.C. 7:27-8.2(a)15 as adopted effective October 3, 1994 at 26 N.J.R. 3943(b). The phrase "except for aeration basins, lagoons, and settling basins at publicly owned treatment works or domestic treatment works" in N.J.A.C. 7:27-8.2(a)15 is redundant as this exception to the preconstruction permit and operating permit requirement is also set forth in N.J.A.C. 7:27-8.2(b)4. The administrative change would eliminate the redundancy. This notice of administrative change is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the changed rule follows (deletion indicated in brackets [thus]):

7:27-8.2 Applicability

(a) New or altered equipment and control apparatus for which a preconstruction permit and an operating certificate are required, pursuant to the provisions of N.J.A.C. 7:27-8.3, include:

1.-14. (No change.)

15. Any waste or water treatment equipment which may emit air contaminants including, but not limited to, air stripping equipment, aeration basins, surface impoundments, lagoons, sludge tanks, dewatering equipment, soil cleaning equipment, conveying equipment, digesters, thickeners, flocculators, driers, fixation equipment, composting equipment, pelletizing equipment and grit classifying equipment[; except for aeration basins, lagoons, and settling basins at publicly owned treatment works or domestic treatment works;], if the concentration in the water of each TXS equals or exceeds 100 parts per billion by weight or the total concentration in the water of VOC equals or exceeds 3,500 parts per billion by weight;

16.-20. (No change.)

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

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration
Recovery of Payments and Sanctions
Recovery of Payments Correctly Made
Adopted Amendment: N.J.A.C. 10:49-14.1

Proposed: July 5, 1994 at 26 N.J.R. 2757(a).
Adopted: September 19, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: September 20, 1994 as R.1994 d.524, **without change.**
Authority: N.J.S.A. 30:4D-3i, 7, 7a, b, c, and r; N.J.S.A. 30:4D-7.2a and 7.2aa; P.L. 1992, c.115.
Effective Date: October 17, 1994.
Expiration Date: August 17, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:49-14.1 Recovery of payments correctly made

(a) Correctly paid benefits shall only be recoverable from the estate of an individual who was 65 years of age or older when he or she received medical assistance if:

1. (No change.)

2. For estates coming into being between February 1984 and October 20, 1992, the individual leaves no surviving child;

3. For estates coming into being on or after October 21, 1992, the individual leaves no surviving child who is under the age of 21 or any surviving blind or permanently and totally disabled children;

4. The amount to be recovered is in excess of $500.00; and

5. The gross estate is in excess of $3,000.

(b) Paragraphs (a)4 and 5 above shall apply to recoveries from the estates of individuals who died on or after July 20, 1981, the effective date of P.L. 1981, c.217 (N.J.S.A. 30:4D-7.2a).

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospice Services Manual

Determination of Medical Requirements for Medicaid Hospice Recipients and Personal Care Assistant Services

Adopted Amendments: N.J.A.C. 10:53A-3.2 and 3.4; Appendix, Form #4 (FD-381)

Proposed: March 21, 1994 at 26 N.J.R. 1283(a).

Adopted: September 13, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: September 14, 1994 as R.1994 d.508, **without change**.

Authority: N.J.S.A. 30:4D-3i(1) through (7); N.J.S.A. 30:4D-6b(20); N.J.S.A. 30:4D-7, 7a, b, and c.

Effective Date: October 17, 1994.

Expiration Date: November 2, 1997.

Summary of Public Comments and Agency Responses:

There was one comment received within the comment period from Donald L. Pendley, Executive Director, the New Jersey Hospice Organization, Center for Health Affairs, Princeton.

COMMENT: The commenter requested the agency rescind the proposed changes requiring additional medical certification of a terminal prognosis if the individual is to continue to receive Medicaid benefits for hospice services beyond the initial six-month benefit period. The commenter was also concerned that hospice patients would be subject to additional testing during a very difficult time in their lives.

RESPONSE: The intention of the amendments was to validate the medical condition for those Medicaid recipients who survive beyond the time frame of the initial certification of the terminal illness received from the attending physician. The amended rule requests the attending physician to recertify the need for continued hospice care and to send the existing medical documentation available to support the recertification. It does not subject the patient to any further assessment or testing. It does enhance the documentation received by Medicaid to determine if the patient is disabled according to the criteria used by the Disability Review Section of DMAHS.

Full text of the adoption follows:

10:53A-3.2 Application policy for medical and financial eligibility for hospice services

(a) The application policy for completion of the medical criteria for receiving hospice services is as follows:

1.-2. (No change.)

3. For those cases in which the disability determination for Medicaid eligibility is within the jurisdiction of the Disability Review Section, Division of Medical Assistance and Health Services, the determination of disability for the first six months of hospice services will be based solely on a physician's certification of terminal illness. (See also N.J.A.C. 10:71-3.11 through 3.13).

i. To ensure the continuity of hospice services after six months, the agency responsible for the eligibility determination (that is, the county welfare agencies (CWA's)), shall inform the Disability Review Section of the recipient's eligibility for hospice services based upon the physician's certification of terminal illness and the determination of financial eligibility.

ii. After the initial six-month period, if it appears that such a recipient will require and elects to continue to receive hospice services, the Disability Review Section of the Division shall require medical documentation to validate the disability status based on terminal illness as part of the medical recertification. This documentation is in addition to the Physician's Certification/Recertification for Hospice Benefits Form (FD-385) required under N.J.A.C. 10:53A-2.3.

(1) The required additional documentation consists of the following:

(A) A statement from the attending physician of the diagnosis(es), prognosis and the stage of illness;

(B) Copies of laboratory test results, biopsy and/or pathology reports, Magnetic Resonance Imaging (MRI) and Computerized Axial Tomography (CAT) results; and

(C) Copies of any other objective medical documentation which supports the diagnosis(es).

(2) Individuals who are over 65 years of age, or receiving Medicare, or receiving Social Security Disability Insurance Benefits under Title II or Supplemental Security Income (SSI) under Title XVI, or who are on Aid to Families with Dependent Children (AFDC) are not required to be evaluated by the Medicaid Disability Review Section.

(3) The Disability Review Section will identify and track individuals who are required to be evaluated for continuing disability and will contact the provider to initiate the enhanced recertification process.

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

10:53A-3.4 Covered hospice services

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

(g) Regarding other covered services, some Medicaid services which are not duplicative of hospice services may be covered by Medicaid for the hospice recipient. These services include optometric and optical services, prosthetic and orthotic services, medical day care services, and personal care assistant services. These services must be approved by the interdisciplinary team, be consistent with the plan of care and be determined to be medically necessary.

1. The personal care assistant (PCA) services shall be provided to hospice recipients by Medicaid approved PCA providers. (See Home Care Services chapter, N.J.A.C. 10:60-1.7, 1.8 and 1.9.) Personal care assistant services shall be included in the plan of care, and must not be duplicate services covered and reimbursed under the hospice per diem.

2. Personal care assistant services for hospice recipients shall be used only to replace the live-in primary adult caregiver as defined in N.J.A.C. 10:60-1.2, and provided under the limitations of N.J.A.C. 10:60-1.9.

APPENDIX
FORM #4

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

REVOCATION OF HOSPICE BENEFITS

I, ______________________________ revoke the
(Recipient's Name and HSP (Medicaid) Case Number)

hospice benefits allowed to me by Medicaid and rendered _______

by ______________________________ effective this
(Hospice Agency and Medicaid Provider Billing Number)

_______ day of ______________ , 19___ .

I understand that any remaining days of this election period will not be available to me.

I understand that I may elect hospice services at a later time if this revocation has occurred during one of the two initial 90-day benefit periods or the third 30-day benefit period.

I understand that as of the date of this revocation, if I am still eligible, my regular Medicaid benefits will be restored.

______________________________ ____________
Hospice Recipient's Signature or Mark Date

FD-381 (6/92)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Initial Response and Service Delivery; General Provisions

Adopted Amendment: N.J.A.C. 10:133-1.3

Proposed: March 21, 1994 at 26 N.J.R. 1285(a).
Adopted: September 23, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: September 23, 1994 as R.1994 d.531, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4C-44 and 9:6-8.15.

Effective Date: October 17, 1994.
Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:

Comments on the proposed amendment were submitted by Brandy Mariah.

COMMENT: In the definition of parent, the term "natural parent" should be replaced with the term "biological parent."

RESPONSE: A recent amendment to N.J.S.A. 9:3-38f amends the term "natural parent" to "birth parent." The Division wants to maintain consistency amongst the laws and rules of the State. The Division is adopting the term "birth parent" as part of the definition of "parent."

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

10:133-1.3 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Adoption" means the legal transfer of all parental rights and responsibilities from the parent to a person willing to assume those rights and responsibilities.

. . .

"Case plan" means a written statement of the Division's intervention on behalf of a child, which includes identification of the problems which necessitate Division involvement with the family, the services or actions needed, who will accomplish or provide them, and the planned time frame for providing each service.

. . .

"Custody" means continuing responsibility for the person of a child, as established by a surrender and release of custody or consent to adoption, for the purpose of providing necessary welfare services, or maintenance, or both. (N.J.S.A. 30:4C-2(d))

. . .

"Delinquency" means the definition given in N.J.S.A. 2A:4A-23.

"Dependency" means the state of being a child under the age of 18 who has been deprived of parental support or care by reason of the death, continued absence from the home or physical or mental incapacity of a parent.

. . .

"Independent living" means the maintenance of a child in a living arrangement that allows that child to function eventually on his or her own when circumstances preclude the child from returning to the person or persons with whom he or she resided at the time of referral or application for services, no appropriate relative or family friend is able or willing to assume care of the child, no family is able or willing to provide long-term foster care custody or to legally adopt the child, or the child rejects each of these living arrangements.

. . .

"Long-term foster care custody" means the establishment of a Division-initiated, court-ordered, legal relationship between a foster parent and a foster child when neither return home, permanency with a relative or family friend, nor adoption is an appropriate permanent plan, although one or more of these case goals have been diligently but unsuccessfully pursued, pursuant to P.L. 1992, c.139.

"Maintenance" means monies expended by the Division to procure board, lodging, clothing, medical, dental, psychological and hospital care, or any other similar or specialized commodity or service furnished to or on behalf of, or for a child.

"Maintenance in own home" means keeping a child in the home of the person or persons with whom he or she is residing at the time of referral or application for services or keeping the child in the home where the child has been returned or placed following out-of-home placement, regardless of the child's biological or legal ties to the person or persons, and when the circumstances do not necessitate removal from the home.

"Other long-term, specialized care" means the out-of-home placement or maintenance of the out-of-home placement of a child in a long-term, specialized care living arrangement when no appropriate family is able or willing to care for and meet the needs of a child with a serious medical, physical, emotional or mental disability.

"Out-of-home placement" or "placement" or "substitute care" means physically locating a child by the Division, or with the Division's approval, in any out-of-home setting, including foster care, group home, shelter care, or a residential facility for temporary treatment or long-term care.

"Parent" means any *[natural]* ***birth*** parent, adoptive parent, stepparent, guardian or any person who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care.

. . .

"Permanency with a relative or family friend" means the placement of a child with a biological relative, a relative by marriage or a family friend when circumstances preclude the child from living with or returning to the person or persons with whom he or she resided at the time of referral or application for services, or the person or persons whom the child previously related to as a "parent."

. . .

"Return home" means putting a child with a parent when the circumstances necessitating placement out of the home have been resolved.

. . .

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Eligibility for Services

Adopted New Rules: N.J.A.C. 10:133C-2

Proposed: February 22, 1994 at 26 N.J.R. 897(a).
Adopted: September 23, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: September 23, 1994 as R.1994 d.530, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 9:6-8.15, N.J.S.A. 30:4C-4(h).

Effective Date: October 17, 1994.

Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:

Comments on the proposed new rules were submitted by Nancy Goldhill, Legal Services of New Jersey and Diane K. Smith, Somerset-Sussex Legal Services.

COMMENT: The use of the term "innocent" with children is either redundant or impermissibly restrictive, if it excludes children who are culpable in connection with the injury inflicted on them.

RESPONSE: N.J.A.C. 10:133C-2.3(a)1 is quoted from N.J.S.A. 9:6-8.8. The Division does not interpret the term "innocent children" to exclude any child who needs protection. Where the wording is quoted directly from statute, the Division prefers to retain the statutory language.

COMMENT: The concept that "children continue to live in their own homes" is value-laden and could be used against poor families who do not have a home. This should be reworded to "children continue to live with their families."

RESPONSE: The wording of N.J.A.C. 10:133C-2.3(a)4 is taken from N.J.S.A. 30:4C-1(b). Again, the Division prefers to retain the statutory language. The Division does not interpret this phrase to literally to mean "house," but rather with their families.

COMMENT: Proposed N.J.A.C. 10:133C-2.4 provides that in case of emergency, services may be provided before an assessment or protective services investigation is completed. Yet where an emergency exists and no other agency is providing services, DYFS is obligated to help the family and cannot wait until evaluations are completed. If the family must wait, the family and children may be separated unnecessarily or placed in danger. Thus, the regulation should be changed to make DYFS' obligation to act mandatory.

RESPONSE: The Division agrees to change N.J.A.C. 10:133C-2.4 to state that it is mandatory for the Division to offer specific services on an emergency basis for a limited time. The Division has also added references to statutes governing such services which authorize the Division to provide specific services when "the welfare of a child is endangered" and "to insure the safety of the child" when the Division has received a report of child abuse.

COMMENT: At N.J.A.C. 10:133C-2.5(c), the Division does not state what the "specific services" are which the Division shall furnish.

RESPONSE: The Division plans to add a reference to N.J.A.C. 10:133E, Services, to clarify which services are available from the Division, when it is adopted. This chapter is also part of the Operations Policy to Rules (OPTR) project. It has not been published yet, but is being prepared for proposal in the New Jersey Register. When N.J.A.C. 10:133E is promulgated, the reference to it will be added.

COMMENT: N.J.A.C. 10:133C-2.5(c) applies to services the State is authorized by statute to provide. The phrase "within the limits of legislative appropriations" need not be repeated here, as the limitation is set forth in N.J.A.C. 10:133-1.7. This encourages the denial of real services to children. The rule should require the Division to provide all statutorily authorized services which are appropriate. The phrase "all children in similar circumstances" indicates that children must fit available services rather than that services must meet the needs of the child.

RESPONSE: The phrase "... specific services which the Division may be authorized, within the limits of legislative appropriations, to provide for all children in similar circumstances..." is quoted from N.J.S.A. 30:4C-13. The Division prefers to retain the statutory language for consistency between rules and statutes.

COMMENT: The words "as available" should be deleted from N.J.A.C. 10:133C-2.6(a) or should reference N.J.A.C. 10:133-1.7(b). This phrase allows the Division to avoid providing a service by proclaiming that it is unavailable.

RESPONSE: The phrase "as available" is included in order to clarify for the public that the Division cannot provide a service which does not exist.

Summary of Agency-Initiated Changes:

In N.J.A.C. 10:133C-2.1, the Division has added a reference to another Administrative Code citation in order to make the scope of these rules clearer. The reference to N.J.A.C. 10:133C-3 clarifies that the persons referred to contract services are those who are Division clients and have had an assessment of their service needs. This is to distinguish these clients from persons receiving information and referral, pursuant to N.J.A.C. 10:133B, who are not clients of the Division.

In N.J.A.C. 10:133C-2.3(a)3 and 4, the Division has added the statutory references for consistency. Statutory references for paragraphs (a)1 and 2 are already included.

In N.J.A.C. 10:133C-2.6, the Division changed the section heading in order to clarify what this section is about. The Division eliminated subsection (c) and placed the reference to delinquency court orders in subsection (b) with other statutory references to court orders. This avoids repetition and undue emphasis on delinquency court orders.

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

SUBCHAPTER 2. ELIGIBILITY FOR SERVICES

10:133C-2.1 Scope

The provisions of this subchapter shall apply to all Division representatives, all persons who apply to a local office for Division services, all persons referred by a local office to contract services ***as the result of an assessment per N.J.A.C. 10:133C-3*** and all clients receiving Division services from a local office.

10:133C-2.2 Definitions

The definitions in N.J.A.C. 10:133-1.3 are hereby incorporated into this subchapter by reference.

10:133C-2.3 Purpose of services

(a) The purpose of the Division's provision of services shall be to:

1. Provide for the protection of children under 18 years of age who have had serious injury inflicted upon them by other than accidental means and to assure that the lives of innocent children are immediately safeguarded from further injury and possible death and that the legal rights of such children are fully protected (N.J.S.A. 9:6-8.8);

2. Provide for the protection of any child whose parent fails to provide the child with proper protection, maintenance and education (N.J.S.A. 30:4C-12);

3. Preserve and strengthen family life ***(N.J.S.A. 30:4C-1(a))***; and

4. Prevent and correct dependency and delinquency among children so far as practicable through welfare services which seek to ensure that such children continue to live in their own homes ***(N.J.S.A. 30:4C-1(b))***.

10:133C-2.4 Services on an emergency basis

The Division *[may]* ***shall*** offer the family services which are needed on an emergency basis ***pursuant to N.J.S.A. 30:4C-13 and 9:6-8.11,*** before completing the assessment or *[a]* child protective services investigation ***until the assessment or child protective services investigation is completed***.

10:133C-2.5 When the Division shall offer services

(a) The Division shall offer services that are determined to be needed as a result of a child protective services investigation or an assessment to meet one or more of the purposes in N.J.A.C. 10:133C-2.3 when:

1. The Division has substantiated an allegation of child abuse or neglect;

2. The welfare of the child is endangered and the condition can be eliminated or ameliorated by the Division making available specific services on behalf of the child in his or her own home; or

3. The welfare of the child is endangered unless the Division removes the child from his or her home pursuant to a court order or voluntary placement agreement signed by the parent(s) or caretaker.

(b) When the Division offers services, in addition to a child protective services investigation or an assessment, the following determinations shall first be made, unless services are required on an emergency basis:

1. The needs of the child cannot properly be provided for by financial assistance, as made available by the laws of New Jersey, including, for example, public assistance;

2. There is no person legally responsible for the support of the child whose identity and whereabouts are known after the Division has completed a search for relatives in accordance with N.J.S.A. 30:4C-12.1, and who is willing and able to provide for the care and support required by the child; and

3. A child, if suffering from a mental or physical disability requiring institutional care, is not immediately admissible to any public institution providing the needed care.

(c) If it appears that the welfare of the child is endangered, and that the condition can be eliminated or ameliorated by making available to or for the child any specific services which the Division may be authorized, within the limits of legislative appropriations, to provide for all children in similar circumstances, the child shall be found eligible for care and supervision, and the Division shall proceed to furnish the services either by direct provision or by purchasing the services from any appropriate privately sponsored agency or institution.

(d) The applicant or client may accept or reject the offer of services by the Division. However, the Division may proceed under N.J.S.A. 30:4C-12 or N.J.S.A. 9:6-8.21 et seq. to seek a court order to provide services if the Division determines that the child requires care and supervision, but the parent refuses services for or on behalf of the child.

10:133C-2.6 *[When the Division shall]* ***Division's authority to*** provide services

(a) When the conditions in N.J.A.C. 10:133C-2.5 are met, the Division shall provide the service, as available, upon acceptance by the client.

(b) In addition to the assessment and child protective services investigation conducted per N.J.A.C. 10:133C-3 and 10:129A and the services provided under (a) above, the Division shall provide services when the court orders the child or family to receive services, consistent with N.J.S.A. 9:6-8.21 et seq., 30:4C-12, *[and]* 30:4C-50 et seq.***, and 2A:4A-43(b)(5).***

[(c) The Division shall provide services to a child who has been adjudicated a delinquent and to a child and his or her family where a juvenile-family crisis exists, as defined in N.J.S.A. 2A:4A-22(g), in accordance with N.J.S.A. 2A:4A-24, only upon a court order pursuant to N.J.S.A. 2A:4A-43(b)(5).]

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

General Placement Requirements
Review of Children in Out-of-Home Placement
Adopted New Rules: N.J.A.C. 10:133H-3

Proposed: December 20, 1993 at 25 N.J.R. 5752(a).
Adopted: September 23, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: September 23, 1994 as R.1994 d.532, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 30:4C-4(h), 30:4C-26a and 30:4C-50 et seq.
Effective Date: October 17, 1994.
Expiration Date: October 17, 1999.

Summary of Public Comments and Agency Responses:

Comments on the proposed new rules were submitted by Angelo F. DiOrio, Department of Human Services, Hunterdon County, and Diane K. Smith, Somerset-Sussex Legal Services.

COMMENT: The term "eventual return" in N.J.A.C. 10:133H-3.1 does not impart any of the urgency with which these matters should be handled.

RESPONSE: The phrase "eventual return" is quoted from N.J.S.A. 30:4C-51. The Division prefers to use the exact language of the statute and does not interpret the phrase to allow the Division to proceed slowly to return a child.

COMMENT: It is unclear as to who determines whether the case goal and intermediate objectives are still appropriate. This can only be made with the most recent information provided by all individuals most actively involved in the case.

RESPONSE: Who shall select a case goal is covered at N.J.A.C. 10:133C-4.5(a). When the case goal is reviewed and for what purpose is covered at N.J.A.C. 10:133C-4.6. The proposed rules also allow for input by another person or professional providing care or services to the child at N.J.A.C. 10:133H-3.7(b).

COMMENT: The phrase "... serves the best interest of the child better than returning home" is laden with value judgments and does not comply with statutory or case law. It is never the standard that a child will be better off in placement.

RESPONSE: Pursuant to the comment, the Division has eliminated the phrase "... better than returning home."

COMMENT: N.J.A.C. 10:133H-3.5 raises concerns that the Division is the only agency deciding on the appropriateness of out-of-home placement. There is no indication of how an assessment is made and how the Division obtains pertinent information from those who work directly with the client.

RESPONSE: N.J.A.C. 10:133C-3.7(b) and (c) and 10:133D-2 give the Division ample ability to make contacts and obtain information from service providers and out-of-home placement providers in preparing the assessment and the case plan.

COMMENT: The CART (Case Assessment Resource Team) Coordinator should be included in the list of those notified of the placement reivew.

RESPONSE: The Division agrees with the suggestion and has added the CART Coordinator to those notified of the placement review.

COMMENT: It is unclear why it is optional for the Division to notify other persons or professionals providing care or services to the child of the placement review, since these persons would be necessary to make an appropriate determination.

RESPONSE: The Division does not believe it is appropriate to notify everyone who provides a service to the child to the placement review. For example, the child's optometrist would not necessarily have any information needed for the placement review.

COMMENT: N.J.A.C. 10:133H-3.8(c) should state that the Division representative will include professionals working directly with the case.

RESPONSE: The Division does not believe it is advisable to require input from other persons or agencies for several reasons. Pursuant to the Federal Adoption Assistance and Child Welfare Act of 1980 and related regulations, the Division must hold placement reviews within a tight time frame, which would make it difficult for the Division employee conducting the placement review to hold the placement review if any input was not forthcoming. Further, the Division does not believe it has the statutory authority to require a professional not employed by or under contract with the Division to do anything. The Division has no budget to pay these professionals for their time to attend the placement review or to prepare and submit a written report.

The Division prefers to leave discretion in the system, so that information can be requested as needed, but without holding back the scheduled placement reviews.

COMMENT: The provision that a person shall attend and participate in the placement review "... to the extent deemed appropriate by the Division ..." should not apply to the parents. Parents must be permitted to review all written submissions.

RESPONSE: The Division does not intend to exclude the parents from participation. The complete phrase says "... to the extent deemed appropriate by the Division **and** in concert with the consent of the parent." Thus the only way a parent could be excluded would be with the parent's own consent. The Division must conform to Federal regulations which require that the review be open to the participation of the parent, unless parental rights are terminated or their whereabouts remain unknown after an attempt to locate them.

There is no Federal requirement to share written information with the parent. The Division has neither prohibited nor required sharing written information with the parent.

COMMENT: The standard of when placement is necessary should be to avoid risk to the child's life or health, not the vague terms "best interest" or "welfare."

RESPONSE: The Division believes the terms "child's best interest" and "child's welfare" are appropriate in this context, as they are terms used in State law and Federal regulation. See N.J.S.A. 30:4C-11, 30:4C-12, 30:4C-13, 30:4C-15, 30:4C-51, 30:4C-54 and 45 CFR 1356.21(d)(3) and 45 CFR 1356.30(b).

COMMENT: There are requirements in the proposal for written reports to be submitted by the Division to the Child Placement Review Board at N.J.A.C. 10:133H-3.9, 3.10 and 3.13. The Division should provide the parent and his or her counsel with a copy of the report unless the court determines after a hearing that to do so would pose an immediate risk to the child's life or health.

RESPONSE: Pursuant to N.J.A.C. 10:133D-2.8(b), the Division shall give a copy of the case plan to the parent. Pursuant to N.J.A.C. 10:133D-2.7(b), the case plan shall contain the information listed in N.J.A.C. 10:133H-3.9(a)1 through 4. As the case plan is the primary written report used to share information with the Child Placement Review Board, the Division is meeting the request to share written reports.

In N.J.A.C. 10:133H-3.10, the Division is sharing reports on a child legally available for adoption. As the parent has voluntarily surrendered, or the Court has terminated, the parental rights, it is inappropriate for the Division to continue sharing information with a parent.

The Division agrees that it should notify the parent of some of the situations listed in N.J.A.C. 10:133H-3.13(a)1 through 3 and 3.13(c)1 through 4. This information has no bearing on determining whether the child's placement should continue, as in most situations it will not continue through DYFS. This subchapter is not the most appropriate place in the Administrative Code to put information about these parental notifications.

Summary of Agency-Initiated Changes:

At N.J.A.C. 10:133H-3.9(a)3, the Division has changed "short-term case plan" to "short-term placement plan" in order to be consistent with N.J.S.A. 30:4C-53.

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

CHAPTER 133H
GENERAL PLACEMENT REQUIREMENTS

SUBCHAPTER 1. PLACEMENT SELECTION (RESERVED)

SUBCHAPTER 2. AUTHORIZATION FOR PLACEMENT: VOLUNTARY CONSENT OF PARENT OR COURT ORDER (RESERVED)

SUBCHAPTER 3. REVIEW OF CHILDREN IN OUT-OF-HOME PLACEMENT

10:133H-3.1 Authority

The Division has the authority to promote the regular review of each child's out-of-home placement in order to provide the opportunity for eventual return to his or her home or out-of-home placement in an alternative permanent home, pursuant to N.J.S.A. 30:4C-50 et seq.

10:133H-3.2 Scope

The provisions of this subchapter shall apply to the Division and to each child placed by the Division, each parent, any legal counsel for the child, the parent or the Division, and each out-of-home placement provider. The provisions of this subchapter shall not apply to those situations cited in N.J.A.C. 10:133H-3.12.

10:133H-3.3 Definitions

The definitions in N.J.A.C. 10:133-1.3 are hereby incorporated in this subchapter by reference.

10:133H-3.4 Purpose of the placement review

(a) The purpose of a placement review shall be to determine:

1. Whether the out-of-home placement should continue, consistent with the provisions of 10:133H-3.5; and

2. Whether the placement plan required by N.J.S.A. 30:4C-55 is appropriate or should be revised, including specifically:

i. Whether the case goal is still appropriate or should be modified, in accordance with the considerations set forth in N.J.A.C. 10:133C-4.6;

ii. Whether the intermediate objectives relating to the case goal are appropriate or should be modified;

iii. Whether the statement of the duties and responsibilities of the Division, the parent, the out-of-home placement provider, and the child, if age appropriate, including the sevices to be provided by the Division to the child, the parent, and the out-of-home placement provider, should be modified;

iv. Whether the Division has made reasonable efforts to return the child home, including the provision of visitation in accordance with the applicable law;

v. Whether the Division has made diligent efforts to locate family members who may be willing and able to care for the child; and

vi. Whether the continued out-of-home placement of the child is in the best interest of the child.

10:133H-3.5 Determination of whether out-of-home placement should continue

(a) In deciding whether the out-of-home placement should continue, the Division shall consider and determine the following:

1. Whether the circumstances and reasons originally necessitating the out-of-home placement of the child continue to exist or if additional or different circumstances have occurred which support continued out-of-home placement;

2. Whether the Division in the provision of services has made every effort to return the child home and the failure to achieve that return home is not due to a lack of appropriate Division services or actions, as specified in the case plan, see N.J.A.C. 10:133D-2;

3. Whether the Division has provided ample opportunity for visitation between the child and parent, siblings and relatives, so as to maintain the parent-child and family relationships;

4. Whether continued out-of-home placement serves the best interest of the child *[better than returning home]*;

5. Whether a less or more restrictive out-of-home placement would better meet the child's needs;

6. Whether an out-of-home placement in closer proximity to the child's family is available and if it would better serve the child's needs; and

7. Whether efforts have been made to place siblings together.

10:133H-3.6 Frequency of placement reviews

(a) The Division shall conduct a placement review between six and a half and seven and a half months from the date of placement and annually thereafter.

(b) The Division placement review schedule shall alternate with the review schedule of the Child Placement Review Board which is within 45 days following the child's out-of-home placement, and annually thereafter. Thus, out-of-home placement of each child is reviewed no less frequently than once every six months.

10:133H-3.7 Notice of Division placement review

(a) The Division shall provide adequate prior written notice of the date, time and location of the placement review to the parent, the out-of-home placement provider, the child, if age appropriate, legal counsel for the child, the parent, and the Division if applicable, *[and]* the Child Placement Review Board*[.]****, and the Case Assessment Resource Team Coordinator, if the child has been referred to the Case Assessment Resource Team.***

(b) In addition to those persons cited in (a) above, the Division may provide prior written notice of the date, time and location of the placement review to another person(s) or professional(s) providing care or services to the child beyond those services provided by the Division.

(c) Each person invited to the placement review shall be entitled to attend and participate in the placement review to the extent deemed appropriate by the Division and in concert with the consent of the parent. In the absence of personal attendance, the invited person may submit information in writing to the Division concerning the case goal and case plan for the child.

10:133H-3.8 Convening and conducting the Division placement review

(a) The Division placement review shall be convened and conducted by a Division representative as defined in N.J.A.C. 10:133-1.3, who has no responsibility for case management or delivery of service to the child who is the subject of the placement review or to the child's parent.

(b) Division representatives who participate in the Division placement review shall include the designated Division representative who conducts the placement review, the Division representative having direct service responsibility for the child, and that Division representative's supervisor. When the Division representative for the parent is different from that for the child, then that Division representative shall also be present at the placement review or submit information about the parent's situation or circumstances to the Division representative conducting the placement review.

