

NEW JERSEY REGISTER



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See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT DECEMBER 19, 1994

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **February 16, 1995**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Rules

Proposed Readoption with Amendments: N.J.A.C. 5:80

Authorized By: Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director/Secretary.

Authority: N.J.S.A. 55:14K-5g.

Proposal Number: PRN 1995-42.

Submit comments by February 16, 1995 to:

Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency serves as an advocate for promoting the supply, construction, rehabilitation and improvement of safe and sanitary housing in the State. To fulfill its objective, the Agency acts as a mortgage lender to housing sponsors who wish to construct, rehabilitate or improve housing projects, particularly for low and moderate income families. The Agency also provides mortgage loans for first time home buyers.

The rules of the Agency, N.J.A.C. 5:80, were adopted and have been amended over time to establish the procedures for and the terms and conditions of mortgage loans made by the Agency. The rules are scheduled to expire on April 20, 1995, pursuant to Executive Order 66(1978). The Agency has reviewed the rules and determined that they should be readopted in their present form, with the exception of the proposed amendments described below, in order to maintain continuity in its statutory obligation to increase the supply of housing and to preserve the financial and physical viability of the projects it has financed to date.

Subchapter 1, General Provisions, sets forth the definitions that apply to the other rules within the chapter. It also includes some general provisions concerning the applicability of the rules to the housing projects financed by the Agency.

Subchapter 2, Actions Regarding Housing Sponsors, sets forth the procedure for consulting with housing sponsors when the Agency is planning to adopt, amend or repeal any rules that affect them. It also provides the Agency with the ability to enforce the obligations and responsibilities required of housing sponsors under the rules within this chapter.

Subchapter 3, Return on Equity, sets forth the method for calculating a sponsor's equity in a project financed by the Agency. It also sets forth the rate of return and the procedure for receiving payments on its return on equity.

Subchapter 4 is reserved.

Subchapter 5, Transfer of Ownership Interests, sets forth the procedures governing the Agency's review and approval of proposed transfers of ownership interests of the projects financed by the Agency. It also sets forth the procedure and criteria governing prepayment of Agency mortgages.

In conjunction with the readoption of the Transfer Ownership rules, the Agency is proposing several amendments. The amendments deal with the conditions applicable to a prepayment of the Agency mortgage. At 26 N.J.R. 1187(a), the Agency proposed amendments to the prepayment rule at N.J.A.C. 5:80-5.10. Those amendments added several requirements that would be imposed upon an owner that prepays an Agency mortgage. The additional requirements provided that the Agency's policies on tax, insurance and repair and replacement reserves, the

provisions of N.J.S.A. 55:14K-7b and the rules concerning transfer of ownership and return on equity would apply following prepayment. The Agency acted to adopt the proposal with the exception of the requirement for return on equity at N.J.A.C. 5:80-5.10(b)1 (see notice of adoption published elsewhere in this issue of the New Jersey Register.)

In response to comments received in opposition to the imposition of return on equity rules, the Agency is now proposing a modified version to the return on equity rules following a prepayment. The modification would eliminate the return on equity requirements provided the owner/project maintains an operating reserve account. The operating reserve account must maintain an amount equal to three months of operating expenses (including debt service) for senior citizens projects. For family projects, six months of operating expenses (including debt service) is required. While this account is funded, the return on equity rules would not be applicable to the project or owner. In such event, the interest on the operating reserve account and all other project surplus funds are available to be distributed to the owner. If the operating reserve account is thereafter used, return on equity rules will be reinstated until the account is again fully funded. The operating reserve is consistent with other Agency rules which require a three/six month operating reserve (see N.J.A.C. 5:80-3 governing increases to the rate of return on equity and N.J.A.C. 5:80-30 and 32 governing the use of residual receipts).

The amendments being proposed are set forth at N.J.A.C. 5:80-5.8(b)1 and 4 and 5.10(b)7.

Additionally, the Agency is proposing amendments to N.J.A.C. 5:80-5.2(b) to eliminate the need for the Agency Board of Directors to approve changes of a limited partner with more than a 10 percent interest. The Executive Director, by virtue of N.J.A.C. 5:80-5.2(a), will have the authority to approve such changes. The amendment is technical in nature as the requirements for a change in limited partners with more than 10 percent is still the same. The approval will be made by the Executive Director in lieu of the Board of Directors.

Subchapter 6, Sale of Projects owned by Non-Profit Corporations to Limited Partnerships, sets forth the procedure for nonprofit sponsors who wish to sell their housing project to a for-profit entity. It also sets forth the procedure and criteria for use of funds (known as DCE and CDE funds) received by the nonprofit in the course of the sale.

Subchapter 7, Tenant Selection Standards, sets forth the standards for selection of tenants that will reside in the housing project.

Subchapter 8, Occupancy Requirements Regarding Income, sets forth the maximum income that tenants may earn in order to qualify for admission to a housing project.

Subchapter 9, Rents, sets forth the procedure for increasing rents to tenants residing at a housing project.

Subchapter 10, Loans to Lenders for Single Family Mortgages, sets forth the procedure for the Agency to make loans to other lenders.

Subchapters 11 and 12 are reserved.

Subchapter 13, Making or Purchasing Eligible Loans for Single Family Mortgages, sets forth the procedure for the Agency to make or purchase loans for single family mortgages.

Subchapter 14, Making or Purchasing Eligible Loans for Home Improvement Loans, sets forth the procedure for the Agency to make or purchase loans for home improvement mortgages.

Subchapters 15 and 16 are reserved.

Subchapter 17, Prevailing Wages, sets forth the wage rate for laborers performing construction work on projects being financed by the Agency.

Subchapter 18, Debarment and Suspension from NJHMFA Contracting, sets forth the grounds and procedures for suspending or debaring individuals/entities from doing business with the Agency.

Subchapter 19, Waivers, sets forth the standards for obtaining a waiver of any of the rules within the Chapter.

Subchapter 20, Certification and Recertification of Income, sets forth the method for determining the income of tenants applying for admission to Agency-financed housing projects in order to ensure that they do not exceed the limits required by subchapter 8.

Subchapter 21, Transfer of Servicing of Single Family Loans, sets forth the review and approval process in order for a Servicer of Agency mortgage loans to transfer the servicing to another Servicer.

Subchapter 22, Affirmative Fair Housing Marketing, sets forth the requirements for marketing of rental units in projects financed by the Agency.

Subchapter 23, Housing Note Incentive Program, sets forth the program under which the Agency will insure a portion of the construction financing for new housing projects funded by other lenders.

Subchapter 24, Lease-Purchase Program, sets forth the program which enables residents to lease dwelling units with an option to purchase the unit after the lease term.

Subchapter 25, Reserved.

Subchapter 26, Housing Affordability Controls, sets forth the requirements and restrictions governing low and moderate income housing being financed pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

Subchapter 27, Reserved.

Subchapter 28, Nonpublic Records, sets forth those records maintained by the Agency which will not be considered public records pursuant to New Jersey Right to Know Law, N.J.S.A. 47:1A-1 et seq.

Subchapter 29, Investment of Project Funds, sets forth the types of investments in which project funds may be invested by the sponsor.

Subchapter 30, Residual Receipts, sets forth the program where non-profit sponsors may use residual receipts, for example, surplus project funds, for increasing the supply of new housing and for providing services or assistance to existing housing.

Subchapter 31, Attorney Services, sets forth the scope of services and permitted fees for services performed by attorneys in connection with projects financed by the Agency.

Subchapter 32, Housing Investment Sales, sets forth the program where for-profit sponsors may gain access to residual receipts through the sale of their project to a buyer which agrees to preserve the low/moderate income housing.

Social Impact

The New Jersey Legislature has determined that there exists a shortage of adequate, safe and sanitary housing in the State. Under the New Jersey Housing and Mortgage Finance Agency Law, the Agency is charged with the responsibility of addressing and responding to the housing needs, particularly for low and moderate income families.

Readoption of N.J.A.C. 5:80 will enable the Agency to continue to finance the construction, rehabilitation or improvement of housing which will be made available to residents of the State, particularly, those of low or moderate income. It will also enable the Agency to continue its current role of assuring that the housing previously financed by the Agency remains safe, decent and affordable to low and moderate income tenants.

Economic Impact

The economic impact behind the readoption of N.J.A.C. 5:80 is seen in the construction of housing throughout the State. Once projects are constructed, another economic impact is seen in the reduced rents that are charged to the tenants residing in the projects. Below market rate mortgage loans under the Agency's First Time Home Buyer Program reduces the debt service payment on mortgage loans and enables more residents to qualify for loans in order to purchase single family homes. Some of the compliance aspects of the rules will result in a cost to the operations of sponsors and others doing business with the Agency. Most of the compliance costs would be incurred without the imposition of the rules as such compliance items would be typically incurred in the ordinary course of business. Other costs can be offset by the benefits in doing business with the Agency, such as a receiving tax abatement and low interest loans.

Regulatory Flexibility Analysis

Virtually all of the rules proposed for adoption apply to housing sponsors. Most, if not all, of the housing sponsors are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The readoption of the rules will not impose any additional reporting, recordkeeping or compliance requirements. It will, however, retain existing reporting, recordkeeping and compliance requirements. These include the submission of monthly operating reports, annual budgets and requests for rent increases, the maintenance of tenant files and other financial records and the establishment of repair/replacement and other escrow accounts. In particular, the rules at N.J.A.C. 5:80-22.23 require sponsors of housing projects to maintain records relating to sales and rental activities. Such information must be sent to the Agency on a monthly basis. Under N.J.A.C. 5:80-22.25, the Agency will monitor the activities of sponsors to ensure compliance with the rules. Such requirements have been imposed and are necessary to ensure that the financial and physical aspects of the projects remain sound in order to preserve their status as low and moderate income housing. As to compliance requirements, there will be a need to retain professional services in some

cases. However, the professional services required would be retained in the ordinary course of business even without the operation of the Agency's rules. Because housing sponsors are virtually all small businesses and no new requirements have been imposed, no differentiation in the reporting, recordkeeping or compliance requirements based on business size is proposed.

Full text of the proposed readoption may be found in the New Jersey Administrative at N.J.A.C. 5:80.

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

5:80-5.2 General policy

(a) (No change.)

(b) The prior specific review and approval of the Agency members is required if a proposed change involves a general partner, [or a limited partner] or shareholder with more than a 10 percent interest, or where the change involves a transfer of control of the housing sponsor.

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

5:80-5.8 Return on equity

(a) (No change.)

(b) The seller shall be limited to a cumulative, but not compounded, return on its equity, from project operations or sale, at the rate of return as determined by N.J.A.C. 5:80-3 and set forth in the mortgage and other contractual documents between the seller and agency.

1. Upon sale or other disposition of the project or any interest therein, the seller shall be entitled to a return of its equity in the project and any accrued but undistributed return on its equity. Such return shall be conditioned upon the Agency's mortgage and any other supplemental project financing from the Agency or other governmental agency or department being assumed by the buyer, [or paid in full in the case of permitted prepayments,] and further conditioned upon the making of any required project repairs or improvements, pursuant to N.J.A.C. 5:80-5.4(d), and the payment of all amounts due the Agency and the funding of reserves pursuant to N.J.A.C. 5:80-5.4(e). The seller shall not be entitled to or paid any return until such conditions have been met. The seller's equity in the project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

2.-3. (No change.)

4. In cases where the sale or other disposition of the project includes a permitted prepayment of the Agency mortgage, return on equity shall be governed by the provisions of N.J.A.C. 5:80-5.10(b).

5:80-5.10 Prepayment

(a) (No change.)

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1.-6. (No change.)

7. After prepayment, return on equity rules at N.J.A.C. 5:80-3 shall continue until the expiration of the original mortgage term or until the owner funds an operating reserve account, whichever is sooner. Upon funding of an operating reserve account, return on equity rules shall terminate. The operating reserve shall be equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments. The three/six months of operating expenses shall be calculated based on the Agency-approved annual budget. Once established, interest earned on a fully-funded operating reserve account may be withdrawn by the owner upon written request to and verification by the Agency that the account is fully-funded. If the operating reserve is thereafter used, return on equity rules shall be reinstated until the operating reserve is again fully-funded. The determination of a fully-funded operating account after its initial establishment shall be based on the Agency-approved budget in effect at the time the project first established the operating reserve account.

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

HEALTH**(a)****PUBLIC HEALTH COUNCIL****Licensure of Persons for Public Health Positions
License Issuance, Renewal, and Fee for Renewal for
Health Officer Licensure; Continuing Education****Proposed New Rules: N.J.A.C. 8:7-1.11 through 1.18**Authorized By: Public Health Council, John D. Slade, M.D.,
Chairperson.

Authority: N.J.S.A. 26:1A-38 et seq.

Proposal Number: PRN 1995-46.

A **public hearing** concerning this proposal will be held at 1:00 P.M.
on Monday, February 6, 1995 at the following address:Department of Health
Room 106 (Auditorium)
Health-Agriculture Building
John Fitch Plaza
Trenton, New Jersey 08625-0360

Submit written comments by February 16, 1995 to:

John D. Slade, M.D., Chairperson
Public Health Council
NJ Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

Pursuant to its authority under N.J.S.A. 26:1A-38 et seq., the Public Health Council is proposing to change the manner in which the licenses of health officers are renewed. Currently, all health officers must renew their licenses annually. The license renewal is automatic upon a licensee's payment of the statutory \$10.00 renewal fee and submittal of a completed application on or before January 1 each year.

As a condition of renewal of an active license, or to activate an inactive license, all candidates shall be required to successfully complete 15 hours of continuing education in health or health related courses, seminars, or programs as approved by the Public Health Council.

The proposed new rules delineate two classes of licenses—active and inactive. Active licenses are those granted to a newly licensed person or to a person who has renewed his or her license and submitted verification of 15 hours of approved continuing education. A person who seeks license renewal without satisfaction of the continuing education requirement will be granted an inactive license. The license shall be deemed inactive until the health officer requests reactivation of the license and verification of continuing education is provided to the Public Health Council.

The amendment also provides for limited waiver of the continuing education requirement, time extension for completion of the required education, changes from inactive to active status, criteria for the continuing education courses, approval of programs or courses, and documentation of education that each licensee must maintain.

Social Impact

The proposed new rules establish standards for continuing education credits and procedures for license renewal for health officers. It is estimated that there are 400 licensed health officers in the State; of this number, approximately 120 are currently actively serving as such. The Public Health Council is establishing these requirements to safeguard the interests of the public by ensuring license renewal of health officers who demonstrate an increased level of knowledge and competency. Further, attendance and participation in the programs as set forth in the proposed new rules will foster currency in the field of public health.

Economic Impact

The proposed new rules will have no tangible economic impact on the public. Health officers, as do other professionals, must maintain a level of knowledge and competency to adequately service their "clients." Health officers seeking license renewal may incur some direct and ancillary costs in attending seminars, programs, and courses which are required pursuant to these rules.

Pursuant to N.J.S.A. 26:3-29 and 26:3-30, local boards of health may defray necessary expenses for certain functions which will provide some

of the requisite continuing education requirements. Moreover, professional associations, of which many health officers are members, are encouraged to offer programs. It is anticipated that programs may be offered by associations at no fee or at reduced costs to its members. Therefore, compliance may impose minimal costs to the health officers as a result of having to pay for attendance for certain other functions. However, these costs are incidental to their profession and the benefits to service delivery and protection of human health and safety outweigh the monetary outlay.

Regulatory Flexibility Statement

The proposed new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Most of the proposed requirements apply only to individual licensed health officers. The only small businesses on which compliance requirements are entities wishing to have a course, seminar or program approved for continuing education credit. A completed application form, in conformance with N.J.A.C. 8:7-1.17(b), has to be submitted to the Council; no professional services are needed to do so, and only administrative costs will be incurred. Given that the application requirements are the minimum needed for evaluation, and the underlying public health objective of these rules, no exemptions or lesser requirements are provided for small business applicants.

Full text of the proposed new rules follows:

8:7-1.11 License issuance, renewal, and fee for renewal of health officer licenses

(a) All initial licenses granted by the Commissioner in accordance with N.J.A.C. 8:7-1.3 shall be deemed active licenses.

(b) All licenses shall expire on December 31 of each year and may be renewed upon the payment of a renewal fee of \$10.00.

(c) Renewed licenses shall be deemed active or inactive licenses based on whether the applicant has fulfilled the continuing education requirements set forth in this chapter.

8:7-1.12 Active and inactive licenses

(a) The requirements set forth under this section through N.J.A.C. 8:7-1.18 shall apply to all individuals eligible to serve as a health officer in the State of New Jersey, except where the rules provide for exemption or waiver.

1. An active license shall be defined as a license that has been newly issued in accordance with N.J.A.C. 8:7-1.3, or any license that has been renewed in accordance with the continuing education requirements set forth in this subchapter.

2. An inactive license shall be defined as a license that has been renewed, without fulfillment of the continuing education requirements set forth in this subchapter, and without a waiver in accordance with N.J.A.C. 8:7-1.14.

8:7-1.13 License renewal and continuing education credit requirements

(a) By the completion of each annual licensing period, each health officer shall, as a condition of active licensure renewal, successfully complete 15 hours of approved continuing education.

1. Continuing education units obtained in the calendar year immediately preceding the effective date of this subchapter may be used in fulfillment of the requirements in (a) above.

(b) Attendance at sessions of the annual meeting of the New Jersey Health Officers Association, as approved by the Public Health Council, may be used in partial fulfillment of some of the continuing education requirement.

(c) Each health officer shall be permitted to carry over up to five excess continuing education units from one licensing period to the next.

(d) Each health officer shall submit to the Public Health Council verification of accumulated continuing education hours. Verification materials shall include evidence of the successful completion of an approved course, seminar, or program, in the form of a certificate or similar formal record of attendance certified by the approved sponsor.

8:7-1.14 Waiver of continuing education credits

(a) The Public Health Council, may, for good cause, such as serious illness or accident involving self or family, which has been determined by the Council to have prevented completion of the

requirements, waive all or part of the continuing education requirement for the licensing period. All such requests to the Public Health Council by the health officer shall be in writing and shall be accompanied by written documentation supporting the reasons for the request.

(b) Waivers shall be granted for one licensure period at a time. If the situation for which the waiver is granted continues, the health officer shall reapply in writing to the Public Health Council.

8:7-1.15 Inactive status

(a) If a licensed health officer fails to fulfill the license renewal requirements in accordance with N.J.A.C. 8:7-1.13, the license shall be deemed inactive.

(b) A health officer may reactivate his or her license upon submission of a request for reactivation of said license, in writing, to the Public Health Council.

(c) A health officer requesting reactivation of their license shall complete the required 15 hours of continuing education credit for the annual licensing period for which reactivation is sought.

(d) A health officer who has requested reactivation of his or her license may serve as a health officer within the State of New Jersey pending completion of the required 15 hours of continuing education credit.

(e) If a health officer has requested reactivation of his or her license and fails to complete the required 15 hours of continuing education credit during the annual license period, said license shall be returned to inactive status.

8:7-1.16 Continuing education criteria

(a) Continuing education courses eligible for credit under this subchapter shall include:

1. Courses, seminars, or programs focusing on professional competency and ethics, as well as legal aspects relating to the practice of public health, environmental health, and sanitation;

2. Courses, seminars, or programs in public health, health care, health education, environmental science, health planning, epidemiology;

3. Courses, seminars, or programs in public health administration, environmental health, communicable diseases, maternal and child health, and chronic diseases; and

4. Courses, seminars, or programs designed to acquaint health officers with the utilization and application of new techniques, policy, and developments relating to public health, environmental health, and sanitation.

(b) If a course, seminar, or program already has continuing education credits assigned thereto and if that course, seminar, or program meets the criteria set forth in (a) above, the Public Health Council may, upon review thereof, accept the assigned credits.

(c) If a course, seminar, or program does not have continuing education credits assigned thereto the sponsor may seek approval from the Public Health Council pursuant to the procedures set forth at N.J.A.C. 8:7-1.17 below.

8:17-1.17 Course, seminar, or program approval

(a) Any course of study that addresses the content areas specified at N.J.A.C. 8:7-1.16(a) offered by an educational institution, association, professional society, person, or organization and used by applicants for the purpose of qualifying for licensing in this State as health officers and/or for license renewal may be approved by the Public Health Council.

1. Any course, seminar, or program sponsored by the New Jersey Department of Health, the New Jersey Department of Environmental Protection, or a school or program accredited by the Council on Education for Public Health which fulfills the requirements as set forth at N.J.A.C. 8:7-1.16 shall be exempted from securing approval from the Public Health Council. The Council shall, however, determine the number of continuing education units which will be afforded such course, seminar, or program.

(b) Any person or organization desiring approval of a health or health-related course, seminar, or program shall apply to the Public Health Council through written application. Each application shall be submitted at least 60 days prior to the first session in the name

of the institution by a person authorized to do so. The application shall contain the following minimum information:

1. The name of the course, seminar, or program and its primary learning objectives;

2. The time, date, and place of the course, seminar, or program;

3. Name of the lecturer(s) and credentials;

4. An outline showing the course, seminar, or program content broken down by session and time schedule;

5. A description of any written materials to be used;

6. A projected schedule for the times the course, seminar, or program will be offered in a year and the dates of such presentation;

7. A statement that the institution shall notify the Public Health Council if the course, seminar, or program is withdrawn or changed;

8. A statement that the sponsor shall provide attendance verification forms for all attendees who request them. Each sponsor shall have a proctor who shall attest to the attendance of each attendee;

9. A statement that the institution shall maintain such records as are required by this section; and

10. A description of the method of evaluation.

(c) The Public Health Council reserves the right to undertake such reviews as may be necessary to verify the accuracy of an application or conformity with these rules. The sponsor, by submitting the application, expressly agrees to cooperate in such reviews.

(d) Continuing education credits may be awarded by the Public Health Council upon review of the application and any supporting materials pursuant to the following schedule:

1. One hour of live lecture equals one credit hour;

2. One hour of field or laboratory work equals one-half credit hour; and

3. All recertification courses equal a maximum of three credit hours.

(e) All sponsors shall secure approval of the Public Health Council prior to representing that the course, seminar, or program fulfills the requirements of this subsection. The sponsor may include the statement "This course (seminar or program) is approved by the Public Health Council for _____ continuing education hours toward the renewal of a New Jersey health officers license."

(f) Approval by the Public Health Council of a course, seminar, or program shall be considered valid for one year from the date of approval, provided that the items identified at N.J.A.C. 8:7-1.16 remain unchanged during the one-year time period.

(g) The Public Health Council shall review all courses, seminars, or programs. Upon evidence that the courses, seminars, or programs fail to meet the criteria set forth above, the sponsoring institution or agency shall lose its approved status and shall be required to reapply for continuing education approval.

(h) A list of pre-approved courses shall be available upon request from the Public Health Council.

8:7-1.18 Record of continuing education credits

(a) A health officer shall maintain documentation of course, seminar, or program attendance.

(b) A health officer shall submit to the Public Health Council verification of accumulated continuing education hours. Verification material shall include evidence of the successful completion of an approved course, seminar, or program, in the form of a certificate or similar formal record of attendance certified by the approved sponsor.

(c) A health officer shall complete the license renewal forms by listing under continuing education information all the approved courses, seminars, or programs which the applicant completed, as well as the number of continuing education units earned, for the renewal period in question.

(a)

PARENTAL AND CHILD HEALTH SERVICES**Birth Defects Registry****Proposed Readoption: N.J.A.C. 8:20**

Authorized By: Len Fishman, Commissioner, Department of Health.

Authority: N.J.S.A. 26:8-40 et seq., specifically 26:8-40.26.

Proposal Number: PRN 1995-55.

Submit comments by February 17, 1995 to:

Pamela Costa, Chief
Birth Defects Registry
Special Child Health Services
N.J. State Department of Health
CN 364
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 26:8-40 et seq., the Department of Health is required to establish and maintain a birth defects registry which shall contain a confidential record of all children with birth defects that are identified within the first year of life. It shall also contain any other information that the Department deems necessary and appropriate in order to conduct thorough and complete epidemiological surveys of birth defects, and to plan for services needed by the children and their families. Although some birth defects can be attributed to genetic disorders, perinatal infections, or exposure to medications taken during pregnancy, the vast majority of birth defects are of unknown etiology. There has been, and continues to be, a growing Statewide and national concern regarding the possible reproductive effects of occupational and environmental exposures as they relate to the occurrence of birth defects. In New Jersey, awareness of these issues led to the introduction of legislation by the then State Senator Daniel Dalton requiring the establishment of a birth defects registry. The legislation was signed into law by Governor Thomas Kean on August 4, 1983. The law, N.J.S.A. 26:8-40.20 et seq., revised and strengthened the State's commitment to collect data on children with birth defects and to develop a system for the surveillance of adverse reproductive outcomes and to plan for services needed by the children and their families.

N.J.A.C. 8:20, which contains the requirements for the confidential Registry, became effective March 4, 1985 and incorporated by reference a listing of reportable conditions, portions of the International Classification of Diseases (see 16 N.J.R. 3118(a) and 17 N.J.R. 591(a)). The chapter was amended by R.1987 d.361, and R.1990 d.187, which added requirements for the reporting of congenital anomalies and other conditions not included in Diagnostic Codes 740.00 to 759.90 of the International Classification of Diseases, Clinical Modification (see 19 N.J.R. 909(b) and 1642(b), and 21 N.J.R. 3636(a), 22 N.J.R. 1134(c), respectively).

Effective August 5, 1991 and April 20, 1992, amendments were adopted which eliminated the requirements to report certain congenital anomalies and other conditions identified at birth. Although these conditions are present at birth, they do not pose a significant public health problem. (See 23 N.J.R. 820(a) and 2335(a), and 24 N.J.R. 171(a) and 1494(b), respectively.)

N.J.A.C. 8:20 expires on March 2, 1995, pursuant to Executive Order No. 66(1978). Discussion of the law and governing rules and need for readoption have been discussed during audit sessions at each of the maternity hospitals, hospitals without maternity services but with pediatric beds, and the Children's Hospital of New Jersey. This discussion has taken place with representatives from administration, the Department of Pediatrics, and all other pediatric disciplines in each respective institution. No comments have been received by this office regarding need for change with the present rules. Consequently, the Department proposes the readoption of N.J.A.C. 8:20 without change. The rules proposed for readoption are summarized as follows:

N.J.A.C. 8:20-1.1 defines the terms used in the chapter.

N.J.A.C. 8:20-1.2 states that any infant born to a resident of the State of New Jersey or who becomes a resident before one year of age, and who is diagnosed as having a birth defect either at birth or within the first year of life, shall be reported to the Department of Health. It lists the conditions that necessitate a report, the individuals responsible for

making reports and the manner in which the report is to be made. All reports are confidential.

Social Impact

It is estimated that three to four percent of infants born each year in this state have birth defects. Approximately 2,000, or two percent, of infants are expected to have a defect which affects survival or physical well being of affected children. In 1992, birth defects were the second most common cause of infant deaths in the State and the leading cause of death in children age one to four years.

Effects of birth defects are not limited only to deaths in early childhood; there are life long health effects among those children who survive. The Birth Defects Registry enables the Department to provide for timely identification of affected children, and to promptly plan for and provide services to these children and their families. Children who have a birth defect are frequently in need of special health and educational services which can assist them to develop to their fullest potential as productive members of society. The timely, accurate and consistent reporting of birth defects is vital to the Department's work and to those individuals directly affected.

In addition to addressing service provision, there continues to be public concern about birth defects and questions regarding possible environmental causes. In order to address these issues, a population based birth defects registry enables the Department to monitor rates of birth defects that occur in this State. When indicated, epidemiological surveys can be conducted to effectively address these public health issues.

Economic Impact

The economic value of the Birth Defects Registry should be measured according to its impact on the lives and health of the residents of this State. The Registry serves as a tool in the search for the etiology of birth defects and a study for mechanisms to prevent and treat the aforementioned defects. Early identification of affected children through the Birth Defects Registry ensures the provision of appropriate health care and other support services for these children. Appropriate and prompt medical treatment can prevent the development of complications, longterm illness, disability or death which minimize costs associated with these conditions.

Administrative costs for the operation of the Birth Defects Registry have been budgeted at \$500,000. The proposed rules, readopted, would not cause any significant financial burden to the State or health care system. To the contrary, early identification and intervention strategies can lead to significant saving in public health and family dollars. The specific amount saved cannot be determined, due to the multiplicity of factors involved.

Regulatory Flexibility Analysis

The proposed readoption will affect numerous small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Physicians, dentists, certified nurse midwives, and certain health care facilities and clinical laboratories will be affected by the reporting and recordkeeping requirements of the rules. The rules specify the manner in which the defects shall be reported and require recordkeeping which conforms to a prescribed standard and is maintained in a confidential manner. While the costs of these requirements on the regulated small business cannot be specifically determined, the Department does not consider the expense onerous, particularly in light of the potential benefit to specific individuals and to the general public. The Department does not consider it appropriate to establish differential standards based on business size, since consistent reporting is essential in the implementation of the law on which these rules are based.

Executive Order No. 27 Statement and Certification

Currently, there are no Federal standards or requirements which mandate the reporting of newborns or infants with birth defects. It is a New Jersey statute, N.J.S.A. 26:8-40 et seq., which requires the Department of Health to establish and maintain a birth defects registry. Within the discussion of the Summary, Social Impact, and Economic Impact, the reasons for reporting have been explained, and the impact discussed. The Registry supplies affected infants and their families with information about service delivery, as well as enables the Department of Health to plan for and provide services. The population-based Registry also enables the Department of Health to monitor rates of birth defects. The Registry can be maintained under current technology.

I, Len Fishman, Commissioner of the Department of Health, hereby certify that the above statement permits the public to accurately and

plainly understand the purposes and expected consequences of the proposed reoption.

Full text of the reoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:20.

(a)

**DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL,
AND OCCUPATIONAL HEALTH SERVICES**

Immunization of Pupils in School

Proposed Amendments: N.J.A.C. 8:57-4

Authorized By: Public Health Council, John D. Slade, M.D.,
Chair.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1995-47.

A public hearing concerning this proposal will be held on Monday,
February 6, 1995 at 2:00 P.M. at

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

Submit written comments by February 17, 1995 to:

Clifford G. Freund, Director
Communicable Disease Control Services
New Jersey Department of Health
CN 369
Trenton, New Jersey 08625-0369
FAX No. (609) 588-7431

The agency proposal follows:

Summary

N.J.A.C. 8:57-4 concerns the establishment of a set of uniform immunization requirements applicable to children attending all schools, preschools, and child care centers in New Jersey, as is mandated by N.J.S.A. 26:1A-7. The Department's objectives in establishing rules as a condition for children entering school continue to be as follows:

- (1) To ensure that all children attending school have been immunized against specific vaccine-preventable diseases;
- (2) To prevent the transmission of vaccine-preventable diseases by maintaining high immunization rates in school-aged and preschool-aged children; and
- (3) To collect data on the immunization status of children attending schools and preschool facilities in order to identify areas of the State where immunization rates are not adequate so that intervention measures can be instituted.

Currently available vaccines have greatly reduced the number of cases of vaccine-preventable diseases as compared to the number reported in the pre-vaccine era. However, disease cases continue to occur among children, particularly measles, mumps, rubella, and pertussis. Most of the proposed amendments to N.J.A.C. 8:57-4 are technical clarifications or additions to the provisions of the current rules. The specific vaccines and the number of vaccine doses required have remained the same except that *Haemophilus influenzae* type b (Hib) conjugate vaccine for child day care enrollees and a second dose of measles vaccine for children entering kindergarten will be required beginning September 1, 1995, in conformance with current immunization recommendations.

The parents or guardians of any child born on or after January 1, 1995, where the child enters a child care center after September 1, 1995, shall be required to document that the child has received a minimum of two doses of Hib conjugate vaccine if the child is two months to 11 months of age; all children aged 12 to 60 months shall have received at least one dose of Hib conjugate vaccine.

The parents or guardians of any child entering kindergarten or first grade for the first time after September 1, 1995, and who was born after January 1, 1995, shall be required to document that the child has received two doses of a measles-containing vaccine. The initial dose must have been administered on or after the child's first birthday and the second dose must have been administered no less than one month after the first dose. Any child entering kindergarten or first grade after September 1, 1995, with no documented doses of a measles-containing vaccine prior

to entry, shall receive the second dose of measles-containing vaccine no sooner than one month after the first dose and no later than two months after the first dose.

A physician's medical exemption to immunization of a pupil shall continue to be granted, provided it is based upon valid medical reasons as cited by the American Academy of Pediatrics (AAP) or the Advisory Committee on Immunization Practices (ACIP) of the United States Public Health Service.

Religious exemptions to immunization for a pupil shall continue to be granted, provided the parent or guardian explains in writing how the immunization conflicts with the exercise of bona fide religious tenets or practices of the pupil.

Provisional admission shall continue to be granted, provided there is written documentation that at least one dose each of all the required vaccines has been administered. Parents or guardians of children under age five whose child lacks all of the required vaccines shall have a maximum of 17 months to complete all requirements; for children age five and older, the parents or guardians shall have a maximum of 12 months to complete the requirements. A child enrolling in a New Jersey school shall be granted provisional status only once.

All pupils with medical or religious exemptions or in provisional enrollment status, may be excluded from the school, preschool, or child care center in the event of a specific vaccine-preventable disease outbreak or threatened outbreak in the school.

Four doses of diphtheria, tetanus, and pertussis (DTP) shall be administered as required in the current rules; however, one dose must now have been administered on or after the child's fourth birthday. The inclusion of newly licensed vaccines such as diphtheria, tetanus, and acellular pertussis (DTaP) and DTP/Hib are recognized as other acceptable vaccines in meeting the specific DTP and Hib requirements.

Three doses of oral polio vaccine (OPV) or inactivated poliovirus vaccine, if medically appropriate, are required as in the current rule; however, one dose must have been administered on or after the child's fourth birthday. The vaccine requirements for DTP and poliovirus vaccine shall still apply to children under one year of age; these children shall be immunized as is medically appropriate for their age in order to ensure greater protection for children and staff in day care settings. Poliovirus vaccine shall not be required of pupils 18 years of age or older.

A physician's diagnosis of past mumps disease will no longer be acceptable for children enrolling in school, preschool, or child care centers after September 1, 1995. A pupil may still present laboratory evidence of mumps immunity. Mumps and rubella vaccines still must have been administered on or after the child's first birthday as recommended by recognized medical authorities and the vaccine manufacturers.

Social Impact

The proposed amendments will have positive social impact since the rules apply uniformly to all pupils in New Jersey. Vaccine-preventable diseases remain a threat to school-aged and preschool-aged children. There has been a resurgence of measles in New Jersey over the past several years which has primarily affected unimmunized preschool-aged children and older children with only one dose of measles-containing vaccine. *Haemophilus influenzae* type B conjugate vaccine can prevent the transmission of bacterial meningitis in child day care settings thereby reducing or eliminating the severe medical complications for infants and toddlers. Pertussis remains a threat to unimmunized infants and young children. Prevention of such disease outbreaks requires high immunization levels among school-aged and preschool-aged children. A continued high level of protection will prevent these disease outbreaks and their after effects by curtailing the associated high social costs that affect the individual, the family, and the community.

Economic Impact

The proposed amendments will not significantly increase the economic cost to the parents or guardians of children entering school or preschool settings. Most of the required vaccines have been medically recommended by health authorities for over 20 years and most children receive these required doses as part of routine well child care by private pediatricians or public health clinics. Physicians and public clinics have routinely vaccinated all children during infancy with Hib conjugate vaccine since 1990. Most physicians support the 1990 recommendation from all national medical advisory bodies that a second dose of measles-containing vaccine be administered to all children; this additional dose can be conveniently given at the same office visit as school entry boosters for DTP and OPV, thereby minimizing costs. Recent data shows that \$1.00

spent on immunizations save up to \$21.00 in direct medical costs. Federal funds have been provided to reduce or eliminate immunization costs to those most in need of economic assistance. Despite increasing vaccine costs for disease prevention, which are borne by the family and public and private health care providers alike, the economic costs associated with outbreaks of vaccine-preventable diseases are at least 10 times greater. These may include hospitalization, lost class time for ill pupils, parental loss of worktime, and disruption of routine school and health delivery activities. Immunization recordkeeping costs have been, and will continue to be, incurred by physician's offices, child day care centers, preschools and schools.

Regulatory Flexibility Analysis

The proposed amendments will have an impact on small businesses, since all children entering or attending schools, preschools, or child care centers in New Jersey are subject to compliance with the same immunization rules, regardless of their source of medical care, or what program they attend. Small businesses, such as physicians' offices, child day care centers, preschools and schools are affected by the amendments, in that they are required to maintain records regarding the immunization status of the children in their care, and incur the costs attendant to doing so. The rules have been developed for the benefit of all children attending schools or preschool facilities in New Jersey. Since prevention of these specific vaccine-preventable diseases is in the public health interest, no differentiation based on business size has been provided in the rules.

Executive Order No. 27 Statement and Certification

The proposed amendments to N.J.A.C. 8:57-4 do not impose standards on schools, preschools, child care centers, or health care providers in New Jersey that exceed those contained in Federal guidelines, as set forth by Advisory Committee on Immunization Practices, U.S. Public Health Service, U.S. Department of Health and Human Services.

I, Len Fishman, Commissioner of the Department of Health, hereby certify that the above statement permits the public to accurately and plainly understand the purposes and expected consequences of the proposed readoption with amendments.

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

8:57-4.1 Applicability

[These uniform regulations] **This subchapter** shall apply to all [pupils] **children** attending any public or private school, child care center, nursery school, preschool [and] or kindergarten in New Jersey.

8:57-4.2 Proof of Immunization

[No] A principal, director or other person in charge of a school, **preschool**, or child care facility shall **not** knowingly admit or retain any [pupil who] **child whose parent or guardian** has not submitted acceptable evidence of **the child's** immunization, according to the schedules specified in this subchapter[, except when there are exemptions as noted in this subchapter]. **Exemptions to this requirement are identified at N.J.A.C. 8:57-4.3 and 4.4.**

8:57-4.3 Medical exemptions

(a) A [pupil] **child** shall not be required to have any specific immunization(s) which are medically contraindicated.

(b) A written statement submitted to the school, [or] preschool [facility], or **child care center** from a physician licensed to practice medicine or osteopathy in any jurisdiction of the United States indicating that an immunization is medically contraindicated for a specific period of time, and the reason(s) for the medical contraindication, based upon valid medical reasons as enumerated by the [Immunization Practices Advisory Committee] **Advisory Committee on Immunization Practices (ACIP)** of the United States Public Health Service or the American Academy of Pediatrics (AAP) guidelines, will exempt a pupil from the specific immunization requirement for the stated period of time.

1. **The guidelines identified in (b) above are available as follows:**

i. **Advisory Committee on Immunization Practices, U.S. Public Health Service, Centers for Disease Control and Prevention, Atlanta, GA 30333; and**

ii. **American Academy of Pediatrics, Committee on Infectious Diseases, PO Box 927, Elk Grove, IL 60009-0927.**

(c) The physician's statement shall be retained as part of the **child's** immunization record [of the pupil] and shall be reviewed annually by the school, **preschool**, or child care facility. When the [pupil's] **child's** medical condition permits immunization, this exemption shall thereupon terminate and the [pupil] **child** shall be required to obtain the immunization(s) from which he or she has been exempted.

(d) Those [pupils] **children** with medical exemptions to receiving specific immunizations may be excluded from the school, **preschool**, or child care facility during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

(e) As provided by N.J.S.A. 26:4-6, "Any body having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school." The State Department of Health shall provide guidance to the school of the appropriateness of any such prohibition. All schools are required to comply with the provisions of N.J.A.C. 8:61-1.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

¹Immunization Practices Advisory Committee, U.S. Public Health Service, Centers for Disease Control, Atlanta, GA 30333.

²American Academy of Pediatrics, Committee on Infectious Diseases, P.O. Box 927, Elk Grove Village, Illinois 60009-0927.]

8:57-4.4 Religious exemptions

(a) A [pupil] **child** shall be exempted from mandatory immunization if the parent or guardian objects thereto in a written statement submitted to the school, [or] preschool, or **child care center** [facility], signed by the parent or guardian, explaining how the administration of immunizing agents conflicts with the pupil's exercise of bona fide religious tenets or practices. General philosophical or moral objection to immunization shall not be sufficient for an exemption on religious grounds.

(b) This statement will be kept by the school, [or] preschool, or **child care center** [facility] as part of the [pupil's] **child's** immunization record.

(c) Those [pupils] **children** with religious exemptions from receiving immunizing agents may be excluded from the school, **preschool**, or child care [facility] **center** during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

(d) As provided by N.J.S.A. 26:4-6, "Any body having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school." The State Department of Health shall provide guidance to the school on the appropriateness of any such prohibition. All schools are required to comply with the provisions of N.J.A.C. 8:61-1.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

(e) Those [pupils] **children** enrolled in school, **preschool**, or child care centers [facilities] before September 1, 1991, and who have previously been granted a religious exemption, shall not be required to reapply for a new religious exemption under N.J.A.C. 8:57-4.4(a).

8:57-4.5 Provisional admission

(a) A [pupil] **child** may be admitted to a school, **preschool**, or child care center [facility] on a provisional basis if a physician or health department can document that at least one dose of each [of the] required **age-appropriate** vaccine(s) or antigen(s) [which are age appropriate] has been administered and that the pupil is in the process of receiving the remaining immunization(s).

(b) Provisional admission for [pupils] **children** under age five shall be granted in compliance with the **specific** requirements set forth in N.J.A.C. 8:57-4.10 through [4.14] 4.15 for a period of time consistent with the current [Immunization Practices Advisory Committee] **Advisory Committee on Immunization Practices (ACIP)** of the

United States Public Health Service or the American Academy of Pediatrics (AAP) immunization schedule, but shall not exceed 17 months for completion of all immunization requirements.

(c) Provisional admission for [pupils] **children** five years of age or older shall be granted in compliance with the **specific** requirements set forth in N.J.A.C. 8:57-4.10 through 4.14 for a period of time consistent with the current [Immunization Practices Advisory Committee] **Advisory Committee on Immunization Practices (ACIP)** of the United States Public Health Service or the American Academy of Pediatricians (AAP) immunization schedule, but shall not exceed one year for completion of all immunization requirements.

(d) Provisional status shall only be granted one time to [pupils] **children** entering or transferring into schools, **preschools**, or child care centers [facilities] in New Jersey. Information on this status shall be sent by the original school, [or] preschool [facility], or child care center to [a] the new school, [or] preschool, or [facility if a pupil transfers] child care center pursuant to N.J.A.C. 8:57-4.7(b).

(e) Those [pupils] **children** transferring into a New Jersey school, **preschool**, or child care [facility] center from out-of-State or out-of-country may be allowed a 30-day grace period in order to obtain past immunization documentation before provisional status shall begin.

(f) The school, **preschool**, or child care [facility] center shall ensure that the required vaccine/antigens are being received on schedule. If at the end of the provisional admission period, the [pupil] **child** has not completed the required immunizations, the administrative head of the school, **preschool** or child care [facility] center shall exclude the [pupil] **child** from continued school attendance until appropriate documentation has been presented.

(g) Those [students] **children** in provisional status may be temporarily excluded from the school, **preschool**, or child care [facility] center during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

8:57-4.6 Documents accepted as evidence of immunization

(a) The following documents [will] **shall** be accepted as evidence of a [pupil's] **child's** immunization history provided that the type of immunization and the date when each immunization was administered is listed:

1. An official school record from any school, [or] preschool, or [facility] **child care center** indicating compliance with the immunization requirements of this subchapter; or

2.-3. (No change.)

(b) (No change.)

8:57-4.7 Records required

(a) Every school, **preschool**, or child care [facility] center shall maintain an official State of New Jersey School Immunization Record for every pupil. **This record** [that] shall include the date of each immunization and [that] shall be separated from the [pupil's] **child's** other medical records for purpose of immunization record audit.

(b) If a [pupil] **child** withdraws, is promoted, or transfers to another school, **preschool**, or child care [facility] center, [this] the immunization record, or a certified copy thereof, along with statements pertaining to religious or medical exemptions **and laboratory evidence of immunity**, shall be sent to the new school by the original school or shall be given to the parent or guardian upon request, within 24 hours of such a request.

(c) When a [pupil] **child** graduates from secondary school, this record, or a certified copy thereof, shall be sent to an institution of higher education or may be given to the parent or guardian upon request.

(d) Each [pupil's] **child's** official New Jersey School Immunization Record, or a **certified** copy thereof, shall be retained by every secondary school for a minimum of four years after the pupil has left the school. Every elementary school, **preschool**, or child care [facility] center shall retain an immunization record, or a copy thereof, for a minimum of one year after the [pupil] **child** has left the school.

(f) Any computer-generated document or list developed by a school, [or] preschool, or **child care center** shall be considered [to be] a supplement to, and not a replacement of, the official New Jersey School Immunization Record.

8:57-4.8 Reports to be sent to State Department of Health

(a) A report of the immunization status of the pupils in every school, [or] preschool [facility], or **child care center** shall be sent each year to the State Department of Health by the principal, director, or other person in charge of the school, [or] preschool [facility], or **child care center**.

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

(d) A copy of this report shall be sent to the local board of health in whose jurisdiction the school, [or] preschool [facility], or **child care center** is located.

(e) Those schools, **preschools**, and child care [facilities] centers not submitting the annual report by December 1 will be considered delinquent. **A delinquency involving schools, preschools, and child care centers** [and] may be referred to the New Jersey State Department of Education or the New Jersey State Department of Human Services, as appropriate **based on the length of time delinquent, number of times delinquent, and efforts made toward compliance**. The local health department will also be notified of the delinquency.

8:57-4.9 Records available for inspection

[The principal or other person in charge of a school or preschool facility shall make all immunization records available for inspection by authorized representatives of the State Department of Health or the local board of health in whose jurisdiction the school is located within 24 hours of notification.] **Each school, preschool, and child care center shall maintain records of their children's immunization status. Upon 24 hour notice, these records shall be made available for inspection by authorized representatives of the State Department of Health or the local board of health in whose jurisdiction the school or child care center is located.**

8:57-4.10 Diphtheria and tetanus toxoids and pertussis vaccine

(a) Every [pupil] **child** born on or after January 1, 1986 shall have received a minimum of four doses of diphtheria and tetanus toxoids and pertussis vaccine (DTP), or **any vaccine combination containing DTP, such as DTP/Hib**, one dose of which shall have been given on or after the **child's** fourth birthday.

(b) Those [pupils] **children** enrolled in [preschool facilities] **child care centers** who are too young to meet this requirement, shall be in compliance with this [rule] section if they are appropriately immunized for their age as recommended by the [Immunization Practices Advisory Committee] **Advisory Committee on Immunization Practices (ACIP)** of the United States Public Health Service.

(c) Pediatric diphtheria-tetanus toxoid (DT) shall be accepted in lieu of DTP or **DTaP** for [pupils] **children** under age seven if a physician's written medical contraindication to further pertussis vaccine has been presented as specified [in] at N.J.A.C. 8:57-4.3.

(d) **Diphtheria, tetanus, and acellular pertussis vaccine (DTaP) for children under age seven shall be accepted in lieu of DTP vaccine for the fourth or fifth dose in the DTP series, if given on or after 15 months of age.**

[(d)](e) [Pupils] **Children** seven years of age and older who have not completed this requirement shall receive tetanus and diphtheria toxoids (adult Td) instead of DTP. Any appropriately spaced combination of three doses of DTP, **DTaP**, DT, or Td in a [pupil] **child** over age seven shall be acceptable as adequate immunization for this vaccine series.

[(e)](f) The requirement to receive a **school entry** booster dose of DTP after the **child's** fourth birthday shall not apply to children **while** enrolled in child care centers.

[(f)](g) Those [pupils] **children** born on or after January 1, 1986, who have received a **total** of five or more doses of DTP **and DTaP** shall have satisfied the DTP requirement.

8:57-4.11 Poliovirus vaccine

(a) Every [pupil] **child** born on or after January 1, 1986 shall have received at least three doses of live, trivalent, oral poliovirus vaccine

(OPV), or inactivated poliovirus vaccine (IPV) if medically appropriate, either separately or in combination, one dose of which shall have been given on or after the child's fourth birthday.

(b) Those [pupils] children enrolled in [preschool facilities] child care centers who are too young to meet this requirement, shall be considered to be in compliance with this [rule] section if they are appropriately immunized for their age as recommended by the [Immunization Practices Advisory Committee] Advisory Committee on Immunization Practices (ACIP) of the United States Public Health Service.

(c) [Any appropriately spaced combination of four doses of conventional or enhanced IPV and OPV will satisfy the poliovirus vaccine requirement.] Any child 18 years of age or older shall not be required to receive poliovirus vaccine.

(d) For [pupils] children seven years of age and older, any appropriately spaced combination of three doses of [enhanced IPV and] OPV or IPV [will] shall satisfy the poliovirus vaccine requirement.

(e) The requirement to receive a [booster] school entry dose of OPV or IPV after the child's fourth birthday shall not apply to children while enrolled in child care centers.

8:57-4.12 Measles virus vaccine

(a) Every [pupil] child born on or after January 1, 1990 shall have received [one] two doses of a live measles [virus] -containing vaccine, [live, attenuated,] or any vaccine combination containing live measles vaccine, such as the preferred measles, mumps, rubella (MMR) vaccine, prior to school entrance for the first time into Kindergarten, Grade One, or an entry level special education program with an unassigned grade. The first dose shall have been administered on or after the child's first birthday, and the second dose shall have been administered no less than one month after the first dose.

(b) Those [pupils] children younger than 15 months of age who are enrolled in a preschool [facility] or child care center, shall be considered to be in compliance with this [regulation] section until reaching the age of 15 months, which is the medically recommended age for [routine] receiving the first measles immunization.

(c) Children born before January 1, 1990 shall have received one dose of live measles vaccine or any measles-containing combination vaccine on or after their first birthday.

(d) Children born on or after January 1, 1990 and enrolling in school (Kindergarten or Grade One) for the first time after September 1, 1995, with no documented doses of measles vaccine, shall receive the second dose of measles or another measles-containing combination vaccine, no sooner than one month and no later than two months after receiving the first dose.

[(c)](e) [Pupils] Children who present documented laboratory evidence of measles immunity shall not be required to receive measles vaccine.

[(d)](f) Those [pupils] children enrolled in school, preschool, or child care [facilities] centers before September 1, 1991 who have a current immunization record with physician diagnosed and documented measles disease shall not be required to receive the first or second dose of measles vaccine.

8:57-4.13 Rubella vaccine

(a) Every [pupil] child shall have received one dose of live rubella virus vaccine, or any vaccine combination containing live rubella virus vaccine, administered on or after the child's first birthday.

(b) Those [pupils] children younger than 15 months of age who are enrolled in a preschool or child care center [facility], shall be considered to be in compliance with this [regulation] section until reaching the age of 15 months, which is the medically recommended age for routine rubella immunization.

(c) Rubella virus vaccine shall not be required of [pupils] children who present documented laboratory evidence of rubella immunization.

8:57-4.14 Mumps vaccine

(a) Every [pupil] child shall have received one dose of live mumps virus vaccine, or any vaccine combination containing live mumps virus vaccine, administered on or after the child's first birthday.

(b) Those [pupils] children younger than 15 months of age who are enrolled in a preschool or child care center [facility,] shall be considered to be in compliance with this [rule] section until reaching the age of 15 months, which is the medically recommended age for routine mumps immunization.

(c) [Pupils] Children enrolled in school, preschool, or child care centers before September 1, 1995 and who previously provided [who present] written certification from the diagnosing physician that the pupil had mumps disease shall not be required to receive mumps vaccine.

(d) [Pupils] Children who present documented laboratory evidence of mumps immunity shall not be required to receive mumps vaccine.

8:57-4.15 Haemophilus influenzae type b (Hib)

(a) Every child from 12 months to 59 months of age enrolling in any child care center or preschool facility after September 1, 1995, shall have received at least one age-appropriate dose of a separate or a combination Hib conjugate vaccine.

(b) Every child from two months to 11 months of age enrolling in a child care center after September 1, 1995 shall have received a minimum of two age-appropriate doses of Hib conjugate vaccine, or fewer as appropriate for the child's age.

8:57-[4.15]4.16 Providing immunization

(a) A board of education and/or a local board of health may provide at public expense, the necessary equipment, materials and services for immunizing [pupils] children with the following immunizing agents, either singly or in combination:

1. Diphtheria toxoid;
2. Pertussis vaccine;
3. Tetanus toxoid;
4. Measles virus vaccine, live, attenuated;
5. Rubella virus vaccine, live;
6. Poliovirus vaccine;
7. Mumps virus vaccine, live;
8. Haemophilus influenzae type B conjugate vaccine;

[8.]9. Other immunizing agents when specifically authorized to do so by the State Department of Health.

8:57-[4.16]4.17 Emergency powers of the State Commissioner of Health

(a) (No change.)

(b) All [pupils] children failing to meet these additional requirements shall be excluded from a school, preschool, or child care center until the outbreak or threatened outbreak is over.

(c) (No change.)

8:57-[4.17]4.18 Optimal immunization recommendations

The specific vaccines and the number of doses required under [N.J.A.C. 8:57-4] this subchapter are intended to establish the minimum vaccine requirements for child care center, preschool, or school entry and attendance in New Jersey. Additional vaccines or vaccine doses are recommended by the State Department of Health, in accordance with the guidelines of the American Academy of Pediatrics (AAP) and the [Immunization Practices Advisory Committee] Advisory Committee on Immunization Practices (ACIP) for optimal immunization protection and may be administered, although they are not required for school attendance.

(a)

DIVISION OF ALCOHOLISM**Intoxicated Driving Program/Intoxicated Driver Resource Centers****Proposed Repeal: N.J.A.C. 8:66****Proposed Readoption with Amendments: N.J.A.C. 8:66A**

Authorized By: Terry O'Connor, Director, Division of Alcoholism, and Len Fishman, Commissioner, Department of Health.

Authority: N.J.S.A. 39:4-50 et seq., specifically 39:4-50(f).

Proposal Number: PRN 1995-56.

Submit comments by February 17, 1995 to:

Robert E. Green, Chief
Intoxicated Driving Program
CN 365
Trenton, NJ 08625-0365

The agency proposal follows:

Summary

N.J.A.C. 8:66, Alcohol Countermeasures Regulations, was adopted by the Department as a recodification of N.J.A.C. 13:20-31, on January 4, 1984 to govern the operations of the Intoxicated Driving Program, the Bureau of Alcohol Countermeasures (which had been transferred from the Division of Motor Vehicles to the Division of Alcoholism) and the Intoxicated Driver Resource Centers. The Bureau evaluated, educated, referred to treatment and monitored the treatment of persons convicted under N.J.S.A. 39:4-50. After January 4, 1984, N.J.S.A. 39:4-50 assigned these functions, in addition to detention of offenders and establishment of treatment networks, to the Intoxicated Driver Resource Centers. N.J.S.A. 39:4-50 also established the Bureau and the Intoxicated Driving Programs Unit as the administrative link between the courts, the Division of Motor Vehicles and the Intoxicated Driver Resource Centers, and assigned oversight of the Intoxicated Driver Resource Center network to the Intoxicated Driving Program.

Superior Court rulings in Burlington County (*State v. Leary*, 232 N.J. Super. 358 and *State v. Klemmer*, 237 N.J. Super. 32) in 1989 prompted the Department to adopt N.J.A.C. 8:66A, specific Intoxicated Driving Program rules, which became effective March 5, 1990. The Department also readopted N.J.A.C. 8:66 to provide flexibility in certain situations where N.J.A.C. 8:66A did not apply.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:66A, Intoxicated Driving Program, expires March 5, 1995. Although these rules have proved generally satisfactory and have not been amended since 1990, the Intoxicated Driving Program and the Intoxicated Driver Resource Center Directors Association agree that certain subchapters of N.J.A.C. 8:66A require amendment to clarify language and to address certain operational issues and areas of joint responsibility N.J.A.C. 8:66, which also expires on March 5, 1995, is deemed unnecessary since N.J.A.C. 8:66A can now be applied to all persons subject to the consequences of conviction under N.J.S.A. 39:4-50 since 1977, and those persons subject to N.J.A.C. 13:20-31 since 1972. N.J.A.C. 8:66 is, therefore, proposed for repeal.

N.J.A.C. 8:66A regulates the post-conviction detention, evaluation, education, referral to treatment if appropriate, and the monitoring of participation in treatment of persons convicted under N.J.S.A. 39:4-50a, 12:7-57, 12:7-34.19, or 12:7-46. The chapter also delineates the actions permitted to the Intoxicated Driving Program and the Intoxicated Driver Resource Centers regarding such persons and the requirements for treatment center affiliation with the Intoxicated Driver Resource Centers treatment resource network required by N.J.S.A. 39:4-50.

The purposes of this chapter are to ensure that persons convicted under the relevant statutes can satisfy the statutory requirements, to establish the lines of authority between the Intoxicated Driving Program, the Intoxicated Driver Resource Centers, the courts and the Division of Motor Vehicles, to establish an orderly information flow among these agencies, to establish procedures for scheduling and processing persons required to comply with the statutory requirements, to establish criteria for the referral of persons to appropriate alcohol or drug treatment programs, to ensure that the process of referral of persons to specific treatment programs or providers is free of conflict of interest, to establish standards and a process for the affiliation of alcohol and drug treatment

practitioners and providers with Intoxicated Driver Resource Centers, and to set out the procedures to be followed by the Intoxicated Driving Program/Intoxicated Driver Resource Centers in the event of non-compliance.

The following is a summary of the general provisions of each section and the rationale for proposed changes.

N.J.A.C. 8:66A-1 states the purpose and scope of the rules and defines words and terms used throughout the chapter. It is proposed that this subchapter be amended to state that the chapter covers all the offenders who were previously covered in both N.J.A.C. 8:66 and 8:66A.

Amendments are proposed to the definitions as follows:

Affiliated treatment agency: "Approved" was amended to "affiliated" to eliminate the implication that an agency is licensed by the Intoxicated Driving Program/Intoxicated Driver Resource Centers to perform its services.

Alcohol or drug-related offenses: Statutory references have been expanded to reflect legislation enacted since adoption of N.J.A.C. 8:66A.

Counselor: The term "counselor" reflects the current name of the Counselor Certification Board.

First offender program: The addition of "detention" reflects the purpose of the Intoxicated Driver Resource Center as stated in the statute.

Intensive outpatient treatment: The deletion of the definition of "intensive outpatient treatment" reflects the proposed deletion of N.J.A.C. 8:66A-5.4.

Intoxicated Driver Resource Center: These changes are corrections of grammar.

Third and subsequent offender: The definition now reflects the statutory mandate.

Self-help group: Peer-run, self-help groups are differentiated from "support" groups run by paid professionals or "treatment," which is structured, and for which there is a charge, however minimal.

A new rule is proposed at N.J.A.C. 8:66A-1.3 to set parameters for establishing or changing an Intoxicated Driver Resource Center, and to assure that the procedures used by a county to establish or designate an Intoxicated Driver Resource Center are clearly defined and conform to existing law and rules.

Subchapter 2 requires courts to report convictions under relevant statutes to the Intoxicated Driving Program for the purpose of scheduling an interview and evaluation of those persons convicted at an appropriate Intoxicated Driving Resource Center. Subchapter 2 also covers mandated procedures when clients fail to appear at an Intoxicated Driver Resource Center or to comply with a treatment referral; when other types of referrals may be made to the Program; fees; and the authority of the Program to recommend restoration or suspension of driving licenses.

Subchapter 2 also holds county counsel or solicitor responsible for precluding conflicts of interests, on the part of the Resource Center, from contaminating the client referral and treatment process.

Subchapter 2 then covers requirements placed on the Intoxicated Driver Resource Centers, including annual submission of an income and expenditure reports, curricula of the Centers and confidentiality of the centers' data.

Lastly, subchapter 2 covers the monthly data reports that must be submitted to the Intoxicated Driving Program. Amendments are proposed at N.J.A.C. 8:66A-2.4 for grammar corrections and to reflect relevant statutes, and at N.J.A.C. 8:66A-2.7 to give the Program the flexibility to adjust the reporting form to elicit more accurate information as needed.

Subchapter 3 covers attendance and scheduling at an Intoxicated Driver Resource Center. Scheduling is initially done by the Intoxicated Driving Program or by the Resource Center. Rescheduling, transfers and second offender treatment scheduling are done by the Resource Center under conditions stated in this subchapter.

Amendments to subchapter 3 are proposed at N.J.A.C. 8:66A-3.3(a) to tighten rescheduling criteria in order to reduce non-compliance and rescheduling, and at N.J.A.C. 8:66A-3.5(a) to limit authority for client transfer to another county specifically to the Intoxicated Driver Resource Center director, and to require that a record be kept in case of subsequent client inquiries.

There is a proposed change to the title of N.J.A.C. 8:66A-3.6 to better reflect the content of subchapter, and N.J.A.C. 8:66A-6.12 is recodified to N.J.A.C. 8:66A-3.7. This section fits better in subchapter 3, as it clarifies procedure for handling third and subsequent offenders.

Subchapter 4 establishes the evaluation and referral procedures for covered individuals, sets criteria for referrals to alcohol or drug treatment and the professional level of the person approving the referral.

Amendments are proposed at N.J.A.C. 8:66A-4.2 for style and grammar; at N.J.A.C. 8:66A-4.4, which is proposed to be recodified at N.J.A.C. 8:66A-6.9, where it more logically fits; at N.J.A.C. 8:66A-4.6(a)3 for clarification of a list format; at N.J.A.C. 8:66A-4.6(d), to eliminate language which is not regulatory; and at N.J.A.C. 8:66A-4.6(e), codifying an existing, approved referral practice.

Subchapter 5 sets out rules for the approval of treatment programs for affiliation with the Intoxicated Driver Resource Centers, approval criteria, documentation of affiliation through signed agreements. The criteria for referrals to intensive outpatient programs were deleted, in the absence of a standard definition for such programs.

Amendments are proposed at N.J.A.C. 8:66A-5.1(a) to clarify affiliation procedures and responsibilities and the flow of documentation, at N.J.A.C. 8:66A-5.1(b) to broaden the authority temporarily to waive the formal affiliation process to include Intoxicated Driver Resource Center Directors in individual cases and at N.J.A.C. 8:66A-5.1(c) to correct punctuation. At N.J.A.C. 8:66A-5.2, the term "affiliation" replaces the term "approved," in order to remove the implication that the affiliation process is a form of licensure by either the State or a particular county. A single date for the annual renewal of all affiliation agreements has been proposed at N.J.A.C. 8:66A-5.3.

Subchapter 6 establishes treatment program operational requirements covering, intake, the intake form, length of treatment, treatment plan, what constitutes non-compliance with treatment, self-help group involvement, the number of meetings required per week, objections to self-help group attendance, attendance monitoring, family involvement, transfers from program to program, monitoring of third and subsequent offenders, release and evaluation, confirmation of the need for treatment in disputed cases, consequences of misuse of self-help attendance cards, responsibility for treatment costs and handling of medically indigent clients, treatment program directories and credit for treatment prior to conviction.

Amendments are proposed at N.J.A.C. 8:66A-6.6 to give more latitude to a treatment provider in the employment of self-help groups as adjuncts to required treatment, and requires that no client be referred to a self-help group without preparation and orientation and at N.J.A.C. 8:66A-6.7(a) to eliminate the two, self-help group per week maximum attendance requirement as an adjunct to treatment, while N.J.A.C. 8:66A-6.7(b) gives the Intoxicated Driver Resource Center more discretion in using self-help as an adjunct to treatment.

At N.J.A.C. 8:66A-6.9, recodified N.J.A.C. 8:66A-4.4 proposes to set parameters for monitoring client progress by the treatment agency and for referrals to more intensive forms of treatment. At N.J.A.C. 8:66A-6.12, the Intoxicated Driver Resource Center is given discretion in giving credit for a client's prior treatment and N.J.A.C. 8:66A-6.14 clarifies the due-process procedure followed when a client refuses a referral to treatment. At N.J.A.C. 8:66A-6.19 it is proposed to permit the Intoxicated Driver Resource Center to evaluate the appropriateness of prior treatment when developing the current treatment plan.