(c) The Division representative conducting the placement review shall ensure that the following are assessed or determined at the placement review:

1. The circumstances that necessitated the out-of-home placement and the efforts made by the Division to prevent out-of-home placement;

2. The proximity of the child's out-of-home placement to his or her own home and the efforts made by the Division to provide continued contact between the child, parent, and siblings not residing with the child;

3. Whether the continued out-of-home placement of the child is in the child's best interest;

4. Whether the child is making an adequate adjustment to the out-of-home placement, as indicated by the child's behavior;

5. Whether returning the child to his or her own home is contrary to the child's welfare;

6. The current objectives of the case plan and whether they are being implemented and are likely to lead to achieving the case goal;

7. Whether the child's case goal is the most likely to meet his or her needs and whether progress is being made toward its achievement;

8. Whether the services the Division is providing to the child, his or her parent, and the out-of-home placement provider meet the identified service needs;

9. Whether the Division, parent and out-of-home placement provider are fulfilling their respective responsibilities in accordance with the case plan;

10. Whether the parent and the Division are maintaining the visitation schedule;

11. Whether obstacles exist that are preventing achievement of the case goal and the efforts being made by the Division to alleviate the obstacles;

12. Whether progress is being made to identify, search for, and assess relatives of the child in order to determine their appropriateness and willingness to care for the child;

13. Whether the child has siblings in out-of-home placement, what the case plan and case goal are for each of them, and what efforts the Division is making to place the siblings together until they can be reunited with their parent;

14. Whether recommendations by the Child Placement Review Board or court orders are being followed; and

15. The time frame and conditions required for return of the child to his or her own home or an alternate permanent living arrangement.

(d) The Division shall inform the parent and the child, if appropriate, of the outcome of the Division's placement review, except that those persons cited in N.J.A.C. 10:133H-3.7(b) may receive only that information from the placement review which has a direct effect on the care or services being provided by that person or professional.

(e) The Division representative who conducts the placement review shall share critical case information with the office management staff following the placement review.

10:133H-3.9 Division responsibility to the Child Placement Review Board

(a) Pursuant to N.J.S.A. 30:4C-50 et seq., the Division shall provide the following information in its notice of out-of-home placement to the Family Court within five calendar days of a child's out-of-home placement:

1. The reasons for the out-of-home placement;

2. The Division's efforts to prevent out-of-home placement;

3. The short-term *[case]* ***placement*** plan;

4. The case goal; and

5. The names and addresses of all parties, Division and non-Division, who have direct responsibility for or interest in the child.

(b) The Division shall submit to the Child Placement Review Board complete and relevant case information for its initial 45-day review and for its annual review.

(c) Subsequent to the initial placement review by the Division between months six and a half and seven and a half of a child's out-of-home placement, the Division shall submit to the Child Placement Review Board complete and relevant case information. The Division shall continue to submit this information prior to the annually scheduled Child Placement Review Board review.

10:133H-3.10 Review of adoption placement

When a child is legally available for adoption and in a selected adoption home or the consent to foster parent adoption is signed by the office manager, the Division shall continue to conduct a placement review no less frequently than once every six months. Since the Child Placement Review Board shall suspend its review, the Division shall submit to the Child Placement Review Board a status report once every four months stating the progress being made toward adoption finalization.

10:133H-3.11 Living arrangements subject to a placement review

(a) Each child in the following living arrangements or circumstances is subject to a placement review. The Division shall notice the Family Court, under N.J.S.A. 30:4C-53, of these situations:

1. A child who has been placed voluntarily or non-voluntarily by the Division from his or her home, free or with maintenance provided by the Division; and

2. A child who has not been placed by the Division from his or her home but for whom the Division provides maintenance or provides permanency services.

10:133H-3.12 Living arrangements not subject to a placement review

(a) Each child in the following living arrangements or circumstances is not subject to a placement review. The Division shall not notice the Family Court as under N.J.S.A. 30:4C-53 of these situations:

1. A child who is residing with a relative or stepparent at the time of application or referral for services, whose parent made the arrangement, and for whom the Division does not provide maintenance;

2. A child who has been ordered by the Family Court to be placed in a correctional facility, where the Division is not the child's legal guardian; and

3. A child who is placed in New Jersey by an out-of-State agency and that agency retains legal and financial responsibility for the child, with the Division providing courtesy supervision of the out-of-home placement.

10:133H-3.13 Termination of providing information to Child Placement Review Board

(a) The Division shall notice the Family Court of the following circumstances and cease to provide information to the Child Placement Review Board unless otherwise ordered by the Family Court:

1. When a child returns to his or her own home;

2. When a child attains the age of 18; or

3. When the Division transfers the responsibility of a child's care to another agency or otherwise terminates its services.

(b) The Division may continue to hold a placement review at the discretion of the office manager in the above-cited situations if the Division continues services or monitoring of the case.

(c) The Division shall provide notice but no further information to the Child Placement Review Board when:

1. The child is adopted and the final judgment of adoption is entered by the Family Court;

2. The child enters the armed forces;

3. The child marries; or

4. The child dies.

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules
Parole Hearings

Adopted Amendments: N.J.A.C. 10A:71-3.15 and 3.16

Proposed: June 6, 1994 at 26 N.J.R. 2189(a).

Adopted: September 14, 1994 by the New Jersey State Parole Board, Mary Keating DiSabato, Chairman.

Filed: September 16, 1994 as R.1994 d.510, **without change.**

Authority: N.J.S.A. 30:4-123.48(d).

Effective Date: October 17, 1994.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

No comments were received.

Full text of the adoption follows:

10A:71-3.15 Initial hearing notice of decision; adult inmates

(a) At the conclusion of the parole hearing, the hearing officer shall:

1. Recommend, except as provided in (b) below, to a member of the appropriate Board panel that the inmate be released on parole; or

2.-3. (No change.)

(b) In the case of an offender serving a term for the crime of murder, aggravated manslaughter, manslaughter, aggravated assault second degree, kidnapping, aggravated sexual assault, sexual assault, robbery, aggravated arson, burglary second degree, endangering the welfare of a child second degree or causing or risking widespread injury or damage second degree, the hearing officer shall refer the case for a hearing before the appropriate Board panel.

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

10A:71-3.16 Board member review; adult inmates

(a) (No change.)

(b) If the assigned Board member(s) concurs with the recommendation of the hearing officer, the member(s) shall certify parole release as soon as practicable after the parole eligibility date by:

1.-5. (No change.)

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

(a)

STATE PAROLE BOARD

Parole Board Rules

Board Panel Action: Revocation of Parole

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

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

Proposed: June 20, 1994 at 26 N.J.R. 2516(a).

Adopted: September 14, 1994 by the New Jersey State Parole Board, Mary Keating DiSabato, Chairman.

Filed: September 16, 1994 as R.1994 d.511, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4-123.48(d), 123.63 and 123.64.

Effective Date: October 17, 1994.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: An inmate whose parole status had previously been revoked suggested that the new rule be given retroactive application.

RESPONSE: The State Parole Board did not concur with the suggestion that the new rule be given retroactive application since retroactive application of rules is statutorily impermissible.

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

10A:71-7.16 Board panel action—schedule of future parole eligibility dates upon revocation of parole for inmates who have violated parole prior to *[(the effective date of the adopted amendment)]* ***October 17, 1994***

(a) This section applies to inmates who violated parole prior to *[(the effective date of the adopted amendment)]* ***October 17, 1994***. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12, and, if parole is revoked, the two-member Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

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

10A:71-7.16A Board panel action—schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after *[(the effective date of the adopted new rule)]* ***October 17, 1994***

(a) This section applies to inmates who violated parole on or after *[(the effective date of the adopted new rule)]* ***October 17, 1994***. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12.

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

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

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

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

iii. Establishing appropriate special parole conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. The parolee has no previous convictions.

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

(p) A two-member Board panel may increase, pursuant to (d), (f), (h)2 or (j) above, the future parole eligibility date required pursuant to (b), (c), (e), (g), (h)1, or (i) above, or increase pursuant to (l) above, the future parole release date required pursuant to

(k) above, if the two member Board panel determines that one or more of the following aggravating factors is present:

1. The parolee has demonstrated a negative attitude to parole supervision.
2. The parolee was under parole supervision for a period of less than six months.
3. The parolee has previous parole failures.
4. The parolee has extensive prior convictions.
5. The parolee has violated more than one parole condition.
6. The parolee was guilty of substance abuse while on parole.
7. The parolee's original sentence was for a violent offense.

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

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

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

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

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

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

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

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

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

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

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

INSURANCE

(a)

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Good Faith Marketing Report

Adopted Amendment: N.J.A.C. 11:20-9.6

Proposed: August 11, 1994 in accordance with N.J.S.A. 17B:27A-16.1, at 26 N.J.R. 3809(a).

Adopted: September 15, 1994 by the New Jersey Individual Health Coverage Program Board, Charles Wowkanech, Chair.

Filed: September 15, 1994 as R.1994 d.509, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17B:27A-2 et seq.

Effective Date: September 15, 1994.

Expiration Date: August 13, 1998.

These amendments are being adopted in accordance with N.J.S.A. 17B:27A-16.1, which provides a special procedure whereby the Individual Health Coverage Program ("IHC") Board may adopt certain actions. Pursuant to this procedure, the Board published notice of its intended action in three newspapers of general circulation, which notice included procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views regarding the intended action. Notice of the intended action also was mailed to affected trade and professional associations, carriers, and other interested persons who may request such notice.

Concurrently, the Board forwarded the notice of the intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board provided a minimum twenty-day period for all interested persons to submit their written comments on the intended action to the Board, which period ended on September 7, 1994. The Board may adopt its intended action immediately upon the close of the specified comment period by submitting the adopted action to the OAL. The Board is required to respond to the comments timely submitted within a reasonable period of time thereafter. The report, which appears below, includes the list of commenters, their relevant comments, and the Board's responses.

Comments were received from:
HIP Rutgers Health Plan
Blue Cross and Blue Shield of New Jersey

Summary of Public Comments and Agency Responses:

COMMENT 1: One commenter asked for clarification of whether the amended rule required a specific type of advertising in order to satisfy the requirement of good faith marketing.

RESPONSE: The Board does not require a specific type of advertising by a carrier in order to demonstrate good faith marketing. The categories enumerated in the rule were intended to provide guidance for reporting purposes, not to suggest what type of advertising was required by the Board. The Board has no intention of inhibiting a carrier's creativity in marketing individual health benefits plans. In order to clarify this, the Board has amended N.J.A.C. 11:20-9.6(c)1 to provide for consideration of "other marketing" campaigns, which are reported under N.J.A.C. 11:20-9.6(a)5.

COMMENT 2: One commenter asked for clarification of the term "significant" as it relates in the rule to media advertising and agent networks. The commenter suggests the Board adopt an objective formula.

RESPONSE: The Board used the term "significant" because there are a number of variables that apply for each carrier and each advertising campaign or agent network. The term was intended to provide flexibility to both the carrier and the Board in judging the sufficiency of efforts that are difficult to measure. The Board intentionally avoided requiring a specific spending formula because it does not intend to substitute its judgement for the carrier's in determining how to market individual health benefits plans or how much to spend in doing so. At the same time, having reviewed the efforts of carriers in 1993, the Board believes the standards articulated in the rule provide sufficient guidance to determine whether a carrier has failed to make a good faith marketing effort. No change has been made in the rule.

COMMENT 3: One commenter suggested that N.J.A.C. 11:20-9.6(a) be changed to clarify that the rule applies to members that have "received conditional exemptions" rather than "requested exemptions."

RESPONSE: The Board agrees that the commenter's suggestion is more accurate. There may be instances of carriers that request but are denied conditional exemptions to which the rule would not apply. The rule has been changed on adoption.

COMMENT 4: One commenter suggested that rule should state that the marketing report is specific to the year for which the conditional exemption applies.

RESPONSE: The Board agrees and has amended the rule accordingly on adoption.

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

11:20-9.6 Good faith marketing report

(a) In order for the Board to determine whether a carrier has made a good faith marketing effort as required by N.J.A.C. 11:20-9.5(f)2, members that have *[requested]* ***received conditional*** exemptions from assessments for reimbursable losses and have enrolled less than 50 percent of the minimum number of nongroup persons determined by the Board shall submit to the Board a marketing report on or before July 1 of the year following the calendar year *[for]* ***to*** which the ***conditional*** exemption *[was requested]* ***applies*** containing the following information pertaining to advertising, marketing, and promotion efforts in direct support of sales of standard health benefits plans ***during the calendar year to which the conditional exemption applies***:

1.-5. (No change.)

(b) (No change.)

(c) The Board will review the marketing reports submitted and determine that a carrier has made a good faith marketing effort as required by N.J.A.C. 11:20-9.5(f)2 if the carrier has demonstrated that it has either:

1. Undertaken a significant media advertising ***or other marketing*** campaign, in proportion to its minimum enrollment share, in direct support of sales of standard health benefits plans; or

2. Undertaken significant efforts, in proportion to its minimum enrollment share, to educate licensed insurance producers about its standard health benefits plans and has offered to pay competitive commission schedules for sales of such plans and competitive rates.

(d) (No change in text.)

LABOR

(a)

DIVISION OF UNEMPLOYMENT INSURANCE AND DISABILITY INSURANCE FINANCING

Contributions, Records and Reports
Wage Reporting
Magnetic Media Reporting

Adopted Amendment: N.J.A.C. 12:16-13.7

Proposed: July 18, 1994 at 26 N.J.R. 2863(a).

Adopted: September 23, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: September 23, 1994 as R.1994 d.527, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: October 17, 1994.

Expiration Date: March 23, 1995.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed amendment was held on August 10, 1994, at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, Regulatory Officer, presided at the hearing and received testimony. She responded to certain statements made during the course of testimony and recommended that the rules be adopted with changes not in violation of N.J.A.C. 1:30-4.3.

Persons wishing to review the transcript of the hearing may contact Deirdre L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, CN 110, Trenton, NJ 08625-0110.

Summary of Public Comments and Agency Responses:

Oral and/or written comments were received from the following individuals and organizations: Maureen Fazio, C.P.P., Media Data Services, Inc.; Bryon Anderson, Software Consultant, Tax and Accounting Software Corporation; and Susan Springberg, Chairperson, New Jersey Society of Certified Public Accountants.

COMMENT: Clarification is needed as to the meaning of a third party processor. There are various types of payroll services available to businesses. Some services prepare payroll returns and send them to their clients for signature, payment and filing. Other payroll services are authorized by their clients to file the returns on the client's behalf. It is apparent that each level of service carries with it a different level of authority and responsibility. It is believed that payroll services/processors should not be required to submit any data by magnetic media unless authorized by their clients to assume responsibility for filing the returns.

RESPONSE: Given the different levels of authority and responsibilities of third party payroll processors, the Department has amended paragraph (c)3 to require that only those third party processors who generate and file Forms UC-27 and WR-30 with payment of the contribution liability file their data magnetically.

COMMENT: Small employers often use payroll services/processors even for as few as two or three employees. Whether or not the payroll service/processor is authorized to file the return on behalf of the employer, the over 100 employee threshold should be determined for each employer and not for each payroll service/processor. Aggregating the number of employees by each payroll service/processor would in effect require every payroll service/processor business to file by magnetic media, and every small business using payroll service/processor to in effect be required to file by magnetic media. The cost of filing by magnetic media would then be passed on to the small employer who otherwise would not be required to file by magnetic media.

RESPONSE: Under the Department's amendment as revised upon adoption, in counting employees for the 100 employee threshold, the third party payroll processors only have to count the employees of those clients for whom they are filing WR-30, UC-27 and payment contribution liability.

COMMENT: On what basis does the Regulatory Flexibility Analysis state that most third party payroll processors do not charge an increased fee for magnetic media processing.

RESPONSE: Third party payroll processors have consistently advised the Department that they do not charge an increased fee for magnetic media processing.

COMMENT: Some small business employers may want to maintain privacy with respect to certain payrolls or may wish to make their own changes to the payroll reports prepared by payroll services/processors, but filed by the employer. The proposed amendment does not provide this option.

RESPONSE: Employers who desire to maintain privacy with respect to certain payrolls or to make their own changes to the payroll reports prepared by payroll services/processor, but filed by the employer may file their payroll separately under the existing manual system.

COMMENT: The proposed amendment needs clarification as to the reporting requirements of employers who commence or terminate their business with a third party processor during the quarter period. In such a case, who is responsible for filing the report by magnetic media?

RESPONSE: This issue is not limited to reporting by magnetic media but exists under any method of filing. The Division of Unemployment Insurance and Disability Insurance Financing will accept reports from either party under these circumstances as long as they are authorized to do so by the employer.

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

12:16-13.7 Wage reporting

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

(c) The following pertain to magnetic media reporting:

1. For all calendar quarters subsequent to the quarter ending December 31, 1994 all employers who would report in excess of 250 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Director, Unemployment Insurance/Disability Insurance Financing.

2. For all calendar quarters subsequent to the quarter ending December 31, 1995 all employers who would report in excess of 100 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Director, Unemployment Insurance/Disability Insurance Financing.

3. For all calendar quarters subsequent to the quarter ending December 31, 1994, all third-party payroll processors who *[prepare or provide to employers the information used in the preparation of]* ***on a quarterly basis generate and file with the New Jersey Department of Labor*** Form WR-30 "Employer Report of Wages Paid," ***and Form UC-27, "Quarterly Contribution Report," together with payment of contributions liability*** shall file *[such]* ***the WR-30*** reports for all *[their]* ***such*** clients via magnetic media directly to the Division of Unemployment Insurance/Disability Insurance Financing in a form and manner specified by the Director, if the aggregate number of employees for all clients processed and so reported by the third party exceeds 100 in any calendar quarter.

4. Employers or third-party payroll processors may have the requirements in (c)1 through 3 above waived or extended for good cause as defined in N.J.A.C. 12:19-1.2 upon written application for waiver or extension to the Director, Unemployment Insurance/Disability Insurance Financing.

5. If an employer or third-party payroll processor fails to comply with the provisions of this subsection, the penalties specified in N.J.A.C. 12:16-13.7(b) shall apply.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Board of Medical Examiners Rules
Readopted with Amendments: N.J.A.C. 13:35

Proposed: June 20, 1994 at 26 N.J.R. 2526(a).

Adopted: August 18, 1994 by the Board of Medical Examiners, Fred Jacobs, President.

Filed: September 19, 1994 as R.1994 d.522, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: September 19, 1994, Readoption; October 17, 1994, Amendments.

Expiration Date: September 19, 1999.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed readoption with amendments of N.J.A.C. 13:35, Board of Medical Examiners Rules. The official comment period ended on July 20, 1994. Announcement of the opportunity to respond to the Board of Medical Examiners appeared in the New Jersey Register on June 20, 1994 at 26 N.J.R. 2526(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, and other interested parties. A full record of this opportunity to be heard can be inspected by contacting the Executive Director of the Board of Medical Examiners, Charles A. Janousek, 140 E. Front St., 2nd Floor, Trenton, NJ 08608.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board of Medical Examiners received 30 written comments regarding the proposed readoption. A list of the commenters follows:

Morristown Memorial Hospital:

1. Frances Rocco, R.N., Assistant Director of Surgical Services
2. Audrey Sherry, R.N., Director, Sterile Processing Dept.

Atlantic City Medical Center:

1. S. Desiderio Penso, M.D., Attending General Surgeon
2. Ralph Cavalier, M.D., Director, Chief Attending Orthopaedic Surgeon
3. Benjamin Epstein, M.D., Chief Attending Orthopaedic Surgeon
4. Kaal Kassis, M.D., Attending General Surgeon
5. Morton A. Rosenblatt, M.D., Attending General Surgeon
6. William B. Aarons, Jr., M.D., Director, Chief Attending Surgeon
7. John M. Naame, M.D., Chief Attending Orthopaedic Surgeon
8. Daniel R. Demeo, M.D., Chief Attending Orthopaedic Surgeon

Audrey Meyer, Senior V.P., Administration, Valley Hospital

Cynthia Spry, MA, Director Surgical Services, United Hospitals Medical Center

Virginia Matthews, Director of Nursing, Newark Beth Israel Medical Center

Ann Guarino, RN, CNOR, Assistant Director of Surgical Services, South Amboy Memorial Hospital

Judith A. Boehm, RN, Director of Nursing, Clifton Surgery Center

John C. McConnell, M.D.

Joginder N. Bhayana, M.D.

Kenneth A. Remsen, M.D.

Howard Taylor, M.D.

Edward A. Lefrak, M.D.

Michael L. Margolin, M.D.

Richardo M. Cuaycong, M.D.

Association of Operating Room Nurses, Inc.:

1. Althea R. Dunscombe, RN, Chair
2. Jane C. Rothrock, President
3. Susan M. Harkness, RN, CNOR, President

Joseph H. Thornton, MPH, President, New Jersey State Society of Physician Assistants

Andrea W. Aughenbaugh, RN, Deputy Director, New Jersey State Nurses Association

Stanley Mendelson, P.T., Chairman, Board of Physical Therapy

Susan H. Gartland, Executive Director, Board of Physical Therapy

Fred M. Palace, M.D., President, Medical Society of New Jersey

Following is a summary of the comments received together with the Board's responses:

N.J.A.C. 13:35-1.5

COMMENT: Lucius Bowser, Supervising Investigator, Enforcement Bureau, Office of Drug Control, supported the consolidation of the prescription requirements as to residents within N.J.A.C. 13:35-1.5 and the repeal of N.J.A.C. 13:35-6.3.

RESPONSE: The Board appreciates the writer's support.

N.J.A.C. 13:35-4.1(a)1

COMMENT: Two respondents wrote that with respect to the endoscopic procedures requiring the traverse of a body wall, the regulation should be clarified regarding the need for a qualified assistant to be immediately available in the "operating suite." The respondent stated it is unclear where the surgeon should be physically located and the precise restrictions that apply to the surgeon's activity at the time of the procedure.

RESPONSE: The Board would interpret the term "immediately available" to require that the assisting surgeon be within the operating room area and available to respond to any emergency. Accordingly, the first assistant ought not to be performing another procedure which he or she is not in a position to leave.

COMMENT: One respondent expressed concern that "endoscopic procedure" may be inappropriately interpreted to include percutaneous endoscopic gastrostomy (PEG), a procedure usually done by gastroenterologists without a surgeon present at all. It was noted that Medicare recently modified its rule so that it is more difficult to obtain payments to have a second gastroenterologist assisting.

RESPONSE: The Board did not intend to require two surgeons at a procedure such as this. The Board does not believe it is necessary to clarify the rule at this time. The Board will, however, review the language to determine whether this and other procedures would be inappropriately encompassed within this language and, if so, will clarify the rule at that time.

N.J.A.C. 13:35-4.3(b)

COMMENT: Twenty-three respondents urged the Board to permit qualified physician assistants and registered nurses to act as first assistants in major surgical procedures. The commenters pointed out that these non-physicians provide safe and cost-effective services that help alleviate scheduling problems caused by an inadequate supply of surgeons to assist the primary surgeon.

The New Jersey State Society of Physician Assistants and the president of the Association of Operating Room Nurses, Inc. (AORN), suggested that the primary surgeon is the best professional to choose the most appropriate provider to first assist. Factors considered by the primary surgeon in choosing a first assistant include complexity of the operation; expected effect of the assistant on morbidity and mortality; and risk of complications during the procedure. AORN stated its belief that the non-physician first assistant must be credentialed by the employing institution and that the credentialing process should include a mechanism for assessing qualifications as well as continued proficiency, annual evaluation, compliance with institutional policies and a definition of lines of accountability.

The New Jersey State Nurses Association pointed out that a registered nurse first assistant (RNFA) is required to complete a one year, post-basic training program that contains structured, didactic and supervised clinical learning activities and that national certifications are available to affirm the RN's competence. The Association requested a public hearing to be jointly conducted by the Board of Medical Examiners and the Board of Nursing in order to reconsider this rule.

In order to ensure patient safety, the president of the Medical Society of New Jersey urged the Board to approach cautiously the requests to expand the role of non-physicians to include acting as first assistants.

RESPONSE: These commenters both for and against an expanded role for non-physician first assistants have raised important policy concerns requiring further consideration. Because of time constraints, additional review cannot be undertaken in the context of this readoption. Rather, the Board has referred this matter to a committee that will study the matter and advise the Board whether amendments to this rule are warranted. The request for a public hearing has therefore been denied. The Board has every intention, however, of fully exploring the ramifications of any such change and will include in its consideration comments from all interested organizations.

N.J.A.C. 13:35-6.17(a)

COMMENT: Lucius Bowser, Supervising Investigator of the Enforcement Bureau, Office of Drug Control, asked whether, under this regulation, amphetamines/sympathomimetic amines could be prescribed for idiopathic edema as permitted in some states.

RESPONSE: Idiopathic edema is not the subject of this rule and is very distinct from idiopathic central nervous system hypersomnia. The Board did not intend to allow the use of Schedule II substances in treating idiopathic edema.

N.J.A.C. 13:35-6.14(a)1

COMMENT: The New Jersey Board of Physical Therapy expressed its opposition to the inclusion of physical therapists within the group of health care providers recognized to accept delegation from doctors within their offices. The Physical Therapy Board stated that physical therapy licensure permits therapists to perform the modalities referred to regardless of the setting.

RESPONSE: By offering some definition to the term "licensed health care professional" the Board was hoping to encompass all those who might reasonably be working within a physician's office. The inclusion of physical therapists within this listing was simply to recognize that they are fully authorized to perform these modalities. The Board recognizes that supervision as contemplated for other professionals and unlicensed persons is not necessary when physical therapists administer the modalities upon physician direction.

COMMENT: The Board of Physical Therapy expressed concern that failure to include the athletic trainers' restricted practice settings in the rule may be misleading to both athletic trainers and the consumer.

RESPONSE: The Board believes it is clear that the scope of practice of athletic trainers, like other professionals, is limited to that permitted by statute. The Board does not believe it is necessary to reiterate statutory practice restrictions for non-physicians.

COMMENT: The president of the Physical Therapy Board asked the Board to consider setting delegation limitations (that is, three sessions), stating that its concern lies with "long term treatments with potentially dangerous side effects when implementing only passive modalities."

RESPONSE: The statute does not set delegation limitations, nor does the Board believe they are necessary. In all instances, the delegating physician retains ultimate responsibility to delegate only those modalities that pose minimal risk and that can reasonably be delivered by persons who have had some training.

COMMENT: Arlene Kern, President of the New Jersey Podiatric Medical Assistants Association, stated that, upon completion of a formalized course or at least certain modules within the course (that is, physical therapy), podiatric medical assistants should be authorized to perform limited physical modalities pertaining to podiatric medicine, including ultrasound and modalities taught under the guidance and direction of qualified individuals.

RESPONSE: N.J.S.A. 45:5-11.1 expressly precludes podiatrists from allowing unlicensed individuals to administer physical modalities. To the extent that the writer seeks a reform, the appropriate forum would be the Legislature.

Summary of Agency-Initiated Changes:

1. References to the practice of medicine were inadvertently omitted both in the section heading of N.J.A.C. 13:35-1.5(a), and in the definition of "permit holder." Clearly, this section was amended to reference permit mechanisms applicable to both unlicensed podiatry residents and medical residents.

2. The remainder of the amendments to this chapter are clarifying amendments only and are self-explanatory within the context of the rule text that follows.

Agency Note: The Board notes that the statements contained in the readoption proposal Summary (see 26 N.J.R. 2526(a)) included two inadvertent, non-substantive errors. While the errors do not affect the underlying basis for the readopted rules, the Board nevertheless wishes to point them out upon adoption:

1. Reference in the third paragraph of the Summary to "Foreign Licensing Examination" should be to the "Federation Licensing Examination," as correctly set forth in N.J.A.C. 13:35-3.1.

2. The word "base-situation" should be changed to "base-station" in the last paragraph on page 2527 as follows:

"According to N.J.A.C. 13:35-6.2(d) and (e), paramedics were authorized to seek from the Board a certificate authorizing them to make pronouncements of death. Since this certification mechanism has not been used in practice, the Board is proposing to bring its regulation into conformance with N.J.A.C. 8:41-7.5, which authorizes paramedics with mobile intensive care units to relay findings, including telemetered electrocardiograms if feasible, to [base-situation] **base-station** physicians so that those physicians can make pronouncements. . . ."

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

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

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

13:35-1.5 Registration and permit requirements for graduate medical education programs ***in medicine or podiatry***

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

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

"Director" means a physician holding a plenary license to practice medicine and surgery in New Jersey who is responsible for the conduct of a graduate medical education programs at a hospital licensed in this State and whose responsibilities shall include generally overseeing the selection, training and evaluation of residents. With respect to graduate medical education programs in podiatry, the director shall be a podiatric physician licensed to practice podiatry in New Jersey.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.-3. (No change.)

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

5. Has obtained ECFMG or Fifth Pathway certification, if he or she is a graduate of a foreign medical school.

(d) (No change.)

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

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

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

(i) (No change.)

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

1.-3. (No change.)

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

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

1. (No change.)

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

3. With respect to medical residents, ECFMG or Fifth Pathway certification, if applicable.

4. (No change.)

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

1.-2. (No change.)

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

4. With respect to medical residents, ECFMG or Fifth Pathway certification, if applicable.

5.-6. (No change.)

(n) (No change.)

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

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

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

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

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

(v) (No change.)

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

1.-4. (No change.)

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

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

13:35-1A.4 Education programs

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

1.-2. (No change.)

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

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

ii. A passing grade on USMLE—Step 1.

4. (No change.)

(b) (No change.)

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

13:35-2.4 (Reserved)

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

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

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

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

13:35-3.1 Licensing examination; physicians

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

(b) Prior to January 1995, the Federation Licensing Examination (FLEX) shall serve as one of the two standard medical and surgical licensing examinations in the State of New Jersey.

(c) A candidate for examination who has met all other requirements of law for medical licensure shall be admitted to USMLE, Step 3, upon appropriate demonstration to the Board of successful completion of one of the following examination sequences. Completion of the examination sequence includes attainment of a passing score on each portion of the sequence. (The passing score for each portion of the examination sequence will be the score that was deemed passing by the Board at the time the examination was administered.)

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

2. FLEX Component I.

(d) The entire examination sequence shall be passed within a seven-year period. The seven-year period begins when the first portion of the examination is passed. No passing credit shall be carried beyond the seven-year period. Candidates shall be required to repeat the entire USMLE sequence if the entire examination is not passed within seven years of the initial date of passage.

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

13:35-3.2 Endorsement; physicians

(a) The Board shall grant without examination a license to practice medicine and surgery to any person who shall furnish proof that he or she can fulfill the requirements of law relating to applicants for admission by examination and who:

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

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

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

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

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

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

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

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

13:35-3.3 Endorsement; podiatric physicians

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

13:35-3.4 (Reserved)

13:35-3.7 Limited exemption from licensure; physicians

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

(c) Any physician employed or to be employed under an exemption from licensure must:

1. Satisfy all statutory and regulatory requirements preceding examination required by law;

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

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

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

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

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

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

(g) (No change.)

(h) The applicant shall demonstrate attainment of a passing grade on an examination approved by the New Jersey Medical Board for purposes of medical licensure in this State.

(i) An applicant who has successfully completed the full medical curriculum in a foreign medical school approved by the Board of Medical Examiners pursuant to law but who has completed clinical training in the United States in a program not specifically approved by the Board, shall demonstrate prior licensure in another state and compliance with all other provisions of this section and of law, and may then be eligible to be considered for licensure in this state by endorsement. An applicant from a program specifically disapproved by the Board or conducted outside of an available approved-program procedure, shall not be eligible under this subsection.

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

SUBCHAPTER 4. SURGERY

13:35-4.1 Major surgery; qualified first assistant

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

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

2.-3. (No change.)

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

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

SUBCHAPTER 6. GENERAL RULES OF PRACTICE

13:35-6.1 Practice identification

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

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

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

13:35-6.2 Pronouncement of death

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

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

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

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

13:35-6.3 (Reserved)

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

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

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

i. (No change.)

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

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

2-4. (No change.)

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

13:35-6.10 Advertising and solicitation practices

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

1.-3. (No change.)

4. The term "print media" shall include newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, signs, matchcovers and other similar items, documents or comparable publications, the content of which is disseminated by means of the printed word.

5. The term "electronic media" shall include radio and television.

6.-7. (No change.)

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

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

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

13:35-6.12 (Reserved)

13:35-6.13 Fee schedule

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

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

i.-viii. (No change.)

ix. Permit $50.00

2. Podiatry (license)

i.-v. (No change.)

vi. Permit $50.00

3.-9. (No change.)

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

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

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

(b) (No change.)

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

(d) A physician may direct an unlicensed aide to administer the following physical modalities: hot packs, cold packs, paraffin baths, contrast baths, and whirlpool baths. The aide shall not be permitted to perform any rehabilitative exercise programs. No other modalities including T.E.N.S. or traction shall be performed by the unlicensed physician's aide.

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

1. (No change.)

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

3.-5. (No change.)

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

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 9. ACUPUNCTURE

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

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

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

1.-5. (No change.)

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

i.-v. (No change.)

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

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

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MORTUARY SCIENCE

Board of Mortuary Science Rules

Readoption with Amendments: N.J.A.C. 13:36

Proposed: June 20, 1994 at 26 N.J.R. 2536(a).

Adopted: August 2, 1994 by the Board of Mortuary Science, Michael Petrolle, President.

Filed: September 19, 1994 as R.1994 d.523, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: September 19, 1994, Readoption; October 17, 1994, Amendments.

Expiration Date: September 19, 1999.

The Board of Mortuary Science afforded all interested parties an opportunity to comment on the proposed readoption with amendments of N.J.A.C. 13:36, Board of Mortuary Science Rules. The official comment period ended on July 20, 1994.

Announcement of the opportunity to respond to the Board of Mortuary Science appeared in the New Jersey Register on June 20, 1994 at 26 N.J.R. 2536(a). Announcements were also forwarded to The Star Ledger, The Trenton Times, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Executive Director of the Board of Mortuary Science, Paul Brush, 124 Halsey St., P.O. Box 45009, Newark, NJ 07101.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board of Mortuary Science received three written comments regarding the proposed readoption. A list of the commenters follows:

Wilson H. Beebe, Jr., Executive Director, New Jersey State Funeral Directors Association, Inc. ("Association")

George T. Dougherty

William B. Waits, Executive Director, New Jersey Cemetery Board

Following is a summary of the comments received together with the Board's responses:

N.J.A.C. 13:36-1.9 Statement of Funeral Goods and Services Selected

COMMENT: The New Jersey Cemetery Board asked the Board to confirm that the services contemplated in the "Optional Packaged Services" (to supersede categories I, II and III) do not include sales of any goods or services customarily offered by cemeteries, and that the same is true regarding goods or services that might fall under the rubric of "other" in category IV.

RESPONSE: The Board does, indeed, affirm that the services contemplated in the "Optional Packaged Services" are not intended to include sales of any goods or services customarily offered by cemeteries. Licensees are limited to providing goods and services that could otherwise be provided as categorized items. Likewise, the designation of "other" in category IV also does not represent an attempt to provide goods or services customarily offered by cemeteries and as such is in compliance with the Board's enabling statute.

COMMENT: In regard to category V, the Cemetery Board asked for clarification that these cash disbursements may not include funds trusted pursuant to the funeral directors trusting statutes (N.J.S.A. 45:7-82 et seq., 2A:102-13 et seq., and 3B:11-16 et seq.) The respondent reminded the Board that the definitions of "prepaid funeral goods" and "prepaid funeral services" in N.J.S.A. 45:7-82 specifically exclude cemetery goods and services.

RESPONSE: The proposed amendments do not represent an expansion of the commonly known scope of goods and services traditionally provided by licensed practitioners of mortuary science. As such, the reminder provided by the respondent is unnecessary.

COMMENT: The Association suggested that subsection (e) be amended to include an FTC requirement that is an exception to the rule. Subsection (e) provides that practitioners need not include the category of Optional Packaged Services on the Statement of Funeral Goods and Services. However, in order to stimulate the offering of packaged services, the Federal Trade Commission requires the practitioner to quote a unit price when offering direct cremation, immediate burial, forwarding of remains and/or receiving remains.

RESPONSE: The technical amendment being offered reflects the condition that already exists in the law and does not change the import of this rule. In concurring that such a technical amendment may provide additional clarification for licensees, the Board accepts the amendment and hereby incorporates it as part of the readoption of these rules.

N.J.A.C. 13:36-5.6 Equipment requirements

COMMENT: The Association suggested deleting reference to the Bloodborne Pathogens Rule adopted by the Occupational Safety and Health Administration (OSHA), stating that the cited OSHA rule is only one of many OSHA rules that determine requirements for use of personal protective equipment.

RESPONSE: The Board agrees and will amend the rule on adoption to refer to "all applicable" OSHA standards.

COMMENT: The Association requested that hardening compound not be required. Use of a hardening compound is not necessary and, if used, necessitates compliance with a number of hazardous chemical/formaldehyde OSHA requirements that would not be applicable if no hardening compound were present.

RESPONSE: To delete the line item "hardening compound" at this time would constitute a substantive change and would as such delay the readoption of these rules. Rather than engender such a delay and in order to provide the Board with an opportunity to gain a fuller appreciation of the issue at hand, the Board will give further consideration to this matter in a timely manner.

N.J.A.C. 13:36-8.6 Funeral arrangements involving cash or negotiable instrument

COMMENT: One respondent recommended that subsection (a) be clarified to refer to every licensed **practitioner** rather than every licensed person.

RESPONSE: The Board agrees and will amend this subsection upon adoption.

COMMENT: The Association pointed out that the concluding reference to "pre-need offerings" in subsection (e) should be "at-need offerings."

RESPONSE: The Board will correct this typographical error upon adoption.

N.J.A.C. 13:36-8.10 Presence of licensee for disposition of dead human body

COMMENT: The New Jersey Cemetery Board questioned whether this section is overly broad in requiring a practitioner to be present at each disinterment of remains, except for disinterments made pursuant to court order in a criminal investigation. The respondent recommended mandatory practitioner presence only in those special cases in which the expertise of a funeral director may be necessary (such as cases in which the person died from a communicable disease and there is a present risk of infection) or where the remains are being removed from the cemetery.

RESPONSE: It is the obligation of the licensee to be present at disinterments for which a family has engaged the licensee's services. Since problems might arise, such as those involving diseases, which cannot be known in advance, the Board requires a licensee to be present at all disinterments (except for those under court order, and pursuant to N.J.A.C. 3:41-7.4) in the interest of public health and safety.

COMMENT: Reference to the exception provided by N.J.A.C. 3:41-7.4 should be included in this section.

RESPONSE: The Board agrees that reference to N.J.A.C. 3:41-7.4 would ensure that the provided exception is known by licensees.

COMMENT: The Cemetery Board noted that "disinterment" is listed as a disposition of the remains and questioned whether a disinterment should be so characterized. The respondent recommended that the first words of the section be amended as follows: "No interment, [disinterment,] cremation or other disposition of a dead human body, **or any disinterment thereof,** shall . . ."

RESPONSE: The Board agrees that the recommended language clarifies the regulation and continues to make clear, as noted above, the requirement of a licensee's presence at any disinterment except one resulting from a court order in a criminal proceeding.

N.J.A.C. 13:36-9.1 **Definitions**

COMMENT: The Association recommended that this section be re-adopted without amendment because the proposed amendments are unclear and in conflict with the purpose of subchapter 9, which is to track the funeral rule recently adopted by the Federal Trade Commission (FTC) at 19 CFR, Part 453. The Association further recommended that subchapter 9 will need to be overhauled at a later date to ensure compliance with the FTC rule.

RESPONSE: The Board recognizes that further revisions will be necessary to ensure compliance with the FTC rule in question. Nevertheless, the Board is not in favor of delaying the implementation of the rules changes that have been proposed because those changes reflect the Board's present intent, subject to further review and clarification.

COMMENT: The Cemetery Board recommended that a phrase be added to the end of the definition of "funeral goods" to clarify that such goods do not include goods customarily offered by cemeteries. The respondent suggested that such an amendment would be consistent with the amendments made to N.J.S.A. 45:7-82 in the funeral directors trusting statute and would be in the interest of all of those individuals who look to the regulations for guidance as to whether certain activities are permitted.

RESPONSE: The Board notes the limitation sought by the respondent but is not in favor of it because the range of goods and services that may be provided by cemeteries cannot be acknowledged in such a manner as to preclude the goods and services that have traditionally, and by necessity, been provided by licensees in order to best serve the consumer's interests. It is not the Board's intent to regulate the conduct of persons other than licensed mortuary practitioners in the sale of goods customarily sold by cemeteries.

COMMENT: One respondent noted that the expanded definition of "funeral goods" includes the term "practitioner" as opposed to "licensed practitioner of mortuary science" and, as such, is not in keeping with other references that appear throughout the Board's proposal. More importantly, the abbreviated reference to "practitioner" might be construed to limit cemeteries from selling goods and services that could fall under the broad and undefined rubric "religious artifacts." The respondent added that N.J.S.A. 45:7-82 contains a definition of "pre-paid funeral goods" that does not include "religious artifacts" but does include the clarification that this definition does not mean goods normally sold by cemetery companies. The respondent therefore stated that the definition of "funeral goods" in this section should conform to the one recently adopted in N.J.S.A. 45:7-82, and should contain the same caveat.

RESPONSE: The Board agrees that the term "practitioner" should be clarified to be "practitioner of mortuary science" and will correct this oversight in readopting the rules. As to including "religious artifacts" in the definition of "pre-paid funeral goods," the Board will reconsider this and all other definitions in reviewing subchapter 9 to ensure compliance with the recently adopted FTC rule.

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

SUBCHAPTER 1. ADMINISTRATION

13:36-1.4 Duties of Executive Director

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

1.-3. (No change.)

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

13:36-1.5 Inspector's duties

(a) The inspector shall:

1. Inspect mortuaries for cleanliness wherein practitioners of mortuary science are practicing;

2. Where necessary, view dead human bodies which have been placed in the care of any practitioner of mortuary science;

3. Inspect the license and registration of practitioners of mortuary science;

4.-6. (No change.)

(b) (No change.)

13:36-1.6 Fees and charges

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

1.-8. (No change.)

9. Biennial license renewal fees:

i.-iv. (No change.)

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

10.-13. (No change.)

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

15. (No change.)

13:36-1.8 Recordkeeping by practitioner of mortuary science

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

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

(c) Such records are to include the following:

1. The Statement of Funeral Goods and Services Selected;

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

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

4. Date of disposition; and

5. The final bill.

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

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

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

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

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

4. Estimated charges;

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

6. Cash disbursements paid by the family; and

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

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

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

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

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

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

CATEGORY I—PROFESSIONAL SERVICES

1. Basic Services of Funeral Director and Staff $

2. Embalming (including use of preparation room and sanitary care) $

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain below.

3. Sanitary Care, Without Embalming $

4. Other (Specify) $

Category I TOTAL $

CATEGORY II—OTHER STAFF AND RELATED FACILITIES

1. Use of Facilities and Staff for Viewing	$
2. Use of Facilities and Staff for Funeral Ceremony	$
3. Use of Facilities and Staff for Memorial Service	$
4. Use of Equipment and Staff for Graveside Service	$
5. Other (Specify)	$
Category II TOTAL	$

CATEGORY III—TRANSPORTATION

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

OPTIONAL PACKAGED SERVICES—Direct Cremation, Immediate Burial. $

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

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

CATEGORY V—CASH DISBURSEMENTS (Estimated)

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

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

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

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

REASONS FOR EMBALMING:

☐ Family authorized.
☐ Other: ____________________

(e) A practitioner who offers the Optional Packaged Services and has that offer accepted by a consumer shall not be required to detail the charges for Categories I through III, which are then not applicable. It shall not be mandatory for practitioners to include the category of "Optional Packaged Services" on the Statement of Funeral Goods and Services Selected form ***if they do not offer for sale the services of Direct Cremation, Immediate Burial, Forwarding of Remains and/or Receiving of Remains***.

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

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

SUBCHAPTER 2. INTERNS

13:36-2.1 Qualification for intern registration

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

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

1. (No change.)

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

3.-4. (No change.)

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

13:36-2.4 Intern identification card

During the course of his or her training, every student intern shall at all times carry the intern card issued by the Board.

13:36-2.6 Credit for embalming body

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

13:36-2.7 Intern qualifications for employment

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

13:36-2.8 Absence from training

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

13:36-2.9 Termination of training

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

13:36-2.10 Return of intern identification card

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

13:36-2.11 Affidavit recommendation form

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

(b) (No change.)

SUBCHAPTER 3. EXAMINATIONS

13:36-3.3 Examination procedure

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

13:36-3.4 Examination subjects

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

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

SUBCHAPTER 4. LICENSE AND REGISTRATION GENERALLY

13:36-4.1 License renewals

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

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

13:36-4.2 Notice of residence address change

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

13:36-4.5 Change of ownership

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

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

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

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

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

i. The officers of the corporation;

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

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

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

4. A letter forwarded to the Board by the funeral establishment manager indicating that he or she accepts the position.

13:36-4.8 Full-time licensed manager

(a) Every establishment operating under corporate, limited partnership or limited liability company ownership, authorized to carry on the practice of mortuary science, shall be under the direct supervision of a full-time licensed manager.

(b) (No change.)

(c) Whenever the manager's services are terminated, the manager and the licensee in charge of the establishment shall notify the Board, in writing, within 30 days of the termination.

(d) Except as set forth in (e) below, the licensee in charge of the establishment shall within 30 days of such termination give notice to the Board of the name of the newly designated manager, whether permanent or temporary. Within 30 days of accepting the manager's position, the newly designated manager shall submit to the Board the following:

1. A letter indicating such acceptance;
2. An application to become a manager; and
3. The fee prescribed for the application.

(e) The licensee in charge of the establishment may within 30 days of such termination submit to the Board documented evidence of hardship or extenuating circumstance. The Board, if it deems such evidence acceptable, may grant the establishment an extension of time up to, but not exceeding, six months after the termination of the former manager in which to secure the services of a new manager.

13:36-4.9 Participation of unlicensed persons

(a) No unlicensed person shall actively participate in any capacity in the actual funeral arrangements, preservation, preparation or disposal of dead human bodies.

(b) The use by an unlicensed person of the words "mortician," "funeral director," "undertaker" or any other words or title of like import or signification, including, but not limited to, "consultant," "counselor" or "provider" in connection with the offering of any funeral service or merchandise, shall constitute a deceptive practice pursuant to N.J.S.A. 45:7-47.

13:36-4.11 Trade Names

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

(c) The trade name firm shall forward to the Board the name of the full-time manager in charge. The manager shall also forward to the Board an affidavit stating he or she accepts said position.

(d) Whenever an individual licensed owner conducts an establishment under his or her own surname, then such use of the surname shall not be considered a trade name.

13:36-4.12 Death of licensee or owner

(a) The practice of a mortuary establishment shall cease and the certificate of registration shall become void upon the death of an owner and shall not be renewed unless the executor or administrator of the estate or the deceased owner's heir or heirs informs the Board within 30 days of their intention to continue the mortuary practice and apply for a certificate of registration. Such notice must be in writing and conform with the following requirements:

1.-2. (No change.)

3. The manager shall simultaneously submit to the Board an affidavit stating his or her willingness to act in such capacity.

4. (No change.)

13:36-4.13 Use of a registered mortuary owned by another

(a) A person who owns a registered mortuary may use another registered mortuary without obtaining a certificate of registration or complying with new funeral home installation requirements up to but not exceeding three times a year. The owner of a registered mortuary may permit the owner of another registered mortuary to use his or her mortuary up to but not exceeding three times a year. The Board may waive such limits of three times a year upon receipt of a special application showing good cause for the waiver.

(b) All parties involved in such a special use agreement shall immediately forward written notice to the Board before each use of the establishment. This notice shall include the following information:

1.-2. (No change.)

3. Name of decedent; and

4. The exact date(s) the establishment is to be used.

(c) (No change.)

SUBCHAPTER 5. MORTUARIES

13:36-5.1 Display of "Manager" sign

(a) Whenever a firm is required to be operated under the supervision, management and control of a licensed manager, the name of the manager shall be conspicuously displayed with the title "manager" on a sign at or about the main entrance of the establishment or on the firm sign, provided, however, that at the option of the firm the term, "senior director" or "executive director" may be substituted for "manager." This sign shall contain legible letters that are no less than 1½ inches in height.

(b) The name of the licensee in charge must also appear with the title "manager," "senior director" or "executive director" on all stationery, billheads, advertising, and in all other instances where the firm name is used.

13:36-5.6 Equipment requirements

(a) Every funeral establishment in the State shall have in its preparation or embalming room and shall be equipped with, but not limited to the following:

1.-4. (No change.)

5. Drainage or viscera bucket;

6.-10. (No change.)

11. For each licensee and trainee, protection, apparel and/or equipment as required by ***all applicable standards*** of the Occupational Safety and Health Administration Agency (OSHA) *[pursuant to Bloodborne Pathogens Rule (29 CFR 1910.1030)]*.

Recodify existing 13.-28. as 12.-27 (No change in text.)

(b) (No change.)

13:36-5.8 (Reserved)

13:36-5.9 Multiple funeral establishments in same location

(a) Any individual, partnership, corporation or limited liability company that applies to register any additional funeral establishment(s) in a location already registered as a funeral establishment by the State of New Jersey shall comply with N.J.A.C. 13:36-4 and this subchapter.

(b) In the event an establishment has the same or similar ownership of individuals, partnerships, corporations or limited liability companies as the primary funeral establishment, prices quoted and charged to consumers shall be the same for all establishments in that location.

(c) No more than three funeral establishments shall operate in one facility unless, upon application, the Board in its discretion finds that permitting an additional establishment will be in the best interest of consumers.

13:36-5.10 Display of establishment sign

Every funeral home, except a trade service, shall display the firm name as registered in the certificate of registration on a sign located reasonably near the main entrance or clearly visible from the street and the main entrance.

13:36-5.12 Advertising

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

1.-2. (No change.)

3. "Licensee" means licensed practitioner of mortuary science as defined by N.J.S.A. 45:7-34(g).

4. (No change.)

5. "Testimonial" means a statement by a person referring to his or her family's personal experience with a mortuary or licensee.

(b) All stationery and advertisements must indicate the true firm name as registered with the Board of Mortuary Science; however, this shall not apply to small novelty items where the space of advertising is limited.

(c)-(i) (No change.)

13:36-5.15 Unlicensed persons in funeral directing or embalming practice

A licensed practitioner of mortuary science shall not permit any unlicensed person to engage in or take charge of the activities for which a license to engage in the business or practice of funeral directing or embalming is required by the provisions of the Mortuary Science Act.

13:36-5.16 Notice of absence from practice

In cases where a licensed practitioner of mortuary science in charge of an establishment intends to remain away from his or her establishment or practice for a period in excess of 30 days, he or she shall so notify the Board and furnish it with the name of the licensed employee who will remain in charge.

13:36-5.17 Removal of human bodies; authorization

No person shall remove human remains from any residence or institution without first securing authorization consenting to the removal from the next of kin or a person legally entitled to grant said authorization.

13:36-5.18 Disposition of dead human remains

(a) Whenever dead human remains are entrusted to the care of a licensed practitioner of mortuary science for a disposition, the practitioner shall conform with N.J.A.C. 8:9-1 et seq. and shall not remove any part or dispose of the remains in any manner whatsoever except as permitted by law and as authorized by the person legally entitled to grant said authorization.

(b) (No change.)

SUBCHAPTER 6. EMBALMING PROCEDURE

13:36-6.1 Privacy of burial preparation

(a) The preparation for burial or other disposition of all dead human bodies shall be performed in privacy. No one shall be permitted to be present in the embalming, operating or preparation room while a dead human body is being embalmed, washed or otherwise prepared for burial or other disposition, except the following:

1. Licensed practitioner of mortuary science and their employees;

2.-6. (No change.)

13:36-6.2 Dress requirement for embalming

(a) Every person, while engaged in the actual embalming of a dead human body, shall be attired in a clean and sanitary smock or gown, which does not permit blood or other potentially infectious materials to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth or other mucous membranes, and shall while so engaged wear protective apparel in compliance with OSHA regulations (see 29 CFR 1910.1030).

(b) (No change.)

13:36-6.4 Disposal of blood and excretion

All blood and excretions of a dead human body shall be disposed of in a sanitary manner. Licensees shall comply with the OSHA regulations (see 29 CFR 1910.1030) in the operation of a licensed funeral establishment and shall use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, including Volume 38, S-6, June 23, 1989, and subsequent volumes available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference. These precautions shall include taking due care to prevent any spread of infection in the handling of dead human body during transportation, in preparing and during embalming, and after contact with such body, and shall also include the disinfecting of hands and the removal of any soiled clothing.

13:36-6.5 Marking receptacles

(a) All receptacles containing embalming fluid, formaldehyde or any poisonous or dangerous substances shall be plainly marked to indicate the contents thereof in compliance with 29 CFR 1910.1048.

(b) Receptacles containing blood or other potentially infectious materials shall be placed in a container that prevents leakage during collection or storage.

13:36-6.6 Unnatural deaths

No licensed practitioner of mortuary science shall permit the embalming of a dead human body where he or she has information reasonably indicating that death occurred as a result of accidental, homicidal or suicidal means or under suspicious or unnatural circumstances, until the body has been duly released to him or her for embalming or other preparation by the proper authority in accordance with the State Medical Examiners Act (N.J.S.A. 52:17B-87).

SUBCHAPTER 8. GENERAL RULES OF PRACTICE

13:36-8.1 Carrying license identification card

Every licensed practitioner of mortuary science shall in the conduct of business carry on his or her person the current license identification card.

13:36-8.2 Divulging secrets

A licensed practitioner of mortuary science shall not divulge or permit his or her agents or employees to divulge any privacies, confidences or secrets that may come to his or her attention through the practice of mortuary science. However, this rule shall not be invoked to circumvent the Board's legal powers to carry out its duties and responsibilities under the law, nor the powers of the courts and other public bodies to compel the giving of testimony.

13:36-8.3 Safeguarding public health and decedent's dignity

Every licensed practitioner of mortuary science shall adopt all proper means and methods to safeguard the public health and dignity of the decedent.

13:36-8.4 Restrictions on employment

A licensed practitioner of mortuary science shall not employ or engage the services of any person other than his or her registered intern or interns or another practitioner in the embalming of cadavers or in the practice of funeral management pursuant to N.J.S.A. 45:7-47.

13:36-8.5 Unauthorized license use

No licensed practitioner of mortuary science shall lend his or her license to any other person, or employ it in such a way as to defeat the purposes of the law; provided, however, this rule shall not prevent the aforesaid licensee from embalming cadavers or supervising funerals and burials on behalf of out-of-State practitioners of mortuary science, funeral directors, or embalmers.

13:36-8.6 Funeral arrangements involving cash or negotiable instrument

(a) Every licensed *[person]* ***practitioner of mortuary science*** responsible for pre-need arrangements shall comply with N.J.S.A. 45:7-82 through 45:7-94, 2A:102-13 through 16.1, and 3B:11-16 through 18.

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

(d) If the licensed practitioner of mortuary science guarantees the funeral home charges and accepts moneys for cash advance items at the time pre-need arrangements are made, the practitioner shall first apply the interest generated by those moneys paid for cash advance items so as to cover any increased costs of those items, and shall refund any surplus therein to the purchaser and/or his or her legal representative or shall apply the surplus to other use as directed. A practitioner shall not apply any surplus derived from the cash advance portion of a guaranteed price contract to any other part of the contract.

(e) In offering pre-need arrangements on behalf of an establishment, a licensed practitioner of mortuary science shall not impose prices that are greater than those on the price lists utilized by the establishment for its *[pre-need]* ***at-need*** offerings.

13:36-8.7 Authorized surrender of cadavers

A licensed practitioner of mortuary science shall promptly surrender a cadaver upon proper direction and authorization of the person lawfully entitled to its custody.

13:36-8.8 Authorization to embalm cadaver

No licensed practitioner of mortuary science shall take possession of or embalm a cadaver without first being directed and fully authorized to do by those charged with the duties of interment.

13:36-8.9 Funeral arrangements or quotation of funeral prices

(a) No unlicensed person shall be permitted to make funeral arrangements on behalf of any licensed practitioner of mortuary science, except that duly registered interns may make such arrangements pursuant to N.J.S.A. 45:7-47.

(b) When funeral arrangements are being made, no one but a duly licensed practitioner of mortuary science shall quote prices to a consumer in connection with any funeral services and/or goods. Nothing contained in this section shall preclude quotation of prices when funeral arrangements are not being made.

13:36-8.10 Presence of licensee for disposition of dead human body

Pursuant to N.J.A.C. 3:41-7.4, *[No]* ***no*** interment, *[disinterment,]* cremation or other disposition of a dead human body***, or any disinterment thereof,*** shall be made in the State of New Jersey unless a New Jersey licensed practitioner of mortuary science is present at the time of disposition, provided, however, that this rule shall not apply to a disinterment resulting from a court order in connection with a criminal investigation.

13:36-8.11 Multiple burials

(a) No licensed practitioner of mortuary science shall place the remains, or any part of the remains, of more than one deceased person, stillborn infant, or fetus in a coffin, casket, or other container for the purpose of interment or cremation, or cause the remains, or any part of the remains, of more than one deceased person, stillborn infant, or fetus, to be interred or cremated together unless specific, written authorization to do so has been signed by a person charged with the duties of interment, or by a court of competent jurisdiction.

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

13:36-9.1 Definitions

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

...

"Funeral goods" means goods which are sold or offered for sale directly to the public for use in connection with funeral services including, but not limited to, merchandise such as casket, vault or other enclosure, clothing, prayer cards, register book, religious artifacts and any other items purchased by the ***licensed*** practitioner ***of mortuary science*** for resale without substantial alteration.

...

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Route U.S. 40
Woodstown Borough, Salem County
Adopted Amendment: N.J.A.C. 16:28-1.6

Proposed: August 1, 1994 at 26 N.J.R. 3131(a).

Adopted: September 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: September 16, 1994 as R.1994 d.513, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.
Effective Date: October 17, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28-1.6 Route U.S. 40
(a) The rate of speed designated for the certain parts of State highway Route U.S. 40 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic:
i. In Salem County:
(1)-(2) (No change.)
(3) Woodstown Borough:
(A) (No change.)
(B) Zone 2: 30 miles per hour between 100 feet west of Green Street and East Wilson Avenue (approximate mileposts 10.41 to 10.86); thence
(C) Zone 3: 35 miles per hour between East Wilson Avenue and Kesswood Avenue, except while "25 miles per hour when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours when passing through Woodstown High School zone (approximate mileposts 10.86 to 11.20); thence
(D) (No change.)
(4)-(7) (No change.)
ii.-iii. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route U.S. 9
Galloway Township, Atlantic County
Adopted Amendment: N.J.A.C. 16:28-1.41

Proposed: August 1, 1994 at 26 N.J.R. 3132(a).
Adopted: September 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: September 16, 1994 as R.1994 d.512, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.
Effective Date: October 17, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28-1.41 Route U.S. 9
(a) The rate of speed designated for certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. (No change.)
2. For both directions of traffic in Atlantic County:
i.-v. (No change.)
vi. In Galloway Township:
(1) Zone 18: 40 miles per hour between the City of Absecon-Township of Galloway corporate line and East Brook Avenue-Old Shore Road (approximate mileposts 44.14 to 44.53); thence
(2) Zone 19: 45 miles per hour between East Brook Avenue-Old Shore Road and 600 feet north of Sommers Town Lane (approximate mileposts 44.53 to 46.54); thence
(3) Zone 20: 40 miles per hour between 600 feet north of Sommers Town Lane and 1,200 feet north of Old Port Republic Road-Oyster Creek Road (County Road 618) (approximate mileposts 46.54 to 47.21); thence
(4) Zone 21: 45 miles per hour between 1,200 feet north of Old Port Republic Road-Oyster Creek Road (County Road 618) and Quail Hill Road (approximate mileposts 47.21 to 48.30); thence
(5) Zone 22: 40 miles per hour between Quail Hill Road and Old New York Road (County Road 610) (approximate mileposts 48.30 to 48.72); thence
(6) Zone 23: 45 miles per hour between Old New York Road and Smith Bowen Road (approximate mileposts 48.72 to 49.04); thence
(7) Zone 24: 50 miles per hour between Smith Bowen Road and the Township of Galloway-City of Port Republic corporate line (approximate mileposts 49.04 to 51.34); thence
vii. In the City of Port Republic:
(1) Zone 25: 50 miles per hour between the Township of Galloway-City of Port Republic line and the Garden State Parkway Interchange No. 48 (approximate mileposts 51.34 to 52.36).
(b) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route NJ 88
Lakewood Township, Ocean County
Adopted Amendment: N.J.A.C. 16:28A-1.44

Proposed: August 1, 1994 at 26 N.J.R. 3135(a).
Adopted: September 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: September 16, 1994 as R.1994 d.514, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.
Effective Date: October 17, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28A-1.44 Route 88
(a) The certain parts of State highway Route 88 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.
1. In Ocean County:
i. In Lakewood Township:
(1) Along the southerly side (eastbound);
(A) From the easterly curb line of Route U.S. 9 to a point 90 feet easterly therefrom (approximate mileposts 0.0 to 0.02); thence
(B) From a point 300 feet west of the prolongation of the westerly curb line of Lexington Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue (approximate mileposts 0.2 to 2.12).
(2) Along the northerly side (westbound);
(A) From the easterly curb line of Route U.S. 9 to a point 212 feet easterly therefrom (approximate mileposts 0.0 to 0.04); thence
(B) Between Lexington Avenue and Railroad Avenue (approximate mileposts 0.25 to 0.28); thence
(C) From a point 150 feet west of the westerly curb line of New Hampshire Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue (approximate mileposts 2.12 to 2.20).
ii. In Brick Township;
(1) Along both sides:

(A) For the entire length within the corporate limits, including all ramps, service roads and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30 (approximate mileposts 3.56 to 7.60).

iii. In Point Pleasant Borough;

(1) Along both sides:

(A) Within the entire corporate limits of Point Pleasant Borough (approximate mileposts 7.60 to 10.02).