Subchapter 7 sets standards for client conduct at an Intoxicated Driver Resource Center regarding intoxication and other improper conduct. Amendments are proposed at N.J.A.C. 8:66A-7.1(a)3 to set standards for admission of intoxicated clients to Intoxicated Driver Resource Center sessions and at N.J.A.C. 8:66A-7.1(a)4 to set a procedure for reporting clients observed driving away from an Intoxicated Driver Resource Center apparently under the influence.

Subchapter 8 establishes client non-compliance procedures. No amendments are proposed to this subchapter.

Subchapter 9 sets out procedures for handling miscellaneous offenders, such as "multiple" offenders, out-of-State offenders, New Jersey residents convicted out-of-State, and intoxicated boaters. Amendments are proposed at N.J.A.C. 8:66A-9.1 to clarify the monitoring procedure for "multiple" offenders in treatment and at N.J.A.C. 8:66A-9.2 to require out-of-State offenders residing within reasonable driving distance of an Intoxicated Driver Resource Center to attend in New Jersey to ensure that as many of these offenders as possible comply with statutory requirements.

Social Impact

It is anticipated that roughly 30,000 to 40,000 drivers will be subject to these rules each year. The Intoxicated Driving Program scheduled 295,000 convicted drivers and boaters reported between 1984 and 1993. Of these, the 24 Intoxicated Driver Resource Centers detained and evaluated approximately 182,000. The remainder were reported to the courts and DMV as non-compliant. Of those detained and evaluated by the Intoxicated Driving Programs, roughly 78,500 were referred to

approximately 140 alcohol or drug treatment providers or several hundred self-help groups. Between 1988 and 1993, alcohol-related driver fatalities declined 38 percent. An outcome evaluation of the IDP/IDRC predecessor program indicated reductions in DUI recidivism of those drivers completing the program (66 percent while licensed and 51 percent while suspended), compared with non-completers.

Economic Impact

The Intoxicated Driving Program and the Intoxicated Driver Resource Centers are wholly fee supported. These fees are set in N.J.S.A. 39:4-50b and f: an \$80.00 administrative fee, payable to the Alcohol Education, Rehabilitation and Enforcement Fund, supports the Intoxicated Driving Program; a \$50.00 per diem fee (total \$100.00) supports the first offender program; and a \$75.00 per diem fee (total \$150.00) supports the second offender program. The fees are paid by the offenders. Annual cost of the programs is estimated at \$3.8 million per year. As elements in the State's overall anti-drunk driving program, the Intoxicated Driving Program and Intoxicated Driver Resource Center have contributed to significant reductions in losses of life, personal injuries and damage to property resulting from alcohol and drug-related highway crashes. Since 1984, it is estimated by the Division of Highway Traffic Safety that 2,130 lives have been saved in New Jersey as a result of the countermeasures implemented. The dollar savings are estimated to be \$1,491,000,000. Estimates of savings regarding property damage and personal injury savings are not available.

Regulatory Flexibility Analysis

The rules proposed for re-adoption with amendments impose certain reporting and recordkeeping requirements on affiliated alcohol and drug treatment providers and practitioners, all of whom are small businesses, as the term is defined by N.J.S.A. 52:14B-16 et seq. These requirements, however, are not substantially different from those required in the normal course of the provision of treatment and do not add costs. The Intoxicated Driving Program provides all forms required. The application process for affiliation with the Intoxicated Driver Resource Centers is routinely accomplished by staff of the applicant agency without professional assistance. No differentiation based on business size has been provided in the rules, given the normal course of treatment nature of the requirements imposed and the necessity to Program efficiency.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:66.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:66A.

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

8:66A-1.1 Purpose and scope

The purpose of this chapter is to improve the driving behavior of individuals who have been identified as having some alcohol or drug involvement in connection with the operation of a motor vehicle or vessel. The chapter applies to all county Intoxicated Driver Resource Centers, all approved treatment programs, and the Department of Health, and all individuals convicted in New Jersey of a drug or alcohol offense related to the operation of a motor vehicle or vessel after [October 4, 1984] **May 25, 1977, and individuals subject to N.J.A.C. 13:20-31, adopted December 15, 1972.**

8:66A-1.2 Definitions

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

"**Affiliated treatment agency**" means an agency or practitioner affiliated with an Intoxicated Driver Resource Center with the approval of the Intoxicated Driving Program pursuant to N.J.A.C. 8:66A-5.3 to provide alcohol and drug treatment services for the education, rehabilitation, and treatment of clients.

"Alcohol or drug related offense" means a conviction by a court of law or a finding by the Division of Motor Vehicles of operating under the influence, pursuant to N.J.S.A. 39:4-50 et seq. or N.J.S.A. 12:7-34.19 et seq. or N.J.S.A. 12:7-46 et seq., or refusal to submit to a chemical test, pursuant to N.J.S.A. 39:4-50.4(a) et seq., or N.J.S.A. 12:7-57 et seq., or N.J.S.A. 39:4-50.14 et seq., N.J.S.A. 39:3-10.24, et seq. or N.J.S.A. 39:4-14.3g.

["Approved treatment agency" means an agency approved by the Intoxicated Driving Program for the education, rehabilitation and treatment of clients.]

"Counselor" means a person certified for the State of New Jersey by the Alcohol and [other Drugs of Abuse] **Drug Counselor Certification Board of New Jersey, Inc.** or another state to counsel alcohol abusers or drug abusers, or a person with five years continuous experience in the treatment of alcohol or drug abusers.

"First offender program" means the program administered by the county Intoxicated Driver Resource Centers for **detention**, evaluation, and referral for first offenders which may also be used to evaluate other offenders or referrals for evaluation. The program normally consists of six hours a day for two consecutive days for a total of 12 hours.

"Intensive outpatient treatment" means outpatient treatment for a client who meets the criteria for inpatient treatment and who is required by the Intoxicated Driver Resource Center/Intoxicated Driving Program, in lieu of inpatient treatment, to attend more than the normal 16 sessions of outpatient treatment within a 16 week period.]

"Intoxicated Driver Resource Center" (IDRC) means the personnel and facilities approved by the Intoxicated Driving Program [which] **that detain and determine**, on the basis of an evaluation instrument and counselor evaluation and other information, the extent, if any, of a client's alcohol or drug related problem and [which] **that monitor and report on referrals to approved treatment programs.**

"Self-help group" means a peer support group **that is of no cost to its members.**

"Third and subsequent offenders" means a person convicted of **three or more offenses under N.J.S.A. 39:4-50(a)(3) or N.J.S.A. 12:7-54(a)(3) within the statutory period.**

8:66A-1.3 Establishment of an Intoxicated Driver Resource Center (IDRC)

(a) Subject to the approval of the Intoxicated Driving Program, the counties shall, with its cooperation, designate or establish Intoxicated Driver Resource Centers on a county or regional basis as required by N.J.S.A. 39:4-50(f). The counties may establish such a center themselves or in cooperation with other counties. The counties may either operate the IDRCs themselves, or they may contract for the operation of the IDRCs.

(b) A county or regional program proposing to establish or substantially change an Intoxicated Driver Resource Center shall notify the Intoxicated Driving Program of its intent to do so in writing 180 days prior to the proposed effective date. The notice shall indicate whether the county intends to operate the Intoxicated Driver Resource Center itself, or contract for services. Within 60 days of the notice of intent the county shall provide a program description, action plan, budget, table of personnel, proposed program schedule and curriculum to the Intoxicated Driving Program. If the county proposes to contract for services, it shall provide the Intoxicated Driving Program with a schedule for calling for proposals, containing, but not limited to, the information specified above, and shall review, rank and approve such proposals in accordance with applicable State and county laws and rules governing the issuance of contracts for such services.

(c) The Intoxicated Driving Program shall consult with the county and provide assistance as needed in the course of the process established pursuant to (a) and (b) above.

SUBCHAPTER 2. ACTIONS SUBSEQUENT TO CONVICTION FOR N.J.S.A. 39:4-50 OR N.J.S.A. 12:7-34.19 OR N.J.S.A. 12:7-46 OR N.J.S.A. 39:4-50.4a OR N.J.S.A. 12:7-57 OR

N.J.S.A. 39:4-50 OR N.J.S.A. 39:3-10.24 OR N.J.S.A. 39:4-14.3g

8:66A-2.1 Notification and evaluation

(a) The Intoxicated Driving Program shall be notified of every conviction for violation of N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50(a) and N.J.S.A. 12:7-54; N.J.S.A. 12:7-34.19; N.J.S.A. 12:7-46; [and] N.J.S.A. 12:7-57; **N.J.S.A. 39:4-14.3g; N.J.S.A. 39:3-10.24 and N.J.S.A. 39:4-50.14** through (by) the sentencing court.

(b) The Intoxicated Driving Program shall schedule persons who have been convicted in (a) above, or referred, **in accordance with N.J.A.C. 8:66A-2.3**, for an interview and evaluation at an appropriate Intoxicated Driver Resource Center.

(c) (No change.)

8:66A-2.2 [Failure of client to appear or comply] Report to court and the Division of Motor Vehicle Services following non-compliance

(a) (No change.)

(b) Failure on the part of the client to comply with the course of action or fee schedule required by the Intoxicated Driving Program/Intoxicated Driver Resource Center or the course of action at an approved treatment agency shall result in [referral to The Division of Motor Vehicle Services for appropriate action and, if appropriate, referral to the court of conviction for appropriate action] **a report of non-compliance to the sentencing court and the Division of Motor Vehicle Services for appropriate action pursuant to N.J.S.A. 39:4-50(b).**

8:66A-2.3 Authorized referrals to the Intoxicated Driving Program

(a) The Chief of the Intoxicated Driving Program may receive referrals in writing from courts, Motor Vehicle licensing authorities, highway safety agencies, law enforcement agencies, physicians, [or] family members, health agencies or social service agencies regarding persons who are believed to be posing a public danger in the operation of a motor vehicle or vessel. The Intoxicated Driving Program may schedule an interview with the individual at an appropriate Intoxicated Driver Resource Center or the office of the Intoxicated Driving Program for evaluation and appropriate action. A copy of the referral document will be given to the client at the time of the interview. Client failure to attend the interview or any ordered treatment or referral under this chapter shall result in a referral to the Division of Motor Vehicles for appropriate action.

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

8:66A-2.4 Fees

Fees shall be paid [in accordance with the statutory fees in] as provided for at N.J.S.A. 39:4-50, N.J.S.A. 39:4-50.4, **N.J.S.A. 39:4-50.14, N.J.S.A. 39:4-14.3g, N.J.S.A. 12:7-57, N.J.S.A. 12:7-34.19, [or] N.J.S.A. 12:7-46, and 39:3-10.24** or any amendment thereto and shall be payable as designated by the Division of Alcoholism and Drug Abuse, from every person each time the person is convicted of an alcohol or drug related offense. These fees are owed and due upon conviction, pursuant to N.J.S.A. 39:4-50[. If] **if the conviction [is] occurred after October 9, 1986, and upon referral or evaluation to the Intoxicated Driver Resource Center/Intoxicated Driving Program Unit if the conviction [was] occurred prior to October 9, 1986.**

8:66A-2.7 Intoxicated Driver Resource Center Income and Expenditure Report

(a) At the beginning of each calendar year, each Intoxicated Driver Resource Center shall submit [an] **a detailed income and expenditure report specified by Intoxicated Driving Program[.]** which shall include information on:

1.-14. (No change.)

8:66A-3.3 Rescheduling

[(a) Upon or after the initial scheduling of a client for attendance at the Intoxicated Driver Resource Center, a first rescheduling may be granted by the Intoxicated Driver Resource Center upon client request.]

[(b)](a) A [second] rescheduling of a client for attendance at the Intoxicated Driver Resource Center may be granted for the following reasons only:

1.-4. (No change.)

[(c)](b) The reasons or instances in [(b)] (a)1-4 above shall be proved by documentation, such as a physician's letter, obituary notice, or a letter from an employer.

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

8:66A-3.5 Transfers from one county to another prior to initial attendance at an Intoxicated Driver Resource Center

(a) A client may be transferred from one county's program to another with the consent of the Intoxicated Driver Resource Center Director. The recipient Intoxicated Driver Resource Center shall not be responsible for any administrative client details until a transfer form is received. A transfer form shall be sent by the transferring Intoxicated Driver Resource Center and shall include: The original abstract from the Intoxicated Driving Program, the record of the conviction, the original scheduling notice from the Intoxicated Driving Program and a noncompliance form, if one has been issued. If a client has a new address, it shall be noted. Upon receipt of the transfer documents, the recipient county shall become responsible for all administrative procedures. [Once the] The transferring Intoxicated Driver Resource Center [transfers client records, it shall no longer process any documents pertaining to the client but shall send them to the recipient Intoxicated Driver Resource Center] shall maintain a log of transferred clients.

(b) (No change.)

8:66A-3.6 Second offender treatment [scheduling] referral and monitoring

(No change in text.)

8:66A-3.7 Scheduling and monitoring of third and subsequent offenders

Third and subsequent offenders shall be referred to the 12 hour Intoxicated Driver Resource Center for evaluation, referral to treatment and/or self-help group participation, pursuant to N.J.A.C. 8:66A-4.2, and N.J.A.C. 8:66A-4.5. Third and subsequent offenders shall be monitored by the Intoxicated Driver Resource Center for one full year from the time the client begins treatment.

8:66A-4.2 Criteria for client referral to treatment

(a) (No change.)

(b) A referral to treatment or for further evaluation shall take into consideration the following facts as relevant to a client's need for treatment or further evaluation:

1.-5. (No change.)

6. Driving record. There must be a clear, independent reason for a treatment referral other than [a] the driving record; however, a driving record [which] that includes motor vehicle or boat accidents, reckless or careless driving, or persistent moving or other motor vehicle violations shall be considered in making a treatment referral and shall be mentioned on any client evaluation documents;

7.-8. (No change.)

8:66A-4.4 [Evaluation of client progress] (Reserved)

[Clients who continue to abuse alcohol/drugs or otherwise fail to comply with program requirements shall be reported to the Intoxicated Driving Program by the Intoxicated Driver Resource Center. The progress of the client shall be monitored and recorded by the treatment program on a weekly basis. A client who may be in need of additional treatment options such as family counseling, detoxification, intensive outpatient or inpatient treatment, may be assigned to such treatment, with approval from the Intoxicated Driver Resource Center. The treatment options shall be acceptable in lieu of, in whole or in part, the 16 weeks of required treatment.]

8:66A-4.6 Referral procedures

(a) The Intoxicated Driver Resources Center shall provide each client referred [to] for treatment with a list of approved treatment programs [within their county]. The list shall reflect the following items:

1.-2. (No change.)

3. [Dates] Days/times of operation of any Intoxicated Driver Resource Center client group sessions;

4.-5. (No change.)

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

(d) When a specific modality or program is recommended it shall be noted on the appropriate form with the reason for recommendation. [This will provide the client with a quality evaluation and, at the same time, reduce the potential for conflict of interest.] All clients shall sign the form to indicate that they understand the content.

(e) Intoxicated Driver Resource Centers shall not make direct referrals to a self help group following evaluation unless the client can demonstrate that he or she is currently actively participating in the self help group. All other treatment appropriate clients shall be referred to self help groups by a treatment program as an addition to treatment. Referrals to self help groups shall not be made [simply because the patient says he or she cannot afford another form of treatment] on the basis of indigence.

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

SUBCHAPTER 5. TREATMENT PROGRAM APPROVAL REQUIREMENTS

8:66A-5.1 [Approved] Affiliated treatment programs

(a) In order for a [county] treatment program to be [approved] affiliated, the [county] program shall apply to [that] the relevant county[s] Intoxicated Driver Resource Center Program and the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program. [Only the] The Intoxicated Driving Program has [the] final approval authority [to approve a treatment program; however, the county's comments on the quality of the program are encouraged. If a county believes that a treatment program should not be approved or should be removed from the approved list, the county may notify the Division of Alcoholism in writing.] based on the recommendations of the county, following an evaluation of staff credentials and program quality. It [is] shall be the responsibility of the Intoxicated Driver Resource Center Director to evaluate and renew the affiliation of each treatment program after an annual site visit or providers meeting. All parties to the agreement shall be notified in writing.

(b) The Chief of the Intoxicated Driving Program or an Intoxicated Driver Resource Center Director [on a temporary basis] may [waive the approval criteria and approve any treatment program] approve an individual treatment plan at a non-affiliated agency or provider in or out of the State. [This] Such approval shall not exceed four months and shall be approved in the best interest of a client.

(c) All approved treatment programs [will be required to] shall report to the Division[s] of Alcoholism and Drug Abuse through the [Divisions prescribed reporting system] Division's Alcohol and Drug Abuse Data System or any successor treatment management information system implemented by the Division.

8:66A-5.2 Treatment program [approval] affiliation criteria

(a) Every treatment program, in order to be [approved] affiliated, [must] shall provide the following information to the Intoxicated Driving Program and to the county Intoxicated Driver Resource Center:

1.-6. (No change.)

7. [A signed affiliation agreement.] A list of proposed IDRC staff and their resumes.

(b) [Applications shall be processed by the Intoxicated Driving Program within 60 days of receipt. County Intoxicated Driver Resource Center Directors shall provide Intoxicated Driving Program staff with their comments within three weeks.] The Intoxicated Driving Program will deny approval to treatment agencies who do not meet the requirements of this chapter. The Intoxicated Driving Program shall indicate the reasons for denial and shall accept reapplication, if the agency eliminates the obstacles [to] which resulted in the nonapproval.

8:66A-5.3 Affiliation agreements

In order to be approved to treat Intoxicated Driver Resource Center/Intoxicated Driving Program clients, a treatment program shall sign an affiliation agreement, which must be approved by the Intoxicated Driving Program, with the county Intoxicated Driver Resource Center. All affiliation agreements shall expire the last day of June of the relevant calendar year.

8:66A-5.4 [Intensive outpatient treatment program] (Reserved)

(a) If a client is determined by the Intoxicated Driver Resource Center/Intoxicated Driving Program to be appropriate for intensive outpatient treatment, he or she will be required to follow the treatment program or be in non-compliance.

(b) If not referred by the Intoxicated Driver Resource Center/Intoxicated Driving Program, a client may decide to attend an approved intensive outpatient treatment program with the approval of the Intoxicated Driver Resource Center/Intoxicated Driving Program.]

8:66A-6.6 Self help group involvement

The treatment plan for clients shall include some exposure to a self help group. This [should] may be accomplished by requiring a specified number of monitored meetings, having someone from a self help group do a presentation, or educating the client about group purposes and functions. **In any event, a client shall not be referred to a self help group without being given specific orientation and education about self help group functions and purposes.** [Meetings are] **Self help group meetings shall not [to] be substituted for individual or group sessions during the 16 week minimum period.**

8:66A-6.7 Determining number of self help group meetings per week

(a) If a client is referred to self help in lieu of [other] treatment by the Intoxicated Driver Resource Center or Intoxicated Driving Program, [one meeting per week is the minimum, three per week is the maximum number of meetings that can be required] **the client shall attend no less than one, and no more than three, meetings during any seven day period.** If [the maximum is required] **three meetings are required during any seven day period,** there must be documentation by the Intoxicated Driver Resource Center to support the decision. [If the client is sent to a self-help group as an adjunct to outpatient treatment, the maximum shall be two meetings per week, unless the client consents to more.]

(b) **Required self help attendance as an adjunct to treatment shall be determined on an individual basis pursuant to N.J.A.C. 8:66A-4.2 and 4.5**

8:66A-6.9 Evaluation of client progress

The progress of the client shall be monitored and recorded by the treatment program staff on a weekly basis. A client who may be in need of additional treatment, such as detoxification, intensive outpatient, or inpatient treatment, may be assigned to such treatment, with approval from the Intoxicated Driver Resource Center. Clients who continue to abuse alcohol/drugs, or otherwise fail to comply with program requirements, shall be reported to the Intoxicated Driving Program by the Intoxicated Driver Resource Center.

Recodify existing 8:66A-6.9 and 6.10 as 6.10 and 6.11 (No change in text.)

8:66A-[6.11]6.12 Client transfers from one treatment program to another

(No change in text.)

[8:66A-6.12 Treatment monitoring of third plus offenders

All third and subsequent offenders shall be sent to the first offender program for evaluation and if they are alcohol or drug abusers they shall be sent to treatment for a full year.]

8:66A-6.14 Client treatment procedures

(a) [Both the] **The Intoxicated Driver Resource Center or Intoxicated Driving Program, as appropriate, and the treatment program must conclude that the client [needs] is appropriate for treatment before treatment [is to] commences.** If the treatment program, after performing a proper evaluation under this chapter, indicates the client [does not need] **is not appropriate for treatment or needs an alternate treatment referral, the client shall be referred back to the Intoxicated Driver Resource Center [Intoxicated Driving Program] for [further evaluation and, if] appropriate[, referral] action.** [If the client is returned to the Intoxicated Driver Resource Center/Intoxicated Driving Program by the treatment program as not in need of treatment, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall refer the client to another treatment program

for another initial evaluation. If this treatment program decides the client does not need treatment and the Intoxicated Driver Resource Center/Intoxicated Driving Program still contends the client needs treatment, and the client does not consent to treatment, the client shall be referred to the sentencing court for appropriate action.] **The Intoxicated Driver Resource Center or Intoxicated Driving Program will close the case unless it is determined that the criteria used, in accordance with N.J.A.C. 8:66A-4.2, justify treatment. A client refusing to participate in treatment after two findings that treatment is appropriate shall be referred to the sentencing court as non-compliant, in accordance with N.J.A.C. 8:66A-8.**

8:66A-6.18 Treatment [prior to conviction] after arrest

(a) The Intoxicated Driver Resource Center may give credit for attendance in treatment after arrest, if the treatment was at an approved facility; such time served does not exempt offenders from Intoxicated Driver Resource Center detention requirements.

(b) **The Intoxicated Driver Resource Center, subject to applicable confidentiality statutes and rules, shall require the previous treatment program to submit the results of its evaluation. The Intoxicated Driver Resource Center shall perform its own evaluation, and develop a new treatment plan with the offender, as appropriate.**

8:66A-7.1 Intoxication at the Intoxicated Driver Resource Center

(a) If a client appears to be under the influence of alcohol or drugs upon arrival or during the Intoxicated Driver Resource Center session, the Intoxicated Driver Resource Center may implement the following procedure:

1.-2. (No change.)

3. If the client is not incapacitated, but is intoxicated, the Intoxicated Driver Resource Center [shall] **may admit the client or reschedule the client. This determination shall take into account the welfare and the safety of other clients, and the degree of disruption the client's attendance creates.** The fact that the client was under the influence shall be noted in the client's file and shall be used as part of the counselor's evaluation;

4. All persons who appear to be under the influence of alcohol or drugs (clients or non-clients) and [drive] **are observed driving a vehicle away from the Intoxicated Driver Resource Center may be reported to the police; and**

5. (No change.)

8:66A-9.1 Multiple offenders

(a) Prior to restoration of a **multiple offender's** driver's license, [a client] **the offender** shall be evaluated by the Intoxicated Driver Resource Center/Intoxicated Driving Program, and if treatment is complete, a recommendation for license restoration will be made to the Division of Motor Vehicles providing that:

1. (No change.)

2. [He or she] **The client** has successfully completed **at least three months of approved treatment requirements and agrees to complete the remainder of any ordered treatment plan.**

(b) If treatment completion took place more than a year before the request to restore the driver's license, documentation and an update by a counselor [is] **are required, or reevaluation may be required by the Intoxicated Driver Resource Center at an approved facility, or the reevaluation may be done by the Intoxicated Driver Resource Center itself.**

8:66A-9.2 Out-of-State offenders

(a) Out-of-State residents [will be given the opportunity by the Intoxicated Driving program to complete program] **may satisfy program requirements [and programs] in their home state or in New Jersey.** [Clients who choose New Jersey will be scheduled in the normal fashion.] If a client chooses to participate in his or her home state, the Intoxicated Driving Program will provide the client with a blank certificate of detention and instructions on program compliance. **Out-of-State residents within reasonable driving distance (one hour's travel time) of an Intoxicated Driver Resource Center shall be scheduled in New Jersey.**

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

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services

Early and Periodic Screening; Diagnosis and Treatment/Private Duty Nursing (EPSDT/PDN)

Proposed Amendments: N.J.A.C. 10:60-1.1, 1.2, 1.4 and 4.2

Proposed New Rule: N.J.A.C. 10:60-1.13

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

Authority: N.J.S.A. 30:4D-6b(2), 7, 7a, b and c; 30:4D-12, 30:4E; 42 CFR 440.40, 42 CFR 441.50, 42 USC 1396a(a)(43); 1902(a)43 of the Social Security Act, 1905(r) of the Social Security Act; 42 U.S.C. 1396d.

Agency Control Number: 94-P-21.

Proposal Number: PRN 1995-64.

Submit comments by February 16, 1995 to:

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

The agency proposal follows:

Summary

The Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) defines, in section 1905(r)(5) of the Social Security Act (cited above), early and periodic screening, diagnosis and treatment (EPSDT) to include such other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions identified by the screening services, whether or not such services are covered under the State Plan. In order to provide private duty nursing services currently not covered under the State plan, the Division of Medical Assistance and Health Services is proposing to amend the Home Care Services chapter (N.J.A.C. 10:60) to provide requirements and standards for the provision of private duty nursing services under EPSDT provisions and to codify those practices previously disseminated through Medicaid communications.

The proposed amendments and new rule:

1. Define early and periodic screening, diagnosis and treatment/private duty nursing (EPSDT/PDN) services;
2. Specify who is eligible for EPSDT/PDN services and under what circumstances the services will be authorized;
3. Explain the referral and prior authorization process for EPSDT/PDN services;
4. Explain the billing procedures for EPSDT/PDN services;
5. Specify the requirements for on-going documentation; and
6. Specify the on-going monitoring which will be conducted by Division of Medical Assistance and Health Service staff.

The proposed amendment and new rule at N.J.A.C. 10:60-1.2 and 1.13(a) define eligible individuals as Medicaid recipients under the age of 21 years, who require EPSDT private duty nursing services in order to enable them to be cared for in a community setting. The proposed new rule at N.J.A.C. 10:60-1.13(a) reminds providers that individuals eligible for Medicaid services through the Medically Needy Program are not eligible for EPSDT services in accordance with N.J.A.C. 10:49-5.3(a)2.

The proposed amendment at N.J.A.C. 10:60-1.4 deletes confusing language without affecting provider or recipient eligibility for Home Health Services.

Under the proposed new rule at N.J.A.C. 10:60-1.13(b), in order to be considered in need of EPSDT private duty nursing services, an individual must exhibit a severity of illness that requires complex interventions by licensed nursing personnel or a trained caregiver on an ongoing basis (24 hours a day), making care continuous rather than

intermittent. The proposed new rule at N.J.A.C. 10:60-1.13(c) contain the criteria for authorization of private duty nursing services.

The proposed new rule at N.J.A.C. 10:60-1.13(d) through (h) specifies the referral process, the assessment process, the prior approval process, and reapproval or modification processes. Billing and reimbursement processes, and Medicaid District Office (MDO) and Office of Home Care Programs oversight responsibilities, are referenced at N.J.A.C. 10:60-1.13(i). The requirements for on-going clinical documentation and the on-going monitoring which will be conducted by Division staff are specified in N.J.A.C. 10:60-1.13(j).

Social Impact

The proposed amendments and new rule will favorably impact on the availability of EPSDT/PDN services in the community. Children under the age of 21 shall become eligible to receive nursing care within their own homes, without establishing eligibility for a special home and community-based services "waiver" program.

As a result of the increased availability of PDN services in a community setting, the duration of hospitalization may be reduced and more children may be cared for in their home. Families of a severely medically compromised child may be able to maintain the child at home and participate in the care needs of the child thereby contributing to family unity.

Economic Impact

It is anticipated that the number of clients served in the first year will number 200. Assuming an average cost of \$50,000 per child per year, the annualized cost of providing EPSDT/PDN services outside of a waiver will be \$10 million (Federal and State combined estimate). These costs were anticipated in the preparation of the fiscal year 1995 budget. There will be no economic impact to recipients of EPSDT/PDN services because they are covered through Medicaid.

Regulatory Flexibility Analysis

The proposed amendments and new rule have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Home care, private duty nursing providers are required to maintain sufficient records to indicate the name of the patient, dates of service, nature and extent of services provided. The requirement is part of the State Medicaid Statute, N.J.S.A. 30:4D-12. The recordkeeping requirements for EPSDT/PDN shall be in accordance with N.J.A.C. 10:60-2.9(d). The proposed new rule does not create any additional compliance requirement, except that providers may have to employ qualified personnel to render PDN services. This rule is not intended to impose any additional costs on providers; however, some providers may incur additional costs if they wish to expand their scope of service.

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

10:60-1.1 Purpose and scope

(a) (No change.)

(b) This chapter provides requirements for, and information about, the following programs:

1.-2. (No change.)

3. Home and Community-Based Services Waiver programs, which include the following:

i.-ii. (No change.)

iii. Home and Community-Based Services Waiver for Persons with AIDS and Children under five who are HIV Positive, known as AIDS Community Care Alternatives Program (ACCAP); [and]

4. Home Care Expansion Program (HCEP)[.]; and

5. Early and Periodic Screening, Diagnosis and Treatment/Private Duty Nursing (EPSDT/PDN) Services.

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

(f) N.J.A.C. 10:60-4 HCFA Common Procedure Coding System—HCPCS, outlines the procedure codes used to submit a claim for services provided under the [Personal Care Assistant] **personal care assistant** services program, Home and Community-Based Services Waiver programs, [and] the Home Care Expansion Program, **and Early and Periodic Screening, Diagnosis and Treatment/Private Duty Nursing Services.**

10:60-1.2 Definitions

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

...

“Early and periodic screening, diagnosis and treatment/private duty nursing (EPSDT/PDN)” means the private duty nursing services provided to Early and Periodic Screening, Diagnosis and Treatment Program recipients under 21 years of age who live in the community and whose medical condition and treatment plan justify that need.

...

10:60-1.4 Covered home health services

(a) Home health care services covered by the New Jersey Medicaid program are limited to those services provided directly by a home health agency approved [certified for Medicaid by the New Jersey Department of Health and approved in accordance] to participate in the New Jersey Medicaid program or through arrangement by that agency for other services.

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

10:60-1.13 Eligibility for early and periodic screening and diagnosis and treatment/private duty nursing services

(a) EPSDT eligible individuals under 21 years of age who are enrolled in the Medicaid program and who require private duty nursing services which will allow them to be cared for in a community setting, may be referred for EPSDT/PDN services.

1. Individuals eligible for Medicaid services through the Medical-ly Needy program, are not eligible for the EPSDT program, in accordance with N.J.A.C. 10:49-5.3(a)2.

(b) An individual must exhibit a severity of illness that requires complex intervention by licensed nursing personnel, to be considered in need of EPSDT/PDN services. EPSDT/PDN services are only appropriate for such cases when the following requirements are complied with:

1. There is a capable adult primary caregiver residing with the individual who accepts ongoing 24-hour responsibility for the health and welfare of the recipient;

2. The primary caregiver agrees to provide a minimum of eight hours of hands-on care to the individual in any 24-hour period; and

3. The home environment can accommodate the required equipment and licensed PDN personnel.

(c) The following criteria shall apply to EPSDT/PDN services:

1. Private duty nursing shall be provided for EPSDT-eligible Medicaid recipients in the community only and not in hospital inpatient or nursing facility settings.

2. The Medicaid District Office (MDO) shall determine and approve the total PDN hours for reimbursement, in accordance with (e) below. A maximum of 16 hours of private duty nursing services may be provided in any 24 hour period.

3. The determination of the total EPSDT/PDN hours approved, up to the maximum of 16 hours per 24 hour period, shall take into account alternative sources of care available to the caregiver (for example, medical day care, or private duty nursing covered by private insurance).

4. In emergency situations, for example, when the sole caregiver has been hospitalized, the MDO may authorize, for a limited time, additional hours beyond the 16 hour limit.

(d) To qualify for payment of EPSDT/PDN services, the recipient shall be referred by a parent, primary physician, hospital discharge planner, special child health services case manager or current PDN provider. Requests for services shall be submitted to the Medicaid District Office (MDO) servicing the county where the child is currently located using a “Request for EPSDT Private Duty Nursing Services (FD-389)” form. The Request shall be completed and signed by a physician and agreed to and signed by a parent or guardian. All sections of the Request must be completed and a physician’s case summary and current treatment plan shall be attached. Incomplete requests shall be returned to the referral source for completion prior to further action by the Medicaid agency.

1. For individuals enrolled in a managed care program, the Physician Case Manager (PCM) will determine the need and approve the PDN services. For children enrolled in the Garden State Health Plan, the “Garden State Health Plan Authorization Form (GSHP-7)” form must be used.

(e) Upon receipt of the fully completed Request (FD-389), the Medicaid Regional Staff Nurse (RSN) will conduct an assessment

(CITE 27 N.J.R. 280)

of the need for PDN services, as well as the level (LPN or RN) and amount of service required. A letter notifying the family and the person who referred the individual of the decision following the RSN’s assessment will be issued by the MDO on the “Medicaid District Office Authorization/Approval/Denial Form (FD-390).” The number of hours approved, the level of services, and the length of time of the approval (up to a maximum of six months) will be noted on the form.

(f) If the prospective PDN provider has not yet been selected at the time of the assessment and approval of the need for PDN services, the PDN agency, when selected, shall submit a request to the MDO for the PDN services on the “Prior Authorization Request Form (FD-365)” which contains a pre-printed prior authorization (PA) number. Telephone requests for prior authorization (PA) can be accommodated in an emergency but shall be followed immediately by a written request.

(g) If the PDN provider has already been selected, the MDO staff, working in conjunction with a hospital discharge planner, will create an active PA record for the individual. This will allow for immediate PDN service provision and billing at the time of the individual’s hospital discharge.

(h) Requests for continuation, or modification of PDN services during the treatment period, shall be submitted by the PDN agency, in writing, to the MDO on the “Prior Authorization Request Form (FD-365).” In an emergency, requests for modification of services may be made by telephone but shall be followed immediately by a written prior authorization (PA) request, in accordance with N.J.A.C. 10:60-1.13(c).

1. Although the requirement for prior authorization (PA) applies to EPSDT/PDN and Garden State Health Plan (GSHP) recipients, the PA process does not apply to recipients of PDN services in Model Waiver III, the AIDS Community Care Alternatives Program (ACCAP), or the ABC Program for Medically Fragile Children.

(i) Claims for payment for PDN services shall be submitted on the Health Insurance Claim Form (1500 N.J.). The PA number from the “Medicaid District Office Authorization/Approval/Denial Form (FD-390)” shall be noted on the claim form. Providers shall bill each date of service on a separate line (FIELD 24A) of the claim form. If more than one procedure code is billed for the same date of service, separate lines shall be used when billing each procedure code. Providers shall not span dates of service on a line of the claim form.

1. Private duty nursing provider charges may vary but reimbursement cannot exceed the maximum rates allowed by the Division in accordance with N.J.A.C. 10:60-4.2(e).

2. The prior authorization (PA) and billing processes also applies to PDN providers servicing children enrolled in the Garden State Health Plan. For services provided to these individuals, the PDN provider must also include the PA number from the “Garden State Health Plan Authorization Form (GSHP-7)” on the 1500 N.J. claim form.

(j) EPSDT/PDN providers shall submit to the MDO, every two months, comprehensive clinical summaries reflecting recipients’ medical status and need for ongoing services. The MDO staff will review the submitted clinical data and may conduct on-site home visits before reauthorizing PDN services. In addition, MDO staff will perform Home Care Quality Assurance Reviews of these individuals. In accordance with N.J.A.C. 10:60-1.17, the Office of Home Care Programs will continue on-site monitoring of private duty nursing agencies to review compliance with personnel (N.J.A.C. 10:60-1.16(b)-(g)), recordkeeping (N.J.A.C. 10:60-1.16(j)) and service requirements (N.J.A.C. 10:60-1.16(h)).

Recodify existing N.J.A.C. 10:60-1.13 through 1.17 as N.J.A.C. 10:60-1.14 through 1.18. (No change in text.)

10:60-4.2 HCPCS Codes

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

(e) HCPCS CODES FOR EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT/PRIVATE DUTY NURSING:

| | |
|--|---------|
| Z1710 WT PDN—RN, EPSDT, Per Hour | \$30.00 |
| Z1730 WT PDN—RN, EPSDT, Enhanced, Per Hour | \$35.00 |
| Z1735 WT PDN—LPN, EPSDT, Per Hour | \$25.00 |

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**Long Term Care Services****Care Guidelines and Audits; Rates of Reimbursement****Proposed Amendments: N.J.A.C. 10:63-3.2, 3.3, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.16, 3.18, 3.19, 3.20, 3.21, 4.1, 4.2, and 4.3**

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

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b and c; 30:4D-12.

Agency Control Number: 94-P-30.

Proposal Number: PRN 1995-62.

Submit comments by February 16, 1995 to:

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

A copy of this proposal is available for review at the County Welfare Agencies or the Medicaid District Offices.

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services has completed a review of the reimbursement system for nursing facilities, otherwise known as the CARE Guidelines (N.J.A.C. 10:63-3). After extensive reassessment of the system, including the completion of appropriate fiscal analyses, the Division has made findings that a revision of the guidelines is necessary at the present time. Consequently, a number of modifications are being proposed which will: eliminate certain rate components that do not correspond to facility costs or do not relate to patient care; stress economy in non-patient care areas of facility operations; increase the efficiency of the rate setting process; provide detail of the current calculation of the reimbursement rates which had not previously been included in the rules; and correct certain technical errors and omissions in the current rules. In addition, certain timing and technical adjustments are being made in the audit section of the Long Term Care Manual.

Throughout the proposal, references to long term care facilities (LTCFs) are changed to nursing facilities (NFs), to conform to current terminology.

The following describes the substantive revisions which are being made in this proposal. Any changes in the section headings reflect the proposed caption.

N.J.A.C. 10:63-3.2 Timing

Text was added to allow the Director of the Division of Medical Assistance and Health Services to delegate authority for making determinations regarding the mitigation or waiver of penalties for late filing of cost reports by nursing facilities.

Text was added to preclude a facility from filing a revised or amended cost report after its original submission to the rate setting unit. This would also preclude a facility from filing an appeal requesting the reclassification or addition of costs to an original cost report submission (also see N.J.A.C. 10:63-3.20). This provision, however, does not preclude a facility from requesting adjustment to an original cost report if such revision would prevent the occurrence of an overpayment by the Division.

N.J.A.C. 10:63-3.3 Rate components

Text was added to exclude legal expenses related to the appeal of reimbursement rates.

Text was deleted which results in the elimination of payment of a working capital for the period of time between the provision of services and the payment of these services. This was revised because it represents reimbursement for a speculative cost not directly related to patient care, which the Division is not obligated to reimburse.

N.J.A.C. 10:63-3.6 General services expenses

Text was amended to reduce the uniqueness factor for the administrator screen from 1.1 to 1.05. Text was also amended to reduce the

increment of the assistant administrator screen from 125 percent to 105 percent of the median unrelated assistant administrator compensation.

N.J.A.C. 10:63-3.7 Property operating expenses

Text was amended to authorize an agent, other than the Department of Transportation, to perform facility appraisals for the purpose of determining property reimbursement. This rule is being changed to formalize the current practice of retaining appraisal firms to perform this function.

Text was amended to reduce the increment to the utility cost screen from 150 percent to 125 percent of the Statewide median utility cost per bed.

N.J.A.C. 10:63-3.8 Special amortization

Text was amended to expand the period of time for the amortization of expenditures from 36 to 60 months to 12 to 60 months.

Text was added to authorize the review of alternative bids as a method of determining the reasonableness of expenses related to capital acquisitions or projects.

N.J.A.C. 10:63-3.9 Routine patient care expenses

Text was amended to eliminate historical terminology related to the implementation of the OBRA/Licensure Reform changes related to the calculation of the nurse staffing cost limit as it occurred on October 1, 1990.

Text was also added to formalize that the NF patient billing and certification process will be the exclusive mechanism for reporting acuties/patient conditions, in order to avoid extensive and burdensome appeals.

Text was transferred from N.J.A.C. 10:63-3.19 regarding the procedure for reporting acuties. This provision was moved in order to retain this part of the text of section 3.19, which is pertinent to the calculation of the nursing cost screen. The change is necessary, because all other text related to this subject matter in the latter section is being omitted due to the elimination of the (six month) acuity adjustment for changes in patient conditions (see description of changes for Section 3.19).

N.J.A.C. 10:63-3.10 Property-capital costs

Text was deleted to eliminate return on equity (return on investment) as a reimbursable item in the Medicaid NF reimbursement rate.

Text was added to change the property capital reimbursement system to limit a facility's reimbursement for the property capital expenses to the lower of actual depreciation, interest, and rent or the aggregate annual Capital Facilities Allowance for building, land and moveable equipment.

N.J.A.C. 10:63-3.11 Buildings

Text was amended to clarify the capital facilities allowance by including detail of the historical changes in the CFA calculation process. This was done to not only document the revisions, but, also, to establish the process of the CFA calculation for either facilities which become Medicaid NF providers at a time subsequent to their original construction and inception of operations or facilities which originally received a special CFA calculation resulting from being financed through a governmental authority.

Text was added to identify the new references source for the calculation of the CFA "interest rate" as the Table of Average Interest Rates on Special Issues of Public-Debt Obligations Issued to the Federal Hospital Insurance Trust Fund. This change is being made, because the table previously used as a reference (Table of Interest Rates for Proprietary Provider's Return on Equity Capital for Skilled Nursing Facilities) is being phased out resulting from Medicare's elimination of return on equity as an element of reimbursement. There will be no difference in the data reported on the new table. Like the original table, it will be published by the Federal Health Care Financing Administration. The data on the substituted table will be derived from the same source and calculated in the same manner as in the original table.

Text was deleted to eliminate the requirement of reducing the CFA interest or amortization rate when the Medicare return on equity rate decreases.

Text was deleted which results in the elimination of the special treatment for reimbursement of property capital costs for facilities which were financed through a governmental agency. This will result in the elimination of any consideration for "soft costs" and reference to actual financing interest rates in the calculation of the Capital Facilities Allowance.

Related to property capital, the Division has not deleted the use of 1977 values for facilities built before 1978. (See N.J.A.C. 10:63-3.11(a)1.)

The text of N.J.A.C. 10:63-3.11 is being supplemented to detail the calculation of the Capital Facilities Allowance (CFA) for facilities built after 1977. Previously, the rules made only a general reference to these facilities as being calculated at current price levels. (See N.J.A.C. 10:63-3.11(o).)

N.J.A.C. 10:63-3.12 Land

Text was added to document the historical modifications in the rate calculation process for land reimbursement and, also, to establish the process of the CFA land calculation for either facilities which become Medicaid NF providers at a time subsequent to their original construction and inception of operations or facilities which originally received a special CFA calculation resulting from being financed through a governmental authority (this special CFA calculation would be eliminated under the proposed changes in N.J.A.C. 10:63-3.11).

Text was deleted at N.J.A.C. 10:3-3.12(a) in order to fix property capital reimbursement at the levels determined as of the date of the origination of the CARE system (1977) or, for facilities built after 1977, at the completion of construction. In addition, the Medicare return on equity rate is no longer being published.

N.J.A.C. 10:63-3.13 Moveable equipment

Text was added to address the possibility of multiple interest rates in a separate section referenced in this provision.

N.J.A.C. 10:63-3.16 Target occupancy levels

Text was added which requires paid bed hold days to be included in actual base period patient days in the calculation of the general services and patient care components of the per diem rate.

Text was added which creates a minimum target occupancy of 85 percent for general services and patient care components of the per diem rate, in order to avoid reimbursement of costs incurred by inefficiently operated facilities.

N.J.A.C. 10:63-3.18 Adjustments to base period data

Text was added to specifically provide for adjustments of base period data (Schedule C Adjustments) for appointment of special medical guardians and emergency evacuations of facilities made pursuant to an Emergency Management Evacuation Procedure.

Text was deleted to eliminate a paragraph which is printed twice in the current rule (N.J.A.C. 10:63-3.18(a)4 and 5).

N.J.A.C. 10:63-3.19 Inflation

Text was added to clarify which property components of the rate are not inflated in the prospective rate calculation.

N.J.A.C. 10:63-3.20 Total rates

Text was deleted and added which results in the elimination of payment of a working capital allowance.

Text was deleted which results in the elimination of the (six month) acuity adjustment of the nursing component of the rate relating to changes in patient conditions (acuties).

Text regarding the procedures for reporting acuties was transferred to N.J.A.C. 10:63-3.9.

Text was added which specifically precludes any allowance in the rate for participation in a cooperative buying group. Cooperative buying groups are now an industry norm and the allowance is, therefore, no longer needed as an incentive to participation.

N.J.A.C. 10:63-3.21 Appeals process

Text was added which reinforces a new provision in N.J.A.C. 10:63-3.2 which eliminates the possibility of appealing a rate for the substitution or revision of a cost report, when an error or omission was made by a facility in the preparation of its cost report.

Text was added which revises the time limit for submitting a rate appeal. The proposal establishes: a revised time limit (20 calendar days from notification of the rate) for requesting a level I appeal; a new time limit (50 calendar days from notification of the rate) for submission of specific appeal issues; and a new time limit (80 calendar days from notification of the rate) for submission of documentation supporting an appeal.

N.J.A.C. 10:63-4.1 Audit cycle

Current rules allow the Division to extend the audit period in the conduct of the audit. Text was added to allow the Division to extend the audit period when the NF has failed to cooperate in the initiation of the audit.

N.J.A.C. 10:63-4.2 Audits

Text was added to clarify that the statement "completion of a field audit" in this section is used exclusively for the purpose of calculating interest, under N.J.S.A. 30:4D-17(f).

N.J.A.C. 10:63-4.3 Final audited rate calculation

Text was deleted which differentiated, for the purposes of recalculating rates following audit, the treatment of reclassified costs, as opposed to previously unreported costs. The exclusion of this language will allow the use of all costs recognized on audit, whether misclassified or unreported in the original cost report, in the calculation of rates after audit. The final per diem rates after audit will continue to be limited to the previously established rates, per N.J.A.C. 10:63-4.3(b).

Social Impact

These proposed amendments should not impact on Medicaid recipients, since they will continue to receive nursing facility services. There are approximately 30,000 Medicaid recipients, and 315 facilities which provide long term care services.

Nursing facilities will be affected by this proposal. However, this impact will be economic rather than social, as described in the statement below. There may be an impact on eligibility for some of the home and community based waiver programs, as described in the Economic Impact below.

Economic Impact

Nursing facility providers will realize a negative fiscal impact as a result of the proposed amendments. This impact would range from a minimum decrease in the Medicaid per diem rate from approximately \$.51, resulting from the discontinuance of the working capital provision, to several dollars from the per diem rate, resulting from a combination of the other proposed rate adjustments, depending upon the circumstances of each facility. The average rate decrease resulting from the combination of all of the proposed changes is projected to be \$3.27 per diem for each Medicaid patient.

Changes in the reimbursement for nursing facilities contained in these proposed amendments will impact upon reimbursement for certain special care nursing facilities, since SCNF rate calculation parallels NF reimbursement methodology. Consequently, the changes being made to certain cost limits and the CFA impact SCNF rates. These amendments will also impact on medical day care centers (Centers) whose reimbursement is based on a percentage of the applicable NF per diem rate (facility-specific or Statewide average). The amendments also impact upon hospice providers, whose reimbursement for care for an individual residing in a NF is based on a percentage of the NF's per diem. Finally, these amendments may impact on eligibility for some of the home and community-based waiver programs, since NF reimbursement is used as a guideline for cost caps for medical care under the waiver programs.

Medicaid recipients are required to pay towards the cost of nursing facility care from their available income. This is a long standing Medicaid policy (see N.J.A.C. 10:63-1.16). However, these amendments do not impact on Medicaid recipients *per se*.

The potential cost savings/cost avoidance to the Medicaid Agency is approximately \$36 million per year, of which \$18 million per year is the State share. This represents an approximate 3.6 percent reduction in reimbursement.

Regulatory Flexibility Analysis

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Some of the providers of long term care services may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no additional reporting, recordkeeping, or other compliance requirements, except for the appeal process, as indicated in the above Summary. The providers are already required to maintain sufficient records to fully disclose the name of the recipient who received the service, date of service, and any additional information as may be required by law or rule (see N.J.S.A. 30:4D-12). This requirement applies equally to all providers regardless of size. The paperwork requirements remain the same. There should be no capital costs associated with these amendments. The impact of these amendments is the economic impact upon providers as indicated in the previous section.

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

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

10:63-3.2 Timing

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

(d) The Director, Division of Medical Assistance and Health Services, or a designee of the Director, may mitigate or waive the penalties specified in (b) above, for "good cause" shown:

1.-3. (No change.)

(e) (No change.)

(f) **A nursing facility cost report cannot be substituted or revised by a NF after submission to Department of Health, Facilities Rate Setting, unless such substitution or revision would prevent an overpayment to the NF.**

10:63-3.3 Rate components

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

(g) A provision for inflation will be added to reasonable base period costs in calculating the prospective rates as described in [section 18 of this subchapter] N.J.A.C. 10:63-3.19. [Finally, a working capital provision will be added as described in section 19 of this subchapter.]

(h)-(j) (No change.)

(k) **The cost of legal services for the appeal of reimbursement rates shall be excluded for reimbursement purposes.**

10:63-3.6 General service expenses

(a) (No change.)

(b) The bases for screen development and reported costs subject to applicable screens, are as follows:

1. (No change.)

2. Administrator: Reasonable compensation of unrelated administrators as determined by the regression analysis formula utilized by the Department of Health, Health Facilities Rate Setting.

i. The regression will utilize as variables: fringed salaries of unrelated administrators and facility bed size. The constants resulting from the regression formula will then be used in the following formula to produce reasonableness limits for each long term care provider.

$$\left[x + \left(\frac{y}{\text{Median Days Per Bed}} \times \frac{\text{NF Patient Days}}{\text{Days}} \right) \right] \times [1.1] 1.05 = \text{Limit}$$

x = Salary constant from regression

y = Per bed salary constant from regression

[1.1] 1.05 = [10] 5 percent Uniqueness factor

ii.-iv. (No change.)

3. Assistant Administrator: Limited to [125] 105 percent of median unrelated assistant administrator compensation.

i. This cost category will apply only to facilities which exceed 99 licensed nursing facility beds.

4. Other general services and legal fees. This category will consist of the following cost elements[;]:

i.-v. (No change.)

5.-8. (No change.)

10:63-3.7 Property operating expenses

(a) Property operating expenses include property taxes and utilities.

1.-3. (No change.)

4. For NFs whose [Department of Transportation (D.O.T.)] appraised value per plant square foot (as determined by an agent designated by the State) is greater than 110 percent of the median construction costs at 1977 price levels, the property taxes attributable to the excess will be excluded from the rate base unless the owners can demonstrate unusual circumstances. For screening new NFs, this figure will be revised each year for inflation and for effects of standards changes upon construction cost. (See N.J.A.C. 10:63-3.11 for the methodology for calculating this limit at 1977 price levels.)

5.-8. (No change.)

(b) (No change.)

(c) Utility costs will be screened for reasonableness as follows:

1. Base period utility costs per bed will be deemed [apparently] unreasonable to the extent that they exceed [150] 125 percent of

the Statewide median cost per bed, as determined for each class type of NF indicated in N.J.A.C. 10:63-3.3.

i. (No change.)

10:63-3.8 Special amortization

(a) The departments will consider on an individual basis, the amortization of start-up costs and special expenditures in rates. Each case will be reviewed on its particular merits and, accordingly, no guidelines are specified herein. As a rule, however, provisions for special amortization would relate to expenditures of a capital nature that are mandated by changes in laws and regulations. The amortization period would generally range from [36] 12 to 60 months, depending upon the nature and magnitude of expenses.

(b) In approving the amortization of special expenditures, the departments will also consider the extent to which a NF's rates are based on capital and cost levels of fully complying NFs, or, for capital items, a review of bids on the acquisition or project.

10:63-3.9 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services (RN's, LPN's and other) will be established as follows:

1. The minimum nursing requirements in terms of hours worked will be calculated for each Class I and Class II NF based upon the case mix patient classification [(see N.J.A.C. 10:63-3.20(a)5ii)] (see N.J.A.C. 10:63-3.9(b)1ii(2) and standards in effect during the base period[.]. [except that, beginning October 1, 1990, minimum] Minimum nursing requirements in terms of hours shall be calculated for each [nursing facility] NF based upon:

i. (No change.)

ii. The base period patient mix related to additional nursing services requiring additional minimum nursing time as derived from patient counts reported by each facility to the Medicaid fiscal agent:

(1) [On the day of February 1, 1990 for the rate effective October 1, 1990 and for any routine annual prospective rate changes which become effective from October 1, 1990 to March 31, 1991, and] Patients with conditions requiring additional nursing services will be reported by means of the billing turnaround document (TAD) for Medicaid recipients, and the Medicaid billing certification document for non-Medicaid patients. If a facility fails to report a condition requiring additional nursing services on the original TAD or billing certification document, the count will not be used in the facility's rate calculation.

(2) [From the data used in the most recent adjustment for patient mix (N.J.A.C. 10:63-3.19(a)5.iii) for each nursing facility's routine annual prospective rate change which occurs from April 1, 1991 until the effective date of the nursing facility rate which includes a full year of patient and cost data under N.J.A.C. 8:39-25.1 et seq.] Facilities will report patients with conditions requiring additional nursing services if a patient: resided in the facility and had the condition(s) for the entire month; resided in the facility for the entire month and developed the condition(s) during that month; or entered the facility and had the condition(s) for some portion of the month. This count shall include patients who develop condition(s) during a month or enter the facility with condition(s) and cease to have this condition, are discharged, or die during the same month. No reporting shall be made for a patient who ceased to have the condition(s), died or left the facility during a month (other than the month of admission or onset of the condition(s)), except for a patient who was on a bed hold leave to an acute care hospital and returned to the facility.

iii. The State Department of Health minimum nurse staffing standards [operative beginning October 1, 1990], according to N.J.A.C. 8:39-25[.1 et seq].

iv. (No change.)

2.-7. (No change.)

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

10:63-3.10 Property-Capital Costs [(including Return on Investment (ROI))]

(a) Included in this category are the following rate components:

1.-5. (No change.)

[6. Return on equity (or fund balances in the care of nonpropriety homes);]

Recodify existing 7 through 9 as 6. through 8. (No change in text.)

(b) (No change.)

(c) The departments believe that the above objectives can best be met by establishing an aggregate "capital facilities allowance" (CFA) [which would replace all of the rate components noted above]. **The aggregate annual CFA for building, land, and movable equipment shall constitute the maximum reasonable reimbursement for depreciation (except automobiles), rentals of buildings and equipment (except automobiles), interest on all indebtedness, and amortization of leasehold improvements. Reimbursement shall be limited to the lower of:**

1. **The total actual NF expenses for depreciation, interest and rental; or**

2. **The aggregate capital facilities allowance for building, land, and movable equipment.**

(d) (No change.)

10:63-3.11 Buildings and fixed equipment

(a) The CFA for buildings and fixed equipment will be based upon appraised [1977 replacement costs less wear and tear, subject to reasonableness limits as described in (c), (d) and (e) below.] value as follows:

1. **For NFs beginning operation before January 1, 1978, the CFA will be determined based upon appraised 1977 replacement costs derived from nationally recognized construction cost manuals, less wear and tear and subject to reasonableness limits as described in (c), (d) and (e) below.**

2. **For NFs, or significant additions to existing NFs, beginning operation on or after January 1, 1978, the appraised value will be determined at the time construction is completed, based upon price levels derived from nationally recognized construction cost manuals, subject to reasonableness limits as described in (c), (d) and (e) below.**

(b) The appraisals are to be conducted by [the New Jersey Department of Transportation] **an agent designated by the State.**

(c) (No change.)

(d) A reasonableness limit on appraised value per square foot will be established [at 110 percent of the median appraised values, at 1977 price levels, of proprietary and voluntary NFs which had over 20 percent Medicaid days in the base period. A separate reasonableness limit will be developed for governmental NFs by the same method.] as follows:

1. **For NFs beginning operation before January 1, 1978, at 110 percent of the median appraised value, at 1977 price levels, of proprietary and voluntary NFs which had over 20 percent Medicaid days in the base period;**

2. **For NFs beginning operation on or between January 1, 1978, and December 31, 1984, at the original reasonableness limit as determined from (d)1 above, increased for inflation by 15 percent for the first year and 10 percent for each succeeding year;**

3. **For facilities beginning operation on or after January 1, 1985, at the reasonableness limit determined for 1984, incremented annually by a factor for inflation which is the average of percentages representing cost increases derived from:**

i. **The Marshall Swift Valuation Index for the Eastern District; published by Marshall and Swift, 1617 Beverly Blvd., P.O. Box 26307, Los Angeles, California; and**

ii. **Inflation factors published by the U.S. Department of Labor, Bureau of Labor Statistics for New York and Northeastern New Jersey;**

4. **For significant additions to existing NFs beginning operation since January 1, 1978, at the original reasonableness limit as determined from (d)1 above, increased by a factor for inflation (see (d)2 above). A single weighted reasonableness limit for the entire NF will be calculated based upon the square footage and the corresponding construction cost factors of the building as originally appraised and the appraised addition(s); and**

5. **A separate reasonableness limit will be developed for governmental NFs by the same method.**

(e) (No change.)

(f) [Two rates will be developed for calculating the CFA for NFs.] **The CFA for buildings and fixed equipment will be determined by applying the appropriate interest or amortization rate, described in (f)1 and 2 below, to the reasonable appraised value of the building and fixed equipment.**

1. Interest rate:

i. **For NFs beginning operation before January 1, 1978, the interest rate is [Equal] equal to the Medicare return on equity rate for the 12 month period ending with December of 1976 (10.719 percent).**

ii. **For NFs, or significant additions to existing NFs, beginning operation between January 1, 1978 and September 30, 1985, the interest rate is equal to the Medicare return on equity rate published at the inception of operations.**

iii. **For NFs, or significant additions to existing NFs, beginning operations between October 1, 1985 and September 30, 1993, the interest rate is equal to 150 percent of the Medicare return on equity rate published at the inception of operations.**

iv. **For NFs, or significant additions to existing NFs beginning operations on or after October 1, 1993, the interest rate is equal to 150 percent of the applicable interest rate at the inception of operations as indicated by the Table of Average Interest Rates on Special Issues of Public-Debt Obligations Issued to the Federal Hospital Insurance Trust Fund as published by the Office of the Actuary of the Federal Health Care Financing Administration.**

2. [Amortization rate: Equal] **The amortization rate shall be equal to the ratio of annual debt service (principal and interest) to original principal required to amortize a loan in 25 equal installments, with an interest rate equal to the appropriate above defined "interest rate" [(11.631 percent)].**

(g) For the first 25 years of the life of a NF beginning with the year of construction, the amortization rate will be applied to the [1977] reasonable appraised value of the building and fixed equipment.

(h) Beyond the 25th year after construction, the interest rate will be applied to the [1977] reasonable appraised value of buildings and fixed equipment.

(i)-(k) (No change.)

(l) For existing NFs the State will not increase the CFA rate in future years should the Medicare return on equity rate increase. [Should this rate decrease by more than the reasonable cost of refinancing, both the interest rate and the amortization rate will be reduced. Should financing through a governmental authority be obtained by a facility, the CFA rate will be adjusted as necessary based upon the lower of the previously established Medicare return on equity rate or the available financing rate incremented in accordance with Medicare return on equity factor.]

[(m) For new NFs or for additions to existing NFs the amortization rate will be established based upon the lower of the latest Medicare return on equity rate published at the inception of operations, or the governmental financing rate incremented in accordance with the Medicare return on equity factor. The provisions of (l) above will apply in subsequent years.]

[(n)](m) (No change in text.)

[(o) With respect to new NFs and significant additions to existing NFs, the appraised value will be determined based upon price levels at the time the constructions is completed.

(p) Expenses incurred by NFs in obtaining financing through a governmental authority may be allowable. These expenses should be presented for treatment under the special amortization provision of the rates, and they will be evaluated on an individual basis in accordance with N.J.A.C. 10:63-3.8(a) and (b).]

10:63-3.12 Land

[(a) The 1977 value of land and land improvements as appraised by the State Department of Transportation will be the basis for determining the CFA with respect to land, subject to reasonableness limits as defined for property taxes on land in N.J.A.C. 10:63-3.7, with respect to:

1. Reasonable land area;

2. The total reasonable appraised value of land and land area.]

(a) The CFA for land will be based upon appraised value of land and land improvements determined by an agent designated by the State of New Jersey as follows:

1. For NFs beginning operation before January 1, 1978, the 1977 value of land and land improvements;

2. For NFs beginning operation on or after January 1, 1978, the value of land and land improvements as of the completion of construction;

3. For additions to existing NFs beginning operation on or after January 1, 1978, the value of additional land acquired or additional land improvements made as of the completion of construction of the addition. Land or land improvements previously included in a facility's appraisal will not be reappraised in determining value of an addition to a facility;

4. For replacement facilities beginning operation on or after January 1, 1978, the value of additional land acquired or additional land improvements made as of the completion of construction. Land or land improvement included in the original facilities appraisal will not be reappraised in determining value of a replacement facility;

5. Land and land improvement value will be subject to reasonable limits with respect to:

i. Reasonable land area;

ii. The total reasonable appraised value of reasonable land area.

6. Reasonableness limits for land and land improvements will be the same as defined for property taxes on land in N.J.A.C. 10:63-3.7. For NF's beginning operation on or after January 1, 1978, the original reasonableness limit for reasonable appraised value will be increased by a factor for inflation, which factor will be the same as described in N.J.A.C. 10:63-3.11(d)2. For acquisitions of land related to addition(s) to building or building replacements, a single weighted reasonableness limit for the entire NF land evaluation will be calculated based upon acreage and the appraisal land limit factors of land as originally appraised, and the land-appraised addition(s) to land.

(b) The applicable interest rate developed for a facility per N.J.A.C. 10:63-3.11(f) will be applied to the [1977] reasonable appraised land value.

(c) The provisions of N.J.A.C. 10:63-3.11(l) through [(p)] (m) will also apply to CFA for land [in years subsequent to 1977].

(d) (No change.)

10:63-3.13 Moveable equipment

(a) (No change.)

(b) The allowance per licensed bed will be determined by applying to this median cost the applicable interest rate developed per N.J.A.C. 10:63-3.11(f)[(1), (m)].

(c) (No change.)

10:63-3.16 Target occupancy levels

(a) A target occupancy level of 95 percent of licensed bed-days (excluding quiet beds) will be used to develop the reasonable per diem amounts of the following rate components:

1.-3. (No change.)

4. CFA for:

i.-iv. (No change.)

v. Property insurance[.]; and

5. Actual NF expenses for depreciation, rental, interest, and amortization in accordance with N.J.A.C. 10:63-3.10(c).

(b) (No change.)

(c) The per diem amounts for all other expenses will be based upon reasonable base period costs divided by actual base period patient days (but no less than 85 percent of licensed bed days will be used).

1. Actual base period patient days shall include paid bed hold days.

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

10:63-3.18 Adjustments to base period data

(a) As described [in previous sections of these guidelines] elsewhere in this subchapter, with the exception of capital items, rates will be based upon reasonable actual base period costs. This section provides for adjustments to reasonable base period costs in establishing prospective rates.

1. (No change.)

2. NFs may also request that cost in addition to base period expenditures be included in the prospective rates owing to:

i.-ii. (No change.)

iii. Appointment of a special medical guardian required to authorize emergency medical treatment for a patient.

iv. Emergency evacuation of a facility which was conducted consistent with an Emergency Management Evacuation Procedure which has been duly adopted and fully implemented by the facility. Costs in additions to base period expenditures for emergency evacuation shall be only those extraordinary costs which are directly related to evacuation, and routine costs which exceed base period levels as a direct result of the emergency evacuation.

3.-4. (No change.)

[5. Where legal and management changes have been approved and the approved costs are not expended in the prospective rate period, the unspent amount will be recovered from the LTCF.]

[6.]5. In the case of significant items, the departments may exclude the effects of legal and management changes from rates until the change is effected, and if necessary, new appraisals made.

10:63-3.19 Inflation

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

(f) No provision for inflation will be made with respect to costs for buildings, land, moveable equipment, interest and lease, as determined by N.J.A.C. 10:63-3.11, 3.12 and 3.13 nor to special amortization of capital costs as determined by N.J.A.C. 10:63-3.8.

10:63-3.20 [Working capital provision and total] Total rates

[(a) Following the additions of the provision for inflation (N.J.A.C. 10:63-3.19), and approved legal and approved legal and management changes, a working capital provision will be added to rates as follows:

1. The State's planned timetable for reimbursing NFs for the care of Medicaid patients will be converted into an average expected days of accounts receivable.

2. This result will:

i. Be divided by 365;

ii. Multiplied by the Medicare return on equity rate for the 12-month period ending December 1976;

iii. Multiplied by the percentage of total revenues for Medicaid patients reimbursed by the State.

3. This result will be multiplied by the rates to develop the working capital provision.

4. Unless the Division of Medical Assistance and Health Services prescribed different limits for patient care services, the rate components for each class of patient will be the same and the related working capital provision as it is affected by this component will be the same.

5. The nursing care component of the rates shall be adjusted six months after the effective date of each facility's prospective rate (see N.J.A.C. 10:63-3.2) in order to allow for changes (if any) in the patient mix of each facility related to additional services requiring additional minimum nursing time. This adjustment shall be based upon the patient mix, as reported monthly by each facility, during a six month period ending three months prior to the effective date of the adjustment. Each facility shall maintain an individual patient classification form for each patient to record additional minimum nursing services required under N.J.A.C. 8:39-25.2(b).

i. The adjustment for patient mix will be made by multiplying the current nursing component per diem times a factor (percentage) which represents the change to the total minimum hours of nurse staffing related to the increase or decrease of conditions requiring additional nursing time from a) the base period, to b) the appropriate sample period (annualized).

ii. For the purpose of the prospective rate calculation and the periodic adjustment for patient mix, facilities will not report exact patient day counts for conditions requiring additional hours, but will report if a patient; a) resided in the facility and had the condition(s) for the entire month, b) resided in the facility for the entire month and developed the condition(s) during that month, c) entered the facility and had the condition(s) for some portion of the month. This

count will include patients who develop condition(s) during a month or enter the facility with condition(s) and cease to have this condition, are discharged, or die during the same month. No count shall be made for a patient who ceased to have the condition, died, or left the facility during a month (other than the month of admission or onset of the condition), except for a patient who was on a bed hold leave to an acute care hospital and returned to the facility. For the purpose of this calculation adjustment to the nursing per diem, this count will be known as patient condition months.

iii. The provisions in (a)5. above will not be effective until a prospective rate is set which includes a full year of cost and patient data under N.J.A.C. 8:39-25.1 et seq. Between the operative date of the DOH minimum nurse staffing standards and the effective date of the facility rate reflecting a full year of patient and cost data, the adjustment of the nursing component of the rate for patient mix will be made as follows:

(1) The nursing care component of the rates for all facilities shall be adjusted every six months from the operative date of the DOH minimum nurse staffing standards. These adjustments shall be made per (i) above, based upon the patient mix as reported monthly by each facility during the six months immediately preceding the rate adjustment. However, the last adjustment for this period will be based upon the patient mix at the facility during the six month period ending three months prior to the effective date of the adjustment.]

Rates shall not contain allowances for working capital or for an incentive for NF's participating in a cooperative buying group.

10:63-3.21 Appeals process

(a) When a NF believes that, owing to an unusual situation, the application of these [guidelines] rules results in an inequity (except for the application of N.J.A.C. 10:63-3.2(f)), two levels of appeals are available[;]: a Level I Appeal heard by representatives from the Department of Health and Department of Human Services; and a Level II Appeal heard before an Administrative Law Judge.

1. Level I Appeal: A request for a Level I appeal should be submitted in writing to the Department of Health, Health Facilities Rate Setting, Health and Agriculture Building, Room 600, John Fitch Plaza, CN-360, Trenton, New Jersey, 08625. [Requests for Level I appeals will be considered timely filed if they are submitted within 30 days of receipt of the notification of rates.]

i. **Requests for Level I appeals shall be submitted in writing within 20 calendar days of receipt of notification of the rate by the facility.**

ii. **A facility shall identify its rate appeal issues in writing to the Department of Health, Facilities Rate Setting, within 50 calendar days of receipt of notification of the rate by the facility.**

iii. **Documentation supporting the appealed rate issues shall be submitted to the Department of Health, Facilities Rate Setting, within 80 calendar days of receipt of notification of the rate by the facility.**

[i.]iv. (No change in text.)

[ii.]v. (No change in text.)

[iii.]vi. The analyst's recommended resolutions will first be [received] reviewed at appropriate levels within the Department of Health, Health Facilities Rate Setting, and will then be forwarded to the Division of Medical Assistance and Health Services for the approval of the Director or a designee of the Director.

[iv.]vii. Adjustments resulting from the Level I appeal [will] shall be effective as follows:

(1) At the beginning of the prospective reimbursement period if an error in computation was made by the Department or if the appeal was submitted within the specified period.

(2) On the first of the month following the date of appeal for non-computational matters if the appeal is submitted after the specified period.

[v.]viii. The date of submission [is] shall be defined as the date received by the Department of Health.

2. (No change.)

10:63-4.1 Audit cycle

(a) Any cost study submitted by a Medicaid participating [long-term care facility (LTCF)] nursing facility (NF) which is selected for audit on or after [the effective date of this section] February

7, 1983 [will] may be audited within three years of the due date of the cost report or the date it is filed, whichever is later. This requirement shall be satisfied if the on-site audit of the [LTCF] NF is initiated within the three-year period and completed within a reasonable time thereafter. If a [LTCF] NF audit is not initiated within this time limit, the appropriate cost study or cost studies shall be excluded from the audit, subject to the conditions set forth in the balance of this subsection and the waiver provisions set forth in (b) below. Exclusion is subject to the following conditions:

1. (No change.)

2. When a timely audit is conducted [by the Division] and additional overpayments are discovered by another agency, the Division shall not be precluded from collecting such overpayments together with any applicable interest or other penalties.

(b) The Division shall not be precluded from waiving the three-year limitation for good cause, and good cause shall include, but not be limited to, the following circumstances:

1. The overpayments involved in the audit were generated as a result of fraudulent activity by the [LTCF] NF or [LTCF] NF-related party, whether or not that fraudulent activity has been the subject of a criminal investigation and/or prosecution;

2. The [LTCF] NF, its agents or employees have failed to cooperate [with the Division] in the initiation or conduct of [its] the audit;

3. (No change.)

4. The audit could not be initiated within the three-year period because of delay or cessation of the audit resulting from a request by a law enforcement agency or an administrative agency with jurisdiction over the facility.

i. This provision shall not apply if the [LTCF's] NF's records are available and no request for delay or cessation of the audit has been made by any of these agencies.

(c) Notice must be given to the [LTCF] NF when the three year requirement is waived together with the reasons for such action. The [LTCF] NF may request a hearing on any waiver by the Division to the extent authorized by applicable statutes, rules and regulations.

10:63-4.2 Audits

(a) For the exclusive purpose of calculating interest, under N.J.S.A. 30:4D-17(f), "[Completion] completion of the field audit" for [long-term care] nursing facility providers [for purposes of N.J.S.A. 30:4D-17(f)] shall be defined in the following manner:

1. For all such audits and audit recovery cases pending on [the effective date of this subsection] February 7, 1983, it shall mean the date that field work is completed, or the date information requested from the provider during the course of that field work is received, whichever is later;

2. (No change.)

3. For all such audits initiated on or after [the effective date of this subsection] February 7, 1983, it shall mean the date the exit conference is completed or the date information requested from the provider during the course of the exit conference is received, whichever is later.

(b) Notwithstanding any of the previous subsections, if after the screening of any [long-term care] nursing facility provider audit [initiated on or after the effective date of this regulation] the Assistant Director, OPIA, determines with reasonable justification that an act or omission on the part of the provider requires additional field work, for the exclusive purpose of calculating interest under N.J.S.A. 30:4D-17, the field audit shall be considered completed when the additional field work is completed.

(c) Notwithstanding any of the previous subsections, if after the screening of any [long-term care] nursing facility provider audit [initiated on or after the effective date of this subsection] the Assistant Director, OPIA, determines with reasonable justification that an act or omission on the part of the provider requires that additional information or documentation be obtained from the provider, then a completed field audit shall, for the exclusive purpose of calculating interest, be considered reopened and interest shall again accrue for the period beginning 20 days from the date that the request for such information or documentation is received by the provider and ending on the date that all of the requested

information or documentation is received by the agency making the request.

(d) Notwithstanding any of the previous subsections, if all or part of any [long-term care] nursing facility provider audit initiated on or after the effective date of this subsection is referred to the Division of Criminal Justice or other agency for criminal investigation:

1.-2. (No change.)

10:63-4.3 Final audited rate calculation

(a) The Division of Medical Assistance and Health Services will calculate final per diem rates based on audit adjustment reports. [in accordance with the following general guidelines:

1. Allowance of audit adjustments which represent the reclassification of previously reported allowable cost and statistics;
2. Disallowance of audit adjustments which represent previously unreported costs; and

[3.](b) The final per diem rates determined based on [1 and 2] (a) above cannot exceed the prospective rates previously paid.

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

[(d)](e) This section applies to all current, pending or future audits for rate years [beginning January 1, 1978] on or after the date of adoption.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hearing Aid Services

Eligibility and Audiological Testing

Proposed Amendment: N.J.A.C. 10:64-1.3

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

Authority: N.J.S.A. 30:4D-6b(12)(17), 30:4D-7, 7a, b and c, 30:4D-12, 42 CFR 440.40(b), 440.110, 42 CFR 440.130, and 42 CFR 441.56.

Agency Control Number: 95-P-1.

Proposal Number: PRN 1995-63.

Submit comments by February 16, 1995 to:

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

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services (DMAHS) is proposing to amend the Hearing Aid Services Manual (N.J.A.C. 10:64) to provide for optional audiological examinations for Medicaid recipients 21 years of age or older. Currently, Medicaid-eligible clients are required to have an otologic examination, an audiological examination, and a hearing aid examination as defined in N.J.A.C. 10:64-1.3(a)1-3, prior to receiving a hearing aid. Given that regulations issued by the Federal Food and Drug Administration concerning the dispensing of hearing aids to adults do not require an examination by an audiologist, and that a hearing aid dispenser may conduct all required testing under the scope of his or her State licensure, the proposed amendment provides the examining physician with the option of referring a Medicaid eligible client 21 years of age or older for an audiological examination when determined medically necessary. The otologic and hearing aid examination will continue to be required for all clients. Additionally, the current requirements for an audiological examination remain unchanged for Medicaid recipients under 21 years of age.

Social Impact

Medicaid-eligible clients under 21 years of age will still require an audiological exam. At the option of the attending physician, Medicaid

eligible clients 21 years of age or older may be required to have an audiological examination when determined to be medically necessary. For Medicaid beneficiaries 21 years of age and older, the amendment may improve access to hearing aid services, since the proposal would limit required audiological testing to those candidates for whom the physician has determined such testing to be medically necessary.

Providers will be able to provide better service to Medicaid-eligible clients and improve access to hearing aid services for clients 21 years of age or older. Adult clients will still be able to receive medically necessary audiological examinations, but will not be required to do so prior to receiving a hearing aid.

Economic Impact

Due to the nature of hearing aid services, it is anticipated that the revised procedure may result in a decrease in expenditures, as timely screening and treatment will alleviate possible future problems for clients.

The Division does not reimburse hearing aid dispensers separately for conducting hearing tests. Medicaid reimbursement will be made for hearing aid devices and related services furnished to the recipient, in accordance with N.J.A.C. 10:64-1.11. Medicaid providers who now provide audiological examinations may experience a loss in revenue associated with the lower utilization volume.

Physicians will continue to be reimbursed for audiological testing as a Medicaid covered physician service.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a medical assistance program designed to certify eligibility for Medicaid recipients for hearing aid services.

Hearing aid dispensers will be required to keep records to indicate the name of the patient, date of service, and value of service pursuant to N.J.S.A. 30:4D-12. Physicians who perform a medical examination of an adult Medicaid client and determine that an audiological examination is necessary will be required to document that such an examination was ordered.

The requirements will apply equally to all providers. 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]):

10:64-1.3 Hearing aid program, policies and procedures

(a) An otologic examination[, an audiologic examination,] and a hearing aid examination [must] **shall** be performed prior to prescribing a hearing aid. **The physician performing a medical examination of the Medicaid eligible recipient shall determine if an audiological examination is medically necessary for clients 21 years of age or older. All Medicaid eligible recipients under 21 years of age shall have an audiological examination completed prior to the prescribing of a hearing aid.** If the recipient is a patient of a long-term care facility, a nursing [home] facility hearing aid screening must also be [included] **performed, as indicated in (a)4 below.**

1.-4. (No change.)

(b) (No change.)

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules

Future Parole Eligibility Terms

Proposed Amendment: N.J.A.C. 10A:71-3.21

Authorized By: New Jersey State Parole Board, Mary Keating
DiSabato, Chairman.

Authority: N.J.S.A. 30:4-123.48(d) and 123.56(a).

Proposal Number: PRN 1995-39.

Submit comments by February 16, 1995 to:

Robert M. Egles
Executive Director
New Jersey State Parole Board
CN 862
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 10A:71-3.21 provide for the restructuring of the schedule utilized for the establishment of future parole eligibility dates in adult inmate cases from four crime categories to nine crime categories; utilize the offense terminology of the Comprehensive Drug Reform Act, N.J.S.A. 2C:35-1 et seq.; provide for an increase in the presumptive future parole eligibility terms that could be imposed upon denial of parole in certain crime categories; provide for a decrease in the presumptive future parole eligibility terms that could be imposed upon denial of parole in certain crime categories; establish time periods by which certain future parole eligibility terms may be increased or decreased; provide that the present presumptive future parole eligibility term schedule remains in effect in the cases of adult inmates whose offenses were committed prior to the effective date of the amendments; and provide that the proposed amendments to the presumptive future parole eligibility terms are applicable in the cases of adult inmates whose offenses are committed on or after the effective date of the amendments. The proposed amendments would also delete reference to the date of May 6, 1985 as the effective for previously adopted amendments. Specific reference to said date is no longer deemed necessary.

Social Impact

Certain adult inmates, upon parole release being denied, will be required to serve longer periods of incarceration prior to their next consideration for parole release. Further, certain adult inmates, upon parole release being denied, will be required to serve lesser periods of incarceration prior to their next consideration for parole release. The length of time required to be served upon denial of parole is contingent on the crime committed by the adult inmate and the category to which the crime has been assigned.

Economic Impact

The economic impact of the proposed amendments cannot be readily measured. It is anticipated that the entire economic impact will be incurred by the Department of Corrections which will be required to house certain adult inmates for a longer period of time than under current practice. The proposed amendments would apply to the cases of adult inmates who commit offenses on or after the effective date of the amendments. The economic impact on the Department of Corrections therefore may not be realized for several years from the effective date of the amendments. The economic impact incurred as a result of housing adult inmates who have committed serious offenses for longer periods of time would be ameliorated to a certain extent due to the decrease in the presumptive future parole eligibility term for adult inmates who have committed less serious offenses.

Regulatory Flexibility Statement

The proposed amendments 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 amendments pertain to the establishment of future parole eligibility terms upon inmates being denied parole release. A regulatory flexibility analysis is, therefore, not required.

Statement Concerning Federal Standards
in State Agency Rulemaking

The proposed amendments do not pertain to any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. The proposed amendments pertain to the establishment of future parole eligibility terms upon inmates being denied parole release. An explanation or analysis of the proposed amendment pursuant to Executive Order No. 27(1994) is, therefore, not required.

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

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

(a) **This subsection shall apply to adult inmates whose offenses were committed prior to (the effective date of the amendment to (b) below).** Upon determining to deny parole to [a prison] **an adult inmate**, a two member adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. [Except as provided herein, a prison] **An adult inmate** serving a sentence for murder, manslaughter, aggravated sexual assault or kidnapping or serving any minimum-maximum or specific sentence in excess of 14 years for a crime not otherwise assigned pursuant to this [section] **subsection** shall serve 27 additional months.

2. [Except as provided herein, a prison] **An adult inmate** serving a sentence for armed robbery or robbery or serving any minimum-maximum or specified sentence between eight and 14 years for a crime not otherwise assigned pursuant to this [section] **subsection** shall serve 23 additional months.

3. [Except as provided herein, a prison] **An adult inmate** serving a sentence for burglary, [narcotic] **narcotics** law violations, theft, arson or aggravated assault or serving any minimum-maximum or specific sentence of at least four but less than eight years for a crime not otherwise assigned pursuant to this [section] **subsection** shall serve 20 additional months.

4. [Except as provided herein, a prison] **An adult inmate** serving a sentence for escape, bribery, conspiracy, gambling or possession of a dangerous weapon or serving any minimum-maximum or specific sentence less than four years for a crime not otherwise assigned pursuant to this [section] **subsection** shall serve 17 additional months.

(b) **This subsection shall apply to adult inmates whose offenses were committed on or after (the effective date of the adopted amendment). Upon determining to deny parole to an adult inmate, a two-member adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.**

1. **An adult inmate** serving a sentence for murder shall serve 60 additional months.

2. **An adult inmate** serving a sentence for aggravated manslaughter, aggravated sexual assault or kidnapping first degree shall serve 40 additional months.

3. **An adult inmate** serving a sentence for robbery first degree or a first degree crime not otherwise assigned pursuant to this subsection shall serve 30 additional months.

4. **An adult inmate** serving a sentence for manslaughter or kidnapping second degree shall serve 27 additional months.

5. **An adult inmate** serving a sentence for robbery second degree or sexual assault shall serve 23 additional months.

6. **An adult inmate** serving a sentence for leader of narcotics trafficking, maintaining or operating a controlled dangerous substance production facility, manufacturing, distributing or dispensing a controlled dangerous substance first or second degree, possession with intent to manufacture, distribute or dispense a controlled dangerous substance first or second degree, strict liability for drug induced deaths, or a second degree crime not otherwise assigned pursuant to this subsection shall serve 20 additional months.

7. **An adult inmate** serving a sentence for bribery second degree, conspiracy second degree, or escape second degree shall serve 17 additional months.

8. An adult inmate serving a sentence for a crime of the third degree shall serve 14 additional months.

9. An adult inmate serving a sentence for a crime of the fourth degree shall serve 12 additional months.

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

[(c)](d) The future parole eligibility dates required pursuant to (a) and [(b)] (c) above may be increased or decreased by up to nine months when, in the opinion of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment.

(e) The future parole eligibility dates required pursuant to (b) above may be increased or decreased when, in the opinion of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment. The increase or decrease shall be established by the Board panel and, except as provided in (f) below, not exceed the following:

1. Twenty months in the case of the offense of murder.
2. Fifteen months in the case of an offense specified in (b)2 above.
3. Ten months in the case of an offense specified in (b)3, 4, 5, 6 or 7 above.
4. Six months in the case of an offense specified in (a)8 or 9 above.

[(d)](f) A three-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) [or], (b) or (c) and [(c)] (d) or (e) 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) or (c) and [(c)] (d) or (e) above is clearly inappropriate as provided herein, the two-member Board panel shall adjourn the hearing for participation of the third Board panel member. In such instances, the third Board panel member shall review all records and 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) or (c) and [(c)] (d) or (e) above has not been established and the reasons therefor, and that a three-member Board panel hearing will be scheduled for the purpose of establishing a future parole eligibility term which differs from the provisions of (a) [or] (b) or (c) and [(c)] (d) or (e) above.

3. The three-member Board panel shall, upon disposition of the case, 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) or (c) and [(c)] (d) or (e) above.

4. The decision of the three-member Board panel to establish a future parole eligibility date which differs from that required by the provisions of (a) [or], (b) or (c) and [(c)] (d) or (e) above shall be by unanimous decision only. Failure to establish a future parole eligibility date pursuant to this subsection by unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date.

5. (No change.)

6. The Board's establishment of a future parole eligibility date shall be based on the review of all records of the panel hearing(s). 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) or (c) and [(c)] (d) or (e) above.

[(e)](g) The Board, upon the conclusion of a hearing conducted pursuant to N.J.A.C. 10A:71-3.16(c) or 3.18(b), may establish a future parole eligibility date which differs from that required by the provisions of (a) [or], (b) or (c) and [(c)] (d) or (e) 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. The Board shall include in the notice issued pursuant to N.J.A.C. 10A:71-3.20 the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) [or], (b) or (c) and [(c)] (d) or (e) above.

[(f)](h) If a three-member Board panel or the Board establishes, in the case of an inmate sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b), a future parole eligibility date which differs from the required by the provisions of (a) and [(c)] (d) above, the inmate shall be scheduled for an annual review hearing. The first annual review hearing shall be scheduled within 18 months from the month in which the decision to deny parole was rendered. Thereafter, annual review hearings shall be scheduled every 12 months until the inmate is within seven months of the actual parole eligibility date.

1.-6. (No change.)

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

[(h) The prior provisions of (b) above shall apply to young adult inmates whose offenses were committed prior to May 6, 1985 and shall continue in effect for that purpose. The amendments to (b) above shall be applicable to young adult inmates whose offenses were committed on or after May 6, 1985.]

(i) The amendments to (d) above shall apply to the cases of adult inmates in which a decision to deny parole has been rendered on or after May 6, 1985.]

INSURANCE

(a)

DIVISION OF PROPERTY/CASUALTY

Private Passenger Automobile Insurance: Annual Premium Survey

Proposed New Rules: N.J.A.C. 11:3-45

Authorized By: Andrew J. Karpinski, Commissioner,

Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e); 17:29A-1 et seq. and 39:6A-23.1.

Proposal Number: PRN 1995-44.

Submit comments by February 16, 1995 to:

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

The agency proposal follows:

Summary

N.J.S.A. 39:6A-23.1 directs the Commissioner of Insurance (Commissioner) to conduct an annual survey of premiums charged by private passenger automobile insurance companies (auto insurers) by territory and to publish the results for the information and benefit of consumers. This information is to be published in such a manner as to facilitate the comparison of prices offered by auto insurers. The purpose of the proposed rules is to establish a fixed date and format for the filing of this survey. Standardized forms and the procedure for the distribution of survey information are set forth in the proposed new rules.

N.J.A.C. 11:3-45.1 sets forth the purpose and intent of the rule and which group of insurers are to be effected.

N.J.A.C. 11:3-45.2 sets forth definitions of terms and words pertinent to the proposed new rules.

N.J.A.C. 11:3-45(a) and (b) provide that the Commissioner, by bulletin, shall provide survey information to auto insurers by July 1 of each year; by August 15 of each year all auto insurers shall respond with the requested information using the rates in effect as of September 1 of that year.

6. Individual collecting and submitting data:

Name: _____

Title: _____

Phone #: _____
(Include Area Code)

Insurance Co. Name: _____

NAIC Group #: _____ NAIC Company #: _____

COMPLETE A SEPARATE FORM FOR EACH COMPANY IN YOUR GROUP.

PREMIUM INFORMATION

| Territory | Example 1 | Example 2 | Example 3 | Example 4 |
|-----------|-----------|-----------|-----------|-----------|
| 1 | _____ | _____ | _____ | _____ |
| 2 | _____ | _____ | _____ | _____ |
| 3 | _____ | _____ | _____ | _____ |
| 4 | _____ | _____ | _____ | _____ |
| 5 | _____ | _____ | _____ | _____ |
| 6 | _____ | _____ | _____ | _____ |
| 7 | _____ | _____ | _____ | _____ |
| 8 | _____ | _____ | _____ | _____ |
| 9 | _____ | _____ | _____ | _____ |
| 10 | _____ | _____ | _____ | _____ |
| 11 | _____ | _____ | _____ | _____ |
| 12 | _____ | _____ | _____ | _____ |
| 13 | _____ | _____ | _____ | _____ |
| 14 | _____ | _____ | _____ | _____ |
| 15 | _____ | _____ | _____ | _____ |
| 16 | _____ | _____ | _____ | _____ |
| 17 | _____ | _____ | _____ | _____ |
| 19 | _____ | _____ | _____ | _____ |

Footnote:
Companies should use the 27 territories set forth in the PAIP Manual.

Insurance Co. Name: _____

NAIC Group #: _____ NAIC Company #: _____

COMPLETE A SEPARATE FORM FOR EACH COMPANY IN YOUR GROUP.

| Territory | Example 1 | Example 2 | Example 3 | Example 4 |
|-----------|-----------|-----------|-----------|-----------|
| 22 | _____ | _____ | _____ | _____ |
| 23 | _____ | _____ | _____ | _____ |
| 24 | _____ | _____ | _____ | _____ |
| 25 | _____ | _____ | _____ | _____ |
| 26 | _____ | _____ | _____ | _____ |
| 27 | _____ | _____ | _____ | _____ |
| 31 | _____ | _____ | _____ | _____ |
| 38 | _____ | _____ | _____ | _____ |
| 39 | _____ | _____ | _____ | _____ |
| 40 | _____ | _____ | _____ | _____ |

Footnote:
Companies should use the 27 territories set forth in the PAIP Manual.

(a)

**DIVISION OF LIFE AND HEALTH
HMO Informational Rate Filing Requirements
Proposed New Rules: N.J.A.C. 11:4-38**

Authorized By: Andrew J. Karpinski, Commissioner,
Department of Insurance.
Authority: P.L. 1994, c.11, N.J.S.A. 26:2J-1 et seq., specifically
26:2J-8, and 17:1C-6(e).
Proposal Number: PRN 1995-38.

Submit comments by February 16, 1995 to:
Donald Bryan, Acting Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, NJ 08625

Summary

P.L. 1994, c.11 (amending N.J.S.A. 26:2J-8b) requires every health maintenance organization ("HMO") to file with the Commissioner of Insurance ("Commissioner") prior to use any schedule of rates for enrollee coverage, as well as any amendments thereto. P.L. 1994, c.11 additionally permits the Commissioner to initiate an enforcement action pursuant to N.J.S.A. 26:2J-1 et seq. if the Commissioner reasonably believes that the HMO's rates are excessive, inadequate or unfairly discriminatory.

These new rules implement P.L. 1994, c.11 by specifically establishing rate filing requirements and procedures for HMOs.

N.J.A.C. 11:4-38.1 sets forth the purpose and scope of these rules.
N.J.A.C. 11:4-38.2 defines terms included in this subchapter.

N.J.A.C. 11:4-38.3 sets forth the rate filing requirements and procedures with which HMOs are to comply. This section includes a provision requiring HMOs which have filed their 1995 rates with the Department to refile the same information in the format required by these rules for consistency purposes.

N.J.A.C. 11:4-38.4 indicates that the Commissioner may institute enforcement actions against any HMO having excessive, inadequate or unfairly discriminatory rates.

Social Impact

Despite the mandatory nature of the HMO rate filings, the filing requirement is for informational purposes only and will not interfere with the HMO's normal business operations. Accordingly, the HMOs will not suffer any negative consequences as a result of the requirement. Additionally, the rules' requirement that HMOs that have filed their 1995 rates with the Department shall refile pursuant to these rules will not impact adversely on those HMOs. Such refileing does not require HMOs to obtain or submit any additional information. Rather, they are merely required to resubmit the same data in a format that will be consistent with all other HMO rate filings.

The rate filing requirement will impact positively on HMO enrollees. Subsequent to the HMO's rate filing, the Department may determine whether the rates are excessive, inadequate or unfairly discriminatory, thereby providing consumers with a measure of protection as to the appropriateness of HMO rates.

Economic Impact

These proposed new rules will not have any direct, significant economic impact on HMOs. Although the rules require that HMOs provide the Department with an actuarial certification signed by a member of the American Academy of Actuaries that the HMO's rates are not excessive, inadequate or unfairly discriminatory, no additional cost will be imposed on HMOs. Prior to enactment of P.L. 1994, c.11, amending N.J.S.A. 26:2J-8b, which mandates HMO informational rate filings, HMOs were required to provide the same actuarial certifications before their rates would be approved by the Commissioner. Accordingly, these rules impose no additional costs on HMOs and will not negatively impact HMOs.

The requirement that HMOs which have already filed their 1995 rate information shall refile that information pursuant to these rules will not impose any additional cost on HMOs because it merely requires the HMOs to resubmit the same rate data in a different format.

These rules could indirectly negatively impact those HMOs whose rates as filed with the Department are determined by the Commissioner

to be excessive, inadequate or unfairly discriminatory. In such an instance, an enforcement action commenced by the Commissioner could result in the suspension or revocation of an HMO's certificate of authority or in the imposition of fines or penalties.

The proposed rules will additionally have no direct economic impact on HMO subscribers. The Department will absorb any administrative costs it will incur in reviewing and maintaining the rate filing information submitted by HMOs.

Regulatory Flexibility Analysis

These proposed new rules impose certain filing requirements on HMOs. Several of the HMOs required to comply with these rules may be a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the rules' informational rate filing requirements do not require that HMOs obtain any additional professional services. Rather, HMOs are merely required to provide the Department with the rates it intends to charge for various plans, together with an actuarial certification as to the appropriateness of the rates. HMOs were required to provide such actuarial certifications prior to enactment of P.L. 1994, c.11 (amending N.J.S.A. 26:2J-8b). Even the rule provision requiring HMOs that have already filed their 1995 rates to refile pursuant to these rules merely requires resubmission of the same data in a different format, thereby imposing no additional costs or administrative burdens on small business HMOs. Accordingly, no significant economic or administrative burden is imposed on small business HMOs by these proposed rules.

Full text of the proposed new rules follows:

SUBCHAPTER 38. HMO INFORMATIONAL RATE FILING REQUIREMENTS

11:4-38.1 Purpose and scope

The purpose of this subchapter is to establish informational rate filing requirements and procedures for all HMOs operating pursuant to N.J.S.A. 26:2J-1 et seq. ("Health Maintenance Organization Act").

11:4-38.2 Definitions

Words and terms, when used in this subchapter, shall have the meanings as set forth below unless the context clearly indicates otherwise.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Health maintenance organization" or "HMO" means any person which directly or through contracts with providers furnishes at least basic comprehensive health care services on a prepaid basis to enrollees in a designated geographical area.

"Schedule of charges" means a table consisting of premium rates for each plan or variation in a plan offered by an HMO, all factors to be used in the calculation of premium rates, and a certification by a member of the American Academy of Actuaries as to the appropriateness of the charges.

11:4-38.3 Informational rate filing requirements and procedures

(a) All HMOs, prior to offering enrollee coverage for health care services, shall submit an informational filing of their schedule of charges with the Commissioner of Insurance, which shall include the following:

1. A completed HMO Informational Rate Filing form for each plan or variation in a plan being offered, appropriately indexed and numbered, and signed by an officer of the HMO, as set forth as Appendix A to this subchapter, incorporated herein by reference.
2. A certification signed by a member of the American Academy of Actuaries, which shall include a statement that the charges are appropriate based on reasonable assumptions, and are not excessive, inadequate or unfairly discriminatory.

(b) An HMO amending a schedule of charges shall comply with the rate filing requirements set forth at (a) above.

(c) The informational rate filing required by (a) and (b) above shall be submitted in triplicate to the Commissioner at the following address:

New Jersey Department of Insurance
Life and Health Division
Managed Care Bureau
CN 325
Trenton, NJ 08625

(d) Changes in rating methodology shall be considered a modification of the information required by N.J.S.A. 26:2J-3 and subject to the filing and approval requirements of N.J.S.A. 26:2J-3.d.

(e) Nothing in this chapter is intended to revise or replace the HMO approval requirements set forth at N.J.S.A. 26:2J-1 et seq.

(f) An HMO which filed its 1995 rates with the Department prior to the adoption of these rules shall refile the 1995 rates pursuant to the requirements of this subchapter within 90 days of the effective date of these rules.

11:4-38.4 Enforcement

The Commissioner may institute an enforcement action pursuant to N.J.S.A. 26:2J-1 et seq. if the Commissioner reasonably believes that an HMO's rates are excessive, inadequate or unfairly discriminatory.

APPENDIX A

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE
LIFE & HEALTH DIVISION
MANAGED CARE BUREAU
CN 325
TRENTON, NJ 08625

HMO INFORMATIONAL RATE FILING

HMO:
Plan:
Region:
Actuary Providing Certification:
Effective Dates From: To:
Capitation Rate:

| TYPE OF CONTRACT | CONTRACT MIX (%) | CONTRACT AVG. SIZE | CONVERSION FACTOR | PREMIUM |
|--------------------------------|------------------|--------------------|-------------------|---------|
| Proposed Rates: Two Tier | | | | |
| Single | | | | |
| Family | | | | |
| AVERAGE | | | | |
| Previously Filed Rates: | | | | |
| Two Tier | | | | |
| Single | | | | |
| Family | | | | |
| Percentage of Premium Increase | | | | |
| Single | | | | |
| Family | | | | |

Submitted By (Print Officer's Name and Title): Signature Date

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE
LIFE & HEALTH DIVISION
MANAGED CARE BUREAU
CN 325
TRENTON, NJ 08625

HMO INFORMATIONAL RATE FILING

HMO:
Plan:
Region:
Actuary Providing Certification:
Effective Dates From: To:
Capitation Rate:

PROPOSALS

Interested Persons see Inside Front Cover

LAW AND PUBLIC SAFETY

CONTRACT CONTRACT CONVERSION
 TYPE OF CONTRACT MIX (%) AVG. SIZE FACTOR PREMIUM
 Proposed Rates: Three Tier
 Single
 Family
 AVERAGE
 Previously Filed Rates:
 Three Tier
 Single
 Family
 Percentage of Premium
 Increase
 Single
 Family

Submitted By (Print _____
 Officer's Name and Title): Signature Date

STATE OF NEW JERSEY
 DEPARTMENT OF INSURANCE
 LIFE & HEALTH DIVISION
 MANAGED CARE BUREAU
 CN 325
 TRENTON, NJ 08625

HMO INFORMATIONAL RATE FILING

HMO:
 Plan:
 Region:
 Actuary Providing Certification:
 Effective Dates From: To:
 Capitation Rate:

CONTRACT CONTRACT CONVERSION
 TYPE OF CONTRACT MIX (%) AVG. SIZE FACTOR PREMIUM
 Proposed Rates: Four Tier
 Single
 Family
 AVERAGE
 Previously Filed Rates:
 Four Tier
 Single
 Family
 Percentage of Premium
 Increase
 Single
 Family

Submitted By (Print _____
 Officer's Name and Title): Signature Date

LAW AND PUBLIC SAFETY

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY**

State Board of Dentistry Rules

Proposed Readoption With Amendments: N.J.A.C. 13:30

Proposed Repeal and New Rules: N.J.A.C. 13:30-2

Authorized By: Board of Dentistry, Agnes Clarke, Executive Director.

Authority: N.J.S.A. 45:6-3, 45:6-19.4 and 45:6-50.

Proposal Number: PRN 1995-58.

Submit written comments by February 16, 1995 to:
 Agnes M. Clarke, Executive Director
 State Board of Dentistry
 124 Halsey Street
 P.O. Box 45005
 Newark, New Jersey 07101

The agency proposal follows:

Summary

The State Board of Dentistry is proposing to readopt its rules for the practice of dentistry at N.J.A.C. 13:30 with amendments. These rules are scheduled to expire on March 12, 1995 pursuant to Executive Order No. 66(1978).

Various amendments have been made since March 1990 when the entire chapter last was reviewed in order to continue to update practice requirements. Notably, N.J.A.C. 13:30-8.4 was amended substantially to clarify the requirements for announcement of practice in a special area of dentistry. The Board also adopted a new rule effective December 20, 1993 which provided complete requirements for the maintenance of patient records (N.J.A.C. 13:30-8.7). Further, the Board adopted entirely new rules concerning the delegation of physical modalities to unlicensed dental assistants (N.J.A.C. 13:30-8.17) and the guidelines for compliance with the mandatory continuing dental education requirements now necessary for renewal of biennial certificates of registration (N.J.A.C. 13:30-8.18).

In compliance with the Executive Order, the Board's Regulations Committee as well as the Advisory Committee for Auxiliaries undertook a thorough review of the existing provisions of N.J.A.C. 13:30 in order to delete unnecessary or unreasonable rules, to clarify rules which proved susceptible to misinterpretation by licensees, and to amend rules as necessary in order to reflect recent developments and evolving standards of practice with an impact on the profession. The Board believes these rules proposed for readoption, as amended, are necessary, reasonable, understandable and responsive to the Board's mandate to regulate the practice of dentistry consistent with the public's health, safety and welfare.

The following is a summary of each of the eight subchapters of N.J.A.C. 13:30 together with a summary of amendments, if applicable, and the rationale therefor.

Subchapter 1, Applicants for License to Practice Dentistry, sets forth the qualifications for a license to practice dentistry in this State as well as the qualifications for obtaining a resident permit. Although there are no changes in the basic qualifications for licensure, N.J.A.C. 13:30-1.1(c) has been amended to provide the criteria the Board will consider in cases where it may, at its discretion, recognize successful completion of the Northeast Regional Board examination when that examination was taken more than five years ago.

The amendment to N.J.A.C. 13:30-1.1(e) has been made merely to reflect the proper terminology for the National Board dental examinations.

The amendment to N.J.A.C. 13:30-1.2, Resident permit, deletes the requirement of such permit for those students participating in a post-doctoral dental school teaching program because they are properly in a student track and not of resident status. However, the amendment clarifies that those residents who are participating in an approved hospital residency program must renew the permit each year for the length of the program so that the Board may maintain an accurate roster of residents in the State.

Subchapter 2, now entitled Applicants for License to Practice Dental Hygiene, has been repealed in its entirety and replaced with a new subchapter 2, Applicants for License and Standards for Practice for Dental Auxiliaries. The new subchapter is primarily a reorganization of the same information but set forth in a manner which the Board believes makes it easier for the three categories of dental auxiliaries to understand the qualifications and permissible areas of practice for each.

N.J.A.C. 13:30-2.1, Qualifications of applicants for license to practice dental hygiene, remains the same for basic licensure. New provisions in subsections (c) and (d) set forth with specificity the criteria the Board will consider when granting a waiver of Northeast Regional Board performance testing, and when recognizing completion of the Northeast Regional Board examination after a lapse of five years. The criteria in this section are very similar to those proposed for dental applicants in N.J.A.C. 13:30-1.1(c).

N.J.A.C. 13:30-2.2, Qualifications of registered dental assistants, has been reorganized, but it does not change the basic qualifications and requirements for registration as a dental assistant.

N.J.A.C. 13:30-2.3, Duties of licensed dental hygienists, provides a list of all permissible duties. It includes not only those duties previously set forth as exclusively those for a dental hygienist, but it also lists all of the duties which previously were provided by cross-reference to the sections listing the duties for registered dental assistants and unregistered dental assistants which also may be performed by dental hygienists. This organization, in effect, eliminates the previous distinction between basic hygiene functions and expanded duties. The Board is confident that registered dental hygienists are trained adequately to perform these duties safely under the direct supervision of a licensed dentist and that the public will benefit from the availability of these services from the dental team. Accordingly, any person qualified and registered as a dental hygienist in this State may perform these duties under direct supervision.

The first duty listed under N.J.A.C. 13:30-2.3 for a licensed dental hygienist contains a change from the previous language clarifying that root planing may be performed as a separate procedure or as part of the prophylaxis. In addition, in order to reflect the developments in the practice of dentistry, a new duty (paragraph (a)27) permits the hygienist to hold a curing light in the process of restoring a tooth, and the paragraph concerning taking photographs ((a)28) specifies that a hygienist may take dental photographs using an intra-oral camera. The Board, in conjunction with its Advisory Committee for Auxiliaries, is satisfied that these duties are well within the competence of trained auxiliaries. The availability of these services also will serve the public. The only amendments in those duties which may be performed by a dental hygienist practicing within an institution are consistent with the changes described above concerning root planing and intra-oral cameras. There is no change in the number of dental hygienists which may be utilized by each licensed dentist at one time in a dental office.

N.J.A.C. 13:30-2.4, Duties of a registered dental assistant and a dental assistant without registration, contains no changes from the previous duties with the exception of permission to hold a curing light in the process of restoring a tooth and the use of intra-oral cameras.

N.J.A.C. 13:30-2.5, Continuing education requirements, contains some clarifications from the previous section. For example, the Board has specified that home study courses may not exceed four hours every two years, and the Board eliminated some previously permitted subjects for courses such as memory training, speed reading and personal health because they are not directly related to the delivery of quality dental services.

N.J.A.C. 13:30-2.6, Resumption of active practice by inactive dental hygienists, has been reorganized to clarify the Board's requirements, but it contains no substantive changes.

Subchapter 3, Applicants for Limited Teaching Certificate in a Dental School, sets forth the qualifications of applicants, the application procedure, the limitations on practice by those holding a limited teaching certificate, and the requirements for educational institutions where dentistry is taught including submission of rosters of persons engaged in teaching any of the areas of dentistry. These procedures have operated satisfactorily, and no changes are being proposed in this subchapter.

Subchapter 4, Industrial or Corporate Clinics, sets forth the standards for a clinic permit and the procedure for making application for same. This subchapter also has functioned satisfactorily, and no changes are being proposed to this section.

Subchapter 5, Standards for Approval of Dental Schools, and Subchapter 6, Standards for Approval of Schools of Oral Hygiene, state that the Board will accept for licensure only graduates of schools approved by the Commission on Dental Accreditation. No changes are proposed for these subchapters.

Subchapter 7 is reserved.

Subchapter 8, General Provisions, provides standards for practice and procedure by dentists in various areas. For example, this subchapter contains rules concerning parenteral conscious sedation (N.J.A.C. 13:30-8.2), use of general anesthesia (N.J.A.C. 13:30-8.3), advertising (N.J.A.C. 13:30-8.4 and 8.6), patient records (N.J.A.C. 13:30-8.7), notification of change of address (N.J.A.C. 13:30-8.12), continuing dental education (N.J.A.C. 13:30-8.18), and other general provisions. As stated at the beginning of this Summary, some of these sections have been promulgated or amended within the last five years, and further changes are not being proposed at this time. In addition, some provisions have operated satisfactorily and therefore require no changes. These are N.J.A.C. 13:30-8.1, 8.3, 8.4, 8.6 through 8.9, and 8.11 through 8.18. The following paragraphs contain a description of those general provisions which the Board proposes to amend at this time.

N.J.A.C. 13:30-8.2, Parenteral conscious sedation, has been amended merely to eliminate the "grandfather clause." When the rule first was adopted in 1990, the Board permitted licensees who had been administering parenteral conscious sedation on a regular basis to obtain permits. Now any dentist who wishes to obtain such a permit will have to meet the educational requirements.

N.J.A.C. 13:30-8.5, Complaint review procedures, has been amended primarily for the purpose of converting the complaint review procedure from one carried out by a Board committee to one carried out by the Board as a whole. As a result of the volume of complaints that need to be handled by the Board each year, the work of reviewing and evaluating each complaint can no longer be accomplished solely by a committee. The time and expertise of each Board member, including the public members, is required in order to process these cases. Therefore, most of the amendments to this section reflect a change in a language from that referring to a committee to that referring to the Board.

N.J.A.C. 13:30-8.10, Dental insurance forms, contains an amendment to subsection (c) pertaining to disclosure of the waiver of co-payment by a patient with dental insurance. The current rule required specific language which had been taken directly from a Superior Court case to be utilized by licensees who rendered dental services to a patient enrolled in any dental prepayment contract plan with co-payment features and who intended to waive the co-payment. The Board found in its experience that the prescribed language in this section was unclear and therefore not accomplishing its purpose. For example, the dentist often does not know the amount of reimbursement to be received from the insurance carrier at the time the claim is submitted. Therefore, the dentist cannot state the specific dollar amount of co-payment that will be waived.

Accordingly, N.J.A.C. 13:30-8.10 has been amended to provide that when the dentist intends to waive any part of or all of the co-payment by the patient, the dentist, when submitting any claim form or bill to the third party payor, must conspicuously disclose on the face of the claim form or bill in a legible and readable manner that co-payment, or a portion of co-payment, will not be billed to or collected from the patient. The main purpose of the rule is to provide notice that a waiver of some or all of the co-payment may occur. The Board also has formed a committee to study the impact on the submission of dental insurance forms created by the technical advances which permit electronic submission of such claims. However, that matter still is under consideration and probably will be a subject for further amendment in the future.

Social Impact

This proposed re-adoption of and amendments to N.J.A.C. 13:30 will allow the State Board of Dentistry to renew the beneficial consumer protection measures which resulted from the original promulgation of these rules. This chapter has enabled persons to receive dental services from only qualified dentists who meet the public safety standards set forth in this chapter. Similar conditions and potential threats to public safety, welfare and health exist as when the rules were originally proposed. Therefore, the Board believes the rules should be continued. These rules will maintain the high standards of practice of dentists and dental auxiliaries while reflecting recent developments in those professions. The rules will affect all of the nearly 15,000 licensees of the Board.

The Board believes the amendment to N.J.A.C. 13:30-1.1(c) will be beneficial in that it will allow dentists with superior credentials, who have successfully completed the approved examination more than five years ago, to obtain a New Jersey license without retaking the exam. Similarly, the amendment to N.J.A.C. 13:30-2.1(d) will provide the same opportunity for dental hygienists, who demonstrate superior credentials, who have successfully completed the approved examination more than five years ago. These changes will make health services more readily available while maintaining high professional standards.

The amendments of the reorganized subchapter 2 will have the practical social impact of clarifying and consolidating rules for the benefit of the public and the three categories of dental auxiliary licensees. The Board deleted previous duties which no longer reflect existing practice, such as the requirement to analyze saliva and prepare smears, and added some to reflect recent developments in dentistry such as holding a curing light in the process of restoring a tooth. The Board's view of the scope of duties for each category will create greater certainty and clarity for the profession and the public.

Deletion of certain previously accepted forms of continuing education for dental hygienists and dental assistants will ensure that continuing education directly enhances those licensees' knowledge, skill or competence in dental service to the community. Such is the case with dentists' continuing professional dental education requirements. There is improved public protection when licensees attend high quality continuing education classes, such as those presented at hospitals and dental schools.

Assuring that the complaint review procedure is carried out by the Board as a whole, and not by a committee, will increase the number of cases which will be reviewed. The public will benefit from a more efficient review procedure which will allow for greater oversight of the profession. In N.J.A.C. 13:30-8.10, the process for disclosure of the waiver of co-payment on dental insurance forms will be clarified to avoid confusion by the public, the practitioners and insurance companies.

Economic Impact

The rules proposed for readoption will have an economic impact upon the approximately 15,000 licensees of the Board, who will be expected to pay biennial registration fees and to spend what is necessary to maintain their practices in the manner prescribed by the Board, such as the costs associated with completion of continuing education. Persons new to the professions will be expected to pay the appropriate application fees. The fee schedule for applications, registrations and renewals is proposed for readoption without change. Generally, the rules proposed for readoption are not expected to bring about any additional public or private costs. The fees account for an estimated \$2,075,655 expenditure for administrative costs of the Board for Fiscal Years 1994 and 1995. The Board continues to protect the public health and safety through its activities and believes the economic burden upon the licensees is outweighed by the benefit these rules provide to the general public.

There will be a slight economic benefit to those licensees who may achieve licensing without having to repeat the Northeast Regional Board examination, successfully completed more than five years ago, if they are able to demonstrate superior credentials.

Students participating in a post-doctoral dental school teaching program have been determined to be in a student status, and as such, will no longer be required to pay a permit fee. Those residents who are participating in an approved hospital program, who are beyond student status, must now renew their permit each year. There will be an increased cost of \$10.00 for each year for those whose residency continues beyond one year. This economic burden is offset by the benefit of the Board's maintenance of an active roster of residents in the State.

There is no anticipated economic impact due to changes in the administrative procedures of the complaint review process which is essentially a restructuring of existing resources.

Regulatory Flexibility Analysis

The compliance and reporting requirements established by the rules proposed for readoption with amendments will affect individual applicants for licensure, approximately 15,000 Board licensees, one dental school and approximately 30 corporate dental clinics. The dental school at the University of Medicine and Dentistry of New Jersey employs more than 100 people and therefore would not qualify as a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. If, for the purposes of the Regulatory Flexibility Act, dentists and corporate dental clinics are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

Reporting, recordkeeping and other compliance requirements which are found in the rules proposed for readoption include requiring dentists, dental hygienists and registered dental assistants to file applications for licensure and biennial registration. Dentists may apply for a limited teaching certificate, specialty practice permit, anesthesia permit, or a parenteral conscious sedation (PCS) permit. Corporate dental clinics will be required to file permit applications and an annual renewal and clinics may be inspected for compliance with the rules. Licensees will need to certify, on their biennial renewals, completion of required hours of continuing education and licensees must maintain proof to demonstrate completion to the Board, upon request.

Licensees remain required to prepare and maintain permanent patient records and to report certain medical incidents or deaths. Licensees are required to display certain exterior and interior signs and all licensees are required to display identifying badges to the public. All licensees are required to notify the Board of change of address. All licensees are expected to adhere to the standards of practice described in the readoption and amendments.

The proposed requirement of an annual renewal rather than the present one-time registration for a resident permit will require those few individuals serving as residents in an approved hospital to renew their permit annually, if the residency tenure is longer than one year. The new opportunity for applicants after five years of having successfully completed the Northeast Regional Board examination to submit records of superior credentials to obtain licensure will require those records to be submitted. The benefits of not requiring re-examination outweigh the burden of supplying these records. The proposed new rule on waiver of co-payment clarifies and specifies the requirements for disclosing a waiver of co-payment but requires no greater amount of recordkeeping.

The rules require uniform applicability to all licensees without differentiation as to size of practice in order to protect the public health, safety and welfare and would require no additional services beyond those of the licensee's regular office staff. Any burden associated with compliance will be offset by the benefits of protection of the public health, safety and welfare.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:30.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:30-2.

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

13:30-1.1 Qualifications of applicants

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

(c) To obtain a license to practice dentistry, the candidate must pass the Northeast Regional Board Examination. The Board will recognize successful completion of the Northeast Regional Board examination for up to five years. After five years, the Board will review each request on a case by case basis[,] and may, in its discretion, recognize successful completion of the Northeast Regional Board Examination provided the candidate submits, at a minimum, evidence satisfactory to the Board that the candidate:

1. Holds a license in good standing in every state where currently licensed;

2. Has had no professional disciplinary action taken, and there are no professional disciplinary investigations or actions pending in any other state;

3. Has practiced dentistry continuously in the five years immediately preceding the application; and

4. Has successfully completed 40 hours of continuing dental education in the two years immediately preceding the application.

(d) (No change.)

(e) To obtain a license to practice dentistry, the candidate must [possess a National Board Certification showing that the applicant has successfully passed all phases of the National Boards of Dentistry] pass all parts of the National Board Dental Examinations.

13:30-1.2 Resident permit

Prior to obtaining licensure, a graduate of an approved dental school who has passed Part I and Part II of the National Board Dental Examination may serve as a resident in an approved hospital [or post-doctoral dental school teaching program] upon obtaining a resident permit from the Board. A resident permit shall be renewed annually for the length of the residency program.

SUBCHAPTER 2. APPLICANTS FOR LICENSE AND STANDARDS FOR PRACTICE FOR DENTAL AUXILIARIES

13:30-2.1 Qualifications of applicants for license to practice dental hygiene

(a) All persons desiring to practice dental hygiene in New Jersey must first secure a license from the Board.

(b) A candidate for licensure as a dental hygienist shall present proof satisfactory to the Board of the following:

1. National Dental Hygiene Board certification;

2. Northeast Regional Board certification;

3. Successful completion of the New Jersey jurisprudence examination; and

4. Graduation from an educational program in dental hygiene approved by the Board and the Commission on Dental Accreditation.

(c) The Board may, in its discretion, grant a waiver of Northeast Regional Board performance testing depending upon the record of the candidate. The candidate shall submit, at a minimum, evidence in the form required by the Board of the following:

1. Licensure in another state and licensure in good standing in all states where licensed;
2. Graduation from an educational program in dental hygiene approved by the Board and the Commission on Dental Accreditation;
3. Test results of any clinical examination other than the Northeast Regional Board;
4. Five years of continuous employment in dental hygiene practice immediately preceding application; and
5. Ten credits of continuing education in dental hygiene earned within two years prior to the application.

(d) The Board will recognize successful completion of the Northeast Regional Board Examination for up to five years. After five years, the Board will review each request on a case by case basis and may, in its discretion, recognize successful completion of the Northeast Regional Board examination provided the candidate submits, at a minimum, evidence in the form required by the Board of the following:

1. Licensure in good standing in every state where currently licensed;
2. No professional disciplinary action taken or investigation pending in any other state;
3. Five years of continuous employment in dental hygiene practice immediately preceding application; and
4. Ten credits of continuing education in dental hygiene earned within two years prior to the application.

13:30-2.2 Qualifications of registered dental assistants

(a) A dental assistant desiring to secure registration from the Board shall have the following qualifications:

1. Satisfactorily completed and graduated, within the past 10 years, from an educational program for dental assistants approved by the Board and the Commission on Dental Accreditation; or
2. Successfully completed high school (or its equivalent) and obtained at least two years' work experience as a dental assistant during the five year period prior to making application for registration.

(b) The candidate shall have satisfactorily completed the Certification Examination administered by the Dental Assisting National Board within 10 years prior to the application.

(c) All registered dental assistants shall furnish the Board with proof of one of the following:

1. A certificate of graduation from an approved educational program in dental assisting in which the expanded functions or duties as listed in N.J.A.C. 13:30-2.4(a) are taught;
2. A certificate of successful completion of an examination for clinical competency in expanded functions in dental assisting administered by the Board or its delegated authority; or
3. A certificate of successful completion of an approved program in expanded functions in dental assisting. The Board may recognize the following as providers of approved programs in expanded functions:
 - i. An institution approved by the Commission on Dental Accreditation;
 - ii. Institutions of higher education which have met the standards of the Commission of Higher Education or a regional agency recognized by the council on Post-Secondary Accreditation;
 - iii. In-service training programs conducted at the graduate level by agencies of the Federal, State, or local government; and
 - iv. Internship and residency programs conducted in hospitals which are approved by the Council on Hospital Dental Services of the American Dental Association.

13:30-2.3 Duties of licensed dental hygienist

(a) A licensed dental hygienist practicing under the direct supervision of a licensed dentist may:

1. Perform a complete prophylaxis including the removal of all hard and soft deposits from all surfaces of human natural and restored teeth to the epithelial attachments and the polishing of natural and restored teeth. Root planing may be performed as a separate procedure or as part of the prophylaxis;
2. Provide prophylactic and preventive measures such as the application of fluorides and pit and fissure sealants and other recognized topical agents for the prevention of oral disease or discomfort;
3. Examine soft and hard tissue of the head, neck and oral cavity; note deformities, defects and abnormalities therein;
4. Fabricate athletic mouth guard appliances;
5. Place and remove rubber dams;
6. Place and remove matrices and wedges;
7. Place temporary sedative restorations;
8. Remove excess cement from crowns or other restorations and orthodontic appliances;
9. Remove sutures;
10. Fabricate and cement temporary crowns and bridges after preparation of tooth (teeth) by a dentist. This does not include intra-oral occlusal adjustment;
11. Take impressions for diagnostic models and models to be used as counters for fixed or removable prostheses;
12. Place amalgam and gold foil in a tooth for condensation by the dentist;
13. Place and remove retraction cords and medicated pellets;
14. Perform bite registration procedures to determine occlusal relationship of diagnostic models only;
15. Place and remove periodontal dressings and other surgical dressings;
16. Trial size (pre-select) orthodontic bands, wires, stainless steel crowns and temporary crowns intra-orally;
17. Prepare teeth for bonding;
18. Remove arch wires and ligature wires;
19. Make radiographic exposures as permitted by the Department of Environmental Protection;
20. Provide oral health education such as, but not limited to, dietary analysis and clinical instruction in order to promote dental health;
21. Apply topical anesthetic agents;
22. Take and record vital signs;
23. Retract patient's cheek, tongue or other tissue parts during a dental operation;
24. Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes and water;
25. Isolate the operative field, not to include rubber dam;
26. Trial size (pre-select) orthodontic bands, wires, stainless steel crown and temporary crowns on a diagnostic model;
27. Hold a curing light in the process of restoring a tooth;
28. Take dental photographs including the use of intra-oral cameras;
29. Select shades for prosthetic appliances; and
30. Assist a licensed dentist in the administration of nitrous oxide, provided the licensed dentist is physically present in the operatory at all times during the procedure.

(b) A licensed dental hygienist practicing within an institution subject to the supervision of a New Jersey licensed dentist in the institution may:

1. Perform a complete prophylaxis including the removal of all hard and soft deposits from all surfaces of human natural and restored teeth to the epithelial attachments and the polishing of natural and restored teeth. Root planing may be performed as a separate procedure or as part of the prophylaxis;
2. Provide prophylactic and preventive measures such as the application of fluorides and pit and fissure sealants and other recognized topical agents for the prevention of oral disease or discomfort;

3. Examine soft and hard tissue of the head, neck and oral cavity, and note deformities, defects and abnormalities therein;

4. Make radiographic exposures as permitted by the Department of Environmental Protection;

5. Provide oral health education such as, but not limited to, dietary analysis and clinical instruction in order to promote dental health;

6. Take and record vital signs; and

7. Take dental photographs including the use of intra-oral cameras.

(c) Each licensed dentist may utilize no more than two licensed dental hygienists at one time in a dental office.

13:30-2.4 Duties of a registered dental assistant and a dental assistant without registration

(a) A registered dental assistant may perform the following duties under the direct supervision of a licensed dentist:

1. Place and remove rubber dams;
2. Place and remove matrices and wedges;
3. Place temporary sedative restorations;
4. Remove excess cement from crowns or other restorations and orthodontic appliances;

5. Remove sutures;

6. Fabricate and cement temporary crowns and bridges after preparation of tooth (teeth) by a dentist. This does not include intra-oral occlusal adjustment;

7. Take impressions for diagnostic models and models to be used as counters for fixed or removable prostheses;

8. Place amalgam and gold foil in a tooth for condensation by the dentist;

9. Place and remove retraction cords and medicated pellets;

10. Perform bite registration procedures to determine occlusal relationships of diagnostic models only;

11. Place and remove periodontal dressings and other surgical dressings;

12. Trial size (pre-select) orthodontic bands, wires, stainless steel crowns and temporary crowns intra-orally;

13. Prepare teeth for bonding not to include prophylaxis;

14. Remove arch wires and ligature wires;

15. Take impressions for and perform laboratory fabrication of athletic mouth guards not to include insertion of the appliance;

16. Make radiographic exposures as permitted by the Department of Environmental Protection;

17. Provide oral health education such as, but not limited to, dietary analysis and clinical instruction in order to promote dental health;

18. Apply topical anesthetic agents;

19. Take and record vital signs;

20. Retract patient's cheek, tongue or other tissue parts during a dental operation;

21. Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes and water;

22. Isolate the operative field, not to include rubber dam;

23. Trial size (pre-select) orthodontic bands, wires, stainless steel crown, and temporary crowns on a diagnostic model;

24. Hold a curing light in the process of restoring a tooth;

25. Take dental photographs including the use of intra-oral cameras;

26. Select shades of prosthetic appliances; and

27. Assist a licensed dentist in the administration of nitrous oxide, provided the licensed dentist is physically present in the operatory at all times during the procedure.

(b) A dental assistant who has not obtained a registration from the Board may perform the following duties under the direct supervision of a licensed dentist:

1. Make radiographic exposures as permitted by the Department of Environmental Protection;

2. Provide oral health education such as, but not limited to, dietary analysis and clinical instruction in order to promote dental health;

3. Apply topical anesthetic agents;

4. Take and record vital signs;

5. Retract patient's cheek, tongue or other tissue parts during a dental operation;

6. Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes and water;

7. Isolate the operative field, not to include rubber dam;

8. Trial size (pre-select) orthodontic bands, wires, stainless steel crown, and temporary crowns on a diagnostic model only;

9. Hold a curing light in the process of restoring a tooth;

10. Take dental photographs including the use of intra-oral cameras;

11. Select shades for prosthetic appliances; and

12. Assist a licensed dentist in the administration of nitrous oxide, provided the licensed dentist is physically present in the operatory at all times during the procedure.

(c) A dental assistant may provide a written work authorization for emergency repair of a dental prosthesis provided that the prosthesis does not require any intra-oral procedure and will be thereafter inserted by a licensed dentist.

13:30-2.5 Continuing education requirements; dental hygienists and dental assistants

(a) All licensed dental hygienists and registered dental assistants shall submit proof of completion of 10 hours of continuing education every two years at the time of registration renewal. No more than four hours of continuing education in the two year period may be fulfilled through home study courses.

(b) An acceptable form of continuing education shall directly enhance the licensee or registrant's knowledge, skill or competence in dental service to the community.

(c) The following shall be considered acceptable forms of continuing education:

1. Scientific courses applicable to the delivery of dental care, including, but not limited to, preventive services, radiography, dental photography, nutrition, patient counseling, community health, C.P.R. certification, and infection control; and

2. Courses which directly relate to or concern the practice of dentistry, including, but not limited to, organization and office management, office design, communication skills, behavioral science, dental-legal matters and methods of health care delivery.

(d) The Board may recognize as acceptable the courses of study and amount of hours credited in continuing education programs approved by:

1. The American Dental Association and its constituents and components;

2. The Academy of General Dentistry and its constituents and components;

3. The American Dental Hygienists Association and its constituents and components;

4. The American Dental Assistants' Association and its constituents and components; and

5. Accredited colleges or universities which meet the definition of acceptable courses in (c) above.

(e) It shall be the responsibility of each licensee/registrant to maintain an authenticated record of all continuing education activity completed and to be prepared to submit evidence of completion of the credit requirements to the Board upon request. Each licensee/registrant shall obtain from the continuing education course sponsor and retain for a period of four years an authenticated record of attendance which shall include, at a minimum, the following:

1. The participant's name;

2. The title or subject area of the course;

3. The instructor;

4. The course sponsor;

5. The date and location of the course;

6. The number of hours; and

7. Verification of successful completion by the course sponsor.

(f) The Board may inspect the licensee/registrant's records as may be necessary to insure that the continuing education requirements have been met.

13:30-2.6 Resumption of active practice by inactive dental hygienists

(a) Any dental hygienist who has been on the inactive status list for any period of time and wishes to resume the active practice of dental hygiene shall, in addition to making application for a current certificate of registration and paying the appropriate fee, submit satisfactory evidence of completion of 10 hours of continuing education earned in the two years preceding the application for active status.

(b) The minimum standards which shall be met by applicants who have been on the inactive status list for five or more years and who want to resume the practice of dental hygiene are as follows:

1. The individual shall apply to the Board for a current biennial certificate of registration and pay the prescribed registration fee;

2. An individual licensed and practicing in another state shall furnish the Board with a certification from the other state that the license to practice dental hygiene is in good standing; and

3. An individual who has not practiced for five or more years shall:

i. Pass the Northeast Regional Board (N.E.R.B.) examination in dental hygiene; or

ii. Complete satisfactorily a Board approved clinical refresher course provided by an institution accredited by the American Dental Association Commission on Dental Accreditation.

(c) An individual who has not practiced for more than 10 years shall pass the N.E.R.B. examination in dental hygiene.

13:30-8.2 Parenteral conscious sedation

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

(c) No dentist shall use PCS for dental patients [after September 19, 1990] unless such dentist possesses a PCS permit issued by the State Board of Dentistry. The dentist holding such permit shall be subject to review, and such permit shall be renewed [in November 1991 and] biennially [thereafter].

(d) Any dentist who wishes to obtain a Board permit to employ PCS shall complete an application as provided by the Board office and shall provide [one of the following:

1. An affidavit attesting that the dentist has administered PCS on a regular routine basis in his or her daily practice during the three year period immediately preceding the effective date of this rule. "Regular routine basis" shall be defined as an average of no less than three times per week; or

2. Certified] certified or verifiable proof that the dentist has completed a minimum of 100 hours of continuing education in didactic training and 100 hours in clinical training in PCS within three years preceding the [effective date of this rule or thereafter] application.

(e)-(m) (No change.)

13:30-8.5 Complaint review procedures

(a) Complaints to the Board shall be in writing.

1.-2. (No change.)

(b) (No change.)

(c) All completed complaints along with the responses of the licensee(s) shall then be forwarded to a dentist member of the Board [of the complaint review committee] for review and to report for consideration at the next scheduled [committee] Board meeting concerning review of complaints.