(b) The certain parts of State highway Route 88 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. In Ocean County:

i. In Lakewood Township:

(1) Along the southerly side (eastbound):

(A) (Mid-block) From a point 90 feet east of the easterly curb line of Route U.S. 9 to a point 190 feet easterly therefrom; thence

(2) Along the northerly side (westbound):

(A) (Far side) Beginning at the westerly curb line of New Hampshire Avenue to a point 200 feet westerly therefrom.

(c) (No change.)

(d) The certain parts of State highway Route 88 described in this subsection shall be designated as "no parking" zones, where parking is prohibited at certain times and hours. In accordance with N.J.S.A. 39:4-199, permission is granted to erect the appropriate signs.

1. In Ocean County:

i. In Lakewood Township:

(1) Along the southerly side (eastbound):

(A) From a point 90 feet east of the easterly curb line of Route U.S. 9 to Clifton Avenue between the hours of 3:00 A.M. to 8:00 A.M. (except Sundays and legal holidays) (approximate mileposts 0.02 to 0.1).

(B) From the easterly curb line of Clifton Avenue to a point 300 feet west of the westerly prolongation of Lexington Avenue between the hours of 6:00 P.M. to 6:00 A.M. (approximate mileposts 0.1 to 0.2).

(2) Along the northerly side (westbound):

(A) From the westerly curb line of Lexington Avenue to Clifton Avenue between the hours of 6:00 P.M. to 6:00 A.M. (approximate mileposts 0.26 to 0.1).

(B) From Clifton Avenue to a point 212 feet east of the easterly curb line of Route U.S. 9 between the hours of 3:00 A.M. to 8:00 A.M. (except Sundays and legal holidays) (approximate mileposts 0.1 to 0.05).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route 56
Deerfield Township, Cumberland County
Adopted Amendment: N.J.A.C. 16:28A-1.98

Proposed: August 1, 1994 at 26 N.J.R. 3136(a).
Adopted: September 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: September 16, 1994 as R.1994 d.515, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.
Effective Date: October 17, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28A-1.98 Route 56

(a) The certain parts of State highway Route 56 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing in Deerfield Township, Cumberland County:

i. Along both sides for the entire length within the corporate limits of the Township of Deerfield, including all ramps, service roads and connections under the jurisdiction of the Commissioner of Transportation.

2.-4. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Rising Sun Road (under State jurisdiction)
Bordentown Township, Burlington County
Adopted New Rule: N.J.A.C. 16:30-3.12

Proposed: August 15, 1994 at 26 N.J.R. 3247(a).
Adopted: September 21, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: September 23, 1994 as R.1994 d.529, **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: October 17, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:30-3.12 Rising Sun Road

(a) Turning movements of traffic on certain parts of Rising Sun Road (under State jurisdiction) described in this subsection are regulated as follows:

1. In Burlington County:

i. In Bordentown Township:

(1) Center lane for left turns only:

(A) Both directions of Rising Sun Road (under State jurisdiction) beginning 800 feet east of the Route I-295 northbound exit ramp and extending to 500 feet west of Old York Road.

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route N.J. 73
Berlin Township, Camden County
Adopted Amendment: N.J.A.C. 16:31-1.17

Proposed: August 1, 1994 at 26 N.J.R. 3137(a).
Adopted: September 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: September 16, 1994 as R.1994 d.516, **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: October 17, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:31-1.17 Route 73

(a) Turning movements of traffic on the certain parts of State highway Route 73 described in this subsection are regulated as follows:

1. No left turn in Camden County.

i. In Berlin Township:

(1) From southbound on Route N.J. 73 into the Amtrak entrance, located approximately 475 feet south of the centerline of the Pennsylvania-Reading Seashore Line—N.J. Transit railroad overpass (approximate milepost 16.00).

[i.]**ii.** (No change in text.)

2.-3. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions
Route U.S. 9
Lakewood Township, Ocean County
Adopted Amendment: N.J.A.C. 16:31-1.29

Proposed: August 1, 1994 at 26 N.J.R. 3137(b).

Adopted: September 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: September 16, 1994 as R.1994 d.517, **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: October 17, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:31-1.29 Route U.S. 9

(a) Turning movements of traffic on certain parts of State highway Route U.S. 9 described herein in this subsection are regulated as follows:

1. In Ocean County:

i.-ii. (No change.)

iii. Lakewood Township:

(1) No left turn eastbound out of the driveways of the Lakewood Plaza to northbound onto Route U.S. 9 (approximate milepost 102.9).

(2) No left turn westbound out of the driveways of the Jamesway Plaza to southbound onto Route U.S. 9 (approximate milepost 102.9).

(b)

DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF REGULATORY AFFAIRS

Zone of Rate Freedom
Adopted Amendment: N.J.A.C. 16:53D-1.1

Proposed: August 15, 1994 at 26 N.J.R. 3247(b).

Adopted: September 20, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Planning, Department of Transportation.

Filed: September 22, 1994 as R.1994 d.526, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and 48:4-2.20 through 48:4-2.25.

Effective Date: October 17, 1994.

Expiration Date: April 8, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing was held on September 1, 1994, before Hearing Officer John J. Mycoff, of the Department's Office of Community Involvement, in the Multi-Purpose Room, Department of Transportation, Engineering and Operations Building, 1035 Parkway Avenue, Trenton, New Jersey. One oral comment was received by Bill Revere and John Solomita, representing the New Jersey Motor Bus Association. That comment, and the Department's response is outlined below. Mr. Mycoff in his hearing report of September 2, 1994, made no recommendations. The docket and comment period closed on September 14, 1994. The hearing record may be inspected by contacting Renee Rapciewicz, Deputy Administrative Practice Officer, NJDOT, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

One written comment was received from Mr. Samuel B. Jamieson, Jr., Vice President, Shortline, Mahwah, New Jersey.

COMMENT: Mr. Jamieson advised the Department that Shortline supports the proposal, as well as the continuation of the annual ZORF allowable adjustments. Mr. Jamieson concluded that the simplified procedure has saved considerable time and expense that used to be associated with tariff adjustments, and at the same time has protected the consumer by limiting the percentage adjustments of the carrier's tariff.

RESPONSE: The Department appreciates Mr. Jamieson's support of the proposal.

COMMENT: The New Jersey Motor Bus Association suggested that the Zone of Rate Freedom (ZORF) should include a procedure to allow for a cumulation of the annual percentage for each year that is not taken on a particular regular route, up to a specified period such as five years. This banking and accumulation of unused ZORF percentages is thought to be needed by the private bus industry because its pricing is sensitive to the pricing of fares by the State's public carrier. Fares of the public carrier have remained unchanged for a number of years, though costs have increased during that period. The industry is concerned about how this situation may marginalize its operations. Therefore, the suggestion is that the unused ZORF percentages, over a specified number of years, be made cumulative in nature for use in future years under the ZORF filing procedure.

RESPONSE: The Department of Transportation is concerned about the phenomenon described by the Association's representative, including its concern over marginalization of private company operations because revenues and expenses are placed out of balance due to fare competitiveness where the public and private bus operations intersect.

The statute establishing the ZORF mechanism does not appear, though, to include any provision for accumulating and banking annual ZORF percentages that go unused. Thus, the comment is more appropriately applicable to possible legislative change than to the instant rulemaking. The Department believes that the autobus industry, bus passengers, and others may wish to have the issue presented as part of a legislative change to the ZORF statute, in light of the serious concerns expressed.

In any event, though the phenomenon remains of concern, the companies continue to have available the tariff procedures of N.J.A.C. 16:51-3.10 and 3.11, in applying for changes in rates, fares or charges that exceed the limits of the annual ZORF percentages. It is acknowledged that those procedures are not as streamlined as the ZORF mechanism.

Full text of the adoption follows:

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State which seeks to revise its rates, fares or charges in effect as of the time of the promulgation of this rule shall not be required to conform with N.J.A.C. 16:51-3.10 (Tariff filings or petitions which do not propose increases in charges to customers) or N.J.A.C. 16:51-3.11 (Tariff filings or petitions which propose increases in charges to customers) provided the increase or decrease in the rate, fare or charge, or the aggregate of increases and decreases in any single rate, fare or charge is not more than the maximum percentage increase or decrease as promulgated below upgraded to the nearest $.05.

1. The following chart sets forth the 1995 percentage maximum for increases to particular rates, fares or charges and the resultant amount as upgraded to the amount $.05:

Present Fare	% of Increase	Increase Upgraded To Nearest $.05
$1.10 or less	4.3%	$.05
$1.15-$2.20	4.3%	$.10
$2.25-$3.30	4.3%	$.15
$3.35 upward	4.3%	$.20+

2. The following chart sets forth the 1995 percentage maximum for decrease to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% of Decrease	Decrease Upgraded To Nearest $.05
$ .50 or less	10%	$.05
$ .55-$1.00	10%	$.10
$1.05 upward	10%	$.15+

(a)

NEW JERSEY TRANSIT CORPORATION

Examination and Duplication of NJ TRANSIT Records

Adopted New Rules: N.J.A.C. 16:82

Proposed: July 18, 1994 at 26 N.J.R. 2871(b).
Adopted: September 21, 1994 by New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.
Filed: September 26, 1994 as R.1994 d.534, **without change**.
Authority: N.J.S.A. 47:1A-2 and 27:25-20.
Effective Date: October 17, 1994.
Expiration Date: October 17, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 16:82 expired on September 5, 1994. The rules proposed for readoption with amendments are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:82.

Full text of the adopted amendments follows:

16:82-2.1 Examination of NJ TRANSIT Public Records

(a) All NJ TRANSIT public records may be examined by members of the public either by appointment during the regular business hours of the Senior Director, Corporate Affairs or by demanding the right to inspect such records during the regular business hours maintained by a particular custodian of any such records. Every citizen of the State also has the right to purchase copies of these public records. The Senior Director, Corporate Affairs will determine the appropriate office where the records may be examined or obtained unless the member of the public demands that the records be made available at the exact location where the records are maintained.

(b) (No change.)

16:82-2.2 Non-public records

(a) Certain records are not considered "NJ TRANSIT public records", and may be made available for examination and purchase only by an individual who demonstrates to the Senior Director, Corporate Affairs that the person has a legitimate beneficial interest in such a 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. Such non-public records include those pertaining to:

1.-15. (No change.)

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

(d) Portions of "non-public" records may be made available for examination or copying at the discretion of the Senior Director, Corporate Affairs where the interests of NJ TRANSIT or its employees are not otherwise negatively affected by such disclosure.

16:82-2.3 Administrative Fees

(a) (No change.)

(b) Costs are as follows:

1. For copies of 8½ inch by 11 inch and 11 inch by 14 inch:

i. First page to 10th page, $0.75 per page;

ii. Eleventh page to 20th page, $0.50 per page;

iii. All pages over 20, $0.25 per page.

2. (No change.)

(c) If the Senior Director, Corporate Affairs finds that there is no risk of damage, mutilation, or loss of such records, and that it will not be incompatible with the economic and efficient operation of NJ TRANSIT and the transaction of its public business, he or she may permit any citizen who is seeking to copy more than 100 pages of records to use his or her own photographic process, approved by the Senior Director, Corporate Affairs, upon the payment of a reasonable fee, considering the equipment and the time involved, of not less than $10.00 or more than $50.00 per day.

(d) When the Senior Director, Corporate Affairs makes available records that involve a significant amount of research and investigation, additional charges may be imposed to reimburse NJ TRANSIT for the cost of conducting this research and investigation. Cost will be calculated on a worker/hour basis. These charges will be in addition to the charges in (b) and (c) above.

16:82-2.4 Procedure for copy request or record examination

A private citizen may request a copy of a NJ TRANSIT public record, or make an appointment to examine such a record, by contacting:

NJ TRANSIT
Senior Director, Corporate Affairs
One Penn Plaza East
Newark, NJ 07105
Telephone (201) 491-7453

OTHER AGENCIES

(b)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Parking, Standing or Stopping on Parkway Prohibited Except in Emergency

Adopted Amendment: N.J.A.C. 19:8-1.8

Proposed: August 15, 1994 at 26 N.J.R. 3251(a).
Adopted: September 15, 1994 by the New Jersey Highway Authority, George P. Zilocchi, Deputy Executive Director.
Filed: September 16, 1994 as R.1994 d.518, **without change**.
Authority: N.J.S.A. 27:12B-5(j) and 27:12B-24.
Effective Date: October 17, 1994.
Expiration Date: May 17, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

19:8-1.8 Parking, standing or stopping on Parkway prohibited except in emergency

(a) No parking, standing or stopping is permitted on the Parkway, including during weather conditions that obstruct travel, except in areas designated by the Authority or in cases of emergency.

(b) (No change.)

(c) For the purposes of this regulation, an "emergency" is defined as the existence of inclement weather conditions that obstruct travel on the Parkway, including, but not limited to, snow, ice, flooding or high wind conditions; mechanically disabled vehicles; the driver of the vehicle is ill or fatigued; or conditions deemed an "emergency" by the Authority or the State Police; but in no case shall the parking, standing or stopping exceed a two-hour period. In any event, the Authority or the State Police may have the vehicle removed if it is determined that it is obstructing traffic or constitutes an unsafe condition.

(d)-(h) (No change.)

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Definitions; Transportation of Explosives and Other Dangerous Articles; Waste and Rubbish; Discharges; Damage to the Parkway Due to Discharges; and Response to a Discharge

Adopted Amendments: N.J.A.C. 19:8-1.1, 1.12 and 2.1

Adopted New Rules: N.J.A.C. 19:8-2.13, 2.14 and 2.15

Proposed: August 15, 1994 at 26 N.J.R. 3249(a).
Adopted: September 15, 1994 by the New Jersey Highway Authority, George P. Zilocchi, Deputy Executive Director.
Filed: September 16, 1994 as R.1994 d.519, **without change.**
Authority: N.J.S.A. 27:12B-5(j) and 27:12B-24.
Effective Date: October 17, 1994.
Expiration Date: May 17, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

19:8-1.1 Definitions

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

...

"Discharge" means the unintentional or intentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, abandonment or dumping of a hazardous or non-hazardous material or waste into or on the land, water or air. This shall also include the disposal of containers of hazadous materials into receptacles for trash or recycling at any location on the Parkway.

...

"Hazardous material" means any material or substance that is capable of posing a risk to health, safety and property or as set forth in N.J.A.C. 7:E1-17, N.J.A.C. 7:26-8 , 40 CFR Part 261 and 49 CFR Part 172, as amended or recodified.

...

19:8-1.12 Transportation of hazardous material

(a) No vehicle loaded with hazardous material, as defined in Part 172 of the United States Department of Transportation (49 CFR Part 172), the Department of Environmental Protection (40 CFR Part 261) and New Jersey laws and regulations N.J.A.C. 7:E1-1.7 and N.J.A.C. 7:26-8), as amended or recodified, shall enter upon this Parkway unless such vehicle, its load and the transportation of such load in such vehicle shall in every respect comply with the requirements of the United States Department of Transportation regulations 49 CFR Parts 171 to 180 and Part 397 and the laws and regulations of New Jersey (N.J.A.C. 7:26), as amended or recodified, governing the preparation for transportation, construction and use of containers, packing, weighing, marking, labeling, certification, quantity, limitations, loading, and the placarding and marking of the vehicle.

(b) The transportation or shipment of radioactive material or devices, and the transportation of Class A, B, and C explosives, as defined in 49 CFR Part 173, as amended or recodified, shall be subject to the prior written approval of the New Jersey Highway Authority. All applications for such approval shall be made in writing addressed to the operations department of the Authority and shall provide to the satisfaction of the Authority that the shipment will comply in all respects with the provisions of Parts 171 to 180 and 397 inclusive of the regulations (49 CFR 171-180 and 397) as amended or recodified.

(c) The Authority reserves the right, however, to refuse to grant such approval as required in (b) above and prohibit entry to the Parkway of any hazardous material, despite compliance with the aforementioned regulations, if in its opinion, the transportation or shipment will be likely to unreasonably endanger life or property.

(d) Any vehicle whose load is or is believed to represent a danger of discharging any material, by a representative of the Authority or State Police, shall be subject to an inspection prior to or at any time after entering onto the Parkway.

19:8-2.1 Waste and rubbish

No person shall throw, drop or discard bottles, cans, paper, garbage, rubbish or other material of any kind or description on the Parkway. No person shall dispose of waste oil and other hazardous materials and/or their containers at any location or into any receptacle on the Parkway.

19:8-2.13 Discharges

(a) Any material being carried by a vehicle shall be firmly secured and vehicles carrying loose material likely to be discharged that is not otherwise boxed, crated, bagged or packaged, shall be firmly secured on all sides with a tarpaulin completely covering the material, and capable of preventing the escape of said material.

(b) No material shall be discharged on the Parkway or on the property adjacent to the Parkway which may cause an impact on the operations of the Parkway. This prohibition shall apply to any material being carried as cargo in or on a vehicle, by any person or by any contractor or vendor of the Authority, and to any material that is a part of the vehicle or necessary for the operation of the vehicle or any apparatus affixed thereon, but shall not apply to ordinary vehicular emissions anticipated by the original design of the vehicle.

19:8-2.14 Damage to the Parkway due to discharges

(a) No material shall be discharged on the Parkway or on the property adjacent to the Parkway, that may cause damage to the Parkway, the general public, the environment, the Authority, its agents and employees. For purposes of this section only, "damage" includes any effect which may be injurious to health, safety or welfare, cause the contamination of the environment including soils and ground water, or which may cause financial loss or delay the movement of traffic.

(b) The operator, owner or lessee of any vehicle, lessee of Authority property, or owner or lessee of adjacent property from which a discharge in violation of any provision of this section or N.J.A.C. 19:8-1.12, or 2.13 occurs, regardless of the cause of the discharge, shall cooperate fully with the Authority, its employees, agents, and third parties (authorized to respond to an emergency, discharge or blockage of traffic by the Authority), the State Police and the New Jersey Department of Environmental Protection (NJDEP) and shall take any action deemed necessary by them to restore normal traffic conditions and to remove spilled or otherwise discharged material from the Parkway immediately. The vehicle operated, owned or leased by any person, lessee of Authority property, or the owner or lessee of the adjacent property failing to cooperate or take such action as deemed necessary by the official in charge of the scene where the discharge occurred is subject to impoundment by the Authority, or its agents and their employees until such time as all penalties, towing and storage fees and costs have been satisfied.

(c) In addition to any penalties prescribed by this chapter or by the laws and regulations of other government entities including, but not limited to, Titles 2C, 13, 27, 39 and 58 of the New Jersey Statutes and Federal law or regulation, any person violating any provision of this section or N.J.A.C. 19:8-1.12, 2.13 or 2.15, shall be liable to the Authority for treble the amount of damages for any and all costs arising out of said violation, including, but not limited to, the costs of:

1. Collecting, testing and properly disposing of the material and any noted contaminated soils or ground water and providing the Authority with all copies of results and documentation of same;

2. Replacing or repairing, in the Authority's sole discretion, any property damaged by reason of said violation.

3. Toll and other revenues lost because of closing of the Parkway, any part thereof, by reason of said violation;

4. Medical care, supervision or other costs relating to personal injury suffered by the general public, the Authority, its agents or employees; and

5. Any other costs arising out of said violation and incurred by the Authority, its Consultants or third parties.

(d) The Authority may recover the costs under (c) above by way of complaint filed in a court of appropriate jurisdiction, by an administrative consent order executed by an authorized representative of the Department of Environmental Protection or by any other lawful means.

19:8-2.15 Response to a discharge

(a) Any operator, owner or lessee of a vehicle on the Parkway which contains any hazardous or non-hazardous material shall be subject to all provisions and penalties hereunder, in addition to any provisions of the United States Code, the New Jersey Statutes and the New Jersey Administrative Code.

(b) In the event of a discharge of hazardous or non-hazardous material on the Parkway or on adjacent property impacting the Parkway, all remedial efforts shall be conducted in compliance with these rules and under the supervision of the Authority, the State Police, and/or the Department of Environmental Protection.

1. Where practicable, but not contrary to the rules of the NJDEP, and not contrary to the safety of the operator, the general public or the Authority, the operator, owner or lessee of the vehicle, lessee of Authority property or owner or lessee of adjacent property may be afforded the opportunity to contain and remove discharged material using personnel, materials and equipment:

i. Aboard the vehicle or on the property from which the discharge occurred;

ii. Aboard another vehicle owned or leased by the operator, owner or lessee of the vehicle or of the property from which the discharge occurred;

iii. By a specialized response team operated by the manufacturer or distributor of the hazardous or non-hazardous material that has been discharged; or

iv. By third parties contracted to contain, clean up, and/or dispose of the discharge (hereafter "emergency response contractors") by the operator, owner or lessee of the vehicle or of the property specifically for the purpose of remediating hazardous or non-hazardous materials discharged from the operator's, owner's, or lessee's vehicle or property.

2. No emergency response services may be provided pursuant to (b)1i through iv above unless all the entities undertaking such services have provided to the Authority proof of adequate insurance, registration with the NJDEP (as per N.J.A.C. 7:E1-4.2) and other such information as may be required by the Department of Operations.

3. The Authority shall make available to any operator, owner or lessee of a vehicle or property so requesting a list of emergency response contractors as compiled by the NJDEP. The operator, owner or lessee of a vehicle or property shall arrange and pay for emergency response services to be performed by such contractors. Approval of such contractors pursuant to (b)2 above is not to be considered a warranty or assurance by the Authority of such contractors' ability to perform emergency response services.

4. Whenever the operator, owner or lessee of a vehicle or property from which a discharge occurred refuses to arrange for an emergency response contractor, or whenever dangerous circumstances or the risk posed by the discharge to the general public, the environment or the Authority's agents or employees is too great to await the arrival of the emergency response contractor(s) arranged by the operator, owner or lessee in the opinion of the Department of Operations or its designee, the Department or its designee may arrange for emergency response services and long-term remedial efforts to be provided by a third party of the Authority's choice. Emergency response and long term remedial services may be performed by or through the NJDEP or its agents, including any county environmental health department, or by private organizations engaged by the Authority. The cost of services pursuant to this paragraph shall be based on the schedule of rates normally charged for emergency response or long-term remedial services, and shall be borne by the operator, owner or lessee of the vehicle or property from which a discharge occurred.

i. If, at the time the emergency response contractor arrives at the scene of the discharge, the operator, owner or lessee of the vehicle or property from which a discharge occurred refuses to agree to pay or complete any documents necessary to engage the contractor for such services, the Authority may impound the vehicle and any cargo or contents thereof until such time as the costs of remedial services are satisfied. If such costs are not satisfied within 14 days, the Authority shall have the right to sell the vehicle, its cargo and contents at public auction and/or to recover treble the amount of damages for any unsatisfied costs by filing a civil action in a court of appropriate jurisdiction over such action.

ii. If the emergency response contractor refuses to contract with the operator, owner or lessee of the vehicle or property from which a discharge occurred because of a bona fide concern about the operator's, owner's or lessee's ability or willingness to pay for such services, the Department or the Department's designee may authorize such services to be performed at the Authority's expense, and the Authority may thereafter recover treble the costs thereof from the operator, owner or lessee from which a discharge occurred by filing a civil action in a court of appropriate jurisdiction over such action. The emergency response contractor's concern shall be deemed bona fide if the operator's, owner's or lessee's credit record indicates a history of refusal or failure to pay commercial debts.

5. Access to Authority property for the purposes of investigating or remediating contamination caused by the discharge or release of any material will be granted only after compliance with (b)2 above and only after notification to the Chief Engineer of the Authority. Such access will not be unreasonably withheld. All investigatory data, including but not limited to, soil investigations, soil boring logs, ground water monitoring well logs, laboratory analytical data, correspondence with regulatory agencies, and all reports and submissions generated as a result of work on Authority property shall be made available for inspection by the Authority or its agents, and copies of all such information and data shall be produced for the Authority or its agents upon request.

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Fee Policy for Construction and Utility Installation Permits

Adopted New Rules: N.J.A.C. 19:8-13

Proposed: August 15, 1994 at 26 N.J.R. 3252(a).
Adopted: September 15, 1994 by the New Jersey Highway Authority, George P. Zilocchi, Deputy Executive Director.
Filed: September 16, 1994 as R.1994 d.520, **without change**.
Authority: N.J.S.A. 27:12B-5(j) and 27:12B-24.
Effective Date: October 17, 1994.
Expiration Date: May 17, 1998.

Summary of Public Comments and Agency Responses:

On September 14, 1994, the Executive Director of the New Jersey Highway Authority received the following comments from Atlantic Electric:

COMMENT: It was their view that they should be exempted from the proposed fee schedule when their facilities and easements preceded Parkway construction and operation.

RESPONSE: It should be noted that provision has been made in N.J.A.C. 19:8-13.4, Waiver for companies to request a waiver of the fee at the time of application. The Authority feels it is unreasonable to request the Authority to give across-the-board exemptions without an opportunity to review the facts of a particular situation. Therefore, this suggestion is rejected by the Authority.

COMMENT: Atlantic Electric claims that a fee of five percent of the total cost of construction to be performed on Highway Authority property or $500.00, whichever is greater, is arbitrary and capricious and lacks sufficient basis in the costs of the Authority to perform the work.

RESPONSE: Contrary to their assertion, the permit fee costs are directly related to the costs of the Authority employees involvement in the permitting process. The fees are based on average costs incurred by the Authority which are derived from experience in the administration of construction and utility installation permits. Moreover, prior to their inclusion in the Authority's rules, said fees had been compared with the fees charged by other agencies and were found to be comparable to the fees charged by other agencies for like work. Therefore, the Authority feels that the fees contained in N.J.A.C. 19:8-13 will attain the Authority's major objectives of the fee policy which are equity, administrative simplicity and predictability. Based upon the foregoing, the Authority also rejects Atlantic Electric's opposition to the fees charged by the policy.

COMMENT: Atlantic Electric requests that the Authority add an additional paragraph that would set forth the Authority's intent to review the permits on a timely basis and would require the Authority to forecast the amount of time the review would require.

RESPONSE: Given the uniqueness of anticipated permit requests, and based upon the Authority's historic experience in these matters, it would be impractical to attempt to forecast the amount of time that will be required for the review of a particular project. Despite the Authority's inability to accurately forecast the length of the review period, it assures the public that all reviews will be performed on a timely basis.

Full text of the adoption follows:

SUBCHAPTER 13. FEE POLICY FOR CONSTRUCTION AND UTILITY INSTALLATION PERMITS

19:8-13.1 Purpose and objective; services provided

(a) The purpose of these rules is to establish and prescribe uniform general rules and procedures to be followed by the New Jersey Highway Authority staff in reviewing permits for applicants desiring to perform work within the Parkway right-of-way.

(b) The objective of these rules is to enable the New Jersey Highway Authority to accomplish its review, inspection and administration of permits equitably and expeditiously.

(c) To accomplish the purpose and objective of these rules, the following services for permit applicants desiring to perform work within the Parkway right-of-way will be provided:

1. Review of the conceptual work plan and offer guidance as to the type of application required and procedure to be followed;
2. Review of detailed plans and other work related documents and provide comments that best serve the Authority's interest. If required, field investigations are performed;
3. Review and approval of contractor's insurance certificate, performance bond and maintenance bond;
4. Provide direction with lane closures and overall traffic control;
5. Periodical inspection of the ongoing work to assure compliance with the approval permit; and
6. Initiation and maintainence of all permit documentation and, upon completion of work, administration of permit close-out documentation.

19:8-13.2 Fee schedule

(a) Resolution 1953-129 adopted on October 29, 1953, and amended on April 8, 1954, authorizes the Chief Engineer to fix and determine the Authority's necessary inspection and other costs in conjunction with the issuance of utility crossing permits in addition to requests from utility companies, outside agencies and developers who submit requests to perform work on Authority property that require issuance of a construction permit which requires similar staff efforts as described in N.J.A.C. 19:8-13.1(c).

(b) The following fee schedule is established to offset the costs of review, administration, inspection and other necessary tasks performed by Authority staff for all Construction and Utility Installation Permits. The final decision concerning the basis and amount of fees shall be solely the responsibility of the Authority's Chief Engineer. The fee schedule will be established as follows:

1. Application Fee: A $250.00 fee to be submitted along with the completed permit application and associated documents. Such fee shall be non-refundable whether the Authority's final decision is to issue or deny the requested permit.
2. Permit Fee: A non-refundable fee consisting of five percent of the total cost of construction to be performed on Authority property or $500.00, whichever is greater, plus any additional specialized fee as described in (b)3 below. As a permit requirement, the applicant shall submit an Engineer's Estimate of the work to be performed on Authority property. Such estimate shall be based on current prevailing construction rates for all work items. The Chief Engineer reserves the right to reject any estimate that is determined to be non-conformance with standard construction rates or not in the best interest of the Authority. Such permit fee shall be paid prior to issuance of the permit.
3. Specialized Fees:

i. Work performed by the contractor involving lane/shoulder closures or slow downs shall require the following non-refundable administrative fees:

(1) Shoulder Closure . . . $250.00 per location per day;
(2) Lane Closure . . . $500.00 per lane per location per day; and
(3) Slow downs . . . $750.00 per set up

ii. Fees for all other items of specialized work shall be determined by the Chief Engineer on a case-by-case basis. Such determination shall be based upon the amount of staff time and services utilized. Documentation of these costs shall be provided upon request. Such specialized fees, even though determined separately, will be considered and collected as part of the permit fee.

19:8-13.3 Unauthorized installations

Anyone performing work within Authority property without the required permit will be ordered to stop work immediately. The Authority will inspect all work performed on Authority property and make a recommendation for removal, restoration, remediation and/or submission of required permit application and associated fees. Any person or persons performing unauthorized work on Authority property will be charged a $1,000 fee for performing unauthorized work and will be required to submit an application for the appropriate permit to remove, restore, remediate and/or continue construction work as approved by the Chief Engineer. All associated fees as outlined in N.J.A.C. 19:8-13.2 will also apply. All fees are non-refundable.

19:8-13.4 Waiver

The Chief Engineer may waive the fees, or some portion thereof, upon written request for a waiver from the applicant submitted at the time of application, based upon the Chief Engineer's determination that the fee is not warranted. Said determination shall be based upon the nature of the entity making the request, that is, a Federal, State or local government agency, and the nature of the project for which the permit is requested.

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Permissible Uses of Candidate Funds

Adopted Amendments: N.J.A.C. 19:25-1.7 and 6.5
Adopted New Rules: N.J.A.C. 19:25-6.6, 6.7, 6.8 and 6.9

Proposed: July 5, 1994 at 26 N.J.R. 2753(a).

Adopted: September 22, 1994 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: September 22, 1994 as R.1994 d.528, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 19:44A-6.

Effective Date: October 17, 1994.

Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:

Written comments were received from State Senator William E. Schluter, Chairman, on behalf of the Joint Committee on Ethical Standards of the New Jersey Legislature. No other comments were received.

A public hearing on the proposed amendments and new rules was conducted at the Commission's public meeting on July 13, 1994, but no persons appeared to testify. Advance written notice of the hearing was circulated on June 15, 1994 to the Governor's Office, legislative leadership, State and county political party committees, the Office of Legislative Services, the Secretary of State, the State House press corps, and other interested parties. The hearing record may be inspected by contacting Greg Nagy, Esq., Legal Director, Election Law Enforcement Commission, CN-185, Trenton, NJ 08625-0185.

COMMENT: Sen. Schluter submitted a list of 17 specific, possible uses of candidate funds by an elected officeholder and suggested that each should be addressed to indicate whether the specific use was permissible or impermissible. The list was as follows:

1. Reimbursement for mileage or travel expenses incurred commuting to Trenton or other locations for legislative business;
2. Telephone, stationery and postage expenses, not paid for by the State, incurred in furtherance of legislative business or as a result of one's official status;
3. Donations for ad books, local sports teams and similar causes incurred as part of a legislator's good constituent relations policy;
4. Frames for ceremonial resolutions;
5. Car phones used in conjunction with legislative business;
6. Signage advertising one's office throughout the district or identifying one's district office location;
7. Entertainment expenses incurred in conjunction with legislative business or as a result of one's official status;
8. Cars used primarily for legislative commuting and official business;
9. Registration, lodging, subsistence, airfare and related expenses incurred as a result of attendance at conferences, seminars or similar programs where the agenda involves matters which are or could be the subject of legislation;
10. Purchasing tickets to charitable fundraising events where solicitation was made as a result of one's official status;
11. Purchasing of newspaper or other periodicals used in connection with carrying out officeholding duties;
12. Payment of dues to organizations which a legislator joins as a result of his official status;
13. Payment for memorial or get well flowers, gifts, favors or "trinkets" given to constituents, honorees or officials as a result of one's official status;
14. Purchasing office accessories including curtains, decorations, pictures, citations, etc.;
15. Purchasing a television set and VCR for use in the district office;
16. Purchasing paper supplies, soap, etc. for the district office;
17. Creating a "petty cash account" for purchasing items which might include some of the above such as paper supplies.

RESPONSE: The Commission agrees that the regulations should indicate whether or not these proposed uses of candidate funds by officeholders are permissible. Therefore, the Commission has amended the proposed text of subsection (e) of N.J.A.C. 19:25-6.7, Ordinary and necessary officeholding expenses, to include most of the submitted items. Many of the items have been combined under topics, such as communications to constituents, for reasons of organizational structure.

The Commission believes that the addition of these items to the text of subsection (e) provides merely additional examples of permissible uses of candidate funds by officeholders, and therefore the changes are not so substantial as to require re-proposal. The Commission responses to the items submitted by Sen. Schluter are as follows, in the order in which Sen. Schluter presented them:

1. To the extent that reimbursement for mileage refers to mileage incurred for official business in a personal or leased vehicle, the subject is already addressed by N.J.A.C. 19:25-6.8, Vehicle Use. However, the Commission has added a new subsection, N.J.A.C. 19:25-6.7(e)4, to address costs of travel by means other than by a personal vehicle, for example use of train transportation to attend a legislative meeting. Such reimbursement for travel undertaken in connection with officeholding duties is permissible as long as it does not result in a personal or financial benefit to the officeholder.
2. The cost of communications to constituents for newsletters or other written materials for officeholding duties is an ordinary and necessary officeholding expense, and it has therefore been included at N.J.A.C. 19:25-6.7(e)1i. However, the Commission has not included the operational expense of a telephone because it believes that expense is prohibited as an "operation" of an office, see N.J.A.C. 19:25-6.7(d).
3. Donations for ad books, neighborhood sports teams and similar expenses promoting constituent welfare are permissible, and accordingly this item has been added at N.J.A.C. 19:25-6.7(e)1iii.
4. The framing of honorary resolutions for constituents is a permissible expense and accordingly has been added at N.J.A.C. 19:25-6.7(e)1iv.
5. The purchase of portable phones generally, including car phones, is permissible, and therefore this item has been added as N.J.A.C. 19:25-6.7(e)2i.
6. The purchase of signs to indicate the location of an office is permissible whether or not the signs are situated on the premises, and does not come under the prohibition against "furnishing" the office as used in N.J.A.C. 19:25-6.7(b). Therefore, this item has been addded at N.J.A.C. 19:25-6.7(e)2ii.
7. Entertainment expenses incurred by an officeholder in connection with carrying out official duties are permissible pursuant to N.J.A.C. 19:25-6.7(a) if they reasonably promote or carry out the responsibilities of the person holding public elective office, and if they do not result in "personal use" of candidate funds, that is they are not expenses arising or existing irrespective of the candidate's ordinary and necessary expense of holding public office, see N.J.A.C. 19:25-6.5(c). However, the Commission cannot amplify further on this item in its regulations until such time as it has more experience in applying the broad statutory criteria in N.J.S.A. 19:44A-11.2a to specific fact settings.
8. Commuting by car for legislative business is already addressed in N.J.A.C. 19:25-6.8, Vehicle use.
9. Registration and reasonable costs of attendance incurred for participation in conferences attended in connection with officeholding duties are permissible, and this item has been added at N.J.A.C. 19:25-6.7(e)3.
10. The purchase of tickets to charitable fundraising events is permissible and is included within the scope of N.J.A.C. 19:25-6.7(e)1iii.
11. The purchase of newspapers or other periodicals used in connection with carrying out officeholding duties are permissible, and this item has been added at N.J.A.C. 19:25-6.7(e)2iv.
12. Payment of membership dues to organizations are permissible if they are educational organizations related to officeholding duties, and this item is included in N.J.A.C. 19:25-6.7(e)3.
13. Nominal purchases for constituents, such as memorial or get well gifts, are permissible, and this item has been added at N.J.A.C. 19:25-6.7(e)1v.
14. The purchase of office accessories such as curtains, decorations, pictures and frames for citations are impermissible pursuant to the

prohibition against "furnishing" of the officeholder's office set forth in N.J.A.C. 19:25-6.7(b).

15. The purchase of a television set and similar equipment is impermissible pursuant to the prohibition against "furnishing" of the officeholder's office set forth in N.J.A.C. 19:25-6.7(b).

16. The purchase of paper supplies or soap, that is janitorial supplies and other consumables, is permissible and this item has been added at N.J.A.C. 19:25-6.7(e)2iii.

17. A "petty cash" account for the purchase of janitorial supplies and other consumables may be established pursuant to N.J.A.C. 19:25-6.4(b), which regulation limits such accounts to no more than $100.00. This item has accordingly been included in N.J.A.C. 19:25-6.7(e)2iii.

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

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act shall have the following meanings unless a different meaning clearly appears from the context.

...

"Family member" shall mean a spouse, child, parent or sibling.

...

19:25-6.5 Use or disposition of campaign funds

(a) All contributions received by a candidate, candidate committee, joint candidates committee or legislative leadership committee shall be used only for the following purposes:

1. The payment of "campaign expenses" as that term is defined in (b) below.

2.-5. (No change.)

6. The payment of ordinary and necessary expenses of holding public office, as provided in N.J.A.C. 19:25-6.7.

(b) The term "campaign expenses" means any expense incurred or expenditure made by a candidate, candidate committee, joint candidates committee or legislative leadership committee from a campaign or organizational depository account for the purpose of paying for or leasing items or services used in connection with an election campaign, other than those items or services which may reasonably be considered to be for the "personal use" of the candidate, any person associated with the candidate or any of the members of a legislative leadership committee.

(c) The term "personal use" as used in (b) above means any use of contributions to pay or fulfill a commitment, obligation or expense of any person that would arise or exist irrespective of the candidate's campaign or irrespective of the candidate's ordinary and necessary expense of holding public office. "Personal use" includes, but is not limited to, the following:

1. A mortgage payment on property not owned by a candidate committee, joint candidates committee or legislative leadership committee making the payment;

2. A purchase, loan or lease payment on a vehicle not owned or leased by the candidate committee, joint candidates committee or legislative leadership committee making the payment, except that nothing herein shall be construed to prohibit reimbursement for use of a vehicle pursuant to N.J.A.C. 19:25-6.8;

3. The purchase of clothing, household food, and personal hygiene or health items or services;

4. A tuition payment, unless made for a course of study specifically related to the candidacy or officeholding duties of the candidate or officeholder who established or who controls the candidate committee, joint candidates committee or legislative leadership committee making the payment;

5. A payment for dues, fees or gratuities paid to a country club, fitness club, or other social or fraternal association, to its employees, or to a person working on its premises, unless the payment is part of the cost of a fundraising event held on the premises; or

6. The payment of a salary to a candidate by that candidate's candidate committee or joint candidates committee, or to a legislator by a legislative leadership committee established by or under the control of that legislator.

19:25-6.6 Limitations on permissible expenses

(a) A candidate committee, or a joint candidates committee, may pay a salary or fee to a family member of a candidate who has established or who controls the committee provided that the salary or fee paid for bona fide services received by the committee does not exceed fair market value.

(b) A legislative leadership committee may pay a salary or fee to a family member of a legislator who has established or who controls the committee provided that the salary or fee paid for bona fide services received by the committee does not exceed fair market value.

(c) A candidate committee, or a joint candidates committee, may pay for the use of an office or other property owned or leased by a candidate who has established or who controls the committee provided that the office or property is used by the committee and the payment does not exceed the fair market value for the bona fide use by the committee.

(d) A legislative leadership committee may pay for the use of an office or other property owned by a legislator who has established or who controls the committee provided that the office or property is used by the committee and the payment does not exceed the fair market value for the bona fide use by the committee.

(e) A candidate committee, or joint candidates committee, may purchase goods or services for use by the committee from a business or other enterprise in which the candidate who established or who controls the committee has a financial interest provided that the goods or services are bona fide and are sold or provided to the committee at fair market value, or if sold or provided at less than fair market value, that the committee reports receipt of an in-kind contribution to the extent the price is under fair market value.

(f) A legislative leadership committee may purchase goods or services for use by the committee from a business or other enterprise in which the candidate who established or who controls the committee has a financial interest provided that the goods or services are bona fide, and are sold or provided to the committee at fair market value, or if sold or provided at less than fair market value, that the committee reports receipt of an in-kind contribution to the extent the price is under fair market value.

19:25-6.7 Ordinary and necessary officeholding expenses

(a) The term "ordinary and necessary expenses of holding public office" as used in N.J.A.C. 19:25-6.5(a)6 means any expense that reasonably promotes or carries out the responsibilities of a person holding elective public office, except that no funds received by a candidate, candidate committee, or joint candidates committee shall be used for the payment of any expense arising from the furnishing, staffing or operation of an office used in connection with the officeholder's official duties as an elected public official.

(b) The word "furnishing" as used in (a) above shall be construed to prohibit the use of contributions received by a candidate, candidate committee or joint candidates committee for the purchase or lease of furniture, equipment or other appointments that are physically situated at an office facility used in connection with the officeholder's official duties as an elected public official. This prohibition shall not be applicable to the purchase or lease of office furniture or equipment situated in the residence of the officeholder and used in conjunction with the officeholder's duties.

(c) The word "staffing" as used in (a) above shall be construed to prohibit the use of contributions received by a candidate, candidate committee or joint candidates committee to pay a salary or fee as compensation to any person for performing duties to assist the officeholder in carrying out the officeholder's duties as an elected public official.

(d) The word "operation" as used in (a) above shall be construed to prohibit the use of contributions received by a candidate, candidate committee or joint candidates committee for the payment of any rent, utility or maintenance expense incurred for an office facility used in connection with the officeholder's official duties as an elected public official.

(e) Permissible uses of funds as ordinary and necessary expenses of holding public office shall include, but not be limited to, the following ***provided the costs are not paid for by the State of New Jersey, or by any political subdivision of the State***:

*[1. The production, circulation and postage of newsletters, mailings or other written materials to constituents of the officeholder; and

2. The sponsorship of holding of a seminar or other meeting to be attended by constituents of the officeholder.]*

***1. Costs of communications to constituents, including:**

i. The production, circulation and postage of newsletters, mailings or other written materials for officeholding duties;

ii. The sponsorship or holding of a seminar or other meeting to be attended by constituents;

iii. The making of donations to charitable or non-profit organizations or activities that promote the welfare of constituents, such as the sponsorship of a neighborhood sports team;

iv. The framing of honorary resolutions for constituents; and

v. The nominal purchase of memorial or get-well gifts, flowers, party favors, or similar items for constituents or other persons involved in the execution of the officeholder's duties;

2. Purchase of items including:

i. A portable telephone, including a telephone in the vehicle used by the officeholder for official travel;

ii. Signs indicating the location of the office used by the officeholder for carrying out official duties whether or not such signs are situated on the premises;

iii. Janitorial supplies and other consumables for the office used in connection with the officeholder's official duties, and funding of a "petty cash" account established pursuant to N.J.A.C. 19:25-6.4(b) for that purpose; and

iv. Newspapers, magazines or other periodicals used in connection with carrying out officeholding duties;

3. Costs of dues for membership in educational organizations related to officeholding duties, and costs of registration and attendance at conferences or seminars attended in connection with officeholding duties. Such costs may include the reasonable expense of travel, lodging, and other subsistence expenses; and

4. Cost of travel by means other than by a vehicle as described in N.J.A.C. 19:25-6.8, Vehicle use, when such travel is undertaken in connection with the performance of duties as an elected officeholder, provided that such travel is not undertaken for any purpose resulting in a person or financial benefit to the candidate or officeholder.*

19:25-6.8 Vehicle use

(a) A candidate committee, joint candidates committee or legislative leadership committee may reimburse a candidate or officeholder for the use of a vehicle owned by that candidate provided that:

1. The candidate provides the committee with written records of:

i. The date of the vehicle use;

ii. The departure and arrival locations of the travel;

iii. The number of miles the vehicle was used; and

iv. The purpose of the use, which purpose must be for travel for campaign or officeholding duties; and

2. The rate of reimbursement does not exceed the rate permitted by the New Jersey Department of Treasury for compensating Executive Branch employees for use of personal vehicles, or the rate provided by the Internal Revenue Service for deduction of business travel mileage.

(b) A candidate committee, joint candidates committee or legislative leadership committee may purchase or lease a vehicle for campaign or officeholding travel by a candidate or officeholder provided that:

1. The vehicle remains an asset of the committee; and

2. The candidate or officeholder reimburses the committee at fair market value for any travel made by the candidate or any other person that was not necessitated by campaign or officeholding duties.

19:25-6.9 Funds remaining unspent at death of candidate

Any funds remaining upon the death of a candidate in the campaign depository of the deceased candidate's candidate committee, or joint candidates committee, shall be used for one or more of the purposes set forth in N.J.A.C. 19:25-6.5 by the committee's treasurer, or by whomever has control of the depository upon the death of the candidate.

(a)

CASINO CONTROL COMMISSION

Notice of Administrative Correction
Accounting and Internal Controls
Procedure for Exchange of Checks Submitted by Gaming Patrons or Simulcast Wagering Patrons; Repurchase of Cash Equivalents
N.J.A.C. 19:45-1.25

Take notice that the Casino Control Commission has discovered errors in codification at N.J.A.C. 19:45-1.25(g)2 and (h), as amended effective September 19, 1994 at 26 N.J.R. 3893(a). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons or simulcast wagering patrons; repurchase of cash equivalents

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

(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:

Recodify existing 1. through 7. as **i. through vii.** (No change in text.)

(h) Prior to acceptance of a travelers check from a patron, the general cashier shall verify its validity by:

Recodify existing i. through iv. as **1. through 4.** (No change in text.)

(i)-(p) (No change.)

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

POLICY AND PLANNING

Notice of Submittal Date for Compliance with N.J.A.C. 7:27-16 for Categories Exempted until November 15, 1994

Take notice that, although the following source categories are currently exempted from N.J.A.C. 7:27-16, as stated in the notice of adoption at 26 N.J.R. 2600(a), this exemption expires on November 15, 1994:

Offset lithography printing operations
Surface coating of plastic parts
Industrial wastewater treatment systems
All other wastewater treatment facilities

These source categories were temporarily exempted from previous rulemaking in anticipation of the United States Environmental Protection Agency (EPA) developing Control Techniques Guidelines (CTGs) which would be used as the basis for future rulemaking which would set forth appropriate Reasonably Available Control Technology (RACT) requirements for these source categories. The Department, however, has not proceeded and does not intend at this time to proceed with such rulemaking, as final CTGs have not yet been issued by EPA.

Pursuant to the Clean Air Act Amendments of 1990, owners and operators of operations in the temporarily exempted categories are required to implement VOC RACT controls at facilities that are major stationary sources of VOC by May 31, 1995. Plans for these VOC RACT controls must be approved by the Department pursuant to N.J.A.C. 7:27-16.17, Facility Specific VOC Control Requirements. This section, N.J.A.C. 7:27-16.17, establishes procedures and standards for the establishment of VOC control requirements if a major VOC facility contains any source operation that is not regulated under N.J.A.C. 7:27-16.2 through 16.16 or 16.18 through 16.21 and has the potential to emit at least three pounds of VOC per hour. ("Potential to emit" means the capability of a source operation or a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition.) So that the owner or operator may receive Department approval in time for compliance to be achieved by May 31, 1995, the Department advises an owner or operator of a source in a temporarily exempted category to submit by January 15, 1995 one of the following to the Department at the address listed below:

1. A demonstration that no modification of the source operation is needed as either: (a) the source operation is served by a control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, or (b) the owner or operator has implemented pollution prevention measures (or a combination of control apparatus and pollution prevention measures) that achieve at least 81 percent VOC reductions from the source operation;

2. An air pollution control permit application and a schedule of implementation of alteration(s) to the source operation which provides that by May 31, 1995 either: (a) the source operation will be served by control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, or (b) the owner or operator will implement pollution prevention measures (or a combination of control apparatus and pollution prevention measures) that achieve at least 81 percent VOC emission reductions from the source operation; or

3. A proposed VOC control plan in accordance with N.J.A.C. 7:27-16.17(d). EPA has issued draft CTGs for offset lithographic printing, plastic parts coating, and industrial wastewater and Alternative Control Technologies (ACT) documents or offset lithographic printing and industrial wastewater. These may be used, if applicable, as guidance in developing VOC control plans.

The owner or operator submitting a proposed alternative VOC control plan, compliance plan or demonstration shall send it to the Department at the following address:

Chief, Bureau of New Source Review
Division of Environmental Regulation
Department of Environmental Protection
CN 401
Trenton, New Jersey 08625-0401

As stated in the notice of adoption at 26 N.J.R. 2600(a), the Department recognizes that in some cases there may not be sufficient time for facilities to achieve full compliance with the VOC RACT rules by May 31, 1995 deadline. Therefore, the Department will consider on a case-by-case basis requests by owners and operators to enter into Federally enforceable Administrative Consent Orders (ACOs) providing for phased in compliance. An owner or operator interested in such phased compliance should consult 26 N.J.R. 2601 for a more complete description of this mechanism.

(b)

ENFORCEMENT
OFFICE OF LOCAL ENVIRONMENTAL MANAGEMENT

Notice of Availability of Grants
County Environmental Health Act Activities

Take notice that the Department of Environmental Protection, in accordance with N.J.S.A. 52:14-34.4 et seq., hereby publishes notice of the availability of the following grant for calendar year 1995.

Name of grant program: County Environmental Health Act Program.

Purpose for which the grant program funds will be used: To support environmental health services undertaken by certified local health agencies on behalf of the Department of Environmental Protection pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.

Amount of money in the grant program: There is $1,000,000 from a State appropriation available for grants. In addition, receipts from fines and penalties collected in excess of those anticipated from certain programs are available for grants as specified at P.L. 1994, c.112. Contact the person identified in this notice to receive further information.

Eligible applicants must comply with the following requirements:

1. Applicant must be a certified local health agency pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.

2. General and specific grant compliance requirements issued by the granting agency.

Procedures for eligible applicants to apply for grant funds: Completion of the County Environmental Health Act 1995 Grant Application which is available through the program office.

For information contact:

Deborah Pinto
NJDEP, Enforcement
Office of Local Environmental Management
401 East State Street, CN 422
Trenton, New Jersey 08625-0422
(609) 292-1305

Deadline by which application must be submitted: Applications must be submitted by November 2, 1994.

Date by which applicants shall be notified: Applicants will be notified by April 1, 1995.

(a)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Notice of Increase in Surf Clam Harvest Quota

Take notice that the Department of Environmental Protection, pursuant to N.J.A.C. 7:25-12.10, announces that the harvest quota for the 1994-95 season will be 600,000 bushels of surf clams. The Department, with the advice of the Atlantic Coast Shellfish Council and the Surf Clam Advisory Committee, established the season quota at a level that provides additional benefits to the industry without detriment to the resource.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on September 16, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment updates both the Florham Park Sewerage Authority (FPSA) and Hanover Sewerage Authority (HSA) Wastewater Management Plans (WMPs) in regard to the Southeast Morris County Municipal Utilities Authority Black Brook Water Treatment Plant in Hanover Township, Morris County. The amendment allows the filter backwash water from the Water Treatment Plant, approximately 8,000 gallons per day, which is currently discharging directly to Black Brook, to be treated by the FPSA sewage treatment plant (STP) instead. The FPSA STP discharges to the Passaic River.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under federal or State statutes or rules.

Take further notice that a revision to the Northeast Water Quality Management Plan was also adopted in conjunction with this amendment. The revision updates the HSA WMP as follows: (1) Based on issuance of Treatment Works Approval No. 88-9538-4 which allows for treatment by the HSA STP of wastewater from one new and one expanded building at the Morris County Park Commission's Frelinghuysen Arboretum in Morris Township, Morris County, the service area delineation in the HSA WMP has been revised to include this entire Park Commission property consisting of Block 460, Lot 15 in Morris Township; and, (2) The service area map in the HSA WMP has been revised to exclude the property containing the Morristown STP (Block 1802, Lots 2 and 3) from the HSA service area. This site was previously included in error.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on September 16, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department of Environmental Protection (Department). This amendment adopts a Wastewater Management Plan (WMP) for Hampton Township. The WMP specifies the following: (1) expansion of the sewer service area to the "Big N" Shopping Center sewage treatment plant (STP) to include additional properties within an area zoned highway commercial/manufacturing/industrial, with wastewater flows to the STP not to exceed the existing permitted capacity of 20,000 gallons per day (discharge to a tributary to the Paulins Kill River); and, (2) a new STP discharging to ground water to serve 65 additional mobile homes, and a small commercial development, at the Carriage Acres Mobile Home Park (projected wastewater flow is 15,000 gallons per day [gpd]). The WMP also delineates the service areas to the Hampton Commons STP (discharge to a tributary of the Paulins Kill River), Kittatinny Regional High School STP (discharge to the West Branch of the Paulins Kill River), McKeown Elementary School STP (discharge to ground water), and the general ground water discharge service areas for facilities with design capacities of less than 20,000 gpd (with a restriction of gpd/acre based on watershed and geologic formation).

This amendment proposal was noticed in the New Jersey Register on July 18, 1994. Comments on this amendment were received during the public comment period and are summarized below with the Department's responses.

The following comments were submitted on behalf of the Sussex County Municipal Utilities Authority.

1. COMMENT: There is a typographical error in Table ES-3 which shows the total (year 1993) flow to be 35.000 gallons per day (gpd) rather than 35,000 gpd for the Hampton Commons STP. Additionally, the calculated (year 2013) future flow of 52,950 gpd for this STP is overstated, and the basis of that flow projection should be revised. Appropriate methodology for establishing future flow projections would be to allocate the present flow among the 1993 existing residences, calculate the increased flow attributed to the remaining (proposed) townhouse units, and add these together to yield the future (2013) buildout flow.

RESPONSE: The typographical error in Table ES-3 has been corrected. Additionally, the projected year 2013 wastewater flow figure for the Hampton Commons STP has been recalculated. Instead of specifying a projected wastewater flow based solely on the Department's flow criteria, the flow has been adjusted to take into consideration the actual flow to this STP from the existing occupied units. Added to the actual flow is the projected wastewater flow from the unoccupied units (flow based on Department standards) for a total projected flow of 43,400 gpd for this facility. Tables ES-3 and ES-1 have been revised to reflect these changes.

2. COMMENT: It appears that flow from the Carriage Acres Mobile Home Park, described in Table ES-6, should more appropriately be separated and identified with respect to the existing septic systems and the proposed treatment facility. Further, with respect to the WMP mapping, the existing septic systems and proposed 15,000 gpd treatment facility do not necessarily reflect existing and proposed sewer service area(s), as delineated. It may be more suitable to designate the existing septic system area as "ground water discharge for facilities with a design capacity of less than 2,000 gpd" and the proposed treatment facility as "ground water discharge for facilities with a design capacity of less than 20,000 gpd."

RESPONSE: The WMP appropriately identifies the total flow from the Carriage Acres Mobile Home Park and the breakdown of flow from both the existing units (served by septic systems, at least one of which has a capacity of greater than 2,000 gpd) and the projected units (to be served by an on-site ground water disposal system). It is not appropriate to designate the existing service area of the Carriage Acres Mobile Home Park as a service area for "ground water discharge facilities with a design capacity of less than 2,000 gpd" and the projected service area for "ground water discharge facilities with a design capacity of less than 20,000 gpd" since the Department considers this to be one facility which will be permitted with consideration to the combined discharges on-site, not just the proposed new discharge. Therefore, since the combined flow from the existing septic systems and the proposed on-site ground water disposal system is greater than 20,000 gpd, the entire property has been appropriately delineated as a "sewer service area." No changes to the WMP have been made based on this comment.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plant); 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.

(a)

LAND USE REGULATION PROGRAM

Public Comment and Response on Department of Environmental Protection Recommendations to the United States Environmental Protection Agency Regarding the EPA's List of Priority Wetlands for the State of New Jersey

Take notice that in March 1994, the United States Environmental Protection Agency (EPA) released an amended edition of the May 1989 "List of Priority Wetlands for the State of New Jersey." Amendments to this list reflect information provided to the EPA by the Department of Environmental Protection (Department) based on public input received by the Department during a May-July 1990 open comment period seeking recommendations on the contents of the list.

The Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B-1 et seq., approved July 1, 1987, mandates at section 23b that the Department issue two general permits allowing limited disturbance in certain types of freshwater wetlands. General permits are permits incorporated in rules and issued by the Department after public notice and comments, which provide for expedited review and approval of certain limited classes of activities. The Act also provides that these two general permits "shall not apply to any wetlands designated as priority wetlands by the United States Environmental Protection Agency." N.J.S.A. 13:9B-23b. On May 16, 1988, the Department adopted rules at N.J.A.C. 7:7A-9 resulting in the issuance of the two statutory general permits and reflecting the above quoted statutory limitation on their use.

On December 17, 1987, the EPA sent the Department the initial draft of EPA's priority wetlands list for New Jersey, and requested recommendations from the Department regarding possible additions or changes to the list. Based on an evaluation of wetlands in New Jersey, the Department provided the EPA with recommended modifications to this document in June 1988. By letter of January 19, 1989, EPA provided the Department with an "interim draft final" list to use for regulatory purposes. EPA followed with a final document in May 1989. Within the introduction to the May 1989 list the EPA stated the intention "to update the list periodically to take into account new information that may become available regarding the listed areas as well as other wetland areas which may be candidates for inclusion." (page 3).

On May 7, 1990, the Department published a public notice in the New Jersey Register announcing the intent to provide EPA with comments on the May 1989 list and providing opportunity for public comment regarding the inclusion or exclusion of specific wetlands and any means by which the list might be made clearer and easier to use. Based on comments received during this period and subsequent to it, the Department sent formal recommendations to the EPA in August 1992. EPA responded with a revised, draft document in December 1993 which the Department reviewed and provided the EPA with recommended modifications in January 1994. EPA finalized the revision of the May 1989 list in March 1994.

A summary of the comments received or made by the Department with Department and/or EPA responses is provided below. Copies of the March 1994 "List of Priority Wetlands for the State of New Jersey" may be purchased from:

Map Sales and Publications Office
Bureau of Revenue, CN 417
Trenton, New Jersey 08625-0417
(609) 777-1039

The following individuals, groups, organizations, and agencies submitted comments in response to the Department's May 7, 1990 request for comments on the List of Priority Wetlands for the State of New Jersey.

1. The Association of New Jersey Environmental Commissions. Abigail Fair.
2. Board of Recreation Commissioners. Faith S. Hahn, Principal Planner-Parks.
3. Cape May Court House Neighborhood Association Ltd. Al Karaso, Project Coordinator.
4. Connonly Environmental Inc. Hallie Connolly-Aubin, President.
5. Barbara Corson, Demont, New Jersey.
6. Crummy, Del Deo, Dolan, Griffinger and Vecchione, Sara L. Sawyer and John H. Klock.
7. Joseph DeGaetani, Palermo, New Jersey.
8. Bill Doran, Cape May Court House, New Jersey.
9. Division of Fish, Game, and Wildlife. George P. Howard, Director.
10. Eric Z. Graff, Ventnor, New Jersey.
11. Gloria Grau, Old Bridge, New Jersey.
12. Great Swamp Watershed Association. Nancy Dehayes Hedinger, Chairman.
13. Amy S. Greene, Environmental Consultants, Inc. Amy Greene, President.
14. Kathy Kilcourse, West Atlantic City, New Jersey.
15. Kinnelon Environmental Commission. Lucy Meyer, Resource Director.
16. Lake Hopatcong Regional Planning Board. Clifford R. Lundin.
17. Leisure Technology. David B. Fisher, Vice President—Forward Planning, New Jersey Division.
18. Bonnie H. McGuire, Mauricetown, New Jersey.
19. Morris County Park Commission. Diane Nelson, Chief, Land Use Section.
20. Morris County Planning Board. Sabine von Aulock, Environmental Planner.
21. Heather Morrision, Ventnor, New Jersey.
22. New Jersey Builders Association, Wayne Karnell, President.
23. Northeast Environmental. Ken Scarlatelli, President.
24. Passaic River Coalition. Ella F. Fillipone, Executive Administrator.
25. Save Our Swamp. Jane Tousman.
26. Schmid and Company, Inc. James A. Schmid, Ph.D., Certified Senior Ecologist.
27. Swampthing. Bayville, New Jersey.
28. U.S. Fish and Wildlife Service. Clifford Day, Supervisor.
29. Upper Rockaway River Watershed Association. Constance Stroh, President.
30. Voices of Concerned Citizens Alliance. Carolyn S. Karg, President.
31. Jessie Weiss, Mays Landing, New Jersey.