[1. The complaint review committee shall consist of no more than six members of the Board and shall be appointed by the president of the Board.

2. A chairman and vice-chairman of the complaint review committee shall also be appointed by the president of the Board and shall serve until a successor is appointed. The chairman shall preside at all meetings. In the absence of the chairman, the vice-chairman shall preside.]

(d) [The complaint review committee] The Board shall review each complaint in order to make one or more of the following determinations:

1. That the information contained in the complaint and/or the response is insufficient. In such cases, the [committee] Board shall

notify the complainant or the licensee(s) to provide the needed information without delay;

2. That the information contained in the complaint and/or response is insufficient and requires information from a subsequent treating licensee(s). In such cases, the [committee] Board shall request needed information from said subsequent treating licensee(s) without delay;

3.-5. (No change.)

(e) Upon completion of its review of a complaint the [committee] Board shall [report to the Board for Board consideration and final disposition] make one [or more] of the following determinations:

1.-4. (No change.)

13:30-8.10 Dental insurance forms; professional misconduct

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

(c) A licensee who renders dental services or procedures to a patient enrolled in any dental prepayment contract plan with co-payment features and intends to waive any [further] part of or all of the co-payment by the patient shall, when submitting any claim form or bill to the third party payor, conspicuously disclose on the face of the claim form or bill in a legible and readable manner that co-payment, or a portion of co-payment, will not be billed to or collected from the patient. [complete the claim form or bill as follows:

1. Enter on the attending dentist's statement a fee in the amount he actually intends to collect for the procedure billed for upon the assumption that the recipient will treat the procedure as a covered dental expense; or

2. Type, print or stamp on the face of the statement, or on a label affixed thereto, in legible characters at least ten points in height, the following words:

I/WE WAIVE CO-PAYMENTS, IT IS MY/OUR INTENTION
EITHER

(Check one)

() BILL THE PATIENT \$ _____
AFTER RECEIPT FROM YOU OF \$ _____.

() WAIVE ANY FURTHER PAYMENT FROM THE
PATIENT AFTER RECEIPT FROM YOU OF
\$ _____.]

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

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF OPHTHALMIC DISPENSERS AND
OPHTHALMIC TECHNICIANS**

**State Board of Ophthalmic Dispensers and
Ophthalmic Technicians Rules**

Proposed Redoption with Amendments: N.J.A.C.

13:33

Authorized By: Board of Ophthalmic Dispensers and
Ophthalmic Technicians, H. Lee Gladstein, Executive
Director.

Authority: N.J.S.A. 52:17B-41.13.

Proposal Number: PRN 1995-66.

Submit comments by February 16, 1995 to:
H. Lee Gladstein, Executive Director
Board of Ophthalmic Dispensers and
Ophthalmic Technicians
Box 45011
Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to Executive Order 66(1978), N.J.A.C. 13:33 is scheduled to expire on March 12, 1995. This chapter regulates the practice of ophthalmic dispensers and ophthalmic technicians in the State. The rules set forth within this chapter are vital in protecting the public health.

The Board of Ophthalmic Dispensers and Ophthalmic Technicians has reviewed its entire body of rules. Overall, the Board believes that the

rules proposed for re adoption are necessary, reasonable, understandable, responsive to the purpose for which they were promulgated and responsive to changes in the practice of ophthalmic dispensing. However, the Board believes some changes are necessary in subchapters 1 and 2 in order to clarify the language and to reflect current Board practice. Subchapter 3 is reserved. Subchapter 4, which prohibits licensed ophthalmic dispensers from dispensing contact lenses, is impliedly repealed by The Contact Lens Dispenser Act, N.J.S.A. 52:17B-41.25. This Act specifically authorizes ophthalmic dispensers licensed in New Jersey to engage in the business of contact lens dispensing. The Board is in the process of drafting dispensing standards. These standards, and a reproposal of the repeal of subchapter 4 (see 26 N.J.R. 1595(a)), will be proposed in a future issue of the New Jersey Register.

Following is a summary of subchapters 1 and 2, together with any amendments and clarifications, if applicable, and the rationale therefor.

N.J.A.C. 13:33-1.1 and 1.2 state the expiration dates for certificates for apprentice ophthalmic dispensers and technicians.

N.J.A.C. 13:33-1.3 governs the supervision and training of apprentices, who are permitted to perform various industry practices only under the immediate supervision of a preceptor. An amendment to subsection (e) relating to work-study programs simply identifies the National Commission on Accreditation as the accrediting body for Board-approved schools, rather than the New Jersey State Department of Higher Education, which no longer exists.

N.J.A.C. 13:33-1.4 through 1.6 are reserved.

N.J.A.C. 13:33-1.7 states that a certificate issued for a branch office or other place of employment is issued for a period of two years and that a fee will be charged for the certificate.

N.J.A.C. 13:33-1.8 requires all persons holding certificates or permits to notify the Board immediately upon any change of address or place of employment.

N.J.A.C. 13:33-1.11 and 1.12 address requirements for the issuance of a temporary dispenser or technician permit to out-of-State applicants. N.J.A.C. 13:33-1.11(b) has been amended for clarification purposes only.

N.J.A.C. 13:33-1.13 addresses requirements for the first 12 months of apprenticeship and the Qualifying Technical Examination for apprentice dispensers and technicians. Subsections (b) and (c) provide that an apprentice who fails the licensing examination three consecutive times may continue to retake it any number of times provided the apprentice has acquired one year of practical knowledge and experience in the professional field within the five-year period immediately prior to taking the examination. A proposed amendment would require the one-year of experience to be within the immediately preceding two-year period. This amendment would ensure that applicants have current knowledge in the field before attempting to qualify for licensure. It also assures the public that only qualified individuals will be practicing in the State.

Another proposed amendment would require an apprentice who has failed the licensing exam twice to obtain Board approval of the preceptor under whose supervision the apprentice intends to continue his or her apprenticeship. This amendment is intended to benefit the apprentice who comes under the tutelage of an incompetent or unresponsive preceptor, while at the same time to effectively "weed out" the inadequate preceptors. A minor amendment to subsection (d) would substitute the word "Director" for the word "Secretary" for clarification purposes only.

N.J.A.C. 13:33-1.14 addresses license renewal requirements for individuals engaged in active military service. A proposed amendment would clarify existing Board policy that licensees engaged in active military service must satisfy all continuing education requirements prior to returning to practice.

N.J.A.C. 13:33-1.19 requires all ophthalmic dispensers, technicians, and branch office registration certificates to be renewed biennially on or before December 31.

N.J.A.C. 13:33-1.20 states that the Board will replace a lost or destroyed certificate of registration upon payment of the required fee.

N.J.A.C. 13:33-1.21 requires all renewal applications to be mailed no later than midnight of December 31 of each renewal year or a penalty will be imposed.

N.J.A.C. 13:33-1.22 presently requires all applicants to pay the license registration fee within 30 days of having been notified by the Board that he or she has passed the examination or a penalty will be imposed. This requirement has been deleted in favor of a proposed requirement intended to ensure that the applicant's knowledge is current prior to attempting to qualify for licensure. The proposed amendment would require an applicant who does not apply for licensure within two years of taking the examination to retake the examination. The amendment is consistent with the proposed amendment to N.J.A.C. 13:33-1.13 and

better reflects the Board's intent with regard to qualifications for licensure.

N.J.A.C. 13:33-1.23 concerns replacement of the registration certificate.

N.J.A.C. 13:33-1.24 governs the application for examination procedures. A clarifying amendment has been proposed, changing "secretary" to "Executive Director."

N.J.A.C. 13:33-1.25 permits any duly licensed and registered ophthalmic dispenser or technician to temporarily practice, for no more than 12 twelve days, at a temporary address provided he or she gives the Board advance notice. This section allows the Board to monitor the practices of all practitioners in the field, and to protect against fly-by-night operations.

N.J.A.C. 13:33-1.26 and 1.27 state minimum age requirements for issuance of apprentice certificates.

N.J.A.C. 13:33-1.29 governs prescription records. A proposed amendment identifies, for the benefit of licensees, additional examples of the information required to appear in the record. This information is intended to provide licensees with the information they need to prepare a complete record.

N.J.A.C. 13:33-1.30 requires employers to ensure that ophthalmic dispensers, technicians, apprentices and permit holders comply with Board rules and regulations. A proposed amendment clarifies that employer verification must include verification that the employee has completed the required number of continuing education hours.

N.J.A.C. 13:33-1.31 and 1.32 list information an employer is required to provide the apprentice with to enable the apprentice to pass the required examination. An amendment is proposed to correct the codification of paragraphs (a)6 and 7 as subparagraphs (a)5i and ii in N.J.A.C. 13:33-1.31.

N.J.A.C. 13:33-1.33 requires every holder of a certificate of registration to display the certificate at the workplace in conspicuous fashion. The proposed amendment to this section merely clarifies that the certificate must be displayed in such a way so that the public can easily identify the certificate.

N.J.A.C. 13:33-1.35 lays out permitted and prohibited acts relating to the advertisement of ophthalmic services.

N.J.A.C. 13:33-1.36 governs space rental agreements between a licensee and a person authorized to prescribe corrective or therapeutic eyewear. This section is intended to protect the public against overprescribing by prohibiting rent payments being made in exchange for referrals of business.

N.J.A.C. 13:33-1.38 describes minimum standards and tolerances for dispensing of eyeglasses.

N.J.A.C. 13:33-1.39 requires all employers to register temporary ophthalmic dispensers, technicians and apprentices before they start work and to display a notice to this effect. A proposed amendment clarifies that the required notice is supplied by the Board.

N.J.A.C. 13:33-1.40 defines a full calendar year and a full work week.

N.J.A.C. 13:33-1.41 lists the fees the Board charges.

N.J.A.C. 13:33-1.42 requires each ophthalmic dispenser and permit holder to wear an identification tag which is clearly visible to the patient.

N.J.A.C. 13:33-1.43 explains continuing education requirements.

N.J.A.C. 13:33-2.1 and 2.2 list minimum optical equipment required both where apprentices are registered and/or fabricating is done and where apprentices are not registered and where no fabricating is done. A proposed amendment to N.J.A.C. 13:33-2.2 would require establishments that fall under this section to have "one hand finishing stone" on the premises. This additional requirement is necessary to assure the quality of ophthalmic dispensing and reflects the practice of most ophthalmic dispensers in the State. An additional amendment recodifies the requirement in paragraph (a)6 as subsection (b) and requires the size of the sign stating "No laboratory on premises" to be at least eight inches by 10 inches. The Board believes this important information must be clearly visible to the consumer.

Social Impact

The rules proposed for re adoption will continue to protect and safeguard the public health. The rules clarify and explain the professional practice standards necessary to maintain the highest quality services in the fabrication and provision of corrective eyewear and also provide for the orderly administration of the Board. Because the purpose of the rules is to provide quality service and care to consumers, in addition to maintaining a high level of professionalism within the practice, this re adoption will have a positive social impact.

The following analysis applies to the proposed amendments other than those proposed for clarification purposes only.

The proposed amendment to N.J.A.C. 13:33-1.13 requiring more recent experience in order to qualify to take the examination is intended to protect the public by ensuring that examination applicants have up-to-date knowledge in the field. For the same reason, the proposed amendment to N.J.A.C. 13:33-1.22 will require individuals who successfully complete the examination to apply for licensure within two years.

Apprentices who fail the licensing examination twice would benefit from a proposed amendment to N.J.A.C. 13:33-1.13 requiring Board approval of the preceptor. This will protect against apprentices being under the tutelage of incompetent or indifferent preceptors during the important formative years of their careers, thereby maximizing the learning experience that comes with an apprenticeship.

Subchapter 2 will be beneficial to all licensees because it will provide a list of the equipment required to practice effectively. At the same time, consumers will be assured that the ophthalmic dispenser or technician will have the equipment necessary to take care of their ophthalmic needs. Furthermore, by requiring a minimum size for the sign stating that there is no laboratory on premises, when applicable, consumers are made more aware of what services they can expect from any particular establishment.

Economic Impact

The rules proposed for readoption will have an economic impact upon licensees, who must pay biennial licensing fees and who are expected to pay what is necessary to maintain their proficiency and their practices in the manner required by the Board. These requirements include continuing education and minimum equipment requirements. Potential licensees will also be impacted by the license application fee, examination and permit costs.

The Board points out that the licensing, certification, and continuing education fees will remain the same. In any event, the Board believes that the economic impact upon licensees and potential licensees is outweighed by the benefits these rules provide in maintaining professional practice standards that serve to ensure responsible and effective service and products. The Board also notes that failure to readopt the current fee structure would endanger the Board's operation, which is required by law to be funded entirely by licensing fees and penalties.

In addition to examination costs of either \$75.00 or \$50.00 depending upon the examination taken, apprentices are required to complete Board mandated course work. Education costs are variable and therefore cannot be estimated with any certainty. However, the benefits of ensuring qualified practitioners in the field greatly outweigh the costs incurred.

A \$50.00 certificate replacement fee is imposed on a licensee who changes his or her name.

The proposed amendments will have no significant adverse impact on the general public because these are largely "housekeeping" amendments intended to clarify, correct and update Board rules that do not impose direct costs on the public.

Some licensees may incur an additional expense in purchasing a hand finishing stone, now added to the list of minimum equipment, but this economic impact should not be unduly burdensome. Currently, most ophthalmic dispensers who do not fabricate on premises have already purchased finishing stones.

An optical establishment that does not have a laboratory on its premises and whose required sign is smaller than eight inches by 10 inches will be required to spend what is necessary to produce a larger sign. This sign is of great benefit to the consumer who has only one pair of glasses and cannot afford to have that pair sent to a laboratory to be worked on. Professional signs are not required; the sign merely needs to be a specific size in order to be visible to the public. The modest economic impact associated with this requirement will not only act to further legitimize the profession, it will also provide consumers with information that will help in their purchasing decision. The more information a consumer can compile regarding a product or service, the more that consumer feels comfortable with making a purchase.

Regulatory Flexibility Analysis

The rules proposed for readoption, complete with amendments, will have an impact on the approximately 2,700 licensed Ophthalmic Dispensers and Ophthalmic Technicians. Almost all of the licensees who operate optical establishments may be classified as "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance requires include the following: Apprentices may work only under the direct supervision of a licensed dispenser or technician. Out-of-State applicants must obtain a temporary permit in order to practice their profession in New Jersey prior to obtaining permanent licensure in this State. Permit holders must take the first examination following issuance of the temporary permit. Compliance costs include the \$50.00 temporary permit fee as well as the cost of the examination, which is \$75.00 for dispensers and \$50.00 for technicians.

An apprentice who has failed the licensing examination three times may take the exam over again only if the apprentice has had at least one year of experience in the optical field within the immediately preceding two years, as opposed to five years. This individual would be required to complete another year of apprenticeship before being permitted to retake the qualifying examination and obtain the monetary benefits associated with full licensure status.

All licensees must renew their licenses on a biennial basis and pay the appropriate fees outlined in the fee schedule. License renewal applications must be mailed no later than midnight of December 31 of the renewal year or a penalty will be imposed.

Applicants for examination are required to submit the application together with a \$100.00 fee 30 days before the test day. In addition, the required years of full-time employment must be accrued prior to taking the examination.

A licensee who plans to practice at a temporary address must give notice to the Board. The temporary practice cannot be for longer than 12 days.

Ophthalmic dispensers must maintain records for a period of six years. The actual expense incurred by practitioners would depend upon the recording technique used and the volume of the practice.

Employers at optical establishments are required to make sure each employee complies with all Board rules governing the profession. The cost of compliance would be based upon establishment size and record-keeping procedures.

Licensed employers of apprentices are required to provide apprentices with information related to the profession which will be of assistance when the apprentice takes the examination to be licensed. The cost associated with such training will depend upon the number of apprentices employed and the type of instruction required.

Licensees must display certificates of registration conspicuously to the public.

Any Board licensee who rents space to or from a person authorized by law to prescribe corrective or therapeutic eyewear, where the rental terms are not in writing, and/or the rent payment is not based on the fair market value, must obtain Board approval of the rental arrangement. The cost imposed here would be that involved in notifying the Board.

Dispensers of eyeglasses must comply with minimum tolerance requirements.

Employers must register each employee and post a notification to the public regarding such registration. The required sign is supplied by the Board.

Each ophthalmic dispenser and permit holder must wear an identification tag. The cost incurred by this compliance requirement would be the price of the tag worn by the person.

Each ophthalmic dispenser and technician must satisfy continuing education requirements as a condition of license renewal and must provide the Board with the sponsors' written verification of attendance. Any person desiring approval as a sponsor of a continuing education course must apply to the Board and pay a \$100.00 fee. Optical establishments must purchase and maintain certain minimum optical equipment. Equipment costs will vary depending upon the size of the establishment and the number of employees. Optical establishments without laboratories on the premises must conspicuously display a sign, with a minimum size of eight by 10 inches, stating that there is no laboratory on the premises. This minimum size requirement may require a modest expenditure for those establishments that currently display smaller signs.

The Board does not anticipate that professional services will be needed in order to comply with the regulations in this subchapter.

The Board views the proposed practice standards and requirements to be the minimum necessary to safeguard the health and safety of the consumer of the professional services regulated by the Board. An exemption for small businesses is thus neither feasible nor desirable.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:33.

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

13:33-1.3 Supervision of apprentice ophthalmic dispensers and technicians

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

(e) A work-study program is defined as that activity which places students enrolled in the Ophthalmic Science curriculum of any school approved by the [New Jersey State Department of Higher Education] **National Commission on Accreditation** into the optical field on a limited basis under the supervision of a college-approved preceptor for the purpose of gaining college-supervised practical experience. A college-approved preceptor is that individual licensed in New Jersey as an ophthalmic dispenser or ophthalmic technician who meets the conditions established by the college in the development of its work-study program.

1. (No change.)

13:33-1.11 Out-of-state applicants; Ophthalmic Dispensers

(a) (No change.)

(b) Qualifications for examinations and licensure are as follows:

1. Any individual with out-of-state optical qualifications may apply for examination and licensure as an Ophthalmic Dispenser, without having worked in the State of New Jersey, [subject to the provisions that] **provided that the applicant:**

i. The last year of work in the optical field has been acquired within five years of the date of application for examination;

ii. The applicant holds an associate degree in ophthalmic science and has worked in the optical field at least four months following the award of the degree; or

iii. The applicant has worked in the optical field for at least three calendar years and has satisfactorily completed 30 credit hours of board-approved courses in ophthalmic science.]

i. Holds an associate degree and has four months of experience in the optical field subsequent to the award of the degree and within the immediately preceding five-year period; or

ii. Has satisfactorily completed 30 credit hours of Board-approved courses in ophthalmic science and thereafter has worked in the optical field for three calendar years, the last year of which shall have been acquired within five years of the date of application for examination.

13:33-1.13 Examination: apprenticeship requirements

(a) (No change.)

(b) The requirements for the Dispenser examination are as follows:

1.-4. (No change.)

5. If the candidate is unsuccessful in passing three consecutive examinations, he/she must return his/her permit. However, no individual may be denied the right to continue to take any examination for licensure for which he/she qualifies, provided that the last year of experience in the optical field has been acquired within the past [five] two years. In the event that the candidate meets the requirements to sit for examination and neither applies for, appears at, or is excused from said examination, an automatic failure will be imposed.

(c) The requirements for the Technician examination are as follows:

1.-2. (No change.)

3. If the candidate is unsuccessful in passing three consecutive examinations, he/she must return his/her permit. However, no individual may be denied the right to continue to take any examination for licensure for which he/she qualifies, provided that the last year of experience in the optical field has been acquired within the past [five] two years. In the event that the candidate meets the requirements to sit for examination and neither applies for, appears at, or is excused from said examinations, an automatic failure will be imposed.

(d) An unsuccessful candidate may apply to the Board for a review of his/her examination work or grades except in such instances as the written Dispenser or Technician examination is failed. Such application must be submitted to the Executive [Secretary] **Director** of the Board in writing within one month following notification of examination results. The Executive [Secretary] **Director** shall subsequently arrange a date for the candidate to review the deficiencies

in his/her examination work in the Board office in conference with an examiner.

(e) (No change.)

(f) In the event an apprentice ophthalmic dispenser or technician fails the licensing examination for the second time, the apprentice shall obtain the Board's written approval of the preceptor under whose immediate supervision the apprentice intends to continue his or her apprenticeship.

13:33-1.14 Military service

Any licensee who is engaged in active duty in the military service of this country shall be required to renew his/her license to keep it in force, but shall not be required to pay the renewal fee for any year during which he/she is in the service. **Notwithstanding a licensee's engagement in active duty, a licensee shall be required to meet all continuing education requirements prior to returning to practice.**

13:33-1.22 [Payment of license registration fee; penalty] Failure to apply for licensure within two years of examination; reexamination required

Any applicant who satisfactorily passes the examinations given by this Board shall be required to [pay the license registration fee within 30 days after receiving notification from this Board that he or she has passed the examination or a penalty will be imposed] **apply for a license within two years from the date of having taken the examination. If an applicant fails to apply for a license within the two year period, the applicant shall be required to take the examination again before applying for a license.**

13:33-1.24 Application for examination

(a) Applications for examination by this board made in accordance with the provisions of N.J.S.A. 52:17B-41.9 shall be completed and filed with the [secretary] **executive director** of the [board] **Board** at least 30 days prior to the date on which the examination is to be held.

(b) (No change.)

13:33-1.29 Record of prescriptions filled

(a) Each person licensed as an ophthalmic dispenser shall maintain for a period of at least six years at a New Jersey establishment the following records:

1. (No change.)

2. [A record for all eyeglasses, frames and lenses fabricated and dispensed which denotes all the data required to prepare and dispense eyeglasses, frames, and lenses, such as, sphere, cylinder, axis, prism, base, add, patient pupillary distance (P.D.) eyeglass pupillary distance (P.S.) and height of segment (Seg) if multi-focal. The record shall identify up to the point of original delivery to the consumer the individuals involved in the interpretation and measurements, the duplication, the fabrication, the verification, and the fitting and adjusting of all eyeglasses, frames and lenses fabricated and dispensed.] **All data required in the preparation and dispensing of:**

i. Eyeglasses;

ii. Frames, such as eye size, bridge size and temple length; and

iii. Lenses, such as sphere, cylinder, axis, prism base, add, patient pupillary distance (P.D.) eyeglass pupillary distance (P.S.) and height of segment (Seg) if multifocal, base curve, frame size, eye size, bridge size and temple length.

3. The record shall identify up to the point of original delivery to the consumer individuals involved in [the interpretation and measurements, the duplication, the fabrication, the verification and the fitting and adjusting of] **interpreting and measuring, duplicating, fabricating, verifying and fitting and adjusting** all eyeglasses, frames and lenses fabricated and dispensed.

[3.]4. (No change in text.)

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

13:33-1.30 Compliance with rules and regulations

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

(d) The employer shall be responsible for ensuring that each employee is in compliance with the continuing education requirements set by the Board.

LAW AND PUBLIC SAFETY

13:33-1.31 Preparation of apprentice ophthalmic technicians for examination

(a) It shall be the responsibility of employers of apprentice ophthalmic technicians to give the employee the opportunity to learn the following in order to prepare for the examination given by the board:

- 1.-4. (No change.)
- 5. To be able to neutralize and identify a series of single vision and multifocal lenses; and one of the following:
 - [6.]i. Surface grinder to be able to mark up a surface a pair of single vision or multifocal lenses from a pair of semifinished lens blanks; or
 - [7.]ii. Benchman to be able to make a complete pair of eyeglasses, given a pair of uncut lenses and a frame or mounting.

13:33-1.33 Display of certificate of registration

(a) Every holder of a certificate of registration issued by this Board, including renewal certificates and validating certificates, shall conspicuously display it to the public at the location for which it is issued.

(b) (No change.)

13:33-1.39 Permits: registration

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

(c) [Notice to this effect shall be posted conspicuously in all optical establishments.] **The employer shall conspicuously post in all optical establishments a sign, which shall be supplied by the Board, stating that the employer is responsible for the registration of all employees.**

13:33-2.2 Optical equipment required for practice of ophthalmic dispensing in establishments where no fabricating is done on premises and where no apprentices are registered

(a) All optical establishments where ophthalmic dispensers practice and where no fabricating is done on the premises and no apprentices are registered, shall be equipped with a minimum of optical equipment as follows:

- 1.-4. (No change.)
- 5. **One hand finishing stone; and**
- [5.]6. One set of samples of frames and mountings, minimum 25, including zyl, rimless and metal rims.
- [6. A sign in a conspicuous location stating "No laboratory on the premises".]

(b) **All optical establishments that do not have a laboratory on the premises shall conspicuously display to the public a sign stating, "No laboratory on the premises." The size of the sign shall be a minimum of eight inches by 10 inches.**

(a)

**DIVISION OF CONSUMER AFFAIRS
OFFICE OF WEIGHTS AND MEASURES
Regulated Consumer Commodities and Their
Approval Units of Measure; Infant Formula
Proposed Amendment: N.J.A.C. 13:45A-14.4**

Authorized By: William J. Wolfe, Superintendent, Office of Weights and Measures.

Authority: N.J.S.A. 56:8-25.

Proposal Number: PRN 1995-57.

A public hearing will be held on Wednesday, February 1, 1995 at 10:00 A.M. at:

Division of Consumer Affairs
124 Halsey Street
Newark, NJ 07102

Submit written comments by February 16, 1995 to:

William J. Wolfe
State Superintendent
New Jersey Office of Weights and Measures
1261 Routes 1 and 9 South
Avenel, New Jersey 07001-1647

The agency proposal follows:

Summary

The purpose of this proposed amendment is to permit unit pricing of infant formula in powder and concentrated form in terms of unit of volume of the reconstituted form of the infant formula. Under the existing regulation, N.J.A.C. 13:45A-14.4(b)2, the unit price of concentrated infant formula may reflect only the product's unreconstituted volume (for liquids) or unreconstituted weight (for powders).

Unit pricing by reconstituted volume will provide the consumer with a basis for comparison of formulas by cost on the basis of standardized nutrition and value. This information should enable consumers to identify true cost savings.

Under the existing regulation, the approved liquid measure is a pint or quart. The proposed amendments change the approved liquid measure to a fluid ounce or a reconstituted fluid ounce so that there will be consistency in unit pricing among ready-to-use liquid products and concentrated products and powders priced according to reconstituted ounce.

For clarity, the general baby food category has been subdivided according to products priced by weight (solids and powders) and baby food priced by volume (liquids) (subparagraphs (b)2i and ii). An additional category of infant formula has been created, with similar distinctions between products sold by weight and those sold by volume (subparagraphs (b)2iii, iv and v).

The proposed amendment is consistent with model, regulations for infant formula unit pricing adopted by the National Conference on Weights and Measures.

Social Impact

The proposed amendment is expected to provide consumers of infant formula with more accurate and straightforward unit price information. Those benefits will obviously be most helpful to those consumers who need to be cost conscious.

Economic Impact

The proposed amendment is expected to help consumers attain a better value when purchasing infant formula. It is not expected to change the total amount of infant formula sales in any way. Unit pricing by reconstituted volume is optional, but retailers will have the option of replacing unit price disclosures for baby foods now priced by pint or quart to reflect unit pricing by the fluid ounce or reconstituted fluid ounce. In as much as the cost of preparing and affixing unit price labels to the categories of regulated commodities listed under N.J.A.C. 13:45A-14.4 depends upon the number of sizes and brands of the regulated commodities any business establishment may sell in New Jersey, such costs cannot be readily quantified. The benefits to the consumer, however, far outweigh the minimal expenses that may be incurred by the retailer to create unit pricing signs.

Regulatory Flexibility Analysis

The proposed amendment will apply to an unknown number of retailers in the State of New Jersey who offer baby food for sale, many of whom would be considered small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Although unit pricing by reconstituted volume is optional, retailers must comply with the requirement to display the unit value of baby foods in fluid ounces rather than in pints or quarts. The Division does not anticipate that additional professional services will be required for compliance with the proposed amendments.

The Division has not created differing standards for small businesses because to do so would defeat the intent of the proposed amendments, which is to provide for more accurate unit pricing of infant formula for the benefit of the consumer.

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

13:45A-14.4 Regulated consumer commodities and their approved units of measure

- (a) (No change.)
- (b) The following consumer commodities shall be considered regulated consumer commodities with their approved units of measure.
 - 1. (No change.)
 - 2. Baby food[..... pint, pound, quart]
 - i. **Baby food (solid, powder) pound**
 - ii. **Baby food (liquid) fluid ounce**
 - iii. **Infant formula (liquid, ready to use) fluid ounce**

- iv. Infant formula (liquid, concentrate) fluid ounce, reconstituted fluid ounce
 - v. Infant formula (dry, powder) pound, reconstituted fluid ounce
- 3-45. (No change.)

(a)

**DIVISION OF CONSUMER AFFAIRS
BUREAU OF SECURITIES**

**Agents of Broker-Dealers and Qualified Issuers
Issuer-Agent Registration; Corporate General
Partners; Requests for Waiver; Exemptions for
Securities Transactions and Securities Offerings;
Employee Benefit Plans; Accredited Investors**

**Proposed New Rules: N.J.A.C. 13:47A-3.3, 3.4, and
12.**

Proposed Amendments: N.J.A.C. 13:47A-3.1 and 4.3.

Authorized By: A. Jared Silverman, Chief, Bureau of Securities.

Authority: N.J.S.A. 49:3-67(a).

Proposal Number: PRN 1995-60.

Submit comments by February 16, 1995 to:

A. Jared Silverman, Chief
Bureau of Securities
P.O. Box 47029
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Bureau of Securities is proposing these new rules and amendments under P.L. 1967, c.93, N.J.S.A. 49:3-47 through 76 (the "Uniform Securities Law (1967)" or the "Law").

Securities attorneys and persons involved in making limited securities offerings in or from New Jersey have advised the Bureau of several problematic areas of the Law that have made it difficult for small businesses to raise capital in New Jersey. This proposal is in response to those concerns and is intended to make it easier for small businesses to raise capital in the State.

The proposed new rules change previous Bureau policy with regard to securities offerings that are not considered controversial by reducing the regulatory requirements upon small businesses, as more specifically set forth below. The rules and amendments also interpret existing law where there has been no official policy statement, thereby avoiding time-consuming technical interpretations of the law pertaining to registration.

1. Changes in previous Bureau policy

(a) N.J.A.C. 13:47A-3.3(c) allows a parent issuer to effect transactions with employees, partners or officers of a subsidiary without having to register an agent, if the parent issuer owns at least 80 percent of the subsidiary. Previous Bureau interpretations of N.J.S.A. 49:3-49(b)(3) limit these exempt transactions without agent registration to employees, partners or officers of the parent.

(b) N.J.A.C. 13:47A-3.4 provides that the definition of "individual" includes an individual acting on behalf of the controlling partnership. This new rule recognizes that a corporate general partner frequently acts on behalf of a partnership, and it allows the person acting on behalf of the corporate general partner to register as an agent for the partnership. Previously, an individual representing a corporate general partner would not qualify as an agent.

(c) N.J.A.C. 13:47A-12.1 provides that the required report form need not include the names and addresses of non-New Jersey resident purchasers of the offering and that non-New Jersey resident purchasers will not be counted when determining whether there are 35 non-accredited purchasers and whether there are 10 offerees in Section 50(b)(12), 60(b) and 50(b)(9) exempt offerings, respectively. The Bureau believes that the previously required reporting of the names and addresses of out-of-State purchasers (although remaining confidential information) may have acted as a deterrent to small businesses raising capital in this State.

(d) N.J.A.C. 13:47A-12.2 concerning employee benefit plans provides that the transactional exemption in N.J.S.A. 49:3-50(a)(11) will be construed to apply to all securities underlying the investment contract. There

is an increasing concern among small businesses that the cost of complying with the Securities Act registration requirements is too great, thus eliminating a potentially important tool to attract, compensate and motivate employees. The Bureau believes that qualified 501(c)(3) plans, ERISA and bank administered plans have sufficient safeguards associated with them that state securities registration in New Jersey is not necessary for those employee benefit plan interests and securities. The only caveat is set forth in proposed N.J.A.C. 13:47A-12.2(d), which states that if a plan otherwise exempt under N.J.A.C. 13:47A-12.2 contemplates distribution in kind of restricted stock to plan members upon withdrawal of the members from the plan, resale of the securities by the members may trigger Federal or State registration requirements.

(e) N.J.A.C. 13:47A-12.3 adopts, by incorporation, the Federal definition of "accredited investor." The comparable New Jersey statutory definition is presently dissimilar, making it difficult or impossible to simultaneously comply with both definitions. This new rule will allow issuers to make private placements under Federal Regulation D's definition of "accredited investor" without unwittingly violating State law.

2. Interpretations of existing law

(a) A new subsection (c) has been added to N.J.A.C. 13:47A-4.3 in order to detail the procedures to be followed when an individual requests a waiver of an agent examination.

(b) N.J.A.C. 13:47A-3.3(a) and (b) clarify the statute (without changing existing Bureau procedures). N.J.A.C. 13:47A-3.3(a) states that an issuer must register an agent in connection with a securities offering or transaction, unless the transaction is through a registered broker-dealer or is otherwise exempt. N.J.A.C. 13:47A-3.3(b) reaffirms that for some of the N.J.S.A. 49:3-50(a) securities and for all of the N.J.S.A. 49:3-50(b) transactions an agent of an issuer is not required to be registered.

Finally, the proposal corrects an error in an existing regulation relating to agent application requirements. In November 1992, N.J.A.C. 13:47A-3.1 was erroneously amended to remove the requirement for an agent of a non-NASD member broker-dealer registered in New Jersey to file a Form SB-3, Agent Application, with the Bureau. This requirement should have been retained and applies to less than 10 registered broker-dealers. Most broker-dealers are NASD members and their agents are registered in New Jersey and elsewhere by filing a Form U-4 with the NASD. Non-NASD agents cannot register in this manner, so the Bureau needs the Form SB-3 to be completed.

Social Impact

The social impact of these new rules and amendments is minimal. The primary impact is economic. The social impact is incorporated within the Economic Impact below.

Economic Impact

Overall, the new rules and amendments should reduce regulatory costs and foster capital formation in New Jersey. Therefore, these rules and amendments will make it easier for small businesses to raise capital in the State.

The investing public will be served in that the limited resources of the Bureau of Securities will be more heavily concentrated on enforcement and less so on the technical interpretations of the Law pertaining to registration, with no loss of regulatory oversight or jurisdiction.

The reduction of Bureau-industry discussions concerning the interpretation of agent registration requirements in connection with certain exempt securities transactions will benefit investors in improved service from the Bureau and the industry as a result of less resources being devoted to interpretation of gray areas in the processing of registrations. The public will benefit from a more responsive Bureau because an administrative burden on the Bureau will have been removed by these rules and amendments, without a negative impact on the Bureau's ability to regulate the industry and detect fraud.

Regulatory Flexibility Analysis

These proposed new rules and amendments are an attempt to decrease the burden on the industry in general and on small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are no additional reporting or recordkeeping requirements imposed by these proposed rules and amendments above those currently required for persons associated with an exempt securities offering. In fact, these rules and amendments eliminate some filing requirements. Therefore, those persons affected by the rules and amendments will see a reduction in their paperwork as a result of these changes. The Bureau cannot estimate the number of persons affected by the elimination of the reporting requirements.

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

13:47A-3.1 Agents of broker-dealers and qualified issuers

(a) Any person desiring to act in the State of New Jersey as an agent of a **non-NASD member broker-dealer registered in New Jersey directly with the Bureau of Securities** or as an agent of a qualified issuer shall file an application with the Bureau of Securities on a form designated N.J. Form SB-3, as set forth in N.J.A.C. 13:47A-11.3. Such application shall be accompanied by:

1. A consent to service of process executed by the applicant;
2. Two applicant non-criminal fingerprint cards (one State Police card and one FBI card) with impressions taken by a recognized law enforcement agency; and
3. A check or money order made payable to the State of New Jersey, Bureau of Securities, in the amount of \$60.00.

(b) (No change.)

[(c) Any person desiring to act in the State of New Jersey as an agent of a non-NASD member broker-dealer registered in New Jersey directly with the Bureau of Securities shall file a Consent to Jurisdiction form directly with the Bureau of Securities no later than five days after the commencement of such employment or affiliation along with the requisite fee to register as an agent. An officer, director, controlling person or partner of the registered broker-dealer may also submit a Consent to Jurisdiction Form.]

13:47A-3.3 Issuer-agent registration

(a) All issuers which are effecting or attempting to effect purchases or sales of securities other than through a registered broker-dealer shall register someone as an "agent," unless an exemption is available pursuant to the definition of "agent" in N.J.S.A. 49:3-49(b). Only a natural person can be registered as an agent.

(b) Agent registration is not required for an individual who represents an issuer in effecting transactions exempted by N.J.S.A. 49:3-50(a)(1) (securities issued or guaranteed by the United States, a State, or political subdivision thereof); N.J.S.A. 49:3-50(a)(2) (Canadian and other foreign government securities); (employee benefit plans); and all of the transactional exemptions under N.J.S.A. 49:3-50(b).

(c) For the purposes of the exclusion from the definition of "agent" in N.J.S.A. 49:3-49(b)3, the phrase "existing employees, partners or directors of the issuer," shall include persons occupying those positions with subsidiaries of which the parent issuer owns at least 80 percent of the stock of the subsidiary.

13:47A-3.4 Corporate general partners

A natural person acting on behalf of the corporate general partner of partnership (issuer) may act as an agent on behalf of the partnership. Similarly, where one partnership is the general partner controlling another partnership, a natural person acting on behalf of the controlling partnership may act as an agent on behalf of the controlled limited partnership.

13:47A-4.3 Requests for waiver

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

(c) In connection with an exempt transaction or a securities offering under N.J.S.A. 49:3-50 and 49:3-60(b), the Bureau generally will consider favorably an application for waiver of the agent examination requirement and the agent fingerprinting requirement for applicants meeting the requirements of (a) above who represent the issuer. An application for waiver shall be made at least five business days prior to the commencement of the offering by the agent. The waiver application shall include an application for issuer qualification, an application for agent registration and an affidavit or certification that no executive officer of the issuer would disqualify the issuer from selling stock pursuant to Regulation A as provided for in Rule 262 promulgated by the U.S. Securities and Exchange Commission and that the agent, assuming the individual was an underwriter within the meaning of that Rule, would not be disqualified from selling securities pursuant to Regulation A.

SUBCHAPTER 12. EXEMPTIONS FOR SECURITIES TRANSACTIONS AND SECURITIES OFFERINGS; EMPLOYEE BENEFIT PLANS; ACCREDITED INVESTORS

13:47A-12.1 Exemptions for securities transactions and securities offerings

(a) For purposes of the Report Form required to be filed with Bureau of Securities under N.J.S.A. 49:3-50(b)(12) or 49:3-60(b), the issuer shall include only the names and addresses of New Jersey resident purchasers of the offering, along with the number and amount of the securities each purchased.

(b) Non-New Jersey resident purchasers will not be counted when determining whether there are 35 non-accredited purchasers of the offering for the N.J.S.A. 49:3-50(b)(12) exemption.

(c) Non-New Jersey resident offerees will not be counted when determining whether there are 10 offerees in an exempt offering under N.J.S.A. 49:3-50(b)(9).

13:47A-12.2 Employee benefit plans

(a) N.J.S.A. 49:3-50(a)(11) provides an exemption from registration for, "[a]ny investment contract issued in connection with an employees' or professional stock purchase, savings, pension, profit-sharing, retirement or similar benefit plan if the bureau chief is notified in writing 30 days before the inception of the plan. . . ." N.J.S.A. 49:3-50(a)(11) requires a 30-day notification and exempts the agreement between the employer and employee insofar as it may be deemed to be an investment contract. With respect to employee benefit plans which are qualified under Section 401 of the Internal Revenue Code, subject to the provisions of Part 4 of Subtitle B of Title I of ERISA, or administered by a national or state bank acting in a fiduciary capacity, N.J.S.A. 49:3-50(a)(11) shall be construed to provide a transactional exemption for all securities underlying the investment contract.

(b) Interests in the plan or securities underlying the investment contract in employee benefit plans which are exempt from Federal securities registration pursuant to SEC Rule 701, promulgated under the Securities Act of 1933, shall also be exempt from registration in New Jersey if offered or sold pursuant to N.J.S.A. 49:3-50(a)(11).

(c) The 30-day notification requirement of N.J.S.A. 49:3-50(a)(11) may be fulfilled by filing a letter with the Bureau of Securities setting forth pertinent information, which shall include the name and address of the issuer, the name and address of participating employers and the approximate number of New Jersey employees eligible to participate in the plan. The letter filing will be deemed to constitute full compliance with the notice requirement of N.J.S.A. 49:3-50(a)(11). The Bureau Chief may request additional information on a case-by-case basis.

(d) If a plan otherwise exempt under this section contemplates distribution in kind of restricted stock to plan members upon withdrawal of the members from the plan, resale of the underlying securities by the members may require registration of the securities under Federal law. If Federal law requires registration of the securities being resold, State registration may be required, unless the security or transaction is otherwise exempt from State registration.

(e) The definition of "agent" in N.J.S.A. 49:3-49(b) specifically excludes an individual who represents an issuer in effecting transactions in a security exempted by N.J.S.A. 49:3-50(a)(11); therefore, no agent registration is required for such an individual to effect transactions with respect to the employee benefit plans or the securities underlying the employee benefit plans described in (a) and (b) above.

13:47A-12.3 Accredited investors

Pursuant to the last paragraph of N.J.S.A. 49:3-49(p), in addition to the persons described in N.J.S.A. 49:3-49(p)(1) through (7), any person who is an "accredited investor" within the meaning of Securities Act of 1933, section 2(15) and SEC Rules 215 and 501, promulgated by the Securities and Exchange Commission, effective

as of (the effective date of this rule) or as thereafter amended or superseded, shall be deemed an "accredited investor" within the meaning of N.J.S.A. 49:3-49(p).

(a)

DIVISION OF STATE POLICE

Firearms and Weapons

Confidentiality of Background Investigations, Permits, Firearms Identification Cards, Licenses, Certifications, Certificates, Forms of Register, Registration Statements and Applications

Proposed Repeal and New Rule: N.J.A.C. 13:54-1.15

Authorized By: Deborah T. Poritz, Attorney General of New Jersey.

Authority: N.J.S.A. 47:1A-2 and Executive Order No. 9 (Gov. Richard J. Hughes, September 30, 1963).

Proposal Number: PRN 1995-59.

Submit written comments by February 16, 1995 to:

Deborah T. Poritz
Attorney General of New Jersey
R.J. Hughes Justice Complex
25 Market Street
CN 081
Trenton, NJ 08625

The agency proposal follows:

Summary

On August 18, 1994 the Appellate Division held, in *Southern New Jersey Newspapers v. Township of Mount Laurel*, Docket No. A-4741-91T3, that N.J.A.C. 13:54-1.15 was invalid because the Superintendent of the Division of State Police lacked statutory authority to determine confidentiality of records under N.J.S.A. 2C:39-1 et seq. and 2C:58-1 et seq. However, the Appellate Division noted that the rule would be valid if promulgated by the Attorney General under N.J.S.A. 47:1A-2 and Executive Order Number 9 (Governor Richard J. Hughes, September 30, 1963). The existing rule is, therefore, proposed for repeal and a new rule proposed by the Attorney General.

Proposed N.J.A.C. 13:54-1.15 provides that applications for permits, firearms purchaser identification cards, or licenses in the possession of the New Jersey State Police or municipal police departments are not public records. The section further provides that originals or copies of permits, firearms identification cards, licenses, certifications, certificates, forms of register, or registration statements in the possession of the New Jersey State Police or municipal police departments are not public records. These records may not be disclosed to any person not authorized by law or this chapter to have access to them. The purpose of the proposed rule is to protect the privacy of holders of firearms and to protect those same individuals, as well as the general public, from being victimized by criminal elements.

Proposed N.J.A.C. 13:54-1.15 also provides that background investigations conducted by the New Jersey State Police, municipal police departments, or county prosecutors for permits, firearms purchaser identification cards, licenses, or registrations are not public records. Such background investigations contain sensitive information, often revealed to law enforcement authorities only on the condition that it not be disseminated. In addition, the proposed rule protects privacy because background investigations include such subjects as medical and mental disabilities, alcoholism, drug addiction, and other matters which ought not to be disclosed to the public.

Social Impact

Proposed N.J.A.C. 13:54-1.15 will serve to protect the privacy of persons who obtain firearms by virtue of permits, firearms identification cards, or licenses. Their names and addresses will not be subject to public disclosure absent legitimate need or legal requirement. Exempting permits, firearms identification cards, licenses, certifications, certificates, forms of register, and registration statements from being classified as public records will deny the criminal elements of our society the opportunity of obtaining "shopping lists" of names and addresses of persons who own firearms. As a result, these persons will not be targets for burglaries or thefts. In 1991 and 1992, the total number of firearms

reported stolen in this State was approximately 2,800. Should the names and addresses of persons who obtain permits, firearms, identification cards, and licenses now be made public, that number could dramatically increase. The dangers inherent in such publication are not only applicable to those who may be victimized by burglaries and/or thefts, but are equally shared by the members of the public at large, who could also be victimized by persons who illegally obtain firearms from their rightful owners.

Economic Impact

The proposed new rule will not have any adverse economic impact upon the State, retailers or owners of firearms, or the public at large. The rule establishes the confidentiality of specific firearms related records in the possession of certain government entities.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Because the proposed rule only affects the ability of the Division of State Police and municipal police departments to disseminate information, it will not have any adverse impact on small businesses or private industry in general.

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

[13:54-1.15 Confidentiality of background investigations, permits, licenses, firearms identification cards, registrations and applications

Any background investigation conducted by the chief of police, the Superintendent or county prosecutor of any applicant for a license, permit, firearms identification card or registration in accordance with the requirements of this chapter, are not public records and shall not be disclosed to any person, not authorized by law or this chapter to have access to such investigations, including the applicant, except upon order of a court of competent jurisdiction. Any applications for licenses, permits, firearms identification cards or registrations and any permits, licenses, registrations and firearms identification cards or any records reflecting the issuance or denial of such permits, licenses, firearms identification cards or registrations, maintained by any State or municipal governmental agency, are not public records and shall not be disclosed to any person not authorized by law or this chapter to have access to such documentation, except upon the request of persons acting in their governmental capacities for purposes of the administration of justice or upon order of a court of competent jurisdiction.]

13:54-1.15 Confidentiality of background investigations, permits, firearms identification cards, licenses, certifications, certificates, forms of register, registration statements and applications

Any background investigation conducted by the chief of police, the Superintendent or the county prosecutor, of any applicant for a permit, firearms identification card license, or registration, in accordance with the requirements of this chapter, is not a public record and shall not be disclosed to any person not authorized by law or this chapter to have access to such investigation, including the applicant. Any application for a permit, firearms identification card, or license, and any document reflecting the issuance or denial of such permit, firearms identification card, or license, and any permit, firearms identification card, license, certification, certificate, form of register, or registration statement, maintained by any State or municipal governmental agency, is not a public record and shall not be disclosed to any person not authorized by law or this chapter to have access to such documentation, including the applicant, except on the request of persons acting in their governmental capacities for purposes of the administration of justice.

(a)

NEW JERSEY RACING COMMISSION
Thoroughbred Rules
Daily Triple

Proposed Amendment: N.J.A.C. 13:70-29.50

Authorized By: New Jersey Racing Commission,
 Frank Zanzuccki, Executive Director.
 Authority: N.J.S.A. 5:5-30.
 Proposal Number: PRN 1995-40.

Submit written comments by February 16, 1995 to:
 Frank Zanzuccki, Executive Director
 New Jersey Racing Commission
 140 East Front Street, CN-088
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Racing Commission is seeking to amend thoroughbred daily triple rule, 13:70-29.50(k) to correct a perceived inequity in the distribution of these pools when two races are cancelled or declared "no contest."

The current rule calls for a complete refund of this wagering pool when two or more of the races comprising the daily triple are cancelled or declared "no contest." When two races are cancelled under the current rule, a bettor who has correctly selected one winner receives a refund instead of a payoff for one winner. To correct the perceived inequity, subsection (k) is proposed for deletion, and subsection (j) amended to apply to cancellation of one or two races.

Social Impact

The proposed amendment will have a positive social impact by rewarding those bettors, who have correctly selected one winner, with a payoff in the wagering pool.

Economic Impact

The proposed amendment will have no direct fiscal impact on the State of New Jersey. It will result in an economic benefit to a wagering patron who has correctly selected one winner in a daily triple contest when the remaining legs of the bet are cancelled or declared "no contest." It will have an economic benefit for the track which will not be required to refund tickets.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment permits a wagering patron who correctly selected one winner in a daily triple contest, the remaining legs of which are cancelled or declared "no contest," to receive a payoff rather than a refund. Track associations affected by the amendment are not small businesses, as each employs more than 100 people. Therefore, a regulatory flexibility analysis is not required.

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

13:70-29.50 Daily Triple

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

(j) If for any reason one or two of the races comprising the Daily Triple [is] are cancelled, the net amount of the pari-mutuel pool shall be distributed as provided in (g), (h), and (i) above.

[(k) If for any reason two or more of the races comprising the daily triple are cancelled, a full and complete refund will be made of the daily triple pool.]

Recodify existing (l)-(n) as (k)-(m) (No change in text.)

(b)

NEW JERSEY RACING COMMISSION
Harness Rules
Daily Triple

Proposed Amendment: N.J.A.C. 13:71-27.54

Authorized By: New Jersey Racing Commission,
 Frank Zanzuccki, Executive Director.
 Authority: N.J.S.A. 5:5-30.
 Proposal Number: PRN 1995-41.

Submit written comments by February 16, 1995 to:
 Frank Zanzuccki, Executive Director
 New Jersey Racing Commission
 140 East Front Street, CN-088
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Racing Commission is seeking to amend the harness daily triple rule at N.J.A.C. 13:71-27.54 to correct a perceived inequity in the distribution of these pools when two races are cancelled or declared "no contest."

The current rule calls for a complete refund of this wagering pool when two or more of the races comprising the daily triple are cancelled or declared "no contest." When two races are cancelled under the current rule, a bettor who has correctly selected one winner receives a refund instead of a payoff for one winner. To correct the perceived inequity, subsection (k) is proposed for deletion, and subsection (j) amended to apply to cancellation of one or two races.

Social Impact

The proposed amendment will have a positive social impact by rewarding those bettors, who have correctly selected one winner, with a payoff in the wagering pool.

Economic Impact

The proposed amendment will have no direct fiscal impact on the State of New Jersey. It will result in an economic benefit to a wagering patron who has correctly selected one winner in a daily triple contest when the remaining legs of the bet are cancelled or declared "no contest." It will have an economic benefit for the track which will not be required to refund tickets.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment permits a wagering patron who correctly selected one winner in a daily triple contest, the remaining legs of which are cancelled or declared "no contest," to receive a payoff rather than a refund. Track associations affected by the amendment are not small businesses, as each employs more than 100 people. Therefore, a regulatory flexibility analysis is not required.

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

13:71-27.54 Daily Triple

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

(j) If for any reason one or two of the races comprising the Daily Triple [is] are cancelled, the net amount of the pari-mutuel pool shall be distributed as provided in (g), (h), and (i) above.

[(k) If for any reason two or more of the races comprising the Daily Triple are cancelled, a full and complete refund will be made of the daily triple pool.]

Recodify existing (l)-(n) as (k)-(m) (No change in text.)

(a)

VIOLENT CRIMES COMPENSATION BOARD

Filing of Claims

Proposed Amendment: N.J.A.C. 13:75-1.5

Authorized By: Violent Crimes Compensation Board,

Jacob C. Toporek, Chairman.

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

Proposal Number: PRN 1995-49.

Submit comments by February 16, 1995 to:

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

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:75-1.5(e) will serve to clarify the practice and procedure before the Board, by stating that the Board's Counseling Unit will provide counseling referral services to a victim at the time of filing a claim. This amendment conforms this provision to what the Board's victim counseling service is to provide under N.J.S.A. 52:4B-25.

Social Impact

The general public will have a better understanding of exactly what type of services are offered by the Board's counseling unit.

Economic Impact

The proposed amendment will have no economic impact. The amendment's purpose is merely to clarify this subsection of the rule concerning counseling services.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys, may make claims for compensation. The proposed amendment imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since it merely clarifies services offered. Therefore, a regulatory flexibility analysis is not required.

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

13:75-1.5 Filing of claims

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

(e) At the time of filing the claim, the Board's **Counseling Unit shall provide to the victim, counseling [to victims without charge] referral services** as provided by N.J.S.A. 52:4B-25.

(b)

VIOLENT CRIMES COMPENSATION BOARD

Eligibility of Claims

Proposed Amendment: N.J.A.C. 13:75-1.6

Authorized By: Violent Crimes Compensation Board,

Jacob C. Toporek, Chairman.

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

Proposal Number: PRN 1995-50.

Submit comments by February 16, 1995 to:

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

The agency proposal follows:

Summary

As a result of the variations in family relationship groups in today's society, the proposed amendment to N.J.A.C. 13:75-1.6(b)2 will include as eligible claimants those persons who can demonstrate a dependency upon the deceased victim for support.

Social Impact

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

Economic Impact

The proposed amendment will compensate innocent victims in accordance with statutory provisions of N.J.S.A. 52:4B-12 and 18(d). The proposed change will allow both increased amounts of compensation and compensation to a greater number of innocent victims.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys may make claims for compensation. The proposed amendment impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since it establishes compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

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

13:75-1.6 Eligibility of claims

(a) (No change.)

(b) In instances where the victim of the crime has died as a direct result thereof, the Board may award compensation to the following persons:

1. A surviving spouse, parent, or child of the deceased victim who has suffered economic loss;

2. Any relative of the deceased victim as defined in N.J.S.A. 52:4B-2 who was dependent upon the victim for support, or any person who has cohabitated with the victim/decedent and who can establish by a preponderance of evidence that a dependency existed at the time of death of the victim. In examining the issue of loss of support as it relates to this paragraph, the Board shall consider any factor it deems relevant;

3. (No change.)

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

PUBLIC UTILITIES

(c)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Technical Sufficiency Standards for Solar Energy Devices or Systems for the Purpose of Qualifying for a Sales and Use Tax Exemption

Proposed Readoption with Amendments: N.J.A.C. 14:25

Authorized By: Board of Public Utilities, Herbert H. Tate, President, Carmen J. Armenti and Dr. Edward H. Salmon, Commissioners.

Authority: N.J.S.A. 54:32B-8.33 and 52:27F-11(q).

BPU Docket Number: AX94110550Y.

Proposal Number: PRN 1995-48.

Submit written comments by February 16, 1995 to:

Michael Ambrosio, Director
Division of Energy Planning and Conservation
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The technical sufficiency standards for solar energy systems contained in N.J.A.C. 14:25, scheduled to expire on March 5, 1995, establish standards that qualify such systems for sales tax exemption under N.J.S.A. 54:32B-8.33 of the Sales and Use Tax Act which pertains to solar energy devices or systems. The aforementioned chapter was

promulgated pursuant to the authority vested in N.J.S.A. 52:27F-11(q). It should be noted that the provisions of Reorganization Plan Number 001-94 issued by Governor Christine Todd Whitman on May 5, 1994, and effective on July 4, 1994, provided, in pertinent part, that:

The Division of Energy Planning and Conservation established in the Board of Public Utilities, pursuant to Reorganization Plan No. 002-1989 ... and created pursuant to L. 1977, c.146, as amended (C.52:27F-7), repealed by L. 1987, c.365 ... and the functions, powers and duties of which were transferred to, and vested in, the Department of Environmental Protection and Energy ... pursuant to Reorganization Plan No. 002-1991, are hereby reinstated and all of its functions, powers and duties are hereby transferred to, and vested in, the BPU. ...

This sales tax exemption reflects the State's support for renewable energy sources, those energy sources derived from the sun. Said exemption supports solar technology and provides a subsidy that has little impact on general revenues. The subject rules exempt several types of equipment from sales tax:

1. Passive solar systems which increase net thermal energy gain during the heating season through south facing windows, night time window insulation or storage of the sun's warmth, or which minimize net thermal gain in the cooling season through daytime window insulation or shading devices;

2. Active solar systems that employ mechanical or electrical devices to transfer the heat to air or water;

3. Solar electric generating systems which use photovoltaics; and

4. Wind powered electric generating systems.

The tax exemption supports a small but growing industry that lowers New Jersey's dependence on fossil fuel. Solar equipment vendors consider the tax exemption an important sales tool for this technology. Active installers use the exemption regularly.

The Board of Public Utilities (Board) proposes the readoption of the technical sufficiency standards rules set out in N.J.A.C. 14:25 with minor amendments. The Board believes these amendments to be necessary in order to clarify certain definitions, contained in N.J.A.C. 14:25-1.3, and eligibility criteria, contained in N.J.A.C. 14:25-2.1 and 2.2, to adequately reflect and cover those types of solar energy systems used today.

The Board further notes that the proposed readoption was prepared after the Division of Energy Planning and Conservation reviewed this matter with the Solar Energy Industry Association, the installers included in the Master Record of installers who participate in the Home Energy Savings Program, N.J.A.C. 14:38-7, the principals of solar industry firms located in New Jersey and representatives of electric utilities involved with solar energy.

Social Impact

The proposed readoption with amendments continues to implement the intent of the Legislature to provide a positive economic stimulus for residential energy consumers to consider the purchase of qualifying solar devices. To the extent that consumers can save energy dollars, these standards will have a positive social impact.

Economic Impact

The proposed readoption with amendments should have a positive economic impact by giving an economic incentive to purchase appropriate types of solar devices. The savings in energy and stimulus to the installation of such devices by contractors offset any loss of State revenue attributed to the tax exemption.

Environmental Impact

Solar energy is a renewable virtually non-polluting source of fuel for certain appropriate residential applications. The proposed readoption provides guidance to those devices which will qualify for sales and use tax exemptions. To the extent that this proposal promotes the use of increased solar energy which displaces fossil fuel generated electricity, the readoption with amendments will have a positive effect on the environment.

Regulatory Flexibility Analysis

The proposed readoption will help stimulate small business sales of qualifying devices. It also contains a dispute resolution mechanism should there be a disagreement as to which types of equipment qualify for the tax exemption. Thus, there would be a minimal burden on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This resolution mechanism, however, is the only manner in which an affected business may make the Board aware of a dispute. Accordingly, the Board finds any filing requirements to

be necessary. Accordingly, no differentiation in requirements based on business size is necessary or required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:25.

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

14:25-1.3 Definitions

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

"Active system" means a [solar energy] system [which] **that converts solar radiation into thermal energy**, and mechanically transfers the energy through the use of pumps and fans for the purpose of heating, cooling or general energy needs of a building] **and requires a mechanical distribution system to transfer the thermal energy to the point of use.**

"Distribution system" means that portion of a solar energy system which transfers thermal energy from the point of collection, through pipes or ducts and/or, from the point of collection to end-use, and where applicable, includes a fan and/or pump, reverse flow protection, and an automatic airpurging valve **or which transfers electric energy through wires, conduits, inverters and devices required to connect to the utility or user's electric system.**

"Solar energy system" means a system or component thereof [which uses solar energy to provide all or a portion of the heating, cooling or general energy needs of a building] **that converts solar radiation to thermal or electrical energy.**

14:25-2.1 Eligible solar energy systems

(a) The following solar energy systems shall be eligible for an exemption from sales and use taxes. The exemption shall be for 100 percent of the tax due on the cost unless stated otherwise.

1. Passive and hybrid systems of the following types, provided that the systems generate a net positive gain of thermal energy [for heating and a net loss of thermal energy for cooling in the building] **over the heating season and reduce the gain of thermal energy over the cooling season.**

i. Sunspaces and direct gain devices: The following components shall be eligible, provided that the sunspace or direct gain device contains, at a minimum, (a)1i(1) through (5) below:

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

(5) Storage devices, including:

(A) Thermal storage walls.

(I) (No change.)

(II) Non-load bearing thermal storage walls shall be eligible for an exemption of the tax due on the cost thereof in accordance with the formula two square feet of [slab] **wall** for every one square foot of south facing glazing, not to exceed the wall area of the sunspace or room in which the direct gain device is located; or

(B) (No change.)

(6)-(7) (No change.)

2.-4. (No change.)

14:25-2.2 Ineligible equipment

(a) The following shall not be considered eligible for an exemption from sales and use taxes:

1. Building insulation used to reduce heat lost through walls, roofs, slabs, and foundations **except for insulation required expressly and only for insulating mass storage floors and walls.**

2.-8. (No change.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping Route N.J. 47

City of Millville, Cumberland County

Proposed Amendment: N.J.A.C. 16:28A-1.33

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

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

Proposal Number: PRN 1995-43.

Submit comments by February 16, 1995 to:
 William E. Anderson, Manager
 New Jersey Department of Transportation
 Bureau of Traffic Engineering and Safety Programs
 1035 Parkway Avenue
 CN 613
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.33 to establish a no stopping or standing zone on Route N.J. 47 in the City of Millville, Cumberland County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the City of Millville in Resolution No. A-1050 adopted on September 20, 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 a no stopping or standing zone along Route N.J. 47 in the City of Millville, Cumberland County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish a no stopping or standing zone restriction along Route N.J. 47 in the City of Millville, Cumberland County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of appropriate parking restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

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-1.33 Route 47

(a) The certain parts of State highway Route 47 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 change.)
2. In Cumberland County:
 - i. (No change.)
 - ii. In the City of Millville:
 - (1) Along both sides:
 - (A) (No change.)
 - (B) Between the southerly curb line of Menantico Avenue and the northerly curb line of Arbutus Avenue (approximate mileposts 38.72 to 38.90).
 - (2)-(3) (No change.)
 - iii. (No change.)
3. (No change.)
 - (b)-(e) (No change.)

TREASURY-GENERAL

(b)

**OFFICE OF THE STATE TREASURER
 COMMUNITY AFFAIRS; DIVISION OF LOCAL
 GOVERNMENT SERVICES
 DEPARTMENT OF EDUCATION**

**Collection of Debts
 Debts Owed to New Jersey Higher Education
 Assistance Authority by State, County and
 Municipal Employees**

Proposed New Rules: N.J.A.C. 17:25

Authorized By: John Ekarius, Deputy State Treasurer; Beth Gates, Director, Division of Local Government Services, Department of Community Affairs; The New Jersey Higher Education Assistance Authority, Warren E. Smith, Chairman; Dr. Leo Klagholz, Commissioner, Department of Education.

Authority: N.J.S.A. 18A:72-23, 24, 25.1-25.6; 52:18A-30; 52:27BB-10; 20 U.S.C. § 1095a; 34 C.F.R. § 682.410(b)(10).

Proposal Number: PRN 1995-65.

Submit comments by February 16, 1995 to:
 Office of the Treasurer
 Director of Fiscal and Resources
 CN 211
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules are being promulgated pursuant to N.J.S.A. 18A:72-23 and 24 and 25.1-25.5 to provide for a system whereby the New Jersey Higher Education Assistance Authority (NJHEAA) in conjunction with the Department of the Treasury, shall cooperate in identifying any State, county, or municipal employees, and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or any public authority established pursuant to State law who are delinquent in payments to the NJHEAA on any note or obligation held by the NJHEAA pursuant to N.J.S.A. 18A:72-16.

The proposed rules, which somewhat follow the procedures for wage deductions formerly found at N.J.A.C. 17:25 which expired May 26, 1994, bring State procedures into compliance with new Federal procedures on wage deductions. See 34 C.F.R. § 682.410(b)(10) (effective July 1, 1994) and United States Department of Education (ED) Dear Colleague Letter (effective March 1, 1994), implementing 20 U.S.C. §1095a et seq. The NJHEAA is statutorily responsible for the administration of Federally guaranteed loan programs as well as the New Jersey College Loans to Assist State Students (NJCLASS) in New Jersey. As a condition of its Federal guarantee, the NJHEAA must comply with the Higher Education Act of 1965, as amended, at 20 U.S.C. §§1071 et seq. and ED implementing rules and regulations.