General Comments on the List of Priority Wetlands

1. COMMENT: Twelve commenters supported the current list of priority wetlands of the State of New Jersey and urged the Department to recommend to the EPA that the list continue in its current form. (1, 10, 12, 14, 15, 18, 21, 24, 25, 27, 30, 31)

RESPONSE: The Department acknowledges these comments in support of the current list of priority wetlands for the State of New Jersey.

2. COMMENT: One commenter stated that all of the wetlands on the EPA priority list should be protected because they are exceptional examples of functioning, productive wetlands in their natural state which provide a critical role in pollution and flood control, habitat for endangered or threatened species, and nursing, feeding or spawning grounds for marine fish and shellfish. (8)

RESPONSE: Based on input received by the Department during the public comment period, the Department has made recommendations to the EPA concerning the content of the priority wetlands list for the State of New Jersey. These recommendations focused on improving the utility and clarity of the existing list as well as suggestions on the addition and deletion of certain freshwater wetlands and the modification of some existing listings to more accurately reflect those wetlands in New Jersey which warrant Priority Wetland status. The March 1994 EPA List of Priority Wetlands for the State of New Jersey reflects EPA's review of the Department's recommendations.

3. COMMENT: Three commenters stated that there is a need for consistency in the document in depicting and delineating priority wetlands and that the same type of base map should be used throughout. (9, 20, 28)

RESPONSE: The Department agrees and recommended to the EPA that the final document feature standardized maps, more accurately delineated site specific boundaries, and more accurately identified U.S.G.S. quadrangle(s) for each site. To the greatest extent feasible, the EPA standardized the maps for the priority wetland listings in the March 1994 edition of the List of Priority Wetlands for the State of New Jersey.

4. COMMENT: One commenter stated that it is unclear where an EPA priority wetland boundary ends if the wetland covers more than one U.S.G.S. Quadrangle. (20)

RESPONSE: The Department agrees and, as stated above, recommended to the EPA that the final document feature standardized maps which clearly delineate the extent of each individual priority wetland listing. To the greatest extent feasible, the EPA standardized the maps for the priority wetland listings in the March 1994 edition of the List of Priority Wetlands for the State of New Jersey.

5. COMMENT: One commenter suggested that for priority wetlands which occur in two or more counties, page numbers be placed on the maps cross referencing the listing to other pages within the document where that listing may be found. (26)

RESPONSE: The Department made this suggestion part of its recommendations to the EPA. In place of providing page references on the document's maps, the EPA provided a "priority wetland quick reference guide" index which referenced the page numbers for text and map for each listing in the March 1994 document.

6. COMMENT: A commenter suggested that the entire document be renumbered due to several page numbering errors. (28)

RESPONSE: The Department made this suggestion part of its recommendations to the EPA. The March 1994 edition of the List of Priority Wetlands for the State of New Jersey has been renumbered by the EPA.

7. COMMENT: One commenter stated that the EPA list of priority wetlands should indicate how it interrelates with other regulations governing wetlands in the State. (2)

RESPONSE: N.J.S.A. 13:9B-23b instructs the Department not to issue two types of Statewide general permit (numbers six and seven) in wetlands determined by the EPA to be priority wetlands. The list is not cited in any other State regulatory statute in New Jersey. At the Federal level, EPA may use the list in guiding its position on federal wetland policies or permits. The document may also be used as a reference source on environmentally sensitive areas when evaluating the potential impacts of particular activities or projects under review under other State regulations. A discussion of the application of the "List of Priority Wetlands for the State of New Jersey" under New Jersey law is also provided on page four of the March 1994 document.

8. COMMENT: One commenter stated that since EPA has no statutory authority to prohibit activities within priority wetlands, DEPE should not use priority wetland designations to prohibit activities within certain areas under the State freshwater wetlands program. (17)

RESPONSE: The Department does not agree. Under the Clean Water Act, the EPA has broad discretionary powers to regulate the discharge of fill material into waters of the United States, which include wetlands. In addition, N.J.S.A. 13:9B-23b of the Freshwater Wetlands Protection Act prohibits the Department from issuing certain Statewide General permits in "any wetland designated as a priority wetland by the United States Environmental Protection Agency". The Department does not have the discretion to disregard this legislative mandate.

9. COMMENT: One commenter stated that the special designation as EPA priority wetlands within the context of the Freshwater Wetlands Protection Act was to bring the State into conformance with the Federal program for assumption of the Federal 404 program by the State. Since the U.S. Army Corps of Engineers proposed a State program general permit for the State, assumption is no longer necessary and thus neither are EPA priority wetlands. (17)

RESPONSE: The Department does not agree. The level of protection priority wetlands receive in New Jersey comes from N.J.S.A. 13:9B-23b and the requirement for the State to assume the Federal authority can be found at N.J.S.A. 13:9B-2. Conversely, at the Federal level, under its authority in the Clean Water Act, the EPA may use the Priority Wetlands List to guide its position on federal wetland permits or policies.

10. COMMENT: Four commenters stated that the Priority list is too extensive since one of the criteria for designating Priority wetlands is "wetlands that are not effectively protected by regulation or management in existing federal, state or local programs" and New Jersey's law already effectively protects the State's wetlands. (6, 17, 22, 26)

RESPONSE: The criteria of "wetlands that are not effectively protected by regulation or management in existing federal, state, or local programs" is not one of the six criteria used by EPA for designation Priority Wetlands, nor does this quote exist in the 1989 or revised list. The six criteria used for Priority Wetland designations in the introduction to both the 1989 and March 1994 edition of the List of Priority Wetlands for the State of New Jersey are:

1. Unique habitat for fauna or flora;
2. Unusual or regionally rare wetland types;
3. Ecologically important and under threat of development;
4. Important to surface water systems;
5. Critical to protect water supplies; and
6. Valuable for and provide flood storage capacity.

11. COMMENT: One commenter stated that EPA priority wetlands are not necessary because New Jersey has one of the strongest freshwater wetlands protection programs in the country and an EPA priority wetland designation does not add any greater level of protection. (17)

RESPONSE: N.J.S.A. 13:9B-23b of the Freshwater Wetlands Protection Act specifically mandates additional protection from certain discharge of fill activities be provided to EPA priority wetlands. Therefore, the designation as a priority wetland adds to the regulatory protection a wetland receives under this law. At the Federal level, EPA may use the list in guiding its position on federal wetland policies or permits.

12. COMMENT: Two commenters stated that none of New Jersey's wetlands should be designated as EPA Priority because all wetlands are protected by the State program. (6, 26)

RESPONSE: Consistent with N.J.S.A. 13:9B-23b, the Department finds that there are certain classes of wetlands featuring special characteristics (for example, important wildlife habitat, rare or unique flora, valuable water quality functions, important flood control functions) which warrant the additional regulatory protection an EPA priority wetland designation provides.

13. COMMENT: One commenter recommends that the Department suspend any use or reference to the priority wetlands list since the six criteria used by EPA in selecting priority wetlands are already satisfied by the implementation of the Freshwater Wetlands Protection program in New Jersey. (17)

RESPONSE: Under the Freshwater Wetland Protection Act and the implementing rules at N.J.A.C. 7:7A, wetlands designated as priority wetlands by the EPA receive an added degree of protection than that provided other wetlands. Suspension of application of the priority wetlands list would be inconsistent with N.J.S.A. 13:9B-23b and thereby not provide these special freshwater wetlands the protection due them under the law.

14. COMMENT: Three commenters stated that the priority list should be tightly defined to only include areas featuring endangered, threatened, rare, or exemplary habitats or communities or those featuring exceptional water quality characteristics which can be documented as special and unique. (6, 17, 26)

RESPONSE: Wetlands featuring endangered species habitat or waters of high quality (that is, FW-1, FW-2TP waters) are determined to be of exceptional resource value and receive the highest degree of regulatory protection provided in the Freshwater Wetlands Protection Act; a level which exceeds the additional regulatory protection provided by a priority wetland designation. Limiting the designation of EPA priority wetland status to only the wetland types described above would do little to improve the regulatory protection provided under the Act.

The EPA acknowledged that wetlands featuring the criteria defined by the commenters could warrant a Priority Wetlands designation. However, wetlands which are valuable for flood storage or protect critical water supplies also fall within the realm of ecologically important wetlands which EPA believes warrant the additional regulatory protection and conservation attention a Priority Wetland designation may provide.

15. COMMENT: Two commenters questioned whether the Department would support changes to the Freshwater Wetlands Protection Act to either remove any reference to EPA Priority Wetlands or to clarify that only a list which is subject to rulemaking be used for regulatory purposes. They also requested that the Department suspend use of the current document until such rulemaking occurs. (17, 22)

RESPONSE: Given the degree of regulatory protection provided in New Jersey to those wetlands designated as priority wetlands, the Department requested that EPA formally promulgate the Priority Wetlands List in the Federal Register. In response, EPA indicated that, because the list has no formal regulatory authority under Federal law, there is no need for a formal Federal adoption process.

The Department does not agree that the additional protection afforded EPA priority wetlands in the Freshwater Wetlands Protection Act should be removed from the Act nor that use of the list for regulatory purposes be halted pending any formal promulgation efforts by the EPA. In the absence of any action by the EPA, the Department has given public notice on the May 1989 list and solicited public comment regarding the inclusion or exclusion of particular freshwater wetlands and other actions which could be taken to make the document clearer and easier to use. It was the Department's intention to broaden the base of public input into recommendations made to the EPA for modifications to the May 1989 document. The March 1994 document reflects much of this input.

16. COMMENT: Two commenters questioned whether EPA priority criteria are being applied uniformly in other Federal EPA regions across the country. (22, 26)

RESPONSE: The Department has determined and EPA Region II has concurred that other EPA regions have developed lists of priority wetlands using similar criteria.

17. COMMENT: Two commenters stated that the list of criteria is all-encompassing and far too broad to be used in designating Priority Wetlands since all wetlands serve at least one of the designated functions. (22, 26)

RESPONSE: The Department does not agree. When evaluating particular freshwater wetlands for recommendation for priority wetland status, the Department made a conscious effort to selectively identify wetlands which featured ecological attributes which exemplified those criteria provided by the EPA to evaluate wetlands for a priority wetland designation. At the Federal level, EPA conducted a similar evaluation of the recommended freshwater wetlands prior to amending the May 1989 list.

18. COMMENT: One commenter requested that the Department compile a list of wetlands that are not designated EPA priority and the reasons for not listing them. (22)

RESPONSE: The Department found that there are certain classes of wetlands featuring special characteristics (for example, important wildlife habitat, rare or unique flora, valuable water quality functions, important flood control functions) which should be placed on a higher ecological level than the remaining wetlands in New Jersey and that such wetlands warrant the additional regulatory protection an EPA priority wetland designation provides. Identifying all wetlands not meeting the priority wetland criteria would be an unnecessary waste of public resources and not serve the purposes of the Act.

19. COMMENT: Two commenters stated that because the priority wetland list is so broad, wetlands that are isolated and less than one acre in size are rated equal in functional and ecological value to major interrelated or contiguous wetland systems. The commenters recommended that small, isolated wetlands be dropped from priority wetland designation. (4, 13)

RESPONSE: When evaluating freshwater wetlands applying the six criteria provided by the EPA for priority status, the Department found cases where small isolated wetlands (for example, fens, ephemeral ponds) featured rare and unique flora or fauna or where such wetlands are an integral part of much larger contiguous systems (for example, Passaic River drainage basin). In these special instances, the Department recommended that small, isolated wetlands receive the protection provided by a priority wetland designation.

Based on comments received during the public comment period and experience gained during the past several years, the Department made additional recommendations to EPA defining the circumstances under which small isolated wetlands should or should not warrant a priority wetland designation (for example, outside the 100 year floodplain in the Passaic River basin, within the Reedy Creek listing).

20. COMMENT: One commenter stated that the EPA criteria are confiscatory because individual's do not have the right to use their land by virtue of criterion which are disproportionate to the value of the wetland. (4)

RESPONSE: At N.J.S.A. 13:9B-23b, wetlands found to warrant priority wetland status are not eligible for a permit for regulated activities consistent with Statewide general permits six and seven. The Department may permit such regulated activities in priority wetlands if they can be demonstrated to comply with the conditions for Individual Freshwater Wetlands permit (N.J.S.A. 13:9B-9-11). These permit criteria are designed to meet the Act's purpose of balancing the rights of individual land owners with the public benefits provided by freshwater wetlands.

21. COMMENT: One commenter indicated that in adopting the priority list of wetlands for the State of New Jersey, the Department has significantly impaired landowner property rights without fact-finding and/or a public hearing. (6)

RESPONSE: The Department does not agree. The Act and implementing rules both went through a substantial period(s) of public review and comment for their adoptions and both clearly state, at N.J.S.A. 23:9B-23b and N.J.A.C. 7:7A-9.2 respectively, the implications of an EPA priority wetland designation. Additional input from the public on the contents of the "List of Priority Wetlands for the State of New Jersey" was received by the Department during the public comment period of May 7, 1990 to July 6, 1990. Based on comments received by the Department, recommendations were forwarded to the EPA. Changes made by the EPA to the May 1989 document in the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflect this public input.

22. COMMENT: One commenter stated that priority wetlands should eventually be directly acquired by the Federal or State government and designated as either wildlife refuges or wildlife management areas. (8)

RESPONSE: The EPA priority wetlands list serves as a source of information on wetlands of special ecological significance in New Jersey. The identification of a wetland as a priority wetland provides opportunity and focus for conservation and preservation efforts on the Federal, State, county, local, and private level. While various priority wetlands are already publicly owned and others are acquisition priorities, it is unlikely that sufficient funding will ever be available to purchase all wetlands on the list.

23. COMMENT: A commenter stated that more wetland areas should be added to the list, such as interior swamps, bayshore marshes, and marshes behind barrier islands. (8)

RESPONSE: The Department is receptive to recommending additions to the priority wetlands list for the State of New Jersey but is of the opinion that such recommendations should focus on specific wetlands or wetland complexes (for example, Manahawkin Swamp, Salem River Wetlands) rather than general categories of wetland type.

24. COMMENT: One commenter urged the Department to consider prohibiting stacking of Statewide general permits in EPA priority wetlands. (1)

RESPONSE: N.J.A.C. 7:7A-9.4 of the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) discusses the Department's regulations on the use of multiple Statewide general permits. Under this section, overall wetland impacts are limited to one acre per property. A priority wetland designation prevents the Department from permitting activities under general permits six and seven which allow up to an acre of fill. Most other activities permitted under a general permit are capped at a quarter acre or less. Given these restrictions, the Department finds that placing further constraints on the use of multiple Statewide general permits in priority wetlands would place greater burdens on the regulated public with minor environmental returns.

25. COMMENT: One commenter stated that there is no rationale for prohibiting the use of GP#4 for hazardous waste cleanups in EPA Priority wetlands. (13)

RESPONSE: The application of EPA priority wetlands to various Statewide General permits was not the subject of this public notice. However, the DEPE did adopt amendments to GP#4 on September 4, 1990 which included the elimination of the restriction on the use of this permit in EPA priority wetlands.

Comments on the Introduction to the Priority Wetlands List

26. COMMENT: Two commenters stated that there is a need for a more detailed and refined rating system for designating priority status. It is important that all values associated with a particular wetland be described in the document. (9, 28)

RESPONSE: The EPA provided the Department with the following six wetland functions and values as guideline criteria for evaluating freshwater wetlands for priority status:

1. Unique habitat for fauna or flora;
2. Unusual or regionally rare wetland types;
3. Ecologically important and under threat of development;
4. Important to surface water supplies;
5. Critical to protect water supplies; and
6. Valuable for and provide flood storage capacity.

These criteria together with the information obtained from documents, studies, reports, Federal, State, local or private agencies or organizations and the regulated public form the basis for the Department's recommendations to the EPA.

In the March 1994 edition of the List of Priority Wetlands for the State of New Jersey, the EPA has provided comments under each listing describing the special ecological attributes of the wetlands where appropriate.

27. COMMENT: One commenter stated that a functional assessment in terms of each of the six criteria identified as characteristics of priority wetlands would be appropriate. (4)

RESPONSE: In making evaluations and recommendations of freshwater wetlands for priority wetland status, the Department relied on the six criteria provided by the EPA. Further "functional assessment" of these criteria for all priority wetlands is beyond the scope and resources of the Department.

28. COMMENT: One commenter stated that after the initial designation as EPA priority, there should be some "functional value mechanism" which can be applied site specifically. (4)

RESPONSE: While no formal "functional value mechanism" exists, the Department and/or EPA will review, on a case by case basis, any request that a particular wetland not be considered as a priority wetland.

29. COMMENT: Two commenters stated that the priority wetland listing criteria should be defined so that it can be applied in a site specific manner. (4, 23)

RESPONSE: Wetlands or wetland complexes established as priority wetlands by the EPA have been demonstrated to feature one or more of the six listing criteria. In this sense, each listing has received a wetland specific review.

30. COMMENT: One commenter stated that the rationale for the designation of wetlands as EPA priority is very weak, and does not provide specific enough or sufficient reason for total preservation of an entire drainage basin. (13)

RESPONSE: The rationale behind designating particular wetlands or areas as priority wetlands is that such sites feature functions and values which separate them from the remaining wetlands in New Jersey. In instances where water quality or flood control protection are identified, extending a priority wetland designation to a watershed or drainage basin insures that the entire functioning system receives regulatory attention and protection. A priority wetland designation does not "preserve" an entire area, but does ensure that regulated activities are conducted so as to minimize environmental impacts.

31. COMMENT: One commenter stated that the list should be open-ended so that future priority wetlands can be added and that the proposal should state that it is open-ended. (9)

RESPONSE: The EPA does provide opportunity for up-dating or modifying the "Priority Wetlands List for the State of New Jersey" as discussed on page four of the introduction to the document.

32. COMMENT: One commenter stated that the document should indicate whether all tributaries and headwater areas within a designated watershed are also considered EPA priority. (1)

RESPONSE: The Department concurs and recommended to the EPA that a discussion of areas included under each priority wetland designation be added to the comments section of each listing. In the March 1994 edition of the List of Priority Wetlands for the State of New Jersey, the EPA has detailed the extent of wetlands which each listing applies to. For example, within the boundaries of the Mullica River listing, only tributary waters to the Mullica River are considered to be priority wetlands.

Comments on the Statewide General Categories Section

33. COMMENT: One commenter stated that the Natural Heritage Program Rare Wetlands category should include an address and phone number for the Natural Heritage Program to facilitate public inquiry. (1)

RESPONSE: The Department forwarded this recommendation to the EPA and it has been incorporated into the March 1994 List of Priority Wetlands for the State of New Jersey.

34. COMMENT: Two commenters offered support for the protection of all wetlands overlying sole source aquifers. While acknowledging this area would be quite extensive, it would be justified because it would signify the Department's commitment to protection of New Jersey's water supply. (1, 20)

35. COMMENT: Two commenters stated that sole source aquifer areas should be removed from the list because there is no evidence that disturbance within these areas would alter the recharge abilities of these regions or affect ground water quality. (13, 22)

36. COMMENT: One commenter was unclear as to which portions of the state would be protected because they overlay a sole source aquifer. (26)

RESPONSE: Information made available to the Department indicates that approximately 80 percent of the freshwater wetlands in New Jersey could be included in the sole source aquifer category. The Department found that designation of such a large area of wetlands is not consistent with the intent of identifying a special class of freshwater wetlands in need of a higher level of protection than that provided the remaining wetlands in New Jersey. As a result, the Department recommended that for the purposes of the Freshwater Wetlands Protection Act, only those wetlands identified as "Specific Geographic Areas" be regulated by the Department.

In response, the EPA has modified the "Statewide General Categories" listing to indicate that the category is for informational purposes only and wetlands meeting these descriptions should not be considered as priority wetlands unless identified as a "Specific Geographic Area". EPA has suggested that wetlands typical of those described in the new "Statewide General Headings" section should be presented individually, where feasible, for incorporation into the "Specific Geographic Area" categories of the List of Priority Wetlands for the State of New Jersey.

37. COMMENT: A commenter suggested that wetlands in State-designated Critical Water Supply Areas should be designated EPA priority and that maps showing these areas be provided. (1)

RESPONSE: A review of the extent of Critical Water Supply Areas indicates that these areas encompass a majority of southern New Jersey. The Department is of the opinion that, in this case, the designation of such a large area of wetlands is not consistent with the intent of identifying a special class of freshwater wetlands in New Jersey in need of a higher* level of protection. As a result, the Department recommended to the EPA that for the purposes of the Freshwater Wetland Protection Act, only those wetlands in the "Specific Geographic Areas" section be regulated as priority wetlands.

In response, the EPA has modified the "Statewide General Categories" listing to indicate that the category is for informational purposes only and wetlands meeting these descriptions should not be considered as priority wetlands. EPA has suggested that wetlands typical of those described in the new "Statewide General Headings" section should be presented individually for incorporation into the "Specific Geographic Area" categories of the List of Priority Wetlands for the State of New Jersey.

Comments on the Specific Geographic Areas

38. COMMENT: One commenter noted that the listing and map for Barnegat Bay did not identify wetlands along the barrier islands despite their being integral parts of the Barnegat Bay ecosystem. (26)

RESPONSE: A review of the Barnegat Bay listing indicates that this comment accurately identifies an unintentional omission. The Department recommended to the EPA that wetlands on the barrier islands of Barnegat Bay be identified in the priority wetland listing and/or mapped in the amended document.

In response, the EPA indicated that they had always considered the wetlands on Barnegat Bay's barrier islands, which are hydrologically connected to the bay, as EPA Priority Wetlands. Modifications of the narrative and map boundaries of the Barnegat Bay listing appearing in the March 1994 amended document clarify this existing EPA position and do not increase the area covered under this listing.

39. COMMENT: One commenter stated that categorizing the entire Raritan Basin watershed as a priority wetland is too broad. The Department should do a selective evaluation and classification of wetlands in the watershed. (2)

RESPONSE: The Department disagrees with the commenter in that the List of Priority Wetlands for the State of New Jersey does not identify the entire Raritan basin as a priority wetland, but rather only those estuarine wetlands associated with Raritan Bay and New York Harbor. However, the Department did request further clarification of the boundaries and/or extent of the Raritan Bay/New York Harbor priority wetland designation from the EPA. EPA has modified the description and boundaries of this listing in response to comments in the March 1994 edition of the List of Priority Wetlands for the State of New Jersey.

40. COMMENT: One commenter stated that blanketly elevating ordinary or intermediate wetlands in the Raritan Basin watershed to priority wetland status could severely impede much needed and desirable public projects. (2)

RESPONSE: The Department does not agree. First, as stated above, only certain wetlands associated with Raritan Bay and New York Harbor are identified as priority wetlands. Second, through the development of the priority wetland list, the EPA is assisting in the planning, siting and design of desirable public projects by "red-flagging" certain wetlands where additional regulatory protection standards will apply. Finally, the Freshwater Wetlands Protection Act features flexible permitting criteria to ensure that projects which can demonstrate sufficient public need or desirability will not be severely impeded by freshwater wetland protection. It should also be noted that the EPA has amended the Raritan Bay/New York Harbor listing to more accurately reflect the boundaries and resources to be protected under this listing.

40. COMMENT: One commenter supported the existing designation of wetlands in the vicinity of Lake Hopatcong as priority wetlands. (16)

RESPONSE: The Department acknowledges the need for special protection for the wetlands in the vicinity of Lake Hopatcong. In an effort to improve this protection, the Department recommended to the EPA that all wetlands which are a component of the upstream tributary system of the lake be identified as priority wetlands. The EPA agreed to adopt this proposal and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

42. COMMENT: A commenter stated that it is unclear why separate sub-watersheds are depicted under the Lake Hopatcong Watershed designation instead of delineating one continuous watershed. (20)

RESPONSE: The Department agrees and recommended to the EPA that all wetlands which are a component of the upstream tributary system of Lake Hopatcong be designated as priority wetlands. In response, the EPA incorporated this suggestion in the March 1994 edition of the List of Priority Wetlands for the State of New Jersey.

43. COMMENT: Five commenters supported the present listing of all wetlands within the Passaic River Watershed as EPA Priority Wetlands. (12, 19, 20, 23, 24)

RESPONSE: The Department acknowledges these comments in support of the listing of all wetlands in the Passaic River Watershed as priority wetlands. Please note that the Department recommended modifications to the current listing of the Passaic River as provided below.

44. COMMENT: One commenter stated that certain areas which are described in the document are not depicted on the appropriate map. Location 6 of the Upper Rockaway River Watershed and the Great Swamp/Lord Sterling Park area are mentioned specifically. (20)

RESPONSE: The EPA has addressed this oversight in the March 1994 edition of the List of Priority Wetlands for the State of New Jersey by removing individual listings and maps of particular wetlands within the overall Passaic River Basin designation. This change clarifies the EPA's position that all wetlands, unless specifically excluded, within the Passaic River Basin are priority wetlands.

Several comments were submitted concerning the Passic River Basin Priority Wetland Listing. They stated:

45. COMMENT: Two commenters suggested that small isolated wetlands occurring within the Passaic River Basin be excluded from the List of Priority Wetlands for the State of New Jersey because such wetlands do not play a significant role in flood control or provide critical wildlife habitat.

46. COMMENT: One commenter stated that it is unclear which wetlands within the Passaic River Basin are classified as EPA priority. The text and the maps appear contradictory and it is unclear whether all isolated wetlands would be considered priority wetlands. (20)

47. COMMENT: A commenter suggested that page 32 be retained but page 33 be omitted (Passaic River Basin) because the statement, "This listing includes all wetlands within the Passaic River Basin" is crucial to the understanding of the delineation. (20)

RESPONSE: Based on experience gained since 1988 in delineating and regulating wetlands in the Passaic River Basin, the Department recommended to the EPA that wetlands which meet the definition of an "isolated wetland or State open water" as cited in the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) and which occur outside the New Jersey Flood Hazard Design Flood as defined at N.J.A.C. 7:13-1.2 not receive status as priority wetlands in the Passaic River Basin. It is the Department's experience that such wetlands often play a reduced role in maintaining the attributes of flood control, water quality and/or valuable wildlife habitat identified for this listing.

In response, the EPA agreed to exclude isolated wetlands outside the 100 year floodplain, as defined by either the Federal Emergency Management Agency's 100 year flood elevation or the New Jersey 100 year flood elevation, whichever is higher, from the Passaic River Basin priority listing.

48. COMMENT: Two commenters suggested the addition of language that would specify that all wetlands associated with tributaries and headwater areas in the Passaic River Basin be designated as EPA priority wetlands, specifically the Great Swamp watershed wetlands. (1, 12)

RESPONSE: Wetlands within the Great Swamp watershed are a component of the Priority Wetland listing for the Passaic River Basin. As such they currently receive the designation as priority wetlands subject to the limitations discussed in the response above.

49. COMMENT: One commenter stated it is not apparent how all wetlands within the Passaic River Basin, even ditches and isolated wetlands, can be critical to the values suggested in the list. (13)

RESPONSE: The Department agrees in part and recommended to the EPA that wetlands which meet the definition of an "isolated wetland or State open water" as cited in the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) and which occur outside the New Jersey flood hazard design flood as defined at N.J.A.C. 7:13-1.2 not receive status as priority wetlands in the Passaic River Basin. As for ditches, the Department finds that due to their surface water connection to the tributary network in the basin, such features contribute to the control of floodwaters and therefore warrant priority wetland status within the Passaic River Basin.

In response, the EPA elected to maintain the priority wetland listing for the entire basin while agreeing to exclude isolated wetlands outside the 100 year floodplain, as defined by either the Federal Emergency Management Agency's 100 year flood elevation or the New Jersey 100 year flood elevation, whichever is higher, from the Passaic River Basin priority listing.

50. COMMENT: One commenter stated the Lower Passaic River Basin should in whole or part be removed from the list since most wetlands within the area are not habitat for threatened or endangered species and are less significant in terms of flood control. (13)

RESPONSE: The Department does not agree and did not support this recommendation when comments were sent to the EPA for formal review. The Department believes that, while wetlands in the lower Passaic may play a "less significant" role in terms of flood control, they still are a component of an extremely stressed system which is currently experiencing flooding problems. Adding to the continuation of lost flood storage space within this basin, even in downstream areas, will only continue to exacerbate the problem.

In response, the EPA agreed to exclude isolated wetlands outside the 100 year floodplain, as defined by either the Federal Emergency Management Agency's 100 year flood elevation or the New Jersey 100 year flood elevation, whichever is higher, from the Passaic River Basin priority listing while maintaining the priority status for all other wetlands in the basin. The March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects these determinations.

51. COMMENT: One commenter recommended that the Department consider adding the wetlands in Palermo, Atlantic County to the EPA list to preserve habitat for many wildlife species and open space for future generations. (15)

RESPONSE: Based on the information submitted, the Department believes that the identified wetlands fall within the Great Cedar Swamp priority wetlands boundaries and are currently considered priority wetlands by the EPA.

52. COMMENT: One commenter recommended that the Palisades wetlands associated with intermittent streams in Norwood, Bergen County be added to the EPA priority list because they support endangered species and are particularly vulnerable to development. (1)

RESPONSE: The Department found that the information submitted is insufficient to allow for the evaluation of the Norwood area of Bergen County for priority wetland designation. The Department recommends that additional information be forwarded to the EPA for further review of these freshwater wetlands for priority status.

53. COMMENT: One commenter recommended the addition of the Rio Grande Swamp in Cape May County to the list because it contains endangered and threatened plant and animal species and is threatened by a proposal to extend a road through the swamp's interior. (8)

RESPONSE: Rio Grande Swamp is already identified as a priority wetlands by the EPA.

54. COMMENT: One commenter requested "Crooked Creek" Watershed in Cape May Court House be considered as EPA Priority because this watershed and associated freshwater wetlands is a remnant undeveloped parcel, functions as a floodplain, and supports a Federally threatened plant species, as well as 20 plant species considered rare in New Jersey. (3)

RESPONSE: Based upon the information submitted, the Department believes that the "Crooked Creek" watershed meets the criteria for designation for priority wetland status and recommended that this wetland complex be added to the list. In response, EPA agreed and has added the Crooked Creek wetlands to the March 1994 edition of the List of Priority Wetlands for the State of New Jersey.

55. COMMENT: One commenter recommended that Hunterdon County wetlands, specifically those associated with streams feeding Spruce Run Reservoir be added to the list. (1)

RESPONSE: The Department agrees and recommended to the EPA that wetlands associated with the tributary system to Spruce Run Reservoir be added to the list of priority wetlands. In response, EPA agreed and has added the tributary system to Spruce Run Reservoir to the March 1994 edition of the list of Priority Wetlands for the State of New Jersey.

56. COMMENT: One commenter recommended the Duhernal Watershed Area of South Old Bridge, Middlesex County be considered as EPA Priority wetlands because it meets the six criteria used to designate EPA priority wetlands. (11)

RESPONSE: The Department found that the information submitted is insufficient to allow for the evaluation of the Duhernal Watershed Area for priority wetland designation. We recommend that additional information be forwarded to the EPA for further review of this freshwater wetland for priority status.

57. COMMENT: One commenter stated that the designation of Raritan Center as a whole, without regard to actual field conditions within and outside the property boundary, was arbitrary, unjustified, and discriminatory and requested that the Department recommend that this listing be removed from the document. (6, 26)

RESPONSE: The Department does not agree and did not support this recommendation when comments were forwarded to EPA for formal review. However, the Department did conduct a review of documentation addressing the extent and ecological value of the freshwater wetlands at Raritan Center. Based on this review, the Department recommended to the EPA that the boundaries of the priority listing for Raritan Center be modified to more accurately reflect the important wildlife habitat occurring at this location.

In response, EPA modified the boundaries of the Raritan Center listing in the March 1994 edition of the List of Priority Wetlands for the State of New Jersey.

58. COMMENT: One commenter stated that the extensive development and disturbed nature of the wetlands at Raritan Center make designation of these wetlands as priority wetlands inappropriate. (6)

RESPONSE: While the Department concedes that the freshwater wetlands at Raritan Center may not be pristine, portions of this complex feature many of the criteria (for example, important wildlife habitat, rare species habitat, represent a regionally rare habitat type) which were provided by the EPA to justify the designation of wetlands as priority wetlands.

59. COMMENT: One commenter recommended the list be expanded to include the Pyramid Mountain-Turkey Mountain area of Kinnelon, Boonton and Montville Townships in Morris County because the area is the primary drainage basin for Boonton's Taylortown Reservoir, supplies surface water for Jersey City's reservoir, is a recharge area for sole source aquifers, and provides habitat for threatened and endangered species. (15)

RESPONSE: As a component of the Passaic River basin, a majority of the wetlands in this area are currently considered priority wetlands. Please note that the EPA has excluded isolated wetlands outside the 100 year floodplain, as defined by either the Federal Emergency Management Agency's 100 year flood elevation or the New Jersey 100 year flood elevation, whichever is higher, from the Passaic River basin priority listing.

60. COMMENT: One commenter recommended all wetlands in the Upper Rockaway River Basin be classified as EPA priority because they are vital to surface water systems, provide flood storage capacity, protect ground water, and are habitat for rare flora and fauna. (31)

RESPONSE: As a component of the Passaic River basin, a majority of the wetlands in this area are currently considered priority wetlands. Please note that the EPA has excluded isolated wetlands outside the 100 year floodplain, as defined by either the Federal Emergency Management Agency's 100 year flood elevation or the New Jersey 100 year flood elevation, whichever is higher, from the Passaic River basin priority listing.

61. COMMENT: One commenter recommended all wetlands in Morris County should be listed as EPA Priority wetlands because they meet the six criteria used to designate EPA priority wetlands and this designation will make the list clearer and easier to use. (19)

RESPONSE: EPA priority wetland designations are made based on the characteristics of a particular wetland, wetland complex, or aquatic system. Basing a designation on political boundaries alone would not be environmentally sound.

Department Recommendations to EPA

General recommendations

62. COMMENT: The Department recommended that due to the regulatory implications of the "Priority Wetlands List for the State of New Jersey" has under the Freshwater Wetlands Protection Act, the EPA finalize the list through a formal rule making process.

RESPONSE: The EPA indicated that, because the list does not have formal regulatory authority under Federal law, there is no need for a formal federal adoption process to be conducted.

Recommendations specific to the introduction of the document

63. COMMENT: The Department recommended that the EPA clearly detail in the list of priority wetlands that this designation applies to all Federally regulated waters, including wetlands.

RESPONSE: The EPA has identified that a priority wetland listing relates to all Federally regulated waters including wetlands in the March 1994 edition of the List of Priority Wetlands for the State of New Jersey.

64. COMMENT: The Department recommended that "interpretation of specific boundaries" be clarified by the EPA to indicate that such factors as wetland complex continuity, wetland community type, and wildlife habitat values, will be considered in establishing boundaries on a site by site basis.

RESPONSE: The EPA adopted this recommendation in the March 1994 edition of the List of Priority Wetlands for the State of New Jersey.

65. COMMENT: The Department recommended that the EPA expand its discussion on the authority under the Clean Water Act which allows for the designation of priority wetlands.

RESPONSE: In the March 1994 edition of the List of Priority Wetlands for the State of New Jersey the EPA expanded upon the discussion of the regulatory authority provided under the Clean Water Act and how this relates to the identification of priority wetlands by the EPA.

Recommendations on the Statewide General Category section

66. COMMENT: The Department recommended to the EPA that a discussion be provided in the list of priority wetlands indicating that those wetlands types listed under the "General Category" heading not be subject to the regulatory standards of N.J.S.A. 13:9B-23b. The Department's rationale for this change is that the primary utility of the "Priority Wetlands List for the State of New Jersey" is to assist the regulatory process by identifying those sites and/or areas which will be subject to more stringent protection standards. To this end, concise information on the extent and location of each priority wetland is necessary. While the "General Category" listing provide valuable information on the types of wetlands which warrant priority status, they offer little information to assist the Department or the regulated public in the application of the Freshwater Wetlands Protection Act.

RESPONSE: In response, the EPA has modified the "Statewide General Categories" listing to indicate that these categories are for informational purposes only and wetlands meeting these descriptions should not be considered as priority wetlands. EPA has suggested that wetlands typical of those described under the new "Statewide General Headings" should be identified individually for incorporation into the "Specific Geographic Area" categories of the List of Priority Wetlands for the State of New Jersey.

Recommendations on specific geographic areas

67. COMMENT: The Department recommended under the Passaic River Basin designation the examples provided for each county be deleted or that their status as "examples" be clearly stated. The Department has received numerous inquiries on whether or not the Passaic River Basin listing only applied those wetlands individually identified under each county discussion suggesting confusion within the regulated community.

RESPONSE: EPA agreed to delete the individual citing of specific wetlands under the Passaic River Basin listing.

68. COMMENT: The Department recommended that the Passaic River Basin listing be amended to indicate that wetlands which meet the definition of an "isolated wetland or State open water" as cited in the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) and which occur outside the New Jersey flood hazard design flood as defined at N.J.A.C. 7:13-1.2 will not be determined to be priority wetlands in the Passaic River Basin. The Department also suggested that all other wetlands within the Passaic River Basin maintain their priority wetland status. The Department's rationale for this recommendation is that the control of flooding in the basin is the primary factor influencing the listing of the entire basin. Small, isolated, wetlands, provide minimal contribution to this function. In addition, most small, isolated wetlands also play a limited role in the maintenance of water quality or in provision of habitat for wildlife.

RESPONSE: The EPA agreed to exclude isolated wetlands outside the 100 year floodplain, as defined by either the Federal Emergency Management Agency's 100 year flood elevation or the New Jersey 100 year flood elevation, whichever is higher, from the Passaic River Basin priority listing.

69. COMMENT: The Department recommended that the EPA provide clarification on the boundaries and resources values of the Raritan Bay/New York Harbor priority wetlands listing or delete this priority wetland listing from the document.

RESPONSE: EPA acknowledged the Department's comments. The March 1994 listing document reflects a review of this listing and modification of the description and boundaries to improve their utility and clarity.

70. COMMENT: The Department recommended that the Maurice River System listing be modified to reflect that this listing only refers to waters and wetlands which are tributary waters to the Maurice River.

RESPONSE: The EPA agreed to adopt this proposal and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

71. COMMENT: The Department recommended that the Mullica River Wetlands listing be modified to reflect that this listing only refers to waters and wetlands which are tributary waters to the Mullica River.

RESPONSE: The EPA agreed to adopt this proposal and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

72. COMMENT: The Department recommended that the boundaries of the Oldman's and Raccoon Creek priority wetland listing be expanded to encompass the extent of suitable waterfowl habitat occurring in the wetland complex associated with these areas.

RESPONSE: The EPA reviewed the Department's information and agreed to expand the extent of wetlands designated as priority wetlands in the vicinity of Oldman's and Raccoon Creeks. The March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this review.

73. COMMENT: The Department recommended that the location description for "Big Pine Swamp" be modified to include Sparta Township, Sussex County and that the listing also be included in the Sussex County discussion.

RESPONSE: The EPA agreed to accept this recommendation and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

74. COMMENT: The Department recommended that the discussion of "Mountain Lakes Bog" be included in the Warren County section to reflect the occurrence of the site in Liberty and White Townships in Warren County rather than Sussex.

RESPONSE: The EPA agreed to accept this recommendation and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

75. COMMENT: The Department recommended that the "Resource Value" for the Manahawkin Lake wetlands be modified to include Pine Barrens treefrogs and State rare flora species.

RESPONSE: The EPA agreed to accept this recommendation and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

76. COMMENT: The Department recommended that the boundaries of the Manahawkin Lake wetlands be extended northward to the intersection of the Garden State Parkway to take in additional wetland habitat critical to the continued existence of a Federally listed plant species and State rare flora.

RESPONSE: The EPA agreed to accept most of these recommendation and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

77. COMMENT: The Department recommended that the Manahawkin Swamp listing be modified to indicate that this listing is a component of the Barnegat Bay tributary system and that this listing refers to all wetlands within the designated boundaries.

RESPONSE: The EPA agreed to accept these recommendations and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

78. COMMENT: The Department recommended that the Sewell Point wetlands, Cape May City, Cape May be added to the list of priority wetlands. This wetland complex consists of approximately 120 acres of freshwater wetlands, provide critical habitat for migratory bird and state listed species, and is threatened by development. This wetland complex is considered a priority wetland by the USFWS.

RESPONSE: The EPA agreed to accept this recommendation and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

79. COMMENT: The Department recommended that the Metro Park wetlands, Edison and Woodbridge Townships, Middlesex County be added to the list of priority wetlands. This wetland complex consists of approximately 55 acres of freshwater wetlands, provides critical habitat for migratory bird species, is regionally rare, and serves as habitat "island" in a highly urbanized area. This complex is considered a priority wetland by the USFWS.

RESPONSE: The EPA agreed to accept this recommendation and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

80. COMMENT: The Department recommended that the Reedy Creek/Herring Point wetlands, Brick Township, Ocean County be added to the list of priority wetlands. This wetland complex features habitat for state listed fauna and flora, critical migratory bird habitat, and is significant to maintaining water quality in northern Barnegat Bay. This listing should indicate that it applies to all regulated waters within the boundaries defined.

RESPONSE: The EPA agreed to accept this recommendation and the March 1994 edition of the List of Priority Wetlands for the State of New Jersey reflects this change.

81. COMMENT: The Department recommended that the EPA review the list of "Scorecard" wetland sites tracked by the NJDEP, Divisions of Parks and Forestry, Office of Natural Lands Management, Natural Heritage Program (NHP) for inclusion in the "Priority Wetland List for the State of New Jersey". The list features 50 sites identified by the NHP as featuring biological attributes significant to the preservation of New Jersey's biological diversity.

RESPONSE: The EPA agreed to review this complete list and add those wetlands meeting the criteria for designation as a priority wetland. The March 1994 edition of the List of Priority Wetlands for the State of New Jersey includes those "Scorecard" sites determined by EPA to warrant a Priority Wetland designation.

(a)

DIVISION OF WATER QUALITY

Notice of NJPDES Alternative Permit Renewal Process

Take notice that the Department of Environmental Protection proposes an alternative process to renew a number of New Jersey Pollutant Discharge Elimination System (NJPDES) permits in an expedited manner. This alternative process will better serve the public interest by directing more time and resources to those permits where permit change will result in the greatest overall water quality benefit or where there is justifiable need for major permit change. The Department prepared a list of permittees who qualify for the alternative permit renewal process. The facilities are those classified as minors with adequate existing permit limits. Based upon internal Departmental comment, file review of the listed facilities and the permittees' acceptance, a final list was generated. The final permits will be issued with existing effluent limitations and monitoring requirements but with updated standard conditions in Parts I, II, III, and/or IV of the NJPDES/DSW permits.

The final list of permittees participating in the alternative permit renewal process will be printed in the DEP Bulletin or may be obtained by contacting:

Jill Bennis
Executive Assistant to the Director
Division of Water Quality
NJ Department of Environmental Protection
CN 029
Trenton, NJ 08625
(609) 292-4543

(b)

ENFORCEMENT POLICY

Notice of Temporary Enforcement Response Policy and Air Pollution Control Permit Amnesty Program Procedures

Take notice that, pursuant to N.J.S.A. 13:1D-9 and 26:2C-19, in the exercise of his traditional statutory and judicially recognized enforcement discretion, the Commissioner of the Department of Environmental Protection (Department) has established a temporary enforcement response policy providing for the waiver of penalties for certain violations of the Air Pollution Control Act (APCA), and procedures for the implementation of this policy.

Purpose. The Department recognizes that a considerable number of entities, especially small businesses with limited financial and technical resources, may not be aware that some of the equipment or control apparatus they operate, activities they undertake or changes they have made to equipment, processes or control apparatus are subject to the permit and certificate requirements of the APCA and the regulations adopted thereunder. As a consequence, there is a potentially significant number of sources, especially smaller sources, that are not currently being operated in full compliance with the APCA, and in some cases may be operating without proper controls. Many small businesses not presently in compliance would voluntarily comply if they were made aware of these requirements. The Department has therefore established an "amnesty" program, as described herein, to encourage those entities not presently in compliance with the permitting requirements of the APCA to voluntarily take prompt steps to comply. The Department intends to conduct extensive outreach in concert with this temporary enforcement response policy to help educate businesses, especially small businesses, about the permit requirements of the APCA and the procedures for obtaining a permit.

Further, the Department recognizes that many businesses are performing voluntary environmental audits, and thereby identifying one or more pieces of unpermitted or altered pieces of equipment or control apparatus. The Department has determined that the use of voluntary environmental audits by regulated entities is a valuable tool for the prompt identification and correction of actual and potential non-compliance, and should therefore be encouraged and promoted by the Department. The Department intends to establish, in the near future, a permanent enforcement response policy for all types of violations discovered by a regulated entity as the result of a voluntary compliance and audit program.

The Department has concluded that considerable environmental benefits may be obtained by identifying presently unpermitted sources and subjecting them to valid permit requirements and routine compliance inspections. Therefore, the Commissioner has established this temporary enforcement response policy and amnesty program procedures to encourage persons subject to the requirements of the APCA to voluntarily review their facility operations, identify unpermitted processes and equipment that require permits, and promptly submit permit applications to the Department for them.

Enforcement Response Policy. Under the temporary enforcement response policy and amnesty program set forth herein, the Department shall, subject to the exceptions noted below, waive civil and civil administrative penalties for violations arising out of the construction, installation, alteration or operation of any equipment control apparatus without a valid permit and certificate, in violation of N.J.S.A. 26:2C-9.2, and N.J.A.C. 7:27-8.3, provided that the person responsible for such violation: (1) voluntarily discloses the violation to the Department between October 1, 1994 and December 31, 1994 (the amnesty period), (2) submits a timely permit application or notice of intent to submit a permit application within the amnesty period, and (3) achieves compliance by May 31, 1995. Persons meeting these requirements, shall be considered participants in this amnesty program.

Voluntary Disclosure Required. The temporary enforcement response policy shall apply only to violations that were previously unknown to the Department and voluntarily disclosed by the person responsible for the violation, and shall not apply to any violation discovered by the Department during a compliance inspection. When the Department identifies unpermitted equipment during an inspection, the Department orders the facility owner/operator to obtain a permit or cease its use of the unpermitted equipment. Inclusion of such violations under this policy would substantially diminish the incentive for facilities to perform voluntary compliance and audit programs to promptly identify and correct violations.

Types of Permits and Violations Covered. The temporary enforcement response policy shall apply, and civil and civil administrative penalties shall be waived, for the failure of a person to obtain a permit or certificate. The temporary enforcement response policy shall also apply to the failure of a person to be in full compliance with the terms of an existing permit or certificate, provided the activity or condition constituting the violation is determined by the Department to be approvable as a modification to the existing permit and certificate. The temporary enforcement response policy shall not apply to the release of an air contaminant into the outdoor atmosphere in quantities that result in air pollution in violation of N.J.A.C. 7:27-5 and emission limits and operational standards that are specified in Federal regulations. (See discussion under Exceptions, below.)

The specific type and size of equipment and control apparatus requiring a permit and certificate are listed at N.J.A.C. 7:27-8.2, Applicability. The following are several examples of violations covered by the temporary enforcement policy. A facility may report the construction, installation, alteration and/or use of pollution control apparatus without having first obtained a new or modified permit therefor. In this situation, the facility has violated the regulations requiring that it obtain a permit and certificate for such control apparatus, regardless of whether or not the equipment or alteration is ultimately determined to be adequate. Here, there is little or no excess emission of air contaminants since control equipment is in place, even though it is not permitted. The temporary enforcement response policy shall apply to these types of violations. This is consistent with recently enacted legislation allowing the installation of control apparatus upon the submission of a permit application. Alternatively, a facility may report that it operates a process that results in the emission of air contaminants into the atmosphere, and has not filed an application to obtain a permit for that process. A facility may also report that it has obtained a permit, but has added new equipment or altered existing equipment resulting in the release of increased quantities of air contaminants not covered in the existing permit. The temporary enforcement response policy shall also apply to these types of violations.

Exceptions. The temporary enforcement response policy shall not apply, and penalties shall not be waived, for past or continuing violations of N.J.A.C. 7:27-5.2, Prohibition of air pollution, such as causing an exceedance of a National Ambient Air Quality Standard. The Department does not anticipate that many violations will fall into this category. Also, the temporary enforcement response policy shall not apply, and penalties shall not be waived, for past or continuing violations if the permit includes emission or operational standards specified in Federal regulations, including, but not limited to, sources subject to the requirements for the prevention of significant deterioration (PSD) pursuant to 40 CFR 52.21, new source performance standards (NSPS) pursuant to 40 CFR 60, national emission standards for hazardous air pollutants (NESHAPs) pursuant to 40 CFR 61, and maximum available control technology (MACT) for hazardous air pollutants pursuant to 42 U.S.C. §7412(d)(2) and (3).

Deadlines and Procedures for Participation in the Amnesty Program. The temporary enforcement response policy shall apply to any person who submits to the Department by December 31, 1994 an administratively complete permit application for presently unpermitted equipment, or a written notice of intent to file a permit application for presently unpermitted equipment. Either the permit application, or the notice of intent, must be submitted on or before December 31, 1994. Persons who submit a notice of intent by December 31, 1994 must thereafter submit an administratively complete permit application by February 28, 1995. The additional time after December 31, 1994 to file a permit application is intended to provide facilities that may have uncontrolled equipment a reasonable period of time to develop a compliance plan and submit a complete permit application. If physical modifications, such as the installation of control equipment, are required, participants shall complete such modifications by May 31, 1995.

All permit applications, notices of intent, and related correspondence should be submitted to:

Attention: Amnesty Program
Department of Environmental Protection
Bureau of New Source Review, CN 027
401 East State Street
Trenton, New Jersey 08625.

One copy of each permit application, notice of intent or related correspondence should be sent to:

Attention: Amnesty Program
Department of Environmental Protection
Air and Environmental Quality Enforcement, CN 422
401 East State Street
Trenton, New Jersey 08625

Extensions of Deadlines. There shall be no extension of the December 31, 1994 deadline for the filing of a permit application or a notice of intent to file a permit application. If a person demonstrates that, notwithstanding his or her diligent, good faith efforts, such person is unable to meet the February 28, 1995 or May 31, 1995 deadline, the Department may in its discretion, on a case by case basis, extend the deadline by executing an Administrative Consent Order containing a compliance schedule. The temporary enforcement response policy shall not apply to violations that exist after May 31, 1995. The Department may, in its discretion, assess penalties for violations that exist after May 31, 1995, regardless of whether such violations are the subject of an ACO executed prior to May 31, 1995. The Department may also assess penalties for a participant's failure to meet the major milestones or the final compliance deadline set forth in an ACO, and an ACO may include stipulated penalties therefor.

Other Remedies Not Waived. Under the temporary enforcement response policy set forth herein, the Department does not waive any other remedies and expressly reserves the right to order a person responsible for a continuing emission violation to take reasonable and diligent steps to minimize the level of emission of any air contaminant caused by the violation. In addition, the Department reserve the right to seek injunctive relief for uncontrolled or inadequately controlled emission sources that pose an immediate risk to human health or natural resources. This temporary enforcement response policy is not intended and shall not be construed to limit or in any way affect the obligation of a person responsible for a violation to construct, install and operate pollution control equipment that is necessary to comply with the APCA.

Outreach. The Department anticipates conducting several workshops in October and November to explain the permitting requirements, the procedures to follow to apply for and obtain a permit and certificate, and the amnesty program. The Department is also mailing a notice to individual businesses within targeted industries to advise them of the amnesty program, and is contacting industry trade associations to solicit their assistance in advising their members about the amnesty program. Persons interested in obtaining more information about the amnesty program, the procedures for obtaining a permit and certificate, and the dates and locations for scheduled workshops may contact, by mail or by telephone, the Bureau of New Source Review, CN 027, 401 East State Street, Trenton, New Jersey 08625, (609) 633-2753. Persons may request such information anonymously.

Expiration and Post-Amnesty Enforcement Response Policy. The temporary enforcement response policy set forth herein shall apply only to those situations described above. At the conclusion of the applicable deadlines (December 31, 1994, February 28, 1995 and May 31, 1995), violations covered by this policy shall be subject to immediate enforcement action, including the assessment of a civil administrative penalty in accordance with N.J.S.A. 26:2C-19 and N.J.A.C. 7:27A-3.

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Notice of Availability of Grant Funds

Title of Grant: Mini-grants for Innovative Service and Training Demonstration Projects

Take notice that, in accordance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services hereby announces the availability of the following grant program funds.

A. Name of program: Mini-grants for Innovative Service and Training Demonstration Projects for Multicultural Populations.

B. Purpose: Funds are being made available to develop and promote innovative service and demonstration projects towards increasing access to, and sensitivity/responsiveness of, mental health services for defined multicultural populations in areas including, but not necessarily limited to, Service/Treatment Issues, Human Resource Development, and System Development and Advocacy.

C. Amount of available funding for the program: $45,000 annually ($15,000 for each of three regions).

D. Organizations which may apply for funding under this program: Any non-profit agency which meets the qualifications of the Department of Human Services as specified in the contract, Policy and Information Manual, N.J.A.C. 10:3. If necessary, this manual may be obtained from the Offices of the Division of Mental Health and Hospitals at the time the application is requested.

E. Qualifications needed by an applicant to be considered for funding: Applicants must have the capacity to develop innovative service or demonstration projects for multicultural populations. Applicants must demonstrate a strong commitment to engaging multicultural populations in all aspects of the service or demonstration projects.

F. Procedure for eligible organizations to apply: Interested applicants may request an application from the Division of Mental Health and Hospitals, as indicated below.

G. Address to which applications must be submitted:

Juan C. Garcia
State of New Jersey—Department of Human Services
Division of Mental Health and Hospitals—CN 727
Trenton, New Jersey 08625-0727

H. Deadline by which applications must be submitted: By close of business December 1, 1994.

I. Date the applicant is to be notified of acceptance or rejection: January 3, 1995.

(b)

DIVISION OF FAMILY DEVELOPMENT

Notice of Availability of Grant Funds

Title of Grant: Supplemental Security Income (SSI) Case Management Services for General Assistance Program Recipients in Selected Municipalities of Camden, Essex, and Hudson Counties

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Department of Human Services hereby announces the availability of the following grant program funds:

A. Name of program: General Assistance Program Case Management Contract for Application Supervision Services for Potential Supplemental Security Income (SSI) Benefits.

B. Purpose: The purpose for which the program funds are issued is for providing assistance to General Assistance (GA) recipients in select municipalities in Camden, Essex, and Hudson Counties in applying for and receiving Supplemental Security Income (SSI) benefits. These funds are for case management services to assist GA recipients in the preparation/completion of SSI applications in accordance with Social Security Administration policies to ensure more accurate and expedient processing of said documents. Related functions include, but are not limited to, helping to obtain third-party documentation of the mental, physical or substance abuse circumstances; completion of appropriate SSI case-related forms and materials; tracking of application progress; and in follow-up actions subsequent to any SSI appeals process. Case management activities will entail close monitoring of all phases of an individual's need to attain SSI benefits.

The applicant entities will be responsible to assist and assure follow-up in the entire SSI application process by GA recipients referred by affiliated municipalities in the respective county to the Social Security Administration District Offices. Applicant entities will provide advocacy services with local legal services' offices; where appropriate, with the existing Community Health Law Project Contract; and any necessary local medical resources which may assist in this process.

C. Amount of available funding for the program: $220,000 The total amount of funding for the grant period in SFY 1996 for administration and services under this RFP will be $220,000. This amount will be subject to available funding and will be distributed to the successful bidder(s). The Grant Period is July 1, 1995 through December 31, 1995.

D. Organizations which may apply for funding under this program: Eligible applicants are public, for profit, or not-for-profit agencies, organizations, or corporate bodies, which can administer any or all of the aforementioned case management functions (screening, tracking and monitoring of SSI applicants) in accordance with subsequent contract provisions and procedures established by the Department of Human Services.

E. Qualifications of organizations that apply for funding under this program: Through written proposals, agencies must demonstrate the capacity to develop and carry out the proposed service delivery of SSI case management supervision as described above and outlined in the final Request for Proposal (RFP) guidelines. Applicants must also demonstrate their ability to work cooperatively with the municipal welfare departments in the designated municipalities administering General Assistance, in accordance with RFP guidelines and the Social Security District Office, to ensure proper and timely determination on the SSI application.

F. Procedure for eligible organizations to apply: Interested agencies may request, in writing, a copy of the Request For Proposal from the Department of Human Services, Division of Family Development, Office of the Acting Deputy Director, CN 716, Trenton, New Jersey 08625, or by telephone (609) 588-2411. Packages will be available on Monday, October 17, 1994.

Additional information and technical assistance will be provided to interested applicants at a **Bidders' Conference** to be held at the Division of Family Development, Quakerbridge Plaza, Building 6, Third-Floor, Board Rooms A and B, Trenton, New Jersey, on Wednesday, October 26, 1994 at 1:00 to 3:00 P.M.

RFP packages will also be available, upon request, at the Bidders' Conference.

G. Address to which applications must be submitted: Applicants should submit one signed original and seven copies of the completed Request For Proposal document and all support materials to:

Marion E. Reitz, Director
Department of Human Services
Division of Family Development
CN 716
Trenton, New Jersey 08625

H. Deadline by which applications must be submitted: Monday, December 5, 1994 (4:00 P.M.). No applications will be accepted after 4:00 P.M.

I. Date the applicant is to be notified of acceptance or rejection: No later than Wednesday, March 1, 1995.

(a)

DIVISION OF FAMILY DEVELOPMENT

Notice of Availability of Grant Funds
Title of Grant: Family Development Program—Statewide Hispanic Contract for Employment-Directed Activities and Job Placement Services

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Department of Human Services hereby announces the availability of the following grant program funds:

A. Name of program: Family Development Program—Hispanic Initiative Contract for Employment-Directed Activities and Job Placement Services.

B. Purpose: The purpose for which the program funds are issued is to promote self sufficiency of Hispanic families who are Aid to Families With Dependent Children (AFDC) Family Development Program (FDP) and Job Opportunities and Basic Skills (JOBS) participants statewide. Applicants will be responsible for providing occupational skills training, related job-readiness activities, job placement services and for monitoring participant progress. Project emphasis should be placed on providing Hispanic individuals, who are 18 years of age and older with language barriers in English, with employment-directed or occupational training activities to be supplemented by employment development skills training (that is, job-readiness activities) which will be conducted by instructors who are fluent in English and Spanish. Additionally, the programs should be short-term initiatives which are sufficient to enable participants to attain skill levels to be placed into unsubsidized employment positions as quickly as possible, but not later than the end of the grant period.

C. Amount of available funding for the program: $300,000 The total amount of funding available in SFY 1995 for administration and services under this RFP will be $300,000. This amount will be subject to available funding and will be divided and distributed as four to six awards to the successful bidder(s).

The Grant Period is January 1, 1995 through June 30, 1995.

D. Organizations which may apply for funding under this program: Eligible applicants are public, for profit, or not-for-profit agencies, organizations, or corporate bodies, which can administer any or all of the aforementioned services of the Family Development Program and the other parameters outlined in this notice. These applicants must be experienced in serving the needs of the Hispanic community.

E. Qualifications of organizations that apply for funding under this program: Through written proposals, agencies must demonstrate the capacity to develop and carry out the proposed service delivery of the Family Development Program as described above and outlined in the final Request for Proposal (RFP) guidelines with particular emphasis on Hispanic culture and language. Additionally, Applicants who are selected must be able to provide culturally sensitive employment skills development training in bilingual classes in conjunction with occupational training activities to net employment. Applicants must also demonstrate their ability to work cooperatively with the existing FDP structure in the county to ensure proper and timely delivery of all services.

F. Procedure for eligible organizations to apply: Interested agencies may request, in writing, a copy of the Request For Proposal from the Department of Human Services, Division of Family Development, Office of the Acting Deputy Director, CN 716, Trenton, New Jersey 08625, or by telephone: (609) 588-2411. Packages will be available on Monday, October 17, 1994.

Additional information and technical assistance will be provided to interested applicants at a **Bidders' Conference** to be held at the Division of Family Development, Quakerbridge Plaza, Building 6, Third-Floor, Board Room A, Trenton, New Jersey, on Tuesday, October 25, 1994 at 10:00 A.M.

RFP packages will also be available, upon request, at the Bidders' Conference.

G. Address to which applications must be submitted: Applicants should submit one signed original and seven copies of the completed Request For Proposal document and all support materials to:

Marion E. Reitz, Director
Department of Human Services
Division of Family Development
CN 716
Trenton, New Jersey 08625

H. Deadline by which applications must be submitted: Wednesday, November 23, 1994 (4:00 P.M.). No applications will be accepted after 4:00 P.M.

I. Date the applicant is to be notified of acceptance or rejection: No later than Friday, December 16, 1994.

INSURANCE

(b)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Notice of Receipt of Petition for Rulemaking
N.J.A.C. 11:20, Appendix, Exhibit F

Petitioner: Scott Schwartz, Oxford Health Plans.

Take notice that the New Jersey Individual Health Coverage Program ("Board") received a petition for rulemaking on August 30, 1994, requesting that the Board adopt a rider to the health maintenance organization benefits plan set forth as Exhibit F in the Appendix to N.J.A.C. 11:20. The proposed rider would allow enrollees in the health maintenance organization benefits plan the option to see out-of-network providers when preapproval is given by either the enrollee's Primary Care Physician or the carrier.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Board shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

LABOR

(c)

OFFICE OF THE CONTROLLER

Public Notice of Rates for Board and Room, Meals and Lodging Furnished by Employers in Addition to, or in Lieu of, Money Wages during Calendar Year 1995

Take notice that, in accordance with N.J.A.C. 12:16-4.8, the Department of Labor hereby publishes notice of the following rates for board and room, meals and lodging furnished by employers in addition to, or in lieu of, money wages during calendar year 1995:

Full board and room, weekly	$118.50
Lodging, per week	$ 50.80
Meals, per day	$ 13.50

If less than three meals per day, the individual meals shall be valued as follows:

Breakfast	$ 4.10
Lunch	$ 4.10
Dinner	$ 5.40

These amounts are used when the employer does not assign value to such payments.