Consistent with the new Federal procedures and also intended to apply to State loan program notes or obligations held by the NJHEAA, the

proposed rules provide the following procedures for wage deduction: definitions, procedure for verification of employment, amount of deduction from wages, notice to debtor, hearing, Authority withholding order, written decision, disposition of proceeds collected, accounting to the Authority. The principal differences between the expired N.J.A.C. 17:25 and the proposed new N.J.A.C. 17:25 consist of definitions (debt, debtor, disposable pay, net proceeds deducted); amount of deduction from wages ("disposable" pay, not "gross" pay); notice to debtor (substance, timing); hearing (issues, process); Authority withholding order (timing of notice to employer to withhold or to cease withholding wages); and accounting to the Authority (gross proceeds "deducted," not "collected").

Social Impact

The proposed new rules, which will impact debtors delinquent in payments to the NJHEAA, will provide for the deduction in each pay period of the lesser of the amount of money permitted by 15 U.S.C. §1673 or 10 percent of the debtor's disposable pay for the particular pay period from which the deduction is made unless the debtor provides the Authority with written consent to deduct a greater amount. The deduction is to be made by the Department for State employees, and by the chief financial officer for county and municipal employees, and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law. These deductions will be forwarded to the NJHEAA and applied to the loan accounts of the affected employees. The primary impact of the new rules is economic, as described below.

Economic Impact

Any State, county or municipal employees, any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or any public authority established pursuant to State law who is delinquent in his or her payments to the NJHEAA on educational loans will have his or her payroll checks decreased, possibly by the amount of the outstanding debt. This will assist the collection of debts owed to the NJHEAA. The proposed new rules impose a modest administrative fee for copying requested loan records, to be assumed by the debtor.

Regulatory Flexibility Statement

The proposed new rules have no effect on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which contract with public agencies. The rules allow for deductions from the wages of any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or any public authority established pursuant to State law who is delinquent in his or her payments to the NJHEAA. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

CHAPTER 25 COLLECTION OF DEBTS

SUBCHAPTER 1. DEBTS OWED TO THE NJHEAA BY STATE, COUNTY, OR MUNICIPAL EMPLOYEES, AND ANY OFFICER OR EMPLOYEE OF A LOCAL BOARD OF EDUCATION, A COUNTY OR MUNICIPAL BOARD OF HEALTH OR AN AUTONOMOUS AUTHORITY CREATED BY A COUNTY OR MUNICIPALITY PURSUANT TO STATUTE AND ANY OFFICER OR EMPLOYEE OF RUTGERS, THE STATE UNIVERSITY, THE UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY, AND NEW JERSEY INSTITUTE OF TECHNOLOGY OR ANY PUBLIC AUTHORITY ESTABLISHED PURSUANT TO STATE LAW

17:25-1.1 Purpose

The purpose of this subchapter is to establish a policy and to provide a system whereby the New Jersey Higher Education Assistance Authority (NJHEAA) in conjunction with the Department of Treasury shall cooperate in identifying State, county, or municipal employees, and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law who are delinquent in payments to the NJHEAA on any note held pursuant to N.J.S.A. 18A:72-16, 18A:72-23, 18A:72-25.1, 18A:72-25.2, 18A:72-25.3, 18A:72-25.4 and 18A:72-25.5. It is also the intent of this subchapter to establish procedures for deducting from the wages of such State, county, or municipal employees, and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, and New Jersey Institute of Technology or any public authority established pursuant to State law the sum of any such debt owed to the NJHEAA. The procedures contained in this subchapter afford the State, county, or municipal employee and any officer or employee of a local board of education, a county or municipal board of health or any autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law the opportunity to assert any legal rights he or she may have directly related to the deduction from the wages.

17:25-1.2 Definitions

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

"Administrative resolution" means resolving any contested debt due and owing the New Jersey Higher Education Assistance Authority by the administrators of the New Jersey Higher Education Assistance Authority.

"Authority" means the New Jersey Higher Education Assistance Authority created pursuant to N.J.S.A. 18A:72-1 et seq.

"Debt" means any liquidated sum due and owing the Authority which has accrued through any note held by the Authority pursuant to N.J.S.A. 18A:72-16, regardless of whether there is any outstanding judgment for that sum.

"Debtor" means any New Jersey State, county, or municipal employee or any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University

of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law on the State, county, municipal, or school district payroll system(s) owing money to or having a note or obligation purchased by the Authority, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy. References to "the debtor" in this subchapter shall include all endorsers or co-signers on a loan.

"Department" means the New Jersey Department of Treasury.

"Disposable pay" means that part of the debtor's compensation from an employer remaining after the deduction of any amounts required by law to be withheld (such as Social Security and Federal and State income taxes).

"Financial officer" means the chief financial officer (or equivalent) of the appropriate county, municipal local unit or school district having authority over the county, municipal or school district payroll system(s).

"Net proceeds deducted" means gross proceeds deducted from a debtor's State, county, municipal or school district payroll checks minus any collection fee charged by the Department or local unit to provide for any expenses of the collection effort.

"Payroll check" means the wages received by New Jersey State, county or municipal employees, any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law paid by the State, county, municipal or school district payroll in return for services provided to the employee's or officer's respective State, county, municipal or school district agency, department, office or the entity using the State, county, municipal or school district payroll system by which the employee or officer is employed.

17:25-1.3 Procedure for verification of employment

(a) For State employees, the Authority shall notify the Department in writing and supply the Department with a list of persons currently in default on notes held by the Authority. The Department shall notify the Authority of those persons currently in default on notes held by the Authority who are currently receiving wages as New Jersey State employees or officers.

(b) For county and municipal employees, and any officer or employee of a local board of education, a county or municipal board of health or any autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law, the Authority shall notify the financial officer in writing and supply the financial officer with a list of persons currently in default on notes held by the Authority. The financial officer shall notify the Authority of those persons currently in default on notes held by the Authority who are currently receiving wages as county or municipal employees of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, or as officers or employees of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law.

17:25-1.4 Amount of deduction from wages

(a) Unless the debtor provides the Authority with written consent to deduct a greater amount, the amount deducted from any debtor's payroll check shall be the lesser of the following amounts in each pay period:

1. The amount of money permitted by use of the formula set forth at 15 U.S.C. § 1673 of the Consumer Credit Protection Act; or
2. Ten percent of the debtor's disposable pay for the particular pay period from which the deduction is made.

17:25-1.5 Notice to debtor

(a) Within 10 days after the notification to the Authority that the employee or officer is receiving wages from the State, county, municipal or school district payroll system, and at least 30 days before the initiation of the proposed deduction, the Authority shall mail to the debtor's last known address a written notice of the nature and amount of the debt, the intention of the Authority to initiate the proposed deduction, and an explanation of the debtor's rights.

(b) The Authority shall offer the debtor an opportunity to inspect and copy Authority records related to the debt. Upon receiving a request for an inspection, the Authority shall schedule an inspection, at which time the debtor may order copies of requested records for the fee of \$10.00.

(c) The Authority shall offer the debtor an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority.

(d) The Authority shall also advise debtors of the right to request a hearing if they are contesting the amount or existence of the alleged debt, or the terms of their repayment schedule. Requests for a hearing shall be made to the Authority, in writing, on or before the 15th day following the debtor's receipt of the notice described in this section. A debtor shall be considered to have received the notice described in this section five days after it was mailed by the Authority. A request for a hearing shall include a full explanation of the facts justifying said request. Only timely hearing requests, those received by the Authority within 15 days of the date the notice is received, will delay or cancel the initiation of the proposed deduction. The Authority shall not delay the institution of the proposed deduction unless the Authority determines that the delay in filing the request was caused by factors over which the debtor has no control, or the Authority received information that the Authority believes justifies a delay or cancellation of the initiation of the proposed deduction. The Authority will take into consideration such factors as illness, disability and parental leave.

(e) The Authority may not deduct from the wages of a debtor whom it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months.

17:25-1.6 Authority procedure; administrative resolution; hearing

(a) When a debtor makes a timely written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule, the Authority shall schedule an administrative resolution with the debtor, which, at the debtor's option, may be in person or by telephone, in an effort to agree upon the sum asserted as due and owing and any other relevant matters.

(b) Pending the administrative resolution of the debt asserted by the Authority, no action shall be taken in furtherance of collection of that debt through the deduction procedure established by this subchapter.

17:25-1.7 Referral to the Office of Administrative Law; hearing

If administrative resolution efforts in a contested case are unsuccessful, the matter shall be filed forthwith with the clerk of the Office of Administrative Law pursuant to the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. as amended and supplemented and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Administrative Law Judge shall issue a final written decision at the earliest practicable date, but not later than 60 days after the Authority's receipt of the debtor's hearing request.

17:25-1.8 Authority Withholding Order

(a) Within 20 days after the debtor fails to make a timely request for a hearing or, if a timely request for a hearing is made by a debtor, within 20 days after the administrative resolution to proceed with the proposed deduction or within 20 days after the final decision in a contested case is made by the Administrative Law Judge to proceed with the proposed deduction, the Authority shall promptly issue a withholding order to the Department or financial officer to begin deductions for the repayment of the debt from the debtor's payroll check.

(b) Upon receipt by the Department or financial officer of a withholding order from the Authority, the Department or financial officer shall make the deduction(s) beginning with the first pay period that occurs after the issuance of a withholding order and transfer the net proceeds deducted for payment to the Authority.

(c) The Authority shall notify the Department or financial officer of any adjustments to be made in the amount of the debt or, if appropriate, inform the Department or financial officer to stop the deductions.

17:25-1.9 Disposition of proceeds collected; administrative fees

(a) Upon effecting deductions, the Department or financial officer shall transfer to the Authority, the net proceeds deducted on its behalf.

(b) From the gross proceeds deducted by the Department or financial officer through deductions, the Department, local unit or school district shall retain one percent, which amount shall be charged to the Authority as an administrative fee.

17:25-1.10 Accounting to the Authority; credit to debtor's obligation

(a) Simultaneously with the transmittal of the net proceeds deducted to the Authority, the Department or financial officer shall provide the Authority with an accounting of the deductions for which payment is being made.

(b) The accounting shall include:

1. The full names of the debtors;
2. The gross proceeds deducted per individual;
3. The net proceeds deducted per individual; and
4. The administrative fee charged per individual.

(c) Upon receipt by the Authority of the net proceeds deducted on the Authority's behalf by the Department or financial officer and an account of the proceeds as specified under this section, the Authority shall credit the debtor's obligation with the gross proceeds deducted.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Contribution Reporting; Contribution Limits

Proposed New Rules: N.J.A.C. 19:25-10

Proposed Amendments: N.J.A.C. 19:25-1.7, 9.2 and 9.3

Proposed Repeal and New Rules: N.J.A.C. 19:25-11

Authorized By: Election Law Enforcement Commission,

Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-6.

Proposal Number: PRN 1995-61.

A public hearing concerning this proposal will be held on Tuesday, February 21, 1995, at 10:00 A.M., at:

Somerset County Administration Building
Freeholders' Meeting Room
20 Grove Street
Somerville, New Jersey

To reserve time to speak, telephone the Commission offices at (609) 292-8700 by Thursday, February 16, 1995.

Submit written comments by February 16, 1995 to:

Gregory E. Nagy, Esq., Legal Director
Election Law Enforcement Commission
CN-185

Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, the Commission) proposes new rules, amendments and repeals concerning the reporting requirements for contributions (see proposed N.J.A.C. 19:25-10), and the limits on the amounts that may be contributed to, or accepted by, a candidate, candidate committee, joint candidates com-

mittee, political committee, continuing political committee, political party committee or legislative leadership committee, or the treasurer of such a committee (see proposed N.J.A.C. 19:25-11).

This proposal is another step in the implementation of statutory changes made by Chapter 65 of the Laws of 1993, which made comprehensive amendments to "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. (hereafter, the act). The proposed rules for Contribution Reporting, N.J.A.C. 19:25-10 (hereafter, subchapter 10), supercede the existing rules at N.J.A.C. 19:25-11, which are proposed for repeal. Most of the changes reflect new statutory requirements created by the 1993 amendments, such as the reporting of the occupation and the name and mailing address of the employer of an individual who has contributed over \$200.00 (see N.J.A.C. 19:25-10.2). Also, a new section has been added (N.J.A.C. 19:25-10.3) to address specifically the reporting of contributions of \$200.00 or less.

The principal substantive changes proposed in subchapter 10 are the additions of new sections concerning reporting of interest payments paid by banking institutions on depository accounts (see proposed N.J.A.C. 19:10-12) and reporting of loans (see proposed N.J.A.C. 19:25-10.13). Under the proposed new rules, payments received as interest on depository accounts are not subject to contributor identification, and it is therefore unnecessary to identify the banking institution paying such interest as a contributor. The rules recognize what is currently common practice, and acknowledge that such interest payments are paid for business and not political reasons. Nevertheless, any amounts received as interest payments must be included in reports in order that those reports accurately reflect all transactions in the depository account.

In regard to loans, the Act provides that they are to be reported as contributions (see N.J.S.A. 19:44A-3(d), defining contributions to include loans (see N.J.S.A. 19:44A-8a and 16a). However, in the event that a loan made by a banking or lending institution is co-signed or guaranteed in the ordinary course of business by a candidate as an individual, or by some third-party, the rules clarify that the contributor is the candidate or third party co-signing or guaranteeing the loan, not the banking or lending institution.

The contribution limit rules (see proposed N.J.A.C. 19:25-11, hereafter subchapter 11) are new because contribution limits were added by the 1993 statutory amendments. The limits are applicable to all persons or entities receiving contributions, such as candidates, candidate committees, joint candidates committees, political committees, continuing political committees, political party committees and legislative leadership committees, and their treasurers. They are also applicable to all persons or entities making contributions, such as individuals, corporations, unions, associations, groups, candidate committees, joint candidates committees, political committees, continuing political committees, legislative leadership committees, New Jersey political party committees and national political party committees.

Proposed N.J.A.C. 19:25-11.1 mandates that all candidates and committees, with the exception of candidates for nomination or for election to the office of Governor, must observe the contribution limits established by the 1993 amendments and codified at N.J.S.A. 19:44A-11.3, 11.4 and 11.5. Gubernatorial candidates must observe contribution limits set forth in other rules not affected by this proposal (see N.J.A.C. 19:25-15 and 16).

In order to summarize the various contribution limits, the Commission has proposed in N.J.A.C. 19:25-11.2 a chart that lists contributing entities in a vertical column on the left, lists recipient committees in a horizontal row at the top, and provides the various per election or per calendar year contribution limits at the intersections. The chart was developed by the Commission early in 1993 and shortly after the enactment into law of the contribution limits, and has proven to be a practical and relatively simple reference tool for both the makers and recipients of contributions. No person or entity is permitted to make a contribution in excess of the limits, and no candidate, committee or treasurer may knowingly accept a contribution in excess of the limits.

In proposed N.J.A.C. 19:25-11.3, subsection (a) provides that a candidate may make a contribution as an individual from personal assets and subject to the limits on a contribution from an individual without having that contribution included for contribution limit purposes with any contributions made by the candidate's candidate committee, or joint candidates committee. Although the act does not specifically address contributions by candidates as individuals, the Commission infers that the act was not intended to preclude an individual who is a candidate from making contributions out of the candidate's personal assets notwithstanding contributions made from the assets of the candidate's

candidate committee, or joint candidates committee. Subsection (b) recites statutory provisions at N.J.S.A. 19:44A-11.3d, and subsection (c) contains statutory provisions at N.J.S.A. 19:44A-11.3c(4).

Proposed N.J.A.C. 19:25-11.4 establishes contribution limits on contributions to and by joint candidates committees. The contribution limit chart in proposed N.J.A.C. 19:25-11.2 does not include joint candidates committees because of the many mathematical combinations that can arise from contributions made to or by such committees, or by one joint candidates committee contributing to another. Subsections (a) and (b) establish limits for receiving or making contributions when none of the candidates who established the joint candidates committee has established a separate candidate committee. Subsection (c) establishes the contribution limit that must be applied to a joint candidates committee which includes one or more candidates who also have established a candidate committee, and introduces the provisions of the equal attribution rule which is set forth in proposed N.J.A.C. 19:25-11.5. Finally, subsection (d) establishes the limit on a contribution from one joint candidates committee to another where the contributing joint candidates committee, and any candidate committee established by one of its participating candidates have not made any other contribution to the recipient joint candidates committee, or to any candidate committee established by a candidate participating in the recipient joint candidates committee.

The equal attribution rule set forth in proposed N.J.A.C. 19:25-11.5 is applicable to candidates who are participating in a joint candidates committee in which one or more of the candidates has also established a candidate committee. Subsection (a) provides that such a candidate cannot receive contributions from a contributor to the candidate's joint candidates committee and to the candidate's candidate committee which in the aggregate exceed the contribution limit. Subsection (b) requires that each contribution received by the joint candidates committee must be equally attributed to each of the participating candidates. After such equal attribution the contribution limits in Subchapter 11 must be applied to each of the participating candidates in the joint candidates committee and to any candidate committee established by any of them. Two examples are provided to illustrate the application of the rule.

Proposed N.J.A.C. 19:25-11.6 provides that political committees supporting or opposing a public question may accept contributions without limits (see N.J.S.A. 19:44A-11.5a), and may make contributions to another political committee, or continuing political committee, without limits (see N.J.S.A. 19:44A-11.5b).

County political party committees, in addition to the limits set forth in other sections of subchapter 11, are subject to limits on the amounts they may contribute to candidates in other counties, or in legislative districts that include other counties (see N.J.S.A. 19:44A-11.3b(2) and 19:44A-11.4c). These special limits are set forth in proposed N.J.A.C. 19:25-11.7.

In proposed N.J.A.C. 19:25-11.8, the Commission prescribes the method for returning to a contributor that portion of a contribution that is in excess of an applicable contribution limit, and for reporting that refund. Failure to observe the prescribed refund and reporting procedures may result in a finding by the Commission of a knowing violation of the contribution limit requirements.

The proposed amendments to N.J.A.C. 19:25-1.7, 9.2 and 9.3 conform cross-references to N.J.A.C. 19:25-10 to its recodification at N.J.A.C. 19:25-11.

Social Impact

The proposed new rules set forth the requirements for reporting contributions in subchapter 10, and the limits on contributions that can be made or accepted by candidates, committees and treasurers in subchapter 11. The new rules implement new statutory requirements created by Chapter 65 of the Laws of 1993, and therefore are intended to enhance the salutary public purposes of the act. These salutary purposes are to ensure that there is full disclosure of the persons or entities making contributions, and to ensure that the amounts of those contributions are within the limits established by the act.

In regard to the reporting of contributions, the Commission believes that interest income generated by funds in a campaign or organizational depository bank account should not be viewed as contributions from the banking institution paying such interest, and therefore proposes at N.J.A.C. 19:25-10.12 that reporting of contributor identification is unnecessary, although the amount of such interest received must be included in reports. Also, the Commission believes that a loan made by a banking or lending institution in the ordinary course of business, when guaranteed or co-signed by a candidate using personal assets, or by some other third

party, is not a contribution from the banking or lending institution, but from the candidate or third party guaranteeing or co-signing the loan. Therefore, the Commission has proposed N.J.A.C. 19:25-10.13 to implement its interpretation of the statutory requirements regarding the reporting of loans.

In regard to the contribution limits, the Commission believes that the chart provided in N.J.A.C. 19:25-11.2 will serve as an effective and relatively simple tool for various contributors and recipient committees to determine quickly what limit is applicable to most contributions. The Commission is cognizant of the complexity of the many different limits applicable to various contributors and committees, and therefore has strived to simplify the contribution limit requirements as much as possible.

Much of the complexity arises because of the difficulty of applying contribution limits to candidates who may simultaneously maintain both a candidate committee and a joint candidates committee. Therefore, the Commission has addressed the applicability of contribution limits on joint candidates committees in a separate section (see N.J.A.C. 19:25-11.4), and has relied on the use of examples to illustrate the application of the equal attribution requirements (see N.J.A.C. 19:25-11.5). Candidates choosing to establish both a candidate committee and participate in a joint candidates committee in an election should review these sections closely to minimize the possibility of receiving excessive prohibited contributions.

Candidates, committees or treasurers who knowingly accept excessive contributions violate the act (see N.J.S.A. 19:44A-11.3, 11.4 and 11.5). Further, any person who willfully and intentionally makes or accepts any contribution in violation of the limits is subject to penalties (see N.J.S.A. 19:44A-22e). Therefore, the Commission has proposed a rule at N.J.A.C. 19:25-11.8 establishing procedures for the return within 48 hours of receipt of the excessive portion of a contribution. Refunds made pursuant to these procedures provides a safe harbor from a finding of a knowing violation.

Economic Impact

These proposed new rules are expected to result in increased compliance costs to the extent they require candidates, committees and treasurers to maintain additional recordkeeping and report the occupation and name and address of employers of individuals making contributions over \$200.00 (see N.J.A.C. 19:25-10.2 and 19:25-10.6). However, these changes are mandated by the 1993 amendments to the Act and promote full disclosure of contributors.

Compliance with the contribution limit requirements set forth in subchapter 11 may also result in increased costs for recordkeeping and reporting. Most of the burden of complying with contribution limits will fall on candidates, committees and treasurers, but it is also possible that persons or entities making contributions will incur recordkeeping costs to assure that their contributions are within the prescribed limits. Contributors must comply with both per election and calendar year contribution limits. However, the contribution limits are mandated by the 1993 amendments to the act, and the Commission is unaware of additional costs generated specifically as a result of this proposal.

Regulatory Flexibility Statement

The Commission's proposed new rules do not impose recordkeeping, reporting, or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rules impose requirements on candidates, various types of committees, their treasurers and persons making political contributions. Small businesses may be employed to provide goods or services to reporting candidates, committees or their treasurers, but the recordkeeping and reporting requirements generated by the proposed rules are solely on the reporting candidates, committees or treasurers.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:25-11.

Full text of the proposed amendments and new rules follows (additions indicated in boldface thus; deletions indicated in brackets [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.

...

"Public solicitation" means a solicitation as described in N.J.A.C. 19:25-[11.6(b)2] 10.7(a).

19:25-9.2 Certified statement (Form A-3)

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

(c) If a continuing political committee, political party committee, or legislative leadership committee, which has filed a certified statement for a calendar year pursuant to (a) above, receives during any calendar year quarter a contribution, or aggregate contributions from a contributor, that exceeds the sum of \$200.00, that committee shall file on the dates provided in N.J.A.C. 19:25-9.1 a report containing the following information:

1.-2. (No change.)

3. The amount of the contribution, or if the contribution was other than money, a description of the contribution and its value as determined pursuant to N.J.A.C. 19:25-[11.5]10.4; and

4. (No change.)

19:25-9.3 Contributions received immediately before an election

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

(c) The report or written notice described in (a) above shall contain the following information:

1.-2. (No change.)

3. The amount of the contribution, or if the contribution was other than money, a description of the contribution and its value as determined pursuant to N.J.A.C. 19:25-[11.5]10.4;

4.-5. (No change.)

SUBCHAPTER 10. CONTRIBUTION REPORTING

19:25-10.1 General provisions

Each contribution received by a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee must be reported at the time and in the manner provided in the act and this subchapter.

19:25-10.2 Contributions of more than \$200.00

(a) A contribution received by a candidate committee, joint candidates committee, or political committee during an election fund report period established in N.J.A.C. 19:25-8 in an amount of more than \$200.00, or aggregate contributions received by such a committee in an election from a contributor totalling more than \$200.00 during such a report period, must be reported by providing the following information:

1. The date the contribution was received or, if more than one contribution was received in the reporting period, the dates the aggregate contributions were received;

2. The name and mailing address of the contributor;

3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;

4. The amount of the contribution, or amount of aggregate contributions in the reporting period; and

5. The total amount of all contributions received from the contributor in the election to date.

(b) A contribution received by a continuing political committee, a political party committee, or a legislative leadership committee during a calendar year of more than \$200.00 from a contributor, or aggregate contributions received by such a committee during a calendar year from a contributor totalling more than \$200.00, must be reported by providing the following information:

1. The date the contribution was received or, if more than one contribution was received in the reporting period, the dates the aggregate contributions were received;

2. The name and mailing address of the contributor;

3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;

4. The amount of the contribution, or amount of aggregate contributions in the reporting period; and

5. The total amount of all contributions received from the contributor in the calendar year to date.

(c) A candidate committee or joint candidates committee which has filed a certified statement (that is, Form A-1 or A-2) in an election and which receives a contribution in that election of more than \$200.00, or aggregate contributions from a contributor of more than \$200.00, shall file the report provided in N.J.A.C. 19:25-8.4(c).

(d) A continuing political committee, political party committee, or legislative leadership committee which has filed a certified statement (Form A-3) in a calendar year and which receives in that calendar year a contribution of more than \$200.00, or aggregate contributions from a contributor of more than \$200.00, shall file the report provided in N.J.A.C. 19:25-9.2(c).

19:25-10.3 Contributions of \$200.00 or less

(a) A contribution received by a candidate, candidate committee, joint candidates committee or political committee in an amount of \$200.00 or less in an election must be reported on the election fund report required by N.J.A.C. 19:25-8.2 or 8.3 for the time period in which the contribution was received by including the amount of the contribution in the total sum reported in the report for all contributions received in the amount of \$200.00 or less, but the name and mailing address of the contributor or the occupation of a contributor who is an individual and the name and mailing address of the individual's employer is not required to be reported.

(b) At any time during an election pursuant to (a) above, if the aggregate amount received from a contributor by a candidate, candidate committee, joint candidates committee, or political committee exceeds the sum of \$200.00, the contribution resulting in aggregate contributions totalling more than \$200.00 and each subsequent contribution (regardless of amount) received from the contributor during the election must be reported on the pertinent election fund report in the same manner as a contribution of more than \$200.00 pursuant to N.J.A.C. 19:25-10.2(a).

(c) A contribution received by a continuing political committee, a political party committee or a legislative leadership committee in an amount of \$200.00 or less in a calendar year must be reported on the quarterly report required by N.J.A.C. 19:25-9.1 for the calendar year quarter in which the contribution was received by including the amount of the contribution in the total sum reported for the quarterly reporting period of all contributions received in the amount of \$200.00 or less, but the name and mailing address of the contributor or the occupation of a contributor who is an individual and name and mailing address of the individual's employer is not required to be reported.

(d) At any time during a calendar year pursuant to (c) above, if the aggregate amount received from a contributor by a continuing political committee, political party committee, or legislative leadership committee exceeds the sum of \$200.00, the contribution resulting in aggregate contributions totalling more than \$200.00 and each subsequent contribution (regardless of amount) received from the contributor during the remainder of the calendar year must be reported on the pertinent quarterly report in the same manner as a contribution of more than \$200.00 pursuant to N.J.A.C. 19:25-10.2(b).

19:25-10.4 Computation of contribution amounts

(a) A contribution received in the form of goods shall be reported in an amount equal to the fair market value of the goods to the candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee receiving such goods.

(b) A contribution in the form of "paid personal services" as defined in N.J.A.C. 19:25-1.7, Definitions, shall be reported in an amount equal to the amount of salary, compensation or consideration for said services paid by the contributor to the individual performing said services.

(c) Personal services performed by an individual on a voluntary, non-compensated basis do not constitute a reportable contribution.

1. Example 1: E is a certified public accountant, who, in aid of the candidacy of candidate A has undertaken to set up the necessary books and records to reflect the financial operations of the campaign of candidate A. E employs in his office several accountants, bookkeepers and clerical personnel who perform some of the work

required to maintain the financial records for the campaign of candidate A. The services of E do not constitute a contribution to candidate A since they are voluntary and uncompensated personal services. The value of the services of the accountants and other employees of E, estimated as described in (b) above, are a contribution to candidate A.

19:25-10.5 Contributions of paid personal services

(a) The treasurer or organizational treasurer of a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee shall upon receipt of a contribution in the form of paid personal services pursuant to N.J.A.C. 19:25-10.4(b) obtain from the person contributing the paid personal services a written statement setting forth the amount of compensation paid by the contributor to the individual performing the services.

(b) In any written statement required pursuant to (a) above, if the individual performing the services for the candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, also performed other services during the same period for the contributor, and the manner of payment was such that payment for the contributed services cannot readily be segregated from contemporary payment for the other services, the contributor shall so state in the written statement and shall either:

1. Set forth the contributor's best estimate of the dollar amount of payment to each such individual which is attributable to the contribution of the paid personal services, and shall certify the substantial accuracy of the same; or

2. If unable to determine such amount with sufficient accuracy, set forth the total compensation paid by the contributor to each such individual for the period of time during which the paid personal services were performed.

19:25-10.6 Currency contributions

(a) A candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, or the treasurer or organizational treasurer of such committee, may accept a contribution in the form of currency provided that it is received in an aggregate amount not to exceed \$200.00 in an election, or a calendar year, whichever is applicable to the recipient candidate or committee, and provided the contributor simultaneously submits a written record to the committee or treasurer containing the following:

1. The date the contribution was made;
2. The name and mailing address of the contributor;
3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;
4. The amount of the contribution; and
5. The signature of the contributor.

(b) A contributor may make a contribution in the form of currency provided that the contribution in an aggregate amount does not exceed \$200.00 in an election to a candidate, candidate committee, joint candidates committee, or political committee, or does not exceed \$200.00 in a calendar year to a continuing political committee, political party committee or legislative leadership committee, and provided such contributor shall simultaneously submit to the committee or its treasurer a written record containing the following:

1. The date the contribution was made;
2. The name and mailing address of the contributor;
3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;
4. The amount of the contribution; and
5. The signature of the contributor.

(c) Nothing in this section shall prohibit the making of, or receipt of, currency contributions not to exceed \$20.00 per contributor made or received under the public solicitation provisions at N.J.A.C. 19:25-10.7.

19:25-10.7 Public solicitations

(a) The term "public solicitation" means any activity by or on behalf of any candidate, political committee, continuing political committee, candidate committee, joint candidates committee, legislative leadership committee or political party committee where-by either:

1. Members of the general public are personally solicited for on-the-spot cash contributions not to exceed \$20.00 per person; or

2. Members of the general public are personally solicited for on-the-spot purchase of items having tangible value as merchandise, at a price not to exceed \$20.00 per item.

(b) Proceeds of a public solicitation must be reported as contributions, however there shall be no obligation to make or maintain records of or report the identity of any contributor, and such proceeds shall not be deemed as anonymous contributions.

(c) In the event contributions are received as the result of a public solicitation, the date and location of each such public solicitation must be identified in any report showing receipt of proceeds from the public solicitation.

19:25-10.8 Anonymous contributions

(a) No contribution shall be made by a person or received by a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee on an anonymous basis, that is without making known, or knowing, the identity of the person making the contribution, or in a fictitious name, or by one person or group in the name of another, and no person shall contribute or purport to contribute to any candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, any funds or property not actually belonging to him or her and in his or her full custody and control, or which have been given or furnished to him or her by any other person or group for the purpose of making a contribution thereof.

(b) A contribution shall not be deemed anonymous if the identity of the contributor was known to the candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, or to the treasurer or organizational treasurer of such committee, at the time when the contribution was received, even though the committee or treasurer may later be unable to identify the contributor because of loss or destruction of records. Nothing in this subsection shall be construed to prevent the Commission from imposing a penalty pursuant to the act or these regulations for failure to keep proper records.

(c) A group contribution, that is a contribution made collectively by persons who are members of the contributing group, shall not be deemed an anonymous contribution by any individual member of the group.

19:25-10.9 Contributions for pre-candidacy activity

In the event that an individual who has been receiving funds or other benefits pursuant to N.J.A.C. 19:25-3.1 solely for the purpose of determining whether or not to become a candidate, actually becomes a candidate in an election, all funds or benefits received in connection with his or her pre-candidacy activity shall be considered contributions under the act and shall be reported in accordance with the applicable reporting requirements in the initial report filed by such candidate's candidate committee, or joint candidates committee.

19:25-10.10 Political communication contributions

(a) The term "political communication" means any written statement, pamphlet, advertisement or other printed or broadcast matter containing an explicit appeal for the election or defeat of a candidate which is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the appeal is directed. Words such as "Vote for (name of candidate)," "Vote against (name of opposing candidate)," "Elect (name of candidate)," "Support (name of candidate)," "Defeat (name of opposing candidate)," "Reject (name of opposing candidate)," and

other similar explicit political directives constitute examples of appeals for the election or defeat of a candidate.

(b) A written statement, pamphlet, advertisement or other printed or broadcast matter that does not contain an explicit appeal pursuant to (a) above for the nomination for election or for the election or defeat of a candidate shall be deemed to be a political communication if it meets the following conditions:

1. The communication is circulated or broadcast within 90 days of the date of any election in which the candidate on whose behalf the communication is made is seeking nomination for election or elected office; except that in the case of a candidate for nomination for the office of Governor in a primary election, the period of time that a communication shall be deemed political shall be on or after January 1st in a year in which a primary election for Governor is being conducted, and in the case of a candidate for election to the office of Governor in a general election, the period of time that a communication shall be deemed political shall begin on the day following the date of the gubernatorial primary election;

2. The communication is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the communication was made;

3. The communication contains a statement or reference concerning the governmental or political objectives or achievements of the candidate; and

4. The production, circulation or broadcast of the communication, or any cost associated with the production, circulation or broadcast of the communication, has been made in whole or in part with the cooperation of, prior consent of, in consultation with, or at the request or suggestion of the candidate.

(c) Nothing contained in (b) above shall be construed to require reporting of a communication by an incumbent officeholder seeking reelection if the communication is in writing and is made to a constituent in direct response to a prior communication received from that constituent, if it is circulated or broadcast for the sole and limited purpose of communicating governmental events requiring constituents to make applications or take other actions before the date of the upcoming election, or if it is circulated or broadcast to constituents for the sole and limited purpose of communicating facts relevant to a bona fide public emergency.

(d) Nothing contained in (b) above shall be construed to require reporting of a communication by a candidate seeking nomination for election in a primary election if that candidate is not opposed by another candidate seeking nomination for election in that primary election.

19:25-10.11 Reporting of political communication costs

(a) If any political communication as defined in N.J.A.C. 19:25-10.10 is incurred or paid for by any candidate committee or joint candidates committee, the committee shall report such expenditure in accordance with N.J.A.C. 19:25-12.

(b) Any political communication as defined by N.J.A.C. 19:25-10.10 incurred or paid for by any person or entity other than the candidate's candidate committee or joint candidates committee, which political communication is prepared, made or circulated with the consent or cooperation of the candidate, shall be reported by that candidate as a campaign contribution of goods and/or services in accordance with N.J.A.C. 19:25-10.4(a).

(c) Any political communication not prepared, made or circulated with the consent or cooperation of a candidate and incurred or paid

for by any other person or entity shall be reported in accordance with N.J.A.C. 19:25-12.

19:25-10.12 Interest income

Any payment received as interest income for funds on deposit in a campaign or organizational depository account established pursuant to N.J.A.C. 19:25-5.2 is not subject to contributor identification requirements, provided that such interest payment amount is included in amounts reported as received and deposited.

19:25-10.13 Loans as contributions

(a) A loan received by a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, or by the treasurer of such committee, shall be reported as a contribution by the person or entity making the loan.

(b) Notwithstanding (a) above, if a loan is made to a candidate, committee or treasurer by a banking or lending institution, and if the candidate as an individual using personal assets, or some third party person or entity, in the ordinary course of business, has guaranteed, co-signed or otherwise assured repayment of the loan to the banking or lending institution, the contributor of the loan shall be reported as the person or entity guaranteeing, co-signing or otherwise assuring the repayment of the loan, and the banking or lending institution shall not be deemed to be the contributor.

(c) A loan made by a banking or lending institution to a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee which loan is not secured pursuant to (b) above is a contribution to the candidate or committee by that banking or lending institution.

SUBCHAPTER 11. CONTRIBUTION LIMITS

19:25-11.1 Candidates subject to contribution limits

(a) All candidates, candidate committees, and joint candidates committees, and all treasurers of such committees, shall observe the contribution limits set forth in this subchapter and shall not knowingly accept any contribution in excess of such contribution limits, except that candidates for nomination for election to the office of Governor shall be subject to the contribution limits set forth in N.J.A.C. 19:25-16, Public Financing of Primary Election for Governor, and candidates for election to the office of Governor shall be subject to the contribution limits set forth in N.J.A.C. 19:25-15, Public Financing: General Elections for the Office of Governor.

(b) All political committees, continuing political committees, legislative leadership committees, political party committees, and all treasurers or organizational treasurers of such committees, shall observe the contribution limits set forth in this subchapter and shall not knowingly accept any contribution in violation of such contribution limits.

19:25-11.2 Contribution limit chart

(a) The following chart sets forth the contribution limits applicable to persons or entities making contributions to candidates, candidate committees, political committees, continuing political committees, legislative leadership committees, and State, county or municipal political party committees:

PROPOSALS

Interested Persons see Inside Front Cover

OTHER AGENCIES

| Entities Making Contributions | Entities Receiving Contributions | | | | | | |
|--|--|---|--------------------------------|----------------------------------|---------------------------------|----------------------------------|-------------------------------------|
| | Candidate Committee (see N.J.A.C. 19:25-11.3) | Political Committee (see N.J.A.C. 19:25-11.6) | Continuing Political Committee | Legislative Leadership Committee | State Political Party Committee | County Political Party Committee | Municipal Political Party Committee |
| Individual to: | \$1,500 per election | No Limit | No Limit | \$25,000 per year | \$25,000 per year | \$25,000 per year | \$5,000 per year |
| Corporation or Union to: | \$1,500 per election | No Limit | No Limit | \$25,000 per year | \$25,000 per year | \$25,000 per year | \$5,000 per year |
| Association or Group to: | \$1,500 per election | No Limit | No Limit | \$25,000 per year | \$25,000 per year | \$25,000 per year | \$5,000 per year |
| Candidate Committee to: (see N.J.A.C. 19:25-11.3) | \$5,000 per election | \$5,000 per election | \$5,000 per year | \$25,000 per year | \$25,000 per year | \$25,000 per year | \$5,000 per year |
| Political Committee to: | \$5,000 per election | \$5,000 per election | \$5,000 per year | \$25,000 per year | \$25,000 per year | \$25,000 per year | \$5,000 per year |
| Continuing Political Committee to: | \$5,000 per election | \$5,000 per election | \$5,000 per year | \$25,000 per year | \$25,000 per year | \$25,000 per year | \$5,000 per year |
| Legislative Leadership Committee to: | | | | | | | |
| State Political Party Committee to: | | | | | | | |
| County Political Party Committee to: (see N.J.A.C. 19:25-11.7) | NO LIMITS, except those set forth in N.J.A.C. 19:25-11.7 for a county political party committee. | | | | | | |
| Municipal Political Party Committee to: | | | | | | | |
| National Political Party Committee to: | \$5,000 per election | \$5,000 per election | \$5,000 per year | \$25,000 per year | \$50,000 per year | \$25,000 per year | \$5,000 per year |

(b) No contributing person or entity listed in (a) above shall make a contribution, or aggregate contributions, in excess of the contribution limits set forth in (a) above.

(c) No candidate, candidate committee, political committee, continuing political committee, legislative leadership committee, political party committee, or treasurer or organizational treasurer of any of such committee, shall knowingly accept a contribution, or aggregate contributions, in excess of the contribution limits set forth in (a) above.

19:25-11.3 Candidate contributions

(a) A candidate may make a contribution as an individual and subject to the limits set forth in this subchapter notwithstanding any contribution made by the candidate's candidate committee or joint candidates committee, provided that the contribution made by the candidate as an individual is not derived from funds controlled by the candidate committee or joint candidates committee.

(b) Notwithstanding the contribution limits set forth in N.J.A.C. 19:25-11.2 above, a candidate, or a corporation one hundred percent of the stock of which is owned by the candidate, or by the candidate's spouse, child, parent, or sibling residing in the candidate's household, may make contributions without limit to a candidate committee established by that candidate, or to a joint candidates committee established by that candidate.

(c) Notwithstanding the contribution limits set forth in N.J.A.C. 19:25-11.2 above, a candidate committee can make contributions in an election without limit to another candidate committee if both the contributing and recipient candidate committees are established by candidates who are seeking nomination for election, or election to, legislative offices within the same legislative district, or to the same offices within the same political subdivision of this State.

19:25-11.4 Joint candidates committee contribution limits

(a) A joint candidates committee established by candidates who have not established any candidate committees in an election may accept a contribution from a contributor in an amount equal to but not in excess of the sum of the number of candidates participating in the joint candidates committee multiplied by the contribution limit applicable to a contribution made by the contributing entity to a candidate committee of a single candidate.

1. Example. A joint candidates committee in which three candidates are participating, none of whom have established candidate committees, may receive from an individual a contribution not to exceed \$4,500 in an election, that is three multiplied by the \$1,500 contribution limit applicable to a contribution from an individual to a candidate committee.

(b) A joint candidates committee established by candidates who have not established any candidate committees in an election may make a contribution to a political committee not to exceed \$5,000

per candidate in the election, and may make a contribution to a continuing political committee not to exceed \$5,000 per candidate in a calendar year.

(c) In the event any of the candidates participating in a joint candidates committee also has established a candidate committee in an election, the amount of a contribution that the joint candidates committee may accept from a contributor without violating the contribution limit will be determined by application of the equal attribution requirement set forth in N.J.A.C. 19:25-11.5, Equal attribution requirements.

(d) A joint candidates committee may receive a contribution in an election from another joint candidates committee in an amount equal to \$5,000 multiplied by the number of candidates participating in the contributing joint candidates committee, and that sum may be further multiplied by the number of the candidates participating in the recipient joint candidates committee, provided that the contributing joint candidates committee, and any candidate committee established by any of the participating candidates, have not made any other contributions to the recipient joint candidates committee, or to any candidate committee established by any of the candidates participating in the recipient joint candidates committee.

1. Example. Joint candidates committee ABC has three candidates participating in it (candidates A, B and C) and wishes to make a contribution to a joint candidates committee DEFG with four candidates participating in it (candidates D, E, F and G). Neither the joint candidates committee ABC, nor any individual candidate committee established by candidates A, B or C, has made any contributions in the election to the joint candidates committee DEFG, or to any individual candidate committee established or maintained by candidates D, E, F or G. Joint candidates committee ABC may contribute the sum of \$60,000 in the election to joint candidates committee DEFG, that is \$5,000 multiplied by three (that is, the three candidates participating in ABC), for a total of \$15,000, further multiplied by four (that is, the four candidates participating in DEFG) for a total maximum permissible contribution in the election of \$60,000.

(e) In the event that a joint candidates committee makes a contribution to another joint candidates committee as described in (c) above, but there have been one or more contributions by the contributing joint candidates committee, or by a candidate committee established by one of the joint candidates committee's candidates, to one or more candidate committees of a candidate or candidates participating in the recipient joint candidates committee, or to the recipient joint candidates committee, the amount of a contribution that the recipient joint candidates committee may receive cannot, after application of the equal attribution requirement set forth in N.J.A.C. 19:25-11.5, exceed \$5,000 per candidate in the election.

19:25-11.5 Equal attribution requirements

(a) A candidate who has established a candidate committee in an election and is also participating in a joint candidates committee in that election may not receive contributions to those committees from a contributor that in the aggregate exceed the applicable contribution limit set forth in N.J.A.C. 19:25-11.2.

(b) Each contribution received in an election by the joint candidates committee of a candidate who has also established a candidate committee in that election must be equally attributed to each of the candidates participating in the joint candidates committee, and the contribution limits in this subchapter must be applied to those participating candidates and to any candidate committee established by any of the participating candidates.

1. Example. The ABC joint candidates committee, consisting of Candidates A, B, and C, receives a contribution from an individual in the amount of \$4,500 in an election. For purposes of applying the contribution limits to the participating candidates and their individual candidate committees, the contribution must be equally attributed to each of the three participating candidates so that each is deemed to have received a contribution in the amount of \$1,500 in the election from the contributor. The sum of \$1,500 is the maximum amount an individual can contribute to a candidate in an election. Therefore, no further contributions can be made by the contributor in the election to the ABC joint candidates committee,

or to any candidate committee established in the election by candidates A, B or C.

2. Example. The ABC joint candidates committee receives a contribution of \$300 in an election from a contributor who has contributed \$1,500 in that election to an individual candidate committee established or maintained by candidate A. The sum of \$1,500 is the maximum amount an individual can contribute to a candidate committee in an election. Application of the equal attribution requirement set forth in (a) above would result in the attribution of \$100.00 to Candidate A of the total \$300.00 contribution to joint candidates committee ABC. Since the sum of the amount contributed to the candidate committee of A (\$1,500), plus the attribution of \$100.00 of the \$300.00 contribution made to the ABC joint candidates committee, results in a total contribution from the contributor in the election of \$1,600 to Candidate A, the ABC joint candidates committee must refund the \$300.00 contribution to avoid receipt of an excessive contribution, or alternatively the candidate committee of A must refund \$100.00 in order that the total contribution from the contributor in the election does not exceed the \$1,500 per election contribution limit of candidate A.

19:25-11.6 Public question political committees

(a) A political committee which is organized to, or does, aid or promote the passage or defeat of a public question in an election, may accept a contribution from a contributor without limit, notwithstanding the contribution limits set forth in N.J.A.C. 19:25-11.2.

(b) A political committee which is organized to, or does, aid or promote the passage or defeat of a public question in an election, may make contributions without limit to another political committee, or to a continuing political committee.

19:25-11.7 County political party contribution limits

(a) In addition to the limits set forth in N.J.A.C. 19:25-11.2, a county political party committee shall not make a contribution, or aggregate contributions, in excess of \$5,000 in an election to a candidate committee established by a candidate seeking election for an office in another county.

(b) In addition to the limits set forth in N.J.A.C. 19:25-11.2, a county political party committee shall not make a contribution, or aggregate contributions, in excess of \$5,000 in a calendar year to a municipal political party committee in another county.

(c) In addition to the limits set forth in N.J.A.C. 19:25-11.2, a county political party committee may make contributions, or aggregate contributions, subject to the following limits:

1. To a candidate for State legislature in a legislative district in which less than 20 percent of the legislative district's population resides in the county of the contributing county political party committee, a contribution not to exceed \$5,000 in the election; and

2. To a candidate for State legislature in a legislative district in which at least 20 percent but less than 40 percent of the legislative district's population resides in the county of the contributing county political party committee, a contribution not to exceed \$25,000 in the election.

19:25-11.8 Return of excessive contributions

(a) A candidate, candidate committee, joint candidates committee, political committee, continuing political committee, legislative leadership committee, or political party committee, or a treasurer or organizational treasurer of such a committee, who receives a contribution in an amount exceeding any contribution limit set forth in this subchapter, shall return that portion of the contribution which exceeds the contribution limit to the contributor within 48 hours of such receipt, and shall make and maintain a written record of the contribution containing the following:

1. The date the contribution was received;
2. The name and mailing address of the contributor;
3. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer;
4. The amount of the contribution;
5. The amount of the contribution that exceeds the applicable contribution limit;

6. A photocopy of the check or written instrument received as a contribution; and

7. A photocopy of the refund check issued by the committee.

(b) A candidate, committee or treasurer who makes a refund pursuant to (a) above, shall report the refund transaction on the election fund or quarterly report required for the reporting period in which the refund was made.

(c) Failure to make a refund pursuant to (a) and (b) above may result in a finding of a knowing violation of the contribution limits set forth in this subchapter or the act.

(a)

CASINO CONTROL COMMISSION

Applications

Application for the Issuance of Employee Licenses or Registrations and Natural Person Qualification; Fingerprinting; Renewal Application Casino Licensees; Application for Renewal of Qualification

Proposed Amendments: N.J.A.C. 19:41-7.1A, 7.7, 14.3 and 19:43-2.7A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69a, 70c, 76, 86, 89, 90, 92 and 93.

Proposal Number: PRN 1995-54.

Submit written comments by February 16, 1995 to:

Ruth S. Morgenroth, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendments to the Casino Control Commission's (Commission's) fingerprinting requirements will enable the Division of Gaming Enforcement (Division) to continue to obtain Federal criminal record checks from the Federal Bureau of Investigation for individuals applying for employee licensure or qualification and for renewal of such licensure or qualification.

The Commission requires applicants for initial and renewal licensure and qualification to provide information concerning their criminal history. This information is used to determine whether the individual possesses the required good character, honesty and integrity and whether he or she has committed any offenses which would disqualify him or her from licensure or qualification pursuant to section 86 of the Casino Control Act (Act).

The Division has the authority, pursuant to section 76 of the Act, to investigate the qualification of each applicant. An important part of this investigation includes verification of the criminal history information given by an applicant. Due to a recent change in procedure the Division can obtain Federal criminal history record checks from the Federal Bureau of Investigation (FBI) only upon submission of a fingerprint card and processing fee.

The Commission's rules have always required individuals applying for licensure or qualification (except qualifiers of labor organizations) to provide fingerprints as part of the initial application process. However, the Commission currently does not require renewal applicants to be fingerprinted. The proposed amendments will require some renewal applicants to be fingerprinted. The proposed amendments will also require natural person qualifiers of labor organizations, labor unions and their affiliates to be fingerprinted as part of their initial applications.

Although Commission rules require natural person qualifiers of casino service industries (CSI) and junket enterprises to be fingerprinted, submission of fingerprint cards was not required by the Division. In the future, all qualifiers for gaming-related CSIs and junket enterprises will be fingerprinted as part of their initial and renewal applications. However, the Division has determined that Federal criminal records checks are not needed for qualifiers of a non-gaming related CSI. Accordingly, these individuals will not be required to be fingerprinted.

Social Impact

The proposed amendments are not expected to have any significant social impact. Information concerning applicants' Federal criminal history is necessary to enable the Commission to satisfy its statutory obligation to exclude persons with known criminal records from participation in the casino industry. The proposed amendments will enable the Division to continue to obtain this information.

Economic Impact

The proposed amendments will require certain applicants for initial licensure and qualification and certain renewal applicants who were not fingerprinted previously to be fingerprinted, either by the Division or by their local police departments. Under the current system the cost of fingerprinting by the Division is incorporated in the application fee. However, applicants for individual qualification who may not be residents of New Jersey are permitted to have their fingerprints taken by local police departments on fingerprint impression cards provided by the Commission. Individuals who choose this optional submission may be charged a nominal fee by local police departments.

The proposed amendments will give the Commission the discretion to permit other applicants to be fingerprinted by their local police department. This change will accommodate out-of-state residents no longer working in the industry who wish to renew an employee license and other applicants whose residence, job assignment or physical condition would make travel to Atlantic City a hardship. To further accommodate applicants seeking to renew a key license or qualification, the Division is planning to make fingerprinting available at locations on the premises of each casino hotel, on a periodic basis to be determined, in addition to its office at Tennessee Avenue and the Boardwalk in Atlantic City.

Regulatory Flexibility Analysis

The proposed amendments affect individuals seeking licensure or qualification. However, individual qualifiers of CSIs which may qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. will be affected by the amendments. Information concerning the criminal history of all applicants is necessary to enable the Commission to satisfy its statutory obligation to exclude persons with known criminal records. It is not feasible therefore to exempt or apply different standards for investigation of small business qualifiers. The time required to accomplish initial or renewal fingerprinting and the cost for the fingerprinting that may be done other than by the Division is not expected to be significant.

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

19:41-7.1A Application for the issuance of employee licenses or registrations and natural person qualification

(a) An application for the initial issuance of an employee license or registration or for individual qualification shall include the following:

1. A completed original and one photocopy of the appropriate Personal History Disclosure (PHD) Form or Qualifier Disclosure Form (QDF), as follows:

i.-v. (No change.)

vi. An applicant required to qualify pursuant to subsection 92a and b of the Act by virtue of his or her position with a casino service industry enterprise or gaming school shall file a PHD-1A as set forth in N.J.A.C. 19:41-5.2; [and]

vii. An applicant required to qualify pursuant to subsection 92c of the Act by virtue of his or her position with a casino service industry enterprise shall file a QDF as set forth in N.J.A.C. 19:41-5.9. If such enterprise is required to be licensed pursuant to N.J.A.C. 19:51-1.2A(f), the applicant shall also provide two copies of his or her Federal tax returns and related documents[.]; and

viii. An applicant required to qualify pursuant to N.J.S.A. 5:12-93 by virtue of his or her position with a labor organization, union or affiliate shall file a Labor Organization Individual Disclosure Form in accordance with N.J.A.C. 19:41-12.9;

2.-3. (No change.)

4. [Either of the following:] Except as otherwise provided by N.J.A.C. 19:41-7.7, a

[i. A] certification by the Division that the applicant has been fingerprinted in accordance with [N.J.A.C. 19:41-7.7(a)1; or] that section

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[ii. In the case of an applicant for individual qualification, either the certification required by (a)4i above or the fingerprint impression cards required by N.J.A.C. 19:41-7.7]; and

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

(d) An applicant for individual qualification shall provide the documents required by (a)2 [and (a)4ii] above upon the request of the Division.

19:41-7.7 Fingerprint

(a) Each applicant, licensee, registrant and **natural person** required to be qualified, **except for an applicant required to be qualified pursuant to subsection 92c of the Act by virtue of his or her position with a casino service industry enterprise**, shall be fingerprinted under the supervision of the Division without charge[, except that]. **The Commission may, for good cause shown, permit an applicant [for individual qualification may] to alternatively submit [two] three sets of classifiable fingerprints on fingerprint impression cards provided by the Commission.**

(b) **Nothing in this section shall relieve such person who submits fingerprints pursuant to (a) above from the continuing duty imposed pursuant to N.J.A.C. 19:41-7.3 or N.J.S.A. 5:12-78.**

19:41-14.3 Contents of renewal application

- (a) (No change.)
- (b) In addition to the materials identified in (a) above, an application for the renewal of a casino key employee license, a gaming school-resident director license or a junket representative license shall include:

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1. A Personal Financial Statement certified and signed by the applicant containing a detailed, itemized list of the applicant's assets and liabilities in a form required by the Commission; [and]

2. Copies of any Federal income tax returns filed by the applicant with the Internal Revenue Service since the applicant's initial license was granted or most recent application for renewal was filed, whichever occurred later[.]; and

3. **Either a certification by the Division that the applicant has been fingerprinted or fingerprint impression cards in accordance with N.J.A.C. 19:41-7.7.**

- (c) (No change.)

19:43-2.7A Application for renewal of qualification

- (a) (No change.)
- (b) An application for renewal of qualification shall consist of the following:

1. (No change.)

2. A signed, dated and notarized certification of truth; [and]

3. A signed, dated and notarized release authorization which shall direct all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Commission or the Division[.]; and

4. **Either a certification by the Division that the applicant has been fingerprinted or fingerprint impression cards in accordance with by N.J.A.C. 19:41-7.7.**

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Notice of Administrative Correction Test and Inspection Fees

N.J.A.C. 5:23-12.6

Take notice that the Department of Community Affairs has discovered an error in the current text of N.J.A.C. 5:23-12.6(c)1i(1) in that it does not reflect the basic annual fee of \$400.00 for traction and winding drum elevators, one to 10 floors, adopted at 24 N.J.R. 3521(b), effective October 5, 1992. That error is corrected through this notice, 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]):

5:23-12.6 Test and inspection fees

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

(c) When the Department is the enforcing agency, the fees set forth in (b) above shall be paid annually in accordance with the following schedule, which is based on the average of the fees to be collected over a five year period:

1. Basic annual fee as follows:

i. Traction and winding drum elevators

(1) One to 10 floors

[\$340.00]~~\$400.00~~

(2) (No change.)

ii-vi. (No change.)

2. (No change.)

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Transfer of Ownership Interests Prepayment

Adopted Amendment: N.J.A.C. 5:80-5.10

Proposed: March 7, 1994 at 26 N.J.R. 1187(a).

Adopted: October 28, 1994 by the New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director/Secretary.

Filed: December 9, 1994 as R.1995 d.20, **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. 55:14K-5g.

Effective Date: January 17, 1995.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

The Agency received comments from the following individuals: Carmine R. Alampi, Esq., Smith, Don, Alampi and D'Argenio Clive S. Cummis, Esq., Sills, Cummis, Zuckerman, Radin, Tischman, Epstein and Gross

Gary R. Backinoff, Esq., Ridolfi, Friedman, Frank and Edelstein Mayor Walter G. Wargacki, Borough of Wallington Rubin Schron, Empire State Management Co., L.P.

As most of the commenters raised similar issues, the comments are summarized by subject matter.

COMMENT: Most of the commenters wrote in opposition to the continuation of return on equity restrictions following prepayment. Their position was that once the mortgage has been prepaid in full, return on equity restrictions should be eliminated.

RESPONSE: In reviewing these comments, the Agency does not agree that return on equity restrictions can be entirely eliminated. Since the projects will be required to be maintained as low/moderate income

housing for the remainder of the original mortgage term after a prepayment, some form of fiscal controls must remain in order to preserve the financial feasibility of the project as low/moderate income housing. The Agency believes it can accomplish its objective in maintaining this financial feasibility with a modified return on equity restriction. Accordingly, the Agency will not be adopting the return on equity restrictions as proposed at N.J.A.C. 5:80-5.10(b)1. Instead, the Agency intends to repropose amendments which will provide for the funding of an operating reserve account in place of return on equity restrictions. The operating reserve would be three months worth of operating expenses (including debt service) for senior projects and six months of expenses for family projects. After prepayment, if a project meets the operating reserve requirement, return on equity restrictions would be eliminated. If the project thereafter falls below the operating reserve requirement, return on equity restrictions will be reimposed until the operating reserve account is again fully funded. Staff believes the revised proposal will accommodate the sponsor's concerns and still satisfy the Agency's objective for maintaining prudent fiscal controls on project operations. The reproposal appears in the proposal section of this issue of the New Jersey Register. Each commenter will also receive personal notice of the reproposal.

COMMENT: Comments were also received in opposition to the imposition, after prepayment, of the same level of management controls currently imposed under the provisions of N.J.S.A. 55:14K-7b (which gives authority to the Agency to inspect the project, examine books and records, require repairs or maintenance to protect the welfare of tenants and to assume the management and control of the project, if necessary, to enforce compliance of the sponsor's obligations).

RESPONSE: The Agency is making a substantive change to the rule at N.J.A.C. 5:80-5.10(b) to make it clear which management controls will be imposed upon prepayment. After prepayment, in implementing the provisions of N.J.S.A. 55:14K-7b, the Agency will initially require the following:

i. Submission of an annual budget;

ii. Submission of annual audited financial statements;

iii. Annual physical inspections conducted by the Agency.

The Agency reserves the right to implement any of the additional provisions of N.J.S.A. 55:14K-7b, if determined by the Agency to be needed to preserve the financial viability of the project or its status as a low- and moderate-income project, to maintain the physical condition of the project or to help ensure the safety and well-being of the tenants residing at the project. The Agency maintains that such controls are equally appropriate and necessary before and after prepayment of the mortgage. Such controls provide the Agency with the requisite power to oversee the management of the project to ensure that its financial viability is being preserved. This will help ensure that it can be maintained as a low- and moderate-income project. Such controls will also provide the Agency with the power to ensure that the physical condition of the project is being preserved. This will help ensure that the safety and well-being of the tenants is being maintained.

The Agency believes the changes are proper upon adoption as the controls at N.J.S.A. 55:14K-7b are now required for all projects prior to prepayment. The change requires that only some of the controls will be imposed upon prepayment, with the Agency reserving the right to impose the balance of the controls, as needed. This change only clarifies which of the existing controls will be initially maintained upon prepayment. The change does not impose any new requirements or conditions upon owners.

COMMENT: One commenter stated that it acquired two Agency projects in 1993, prior to the proposed new restrictions. The commenter asserted that the adoption of the new restrictions would "cause potential harm due to its initial analysis prior to the purchase of the projects." The commenter requested that the two projects be exempt from the new rules.

RESPONSE: In response, the Agency would like to point out that, in actuality, there was no acquisition of the projects as referenced by the commenter. The limited partnerships that own the projects have not changed. The corporate general partners and limited partners for both projects have not changed. What occurred was a transfer of management control, as the parent company of both general partners filed for bankruptcy. The commenter acquired the interests of the bankrupt parent company and thereby acquired the stock of the corporate general

partner. This does not constitute an acquisition of the project as asserted by the commenter. Rather, it constitutes an acquisition of the management control of the projects since the general partner controls the management of the project. The Agency believes the distinction is important as the commenter's request to be exempt is not supportable as it did not acquire the projects as asserted. Even if a project was acquired by a new owner prior to the proposed new restrictions, the Agency believes that the restrictions are reasonable and necessary and should still be adopted.

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

5:80-5.10 Prepayment

(a) (No change.)

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 20-year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the Housing Sponsor's agreement that: The Agency policies on tax, insurance and repair and replacement reserves; The provisions of N.J.S.A. 55:14K-7b; and The statutory provisions at N.J.S.A. 55:14K-1 et seq. and the corresponding rules under this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income, affirmative fair housing marketing, ***and*** transfer of ownership interests ***[and return on equity]*** shall continue to be applicable in their entirety to the sponsor, project and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the Sponsor to pay the servicing fees and charges currently being paid by the Sponsor under the mortgage documents, through the remainder of the original mortgage term, in order to cover the administrative costs of the Agency in monitoring the statutory and regulatory controls that will continue to apply to the project. The Agency may require Housing Sponsors to execute a deed restriction or other appropriate agreement upon prepayment whereby the Sponsor acknowledges the continuing statutory and regulatory control of the Agency and its obligation to pay fees and charges determined by the Agency.

2.-4. (No change.)

***5. After prepayment, in implementing the provisions of N.J.S.A. 55:14K-7b, the Agency will initially require the following:**

- i. Submission of an annual budget;
- ii. Submission of annual audited financial statements;
- iii. Annual physical inspections conducted by the Agency.

6. The Agency reserves the right to implement any of the additional provisions of N.J.S.A. 55:14K-7b, if determined by the Agency to be needed to preserve the financial viability of the project or its status as a low- and moderate-income project, to maintain the physical condition of the project or to help ensure the safety and well-being of the tenants residing at the project.*

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

(f) The provisions of this section which impose conditions on prepayment regarding Agency policies on the insurance and repair and replacement reserves, ***the*** provisions of N.J.S.A. 55:14K-7b, and the regulations on transfer of ownership interests and return on equity shall not be applicable to projects financed between October 15, 1990 and ***[the effective date of such provisions]* January 17, 1995*.**

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Endangered Plant Species Program

Readoption with Amendments: N.J.A.C. 7:5C

Proposed: September 19, 1994 at 26 N.J.R. 3790(a).

Adopted: December 22, 1994 by Robert C. Shinn, Jr.,

Commissioner, Department of Environmental Protection.

Filed: December 22, 1994, as R.1995 d.45, with a **technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

13:1B-15.146 through 13:1B-15.150 and N.J.S.A. 13:1B-15.151 through 13:1B-15.158; and 13:1D-9.

DEP Docket Number: 41-94-08/130.

Effective Date: December 22, 1994, Readoption;

January 17, 1995, Amendments.

Expiration Date: December 22, 1999.

Summary of Public Comments and Agency Responses:

On September 19, 1994 at 26 N.J.R. 3790(a), the Department of Environmental Protection (Department) proposed to readopt the Endangered Plant Species Program rules, N.J.A.C. 7:5C, and to amend N.J.A.C. 7:5C-5.1, the Endangered Plant Species List, in order to add 33 plant species to the official list of endangered plant species native to the State, to delete 10 listed species which no longer qualify as endangered, and to update the scientific nomenclature for 26 listed species.

The Department received written comments on the proposed readoption with amendments from one commenter, Nancy Wittenberg, of the New Jersey Builders Association, during the public comment period which closed on October 19, 1994. Secondary notice of the proposal was achieved by publication of legal notices in four newspapers and by distribution of a press release on the proposal.

1. COMMENT: Identification of a plant as endangered in New Jersey should take into consideration the natural range of the species. Plants for which New Jersey represents the northern or southern extent of their range would not be expected to have many or large populations in this State. In such cases one would expect the occurrence of these species to be rare. The definition of endangered species should be modified to acknowledge such situations and exclude them from being considered endangered.

RESPONSE: The Department agrees that native New Jersey plant species at their northern or southern range limits might naturally be expected to exhibit rarity within New Jersey. However, the Department disagrees that the definition of endangered species at N.J.A.C. 7:5C-1.4 should be modified to exclude such species. The definition of the term "endangered species" in the rule is taken directly from the Endangered Plant Species List Act (Act) at N.J.S.A. 13:1B-15.153. The Act and rules define endangered species as "any native plant species whose survival in the State or nation is in jeopardy," specifically including "any species having five or fewer extant populations within the State." It is clear, therefore, that the Legislature intended that the list of endangered species should include species of both national and State rarity without regard to their range limits.

2. COMMENT: N.J.A.C. 7:5C-4.1, Public participation, allows any person with information on a plant species to submit it to the Department. This section does not include any specific protocol for who may submit such information, what the information should include (report formats, level of detail, photographs, maps) or how the Department will confirm the information submitted. This section should be amended to define the protocol for submitting information and for confirming such information.

RESPONSE: The Department interprets N.J.A.C. 7:5C-4.1 to mean that persons who have information that will help the Department determine whether a plant species qualifies for listing as endangered may contact the Division of Parks and Forestry (Division) with such information. Because the Department does not wish to in any way restrict what type of information the public may provide, it has not specified any report formats, level of detail, or supporting materials in the rules. Any informa-

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tion submitted by the public under N.J.A.C. 7:5C-4.1 will be reviewed and verified by the Department in accordance with procedures of the Department's Natural Heritage Database. If such information is accepted by the Division as adequate justification for an addition to or deletion from the Endangered Plant Species List, the information will be entered into the Natural Heritage Database and will be taken into consideration by the Department during its annual review of the Endangered Plant Species List, as provided at N.J.A.C. 7:5C-2.1(c). Moreover, in the event that the Department decides to propose to amend the Endangered Plant Species List on the basis of information submitted by a member of the public, the proposal will be subject to public notice and comment under the rulemaking provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.). See N.J.A.C. 7:5C-2.1(c).

3. COMMENT: The rules include no provisions for mitigation or recovery of species. The endangered species list is used by several programs administered by DEP (including CAFRA and Freshwater Wetlands) to restrict or prohibit development. To best serve the State in terms of economic improvement and conform to the Governor's policy of being "open for business," these rules should include provisions for recovery of endangered plant species.

RESPONSE: The purpose of the Endangered Plant Species List Act is to provide for the creation of a definitive, officially recognized State list of endangered plant species. See N.J.S.A. 13:1B-15.152. Since the Act does not contain any specific provisions for the protection or recovery of endangered species, it would be beyond the scope of these rules to do so. To the extent that the Endangered Plant Species List is used by the Department's other regulatory programs, this has been done under statutory authority other than the Endangered Plant Species List Act.

4. COMMENT: The State Legislature has recently passed legislation (A1557/S231), which requires State agencies to justify any actions taken which exceed Federal standards. While the Act gives the Department the flexibility to include species on the endangered list which may not be on the Federal list, the Department needs to better justify when such actions are taken. The policy on when such species will be listed and the methodology used to identify these species should be clearly delineated in the rules.

RESPONSE: As of the time of this adoption, the legislation the commenter cites has not been signed into law. Therefore, the Department disagrees with the comment.

Summary of Agency-Initiated Change:

The Department incorrectly proposed that the common name for *Platanthera flava* var. *flava* be revised from "southern rein orchid" to "southern rain orchid." The common name for this species is being restored to "southern rein orchid."

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:5C.

Full text of the adopted amendments follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks ***[thus]***).

7:5C-5.1 Endangered Plant Species List

(a) The following plant species are designated as endangered plant species:

| 1. Scientific Name | Common Name |
|---|----------------------|
| ... | |
| <i>Amaranthus pumilus</i> | sea-beach pigweed |
| <i>Amelanchier sanguinea</i> | running serviceberry |
| <i>Ammannia latifolia</i> | Koehn's tooth-cup |
| ... | |
| <i>Antennaria neglecta</i> var. <i>canadensis</i> | Canada pussytoes |
| ... | |
| <i>Armoracia lacustris</i> | lake cress |
| ... | |
| <i>Aster firmus</i> | shining aster |
| <i>Aster praealtus</i> | willow-leaved aster |
| ... | |
| <i>Atriplex subspicata</i> | orache |
| <i>Bidens beckii</i> | water-marigold |
| <i>Bidens bidentoides</i> | bur-marigold |
| <i>Bidens eatonii</i> | Eaton's bur-marigold |
| ... | |

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|--|--|
| <i>Boltonia asteroides</i> var. <i>glastifolia</i> | <i>boltonia</i> |
| ... | |
| <i>Calystegia spithamea</i> | erect bindweed |
| ... | |
| <i>Cardamine maxima</i> | large-leaved toothwort |
| ... | |
| <i>Carex albursina</i> | sedge |
| ... | |
| <i>Carex amphibola</i> var. <i>amphibola</i> | narrow-leaved sedge |
| ... | |
| <i>Carex arctata</i> | dropping woodsedge |
| ... | |
| <i>Carex jorii</i> | cypress-swamp sedge |
| ... | |
| <i>Carex lupuliformis</i> | hop-like sedge |
| ... | |
| <i>Carex peckii</i> | white-tinged sedge |
| ... | |
| <i>Carex siccata</i> | dry-spiked sedge |
| ... | |
| <i>Claytonia virginica</i> var. <i>hammondiae</i> | Hammond's yellow spring beauty |
| ... | |
| <i>Coelorachis rugosa</i> | wrinkled jointgrass |
| ... | |
| <i>Cornus amomum</i> var. <i>schuetzeana</i> | silky dogwood |
| ... | |
| <i>Cuscuta indecora</i> | collared dodder |
| <i>Cynoglossum virginianum</i> var. <i>boreale</i> | northern wild comfrey |
| <i>Cyperus hystricinus</i> | flatsedge |
| <i>Cyperus plukenetii</i> | Plukenet's flatsedge |
| <i>Cyperus polystachyos</i> | coast flatsedge |
| ... | |
| <i>Cyperus schweinitzii</i> | Schweinitz's flatsedge |
| <i>Cyperus tenuifolius</i> | low flatsedge |
| ... | |
| <i>Eleocharis minima</i> | small spikerush |
| <i>Eleocharis pauciflora</i> | few-flowered spikerush |
| <i>Eleocharis tenuis</i> var. <i>verrucosa</i> | spikerush |
| ... | |
| <i>Elymus trachycaulus</i> | slender wheatgrass |
| ... | |
| <i>Eriophorum vaginatum</i> var. <i>spissum</i> | sheathed cottongrass |
| ... | |
| <i>Filipendula rubra</i> | queen-of-the-prairie |
| ... | |
| <i>Gnaphalium helleri</i> | Heller's everlasting |
| ... | |
| <i>Hieracium kalmii</i> | Canada hawkweed |
| ... | |
| <i>Hypericum adpressum</i> | Barton's St. John's-wort |
| ... | |
| <i>Isoetes lacustris</i> | lake quillwort |
| ... | |
| <i>Isoetes tuckermanii</i> | Tuckerman's quillwort |
| ... | |
| <i>Lemna perpusilla</i> | minute duckweed |
| <i>Lemna valdiviana</i> | pale duckweed |
| <i>Liatris scariosa</i> var. <i>novae-angliae</i> | northern blazing star |
| ... | |
| <i>Maianthemum canadense</i> var. <i>interius</i> | Western wild lily of the valley |
| ... | |
| <i>Ophioglossum vulgatum</i> var. <i>pyncnostichum</i> | sheathed adder's tongue |
| ... | |
| <i>Phlox divaricata</i> | wild blue phlox |
| ... | |
| <i>Platanthera flava</i> var. <i>flava</i> | southern *[rain]* *rein* orchid |
| ... | |
| <i>Pycnanthemum clinopodioides</i> | basil mountain mint |
| <i>Pyrola chlorantha</i> | greenish-flowered wintergreen |
| ... | |

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ADOPTIONS

| | |
|-----------------------------------|-----------------------------|
| Rhexia interior | showy meadowbeauty |
| ... | |
| Scheuchzeria palustris | arrow-grass |
| ... | |
| Sisyrinchium montanum | strict blue-eyed grass |
| Smilacina trifolia | three-leaved Solomon's seal |
| ... | |
| Stachys palustris var. homotricha | marsh hedge-nettle |
| Stellaria borealis | northern stitchwort |
| ... | |
| Stylisma pickeringii | Pickering's morning-glory |
| Suaeda rollandii | sea blight |
| ... | |
| Trichomanes sp. 1 | filmy fern |
| ... | |
| Trollius laxus ssp. laxus | spreading globe flower |
| ... | |
| Uvularia puberula var. nitida | pine barren bellwort |
| ... | |
| Valerianella umbilica | corn-salad |
| ... | |
| Vulpia ellioatea | squirrel fescue |
| ... | |
| Xyris caroliniana | sand yellow-eyed grass |
| ... | |

(a)

**DIVISION OF ENGINEERING AND CONSTRUCTION
Flood Plain Redelineation of Pascack and Fieldstone
Brooks**

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

Proposed: July 18, 1994 at 26 N.J.R. 2834(a).
 Adopted: December 22, 1994 by Robert C. Shinn, Jr.,
 Commissioner, Department of Environmental Protection.
 Filed: December 22, 1994 as R.1995 d.46, **without change**.
 Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et
 seq.
 DEP Docket Number: 30-94-06/455.
 Effective Date: January 17, 1995.
 Expiration Date: June 10, 1999.

Notice of the proposed amendment was published on July 18, 1994 in the New Jersey Register at 26 N.J.R. 2834(a). The Department held a public hearing on August 5, 1994 at 501 E. State Street, Trenton, New Jersey. In addition, a secondary notice of the proposal was published on July 15, 1994 in The Record. Both notices announced the holding of the public hearing and invited written comments to be submitted by August 17, 1994. Six people from the general public attended the hearing.

Summary of Hearing Officer Recommendations and Agency Response:

John V. Scordato, of the Department's Division of Engineering and Construction, served as hearing officer at the August 5, 1994 public hearing. Based on the discussion at the public hearing, Mr. Scordato recommended that the Department adopt the amendment as proposed, without change. Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

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

Summary of Public Comments and Agency Responses:

No written comments were received regarding the proposed flood plain redelineation mapping. However, at the public hearing, Mr. John Stern, attorney for Montvale Borough, objected to the wording of the Summary in the rule proposal regarding the relocation, deepening and

widening of Pascack Brook. According to Mr. Stern and Mr. Louis Raimondi, Borough Engineer, the Borough did not engage in activities to relocate, deepen or widen the stream.

In response, the Department maintains that its understanding, at the time it prepared the rule proposal, was that the Borough legally altered the stream during the stream maintenance work and the construction of the gabion walls. Heavy rains and flooding along Pascack Brook have caused natural stream erosion, scouring and shoaling. The mapping as adopted depicts the present stream conditions.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles showing the location of the revised delineated flood hazard areas may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey.

The revised floodway and flood hazard areas are identified on the plates specifically identified:

STATE of NEW JERSEY
 DEPARTMENT of ENVIRONMENTAL PROTECTION
 DELINEATION of FLOODWAY and FLOOD HAZARD AREA
 Pascack Brook, Stataline Brook and Fieldstone Brook
 Plate No. 16

(b)

ENVIRONMENTAL REGULATION

**Sewage Infrastructure Improvement Act Grants
 Redooption With Amendments: N.J.A.C. 7:22A**

Proposed: September 19, 1994 at 26 N.J.R. 3793(a).
 Adopted: December 22, 1994 by Robert C. Shinn, Jr.,
 Commissioner, Department of Environmental Protection.
 Filed: December 22, 1994 as R.1995 d.47, **with a technical change**
 not requiring additional public notice and comment. (See
 N.J.A.C. 1:30-4.3).
 Authority: N.J.S.A. 58:25-23 et seq., 40:55D-93 et seq., 58:10A-1
 et seq., 58:11A-1 et seq., 13:1D-1 et seq., P.L. 1989, c.181 and
 P.L. 1990, c.28.
 DEP Docket Number: 40-94-08/67.
 Effective Date: December 22, 1994, Redooption; January 17,
 1995, Amendments.
 Expiration Date: December 22, 1999.

The New Jersey Department of Environmental Protection is redooptioning N.J.A.C. 7:22A, the rules governing Sewage Infrastructure Improvement Act (SIIA) Grants, with amendments. The redooption and amendment of these rules was proposed on September 19, 1994 at 26 N.J.R. 3793(a). A public hearing to accept testimony regarding the proposed redooption with amendments was held on October 13, 1994 at the Municipal Wastewater Assistance Offices, 1333 Brunswick Avenue, Trenton, New Jersey. The comment period on the proposal closed on October 19, 1994. The Department received eight written comments and three persons made comments regarding the rule at the public hearing (one of whom submitted a written statement as well).

Summary of Hearing Officer's Recommendations and Agency Response:

Nicholas G. Binder, the Department's Assistant Director of the Municipal Wastewater Assistance Program, served as the hearing officer at the October 13, 1994 public hearing. After reviewing the testimony presented at the public hearing, the hearing officer recommended that the Department proceed with the redooption with amendments. The Department accepts the recommendations.

A copy of the record of the public hearing which includes the hearing officer's report is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Janis E. Hoagland, Esq.
 Department of Environmental Protection
 Office of Legal Affairs
 CN 402
 Trenton, NJ 08625

Summary of Public Comments and Agency Responses:

The following is a list of the persons, and their affiliations, who made either written or oral comments related to the proposed readoption with amendments:

1. Michael Bennett; CH2M Hill
2. Clifford Bowers; CH2M Hill
3. Raymond DiFrancesco; Ewing-Lawrence Sewerage Authority
4. Anthony DiLodovico; Schoor, DePalma and Canger Group
5. Harvey Klein; Garden State Laboratories
6. Frederick Martin, Jr.; City of Camden Department of Utilities
7. Megan McQuarrie; Clean Ocean Action
8. Richard Turner; Fresh Creek Technologies, Inc.
9. Phil Wildbore; WRC Inc.
10. Sharron Wojciehowski; Township of Monroe

Comments were received with respect to the proposed readoption with amendments of the rules, as well as the proposed use of the available funds. The Department has given due consideration to all comments received. The various suggestions did not support substantive changes to the rules or the proposed use of the limited funds. In view of this, the Department is proceeding with the readoption of the rules with the amendments as proposed.

N.J.A.C. 7:22A-2.5 Project changes and modifications to grant agreements

1. COMMENT: The rule should be changed to allow the transfer of the responsibility of the grant to the owner and/or holder of a NJPDES permit for a combined sewer overflow (CSO) without loss or decrease in the grant amount in situations where the original grantee is no longer the appropriate party to administer the planning or design project. (1)

RESPONSE: The Department recognizes that, as planning progresses, situations change. If the grantee and permit holder or other appropriate entity involved wish to do so, they may develop an intermunicipal or interagency agreement to define their roles and effectuate the project without formally amending the grant agreement. Without such an agreement, a formal grant amendment would be required to transfer responsibility from one party to another, provided the existing grantee consents. Alternatively, it may be appropriate to complete the planning as originally envisioned under the grant agreement. A different entity may apply for financial assistance from the Department for the design or construction aspects of the project as appropriate.

N.J.A.C. 7:22A-4.7 Excessive bacterial levels for sample analysis

2. COMMENT: The rule provision which requires laboratories to test a grab sample within six hours after the sample was taken should be changed to provide an additional two hours in order to allow more samples to be taken during a storm event at a higher cost efficiency. In lieu of the additional two hours, the testing might be allowed to be performed within six hours of the sample's arrival at the laboratory rather than six hours from the taking of the sample. (5)

RESPONSE: The existing holding time requirement of six hours from the taking of the sample was established by the Department to be consistent with the standards set by the United States Environmental Protection Agency (USEPA) and codified at 40 CFR Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants. At this time, the Department does not support modifying the requirement that tests be performed within six hours from the taking of the sample. The purpose of this standard is to establish a uniform timeframe and consistent basis for sample testing so that sample results that have been taken in conformance with water quality assurance requirements can be compared and characterized. The Department's Office of Quality Assurance has discussed this issue with USEPA's quality assurance officer, including the possibility and appropriateness of changing the Federal holding time requirement for stormwater grab samples. If a change to the six hour holding time within the Federal Guidelines is determined to be appropriate, the Department will consider amending the applicable sections of this rule.

3. COMMENT: The indicators and standards used for monitoring purposes are not appropriate. The requirements for enterococcus testing should be modified to remove the link to investigative monitoring. Testing for only fecal coliform would be sufficient for investigative

monitoring, and testing of enterococcus is not a good indicator of fecal contamination. The commenter acknowledged that enterococcus is generally used as an indicator of human health risk in bathing waters. The total coliform testing requirement should be removed because fecal coliform data are more useful and consistent with the purposes of the sampling program. (5)

RESPONSE: The protection of bathing beach areas was one of the primary goals of the SIIA. Although there may be a difference of opinion in the scientific community regarding the effectiveness of testing for enterococcus to indicate fecal coliform contamination, the studies done by USEPA in the 1980s clearly indicated a link between enterococcus and the potential risk of disease in swimmers. In some instances, sampling data received by the Department has shown low fecal coliform counts in concert with very high enterococcus counts. Although the fecal coliform contamination may not be a concern at that particular location, the high enterococcus count would indicate that there was some bacterial contamination in the stormwater, and could impair the primary contact recreational use of the water bodies. In view of this, the Department has elected to continue to require testing for enterococcus in the grab samples and for investigative monitoring purposes as well.

With respect to total coliform testing, the Department expects to use the data to establish background levels which will be considered when Phase III of the SIIA program is implemented, which will address nonpoint source pollution. In addition, total coliform testing values are used as indicators for bacteria in all shellfish waters as established by the National Shellfish Sanitation Program. Thus, the Department believes that it is appropriate to continue to use the indicators and standards in the existing rule for monitoring purposes.

N.J.A.C. 7:22A-4.10 Funding

4. COMMENT: Not enough money was allocated to the affected municipalities to adequately complete the mapping and investigative monitoring requirements required for Phase II mapping as specified in N.J.A.C. 7:22A-4, Final Mapping and Monitoring Requirements. As a result, some of the affected municipalities have stopped doing the work necessary to complete the final map and to identify inter-connections and cross-connections. The Department should use the entire \$50 million available from the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 for planning and design grants rather than for construction. Far more money is needed to address the problems. The investigations which have been done on sewer systems have been inconclusive, and bacteria counts were highly variable. In one example, a 5,000 count was observed, an investigation was set up and, when the outfall was resampled, the bacteria count was only two. In another example, a 35,000 count was observed for a particular outfall and, when an investigation was set up, the readings were consistently in excess of the 200 level established in the rule. At a cost of over \$10,000, the sewer lines were televised to visually inspect them and dye tested only to reveal that numerous hairline cracks existed in the system. No interconnections or cross-connections were found. The problem has been compounded since the Department's enforcement group has advised the affected municipality that the municipality is responsible for resolving the high counts in the discharge. In view of this, the commenter questioned why towns should identify problems if Enforcement's response is that the towns must fix them or face fines. Why should towns spend any more money on investigations, since any sanitary sewer in the area would likely have hairline cracks and money is needed to replace all of the sanitary sewers? Finally, the Department should rethink its allocation formula for initial planning grants for interconnection and cross-connection abatement since the funding limits prohibit towns from properly investigating their systems. The Department should select several representative municipalities and perform detailed analyses of their systems, and use that as a model for other areas. (4)

RESPONSE: The funding distribution formula for the Phase II, or final mapping, aspects of the SIIA was based on such factors as municipal road mileage, development and population. When the funds were allocated, the Department had only preliminary estimates of the number of outfalls in each municipality and how much time, effort and costs would be involved in the investigative monitoring and the identification of interconnections and cross-connections. The Department acknowledges that insufficient monies are available under Phase II for some municipalities to address the water quality problems identified under the SIIA and the 1989 Bond Act.

The allocation formula developed by the Department for initial planning grants for interconnection or cross-connection abatement was not

intended to cover investigative monitoring activities (which were to be included under the Phase II aspects of the program). The initial planning grants are intended to cover planning related activities once a specific interconnection or cross-connection is identified. It should also be noted that the second-round planning grants are not based on the allocation formula. These grant awards are based on estimated costs in accordance with the project priority approach established in the rules.

Regardless of the availability of funding, the affected municipalities are required to monitor their stormwater outfalls and investigate their stormwater and sanitary sewer systems in cases where bacteria counts indicate the potential for sewage contamination of the stormwater. Findings must be reported to the Department. The Department will assist municipalities to assure compliance with the requirements of the SIIA. Discussion between the Department and the municipalities will plan a course of remedial action. Municipalities need to take necessary actions which may include further monitoring and investigation of the systems (to verify or discount high bacteria counts) or the repair of the sanitary sewers to reduce water quality impacts. The purpose of these actions is to eliminate the deleterious effects of sewage contaminated stormwater on public health at recreational bathing and shellfish harvesting areas.

The Department does not believe that several representative municipalities could provide a reliable model. Each affected municipality is subject to the requirements of the SIIA, and the mapping, monitoring/modeling and presence and correction of interconnections/cross-connections are expected to be specific to individual conditions. Therefore, the Department believes that it would be more equitable to continue to provide funding to each affected municipality.

Whether to make available additional monies for the various water quality projects to be addressed under the SIIA is an issue for the Legislature and the Governor to resolve in light of overall budget limitations. The Department will continue efforts to maximize the use of the existing funds available through the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (1989 Bond Act). However, given the various activities that are needed such as planning, design and construction of CSO abatement and stormwater management facilities which qualify for 1989 Bond Act funds, there are many projects competing for grant funding from the 1989 Bond Act. While many of these needs exist in the planning and design areas, the Department continues to reserve the ability to use a portion of the 1989 Bond Act funds for construction purposes as well. The original purpose of the 1989 Bond Act funds was to provide construction funding to projects which are planned and designed under the SIIA Grants Program, and completion of construction will result in water quality benefits. The Department recognizes that the SIIA funds intended for the planning, design and nonpoint source control activities considered to be precursors to construction loans have lapsed, creating pressure on the 1989 Bond Act to fund more activities than originally anticipated.

N.J.A.C. 7:22A-6.2 Combined Sewer Overflow Account

5. COMMENT: Several commenters noted that grant eligibility under the CSO abatement aspects of the SIIA is limited to studies related to eliminating dry weather overflows and removing solids/floatables greater than one-half inch in diameter from the discharge. The Department should broaden its approach and fund studies of technologies which offer long term, more comprehensive control of pollutants such as bacteria. Several commenters suggested that grant eligibility under the CSO aspects of the SIIA should be increased to cover costs associated with the nine minimum controls identified in the USEPA's National CSO Control Policy. In addition to dry weather overflow elimination and control of solids/floatables discharges, USEPA has identified other CSO controls such as proper operation, maximizing use of collection capacity and treatment capabilities, as well as monitoring and modeling activities; all are required by the draft General CSO permit issued by the Department. One commenter also provided information regarding two case studies of a particular type of CSO control used in the United Kingdom which maximizes use of collection and treatment capacity. The commenter noted that while the addition of CSO monitoring and modeling activities and full analysis of candidate technologies could double or triple the cost of the planning work, spending additional funds in the planning stage to determine the most cost effective solution to meet the environmental needs of the receiving water can significantly reduce total project costs in the long term. (1, 2, 6, 9)

RESPONSE: Ideally, the Department would provide the necessary funding to all owners/operators of combined sewer systems in the State to improve their systems and reduce pollution by immediately implementing USEPA's nine minimum controls. Unfortunately, the monies needed

to accomplish such a task, as well as to fully address the other significant water quality improvement aspects of the SIIA, including stormwater management and nonpoint source pollution controls, are not available. The loss of nearly \$21 million through the budgetary process (much of which was initially allocated under the SIIA for combined sewer overflow planning and design activities) has further diminished the Department's ability to provide financial assistance for these projects. In addition, USEPA's 1992 National Needs Survey indicated that over \$1.29 billion worth of combined sewer overflow projects are needed in New Jersey.

In order to continue to provide funding for tasks initially envisioned under the SIIA, the Department proposed amendments to allow the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) to be used as a source of funding for such activities. The original purpose of the \$50 million authorized under the 1989 Bond Act was to provide funding to implement or construct stormwater management and combined sewer overflow abatement projects which were planned and designed through the SIIA. It was determined that these funds could also be used for combined sewer overflow planning and design statewide and mapping/investigation of stormwater sewer systems in the four southern coastal counties (the two main activities under the SIIA).

Given the limited amount of funds to be spread over a wide range of activities, funding for grants for combined sewer overflow improvements is presently scarce. Recognizing these limits, the Department established some minimum goals which the Department believed were achievable in the near future. These included the elimination of dry weather overflows and the control of solids/floatables (including improvements to certain system components, such as tide gates and regulators). The elimination of dry weather overflows and the control of solids/floatables are intended to complement any long term combined sewer overflow control plans and to serve as the basis for the scopes of work to be approved for funding under the SIIA. The Department recognizes that due to limits in the availability of funds, some of the activities identified in USEPA's CSO Control Strategy are not eligible for funding under this rule (in particular, monitoring and modeling). Nevertheless, many of the activities related to the nine minimum controls qualify for funding under the 1989 Bond Act, including construction. Through this approach, the Department does not believe it is discouraging planning for long term, more comprehensive control of specific pollutants such as bacteria. Rather, the Department anticipates that the improvements which are developed under this rule can be implemented quickly and be a part of the long term solution. The development of pollutant limits, such as bacterial limits, is likely to take several years and can only be accomplished after intensive monitoring and modeling of the combined sewer and stormwater sewer systems in the area.

The Department agrees that proper planning can save overall project costs. However, the Department is concerned that the elimination of dry weather overflows and implementation of solids/floatables control measures would be significantly delayed pending the results of the long term monitoring and modeling studies. As the Department believes that implementation of interim control measures will result in immediate water quality benefits, the existing eligibility limitations regarding dry weather overflow elimination and solids/floatables control measures for combined sewer overflow planning and design grant funding under this rule will be retained. As a final note, while certain planning and design activities do not qualify for SIIA grant funding, combined sewer overflow abatement projects which address activities beyond dry weather overflows and solids/floatables control measures (such as those which would provide additional conveyance/treatment capacity for CSOs) and qualify for a loan under the Wastewater Treatment Financing Program are also eligible for a planning and design allowance which could be used to offset some of these costs.

N.J.A.C. 7:22A-6.8 Application procedures

6. COMMENT: The Department should accept CSO design applications prior to planning approval and, upon CSO planning approval, allow project sponsors to proceed with design and qualify for reimbursement through the SIIA Grant Program. (1)

RESPONSE: The Department has accepted design applications for the past two years even though no planning approvals have been granted yet. The Department expects to continue to accept CSO design applications in the future. However, in order to ensure that public funds are not spent erroneously, the Department believes it is not prudent to award a design grant until planning has been approved and the cost effective, environmentally sound and implementable solution has been selected. Provided planning has been approved, the Department agrees with the

comment to allow design activities to proceed prior to grant award and qualify the costs for reimbursement under the program. The existing rule at N.J.A.C. 7:22A-6.12 already allows for such an arrangement provided the project sponsor receives Department approval to award the design contract to the consultant in advance of the actual grant award to the project sponsor.

N.J.A.C. 7:22A-6.13 Allowable project costs

7. COMMENT: The commenter, noting that the consulting engineering community and owners/operators of CSOs and combined sewer systems have questions regarding the efficacy of certain CSO technologies and are reluctant to invest in them, suggested that the rule include provisions to provide grant funding for the construction of pilot remediation projects and monitoring the results achieved. Grants should be made to implement solutions rather than to continue to study the problem and procrastinate in taking action. (8)

RESPONSE: It is the Department's understanding that several pilot projects throughout the country are under way, some of which received grant funding through the USEPA and other agencies. The results of these studies should assist in determining cost effective, environmentally sound, implementable solutions for the CSOs in New Jersey. The Department has done its best to prioritize the use of the limited available funds to address the significant water quality problems throughout the State. Because of limited funds, the Department does not support the use of funds from the 1989 Bond Act for further pilot studies.

Funding of Sanitary Sewer Overflows

8. COMMENT: Funding for overflows should be expanded to include infrequent overflows from sanitary sewers as well as those from combined sewer systems. Both types of overflows occur under similar circumstances, and a wet weather overflow from a sanitary sewer system has the same impact on the receiving water as a CSO. Typically, infiltration and inflow cause the additional flow which results in overflows in a sanitary sewer system. (3)

RESPONSE: The Department would prefer to eliminate or abate all sanitary and combined sewer overflows and provide the necessary funding. However, the enabling legislation, the SIIA, limits the project types which qualify for funding to combined sewer overflow planning and design activities and stormwater sewer system mapping and related investigations. Similarly, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 limits project eligibility to CSO and stormwater management projects. Therefore, funding to address separate sanitary sewer overflows is precluded from consideration under the SIIA Grant Program. On the other hand, the Wastewater Treatment Financing Program offers low interest loans to local government units to improve their collection, conveyance or treatment facilities. Infiltration/inflow (which the commenter suggests causes the sanitary overflows) correction measures such as slip-lining, grouting and sealing manholes are eligible activities under the Wastewater Treatment Financing Program.

Funding Concerns

9. COMMENT: A stable source of funding should be developed to continue the progress being made under the Sewage Infrastructure Improvement Act (that does not undermine any existing stormwater project). The public record should clearly indicate where the funds are coming from and that the funds available through the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 are not to be used to implement CSO improvements outside the jurisdiction of the SIIA. (7)

RESPONSE: The Department agrees that progress has been made under the SIIA in the coastal counties with respect to sanitary/stormwater system mapping/monitoring activities. As discussed in previous responses to comments, it has been determined that the funds available from the 1989 Bond Act can be used for a variety of stormwater management and combined sewer overflow planning, design and construction activities subject to legislative appropriation. Through the amendments adopted herein, the Department will be able to direct funds from the 1989 Bond Act to perform SIIA tasks. The funding for SIIA projects initially came from a direct State appropriation to the Department authorizing the Department to make grant awards for such purposes. The 1989 Bond Act funds come from the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 which authorized the State to sell \$50 million in general obligation bonds for such purposes. Further, any appropriation of funds from the 1989 Bond Act must be made

through legislation; specific recipients authorized for funding will be listed in the appropriations act. Finally, it should be noted that the provisions of the SIIA applies to all CSOs in the State.

Support for Rule Amendments

10. COMMENT: The commenter supports the Department's action to use funds available from the 1989 Bond Act to undertake planning and design activities to abate pollution from stormwater sewer systems and combined sewer systems. (10)

RESPONSE: The Department appreciates the commenter's support in recognition of the vital role these activities play in protecting the waters of the State and public health.

Permit Fees

11. COMMENT: The Department should waive permit fees, such as those associated with a NJPDES permit or a Treatment Works Approval, for projects which receive funding through the SIIA Grant Program. The Department should also investigate the possibility that the Municipal Wastewater Assistance Program issue the permits for those projects which pursue financial assistance through the State's wastewater assistance programs. (4)

RESPONSE: The Department has considered the possibility of waiving permit fees for projects which qualify for financial assistance through the Department's wastewater assistance programs. However, the individual programs throughout the Department which issue the permits for funded and non-funded projects rely on the permit fees as a primary source of revenue to cover administrative costs. Waiving permit fees for funded projects would create an inequity in covering the Department's costs associated with permit issuance. The permits which project sponsors need to proceed to construction for a wastewater treatment project are issued by the individual permitting groups within the Department. This facilitates permit review by Department staff with the knowledge and expertise in the particular permitting field and provides consistency in rendering policy decisions and applying the rules applicable to the individual programs.

The Municipal Wastewater Assistance Program provides environmental, engineering, construction and financial management assistance to local government units under one or more of the State's financing programs. As such, the Department does not believe it is appropriate for the Municipal Wastewater Assistance Program to issue the permits for funded facilities.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 7:22A.

Full text of the adopted amendments follows: (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 1. GENERAL PROVISIONS

7:22A-1.2 Scope

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

(f) This chapter also governs the Department's disbursement of funds from the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) for the performance of activities required by the Sewage Infrastructure Improvement Act.

7:22A-1.4 Definitions

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

...
 "Combined Sewer Overflow Account" means the component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund, as determined by the Department, which will be used to provide grants to local government units for the planning and design of combined sewer overflow abatement facilities.

...
 "Department" means the New Jersey Department of Environmental Protection and its successors and assigns.

...

ADOPTIONS

"Fund" means the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund established by the Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq., or the Stormwater Management and Combined Sewer Overflow Abatement Fund established by the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181).

...
"Interconnection/Cross-Connection Abatement Account" means the component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund, as determined by the Department, which will be used to provide grants to affected municipalities for the planning or design of interconnection/cross-connection abatement facilities.

...

7:22A-1.5 Fund procedures

(a) The moneys appropriated pursuant to the Sewage Infrastructure Improvement Act and any interest earned thereon shall be deposited in a separate interest bearing account known as the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund. The moneys available pursuant to the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 shall be deposited in a separate interest bearing account known as the Stormwater Management and Combined Sewer Overflow Abatement Fund.

(b) (No change.)

(c) Prior to awarding any grant money from the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund pursuant to the Sewage Infrastructure Improvement Act, the Department shall, in writing, notify the presiding officers of both houses of the State Legislature of the applications received, the grant recipients, the amounts requested, the amounts to be awarded and the purposes for which the grants shall be used.

(d) The Department shall not award any grant money from the Stormwater Management and Combined Sewer Overflow Abatement Fund pursuant to the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 unless the expenditure is authorized pursuant to an appropriations act.

SUBCHAPTER 2. GRANT AGREEMENT PROCEDURES AND REQUIREMENTS

7:22A-2.4 Grant conditions

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

(d) Recipients shall include the following statement in each subagreement awarded pursuant to this chapter:

"This contract or subcontract is or may be funded in part with funds from the New Jersey Department of Environmental Protection. Neither the State of New Jersey nor any of its departments, agencies, or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the requirements contained in N.J.A.C. 7:22A."

(e) (No change.)

SUBCHAPTER 4. FINAL MAPPING AND MONITORING REQUIREMENTS

7:22A-4.2 Reporting requirements

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

(f) All affected municipalities shall submit a priority list for quarterly monitoring in accordance with N.J.A.C. 7:22A-4.8(b) to the Department with the final map or *[within 60 days of the adoption of these rules]* ***by March 18, 1995***, whichever is later.

(g)-(i) (No change.)

7:22A-4.3 Final mapping

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

(j) The affected municipality shall include on the final map the following features associated with their stormwater sewer system:

1. (No change.)

ENVIRONMENTAL PROTECTION

2. The location of stormwater outfalls, including the surface water classification, as set forth in the Surface Water Quality Standards, N.J.A.C. 7:9B, of the receiving water body at each outfall;

3.-10. (No change.)

(k)-(q) (No change.)

7:22A-4.4 Investigative priority listing

(a) All affected municipalities shall submit a priority list for the Department's approval which identifies the order in which the stormwater sewer systems will be investigated. The priority list shall include for each stormwater outfall the surface water classification, established in the Surface Water Quality Standards, N.J.A.C. 7:9B, for the waterbody into which the outfall discharges. The priority list shall include the stormwater outfall number established in N.J.A.C. 7:22A-3.10(a) and shall be based on the following priorities, unless the affected municipality demonstrates to the satisfaction of the Department that other priorities should be used due to site-specific conditions:

1.-9. (No change.)

(b) (No change.)

7:22A-4.5 Identification of interconnections and cross-connections

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

(d) The affected municipality shall, unless otherwise directed by the Department, isolate and identify the source of the contamination as follows:

1.-2. (No change.)

(e) (No change.)

7:22A-4.7 Excessive bacterial levels for sample analysis

(a) Based on the surface water classification of the receiving water body as set forth in the Surface Water Quality Standards, N.J.A.C. 7:9B, bacteria levels shall be considered excessive for the purposes of this subchapter where grab sample analysis indicates:

1.-3. (No change.)

7:22A-4.8 Periodic monitoring

(a) All affected municipalities shall initiate the quarterly monitoring of their stormwater outfall lines in the first month following the approval of the final map. The affected municipality shall, on a quarterly basis, take a grab sample at all stormwater outfalls for any stormwater sewer system discharging into salt water in accordance with N.J.A.C. 7:22A-4.6(d)1.

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

7:22A-4.15 Allowable costs

(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant agreement. The quarterly monitoring requirements under N.J.A.C. 7:22A-4.8 will not be an allowable cost under the final mapping grant award. Allowable project costs may include:

1.-2. (No change.)

(b) (No change.)

SUBCHAPTER 6. COMBINED SEWER OVERFLOW ACCOUNT PROCEDURES AND REQUIREMENTS

7:22A-6.4 Criteria for project priority

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

7:22A-6.5 State and Federal funding

Local government units which receive grants from the Combined Sewer Overflow Account shall be ineligible to receive financial assistance for the same work (planning or design) within the scope of the project in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6. Further, those local government units which receive financial assistance in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure

Trust grant or loan pursuant to N.J.A.C. 7:22-6 shall be ineligible to receive grant moneys for the same work (planning or design) within the scope of the project pursuant to this subchapter.

7:22A-6.6 Project funding

(a) The Department shall consider a local government unit's failure to submit the complete application within the time period specified as a decision to not pursue a grant for the project during the applicable funding cycle.

(b) Grant applications will be prioritized by the Department based on the criteria set forth in the Priority System pursuant to N.J.A.C. 7:22A-6.4. The award of grant funds from the Combined Sewer Overflow Abatement Account will be based on the application's priority relative to other applications certified for funding by the Department pursuant to N.J.A.C. 7:22A-6.9 and on the amount of available funds.

7:22A-6.8 Application procedures

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

(f) Submissions which do not substantially comply with this subchapter shall not be processed further and the applicant will be so notified.

(g)-(i) (No change.)

7:22A-6.9 Evaluation of application

(a) (No change.)

(b) Upon the completion of a full review and evaluation of each application, the Department shall either certify the project for funding or defer the project application.

7:22A-6.15 Value engineering

(a) Recipients of Combined Sewer Overflow Account design grants shall conduct value engineering for the project if the total estimated building cost exceeds \$10 million or such amount as established in the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. and any amendatory or supplementary acts thereto, whichever is greater.

(b) (No change.)

SUBCHAPTER 7. INTERCONNECTION/CROSS-CONNECTION ABATEMENT ACCOUNT PROCEDURES AND REQUIREMENTS

7:22A-7.6 State and Federal funding

Affected municipalities which receive second-round grants from the Interconnection/Cross-connection Abatement Account shall be ineligible to receive financial assistance for the same work (planning or design) within the scope of the project in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a New Jersey Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6. Further, those affected municipalities which receive financial assistance in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a New Jersey Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6 shall be ineligible to receive second-round grant moneys for the same work (planning or design) within the scope of the project pursuant to this subchapter. Notwithstanding the provisions of N.J.A.C. 7:22-3, 4 and 5, projects which do not receive a second-round grant pursuant to this subchapter will be eligible to receive a planning and design allowance pursuant to N.J.A.C. 7:22-5 or 7:22-7, less the amount of their initial planning grant.

7:22A-7.7 Pre-application procedures

(a) Affected municipalities are urged to be familiar with the requirements of this subchapter and to contact the Department prior to the initiation of the planning process so that their projects are in a position to proceed in a timely manner.

(b) (No change.)

7:22A-7.9 Evaluation of application

(a) (No change.)

(b) Upon the completion of a full review and evaluation of each application, the Department will either certify the project for funding or defer the project application and notify the applicant of such action. As a result of a project deferral action, the next highest ranked project may fall within the fundable range.

7:22A-7.15 Value engineering

(a) The recipient shall conduct value engineering for the project if the total estimated building cost exceeds \$10 million or such amount as established in the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. and any amendatory or supplementary acts thereto, whichever is greater.

(b) (No change.)

(a)

**DIVISION OF FISH, GAME AND WILDLIFE
ENDANGERED AND NONGAME SPECIES PROGRAM**

**Regulations Implementing the Wild Bird Act of 1991
Possession of Wild-caught Bird Species for
Breeding, Zoological, Scientific or Educational
Purposes**

**Banding of Birds; Alterations of Appearance
Bird Breeder Permit; Permit Fee
Bird Hobby Permit; Permit Fee**

**Permit Required; General Possession Criteria;
Miscellaneous Provisions; Notice of Denial of
Permit, Procedure, Review, Time Limitations,
Hearings**

Adopted New Rules: 7:25-4.19 and 4.20

**Adopted Amendments: 7:25-4.1, 4.2, 4.4, 4.6, 4.7,
4.11, 4.12, 4.14 and 4.15**

Proposed: February 22, 1994 at 26 N.J.R. 1040(a).

Adopted: December 22, 1994 by Robert C. Shinn, Jr.,
Commissioner, Department of Environmental Protection.

Filed: December 22, 1994 as R.1995 d.48, with **substantive and technical changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 23:4-50, 23:2A-1 et seq., 13:1B-30 et seq. and 23:1-1 et seq.

DEP Docket Number: 68-93-12/169.

Effective Date: January 17, 1995.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (Department) is adopting new rules at N.J.A.C. 7:25-4.19 and 4.20 and amendments at N.J.A.C. 7:25-4.1, 4.2, 4.4, 4.6, 4.7, 4.11, 4.12, 4.14 and 4.15. These rules were proposed on February 22, 1994 at 26 N.J.R. 1040(a). The new rules at N.J.A.C. 7:25-4.19 and 4.20 implement the Wild Bird Act of 1991 which amends N.J.S.A. 23:4-50 and bans the acquisition and sale of wild-caught birds effective December 10, 1991. The rules control all aspects of the wild-caught bird ban and establish a new permit category to allow an exception to the ban for breeding legally possessed wild-caught birds. The amendments clarify the intent of the regulations. Definitions were added in N.J.A.C. 7:25-4.1. N.J.A.C. 7:25-4.2 and 4.12 clarify the reasons for the denial, revocation or suspension of a permit and clarify the rights of applicants to appeal according to the Administrative Procedures Act. N.J.A.C. 7:25-4.4 is amended to conform the numbers and names of species exempt from permit requirements with those exempt from the Wild Bird Act. Amendments to N.J.A.C. 7:25-4.6 create a bird breeder permit, simplify the permit fee list and describe annual reporting requirements for hobby, scientific holding, animal exhibitor and theatrical agency permittees consistent with other permit categories. N.J.A.C. 7:25-4.7 is amended to clarify the requirement to provide veterinary care to regulated species. N.J.A.C. 7:25-4.9 is

amended to clarify the Department's policy to deny permits to possess potentially dangerous species when animals of any species (including birds) are endangered in situations which adversely affect their health or which could constitute a hazard to the public. N.J.A.C. 7:25-4.14 and 4.15 are amended to articulate the requirements for sponsors of applicants for a permit to possess endangered species of animal and to ensure that animals (including birds) are possessed by responsible persons who are likely, under supervision, to produce scientifically reliable data of use to the zoological community working to conserve that species of animal.

The Department accepted comments on the proposal until April 3, 1994. The following persons submitted written comments within the comment period:

1. Stephen T. Delloff
2. Gary Clinton, American Federation of Aviculture
3. Marshall Meyers, Pet Industry Joint Advisory Council
4. Angel Santiago, Bird Jungle, Inc.

The comments and the Department's responses are summarized below. The numbers in parenthesis after each comment identifies the commenter(s) listed above.

1. COMMENT: Since not all veterinarians know how to treat birds, the Department should require permittees not only to ensure that a bird will receive veterinary care as currently stated in N.J.A.C. 7:25-4.7(a)4 but ensure that a bird will receive care from a veterinarian with experience in treating the species of bird in question. (1)

RESPONSE: The Department disagrees that further elaboration is needed concerning the type of veterinary care required under the permit. In the Department's experience, veterinarians without experience in avian medicine are highly unlikely to accept avian patients and will refer such patients to veterinarians with avian experience. Furthermore, the Department believes that it is unnecessarily burdensome to permittees to restrict veterinary care to those veterinarians with experience in treating the species owned by the permittee, since there is no evidence that a veterinarian with general avian experience would not be qualified to treat certain bird species or certain avian diseases or injuries.

2. COMMENT: The attachment of butt-end bands as stipulated in N.J.A.C. 7:25-4.20(d) will injure birds and the bands will be difficult to remove to treat a leg injury. (1)

RESPONSE: The Department notes that the use of butt-end bands will not be at all common since the majority of birds coming into the State will be captive-bred with affixed seamless bands, and birds hatched in the State will be required to have seamless bands. As for the relatively small number of birds required to wear butt-end bands, the Department notes that such bands have been successfully used on captive birds and birds in the wild for research purposes. While it is impossible to guarantee that no injury will ever be caused or aggravated by band wear, the Department believes that any possibility of injury will be greatly minimized by use of the proper size band for the species in question. Band sizes will be stipulated by the Department in a list to be released subsequent to the adoption of these rules. It is important to note that the rules do not prohibit removal of a band for medical treatment as long as the band is replaced as soon as medically permissible, either with the same band, or if the original is destroyed, by another legally obtained band. Of course, micro-chip implants eliminate these problems with bands entirely.

3. COMMENT: The Department is deriving economic gain from the rules and probably lacks the resources to enforce the rules. (4)

RESPONSE: The Department will not be deriving any economic benefit from the regulations. First, the Department notes that the promulgation and enforcement of these regulations is required by the statute. Second, as explained in the proposal Summary, the permit fees are structured so that the Department meets only its costs to enforce the program and administer paperwork. Finally, the Department believes that this permit program will be no more difficult to implement and enforce than any other exotic and nongame species permit program administered by the Department.

4. COMMENT: The regulations operate to discourage avian conservation by making rare birds hard to obtain. (4)

RESPONSE: The rules do not prohibit anyone from learning the art of avian husbandry from an expert and becoming qualified under the rules to obtain a permit. Possession of wild-caught birds is restricted to those who meet the criteria set by the Department and who therefore are more likely to be successful in their conservation efforts. Moreover, the key to conservation of wild caught birds lies in making their illegal importation unprofitable. The requirements for documentation of

provenance of regulated birds coupled with banding requirements will make the detection of illegally possessed birds easier, rendering importation ultimately unprofitable for both supplier and buyer. Unregulated breeding and collecting of wild-caught birds for the pet trade only diminishes the diversity and numbers of natural populations of wild birds. This diminution of natural bird populations is not offset by captive-breeding and, in any event, the captive-bred wild-caught birds are never returned to the environments from which they were stolen. The Department believes that these rules set up the scheme most likely to preserve populations of wild-caught birds in their native environment, thereby preserving the widest possible genetic pool for each species.

5. COMMENT: Persons qualified to hold a Federal Endangered Species Permit will not qualify for a permit under the proposed regulations. (4) The proposed regulations are stricter than Federal rules concerning possession of wild-caught birds. (2)

RESPONSE: The Wild Bird Conservation Act of 1992, 16 U.S.C. §4901 et seq., requires a Federal permit for possession of certain rare species of exotic birds. It is possible that a Federal permittee may not qualify in all cases for the New Jersey permit needed to possess all species of birds owned by that Federal permittee in New Jersey. However, §117 of the Federal law (16 U.S.C. §4916) specifically permits state regulation of the sale, transfer or possession of wild birds as long as such state regulation does not allow activities prohibited under the Federal law. The New Jersey Wild Bird Act complies with this restriction since it applies to all wild birds, including those designated as rare under the Federal law. However, New Jersey's rules are not uniformly stricter than Federal rules. Pursuant to N.J.A.C. 7:25-4.4 for example, the most common captive-bred birds such as society and zebra finches may be possessed without a permit, unlike the Federal provisions found in 50 C.F.R. §15 (59 Fed. Reg. 62255, December 2, 1994). It is also important to note that large parts of the Federal regulations implementing the Wild Bird Conservation Act of 1992 (50 C.F.R. §15 et seq.) are still under study and not yet proposed by the U.S. Fish and Wildlife Service. For example, the currently adopted Federal regulations establishing a list of rare birds subject to regulation, 50 C.F.R. §23 (Appendix I, II and III), is only partial and will be expanded. Thus, further comparison between the federal and state program is difficult at this point.

6. COMMENT: The rules are redundant to the Federal "Wild Bird Act of 1992." (4)

RESPONSE: As explained in response to Comment 5, both State and Federal governments regulate possession of wild birds but the Federal law protects only those birds designated as rare, threatened or endangered; the New Jersey Wild Bird Act protects all wild birds. These rules implement this broader state mandate. Moreover, the federal program is still largely incomplete, making specific comparison between the two programs difficult. Nevertheless, it is the Department's belief that New Jersey's statute banning possession of most wild birds will be easier for the public to comply with and will be more easily enforced at less expense than the current Federal scheme which protects only certain selected species of wild birds.

7. COMMENT: The proposed amendments to N.J.A.C. 7:25-4.14, Requirements for possession of endangered wildlife species, will prevent Federal permittees allowed to breed endangered species from working to save endangered avian species in New Jersey. (4)

RESPONSE: The rules concerning endangered species implement the provisions of the existing New Jersey Endangered and Nongame Species Conservation Act and clarify the existing sponsorship requirements for an Endangered Species permit. The rules articulate the qualifications for sponsorship and the process by which such applications will be reviewed. With respect to State and Federal jurisdiction, it is true that the criteria for a State permit to possess an endangered species are more restrictive than the criteria for the corresponding Federal permit. The Department has imposed these additional criteria because they are necessary not only to conserve endangered species but to protect the individual animals possessed under the permit.

8. COMMENT: N.J.A.C. 7:25-4.2(d) (Permit required), which allows a newly disqualified permittee to petition the Director to keep both a hobby permit and the animal possessed under that permit, should be amended to include holders of Bird Breeder Permits. (2)

RESPONSE: Under these rules, wild-origin birds possessed under a Breeder, Scientific or Zoological permit which is later revoked cannot then be reclassified as animals possessed pursuant to a Hobby permit in order to allow the permittee to petition the Division Director for continued possession of the animals. The Department differentiates completely between birds held under a Hobby permit and those held

under the three above-mentioned specialized permits. Because certain privileges are accorded breeder permittees, scientists and zoological personnel under these rules due to their professional status and/or expertise, it is the Department's judgment that the goals of the Wild Bird Act of 1991 could not be effectively implemented if newly disqualified holders of such specialized permits were permitted to petition the Director to continue physical possession of birds owned under these specialized permits. A person owning legal, wild-origin birds under a newly revoked breeder permit would still own the birds, but would be obligated to relinquish possession and physical control over those birds to another person qualified to possess the birds. This also means that "grandfathered" birds previously unbanded under the Act are required to be banded when the birds are transferred to another person as a result of a revocation of a permit under these rules. The ex-permittee could not again possess those birds or any other regulated birds until he or she obtained a new permit from the Department. Ownership of all illegal, wild-caught birds shall, under all circumstances, be forfeit to the State (N.J.S.A. 23:4-50h(2)(c)).

9. COMMENT: The commenter is concerned that the rules will deprive him of a property right without compensation and asks whether a person possessing a wild-caught bird under a Hobby permit can sell that bird to another hobby permittee, a bird dealer, pet store or a resident of another state. (2)

RESPONSE: Wild-caught birds "grandfathered" by the Act and possessed under a Hobby permit are exempt from the restrictions of the Wild Bird Act. Such birds may be sold to anyone, including another hobbyist, dealer, pet store or to a person in another state subject to that other state's laws. These birds can also be used as breeding stock with regulated birds held under a Breeder Permit. Regulated wild-caught birds remain the property of their legal owner even after that owner's permit to possess those birds is revoked, but the owner must temporarily relinquish physical possession of the birds in New Jersey until a new permit to possess the birds in New Jersey is obtained.

10. COMMENT: N.J.A.C. 7:25-4.6(a)14 should be further amended to distinguish a "Bird Breeder" permit from an "Individual Hobby/Birds" permit. (2)

RESPONSE: The differences between a Hobby permit for birds and the Bird Breeder permit are already well defined in the rules. The Hobby permit is defined at N.J.A.C. 7:25-4.6(a). A Hobby permit for birds is the same permit; only the fee is different.

11. COMMENT: The commenters question the need for the increase in the Hobby permit fee for holders of birds proposed at N.J.A.C. 7:25-4.6(c). (2,3) Hobby permit fees for all types of animals should be the same. (2) Dealer permit fees are being raised by \$10.00 per year. (3)

RESPONSE: The Department has not increased the fee for dealers. The Department has simply combined the annual inspection fee and the annual fee into a single fee to simplify the rule. The Department believes that the increase in the hobby permit fee for holders of birds is justified. All Department activities necessary to implement the Wild Bird Act are in addition to the existing funding and administrative obligations of the Department. The 1991 Wild Bird Act now requires the allocation of additional personnel, time and equipment to process applications for bird-related permits, to verify all supporting documentation, to record and organize banding records, inspect animals and generally, to enforce all aspects of the Act. The costs for this additional personnel, time and equipment will be borne by the persons who wish to possess birds under these permits. The fee increases are based upon the Department's best estimates of the cost of program administration. After the permitting program becomes fully operational, the Department will be able to accurately assess costs and propose to amend the fee schedule as necessary.

12. COMMENT: The sign required to be placed in pet shops notifying the public of the Wild Bird Act pursuant to N.J.A.C. 7:25-4.6(k) is too lengthy and would take up too much space on a wall. (2)

RESPONSE: The required text should easily fit on a standard 8½ by 11 inch piece of paper.

13. COMMENT: N.J.A.C. 7:25-4.14, Requirements for possession of endangered wildlife species, seems to prohibit privately operated endangered species propagation programs. The rule should be amended to allow private captive propagation by knowledgeable persons. (2)

RESPONSE: The rule does not prohibit propagation programs by permittees. Permittees undertaking scientific research under this section have never been prohibited from captive-breeding for conservation. (Of course, no animals may be released into the wild except pursuant to

the terms and conditions of a permit issued by the Department.) The provisions of the rule that require the applicant for an endangered species permit to obtain a sponsor and submit a proposal for scientific research are designed to enable the Department to assess the expertise and intentions of the permit applicant and to ensure adequate oversight of the applicant's research by the Department.

14. COMMENT: N.J.A.C. 7:25-4.20(c) only allows regulated birds hatched in New Jersey to be seamless banded, including birds hatched prior to the Act, when many such birds can only be safely butt-end banded. (2)

RESPONSE: Any bird legally possessed prior to the implementation of these regulations, whether wild-caught or captive-bred, is exempt from banding until it is sold or physical possession is otherwise transferred to another person. This also means that "grandfathered" birds previously unbanded under the Act would be required to be banded when the birds are transferred to another person as a result of a revocation of a permit under these regulations. The Department acknowledges that seamless bands cannot safely be placed upon the leg of a bird after the early nestling stage. Accordingly, N.J.A.C. 7:25-4.20(c) requires placement of seamless bands only upon captive-bred birds hatched in New Jersey after these new rules and amendments become effective on January 17, 1995.

15. COMMENT: The conservation of wild-caught birds does not concern New Jersey residents; the only beneficiaries of these regulations are conservation groups and residents of the foreign countries from which many of the regulated birds are exported. (2)

RESPONSE: In passing the 1991 Wild Bird Act, the Legislature declared it to be the public policy of the State to ensure that New Jersey consumer markets are closed to the trade in wild-caught birds. This trade is leading to the extinction of entire species and subspecies of birds valuable not only for their appearance but for their genetic diversity, which may be directly or indirectly useful in ways not yet fully understood by science. This animal trade has no widespread economic benefit for the indigenous peoples trapping and supplying the birds and inflicts an enormous mortality rate upon native bird populations. The regulation of possession and sale of wild-caught birds is consistent with the Department's mandate to encourage conservation of natural resources whenever possible. The fact that State wildlife conservation policy coincides with some of the goals of some private conservation organizations is not at all uncommon. Cooperation between public and private sectors ensures speedy public education and quicker implementation and enforcement of many programs.

16. COMMENT: Some of the bird species for which trade is banned under these regulations are not defined as "rare" species under other treaties or laws and, thus, trade should be allowed for such species. (2)

RESPONSE: The regulations implement the Wild Bird Act, which bans trade in all wild-caught birds as defined therein. The rareness of a species is irrelevant to the overall intent of the New Jersey Wild Bird Act, which is to prevent the destruction of millions of birds through indiscriminate capture and transport, and so to promote their conservation.

17. COMMENT: The proposed regulations represent a regulatory scheme far stricter than that discussed with the industry when the Act was being formulated. Now, bird owners will be forced to license themselves as bird breeders if they want to breed regulated birds at all. (3)

RESPONSE: The Department believes that the regulations contain only those provisions necessary to implement the Wild Bird Act. The rules continue to allow persons to breed birds under any permit. The new Bird Breeder permit is only for those persons qualified to obtain wild-caught birds after the effective date of the Act. Wild-caught birds obtained before the effective date of the Act and captive bred birds can be possessed and bred under any other permit.

18. COMMENT: The regulations operate so that anyone holding legally obtained imported birds must show original sales receipts in order to transfer or sell these birds and that anyone who moves into New Jersey with wild-caught birds will be breaking the law. (3)

RESPONSE: There are various ways to prove that a bird is legal under the Act, aside from production of an original proof of purchase. For example, pursuant to N.J.A.C. 7:25-4.19(b)6i, the Department will consider sworn affidavits from persons with knowledge of the age and source of the bird and the particulars of the sales transaction. The Department will also consider sworn-true copies of other documents such as bills of lading, pet shop records kept in the normal course of business and veterinary records in order to establish the status of birds under the Act. (Id.). As to interstate relocation of persons possessing birds, N.J.A.C. 7:25-4.6(a)1 through 14 allows persons entering New Jersey to

apply for a permit to possess wild-caught birds. If the bird is illegally possessed under the Act, the Act forbids its possession only in New Jersey.

19. COMMENT: Lovebirds are not properly categorized as an exotic species of animal since they have been raised in captivity for over 40 years. Furthermore, the Hobby permit fee can be more expensive than the cost of the bird. (3)

RESPONSE: An exotic species of animal is defined as an animal which is not a natural native species of the State of New Jersey. Lovebirds are native to Africa and therefore are properly classified as exotic species in New Jersey. Furthermore, there are species of lovebirds which are uncommon in aviculture and which, consequently, are rarely found in captive breeding programs. As to the \$20.00 hobby permit fee, the Department believes that the fee covers only the cost of implementing the Act such as processing applications for permits, investigating the veracity of supporting documentation, answering questions and enforcing the regulations. An unlimited number of birds and other wildlife, expensive or inexpensive, may be possessed under a single permit.

20. COMMENT: New Jersey is the only jurisdiction which requires permits for domestically raised animals. Furthermore, there is no benefit derived from permit fees. (3)

RESPONSE: Although the Department regulates the possession of wildlife as stipulated by the laws of the State of New Jersey, the Department notes in response to this comment that the Federal government also requires permits for certain species of wildlife, which cannot be imported but which must be captive-bred. Fees are a necessary method to implement the goals of the Act in order to cover the administrative costs of the program. Compliance with these regulations not only benefits the wildlife protected thereunder, but also protects the economic investment of permittees who conform their business practices to the requirements of the Act.

21. COMMENT: No pet shop selling animals requiring a permit would find that a shorter list of species exempt from regulation makes compliance with the law easier. (3)

RESPONSE: Permit program staff report that almost all commentary received from regulated pet shop owners and others during the drafting of these regulations was in favor of reducing the number of species exempt from regulation. A lengthy list of exempt species is difficult to remember and administer. Thus, the Department has continued to exempt from permitting requirements in N.J.A.C. 7:25-4.4 the three species exempt under the Wild Bird Act, the cockatiel, canary and budgerigar. Moreover, after careful consideration of this comment, the Department has decided to restore zebra finches and society finches to the list exempt from permit requirements in N.J.A.C. 7:25-4.4. These species may continue to be possessed without a permit since they are not imported from the wild. The society finch is not found in the wild at all. The zebra finch may not be exported from its native country, Australia, and is easily and extensively bred in this country in captivity. However, the Department's decision to allow these two species to remain on the permit exemption list does not affect the net impact of the amendments, which is a reduction of the total number of bird species exempt from regulation.

22. COMMENT: The proposed rules will do nothing to prevent the illegal importation of birds (3).

RESPONSE: The intent of the Wild Bird Act and the rules is to conserve birds in the wild by making it illegal to sell, transfer or possess birds so obtained after the effective date of the Act. The Act does not address smuggling. As to the illegal importation of birds into New Jersey, the Department notes that if only captive-bred birds are allowed to be procured in New Jersey, there will be fewer legally imported birds along side of which smuggled birds can be concealed, thereby making detection and seizure of smuggled birds far more likely. Again, if importers cannot successfully reach consumers in numbers sufficient to cover their costs, smuggling into New Jersey will be fatally affected. The Department predicts illegal importation into New Jersey will eventually cease altogether as compliance with the Act becomes widespread and the public becomes educated as to the operation of the Act.

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

7:25-4.1

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

"Butt-end band" means a band with an open seam locked around the leg of a bird of any age using pliers or a similar tool and which is obtained from a source approved by the Department, inscribed with a code approved by the Department in sizes stipulated by the Department for each species of bird.

"Captive-bred bird" means any bird that is hatched in captivity from eggs produced by captive parent birds.

"Color mutation" means a color which is different and distinctive from the normal, natural color for that species of animal, as defined in reference texts commonly recognized as authoritative in the field of zoology, ornithology or aviculture, which is produced by breeding together animals with aberrant (mutated) color-producing genes.

...

"Seamless leg band" means a solid ring leg band from a source approved by the Department, inscribed with a code approved by the Department, in sizes stipulated by the Department for each species of bird, which is slipped onto the leg of a newly hatched captive-bred bird and which is incapable of being removed or reopened when the bird has reached adult size without either destroying the band or injuring the bird.

...

"Wild bird" means any bird other than a native, introduced, or feral game bird as defined in N.J.S.A. 23:4-49 and other than a domesticated bird such as a chicken, turkey, guinea fowl, goose, duck, pigeon, or peafowl. "Wild bird" also means the egg of a wild bird.

7:25-4.2 Permit required

(a) Except as hereinafter provided, no person shall possess any nongame species or exotic species of any mammal, bird, reptile or amphibian unless such person has first received both the appropriate permit from the Department as listed in N.J.A.C. 7:25-4.6(a) as well as any other state, municipal, or Federal permits or licenses which may be required to possess such species. Any permit issued to an applicant by the Department for the possession of any animal shall not exempt that applicant from compliance with any other law of the State of New Jersey or any municipal or Federal law. An application to the Department for a permit shall be made using the form prescribed by the Department. Any false representation by the applicant or a permittee who knows or reasonably should know that the representation is false, and who has submitted the representation to induce the Department to issue a permit or take any other action, shall subject the applicant or permittee to all penalties available under State law, including revocation of any permit obtained based upon false information. All permits issued by the Department under this chapter are valid only when used by the permittee in accordance with the terms and conditions of the permit and the regulations governing that permit. The Department shall, upon written notice to the permittee, revoke any permit listed in N.J.A.C. 7:25-4.6(a) issued to any person who ceases to consistently meet the eligibility criteria for that particular permit and may, in its discretion, seek an order from the Director or a court of competent jurisdiction allowing immediate removal of any animal possessed under that permit. Written notices of violation against a permittee shall set forth the terms of the permit or the regulation which the Department alleges the permittee has violated and the penalty sought. Notices of violation shall be brought and if not settled, contested, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14-1 et seq., or the rules of the court with jurisdiction over the claim of violation. The Department may settle all claims for penalties pursuant to N.J.S.A. 23:2A-10. Revocation of all Department-issued permits for repeated violations shall occur as set forth in (c) below.

(b) (No change.)

(c) Upon written notice to the permittee, the Department may suspend any type of exotic or nongame species permit described in (a) above as listed in N.J.A.C. 7:25-4.6 for six months based upon final agency action establishing that a violation of a permit condition has occurred or that a violation of any regulation appearing in this subchapter has occurred as a result of a plea of guilt, court conviction or final agency action establishing guilt. A notice of suspension may be mailed to the permittee together with any administrative notice of violation on which it is based, but the suspension shall not take

effect until the deadline to request a hearing concerning the notice of violation has elapsed. In the event of a timely request to the Department for a hearing on an administrative notice of violation, no proposed suspension shall take effect until final agency action on the notice of violation and, if appealed, until all appeals of the final agency action have been concluded and the violation has been affirmed. In the event of municipal or Superior Court conviction of a violation of any regulation in this subchapter, no proposed suspension mailed to the permittee shall take effect until all appeals from the conviction have been concluded and conviction of the violation has been affirmed. If the permit expires during the period of its suspension, no application for any other permit to reacquire possession of any animal possessed pursuant to the suspended permit may be made until the six month suspension period has elapsed. During the suspension period, all animals possessed pursuant to any suspended permit must be removed from the custody and control of the permittee and placed in the custody of an individual licensed by the Division or, as permitted by Federal law, with a person residing outside of New Jersey in accordance with that state's laws, at the sole expense of the permittee.