TRANSPORTATION

(a)

DIVISION OF ROADWAY DESIGN
BUREAU OF RESEARCH AND DEMONSTRATION

Notice for Professional Services for the Maintenance Management System Reengineering Study

Take notice that the New Jersey Department of Transportation is seeking qualified engineering firms interested in submitting letter of interest to conduct a research study on how to reengineer the NJDOT Maintenance Management System (MMS). The study will result in recommended changes in operations activities, work and planning standards, and engineering and planning methods. The study will result in recommendations concerning the use of advanced engineering technologies, functional data system requirements, and a limited pilot test to verify the recommendations.

The specific agency notice follows:

REQUEST FOR LETTERS OF INTEREST
CLOSING DATE: 4:00 P.M., WEDNESDAY, NOVEMBER 16, 1994
NEW JERSEY DEPARTMENT OF TRANSPORTATION
PUBLIC NOTICE FOR PROFESSIONAL SERVICES
FOR THE MAINTENANCE MANAGEMENT SYSTEM
REENGINEERING STUDY

The New Jersey Department of Transportation (NJDOT) is seeking qualified engineering firms interested in submitting letters of interest to conduct a research study on how to reengineer the NJDOT Maintenance Management System (MMS). The study will result in recommended changes in operations activities, work and planning standards, and engineering and planning methods. The study will result in recommendations concerning the use of advanced engineering technologies, functional data system requirements, and a limited pilot test to verify the recommendations.

The research study will consist of the following tasks:

(1) Conduct interviews and review maintenance resources, operations, engineering, work standards, planning standards and analytical methods, needs of ISTEA Management Systems for input and access, and relevant advanced data handling and communication technologies;

(2) Recommend changes in operations activities, engineering support, work standards, methods, and technologies;

(3) Recommend changes in annual planning standards and analytical programming methods, and determine functional data system requirements;

(4) Demonstrate alternative advanced engineering technologies, including geographic location technologies, field data handling devices, and user task interfaces;

(5) Verify the recommended MMS with a pilot test involving NJDOT employees;

(6) Submit a final report with results of the interviews and reviews, recommendations, functional data system requirements, and documentation to support full development, intallation, and implementation of a reengineered NJDOT MMS.

This effort is expected to be completed within six months of the beginning of work, which is scheduled to start in early 1995. There is $250,000 available for this contract.

Evaluation Requirements

Proposed staffing, recent relevant experience, licensing and professional registration of the key project individuals will be critical elements in short listing and final selection.

Respondents will be evaluated on the basis of: Current PS01 (years experience in management systems should be disclosed); Cost basis approval (questions are directed to the Audit Bureau); Location of Office; Insurance; DBE targets; Staff Size; Evaluation of file with NJDOT; and Special Task and/or Equipment.

NJDOT, in accordance with Title VI Civil Rights Act of 1964, 78 Stat. 252.52 U.S.C. and 49 C.F.R., Part 21 issued pursuant to such Act, affords minority/women business enterprises full opportunity to submit an indication of interest in response to this invitation and will not discriminate against any interested firm on the grounds of race, creed, color, sex, age, or national origin in a contract award.

Interested firms will be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and all other applicable Equal Opportunity Laws and Regulations.

Following a review of submitted Letters of Interest, NJDOT will request proposals from the most qualified firms/teams. Proposals will not be solicited from firms or teams that have not responded to the Request for Letters of Interest. The short listing process is expected to take approximately two to six weeks from the receipt of the responses. All respondents will be notified at the completion of the process regarding their status.

Submission Requirements

Qualified firms or joint ventures interested in being considered for this study must submit 10 copies of:

(1) A letter of interest not exceeding four single side, letter sized pages, summarizing the firm's understanding of the project, qualifications of the firm, prior relevant experience, team organization and key personnel;

(2) A list of references claimed as relevant experience by each firm and each key individual including: name, title, agency, address and telephone number of client agency project manager;

(3) An organizational chart showing proposed key personnel names, position titles and reporting relationships of each firm; and

(4) A completed NJDOT form PS01 for the prime consultant and each designated subconsultant or for each member of a joint venture team.

Blank forms may be obtained upon written request. The responses must be submitted by the closing date and addressed to:

Mr. Richard L. Hollinger
New Jersey Department of Transportation
Bureau of Research and Demonstration, CN612
Trenton, New Jersey 08625-0612
FAX—609-292-4599
Office Location: 1600 North Olden Avenue, Trenton, NJ.
Solicitation Number: 71701

Any questions on this effort should be directed to:

Arthur Roberts
New Jersey Department of Transportation
Bureau of Research and Demonstration, CN612
Trenton, New Jersey 08625-0612
609-292-4663

Please note that the New Jersey Department of Transportation has a DBE target of 20 percent.

Statement of Ownership, Management and Circulation (Required by 39 U.S.C. 3685) 1. Publication title: NEW JERSEY REGISTER. 2. Publication No. 0300-6069. Filing date: September 27, 1994. 4. Issue frequency: Semimonthly. 5. Number of issues published annually: 24. 6. Annual subscription price: $125 second class; $215 first class. 7. Complete mailing address of known office of publication: New Jersey Office of Administrative Law, 9 Quakerbridge Plaza, CN 301, Trenton, Mercer County, New Jersey 08625-0301. 8. Complete mailing address of general business office of publisher: Same as above. 9. Full names and complete mailing addresses of publisher, editor, and managing editor. Publisher: New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625-0301. Editor: Norman Olsson, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625-0301. Managing Editor: Anthony Miragliotta, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625-0301. 10. Owner: New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625-0301. 11. Known bondholders, mortgagees, and other security holders owning or holding one percent or more of total amount of bonds, mortgages, or other securities: None. 12. The purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes has not changed during the preceding 12 months. 13. Publication name: New Jersey Register. 14. Issue date for single issue data below: October 3, 1994. 15. Extent and nature of circulation. Average number of copies each issue during preceding 12 months: (a) Net press run: 3,595. (b)1. Sales through dealers, carriers, street vendors, and counter sales: None. (b)2. Paid and requested mail subscriptions: 2,650 second class; 432 first class. (c) Total paid and requested circulation: 3,082. (d) Free distribution by mail: 2. (e) Free distribution outside the mail: 412. (f) Total free distribution: 414. (g) Total distribution: 3,496. (h) Copies not distributed: (h)1. Office use: 99. (h)2. Return from news agents: None. (i) Total: 3,595. Percent paid and requested circulation: 88. Actual number of copies of a single issue published nearest to filing date: (a) Net press run: 3,550. (b)1. Sales through dealers, carriers, street vendors, and counter sales: None. (b)2. Paid and requested mail subscriptions: 2,602 second class; 442 first class. (c) Total paid and requested circulation: 3,044. (d) Free distribution by mail: 2. (e) Free distribution outside the mail: 410. (f) Total free distribution: 412. (g) Total distribution: 3,456. (h) Copies not distributed: (h)1. Office use: 94. (h)2. Return from new agents: None. (i) Total: 3,550. Percent paid and requested circulation: 88. 16. Statement of Ownership printed in the October 17, 1994 issue of the New Jersey Register. 17. I certify that all information furnished above is true and complete: Norman Olsson, Editor. September 27, 1994.

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 September 6, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1994 d.1 means the first rule filed for 1994.

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 AUGUST 15, 1994

NEXT UPDATE: SUPPLEMENT SEPTEMBER 19, 1994

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

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25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
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26 N.J.R. 879 and 1178	February 22, 1994	26 N.J.R. 3505 and 3780	September 6, 1994
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26 N.J.R. 1555 and 1738	April 18, 1994		

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4A:2-3.1	Performance evaluations	26 N.J.R. 3509(a)		
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7:1G-2.1, 3.1	Community Right to Know: EPA list of regulated substances for accidental release prevention; hazardous substance reporting threshold	26 N.J.R. 2833(a)		
7:1H	County Environmental Health Act rules: pre-proposal	26 N.J.R. 3526(a)		
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7:9	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:9A	Individual subsurface sewage disposal systems	26 N.J.R. 2715(a)	R.1994 d.469	26 N.J.R. 3829(a)
7:9B	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:10	Safe Drinking Water Act rules	26 N.J.R. 2720(a)	R.1994 d.482	26 N.J.R. 3833(a)
7:10-15.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
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7:13-7.1	Flood plain redelineation of Pascack and Fieldstone brooks in Montvale	26 N.J.R. 2834(a)		
7:14	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(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)		
7:14A-2.15	NJPDES program: administrative correction regarding permit-by-rule authorization	———	———	26 N.J. 4182(b)
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)	R.1994 d.448	26 N.J.R. 3709(a)
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7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15	Statewide water quality management planning	26 N.J.R. 3106(a)	R.1994 d.525	26 N.J.R. 4182(c)
7:15	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:19-3.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
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7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-6	1995-96 Fish Code	26 N.J.R. 2835(a)		
7:25-6.9	1995-96 Fish Code: administrative correction	26 N.J.R. 3258(a)		
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)		
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7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
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7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
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7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
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7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)	R.1994 d.483	26 N.J.R. 3835(a)
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)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
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7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)	R.1994 d.500	26 N.J.R. 4026(a)
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-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)		
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
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7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:30-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:31-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)		
7:61-3.15, 3.16	Board of Commissioners of Pilotage: Drug Free Workplace Program	26 N.J.R. 2238(a)	R.1994 d.449	26 N.J.R. 3715(a)

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8:18	Catastrophic Illness in Children Relief Fund Program	26 N.J.R. 3573(a)		
8:18	Catastrophic Illness in Children Relief Fund Program: corrections to proposal statements	26 N.J.R. 3805(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill-patient summaries (inpatient)	26 N.J.R. 10(a)	R.1994 d.488	26 N.J.R. 3839(a)
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8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)	R.1994 d.496	26 N.J.R. 4046(a)
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)	R.1994 d.497	26 N.J.R. 4046(b)
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)		
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8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
8:59	Worker and Community Right to Know Act rules	26 N.J.R. 2888(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:62	Certification of lead abatement workers, supervisors, inspectors, project designers	26 N.J.R. 3575(a)		
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b), 2095(a))	25 N.J.R. 4844(a)	R.1994 d.457	26 N.J.R. 3717(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)
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8:71	Interchangeable drug products	26 N.J.R. 2723(a)	R.1994 d.460	26 N.J.R. 3720(a)
8:71	Interchangeable drug products	26 N.J.R. 3583(a)		
8:91	Health Access New Jersey	26 N.J.R. 2007(a)	R.1994 d.495	26 N.J.R. 3840(a)

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9:11-2, 3, 4	Graduate EOF financial eligibility; Martin Luther King Physician-Dentist Scholarship; C. Clyde Ferguson Law Scholarship	26 N.J.R. 1932(a)	R.1994 d.452	26 N.J.R. 3722(a)
9:12-1.1, 1.4, 1.6–1.9, 1.16–1.21, 1.23, 2.5, 2.7, 2.8, 2.10	Educational Opportunity Fund Program	26 N.J.R. 3586(a)		

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10:15B	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15C	Child Care Services Manual	26 N.J.R. 3327(a)		
10:17	Child placement rights	26 N.J.R. 1563(a)		
10:37-5.28–5.34	Repeal (see 10:37E)	26 N.J.R. 3608(a)		
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10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)	R.1994 d.464	26 N.J.R. 3726(a)
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
10:43	Division of Developmental Disabilities: determination of need for guardian	26 N.J.R. 2838(a)		
10:43	Division of Developmental Disabilities: extension of comment period concerning determination of need for guardian	26 N.J.R. 3341(a)		
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10:49-14.1	Medicaid benefits: recovery from estates of payments correctly made	26 N.J.R. 2757(a)	R.1994 d.524	26 N.J.R. 4184(b)
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10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component	26 N.J.R. 2239(a)		
10:52-8.2	Charity care component of Health Care Subsidy Fund	Emergency (expires 9-30-94)	R.1994 d.440	26 N.J.R. 3485(a)
10:53-1.6, 1.7	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)	R.1994 d.508	26 N.J.R. 4185(a)
10:54-1.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:58-1.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
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10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)	R.1994 d.463	26 N.J.R. 3729(a)
10:81-11.6A, 11.6B, 11.15	Child Support Hotline; locator processing fees	26 N.J.R. 3353(a)		
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10:82-2.3	Assistance Standards Handbook: administrative correction regarding income from noneligible individual	________	________	26 N.J.R. 4047(a)
10:82-2.3	Assistance Standards Handbook: AFDC-N segment eligibility of aliens	26 N.J.R. 3932(a)		
10:85	General Assistance Manual	26 N.J.R. 2757(b)		
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10:95	Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program	26 N.J.R. 2242(a)		
10:126-1.2, 1.4, 2.2–2.4, 2.6, 3.2, 4.1, 4.2, 4.6, 4.8, 5.1–5.4, 5.6–5.10, 6.1–6.6, 6.8, 6.9, 6.13, 6.18, 6.20	Manual of Requirements for Family Day Care Registration	26 N.J.R. 3144(a)		
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10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)	R.1994 d.532	26 N.J.R. 4188(a)

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10A:71-3.15, 3.16	State Parole Board: parole hearings	26 N.J.R. 2189(a)	R.1994 d.510	26 N.J.R. 4190(a)
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-7.16, 7.16A	Parole Board panel action: establishment of parole release date upon revocation of parole for technical violations	26 N.J.R. 2516(a)	R.1994 d.511	26 N.J.R. 4191(a)

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11:2-27.3	Determination of insurers in a hazardous financial condition	26 N.J.R. 3589(a)		
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11:13-7.4, 7.5	Commercial lines insurance: exclusions from coverage; refiling of policy forms	26 N.J.R. 3805(b)		
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11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)		
11:20-9.6	Individual Health Coverage Program: good faith marketing report	26 N.J.R. 3809(a)	R.1994 d.509	26 N.J.R. 4193(a)
11:20-App. Exh. A–F, M, N, O, P	Individual Health Coverage Program: policy forms, PPO and POS standard plan provisions, schedule of benefits	26 N.J.R. 3356(b)		
11:21-1.2, 1.3, 2.2, 3A, 7.1, 7.2, 7.3, 7.5–7.9, 7.12, 7.13, 7A, App. Exh. N, O, Q, R, S, T	Small Employer Health Benefits Program: standard and non-standard plans	26 N.J.R. 3421(a)	R.1994 d.499	26 N.J.R. 4047(b)
11:21-7.4	Small Employer Health Benefits Program: carriers acting as administrators for small employers	26 N.J.R. 3117(a)		
11:21-9.1–9.4, 11, 14.2, 14.4, 14.5, 16.2, 16.3, 16.4, 16.7, Exh. BB, U	Small Employer Health Benefits Program: plan filings; informational rate filings; declaration and approval of carrier status; withdrawals of carriers from plan market	26 N.J.R. 3118(a)		
11:21-Exh. A–F	Small Employer Health Benefits Program: administrative correction	————	————	26 N.J.R. 3867(a)
11:11-Exh. A–AA	Small Employer Health Benefits Program: plan exhibits	26 N.J.R. 2843(a)	R.1994 d.498	26 N.J.R. 4066(a)

Most recent update to Title 11: TRANSMITTAL 1994-8 (supplement August 15, 1994)

LABOR—TITLE 12

12:15-1.3–1.7	Unemployment compensation and temporary disability: 1995 maximum weekly benefit rates, contribution levels, and eligibility tests	26 N.J.R. 3592(b)		
12:16-13.7	Unemployment Insurance and Disability Insurance Financing: magnetic media wage reporting	26 N.J.R. 2863(a)	R.1994 d.527	26 N.J.R. 4194(a)
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:23-1, 2	Workforce Development Partnership Program: application and review process for customized training services	26 N.J.R. 2770(a)	R.1994 d.489	26 N.J.R. 3867(a)
12:23-7	Workforce Development Partnership Program: occupational safety and health training services	26 N.J.R. 2774(a)	R.1994 d.490	26 N.J.R. 3870(a)
12:41-1.2, 1.14	Job Training Partnership Act: non-criminal complaints and appeals	26 N.J.R. 2864(a)	R.1994 d.491	26 N.J.R. 3872(a)
12:56-6.1, 7.5, 7.6	Wage and Hour compliance: limousine operators	26 N.J.R. 94(a)		
12:90	Division of Workplace Standards: boilers, pressure vessels, refrigeration	26 N.J.R. 3810(a)		
12:100	Safety and Health Standards for Public Employees	26 N.J.R. 2776(a)	R.1994 d.492	26 N.J.R. 3872(b)
12:195-1.9	Carnival-amusement rides: inspection fees	26 N.J.R. 2520(a)		
12:195-1.9	Carnival-amusement rides: inspection and permit fees	26 N.J.R. 3594(a)		
12:235-1.6	Workers' Compensation: 1995 maximum benefit rate	26 N.J.R. 3594(b)		
12:235-14.7	Uninsured Employer's Fund: attorney fees	26 N.J.R. 2199(a)		

Most recent update to Title 12: TRANSMITTAL 1994-4 (supplement August 15, 1994)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-1	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)	Expired	
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: reopening of comment period regarding allocation of direct loan assistance	26 N.J.R. 1434(a)		

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13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 1297(a)		
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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:18-1.5–1.9, 1.12, 1.15	Division of Motor Vehicles: overweight oceanborne containers	26 N.J.R. 2521(a)		
13:19	Division of Motor Vehicles: Driver Control Service	26 N.J.R. 2738(a)	R.1994 d.468	26 N.J.R. 3873(a)
13:19-1.1	Division of Motor Vehicles: applicability of administrative hearings	26 N.J.R. 2522(a)	R.1994 d.486	26 N.J.R. 3874(a)
13:21-6.1, 6.2, 6.3, 7.1, 7.2, 7.3, 7.4, 8.1, 8.2, 8.4, 16	Division of Motor Vehicles: permits, licenses, nondriver IDs	26 N.J.R. 2522(a)	R.1994 d.486	26 N.J.R. 3874(a)
13:24	Division of Motor Vehicles: equipment for emergency and other specified vehicles	26 N.J.R. 2865(a)		
13:25-1.1, 2.1, 2.2, 3.1, 3.3	Division of Motor Vehicles: motorized bicycle permits and licenses	26 N.J.R. 2522(a)	R.1994 d.486	26 N.J.R. 3874(a)
13:30-8.18	Board of Dentistry: licensee continuing education	26 N.J.R. 1948(a)		
13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)	R.1994 d.487	26 N.J.R. 3877(a)
13:31-1.11, 1.16	Board of Examiners of Electrical Contractors: fee schedule; requirement of ID card defined	26 N.J.R. 2742(a)		
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:35	Board of Medical Examiners rules	26 N.J.R. 2526(a)	R.1994 d.522	26 N.J.R. 4195(a)
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)		
13:35-3.12	Board of Medical Examiners: licensure of physicians with post-secondary educational deficiencies	26 N.J.R. 2742(b)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-6.21	Board of Medical Examiners: withdrawal of stay of operative date for hair replacement techniques	________	________	26 N.J.R. 4083(a)
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)		
13:36	Board of Mortuary Science rules	26 N.J.R. 2536(a)	R.1994 d.523	26 N.J.R. 4201(a)
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39	Board of Pharmacy rules: administrative correction to expiration date	________	________	26 N.J.R. 3878(a)
13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1	Board of Pharmacy: pharmacy technicians	26 N.J.R. 2743(a)		
13:39-10.2, 11	Board of Pharmacy: sterile admixture services in retail pharmacies	26 N.J.R. 1303(a)	R.1994 d.476	26 N.J.R. 3878(b)
13:39A-2.3	Board of Physical Therapy: public forum on direct supervision of physical therapist assistants	26 N.J.R. 1604(a)		
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44	Board of Veterinary Medical Examiners: practice standards	26 N.J.R. 1951(a)	R.1994 d.442	26 N.J.R. 3737(a)
13:44D-2.2, 2.6	Board of Public Movers and Warehousemen: licensee mailing address and permanent place of business	26 N.J.R. 2745(a)		
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	26 N.J.R. 3932(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)	Expired	
13:44E-2.2	Board of Chiropractic Examiners: patient records and cessation of practice	26 N.J.R. 2866(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)	Expired	
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)	Expired	
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:45A-27	Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency	26 N.J.R. 3128(a)		
13:45A-28	Motor vehicle leasing	26 N.J.R. 3243(a)		
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: rules of practice	26 N.J.R. 3814(a)		
13:48	Charitable fund raising	26 N.J.R. 2746(a)	R.1994 d.494	26 N.J.R. 3882(a)
13:59	State Police: criminal history background checks for non-criminal justice purposes	26 N.J.R. 3595(a)		
13:70-8.18	Thoroughbred racing: items included in jockey's weight	26 N.J.R. 3130(a)		
13:70-8.18	Thoroughbred racing: overweight of jockey after race	26 N.J.R. 3130(b)		
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		

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13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:72-2.11, 4.10	Racing Commission: casino simulcasting and cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2546(a)		

Most recent update to Title 13: TRANSMITTAL 1994-8 (supplement August 15, 1994)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		

Most recent update to Title 14: TRANSMITTAL 1994-3 (supplement May 16, 1994)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)

STATE—TITLE 15

15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		
15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		

Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)

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Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:1A-1.2	Organization of Department of Transportation	Exempt	R.1994 d.453	26 N.J.R. 3740(a)
16:21A	Bridge Rehabilitation and Improvement Fund: State aid to counties and municipalities	26 N.J.R. 3246(a)		
16:28-1.6	School zone along U.S. 40 in Woodstown Borough, Salem County	26 N.J.R. 3131(a)	R.1994 d.513	26 N.J.R. 4206(a)
16:28-1.10	Speed limits along entire length of U.S. 46, including U.S. 1, 9 and 46	26 N.J.R. 3600(a)		
16:28-1.18	Speed limit zones along Rising Sun Square Road-Old York Road in Bordentown Township	26 N.J.R. 3934(a)		
16:28-1.25	Speed limit zones along Route 23 in Franklin Borough, Sussex County	26 N.J.R. 2749(a)	R.1994 d.465	26 N.J.R. 3887(a)
16:28-1.41	Speed limit zones along U.S. 9 in Galloway Township, Atlantic County	26 N.J.R. 3132(a)	R.1994 d.512	26 N.J.R. 4207(a)
16:28-1.53	Speed limit zone along Route 165 in Lambertville	26 N.J.R. 3602(a)		
16:28-1.77	Speed limits along Route 29 in Mercer and Hunterdon counties	26 N.J.R. 3821(a)		
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.79	Speed limits along Route 94 in Warren and Sussex counties	26 N.J.R. 3603(a)		
16:28-1.132	Speed limit zones along Route 47 in Dennis Township, Cape May	26 N.J.R. 2867(a)	R.1994 d.478	26 N.J.R. 3887(b)
16:28-1.158	Speed limits along Route 179 in Lambertville	26 N.J.R. 3820(b)		
16:28A-1.7	Restricted parking along U.S. 9 in Middle Township, Cape May	26 N.J.R. 3935(a)		
16:28A-1.19	Handicapped parking along Route 28 in Elizabeth	26 N.J.R. 3605(a)		
16:28A-1.25	No stopping or standing zones along Route 35 in Berkeley Township	26 N.J.R. 2749(b)	R.1994 d.466	26 N.J.R. 3887(c)
16:28A-1.28	No stopping or standing zones along U.S. 40 in Pilesgrove Township, Salem County	26 N.J.R. 3936(a)		
16:28A-1.33	Parking restrictions along Route 47 for entire length	26 N.J.R. 2867(b)	R.1994 d.479	26 N.J.R. 3888(a)
16:28A-1.33	No stopping or standing zone along Route 47 in Middle Township, Cape May	26 N.J.R. 3936(b)		
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood Township, Ocean County	26 N.J.R. 3135(a)	R.1994 d.514	26 N.J.R. 4207(b)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township	26 N.J.R. 3820(a)		
16:28A-1.98	No stopping or standing zones along Route 56 in Deerfield Township, Cumberland County	26 N.J.R. 3136(a)	R.1994 d.515	26 N.J.R. 4208(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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:30-3.12	Left turn center lane along Rising Sun Road, Bordentown	26 N.J.R. 3247(a)	R.1994 d.529	26 N.J.R. 4208(b)
16:30-9.14	Bidwells Creek bridge restrictions, Route 47 in Middle Township, Cape May	26 N.J.R. 3937(a)		
16:31-1.1	Left turn prohibition on U.S. 206 at Valley Road in Hillsborough Township	26 N.J.R. 2547(a)	R.1994 d.439	26 N.J.R. 3740(b)
16:31-1.8	Left turn prohibitions along Route 47 in Vineland	26 N.J.R. 3822(a)		
16:31-1.8	Turn prohibitions along Route 47 in Middle Township, Cape May	26 N.J.R. 3937(b)		
16:31-1.17	Left turn prohibition along Route 73 in Berlin Township, Camden County	26 N.J.R. 3137(a)	R.1994 d.516	26 N.J.R. 4208(c)
16:31-1.22	Turn prohibitions along U.S. 130 in Burlington and Mercer counties	26 N.J.R. 2870(a)	R.1994 d.480	26 N.J.R. 3890(a)
16:31-1.22	Turn prohibitions along U.S. 130 in Burlington City	26 N.J.R. 3938(a)		
16:31-1.29	Left turn prohibitions along U.S. 9 in Lakewood Township, Ocean County	26 N.J.R. 3137(b)	R.1994 d.517	26 N.J.R. 4209(a)
16:31-1.35	U turn prohibitions along Route 42 in Gloucester County	26 N.J.R. 2750(a)	R.1994 d.467	26 N.J.R. 3890(b)
16:31-1.36	Turn prohibitions along U.S. 40/322 in Egg Harbor Township	26 N.J.R. 2871(a)	R.1994 d.481	26 N.J.R. 3891(a)
16:45	Construction control	26 N.J.R. 2547(b)	R.1994 d.454	26 N.J.R. 3740(c)
16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L	State Highway Access Management Code	26 N.J.R. 2549(a)		
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D-1.1	Autobus carrier Zone of Rate Freedom	26 N.J.R. 3247(b)	R.1994 d.526	26 N.J.R. 4209(b)
16:82	Examination and duplication of NJ TRANSIT records	26 N.J.R. 2871(b)	R.1994 d.534	26 N.J.R. 4210(a)

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TREASURY-GENERAL—TITLE 17

17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 3823(a)		
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 3606(a)		
17:4-1.4	Police and Firemen's Retirement System: election of member-trustee	26 N.J.R. 3938(b)		
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:9-4.2, 8.3, 9.1	State Health Benefits Program: continued coverage under voluntary furlough program	26 N.J.R. 2202(a)		
17:12	Purchase Bureau	26 N.J.R. 3248(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)	Expired	
17:16-20.2	State Investment Council: permissible international investments by State-administered pension funds	26 N.J.R. 2751(a)	R.1994 d.445	26 N.J.R. 3742(a)

Most recent update to Title 17: TRANSMITTAL 1994-6 (supplement August 15, 1994)

TREASURY-TAXATION—TITLE 18

18:1	Organization of Division of Taxation	26 N.J.R. 2752(a)	R.1994 d.503	26 N.J.R. 4087(a)

Most recent update to Title 18: TRANSMITTAL 1994-5 (supplement August 15, 1994)

TITLE 19—OTHER AGENCIES

19:2	South Jersey Transportation Authority: rules of operation; Atlantic City Expressway	26 N.J.R. 1966(a)	R.1994 d.462	26 N.J.R. 3742(b)
19:3, 3A, 4, 5	Hackensack Meadowlands Development District rules	26 N.J.R. 1970(a)		
19:8-1.1, 1.12, 2.1, 2.13, 2.14, 2.15	Garden State Parkway: transporting of hazardous materials	26 N.J.R. 3249(a)	R.1994 d.519	26 N.J.R. 4211(a)
19:8-1.8	Garden State Parkway: prohibited parking, stopping or standing	26 N.J.R. 3251(a)	R.1994 d.518	26 N.J.R. 4210(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:8-13	Garden State Parkway: fees for construction and utility installation permits	26 N.J.R. 3252(a)	R.1994 d.520	26 N.J.R. 4213(a)
19:10	Public Employment Relations Commission: definitions, service, construction	26 N.J.R. 2205(a)	R.1994 d.437	26 N.J.R. 3745(a)
19:25-1.7, 6.5–6.9	ELEC: permissible uses of candidate funds	26 N.J.R. 2753(a)	R.1994 d.528	26 N.J.R. 4214(a)
19:25-9, 10	Reporting by continuing political committees, political party committees, and legislative leadership committees	26 N.J.R. 3138(a)		

Most recent update to Title 19: TRANSMITTAL 1994-8 (supplement August 15, 1994)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40	General provisions	26 N.J.R. 2564(a)	R.1994 d.461	26 N.J.R. 3746(a)
19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)		
19:41-1.5A, 1.8, 1.9	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)	R.1994 d.447	26 N.J.R. 3746(b)
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-5.13	Key Standard Qualifier Renewal Form	26 N.J.R. 3824(a)		
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)		
19:41-7.2A	Applicant identification for license or registration	26 N.J.R. 2565(a)	R.1994 d.470	26 N.J.R. 3891(b)
19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)		
19:43-2.7A	Key Standard Qualifier Renewal Form	26 N.J.R. 3824(a)		
19:44-5.2, 8.3, 8.6	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:45-1	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:45-1.1	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33, 1.46–1.51	Keno	26 N.J.R. 2218(a)		
19:45-1.1, 1.9B, 1.24, 1.26, 1.27, 1.29	Use of cash complimentary gifts	26 N.J.R. 2212(a)	R.1994 d.471	26 N.J.R. 3891(c)
19:45-1.1, 1.26, 1.26A	Substitution and redemption of patron checks	26 N.J.R. 3825(a)		
19:45-1.17, 1.42	Storage of empty drop boxes and slot cash storage boxes	26 N.J.R. 3606(b)		
19:45-1.24A	Release of wire transfer funds: patron identification procedure	26 N.J.R. 3140(a)		
19:45-1.1, 1.25	Exchange of annuity jackpot checks	26 N.J.R. 2211(a)		
19:45-1.1, 1.37A, 1.39	Electronic transfer credit systems at slot machines; progressive slot machines	26 N.J.R. 2214(a)		
19:45-1.24A	Wire transfer fees	26 N.J.R. 2215(a)	R.1994 d.472	26 N.J.R. 3892(a)
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