(d) Upon written notice to the permittee, the Department may revoke all Division-issued permits described in (a) above as listed in N.J.A.C. 7:25-4.6 upon a finding that in any five year period, two or more violations of any permit condition or any regulations appearing in this subchapter have occurred. Except by order of the Division Director as provided below, no permit whatsoever shall be issued by the Division to the violator of permit conditions or regulations within two years from the date of the final agency action affirming a violation or within two years of a conviction or guilty plea in municipal or Superior Court, whichever constitutes the second violation or within three years from the date of the final agency action affirming a violation or within three years of a conviction or guilty plea in municipal or superior court, whichever constitutes the third or subsequent violation. The two and three year period of disqualification above shall be computed beginning from the date of any court order or final agency action affirming the violation which is not appealed, or, if appealed, from the filing date of the order as entered by the last court of competent jurisdiction to which any party has appealed which affirms the conviction or final agency action. In the event of the imposition of a two or three year period of disqualification, a permittee whose violations do not arise from possession of animals authorized pursuant to a hobby permit previously issued to the now-disqualified permittee may petition the Division Director to retain the hobby permit and the animal specifically authorized for possession pursuant to that permit which was in the physical possession of the permittee prior to the date of the Notice of Revocation if the Director determines, in his or her sole discretion and based upon the evidence submitted by the permittee, that there is a high probability that the animal's well-being will be jeopardized or its life endangered if the animal is separated from daily contact with the permittee during the course of the disqualification period. In the event the Director denies this petition, the former permittee may petition the Director for permission to reapply for a hobby permit to regain possession of the animal if the Division Director determines that there is physical evidence verified by an affidavit from a licensed veterinarian submitted by the former permittee that the animal's life is plainly in danger or its well-being is jeopardized solely as a result of its separation from the former permittee. The permittee may not possess any animals under a hobby permit issued or extended at the discretion of the Director other than those animals authorized by the Director and originally possessed by the permittee and the offspring from interbreeding between those individual animals. No animal may be possessed pursuant to a hobby permit extended by discretion of the Director if possession of the animal violates any Federal, state or local law.

1. The violator may request a hearing to contest an administrative notice of violation, proposed suspension or revocation, as the case may be, in accordance with the Administrative Procedure Act, N.J.S.A 52:14B-1 et seq., and the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1. No administrative hearing shall be

afforded a violator in order to contest a notice of proposed suspension or revocation based upon repeated violations as set forth in (c) above when the objection to the proposed suspension or revocation constitutes a challenge to the facts underlying a violation for which an opportunity for a hearing and appeal has already been afforded the permittee.

2. The request for an administrative hearing must be received in writing by the Department within 20 days from the date of mailing of the Division's notice of violation or intent to suspend or revoke the permit. If a timely request for a hearing concerning any notice of proposed agency action is not received by the Department, any alleged violation contained in the notice shall be deemed admitted by the permittee and any suspension or revocation proposed in that notice, or in any separately-mailed notice, shall become effective without further action by the agency on the date stipulated in the notice of suspension or revocation.

7:25-4.4 Exempted species

(a) The following listed species of exotic or nongame mammals, birds, reptiles or amphibians may be possessed in this state without a permit.

1. Birds:

- i. Budgerigar—*Melopsittacus undulatus*;
- ii. Cockatiel—*Nymphicus hollandicus*;
- iii. Peafowl—*Pavo cristatus*;
- iv. Rock dove—*Columba livia*;
- v. Canary—*Serinus canaria*;
- vi. House sparrow—*Passer domesticus*;
- vii. European starling—*Sturnis vulgaris*;
- *viii. Zebra finch—*Poephila guttatus*;
- ix. Society finch—*Lonchura domesticus*.*

2.-4. (No change.)

(b) (No change.)

7:25-4.6 Categories of permits, expiration, fees, sales receipts required, records and reports required

(a) The Division may issue, but shall not be limited to, the following categories of permits:

1.-13. (No change.)

14. Bird Breeder—issued to persons meeting the regulatory criteria for possessing wild-caught bird species to acquire birds for use as new breeding stock to increase genetic variety (see N.J.A.C. 7:25-4.19). This permit does not authorize the resale of wild-caught birds acquired under this permit except with the permission of the Department to another holder of a bird breeder permit. Those engaged in the retailing or wholesaling of birds must also have a pet shop or animal dealer permit.

(b) (No change.)

(c) The possession permits shall require an annual application and inspection fee as listed:

| Categories of Permits | Annual Application and Inspection Fee |
|--------------------------|---------------------------------------|
| Individual Hobby | \$ 10.00 |
| Individual Hobby/Birds | \$ 20.00 |
| Scientific Holding | \$ 35.00 |
| Zoological Holding | |
| —less than 10 animals | \$ 60.00 |
| —more than 10 animals | \$110.00 |
| Pet Shop | \$100.00 |
| Animal Dealer | \$100.00 |
| Animal Exhibitor | |
| Single Exhibit | \$ 35.00 |
| Annual | \$110.00 |
| Animal Theatrical Agency | \$110.00 |
| Scientific Collecting | \$ 22.00 |
| Special Purpose Salvage | \$ 7.00 |
| Special Wildlife Salvage | \$ 7.00 |
| Endangered Species | \$ 7.00 |
| Depredation Control | \$ 22.00 |
| Rehabilitation | \$ 7.00 |
| Bird Breeder | \$150.00 |

(d) Pet shop, animal dealer, zoo, nature center and animal theatrical agency possession permits must be displayed in a prominent place. The sale of exotic mammals, birds, reptiles or amphibians, or nongame species to any individual must be accompanied by an "Exotic or Nongame Sales Receipt" the form of which shall be prescribed by the Department, and an application packet. This "Exotic or Nongame Sales Receipt" will be a temporary possession permit valid for a period of 20 days after the date of sale.

(e) Pet shops and animal dealers shall submit to the Division an annual inventory of acquisitions, sales and exchanges, and white copies of temporary permits issued for sale of any regulated species, upon expiration or renewal of their permits.

(f)-(i) (No change.)

(j) Any person holding an Exotic or Nongame Species Possession Permit pursuant to this subchapter which expires or is revoked shall file a report with the Division within 15 days after expiration or revocation explaining the final disposition of all animals in his or her possession during the calendar year of issue. The explanation shall set forth the following information: the species and number of individuals of each species possessed; the date of birth and current age of each animal; births; deaths and cause of each death; the complete name, address and telephone number of the person to whom an animal was transferred or sold; the date the animal was transferred or sold; and the current location of each animal's records.

(k) Pet shops or other establishments dealing in birds other than canary, budgerigar and cockatiel shall prominently display a sign visible to the public on the premises where such birds are offered for sale, which states: After December 10, 1991, only captive-bred birds or birds legally in possession pursuant to New Jersey regulations prior to December 10, 1991 may be offered for sale or purchased in New Jersey. All birds offered for sale except those exempted by New Jersey regulations, must also be marked with a band or micro-chip approved by the New Jersey Division of Fish, Game and Wildlife. To report violations, or questions, call (908) 735-5450.

7:25-4.7 General possession criteria

(a) Prior to the issuance of any permit permitted by these regulations, every applicant shall, in forms provided by the Department, demonstrate that:

1.-3. (No change.)

4. The animal shall receive prompt treatment for any illness or injury from a licensed veterinarian; and

5. (No change.)

7:25-4.9 Criteria for the possession of potentially dangerous species

(a) In addition to the general criteria enumerated above in N.J.A.C. 7:25-4.7, every person applying for a permit to possess potentially dangerous species shall meet each and every of the following criteria to the satisfaction of the Division.

1.-2. (No change.)

3. Protection of the Public: The housing facilities shall also be constructed to prevent public access to and contact with the animal. The potentially dangerous species shall not be kept as a pet, for hobby purposes or in situations, which, in the judgment of the Department, could adversely affect the health of the animal or which could constitute a hazard to the public.

4.-5. (No change.)

6. Other restrictions: Under no circumstances shall a person issued a pet shop or animal dealer permit possess any potentially dangerous species on the commercial premises, except in emergencies and for a limited period of time as stipulated by the Department in writing and subsequently agreed to by the animal dealer or pet shop owner, who shall assume full responsibility for the safety and welfare of both the animal and the public during its temporary storage. A potentially dangerous animal already on display at the premises of a pet shop or animal dealer and already under a permit for such display as of *[the effective date of this amendment]* ***January 17, 1995*** may remain so displayed under the terms and conditions of that permit for the lifetime of that animal.

7:25-4.11 Miscellaneous provisions

(a) (No change.)

(b) (Reserved)
(c) (No change.)

7:25-4.12 Notice of a denial of permit, procedure, review, time limitations, hearing

(a) In the event of a denial of an application for any permit required by this subchapter or the revocation of any permit, the Division shall issue to the applicant or prior permittee a written statement setting forth the reasons for the denial or revocation.

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

7:25-4.14 Requirements for possession of endangered wildlife species

(a) Individuals wishing to apply for a permit to possess endangered wildlife must meet all criteria for a Federal endangered species permit (issued by the United States Fish and Wildlife Service), when applicable, and for the New Jersey nongame and exotic species permit pursuant to N.J.A.C. 7:25-4.7 (issued by the Division of Fish, Game and Wildlife). The Department will require and review the Federal permit before issuing a State permit.

(b) The Division shall issue a permit for possession of specific individual animals classified as endangered wildlife to an applicant who fulfills the criteria in (a) above, and who:

1. Has obtained a sponsoring organization and designated professional who have submitted to the Division all information required in (a)2 and 3 below;

2. Has submitted to the Division a detailed written proposal for scientific research to be completed by the applicant within the time stated by the applicant which, in the judgment of the Division, requires use of the species in question, will not jeopardize the animal's health and has a reasonable probability of yielding, when performed by the applicant under the supervision of the Division and the sponsor pursuant to scientific protocol approved in writing by the Division, scientifically-reliable, new information of use to researchers or zoologists specializing in the study or conservation of the species in question;

i. All proposals shall stipulate the intervals at which the applicant shall submit periodic reports to the Division stating the applicant's progress with the research and improvements in the applicant's expertise in handling and caring for the animals; and

3. Has submitted to the Division written records of the applicant's relevant education, past and current research, publications, funding, equipment and any other information (including personal demonstration as may be required by the Division) which demonstrates to the satisfaction of the Division that the applicant has working knowledge and expertise in handling and caring for the species in question, and that it is reasonably probable that the applicant will accept guidance from both the sponsor and the Division to improve that expertise and that the applicant will accomplish the research within the time stated to the Division in accordance with the scientific protocol approved by the Division.

(c) Amateur attempts or intent to propagate an endangered species will not be considered as sufficient purpose for an individual to be issued a permit to keep an endangered species.

(d) Applicants for a permit to possess endangered wildlife species in New Jersey must be sponsored by a scientific institution, zoological society or similar organization accredited by its professional peers. The goal of sponsorship is to improve the applicant's expertise in the handling, care and breeding of the animal in question, to ensure that the applicant's research requires use of the species in question and has a reasonable probability of producing scientifically-reliable, new data useful to other researchers or zoologists specializing in the study and conservation of the species in question. All research proposals, scientific protocols (including the frequency of reports to the Division by the applicant), and supervisory procedures must be described in writing to the Division by the applicant and receive written approval from both the Division, the sponsor, and the monitoring professional for a permit to be issued. Any permit issued pursuant to this section is conditioned upon the applicant's consistent compliance with instruction from the Division and the professional monitoring the applicant's research as well as the diligent pursuit and timely completion of the Division-approved research project by

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the applicant pursuant to the scientific protocols approved by the Division. Applicants shall produce their research and exhibit their animals to Division personnel on 24 hours notice. Should the Division determine that the applicant has failed to meet these conditions, the Division shall suspend or revoke the applicant's permit and place the animals possessed pursuant to that permit under immediate constructive seizure, pending permanent removal of the animals by the Division from the possession of the applicant at the applicant's own expense. All research by the applicant shall cease immediately upon receipt of a notice of suspension or revocation, except as approved in writing by the Division.

(e) An offer of sponsorship must contain the following:

1. An agreement to commit the organization to the responsibilities of sponsorship as defined in this section, executed by the president, director or other employee of the organization with authority to so bind the organization;

2. Confirmation that the organization is acquainted with the relevant training and experience of the applicant, has reviewed the applicant's proposed research and has determined that it is reasonably probable that the proposed research, as performed by the applicant pursuant to the supervision and scientific protocol described by the sponsor shall yield scientifically-reliable, new information which will be useful to other researchers or zoologists specializing in the study or conservation of the species in question. All scientific protocol and supervisory practices proposed are subject to approval by the Division. Any Division modification of the proposed protocol or practices shall be resubmitted to the sponsoring organization for its comment;

3. The name and address of a professional with well-established, recently-practiced expertise in the handling, care and breeding of the species at issue (or a species closely related) who has agreed to monitor all aspects of the applicant's research on behalf of the organization in accordance with the procedures approved in advance of commencement of the work by the Division and fulfill all the obligations set forth in (e)4 below. The sponsoring organization shall acknowledge its responsibility to locate another professional with credentials acceptable to the Division who shall monitor the applicant's work, report to the Division, and fulfill all the obligations set forth in (e)4 below in the event the professional initially chosen and approved by the Division is unable, for reasons unrelated to the performance of the applicant, to continue in assisting the Division in monitoring the applicant's work;

4. A letter from the professional identified in (e)3 above which lists his or her professional qualifications, verifies that he or she has personally met the applicant, reviewed the applicant's relevant training and experience as well as the proposed research, finds the research meritorious and believes, based upon his or her experience, that it is reasonably probable that the proposed research, as performed by the applicant within the time stated by the applicant pursuant to the supervision and scientific protocol described by the professional, shall yield scientifically-reliable, new information which will be useful to the other researchers or zoologists specializing in the study or conservation of the species in question. All scientific protocol and supervisory practices proposed are subject to approval by the Division. Any Division modification of the proposed protocol or practices shall be resubmitted for the professional's comment. The professional shall agree in writing to guide the applicant in the proper handling, care and breeding of the animals in question and review the applicant's research protocol and data as frequently as needed to ensure the applicant's research meets the criteria for the issuance of this permit. The professional shall agree to personally meet with the applicant and review the applicant's work no less than once every three months and to submit a written report to the Division on the applicant's progress every three months. The applicant may prepare and submit this report as long as the report is approved in writing by the professional in advance of its submission to the Division. Reports must be submitted to the Division no later than the 15th day following the end of each three month reporting period;

5. A written statement that the professional agrees to notify the Division and the sponsoring organization in writing if the applicant

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fails to follow the professional's or the Division's guidance or the scientific protocol approved by the Division and the professional believes that such failure is jeopardizing the probability that scientifically-reliable, useful, new information shall be produced as a result of the applicant's research or that the research cannot be accomplished within the time stated by the applicant; and

6. The applicant shall execute a written acknowledgement releasing the Department, the sponsoring organization and any professionals monitoring the applicant's work from liability for any damages of whatsoever nature arising from the suspension or revocation of any permit issued by the Division. The applicant shall be solely responsible for all costs of maintaining and relocating at the direction of the Division all the animals possessed under this permit when a permit is suspended, revoked or expires.

7:25-4.15 Protection of animal and welfare of public

(a) (No change.)

(b) The housing facilities must be constructed to prevent public access to and contact with the animal, including all animals used for exhibition purposes. The animal may not be kept as a pet, for hobby purposes or in situations which, in the judgment of the Department, could adversely affect or provide no net benefit to the health of the animal or the welfare of the species. The individual must demonstrate to the satisfaction of Division personnel that the security of the housing and caging facilities protects the animal and the public.

(c) (No change.)

7:25-4.19 Criteria for possession of wild-caught bird species for breeding, zoological, scientific or educational purposes

(a) No permit shall be issued for the purpose of selling any wild-caught bird. Except as provided in this subchapter, a person issued a permit to possess wild bird species shall possess only birds bred from captive parent birds and eggs produced from captive parent birds. To preserve the genetic integrity of species of regulated birds, distinct species of birds shall not be cross-bred with other different species of birds to produce hybrid birds.

(b) In addition to meeting the general criteria in N.J.A.C. 7:25-4.7, every person applying for a permit to possess individuals of a species of wild-caught bird shall meet each and every of the following criteria:

1. Education and background, as follows:

i. A person applying for a permit to possess individuals of species of birds which have been wild-caught, or their eggs, primarily for breeding purpose, including those persons designated by institutions or businesses as those responsible for breeding birds, shall affirmatively demonstrate that he or she possesses extensive and thorough experience in breeding the species which is the subject of the application, or of a closely related species.

ii. A person applying for a permit to possess individuals of species of birds which have been wild-caught or their eggs primarily for zoological, scientific or educational purposes which include breeding only as a secondary purposes, including those persons designated by institutions or businesses as those responsible for breeding and handling birds, shall demonstrate that he or she possesses a thorough knowledge of the handling, care and breeding of the species which is the subject of the application, or of a related bird species. As a condition for the issuance of the permit the Division may require that the applicant be supervised by an aviculturist approved by the Department. In the case of scientific or educational projects of limited duration, the applicant shall identify the final disposition of the bird(s);

2. Any person applying to possess individuals of species of birds which have been wild-caught, or their eggs, shall obtain, in addition to a New Jersey Exotic Species or Nongame Species Permit, all other permits applicable to the possession of such species. Any permit issued for the possession of birds by the Department shall not exempt an applicant from compliance with any other relevant Federal, state, county or municipal law;

3. Any person applying to possess individuals of species of birds which have been wild-caught, or their eggs, shall state in writing the purpose and intent of keeping the birds, the species of birds, and

the number of individuals of each species the applicant intends to possess under the permit. In the case of multiple purposes and intents, the applicant shall rank his or her intentions in order of decreasing importance to the applicant;

4. Any person applying to possess individuals of species of birds which have been wild-caught, or their eggs, shall describe in written detail the caging facilities for each bird species, including those aspects of the facilities designed to prevent escape. For each building in which birds are to be housed, its street address and on which floors the birds are to be housed shall be stated. For each room in which birds are to be housed, that room's dimensions, the nearest source of natural and artificial light available for each bird, the type of heating, cooling and ventilation in each room and its source in each room relative to each bird's caging facilities and the location of each room within the building shall be described. Acceptance of any permit authorized under this subchapter shall entitle and authorize Department personnel to inspect the housing and caging of the licensed birds from 8:00 A.M. to 9:00 P.M., Monday through Saturday, in order to determine if the housing and caging is suitable for the species and will ensure accomplishment of the applicant's stated purposes;

5. Any person applying to possess individuals of species of birds which have been wild-caught, or their eggs, shall describe in written detail a reliable, continuous source of food for each bird species, including adult, nestling and hatchling diets for each bird species to be kept; and

6. Except as stated in this section, no person or organization shall possess for any purpose any wild-caught bird or egg produced from such a bird unless that person or organization produces credible documentary evidence that the bird (or egg) was legally possessed pursuant to this subchapter before December 10, 1991, the effective date of the Wild Bird Act.

i. All wild-caught birds possessed before December 10, 1991 by persons or organizations with a permit or other written approval from the Department are exempt from this proof requirement. The Department may consider, among other things, the following as proof of a wild-caught bird's pre-Act status: affidavits from persons with relevant knowledge and sworn-true copies of such documents as bills of lading, contracts of sale, pet shop records and veterinary records.

ii. No person or institution shall sell or otherwise transfer possession of any wild-caught bird or its egg which is possessed pursuant to a Department permit, or purchase or otherwise receive any new wild-caught birds without first obtaining written permission from the Department.

iii. Sellers or transferrers of both pre-Act and post-Act birds shall maintain written documentation as per (b)6i above showing that all birds are either captive-bred or were legally possessed pursuant to these regulations before December 10, 1991. Copies of such documents for each regulated bird sold or otherwise transferred must be provided to the purchaser or receiver of each bird and to the Department.

7:25-4.20 Birds which must be banded; criteria for identifying and marking birds; permitted alterations of appearance; miscellaneous

(a) Regulated birds possessed under a permit issued prior to *[the effective date of these regulations]* ***January 17, 1995*** shall be exempt from banding until the bird is sold or otherwise transferred to a different person. All other regulated birds shall not be possessed until such time as an application to possess the bird, accompanied by proper documentation, is made to the Department and the bird is banded in accordance with this subchapter. Department denial of an application to possess regulated bird(s) shall result in the forfeiture of the bird(s) to the Department without compensation to the applicant.

(b) The natural appearance of any bird shall not be altered by any person in any way for any purpose, except as follows:

1. Seamless or butt-end bands as provided in this section;
2. Subcutaneous coded identification as provided in this section;
3. Clipped flight feathers of wind; or

4. Surgical or other medical procedure mandated in writing by a licensed veterinarian to preserve the life or health of the bird.

(c) Captive-bred birds hatched in New Jersey shall have seamless bands slipped onto one of their legs. A proper-sized seamless band slipped onto the leg of a hatchling shall be of such a size as to later fit a full-grown adult comfortably, but must not be so large that it could have been slipped over the foot of an older or full-grown bird. The Division shall publish and distribute a list of those species of birds exempt from the banding requirements because of adverse health effects.

(d) Captive-bred birds hatched outside the State of New Jersey and wild-caught birds (except for zebra finches, society finches, canaries, budgerigars and cockatiels) which remain in New Jersey for more than 48 hours and are not wearing seamless bands shall have butt-end bands placed around one of their legs upon arrival in New Jersey. All aviculturally recognized color mutations of any parrot species will be exempt from banding due to their captive-bred origin.

(e) In lieu of or in addition to banding as set forth in (a) through (d) above, birds may be identified by micro-chips (subcutaneous implants or coded information) obtained solely from manufacturers expressly authorized by the Department.

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH, AND ANALYTICAL PROGRAMS

Application and Annual Registration Renewal Fees for Ionizing-Radiation-Producing Machines

Adopted Repeal and New Rule: N.J.A.C. 7:28-3.12

Proposed: September 19, 1994 at 26 N.J.R. 3797(a).

Adopted: December 22, 1994 by Robert C. Shinn, Jr.,

Commissioner, Department of Environmental Protection.

Filed: December 22, 1994 as R.1995 d.49, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq., and N.J.S.A. 26:2D-1 et seq.

DEP Docket Number: 42-94-08/430.

Effective Date: January 17, 1995.

Expiration Date: July 30, 1995.

On September 19, 1994, the New Jersey Department of Environmental Protection (Department) proposed to repeal N.J.A.C. 7:28-3.12 and replace it with a new rule establishing Application and Annual Registration Renewal Fees for Ionizing-Radiation-Producing Machines. The Department herein adopts the new rule, which applies to all owners of ionizing-radiation-producing equipment (X-ray machines) regulated pursuant to N.J.A.C. 7:28. The new fees are based on actual costs associated with the inspection frequency and the time required to perform inspections of various types of X-ray machines.

Implementation of this application and annual registration renewal fee schedule will enable the Department to continue to carry out its inspection program in order to protect the residents of New Jersey from unnecessary radiation exposure pursuant to the New Jersey Radiation Protection Act (N.J.S.A. 26:2D-1 et seq.).

The public comment period for N.J.A.C. 7:28-3.12 opened on September 19, 1994 with the publication of the Notice of Proposal in the New Jersey Register. The notice was also published in the Camden Courier Times, the Newark Star Ledger, the Trenton Times, and the Atlantic City Press. The Department also mailed the proposal to individuals who had expressed interest in receiving the document including hospitals, and medical, dental and industrial associations.

Summary of Hearing Officer Recommendations and Agency Response:

The Department held a public hearing concerning the proposed repeal and new rule on October 12, 1994 at 729 Alexander Road, Princeton, New Jersey. Jill Lipoti, Ph.D., Assistant Director of the Radiation Protection Program in the Division of Environmental Safety, Health, and Analytical Programs, served as the hearing officer. Two individuals

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commented at the hearing. Assistant Director Lipoti recommended that the Bureau of Radiological Health consider whether the number of X-ray machines at a facility and the violation history of various types of facilities should be considered in calculating the inspection times and frequencies used in the Department's fee calculation. Dr. Lipoti recommended that the Department adopt the proposal with any necessary modifications. The Department agrees and is adopting the proposal with the changes described below in the Summary of Public Comments and Agency Responses. Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

Janis E. Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection
401 East State Street
CN 402
Trenton, NJ 08625-0402

Summary of Public Comments and Agency Responses:

The Department accepted written comments until October 19, 1994. The Department received comments from the nine people listed below. Two of the nine commenters also attended the hearing.

1. William Prentice, Director, Governmental Affairs, New Jersey Dental Association
2. Keith E. Bailey, Executive Vice President/CEO, South Jersey Hospital System
3. Sylvia Hadad, Manager, Radiology & Radiation Oncology, Mercer Medical Center
4. James Donlan, Medical Physicist, Overlook Hospital
5. Jack Palmero, Vice President, Overlook Hospital
6. James Pierce, Vice President, Warren Hospital
7. Lorraine C. Bopp, D.P.M., Podiatric Physicians & Surgeons
8. Stanley Brandwein, D.D.S., P.A.
9. Scott E. Dickerson, D.M.D., P.A.

A summary of the comments timely submitted and the Department's responses follows. The number in parenthesis after each comment identifies the respective commenter(s) above.

General

1. COMMENT: Why did the Department waste money compiling, printing and mailing this booklet? (2) (9)

RESPONSE: The "booklet" referred to is a photocopy of the proposed repeal and new rule which was filed with the New Jersey Office of Administrative Law for publication in the New Jersey Register. Publication of the proposal in the New Jersey Register is mandated for all proposed new rules, pursuant to the Administrative Procedure Act (APA) N.J.S.A. 52:14B-1 et seq., at N.J.S.A. 52:14B-4(a)(1). Additionally, the contents of the document, including each of the proposal's sections, are mandated pursuant to the APA, at N.J.S.A. 52:14B-4(a)(2).

Therefore, the document's creation and publication are not discretionary and are required by the APA, the purpose of which is to inform the public of proposed new rules and to provide the public with an opportunity to comment prior to the adoption of such rules. The agencies proposing rules are directed by the APA, at N.J.S.A. 52:14B-4(a)(1), to publicize such proposed rules in a manner most appropriate in order to inform those persons most likely to be affected or interested in the intended action. In this case, the Department determined that it would directly notify, by mail, all persons and businesses who pay registration fees pursuant to the current rule and that it would additionally provide a copy of the proposed rule to those upon request. The Department mailed copies of the booklet to the 312 individuals who responded to the notice. If the commenters themselves had not responded to the Department's notice and requested a copy of the proposed rule, none would have been sent to them.

2. COMMENT: The Bureau of Radiological Health should reduce its fringe benefits which are listed as 32.5 percent. This would help reduce costs. (3)

RESPONSE: The Department agrees with the commenter that reducing fringe benefits would reduce the overall costs associated with the proposed fees. However, the Department cannot change the fringe benefit percentage, because the Department of Treasury establishes this figure. The current fringe benefit percentage is 32.35, as indicated in the proposal Summary (see Table 3 at 26 N.J.R. 3800), not 32.5 percent as indicated by the commenter. The fringe benefit percentage is based on the cost of pensions, health benefits, workers compensation, disability

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benefits, sick leave and the Department's share of Federal Insurance Contribution Act (FICA) payments. Several of these costs, such as the pension contributions, workers compensation, disability benefits and FICA are set by State and Federal law. Other benefits such as health benefits and sick leave are established through negotiations with the employees' union. Neither the Department nor the Department of Treasury can unilaterally modify any of these costs.

3. COMMENT: The new requirement that collimator light field intensity be at least 15 footcandles will cause many institutions to add expenses bringing older units up to the standard. Older radiographic units should be "grandfathered" out of this requirement. (3)

RESPONSE: The requirement that the collimator light field intensity be at least 15 footcandles is contained in N.J.A.C. 7:28-15.3(c)1i. This provision was adopted by the Commission on Radiation Protection on August 25, 1993 and became effective on October 18, 1993. The 1993 rule changes, which included the collimator light field intensity requirement, were subject to the full rulemaking public comment process including a public hearing on February 24, 1993. The collimator light field intensity provision and therefore this comment are beyond the scope of this fee rule adoption, however the Department has forwarded the comment to the Commission on Radiation Protection for its consideration in future rulemaking.

4. COMMENT: There is a State law that says the Department cannot charge more than the amount needed to maintain the records. (9)

RESPONSE: The Department is not aware of any applicable State laws which restrict fees to the cost of maintaining records. The Radiation Protection Act at N.J.S.A. 26:2D-9(1) authorizes the Department to charge fees which "reflect the actual or projected expense incurred by the Department in the performance of the service for which the fee is charged."

In developing the fees adopted herein, one of the Department's primary goals was to ensure that the fees did reflect the actual costs of the registration and inspection program. As described in the proposal Summary, the Department analyzed the costs of processing a new registration application, the costs of maintaining the registration system, and the inspection costs. The \$40.00 initial registration fee was based on personnel costs, equipment, supplies and computer costs. In accordance with the statute, this fee reflects the actual cost of the service.

The annual registration renewal fees are based on the Department's administrative and inspection costs. For example, the fee for a fixed medical radiographic machine in a hospital (\$208.00) is higher than the fee for a fixed medical radiographic machine in a doctor's office (\$140.00) because the hospital machine is inspected annually whereas the machine in a doctor's office is inspected every two years. The fee for a bone densitometer machine in a hospital (\$118.00) is lower than the fee for a fixed medical radiographic/fluoroscopic machine in a hospital (\$253.00) because, although both are inspected once a year, the latter requires more time to inspect. Based on the Department's analysis in the proposal, each fee reflects the cost of the service as required by the Radiation Protection Act.

5. COMMENT: Inspection times in the proposal document are too long. Inspections of multiple tubes at one location take less time to do and should result in lower fees for additional units at the same location. (6) (7)

The amounts of time specified in Table 1 are excessive. Using Table 1 to calculate the total amount of time required to inspect the equipment in the commenter's hospital would lead to a total of 9.65 days. From the commenter's experience, the actual amount of time to inspect the commenter's hospital is seven or eight days. The fees do not accurately reflect the amount of time to inspect hospitals, in particular, because of the discount of time for multiple tubes at one location. (4)

The amount of time to perform the total inspection in facilities with multiple dental tubes is too long. In particular, the times in Table 1 for the initial interview, set-up, paperwork review, equipment breakdown, and exit interview are not duplicated for each tube. For example, in a three tube office, the exit interview would not take 15 minutes, as opposed to the five minutes allotted for a one tube office. The inspection time estimate for dental facilities is at least 30 percent too high. The estimate of inspection time per X-ray tube should be rectified and the inspection fee lowered accordingly. (1) (8)

Another commenter disputes the Department's estimate in Table 1 that the average inspection time for a dental X-ray tube is 45 minutes. Generally, inspections take from 15 to 30 minutes. (1)

RESPONSE: Table 1 in the proposal Summary (see 26 N.J.R. 3799) summarizes the Department's analysis of the amounts of time needed

to inspect various types of X-ray machines. The Department used these times to calculate the proposed fees.

The times in Table 1 are estimates based on interviews with the Department's inspectors and other staff who schedule the inspection appointments. In some cases, actual time measurements were made to verify the estimates. Supervisors who occasionally accompany inspectors also confirmed the estimates. In all cases, the times are averages. Some X-ray machine inspections require more or less time than the average for various reasons including availability of the X-ray machines, records and staff; malfunctions (violations); the need for special testing equipment; and the need to repeat some tests.

In light of these comments regarding the estimated inspection times, the Department conducted a limited study of inspection times, particularly focusing on hospital and dental facilities. The study was limited to a two week period in October, 1994 and included two hospitals and 18 dental offices with a total of 39 dental tubes.

The results of the study confirmed the accuracy of the Department's inspection time estimates for X-ray machines in hospitals. For example for one hospital, the estimated time based on Table 1, to inspect the hospital's 28 X-ray machines was 31.5 hours. The amount of time actually used by the inspector to complete the inspections was 32.5 hours, within three percent of the Department's estimate. For the second hospital, the estimated inspection time for its 29 X-ray machines, based on Table 1, was 32.33 hours. The actual inspection time was 32.5 hours, within one percent of the estimate. The Department has determined not to change fees for X-ray machines in hospitals, because the limited time study validated its inspection time estimates.

In the dental facilities study, the results were more varied. In one case, the inspection of three X-ray machines was completed in 73 minutes (about 24 minutes per tube). In another case, the inspection of a single X-ray machine took 60 minutes. The study concluded that the average inspection time was 38 minutes per dental X-ray machine, which is seven minutes, or 15 percent, less than the 45 minutes listed as the average inspection time in Table 1.

As part of the survey, the inspectors noted unusual circumstances. For example, in the case where it took 60 minutes to inspect one dental X-ray machine, the inspector had to wait for the dentist to finish with a patient. During the inspection, several violations were found which extended both the inspection and the exit interview. In the case where three X-ray machines were inspected in only 73 minutes, the dental office was closed (no patients) allowing the inspector immediate access to the doctor and equipment operators and the X-ray machines. All needed records were available and in good order. The office provided a cart which allowed the inspector to move the testing equipment quickly from room to room, and all of the X-ray machines were in full compliance with N.J.A.C. 7:28. This resulted in a brief exit interview.

As part of the time-study in dental facilities, the Department evaluated the assertion of several commenters that the inspection time per machine is less when one dental facility has multiple X-ray machines. Using a statistical analysis to compare the number of X-ray machines per dental facility to the inspection time per X-ray machine, the Department found only a slight negative correlation. This means that inspection times are reduced only slightly when more than one X-ray machine is inspected at a single dental facility.

Based on the information provided by the commenters and this limited study of the inspections of X-ray machines at dental facilities, the Department is reducing the annual registration renewal fee for X-ray machines in dental facilities from \$95.00 to \$92.00 per tube. This represents a 15 percent reduction (from approximately \$22.00 to \$19.00) in the variable portion of the fee which reflects the inspection costs.

N.J.A.C. 7:28-3.12(a) Initial application fee

6. COMMENT: The Department is proposing a \$40.00 initial application fee for new X-ray machines as well as a prorated portion of the current registration fee. The commenter supports wholeheartedly the prorated first year fee, but sees no need for an additional \$40.00 application fee. (1)

RESPONSE: The \$40.00 application fee is based on the Department's analysis of the cost of processing initial registration applications. The application fee is a one-time charge for new registrants to cover personnel costs, computer data processing and office supply costs, as explained in the proposal Summary at 26 N.J.R. 3801.

The annual registration fee for the first year is prorated because the costs of the X-ray machine registration and inspection program begin to accrue when the equipment is registered.

7. COMMENT: On page 3801 of the proposal, the Department states that the \$40.00 application fee is "a substantial reduction to registrants." Then later on page 3803 it states that the new first year fee will "usually exceed the current fee." Many persons who skimmed this proposal probably mistakenly believed that the new \$40.00 application fee would result in a lower first year fee. (1)

RESPONSE: The Department was careful to point out in both the Economic Impact and Regulatory Flexibility Analysis in the proposal that the application fee in combination with the prorated annual registration fee would likely result in greater fees for registrants for the first year of registration (see 26 N.J.R. 3803).

N.J.A.C. 7:28-3.12(b) Dental facilities

8. COMMENT: The fee for dental equipment is shown as reduced from \$100.00 to \$95.00. Then a final fee list raises the dental machine fee to \$106.00 each. At this rate, the commenter's fees for six machines would be \$636.00 annually. This is a hardship because of other required fee increases in dental practice and comes at a time when infection control has dictated a costly upgrade to the commenter's facility. (8)

RESPONSE: The commenter apparently misunderstood the two different dental fees listed in the proposal. The \$95.00 fee was proposed at N.J.A.C. 7:28-3.12(b) for dental X-ray machines in dental facilities which are inspected every three years. The \$106.00 fee was proposed at N.J.A.C. 7:28-3.12(d) for dental X-ray machines in non-hospital facilities such as medical offices and schools. These units are inspected every two years. The different inspection cycles account for the different fees for the same type of machine.

Prior to the adoption of this rule, the commenter has paid \$600.00 per year for the six dental X-ray machines. If the Department had proposed new fees based on the previous approach, where all X-ray machines were charged the same fee regardless of inspection times and frequencies, the fees would have increased from \$100.00 per X-ray machine to \$130.00 per X-ray machine. The commenter's fees would have increased from \$600.00 per year to \$780.00 per year. Under the new rule as proposed, this commenter's fees would have decreased by \$30.00 per year, from \$600.00 to \$570.00 per year.

As a result of the Department's analysis of inspection times at dental facilities (see response to Comment 5 above), the fee for X-ray machines at dental facilities is being lowered by three dollars, from \$95.00 to \$92.00 per X-ray tube. The commenter's annual renewal registration fee will be \$552.00 per year, below the \$600.00 per year the commenter has paid previously and well below the \$780.00 per year the commenter would have paid had the Department proposed and adopted an across-the-board fee increase.

9. COMMENT: According to the proposal, dental machines must be inspected every three years. This time interval is arbitrary. What is the longest interval that can be used to identify the negative impact on public welfare? (8)

RESPONSE: The inspection frequency for X-ray machines in dental facilities was not chosen arbitrarily. The Department determined that the three year inspection cycle for dental facilities was appropriate on the basis of an extensive analytical process. First, the Department analyzed the literature and found that national associations such as the Conference on Radiation Control Program Directors recommended that all radiation sources should be inspected at least every five years. The Department compared use patterns of hospital and medical X-ray machines with those of dental machines and found that dental machines are generally used less frequently and usually deliver less radiation to the patient. However, most dental facilities do not use medical physicists or quality assurance programs to ensure that the X-ray machines are working properly and a malfunctioning dental X-ray machine can produce harmful doses of radiation. When the Department analyzed enforcement data, the Department found a 10 percent violation rate for dental X-ray machines. Based on this analysis, the Department concluded that a three year inspection cycle for dental facilities is appropriate.

10. COMMENT: Fees should be charged only for the year in which a facility is inspected. If a dentist is inspected every three years, why is the facility charged annually? (8)

RESPONSE: The Department has allocated registration and inspection costs on an annual basis rather than on an inspection year basis. The Department could have chosen to assess the fee only in the year in which the facility is inspected, but this would neither change the overall costs of the registration and inspection program nor result in lower fees. For dental offices, charging the fee only in the year in which the facility is inspected would mean a dentist with two machines would pay \$552.00 every three years rather than \$184.00 each year. The Department has

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spread the costs over three years because the fixed costs covered by the fees accrue even when dental facilities are not inspected. The Department also believes allocating the costs on an annual basis enables dental facilities to project their budget costs more predictably.

11. COMMENT: The negative economic impact for dental facilities is greater than that of medical offices because dental X-ray machines are not used as often. Medical facilities have many doctors using the X-ray machines, but dentists do not have referrals from other dentists. (8)

RESPONSE: The Department's role is to ensure that the public is protected from unnecessary radiation exposure. The radiation protection rules at N.J.A.C. 7:28 and the registration and inspection program are designed to accomplish that goal. The annual registration renewal fees adopted herein fairly and equitably distribute the costs of the program to the regulated community. The Department does not regulate dental business practices, for example, referrals for X-ray examination. Although the economic impact may vary from dentist to dentist, the Department believes that the \$92.00 annual registration renewal fee adopted herein for an X-ray tube in a dental facility (reduced from the \$100.00 fee previously charged) is reasonable and will not have significant negative economic impact on dentists.

12. COMMENT: Over the years the commenter has been in practice the commenter has reduced the number of radiographs and the dose per radiograph. The registration renewal fee, in other words, has gone up for reduced use. (8)

RESPONSE: The Department appreciates and supports the commenter's reducing the number of radiographs and the dose per radiograph because this type of practice helps to ensure the health and safety of the people of New Jersey. The Department, through its inspection program for X-ray machines, helps ensure that medical professionals such as the commenter can continue the practice of lowering doses to patients. Machine parameters can and do change over time, and can exceed manufacturers' specifications. The user is often not aware of the malfunction until the equipment is inspected and tested with the Department's specialized equipment. The registration renewal fee covers only the costs of the services the Department provides. These services protect the workers and the public and help to ensure that the X-ray machine is working according to manufacturers' specifications. In addition, it would not be practical to attempt to base inspection frequency on the actual number of times that X-rays are taken on individual machines, since there are approximately 20,800 X-ray machines registered in New Jersey.

13. COMMENT: The New Jersey Dental Association stands ready to work with the Department in any way possible to reduce the amount of time it takes to inspect dental X-ray equipment and to ensure that its members are fully informed of their responsibilities regarding these inspections. (1)

RESPONSE: The Department appreciates and supports the commenter's offer to work with the Department to minimize the inspection time in dental offices. It is the Department's experience that an inspector frequently must wait to begin the inspection of the X-ray machine, or once the inspector is in a dental office at which there is more than one X-ray machine, the inspector must wait to have the second or third X-ray machine available for inspection. Needed records are not always readily available for review, which increases inspection time. Through education, these times might be shortened and the inspectors' efficiencies improved. The Department is currently discussing ways to accomplish this with the New Jersey Dental Association.

N.J.A.C. 7:28-3.12(c) Hospital facilities

14. COMMENT: The proposed machine source registration renewal fees will be a financial burden to hospitals in light of reduced income due to the constraints of managed health care. (3) (4)

RESPONSE: The Department appreciates the commenter's concern but the Department views the X-ray inspection program as supporting managed care. Most X-ray procedures are diagnostic in nature and the number of X-ray procedures is not likely to decrease with managed care. Because of the high use and relatively high radiation doses, it is particularly important for hospitals to have their X-ray machines functioning according to the manufacturers' specifications and in compliance with State radiation protection standards. The Department's inspection program helps reduce the number of repeat X-ray procedures needed when the initial X-ray procedure fails because of a faulty X-ray machine. The Department's inspections frequently reveal that X-ray machines have faulty timers, misaligned collimators or improperly calibrated

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X-ray tube voltage; such malfunctions can result in unnecessary radiation exposure to patients and machine operators. Excess exposure can cause increased risk of cancer, which would eventually increase the overall costs of health care. The Department's registration and inspection program supports reduced health care costs.

15. COMMENT: The proposed fees to hospitals are unjustified. The commenter's fees would increase 118 percent in one year. No other hospital fee is doubling in this manner. Hospitals are constantly criticized for costs increasing faster than the consumer price index. The Radiology Department is trying to meet a goal of zero inflation for 1995. The hospital probably will not be able to meet this goal with the fee increases. (2) (4) (6)

RESPONSE: The Department agrees that the fees for X-ray machines in hospitals are doubling. The reasons are twofold: first, the fees for X-ray machines in hospitals have not, until this adoption, reflected the actual costs of registration and inspection. The rule adopted herein is more fair and equitable to the regulated community because the fees reflect the cost of carrying out the registration and inspection program. Second, the Department has not increased its fees for X-ray machines since 1990 even though the annual inflation rate since 1990 has averaged 4.3 percent.

In dollars, the average annual fee increase resulting from this adoption is approximately \$2,000 per hospital. Although this is a substantial increase, the Department believes that the increase is reasonable because patients and hospital workers deserve the protection from unnecessary radiation provided by the Department's registration and inspection program. The Radiation Protection Act requires that the Department base its fee on the cost to carry out its program.

16. COMMENT: Hospitals do not need an inspection every year. Hospitals such as the commenter's employ full time medical physicists or make extensive use of consultant services. Therefore, hospitals with adequate physics services should be the Department's lowest priority. Hospitals should be permitted to submit physicists' equipment performance reports in lieu of on-site inspections. Registrants that do not have extensive programs of physics support should be a higher priority for inspections. (2) (4)

RESPONSE: The Department disagrees with the commenter that hospitals do not need annual inspections. Some hospitals employ medical physicists while others contract with consulting services. Except for the quality assurance requirements for mammography, computed tomography and radiation therapy simulators, the Department does not define or regulate the work of hospital medical physicists nor does the Department oversee their performance. The physicists may perform excellent machine evaluations but they lack the authority to require that equipment be repaired. Even if physicists were to send reports to the Department, the Department would be unable to enforce the physicists' recommendations. At times, the Department's inspectors find that hospital physicists' recommendations regarding X-ray machines have not been acted upon.

The Department also reviewed its records of violations cited as a result of the Department's inspections of X-ray machines in hospitals for the period of July through October 1994 and found that for all X-ray machines inspected in hospitals, there was a 25 percent violation rate. In other words, even with physicists inspecting hospital equipment, there continues to be a significant number of problems with the machines. The Department believes one reason for this is the high usage of X-ray machines in hospitals. For this reason, the Department believes annual inspections of X-ray machines used in hospitals are appropriate.

17. COMMENT: The commenter disagrees with the statement in the proposal that "the proposed new rules will have an indirectly positive economic impact on hospitals because national agencies such as The Joint Commission on Accreditation of Healthcare Organization (JCAHO) review state inspection reports as part of their hospital survey process." In the commenter's experience, this statement is incorrect. JCAHO standards require certain services, including equipment performance evaluations, to be provided by qualified medical physicists. The scope of the services to be provided by physicists to meet JCAHO standards is far beyond the services provided during State inspections in New Jersey. The review of state inspection reports is not part of the JCAHO survey process, however; review of the physics reports provided by the hospital's physics staff or consulting physicist is part of the process. (2) (4)

RESPONSE: In preparing the fee proposal, the Department contacted the JCAHO and spoke to a medical reviewer. The Department asked very specific questions about the reviewer's use of State inspection reports. The JCAHO reviewer informed the Department that reviewers

do ask hospitals for copies of State inspection reports. Since this was information provided to the Department by the JCAHO, the Department relied on it for the statement in the proposal Summary that the commenter cites.

18. COMMENT: The proposal states "the Department analyzed the revenues from radiology departments at several hospitals and found that the total revenues from the radiology departments at these larger facilities can exceed \$10,000,000." The commenter recognizes that the Department's calculated average fee increase of \$3,000 is only a small portion of the total revenue. However, the Department neglects to consider the total cost of providing radiology service to patients and what portion of the total revenues is left over. (4)

RESPONSE: At the commenter's suggestion, the Department analyzed the revenue and cost data for several radiology departments for larger New Jersey hospitals. The Department obtained the data from the New Jersey Department of Health's Facility Finance and Data Analysis Section of the Division of Health Care Planning and Financial Information System. Based on the 1993 New Jersey Acute Care Actuals report from four larger hospitals, the radiology departments' net proceeds (after costs) range from \$8 to \$16 million. The fee increase under the adopted rule for larger hospitals is estimated to be approximately \$3,000 per year. The Department continues to believe the new fees will not have a significant effect on radiology departments' net proceeds.

19. COMMENT: For hospitals, the inspection frequency should be proportional to the rate of compliance. There is a point at which the curve (inspection vs. violations) levels out. Continuing the present inspection frequency will not increase the rate of compliance. (4)

RESPONSE: The Department's inspection frequencies, as explained in the proposal Summary (see 26 N.J.R. 3798), were based on several factors including the relative number of X-ray exposures, the number of people subject to the X-ray exposures, and the potential level of radiation dose administered during the X-ray procedures.

Compliance with the Department's radiation protection rules (N.J.A.C. 7:28) is also an important factor. The Department conducted a study of its enforcement records over a four month period and found that even with annual inspections, hospitals had a violation rate of approximately 25 percent (that is, 212 violations of N.J.A.C. 7:28 were cited while inspecting 865 hospital X-ray machines). This compares with a 10 percent violation rate at dental facilities and a violation rate of over 50 percent at medical facilities.

If the Department were to follow the commenter's suggestion, medical offices would be inspected more frequently because of the higher violation rate. However, according to NCRP Report No. 100 (1989) 78 percent of radiation exposures occur at hospitals. It is also generally true that the highest doses of radiation are related to procedures (for example, fluoroscopic procedures) conducted at hospitals. Based on all of these considerations, the Department believes it is appropriate to continue conducting annual inspections of X-ray machines in hospitals.

20. COMMENT: The Department stated that most X-rays are taken in hospitals. The commenter feels this is no longer true, based on observation in the waiting room and decrease in statistics at one hospital. (4)

RESPONSE: The Department has found no published data confirming the commenter's belief that fewer X-rays are taken in hospitals today. The commenter's written comment indicated that perhaps at some hospitals the numbers of X-ray examinations have decreased, but at the public hearing the commenter acknowledged that it is equally true that the number of X-ray exams has increased at other hospitals. Even if slightly fewer X-rays are being taken at some hospitals, the vast majority of high radiation doses are still received by hospital patients. Examples of these types of procedures are cardiac catheterization, fluoroscopies, arterial studies and other invasive procedures. With high dose X-ray examinations, it is imperative that the Department provide assurance that all X-ray machines perform to manufacturers' specifications to prevent unnecessary radiation exposures to the public or medical personnel.

21. COMMENT: The Department makes various assumptions based on the NCRP Report No. 100 published in 1989. The commenter questions the validity of the data, also the accuracy of the trends in radiologic examinations in 1994. The commenter questions whether more current data would provide a better basis for the fee proposal. (4)

RESPONSE: The Department has attempted to identify more recent information, but has been unable to find published studies to either validate or discredit the information in NCRP Report No. 100. At the

public hearing, the commenter was asked to provide documentation supporting this comment but the commenter has not yet done so.

According to NCRP Report No. 100, radiographic exams in hospitals constitute 78 percent of the population's exposure to radiation. Some of the procedures may be shifting to outpatient facilities but the Department can find no published data to confirm or quantify such a shift. NCRP Report No. 100 specifically addresses the amount of radiation dose in hospitals. The types of examinations done in hospitals frequently have the potential for delivering high radiation doses to the patient. Special invasive procedures, cardiac catheterization, angioplasty and computed tomography are types of examinations which deliver high doses. The use of these studies is increasing and is cause for concern. For example, on September 9, 1994, the United States Food and Drug Administration (FDA) issued a document entitled "Avoidance of Serious X-ray Induced Skin Injuries To Patients During Fluoroscopically-Guided Procedures." This report warns of occasional but at times severe radiation-induced burns to patients from fluoroscopically guided invasive procedures.

The Department believes that the one year inspection cycle for X-ray machines located in hospitals remains appropriate.

22. COMMENT: The commenter questioned what portion of unnecessary radiation comes from machine performance problems versus unnecessary radiologic exams ordered by physicians and repeat examinations needed due to poor quality X-rays. Maybe it is time to review the goals and effectiveness of the X-ray inspection process in relation to an appropriate and balanced As Low As Reasonably Achievable (ALARA) program and the evolution of the New Jersey hospital industry. The Department must complete a comprehensive ALARA analysis and the entire X-ray inspection program must be based on the ALARA analysis. It is unfortunate that the Department can act only as the Legislature permits, spending a considerable amount of State residents' financial resources for what may be only a marginal gain in their level of safety. (4)

RESPONSE: The Department has reviewed the literature and its records and cannot provide a quantitative answer to the commenter's question concerning the sources of unnecessary radiation. Nonetheless, the Department believes that the X-ray registration and inspection program activities, in concert with applicable Federal programs, provides adequate protection from unnecessary radiation. In addition to the registration and inspection program, the New Jersey Radiologic Technology Board of Examiners was created in the Department to ensure that persons using X-ray equipment on humans are fully trained and licensed.

The commenter recommended that the Department complete a comprehensive ALARA analysis. Although, the New Jersey Radiation Protection Act (N.J.S.A. 26:2D-1 et seq.) does not specifically provide for or require the Department to employ the ALARA process, the Department believes that a comprehensive quantitative review of the sources of ionizing radiation and an evaluation of the current state and Federal regulatory and program initiatives is appropriate as a long term goal.

23. COMMENT: The Department determined that there is a significant positive economic effect for performing a quality X-ray inspection program. What is the effectiveness or rate of return per dollar invested in performing a quality inspection program in hospitals? (4)

RESPONSE: The Department is not aware of sufficient data upon which to base a detailed cost-benefit analysis for the registration and inspection program. As is noted in the proposal (see 26 N.J.R. 3798) which references the NCRP Report No. 100 (1989), the Department pointed out that radiographic exams in hospitals constitute 78 percent of the population's exposure to radiation and X-ray exposure can increase risks of developing cancer. Extrapolating the estimates for total yearly national exposure from NCRP Report No. 100 to New Jersey's population, the Department estimates that each year in New Jersey 147 fatal cancers and 59 non-fatal cancers can be attributed to radiation from medical procedures using X-rays. The Department believes that preventing New Jersey citizens from developing cancer caused by unnecessary radiation more than justifies the cost for a quality inspection program.

24. COMMENT: The Department can avoid cost increases and meet its mission to protect the citizens by changing the inspection cycle in hospitals to every two years. The bi-annual inspection cycle proves effective in neighboring states such as Pennsylvania. (6) (5)

RESPONSE: Although a biennial inspection schedule for hospitals may appear to save money, if X-ray machines are not functioning properly, the public may be exposed to unnecessary radiation. As explained in the response to Comments 19 through 21 above, because

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X-ray examinations performed in hospitals produce the largest amount of radiation exposure to the public and because the Department found the violation rate for X-ray machines inspected in hospitals was 25 percent, the Department believes annual inspections are warranted.

Also, the Department notes that New Jersey's neighboring states of New York, Maryland and Delaware conduct annual inspections on X-ray equipment in hospitals. Only Pennsylvania has a biennial inspection cycle for hospital X-ray equipment.

25. COMMENT: The average estimated additional cost per hospital is \$3,000. This means an additional cost to all hospitals in New Jersey of \$250,000. The commenter would rather see this amount dedicated to patient services, not regulatory costs. (5) (6)

RESPONSE: The Department believes that the additional costs to hospitals for registration and inspection fees are dedicated to patient services because the inspections ensure the health and safety of the patients who undergo X-ray procedures in hospitals. For the reasons explained in preceding responses to comments, the Department believes the new fees are justified.

26. COMMENT: The proposed fee increase appears to be counter to the present State administration's policy of providing quality health care while reducing regulatory burdens to institutions and businesses. The commenter urges the Department to work with hospitals to achieve that end. (5) (6)

RESPONSE: The fee rule adopted herein imposes no new substantive regulatory burdens on institutions and businesses. The equitable distribution of the costs of the X-ray machine inspection program among the regulated community through the revised fee structure will help ensure that quality health care is provided to New Jersey citizens.

N.J.A.C. 7:28-3.12(d) Non-hospital facilities

27. COMMENT: The \$40.00 increase in the annual registration renewal fee for non-hospital radiographic machines will impact the commenter's podiatric medical business. (7)

RESPONSE: The Department agrees with the commenter that the \$40.00 increase will impact podiatric medical practices, but believes that the impact will be slight. The Department has not increased fees since 1990. If the Department had adjusted fees each year by the increase in the consumer price index, the fee for a podiatric medical practice would have been approximately \$130.00 by 1994.

The previous fees did not reflect actual inspection cycles and cost. As explained in the proposal Summary and in preceding responses to comments, with this new rule, the Department allocated the inspection costs according to the established inspection frequency and the length of time for each inspection in order to more equitably apportion the costs of the program among the regulated community.

Summary of the Agency-Initiated Change:

The Department is making one substantive change in the rule on adoption. At N.J.A.C. 7:28-3.12(b)2, the Department is lowering the Annual Registration Renewal Fee from \$95.00 to \$92.00 per year for dental X-ray machines in dental offices. This change is based on time studies performed by the Department and is described in more detail in the response to Comment 5 above.

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

7:28-3.12 Application and annual registration renewal fees for ionizing radiation-producing machines

(a) On initial registration of each x-ray tube, each registrant shall pay an application fee of \$40.00 plus the prorated portion of the applicable annual registration renewal fee set forth in (b), (c), (d) or (e) below for the remainder of the first year of registration.

(b) Each registrant of an ionizing-radiation-producing machine used in a dental facility shall pay:

1. The initial application and registration fees for each x-ray tube pursuant to (a) above, and

2. In each year after the expiration of the first year of registration established pursuant to (f) below, the annual registration renewal fee per X-ray tube as follows:

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DENTAL FACILITIES

| Machine Category and Description | Annual Registration Renewal Fee Per X-Ray Tube |
|----------------------------------|--|
| 01D Dental Machine | *[\$95]* *\$92* |

(c) Each registrant of an ionizing-radiation-producing machine used in a hospital facility shall pay:

1. The initial application and registration fees for each X-ray tube pursuant to (a) above, and

2. In each year after the expiration of the first year of registration established pursuant to (f) below, the annual registration renewal fee per X-ray tube follows:

HOSPITAL FACILITIES

| Machine Category and Description | Annual Registration Renewal Fee Per X-Ray Tube |
|---|--|
| 01H Dental Machine | \$140.00 |
| 02H Fixed Medical Radiographic Machine | 208.00 |
| 03H Mobile Medical Radiographic Machine | 208.00 |
| 31H Portable Medical Radiographic Machine (hand carried) | 208.00 |
| 06H Motor Vehicle Mounted Medical Radiographic Machine | 208.00 |
| 04H Fixed Medical Fluoroscopic Machine | 163.00 |
| 05H Mobile Medical Fluoroscopic Machine | 163.00 |
| 32H Portable Medical Fluoroscopic Machine (hand carried) | 163.00 |
| 33H Motor Vehicle Mounted Medical Fluoroscopic Machine | 163.00 |
| 07H Fixed Medical Radiographic Fluoroscopic Machine | 253.00 |
| 08H Mobile Medical Radiographic Fluoroscopic Machine | 253.00 |
| 34H Portable Medical Radiographic Fluoroscopic Machine (hand carried) | 253.00 |
| 35H Motor Vehicle Mounted Medical Radiographic Fluoroscopic Machine | 253.00 |
| 09H CT Scan Machine | 163.00 |
| 10H Mammography Machine | 298.00 |
| 36H Motor Vehicle Mounted Mammography Machine | 298.00 |
| 37H Mobile Mammography Machine | 298.00 |
| 11H Medical Therapeutic Machine 60 kVp | 253.00 |
| 12H Medical Therapeutic Machine 61 kVp to 999 kVp | 253.00 |
| 14H Medical Therapeutic Machine 1 MeV and above | 343.00 |
| 30H Radiation Therapy Simulator Machine | 208.00 |
| 38H Biomedical (non-human) Research Machine | 140.00 |
| 21H Electron Microscope Machine | 140.00 |
| 22H Cabinet X-ray Machine | 140.00 |
| 28H Bone Densitometer Machine | 118.00 |

(d) Each registrant of an ionizing-radiation-producing machine used in a non-hospital facility (including, but not limited to, doctors' offices, medical facilities, industrial facilities, schools, and government facilities) shall pay:

1. The initial application and registration fees for each X-ray tube pursuant to (a) above, and

2. In each year after the expiration of the first year of registration established pursuant to (f) below, the annual registration renewal fee per X-ray tube as follows:

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NON-HOSPITAL FACILITIES

| Machine Category and Description | Annual Registration Renewal Fee Per X-Ray Tube |
|---|--|
| 01N Dental Machine | \$106.00 |
| 02N Fixed Medical Radiographic Machine | 140.00 |
| 03N Mobile Medical Radiographic Machine | 140.00 |
| 31N Portable Medical Radiographic Machine (hand carried) | 140.00 |
| 06N Motor Vehicle Mounted Medical Radiographic Machine | 140.00 |
| 04N Fixed Medical Fluoroscopic Machine | 118.00 |
| 05N Mobile Medical Fluoroscopic Machine | 118.00 |
| 32N Portable Medical Fluoroscopic Machine (hand carried) | 118.00 |
| 33N Motor Vehicle Mounted Medical Fluoroscopic Machine | 118.00 |
| 07N Fixed Medical Radiographic Fluoroscopic Machine | 163.00 |
| 08N Mobile Medical Radiographic Fluoroscopic Machine | 163.00 |
| 34N Portable Medical Radiographic Fluoroscopic Machine (hand carried) | 163.00 |
| 35N Motor Vehicle Mounted Medical Radiographic Fluoroscopic Machine | 163.00 |
| 09N CT Scan Machine | 118.00 |
| 10N Mammography Machine | 298.00 |
| 36N Motor Vehicle Mounted Mammography Machine | 298.00 |
| 37N Mobile Mammography Machine | 298.00 |
| 11N Medical Therapeutic Machine ≤60 kVp | 118.00 |
| 12N Medical Therapeutic Machine >61 kVp to 999 kVp | 253.00 |
| 14N Medical Therapeutic Machine 1 MeV and above | 343.00 |
| 30N Radiation Therapy Simulator Machine | 208.00 |
| 38N Biomedical (non-Human) Research Machine | 140.00 |
| 17N Industrial/Research Radiography Machine | 151.00 |
| 39N Portable Industrial Radiography Machine | 151.00 |
| 40N Shielded Room Radiography Machine | 151.00 |
| 18N Electron Beam Welder/Furnace Machine | 129.00 |
| 19N Analytical X-ray Machine ≤16 kVp | 118.00 |
| 20N Analytical X-ray Machine >16 kVp | 118.00 |
| 21N Electron Microscope Machine | 106.00 |
| 22N Cabinet X-ray Machine | 106.00 |
| 23N X-ray Baggage Machine | 106.00 |
| 24N Particle Accelerator Machine (non-medical use) ≤30 kVp | 196.00 |
| 25N Particle Accelerator Machine (non-medical use) >30 kVp | 185.00 |
| 28N Bone Densitometer Machine | 95.00 |
| 41N Machine not specifically listed above, ≤50 kVp | 118.00 |
| 42N Machine not specifically listed above, 51 kVp to 999 kVp | 118.00 |
| 43N Machine not specifically listed above, 1 MeV and above | 140.00 |

(e) Each registrant of an ionizing-radiation-producing machine used in a veterinary facility shall pay:

1. The initial application and registration fees for each X-ray tube pursuant to (a) above, and
2. In each year after the expiration of the first year of registration established pursuant to (f) below, the annual registration renewal fee per X-ray tube as follows:

VETERINARY FACILITIES

| Machine Source Category and Description | Annual Registration Renewal Fee Per X-Ray Tube |
|--|--|
| 01V Dental Machine | \$ 86.00 |
| 02V Fixed Medical Radiographic Machine | 100.00 |
| 03V Mobile Medical Radiographic Machine | 100.00 |
| 31V Portable Medical Radiographic Machine (hand carried) | 100.00 |
| 04V Fixed Medical Fluoroscopic Machine | 91.00 |
| 05V Mobile Medical Fluoroscopic Machine | 91.00 |
| 32V Portable Medical Fluoroscopic Machine (hand carried) | 91.00 |
| 07V Fixed medical Radiographic Fluoroscopic Machine | 109.00 |
| 08V Mobile Medical Radiographic Fluoroscopic Machine | 109.00 |

(f) The expiration date of each year of registration shall be specified by the Department on the billing invoice sent to each registrant. The registration expiration date shall be based on the first letter of the registrant name as follows:

1. For a registrant whose name begins with A through F, the registration expiration date shall be August 31 of each calendar year;
2. For a registrant whose name begins with G through L, the registration expiration date shall be September 30 of each calendar year;
3. For a registrant whose name begins with M through R, the registration expiration date shall be October 31 of each calendar year; and
4. For a registrant whose name begins with S through Z, the registration expiration date shall be November 30 of each calendar year.

(g) Each registrant shall pay the initial registration application fee and annual registration renewal fee within 60 days of the date of the invoice billing issued by the Department. Any fee payment postmarked or handcarried to the Department after the invoice due date will be subject to a \$25.00 per month late charge. If necessary, the Department will issue a second invoice. Late charges must be paid within 30 days of the second invoice. If a registrant fails to pay a fee by the original invoice due date, the registration of the ionizing-radiation-producing machine shall be deemed expired.

(h) When two or more X-ray tubes are operated from the same generator, the registrant shall pay an application fee and an annual registration renewal fee for each tube.

(i) Each registrant shall make payment only by check or money order made payable to "Treasurer, State of New Jersey." Each payment shall be accompanied by the invoice issued by the Department and shall be submitted to the address specified on the invoice: Bureau of Revenue, CN 417, Trenton, New Jersey 08625-0417.

(j) An application fee will not be charged for any machine registered pursuant to the Radiation Protection Code prior to November 16, 1987. However, the registrant shall pay the applicable annual registration renewal fee for any such machine.

HEALTH

(a)

PUBLIC HEALTH COUNCIL

State Sanitary Code

Collection, Processing, Storage and Distribution of Blood

Adopted Amendments: N.J.A.C. 8:8-8.3, 8.5 and 8.8

Proposed: August 1, 1994 at 26 N.J.R. 3141(b).

Adopted: December 12, 1994 by the Public Health Council, John Slade, M.D., Chairman.

Filed: December 13, 1994 as R.1995 d.25, without change.

Authority: N.J.S.A. 26:1A-7 and 26:2A-7.

Effective Date: January 17, 1995.

Expiration Date: April 12, 1999.

Summary of Hearing Officer Recommendations and Agency Responses:

The public hearing was held on September 12, 1994 at the Health Agriculture Building, Trenton. No one attended the meeting. No written comments were received on the proposal. The hearing officer was Ann Marie Russell, M.P.H., Supervising Clinical Laboratory Evaluator, Clinical Laboratory Improvement Service. Since no comments were received, the proposal has been adopted without change. The hearing record may be inspected by contacting Susan Eates, Department of Health, CN 360, Trenton, NJ 08625-0360.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption follows:

8:8-8.3 Medical contingency plan

(a) Each location for collection of whole blood units or the transfusion of blood and blood components shall have a current medical contingency plan specific for that location which shall include:

1.-4. (No change.)

5. When a private physician is providing medical coverage, personnel will be responsible for:

i. Notifying the physician of the location and telephone number of the facility or recipient's home and the time that the procedure is being initiated;

ii.-iii. (No change.)

(b) When a hospital in the area is providing medical coverage, personnel will be responsible for:

1. Notifying the hospital emergency room of the location and telephone number of the facility and the hour the procedure is being initiated;

2. (No change.)

(c) A copy of the Medical contingency plan for each location must be maintained on file on the premises of each licensed blood bank for a period of not less than five years.

8:8-8.5 Method of blood and blood component collection

(a) Immediately prior to collection of the blood or blood component, a unique sequential numeric or alphanumeric identification shall be placed on all material related to that donation, such as the blood component label, the donor medical history record and pilot tubes. This number shall identify all material related to the particular blood donation.

Recodify existing (a)-(h) as (b)-(i) (No change in text.)

8:8-8.8 Labeling

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

(c) Untested autologous blood collected from a donor/recipient, who has been tested in the last 30 days, shall not be labeled according to standards for uniform labeling of homologous blood. It shall be labeled as follows:

1. With a statement that the blood was collected from a donor known to be tested for FDA-required tests; and

2. The date that the donor recipient was tested.

(b)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL
AND OCCUPATIONAL HEALTH SERVICES

Veterinary Public Health

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

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

Proposed: October 17, 1994 at 26 N.J.R. 4129(a).

Adopted: December 12, 1994 by Len Fishman, Commissioner, Department of Health, and the Public Health Council, John Slade, M.D., Chairperson.

Filed: December 13, 1994 as R.1995 d.24, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: December 13, 1994, Readoption; January 17, 1995, Amendments and Recodification.

Expiration Date: December 13, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing was held on November 14, 1994 at the Department of Health in the Health/Agriculture Building Auditorium, John Fitch Plaza, Trenton, New Jersey, for the proposal relating to the Veterinary Public Health rules. Four people spoke at the public hearing. John Slade, M.D., Chairperson of the Public Health Council, served as Hearing Officer.

After reviewing the oral testimony and written comments submitted, the Department and the Public Health Council have determined the appropriateness and acceptability of the proposed rules with the changes described below in the Summary of Public Comments and Agency Responses and the Summary of Agency-initiated Changes. The hearing record may be inspected by contacting Susan Eates, Department of Health, CN 360, Trenton, NJ 08625-0360.

Summary of Public Comments and Agency Responses:

The Department received oral and written comments from 16 persons. The following people submitted comments:

1. Mr. Lee Bernstein, Associated Humane Societies, Newark, New Jersey;
2. Ms. Nina Austenberg, Humane Society of the United States, Flanders, New Jersey;
3. Mr. Walter Trommelen, Burlington County Health Department;
4. Mr. Keith Phillips, Atlantic County Health Department;
5. Ms. Bettina A. Bieri, West Milford Animal Shelter Society, West Milford, New Jersey;
6. Mr. N. Marshall Meyers, Pet Industry Joint Advisory Council, Washington, D.C.;
7. Dr. Clifford Sporn, Burlington, New Jersey;
8. Mr. Willard Burner, Animal Kingdom and Aquarium, Wanamassa, New Jersey;
9. Mr. Walter Harris, Jr., Morris Animal Inn, Inc., Morristown, New Jersey;
10. Ms. Jeanette Fullerton, Whitehouse Kennels, Lebanon, New Jersey;
11. Ms. Sally B. Smith, Animal Inn Pet Hotel, Ledgewood, New Jersey;
12. Ms. Patricia Diamond, Atlantic County Health Department;
13. Mr. Steve Marshall, Pet Farm, Southampton, New Jersey;
14. Ms. Suzanne Dragan, WCTC 1450 AM Newstalk Radio;
15. Ms. Mandi DeMartini, Atlantic County Water Pollution Control; and
16. Mr. John O. Grunn, M.S., Health Officer, Edison, New Jersey.

The following is a summary of the comments received on the proposal and the Department's responses. Each comment is followed by the commenter(s) number, as listed above.

General Comments

1. COMMENT: Two commenters felt that the proposed amendments were excellent and the Department should be complimented for developing these rules. One commenter complimented the Department for

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developing innovative animal control and welfare programs that serve as an example for other states to follow (1, 2).

RESPONSE: The Department acknowledges and thanks the commenters for their statements of appreciation and support for the subject proposed rules and recognizes the importance of input from the regulated community and other interested parties.

2. COMMENT: One commenter expressed concern about enforcement of the rules, since the Department no longer has adequate field staff to routinely inspect animal facilities (1).

RESPONSE: The Department believes that establishing minimum standards of care for animals through regulation is appropriate, regardless of the resources available to the governing agencies for aggressive enforcement of such rules. The Department also believes that there are adequate resources at both the State and local levels to provide for appropriate enforcement of these rules.

3. COMMENT: One commenter stated that there should be a standard fee for all veterinarians performing spay and neuter surgeries throughout the State under the provisions of the Animal Population Control Program (APC) (1).

RESPONSE: The Department appreciates this suggestion; however, this comment is not applicable, because the operation of the APC program is conducted under separate State statute and is not part of the proposed rules.

4. COMMENT: One commenter stated that the course to certify animal control officers is lacking practical training. The students should spend two weeks working with two separate certified animal control officers and one week with a veterinarian (1).

RESPONSE: The Department agrees that it may be valuable to include a longer, more structured field experience in the animal control officer's course; however, the Department believes that the current curriculum for the three credit course provides students with a standardized body of knowledge which meets the legislative intent. The Department is not in a position to propose a modification of this course at this time, but will take the suggestion under advisement for further evaluation.

5. COMMENT: One commenter felt that the course to certify animal control officers should be allowed to be taught outside of an accredited New Jersey college or university by a person licensed by the Police Training Commission (1).

RESPONSE: Universities and colleges must meet certain educational proficiency standards and, therefore, the Department believes that they are best suited to provide the training course. Additionally, as this program is currently structured, the Department believes that the subject courses are accessible, affordable and effective; therefore, there is no documented compelling need to modify this program at this time.

6. COMMENT: One commenter suggested that certified animal control officers must be on-call 24 hours per day for emergencies (14).

RESPONSE: This comment is not applicable to these proposed rules. All municipalities are required by statute (N.J.S.A. 4:19-15.16b) to have a certified animal control officer designated to provide animal control services. The Department considers 24 hour emergency coverage as an essential function of municipal animal control.

7. COMMENT: One commenter stated that veterinarians who board animals should be included under these rules (9).

RESPONSE: Facilities used for boarding animals are subject to the rules. Facilities used only for animal diagnosis, surgery and treatment operated by a licensed veterinarian are exempt by statute.

8. COMMENT: Two commenters suggested that the Department of Health should outlaw the use of glue traps for control of rodents for humane reasons (1, 14).

RESPONSE: This comment is not applicable, because regulations concerning rodent control and glue traps are not addressed in this proposal or within the purview of these regulations.

9. COMMENT: One commenter stated that dogs brought into the State for exhibition, breeding, or laboratory purposes should also be required to be accompanied by a health certificate signed by a veterinarian (1).

RESPONSE: The Department disagrees with requiring health certificates for dogs brought into the State for exhibition, breeding, or laboratory purposes. Such a requirement would be impractical, unenforceable and there is no documented public health need for such a requirement at this time.

10. COMMENT: One commenter complimented the Department on deleting the requirement that health certificates must be forwarded to

the health officer where the dog is located, since this requirement was unnecessary and the monitoring procedure was rarely if ever followed (6).

RESPONSE: The Department acknowledges the commenter's appreciation.

11. COMMENT: One commenter felt that publishing the proposed rules in the New Jersey Register on October 17, 1994 and allowing only a 30 day comment period did not allow sufficient time for regulated facilities to make comments. Animal facilities are already overregulated and the proposed changes to the rules are unnecessary (13).

RESPONSE: The proposed readoption with amendments of these rules was made in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the requirements of Executive Order 66(1978). The public is noticed by both publication in the New Jersey Register and secondary notice by mail to all those parties on a distribution list. A longer period of comment is not felt to be necessary, as the 30 day comment period has been established by the APA and has served as a reasonable timeframe for comments for all State agencies.

12. COMMENT: One commenter suggested that the section pertaining to importation and release of rabbits, N.J.A.C. 8:23-2.1, is unnecessary and should be deleted (1).

RESPONSE: The proposal deletes this section.

13. COMMENT: One commenter requested that the experimental V-RG oral rabies vaccine for raccoons be utilized in all counties to prevent the spread of rabies in wildlife (14).

RESPONSE: This comment is not applicable to the subject proposal. For the readers' edification, the experimental V-RG vaccine has not yet been approved for general use in this country at this time. The Department is conducting a field trial in Cape May County, in cooperation with the Departments of Environmental Protection and Agriculture and local agencies, to test the efficacy of this biological agent with the goal of documenting its effectiveness in order for the vaccine to gain general use approval by the United States Department of Agriculture.

14. COMMENT: One commenter stated that an animal shelter or impoundment facility which is operated by a county or municipal government should be required to be inspected by the New Jersey Department of Health (1).

RESPONSE: The Department has the authority to inspect any facility, regardless of ownership, and does assist local health departments with facility inspections, when necessary. Local health departments are also empowered to enforce the standards of operation for animal facilities and are required to inspect such facilities prior to annual renewal of their licenses. The Department does not view this as an inherent conflict of interest. Should a conflict arise, the Department would intervene, subject to available resources.

15. COMMENT: One commenter stated that shelters and pounds should be checked to make sure that they have adequate capacity for the geographic area that they serve (1).

RESPONSE: The Department does not believe that adequate capacity can be accurately determined. A facility operating beyond its capacity would result in overcrowding, which is a violation of N.J.A.C. 8:23A-1.6.

16. COMMENT: One commenter stated that the amendments which require the exercising of dogs, feeding young animals three times per day, and having potable water accessible to animals at all times are excellent amendments. Increasing the operation hours of impoundment facilities is also an excellent amendment (1).

RESPONSE: The Department acknowledges the commenter's appreciation and support of these proposed amendments.

N.J.A.C. 8:23A-1.1 Definitions

17. COMMENT: One commenter stated that the definition of "animal" is not clear and is subject to misinterpretation (6).

RESPONSE: The definition for "animal" is unchanged by this proposal, but appears as an amendment because it has been moved into a new definitions section. The commenter did not make clear what misinterpretation might apply. Further, the term as defined has been in use since 1969 without apparent misinterpretation. Therefore, the Department believes that the definition is clear and no change is needed.

N.J.A.C. 8:23A-1.2 Compliance

18. COMMENT: One commenter suggested that the telephone number of the inspecting agency should be displayed on the certificate issued for the current licensing year by the local health authority (2).

RESPONSE: The Department agrees and will add this requirement to N.J.A.C. 8:23A-1.2(b).

19. COMMENT: Two commenters asked if the "certificate of inspection" could be a rating card utilized by local health departments (4, 12).
RESPONSE: Yes, a rating card is considered a certificate of inspection.

20. COMMENT: Two commenters stated that posting a certificate of inspection at the facility will increase operating costs for kennels (9, 11).

RESPONSE: The Department believes that this amendment will not result in increased facility operating costs. Local health departments routinely supply rating cards and other inspection certificates with no additional charge.

21. COMMENT: One commenter asked that if a facility is under construction at the time that these rules are promulgated, is it necessary to undergo additional plan review and approval by the local health department to determine compliance with the new rules (4)?

RESPONSE: This requirement would only apply to facilities for which renovation or construction begins after the promulgation of the rules.

22. COMMENT: Two commenters did not feel that it was appropriate for the local health authority to review and approve construction or renovation plans (6, 10).

RESPONSE: The local health department is the enforcing agency for these rules and the review would be limited to the specified health related requirements contained therein. This evaluation is consistent with a pre-operational inspection that all facilities must undergo by the local health department prior to the issuance of a license to operate. This review affords an opportunity to make required modifications prior to construction to ensure compliance with rules and to avoid undue hardship, should the plans fail to address the necessary requirements. The local health official's review is in no way intended to duplicate the reviews performed by the construction code officials.

23. COMMENT: One commenter asked that if the local health department reviews construction plans but fails to complete the review in 60 days, would the plan be considered approved (7)?

RESPONSE: The current rule is unclear in this regard. The Department feels that failure to respond should result in an automatic approval. However, a change in the rule to permit an automatic approval would be too substantive a change to make upon adoption. Therefore, the Department will propose such an amendment to this rule separately in the near future.

24. COMMENT: Two commenters believes that local fire officials do not inspect small private kennels and suggested that the Department of Community Affairs, Division of Codes and Standards, be notified of this new requirement upon promulgation of these rules (4, 12).

RESPONSE: All licensed kennels will need to comply with this provision, once the rules are adopted, and the Department will notify the appropriate agencies at that time.

N.J.A.C. 8:23A-1.3 Facilities (general)

25. COMMENT: One commenter suggested rewording N.J.A.C. 8:23-1.3(b) to reflect the different requirements for transient and non-transient water supply systems (15).

RESPONSE: The Department proposes a technical correction to this section to properly refer to N.J.A.C. 7:10, The New Jersey Safe Drinking Water Standards. This correction is intended to ensure that the appropriate standards are applied to each facility, based on its water system classification.

26. COMMENT: Two commenters suggested mandating the use of disposable towels instead of referring to "towel" which would encompass reusable laundered towels (4, 12).

RESPONSE: Use of disposable towels would be discretionary. The Department feels that requiring the use of disposable towels may place an unnecessary hardship on facilities and such a requirement does not appear to be warranted at this time.

N.J.A.C. 8:23A-1.4 Facilities (indoor)

27. COMMENT: One commenter stated that the minimum ambient temperature of indoor facilities should be lowered from 50 degrees Fahrenheit to 45 degrees Fahrenheit to be consistent with the Federal Animal Welfare Act (9 CFR Sec. 3) (6).

RESPONSE: The Federal Animal Welfare Act requires a minimum temperature in facilities of 50 degrees Fahrenheit, except for certain specific types of animals which can be kept at a minimum of 45 degrees Fahrenheit, if approved by the attending veterinarian. The Department believes that the Federal requirement is too complicated to implement into this proposal. The existing minimum temperature has been in effect since 1969 and has not been shown to cause hardship for regulated facilities.

28. COMMENT: One commenter stated that facilities not connected to a municipal sewerage system shall have sewage disposal systems which meet the provisions of the N.J.A.C. 7:9A, New Jersey Standards for Individual Subsurface Sewage Disposal Systems (3).

RESPONSE: The Department agrees and will add this reference to N.J.A.C. 8:23A-1.4(g).

N.J.A.C. 8:23A-1.5 Facilities (outdoor)

29. COMMENT: One commenter noted that in N.J.A.C. 8:23A-1.5(e), reference is made to N.J.A.C. 8:23A-1.3(g), although this subsection does not exist, and that the word "shall" should replace the word "should" (3).

RESPONSE: The Department apologizes for the typographical errors. This citation has been corrected to read N.J.A.C. 8:23A-1.4(g) and "should" has been replaced by "shall." As with all other similar provisions in this chapter, for example see similar language in N.J.A.C. 8:23A-1.4, the requirements of N.J.A.C. 8:23A-1.5(e) were not intended to be discretionary as would be implied by the use of the term "should" in the proposal. In fact, the requirements are necessary for the maintenance of the health and well being of the animals. The mandatory requirements are reflected in the similar language of the rules proposed for readoption which have been in effect since 1969. Therefore, the correction upon adoption is not a change in policy and is not viewed as a change so substantive as to necessitate republication.

N.J.A.C. 8:23A-1.6 Primary enclosures

30. COMMENT: One commenter stated that the minimum caging requirements are too restrictive. Most commercial animal crates and carriers, as well as veterinary hospitals cages, do not met these standards (9).

RESPONSE: Crates and carriers are not designed to be primary enclosures to contain an animal for a long period of time and, as such, are not considered primary enclosures. The caging requirements are consistent with the provisions in the Federal Animal Welfare Act (3 CFR Part 3).

31. COMMENT: One commenter stated the formula to calculate the minimum square footage of floor space required for dogs is too complicated to understand (11).

RESPONSE: The Department believes that the formula contained in the rules is a simple mathematical formula, based on the length of the dog, which has been in use for over 20 years. For example, a dog measuring 16 inches from tip of nose to base of tail would require $3\frac{1}{2}$ square feet of floor space ($16'' + 6'' = 22''$; $22'' = 1.83$ feet; 1.83^2 feet = 3.36 square feet) Should a facility operator encounter difficulty in applying this formula, the Department and/or the local health agency would gladly assist any facility operator in the calculation.

32. COMMENT: Two commenters felt that the section prohibiting animals of different species from being housed in the same enclosure should not apply to birds and fish or small rodents and lagomorphs (that is, guinea pigs and rabbits) (6, 8).

RESPONSE: The definition of "animal" in the proposal does not apply to birds, fish or reptiles. The Department believes that housing small rodents and lagomorphs by species, in separate enclosures, is a reasonable requirement and a common industry practice.

33. COMMENT: One commenter stated that a minimum space requirement for cats should specify the minimum square footage of floor space as opposed to a volume of seven cubic feet, as this may result in inadequate floor space if particularly tall cages are utilized (5).

RESPONSE: The requirement of seven cubic feet is consistent with the provisions contained in the Federal Animal Welfare Act (9 CFR Part 3) for the housing of cats. The provisions of N.J.A.C. 8:23A-1.6(a)6, which require that enclosures provide sufficient space for each animal to turn about freely and to stand, sit, and lie in a comfortable position, would ensure that enclosures have adequate floor space.

34. COMMENT: One commenter asked if a run would include outdoor exercise pens and is there a size guideline for runs (4)?

RESPONSE: A large, outdoor enclosure/pen would be considered an exercise run, as there are no specific size requirements for runs.

35. COMMENT: One commenter asked if vicious or severely ill dogs would be exempt from the exercise requirement if they are confined in cages less than double the minimum standard size (4)?

RESPONSE: Vicious and seriously ill dogs are not exempt from this requirement. It would be recommended that vicious animals be kept in enclosures with direct access to exercise runs or ones which are more than double the minimum size to minimize the possibility of people being

injured while exercising the animal by hand. To assist facilities in addressing this operational concern, the Department intends on issuing guidance on this matter in the near future.

N.J.A.C. 8:23A-1.7 Feeding and watering

36. COMMENT: Several commenters felt that it is unreasonable to provide water to animals at all times, because some animals spill their water containers and not all facilities utilize automatic watering systems of sipper-type bottles. The language in this proposal could also expose operators of animal facilities to charges of animal cruelty (6, 8, 10, 16).

RESPONSE: Water spillage is a common problem inherent in animal husbandry. Inexpensive means are available to secure water containers to the sides of an enclosure so that they cannot be overturned. The Department believes that this is a necessary and reasonable requirement which will not place undue hardship on affected facilities.

37. COMMENT: One commenter stated that language should be included to provide for an exception to the feeding and watering requirements upon instructions from a veterinarian (10).

RESPONSE: The Department agrees and has changed the wording of N.J.A.C. 8:23A-1.7(h) to read "Potable water must be accessible to animals at all times unless contraindicated by the contracting veterinarian".

N.J.A.C. 8:23A-1.8 Sanitation

38. COMMENT: Two commenters stated that not all facilities have the capability to use live steam or hot water (180 degrees Fahrenheit) to disinfect (9, 11).

RESPONSE: The list of acceptable methods to disinfect facilities have not been amended by this proposal. Facilities can be disinfected by washing with 180 degree Fahrenheit water and detergent, washing with a soap solution followed by a chemical disinfectant, or by the use of live steam.

39. COMMENT: Two commenters suggested that there should be a minimum water temperature requirement, such as 120 degrees Fahrenheit, for situations where facilities wash all surfaces with detergent first and then disinfect (4, 12).

RESPONSE: The Department recognizes that hot water aids in the cleaning of surfaces and is preferred over cold water, but does not believe that a minimum temperature should be a mandated requirement when a disinfectant is used after cleaning. The goal is to maintain a clean and sanitary environment and if a facility can accomplish this through the use of cold or tepid water, then such practice should be allowed.

40. COMMENT: One commenter felt disinfecting cages, floors and pens daily will waste resources and unnecessarily stress the animals in boarding kennels (10).

RESPONSE: Daily disinfection of cages and flooring where animals are kept is the recognized industry standard for animal facilities, including kennels, to prevent transmission of disease between animals grouped together. The requirement at N.J.A.C. 8:23A-1.8(c) reflects this practice.

N.J.A.C. 8:23A-1.9 Disease control

41. COMMENT: Two commenters stated that boarding kennels should not be categorized with pet shops and pounds because they only accept healthy dogs and therefore do not need to provide an isolation area or have a veterinarian responsible for disease control (9, 10).

RESPONSE: Although kennels and animal shelters may be operated differently, the Department feels that the same health concerns (that is, transmission of disease) exist and, therefore, boarding kennels should meet the same minimum standards.

42. COMMENT: One commenter stated that the term "supervising veterinarian" should be changed to "consulting veterinarian" because most veterinarians do not directly supervise employees (6).

RESPONSE: The Department agrees that the term "supervising veterinarian" does not accurately reflect the intent of the rules and is therefore changing the reference in N.J.A.C. 8:23-1.9(a), (c) and (g) to "contracting veterinarian" to refer to the designated veterinarian responsible for the supervision of the disease control program in an animal facility.

43. COMMENT: One commenter stated that, since kennels must be inspected by local health department, having a veterinarian responsible for disease control is unnecessary (11).

RESPONSE: The requirement for a veterinarian to establish and maintain a program of disease control at all licensed facilities has not been amended by this proposal, nor does the Department believe that it should be amended as suggested by the commenter. The purpose of a health inspection is not to establish an animal disease control program, but to ensure compliance with the pertinent laws and rules.

44. COMMENT: One commenter stated that the isolation room should not be used for the storage of food, medications or bedding, except for those materials used exclusively for the isolated animal (8).

RESPONSE: Since this proposal states that the isolation room "is not to be used for any purposes other than the segregation of animals . . .", it cannot be used for the long term storage of supplies. The Department concurs that the presence of a reasonable working quantity of materials to be used for the maintenance and treatment of isolated animals is an acceptable practice and this section should be interpreted as such.

45. COMMENT: Two commenters stated that although they agreed with the concept of a separate isolation room with an exhaust fan, they felt that this requirement will pose a financial hardship to pet shops, shelters, pounds, and kennels which were built prior to enactment of these rules (5, 6).

RESPONSE: After careful review of this issue, the Department agrees with the commenters. While the vast majority of facilities have isolation rooms as required by this rule, the Department recognizes that the imposition of the requirement on the few existing facilities which have provided other means to meet isolation requirements such as segregation or alternative rooms, would impose a financial hardship. Further, no outbreaks have occurred in those few existing facilities which have used alternate means for meeting the requirement such as segregation of sick animals. Therefore, the intent of protection of animal and public health can be adequately maintained while amending N.J.A.C. 8:23-1.9(d) and (e) will be changed so as to apply to "facilities constructed or renovated after January 17, 1995."

46. COMMENT: One commenter stated that the installation of exhaust fans in a isolation room should be a recommendation, not a requirement, with the final determination being made on a facility by facility basis by the supervising veterinarian or the State Department of Health.

RESPONSE: The Department believes that there needs to be a Statewide standard for isolation room ventilation. Ventilation systems would be evaluated by local authorities as part of the plan review and since this requirement has been amended to apply only to new construction or renovation, financial and operational hardships have been minimized.

47. COMMENT: One commenter asked if animals are required to receive veterinary care while they are being held for seven days to allow their owners an opportunity to reclaim them, can a veterinarian euthanize the animal for humane reasons if the animal is in severe pain (7)?

RESPONSE: According to N.J.S.A. 4:19-15.16, impounded animals must be held for a period of seven days before being euthanized or made available for adoption. The Department believes that the comment has merit, but because the holding period is stipulated in statute, this issue cannot be addressed through regulation at this time.

48. COMMENT: One commenter asked if separate utensils for use in the isolation areas need to be stored separately from other utensils (4).

RESPONSE: Utensils for cleaning the enclosures in the isolation area must be cleaned and stored separately from general use utensils and must not be used for any other purpose.

49. COMMENT: One commenter noted that in N.J.A.C. 8:23A-1.9(g) "the local board of health" should be replaced with "Health Officer of the local health department," to be consistent with the requirements of the Reporting Communicable Disease section (3).

RESPONSE: The Department agrees and will rephrase this section.

50. COMMENT: One commenter stated that there should be a list of zoonotic diseases which must be reported to the local health department (7).

RESPONSE: Veterinarians should report any zoonotic disease which has been diagnosed. The Department feels that listing all zoonotic diseases which can affect animals in pet shops and shelters is impractical and could exclude emerging zoonotic diseases. The Department routinely provides notice to local health departments concerning emerging zoonotic diseases.

N.J.A.C. 8:23A-1.10 Holding and receiving of animals

51. COMMENT: One commenter stated that animal shelters should be required to be open for eight hours on either Saturday or Sunday each week (14).

RESPONSE: The Department understands that it is common practice for animal shelters to have extended operating hours on weekends to facilitate adoptions and recovery of lost pets. The Department believes that the proposed rules which require facilities to be open at least two

hours on Saturday or Sunday would provide adequate public access and take into consideration the rural nature of the less populated areas of New Jersey, which may impound very few animals.

N.J.A.C. 8:23A-1.11 Euthanasia

52. COMMENT: One commenter asked if it is the facility or the individual that becomes certified in order to administer animal euthanasia (4)?

RESPONSE: A Controlled Dangerous Substance (CDS) permit can be issued to animal facilities for purchase of euthanasia solution without a veterinarian's prescription. A prerequisite of this permit is that a veterinarian certifies in writing that the individuals euthanizing the animals have been properly trained to do so. This requirement is restated here for clarification.

N.J.A.C. 8:23A-1.13 Records and administration

53. COMMENT: Two commenters stated that boarding kennels should not be required to keep records for one year, record the license number of the animal, or record the name and address of the person to whom the animal was transferred (10, 11)

RESPONSE: The recordkeeping requirements have not been amended by this proposal. The Department believes that these requirements are important in order to trace animals in the event of rabies or other disease outbreaks and licensure is considered legal documentation or ownership. This longstanding requirement has not been shown to present undue hardship on the part of kennels.

Summary of Agency-Initiated Changes:

The following typographical errors have been corrected:

At N.J.A.C. 8:23A-1.9(h), "recommendations" has been correctly spelled.

At N.J.A.C. 8:23A-1.10(a)2, "been" has been deleted.

At N.J.A.C. 8:23A-1.11(d), "therewith" has been corrected.

At N.J.A.C. 8:23A-1.12(e), "charge in his operations" has been changed to "change in operations."

The definition of "certification" at N.J.A.C. 8:23A-2.1 is changed by replacing "requires" with "required."

At N.J.A.C. 8:23A-1.3(e) the words "and shall be kept clean and in good repair" have been added to create consistency with similar provisions throughout the chapter.

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

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

CHAPTER 23

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

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.

8:23-1.3 Transportation of confined animals

Animals confined by provisions of N.J.S.A. 26:4-82, 83, or 84 shall not be transported from confinement unless permission therefor shall be granted by the health officer of the municipality 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 confined animal is beyond the boundaries of this State, permission must be obtained from the Department of Health.

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

SUBCHAPTER 2. SALE OR DISTRIBUTION OF LIVE TURTLES

8:23-2.1 (No change in text.)

CHAPTER 23A

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

SUBCHAPTER 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-1.2 Compliance

(a) Kennels, pet shops, shelters and pounds shall comply with the provisions of these rules 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) 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. ***The telephone number of the inspecting local health authority shall be on the certificate.***

(c) Any facility constructed or renovated after ***[(the enactment of these amended regulations)]* *January 17, 1995*** 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-1.3 Facilities (general)

(a) Housing facilities for animals 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 ***applicable*** standards of the ***[Public Noncommunity]* *New Jersey Safe* Drinking Water Standard*s*** (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 control vermin infestation, odors and disease hazards. In facilities having no refrigeration

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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 ***and shall be kept clean and in good repair***.

(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-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. The ambient temperatures shall not be allowed to fall below 50 degrees Fahrenheit 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 impervious to moisture and may be readily cleaned.

(g) A suitable method shall be provided to eliminate 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. 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.]* *the New Jersey Standards for Individual Subsurface Sewage Disposal Systems (N.J.A.C. 7:9A).***

8:23A-1.5 Facilities (outdoor)

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

(c) In kennels where animals are housed solely outdoors, 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]* *shall*** 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)]**1.4(g)***.

8:23A-1.6 Primary enclosures

(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;

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4. Enable animals to remain dry and clean;

5. Permit animals convenient access to food and water as required in these rules;

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.

(b) In addition to the other provisions of this 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.

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

1. Females 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-1.7 Feeding and watering

(a) (No change.)

(b) The food shall be free from contamination, wholesome, palatable, and of sufficient quantity and 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, cleaned and disinfected daily.

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

(h) Potable water must be accessible to animals at all times ***unless contraindicated by the contracting veterinarian***. Receptacles for such purposes shall be kept clean at all times.

8:23A-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 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.

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(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) Cages, floors, and hard surfaced pens or runs shall be 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.

(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 to prevent nuisances.

(e) (No change.)

8:23A-1.9 Disease control

(a) Programs 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]* *contracting* 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 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 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 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 confinement for, or 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]* *contracting* veterinarian**.

(d) ***In facilities constructed or renovated after January 17, 1995, the*** ***[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) ***In facilities constructed or renovated after January 17, 1995, the*** ***[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 ***contracting* veterinarian** supervising the facility's disease control programs shall report the diagnosis of zoonotic diseases in animals at the facility to the ***Health Officer of the*** local ***[board of health]* *health department***.

(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 the local health department or the State Department of Health and segregate such animal. 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 ***[recomendatinos]* *recommendations*** of the State Department of Health.

8:23A-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.

2. A dog or cat which has been bitten a human may be kept alive and observed for 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.

5. 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.

6. Animals brought in for elective destruction shall not be 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 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 10 days, the appropriate specimen shall be delivered to the laboratory.

7. The person in charge of the facility shall keep a record of evidence submitted in support of (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 shall be clearly visible from the outside.

2. The hours for public access shall be at least 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 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 his or her missing animal shall furnish to the shelter or pound a written description of his or her animal and a license or other proof of ownership.

5. The person who is searching for 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

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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-1.11 Euthanasia

(a) No animal being euthanized shall be allowed to make physical contact with another animal unless pretranquilized to the extent that they are not capable of aggressive actions dangerous to humans or animals.

(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.

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

3. Administration of inhalant anesthetics:

i. Ether, 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 explosive. Occupational exposure to inhalant anesthetics constitutes a human health hazard.

4. Intravenous injection of combinations of chloral hydrate, magnesium sulfate and pentobarbital is acceptable for large animals, such as horses.

[(c)](d)* 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. Electrocuting;
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)](e)* 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]* *therewith*, 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-1.12 Transportation

(a) Vehicles used in transporting animals shall 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:

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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.

(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-1.13 Records and administration

(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 euthanized and method, or name and address of person to whom sold or otherwise transferred.

(b) These records shall be kept at the premises for 12 months after the date the animal is 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.

(c) Except as otherwise provided in this 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.

(d) The records required to be maintained under these rules shall be held for such period in excess of the one year period specified in (b) above 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.

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

SUBCHAPTER 2. ANIMAL CONTROL OFFICER CERTIFICATION

8:23A-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]* *required* 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.)

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8:23A-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. 8:23A-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 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

Readoption: N.J.A.C. 8:31

Proposed: October 17, 1994 at 26 N.J.R. 4135(a).

Adopted: December 20, 1994, by Len Fishman, Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: December 22, 1994 as R.1995 d.38, **without change.**

Authority: N.J.S.A. 26:2H-5.

Effective Date: December 22, 1994.

Expiration Date: December 22, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption follows:

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.

(b)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: November 7, 1994 at 26 N.J.R. 4288(a).

Adopted: December 13, 1994, by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.

Filed: December 22, 1994, as R.1995 d.39, **with the proposal not adopted.**

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

Effective Date: January 17, 1994.

Expiration Date: May 16, 1999.

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Summary of Public Comments and Agency Responses:

The following comment was received:

COMMENT: Geneva Pharmaceuticals, in opposition to the proposed deletion of its products, informed the Council that it was reinspected by the FDA and found to be in compliance with current Good Manufacturing Practices (cGMPs). Geneva also submitted the report of an outside consulting firm which outlined the progress made in complying with cGMPs.

RESPONSE: The Council confirmed that the results of the FDA inspection assured compliance of current Good Manufacturing Practices. Based on this information, the Council rejected the proposal to delete the products.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed deletions from the List of Interchangeable Drug Products was held on November 21, 1994. Vincent Astolfi, New Jersey Department of Health, served as the hearing officer. Two persons attended the hearing. One comment was offered as summarized above. The hearing officer recommended that the decisions be made based upon the available Food and Drug Administration information. The hearing record may be inspected by contacting Mark A. Strollo, R.Ph, M.S., Drug Utilization Review Council, CN 360, Trenton, New Jersey 08625-0360.

The Council rejected the entire proposal, based upon the information received from the Food and Drug Administration that Geneva Pharmaceuticals is in compliance with current Good Manufacturing Practices at its most recent inspection.

The list of drugs produced by Geneva, proposed for deletion, was **not adopted.**

(c)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: November 7, 1994 at 26 N.J.R. 4294(a).

Adopted: December 13, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.

Filed: December 20, 1994 as R.1995 d.29, **with portions of the proposal not adopted but still pending.**

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

Effective Date: January 17, 1995.

Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

The following two comments were received:

COMMENT: Burroughs Wellcome Co. (BW), in opposition to the proposed addition of digoxin 0.125mg, 0.25mg, and 0.5mg tablet manufactured by Amide Pharmaceuticals, urged careful evaluation of dissolution data for this product. BW reviewed the U.S. Pharmacopeia and FDA dissolution requirements and stated that "bioavailability correlates well with the tablet dissolution rate" for its branded digoxin, Lanoxin. BW asserted that its product showed minimal variation in dissolution rate and were well within the FDA requirements. BW cautioned the Council that variation in dissolution of a generic substitute could cause clinical problems which would potentially negate any cost-savings generated by generic substitution.

RESPONSE: Based on the dissolution data submitted, the Council approved Amide's digoxin tablets.

COMMENT: Procter & Gamble, in opposition to the proposed addition of the Entex PSE tablet substitute manufactured by Anabolic, requested that the Council reject this product, based on the lack of demonstrated therapeutic equivalency and bioavailability data, as well as the unique delivery system used in the branded product.

RESPONSE: The Council deferred taking action, pending the submission of comparative bioavailability data.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on November 21, 1994. Vincent

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Astolfi served as the hearing officer. Two persons attended the hearing. Two comments were offered as summarized above. The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be reviewed by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted**:

| | |
|--|---|
| BENADRYL Diphenhydramine HCl 12.5 mg/5 ml Elixir Pharm. Assoc. | GARAMYCIN Gentamicin sulfate 40 mg/ml Injection Steris Labs. |
| BICITRA Sodium citrate 1500 mg, citric acid 1002 mg Per 15 ml Oral solution Pharm. Assoc. | HALCION Triazolam 0.125 mg Tablet Roxane |
| CLOMID Clomiphene citrate 50 mg Tablet Blue Ridge | HALCION Triazolam 0.25 mg Tablet Roxane |
| LANOXIN Digoxin 0.125 mg Tablet Amide | HALDOL Haloperidol 2 mg/ml Solution Silarx |
| LANOXIN Digoxin 0.25 mg Tablet Amide | HALDOL Haloperidol 2 mg/1 ml Solution Pharm. Assoc. |
| LANOXIN Digoxin 0.5 mg Tablet Amide | ILOTYCIN Erythromycin 0.5% Ophth oint Sight/B&L |
| ELIXOPHYLLIN Theophylline 80 mg/15 ml Elixir Pharm. Assoc. | LOZOL Indapamide 2.5 mg Tablet Mylan |
| ENTEX Phenylpropanolamine HCl 20 mg, phenylephrine 5 mg, guaifenesin 200 mg Per capsule Capsule Duramed | MEDROL Methylprednisolone 4 mg Tablet Greenstone |
| ERYC Erythromycin base enteric coated pellets 250 mg Capsule Barr | NOCTEC Chloral hydrate 500 mg/5 ml Syrup Pharm. Assoc. |
| FIORICET Acetaminophen, butalbital and caffeine 325/50/40 mg Tablet Graham | NORPRAMIN Desipramine HCl 25 mg Tablet Blue Ridge |
| | NORPRAMIN Desipramine HCl 50 mg Tablet Blue Ridge |

ADOPTIONS

NORPRAMIN
Desipramine HCl
75 mg
Tablet
Blue Ridge

NORPRAMIN
Desipramine HCl
100 mg
Tablet
Blue Ridge

PERIDEX
Chlorhexidine gluconate
0.12%
Oral rinse
Paco Pharmaceuticals

PHENERGAN/CODEINE
Promethazine HCl 6.25 mg, Codeine phosphate 10 mg
Per 5 ml
Syrup
Pharm. Assoc.

REGLAN
Metoclopramide
5 mg/5 ml
Syrup Pharm. Assoc.

ROBITUSSIN A-C
Codeine phosphate 10 mg, guaifenesin 100 mg
Per 5 ml
Liquid
Pharm. Assoc.

RONDEC
Carbinoxamine maleate 2 mg, pseudoephedrine HCl 25 mg
Per ml
Drops
H.N. Norton

TENUATE DOSPAN
Diethylpropion HCl
75 mg
Tablet
Blue Ridge

TYLENOL WITH CODEINE
Acetaminophen with codeine (#2)
300/15 mg
Tablet
Noramco

TYLENOL WITH CODEINE
Acetaminophen with codeine (#3)
300/30 mg
Tablet
Noramco

TYLENOL WITH CODEINE
Acetaminophen with codeine (#4)
300/60 mg
Tablet
Noramco

TYLENOL WITH CODEINE
Acetaminophen 120 mg & codeine 12 mg
Per 5 ml
Elixir
Pharm. Assoc.

TYLOX
Oxycodone with acetaminophen
5 mg/500 mg
Capsule
Noramco

TOLECTIN
Tolmetin sodium
200 mg
Tablet
Noramco

TOLECTIN DS
Tolmetin sodium
400 mg
Capsule
Noramco

TOLECTIN
Tolmetin sodium
600 mg
Tablet
Noramco

TOLECTIN 600
Tolmetin sodium
600 mg
Tablet
Mylan

The following products and their manufacturers were **rejected, and were not adopted**:

| | |
|--|---|
| ANAPROX Naproxen sodium 275 mg Tablet Mylan | ANAPROX DS Naproxen sodium 550 mg Tablet Mylan |
|--|---|

The following products and their manufacturers remain **pending**:

| | |
|---|--|
| ANSAID Flurbiprofen 100 mg Tablet Lemmon | BUMEX Bumetanide 0.5 mg Tablet Zenith |
| ANUSOL HC Hydrocortisone acetate 25 mg Suppository Bio-Pharm | BUMEX Bumetanide 1 mg Tablet Zenith |

ADOPTIONS

HEALTH

BUMEX
 Bumetanide
 2 mg
 Tablet
 Zenith

CAPOTEN
 Captopril
 12.5 mg
 Tablet
 Danbury

CAPOTEN
 Captopril
 25 mg
 Tablet
 Danbury

CAPOTEN
 Captopril
 50 mg
 Tablet
 Danbury

CAPOTEN
 Captopril
 100 mg
 Tablet
 Danbury

CARDIZEM CD
 Diltiazem
 120 mg
 Capsule
 Blue Ridge/Carderm

CARDIZEM CD
 Diltiazem
 180 mg
 Capsule
 Blue Ridge/Carderm

CARDIZEM CD
 Diltiazem
 240 mg
 Capsule
 Blue Ridge/Carderm

CARDIZEM CD
 Diltiazem
 300 mg
 Capsule
 Blue Ridge/Carderm

CECLOR
 Cefaclor
 250 mg
 Capsule
 Zenith

CECLOR
 Cefaclor
 500 mg
 Capsule
 Zenith

CECLOR
 Cefaclor
 125 mg/5 ml
 Suspension
 Zenith

CECLOR
 Cefaclor
 187 mg/5 ml
 Suspension
 Zenith

CECLOR
 Cefaclor
 250 mg/5 ml
 Suspension
 Zenith

CECLOR
 Cefaclor
 375 mg/5 ml
 Suspension
 Zenith

CORGARD
 Nadolol
 80 mg
 Tablet
 Copley

CORGARD
 Nadolol
 120 mg
 Tablet
 Copley

CORGARD
 Nadolol
 160 mg
 Tablet
 Copley

CORGARD
 Nadolol
 20 mg
 Tablet
 Zenith

CORGARD
 Nadolol
 40 mg
 Tablet
 Zenith

CORGARD
 Nadolol
 80 mg
 Tablet
 Zenith

CORGARD
 Nadolol
 120 mg
 Tablet
 Zenith

CORGARD
 Nadolol
 160 mg
 Tablet
 Zenith

DECONSAL II
 Guaifenesin/pseudoephedrine
 600 mg with 60 mg
 Tablet
 Anabolic

DOLOBID
 Diflunisal
 250 mg
 Tablet
 Danbury

DOLOBID
 Diflunisal
 500 mg
 Tablet
 Danbury

DURA-VENT
 Guaifenesin/
 phenylpropranolamine HCl
 600 mg/75 mg
 Tablet
 KV Pharm

DYAZIDE
 Triamterene/
 hydrochlorothiazide
 50 mg/25 mg
 Capsule
 Zenith

ENTEX PSE
 Guaifenesin/pseudoephedrine
 600/120
 Tablet
 Anabolic

GLUCOTROL
 Glipizide
 5 mg
 Tablet
 Circa

GLUCOTROL
 Glipizide
 10 mg
 Tablet
 Circa

HUMIBID DM
 Guaifenesin/DM
 600/30
 Tablet
 Anabolic

HUMIBID LA
 Guaifenesin
 600 mg
 Tablet
 KV Pharm

LOPRESSOR
 Metoprolol tartrate
 50 mg
 Tablet
 Teva

LOPRESSOR
 Metoprolol tartrate
 100 mg
 Tablet
 Teva

NEPTAZANE
 Methazolamide
 25 mg
 Tablet
 Mikart

NEPTAZANE
 Methazolamide
 50 mg
 Tablet
 Mikart

PHENOBARBITAL
 Phenobarbital
 20 mg/5 ml
 Elixir
 Pharm. Assoc.

PYRAZINAMIDE
 Pyrazinamide
 500 mg
 Tablet
 Mikart

TAGAMET
 Cimetidine
 200 mg
 Tablet
 Zenith

TAGAMET
 Cimetidine
 300 mg
 Tablet
 Zenith

TAGAMET
 Cimetidine
 400 mg
 Tablet
 Zenith

TAGAMET
 Cimetidine
 800 mg
 Tablet
 Zenith

TENORMIN
 Atenolol
 50 mg
 Tablet
 Teva

TENORMIN
 Atenolol
 100 mg
 Tablet
 Teva

TIGAN
 Trimethobenzamide HCl
 100 mg
 Suppository
 Bio-Pharm

TIGAN
 Trimethobenzamide HCl
 200 mg
 Suppository
 Bio-Pharm

VOLTAREN
 Diclofenac sodium
 25 mg
 Tablet
 Ciba-Geigy

VOLTAREN
 Diclofenac sodium
 50 mg
 Tablet
 Ciba-Geigy

VOLTAREN
 Diclofenac sodium
 75 mg
 Tablet
 Ciba-Geigy

VOLTAREN
 Diclofenac sodium
 50 mg
 Tablet
 Purepac

VOLTAREN
 Diclofenac sodium
 75 mg
 Tablet
 Purepac

(a)

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

Proposed: November 7, 1994 at 26 N.J.R. 4293(a).

Adopted: December 13, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.

Filed: December 20, 1994 as R.1995 d.30, with portions of the proposal not adopted but still pending.

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

Effective Date: January 17, 1995.

Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

The following two comments were received:

COMMENT: Houba, Inc., in opposition to the proposed deletion of doxycycline hyclate 100 mg and 50 mg capsules and doxycycline hyclate 100 mg tablets manufactured by Rachelle, requested that the Council retain these products in the Formulary since they will be available in the near future.

RESPONSE: The Council rejected the proposal to delete the doxycycline hyclate 100 mg and 50 mg capsules and doxycycline hyclate 100 mg tablets manufactured by Rachelle. The Council clarified that Rachelle is a division of Houba, Inc. and agreed to list these products in the Formulary with the full name of the manufacturer, Rachelle/Houba.

COMMENT: Hi-Tech Pharmacal Co., Inc., in opposition to the proposed deletion of the Tri-Vi-Flor with Iron liquid substitute, requested that the Council retain this product in the Formulary since it has become available.

RESPONSE: The Council rejected the proposal to delete the Tri-Vi-Flor with Iron liquid substitute manufactured by Hi-Tech Pharmacal Co., Inc.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed deletions from the List of Interchangeable Drug Products was held on November 21, 1994. Vincent Astolfi, New Jersey State Department of Health, served as the hearing officer. Two persons attended the hearing. Two comments were offered as summarized above. The hearing officer recommended that the decisions be made based upon the available biodata. The Council "adopted" the products specified for deletion from the Formulary and the "not adopted" products were retained in the Formulary. The hearing record may be inspected by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, CN 360, Trenton, NJ 08625-0360.

The deletion of the following products and their manufacturers was adopted and, therefore, they are deleted from the Formulary:

ACHROMYCIN V
Tetracycline HCl
250 mg
Capsule
ICN

ALDOMET
Methyldopa
250 mg
Tablet
Purepac

ALDOMET
Methyldopa
500 mg
Tablet
Purepac

ALDORIL
Methyldopa with
Hydrochlorothiazide
250 mg/15 mg
Tablet
Purepac

ALDORIL
Methyldopa with
Hydrochlorothiazide
250 mg/25 mg
Tablet
Purepac

AZO GANTRISIN
Sulfisoxazole and
phenazopyridine HCl
50 mg/50 mg
Tablet
Trinity

ELIXOPHYLLIN
Theophylline
80 mg/15 ml
Elixir
Life

ELIXOPHYLLIN KI
Theophylline 80 mg/15 ml with
potassium
iodide 139 mg/15 ml
Elixir
Forest

DYAZIDE
Triamterene/
hydrochlorothiazide
50 mg/25 mg
Capsule
Geneva

DYAZIDE
Triamterene/
hydrochlorothiazide
50 mg/25 mg
Capsule
Penn Labs

EQUAGESIC
Aspirin with meprobamate
325 mg/200 mg
Tablet
Par

GANTANOL
Sulfamethoxazole
0.5 g
Tablet
Roche

HALDOL
Haloperidol
2 mg/ml
Solution
Searle

KEFLEX
Cephalexin
250 mg
Capsule
IBSA

KEFLEX
Cephalexin
500 mg
Capsule
IBSA

MEDROL
Methylprednisolone
4 mg
Tablet
Chelsea

NOCTEC
Chloral hydrate
250 mg
Capsule
Pharmacaps

NOCTEC
Chloral hydrate
500 mg
Capsule
Pharmacaps

PROLIXIN
Flufenazine HCl
0.5 mg/ml
Elixir
Copley

STELAZINE
Trifluoperazine HCl
1 mg
Tablet
Zenith

STELAZINE
Trifluoperazine HCl
2 mg
Tablet
Zenith

STELAZINE
Trifluoperazine HCl
5 mg
Tablet
Zenith

STELAZINE
Trifluoperazine HCl
10 mg
Tablet
Zenith

SURMONTIL
Trimipramine maleate
100 mg
Capsule
PBI

SURMONTIL
Trimipramine maleate
50 mg
Capsule
PBI

SURMONTIL
Trimipramine maleate
25 mg
Capsule
PBI

TERRAMYCIN
Oxytetracycline HCl
250 mg
Capsule
P-D

TERRAMYCIN
Oxytetracycline HCl
250 mg
Capsule
MK

TERRAMYCIN
Oxytetracycline HCl
250 mg
Capsule
West-Ward

THEO-ORGANIDIN
Theophylline 120 mg, iodinated
glycerol
30 mg
Per 5 ml
Elixir
Barre-National

URISED
Urised substitute
Per tablet
Tablet
Trinity

ADOPTIONS

HEALTH

The deletion of the following products and their manufacturers was **not adopted**, and, therefore, they are retained in the Formulary:

- | | |
|---|---|
| ORNADE Chlorpheneramine maleate, phenylpropanolamine 12/75 mg Capsule, ER Geneva | VIBRAMYCIN Doxycycline hyclate 50 mg Capsule Rachelle/Houba |
| TRI-VI-FLOR WITH IRON Tri-Vi-Flor with Iron substitute 0.25 mg/ml Drops, liquid Hi-Tech | VIBRATABS Doxycycline hyclate 100 mg Tablet Rachelle/Houba |
| VIBRAMYCIN Doxycycline hyclate 100 mg Capsule Rachelle/Houba | |

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: March 7, 1994 at 26 N.J.R. 1190(b).
Adopted: December 13, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: December 20, 1994 as R.1995 d.31, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).
Effective Date: January 17, 1995.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

No comments were received pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on March 28, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. One comment was offered, as summarized in a previous issue of the New Jersey Register (see 26 N.J.R. 2025(b)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be inspected by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:

- The name of the substituted brand name drug;
- The generic name of the drug product;
- The strength of the drug product;
- The dosage delivery system of the drug product (for example, cream, capsule, tablet); and
- The name of the generic drug's manufacturer:

- | | |
|--|---|
| LOPRESSOR Metoprolol tartrate 50 mg Tablet Novopharm | LOPRESSOR Metoprolol tartrate 100 mg Tablet Novopharm |
|--|---|

The following products and their manufacturers were **not adopted and are still pending**:

- | | |
|---|--|
| Atenolol tabs 50 mg, 100 mg Carbidopa/levodopa tabs 10/100, 25/100, 25/250 Clotrimazole 1% top soln Dexchlorpheneramine maleate repetabs 4 mg, 6 mg Diflunisal tabs 250 mg, 500 mg Diltiazem tabs 30 mg, 60 mg Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg Endal HC substitute Gemfibrozil tabs 600 mg Glipizide tabs 5 mg, 10 mg Glipizide tabs 5 mg, 10 mg Levothyroxine sodium tabs 137 mcg Metoclopramide tabs 5 mg Metoprolol tartrate tabs 50 mg, 100 mg Nortriptyline HCl caps 10 mg, 25 mg, 50 mg, 75 mg Oxazepam caps 10 mg, 15 mg, 30 mg Phenytoin 125 mg/5 ml oral suspension Pindolol tabs 5 mg, 10 mg Piroxicam caps 10 mg, 20 mg Terfenadine tabs 60 mg Trazodone tablets 150 mg Verapamil tabs 80 mg, 120 mg | Teva Geneva Lemmon Amide Purepac Novopharm Teva Pharm. Assoc. Danbury Danbury Mylan Rhone Poulenc Biocraft Teva Lemmon Geneva Barre-National Lemmon Danbury Mutual Mutual Mylan |
|---|--|

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 26 N.J.R. 2025(b), 2901(a), 3715(b) and 4387(a).

(b)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: May 2, 1994 at 26 N.J.R. 1822(a).
Adopted: December 13, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: December 20, 1994 as R.1995 d.32, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).
Effective Date: January 17, 1995.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

No comments were received pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed deletions from the List of Interchangeable Drug Products was held on May 23, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. Eight comments were offered as summarized in previous issues of the New Jersey Register (see 26 N.J.R. 2899(a) and 26 N.J.R. 2898(a)). The hearing officer recommended that the decisions be made based upon the available information and evidence. The Council deleted the products specified as "adopted," declined to delete the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be inspected by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, CN 360, Trenton, NJ 08625-0360.

The deletion of the following products and their manufacturers was **not adopted** and therefore, they are retained in the Formulary in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:

- The name of the substituted brand name drug;
- The generic name of the drug product;
- The strength of the drug product;
- The dosage delivery system of the drug product (for example, cream, capsule, tablet); and

HEALTH

ADOPTIONS

The name of the generic drug's manufacturer:

DONNATAL
Belladonna alkaloids with phenobarbital
Elixir
Halsey

ROBITUSSIN AC
Codeine phosphate 10 mg, guaifenesin 100 mg
Per 5 ml
Liquid
Halsey

PERIACTIN
Cyproheptadine HCl
2 mg/5 ml
Syrup
Halsey

BENADRYL
Diphenhydramine HCl
12.5 mg/5 ml
Elixir
Halsey

MARAX DF
Ephedrine/hydroxyzine/theophylline
6.25/2.5/32.5 mg per 5 ml
Per 5 ml
Liquid
Halsey

ROBITUSSIN DAC
Guaifenesin/codeine/pseudoephedrine
100/10/30 mg
Per 5 ml
Liquid
Halsey

HYCODAN
Homatropine MBr/hydrocodone bitartrate
1.5/5 mg
Per 5 ml
Syrup
Halsey

HYCOMINE PEDIATRIC
Hydrocodone bitartrate/phenylpropenoclamine
2.5/12.5 mg
Per 5 ml
Syrup
Halsey

HYCOMINE
Hydrocodone bitartrate/phenylpropanolamine
5/25 mg
Per 5 ml
Syrup
Halsey

ENTEX
Phenylpropanolamine/phenylephrine/guaifenesin
20/5/100 mg
Per 5 ml
Liquid
Halsey

KAY-CIEL
Potassium chloride 10%
20 mEq/15 ml
Liquid
Halsey

PHENERGAN
Promethazine HCl
6.25 mg/5 ml
Syrup
Halsey

PHENERGAN/CODEINE
Promethazine/codeine
6.25/10 mg
Per 5 ml
Syrup
Halsey

PHENERGAN VC
Pormethazine/phenylephrine
6.25/5 mg
Per 5 ml
Syrup
Halsey

PHENERGAM DM
Promethazine/DM
6.25/15 mg
Per 5 ml
Syrup
Halsey

PHENERGAN VC/CODEINE
Promethazine/phenylephrine/codeine
6.25/5/10 mg
Per 5 ml
Syrup
Halsey

ELIXOPHYLLIN
Theophylline
80 mg/15 ml
Elixir
Halsey

QUIBRON
Theophylline/guaifenesin
150/90 mg
Per 15 ml
Elixir
Halsey

Ampicillin/ampicillin trihydrate susp 125 mg/5 ml
Ampicillin/ampicillin trihydrate caps 250 mg
Ampicillin/ampicillin trihydrate caps 500 mg
Baclofen tabs 10 mg, 20 mg
Cephalexin susp 125 mg/5 ml, 250 mg/5 ml
Cephalexin caps 250 mg, 500 mg
Cephalexin tabs 250 mg, 500 mg
Cephradine caps 250 mg, 500 mg
Cephradine susp 125 mg/5 ml, 250 mg/5 ml
Cinoxacin caps 250 mg, 500 mg
Cloxacillin sodium monohydrate caps 250 mg, 500 mg
Cloxacillin sodium monohydrate syrup 125 mg/5 ml
Dicloxacillin sodium monohydrate caps 250 mg, 500 mg
Disopyramide phosphate caps 100 mg, 150 mg
Hydrocortisone cream 1%
Imipramine HCl tabs 10 mg, 25 mg, 50 mg
Ketoprofen caps 25 mg, 50 mg, 75 mg
Metaproterenol tabs 10 mg, 20 mg
Metaproterenol syrup 10 mg/5 ml
Metoclopramide tabs 10 mg
Metoclopramide syrup 5 mg/5 ml
Minocycline HCl caps 50 mg, 100 mg
Nystatin susp 100,000 u/ml
Penicillin G potassium tabs 200,000 u, 400,000 u
Penicillin VK tabs 250 mg, 500 mg
Penicillin VK for sol. 125 mg/5 ml, 250 mg/5 ml
Sulfamethoxazole/TMP susp 200/40 mg per 5 ml
Sulfamethoxazole/TMP tabs 400/80 mg, 800 mg/160 mg
Trimethoprim tabs 100 mg, 200 mg

Sidmak:
Albuterol sulfate tabs 2 mg, 4 mg
Amitriptyline tabs 10 mg, 25 mg, 50 mg, 75 mg, 100 mg, 150 mg
Benztrapine mesylate tabs 0.5 mg, 1 mg, 2 mg
Bethanechol CL tabs 5 mg, 10 mg, 25 mg, 50 mg
Chlorpropamide tabs 100 mg, 250 mg
Choline magnesium salicylate tabs 500 mg, 750 mg, 1 g
Cyproheptadine HCl tablets 4 mg
Desipramine HCl tablets 25 mg, 50 mg, 75 mg
Dipyridamole tabs 25 mg, 50 mg, 75 mg
Doxycycline hyclate caps 100 mg
Griseofulvin ultramicrosize tabs 165 mg, 330 mg
Hydralazine HCl tabs 10 mg, 25 mg, 50 mg, 100 mg
Hydroxyzine HCl tabs 10 mg, 25 mg, 50 mg
Ibuprofen tabs 400 mg, 600 mg, 800 mg
Indomethacin capsule 25 mg, 50 mg
Meclizine HCl tabs 12.5 mg, 25 mg
Methyldopa tabs 125 mg, 250 mg, 500 mg
Metronidazole tabs 250 mg, 500 mg
Nystatin vaginal tabs 100,000 u
Oxybutynin CL tabs 5 mg
Procainamide SR tabs 250 mg, 500 mg
Propranolol HCl tabs 10 mg, 20 mg, 40 mg, 60 mg, 80 mg, 90 mg
Propranolol/hydrochlorothiazide tabs 40/25 mg, 80/25 mg
Salsalate tabs 500 mg, 750 mg
Sulfamethoxazole/TMP tabs 400/80 mg, 800/160 mg
Theophylline tabs 100 mg, 200 mg, 300 mg, 450 mg
Trazodone HCl tabs 50 mg, 100 mg, 150 mg
Verapamil HCl tabs 80 mg, 120 mg

Chase:
Clofibrate 500 mg capsule
Valproic acid 250 mg capsule
Amantadine HCl 100 mg capsule

The deletion of the following products and their manufacturers was **not adopted and are still pending:**

Biocraft:
Albuterol sulfate tabs 2 mg, 4 mg
Amiloride HCl, hydrochlorothiazide tabs 5/50 mg
Amitriptyline tabs 10 mg, 25 mg, 50 mg, 75 mg, 100 mg
Amoxicillin as the trihydrate caps 250 mg, 500 mg
Amoxicillin as the trihydrate tabs 250 mg
Amoxicillin as the trihydrate susp 250 mg/5 ml
Amoxicillin as the trihydrate susp 125 mg/5 ml
Ampicillin/ampicillin trihydrate susp 250 mg/5 ml

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 26 N.J.R. 2898(a), 3717(b), and 4388(b).

(a)

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

Proposed: May 2, 1994 at 26 N.J.R. 1821(a).
Adopted: December 13, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: December 20, 1994 as R.1995 d.33, with portions of the proposal not adopted but still pending.
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: January 17, 1995.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:
The Drug Utilization Review Council received **no comments** pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on May 23, 1994. Mark A. Stollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. One comment was offered as summarized in previous issues of the New Jersey Register (see 26 N.J.R. 2897(a) and 26 N.J.R. 3719(a)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be inspected by contacting Mark A. Stollo, R.Ph., M.S., Drug Utilization Review Council, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug;
The generic name of the drug product;
The strength of the drug product;
The dosage delivery system of the drug product (for example, cream, capsule, tablet); and
The name of the generic drug's manufacturer:

GLUCOTROL
Glipizide
5 mg
Tablet
Dupont Pharma

GLUCOTROL
Glipizide
10 mg
Tablet
Dupont Pharma

The following products and their manufacturers were **not adopted and are still pending**:

| | |
|--|---------------|
| Cefaclor capsules 250 mg, 500 mg | Lederle |
| Cefaclor susp 125 mg/5 ml, 187 mg/5 ml | Lederle |
| Cefaclor susp 250 mg/5 ml, 375 mg/5 ml | Lederle |
| Cimetidine 300 mg/5 ml oral solution | Dupont Pharma |
| Diltiazem CD caps 60 mg, 90 mg, 120 mg | Blue Ridge |
| Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg | Mutual |
| Guanabenz acetate tabs 4 mg, 8 mg | Zenith |
| Hyoscyamine sulfate ER tabs 0.375 mg | Contract |
| Indapamide tabs 2.5 mg | Zenith |
| Isoniazid 100 mg, 300 mg tabs | Barr |
| Materna vitamin tabs substitute | Anabolic |
| Metoprolol tartrate tabs 50 mg, 100 mg | Copley |
| Naproxen sodium tabs 275 mg, 550 mg | Purepac |
| Pindolol tabs 5 mg, 10 mg | Novopharm |
| Piroxicam caps 10 mg, 20 mg | Zenith |
| Prenate 90 vitamin tabs substitute | Lini |
| Sucralfate tablets 1 gm | Blue Ridge |

| | |
|---|------------|
| Sulfadiazine tabs 500 mg | Eon |
| Terfenadine tabs 60 mg | Blue Ridge |
| Terfenadine/pseudoephedrine tabs 60/120 | Blue Ridge |

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 26 N.J.R. 2897(a), 3719(a), and 4388(a).

(b)

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

Proposed: September 6, 1994 at 26 N.J.R. 3583(a).
Adopted: December 13, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: December 20, 1994 as R.1995 d.34, with portions of the proposal not adopted but still pending.
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: January 17, 1995.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:
No comments were received.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on September 26, 1994. Mark A. Stollo, R.Ph., M.S., served as the hearing officer. No one attended the hearing. No comments were offered. The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be inspected by contacting Mark A. Stollo, R.Ph., M.S., Drug Utilization Review Council, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug;
The generic name of the drug product;
The strength of the drug product;
The dosage delivery system of the drug product (for example, cream, capsule, tablet); and
The name of the generic drug's manufacturer:

| | |
|---|---|
| LOPRESSOR Metoprolol tartrate 50 mg Tablet Watson | TEMOVATE Clobetasol propionate 0.05% Cream NMC Labs |
| LOPRESSOR Metoprolol tartrate 100 mg Tablet Watson | TEMOVATE Clobetasol propionate 0.05% Ointment NMC Labs |

The following products and their manufacturers were **not adopted and still pending**:

| | |
|---|---|
| ALDACTAZIDE-50 Spironolactone/ hydrochlorothiazide 50 mg/50 mg Tablet Danbury | AMOXIL Amoxicillin as trihydrate 250 mg Tablet, chewable Novopharm |
| AMOXIL Amoxicillin as trihydrate 125 mg Tablet, chewable Novopharm | ANAPROX Naproxen sodium 275 mg Tablet Mylan |

HEALTH

ANAPROX
Naproxen sodium
550 mg
Tablet
Mylan

ANSAID
Flurbiprofen
100 mg
Tablet
Mylan

ANSAID
Flurbiprofen
100 mg
Tablet
Novopharm

ANSAID
Flurbiprofen
50 mg
Tablet
Mylan

ANSAID
Flurbiprofen
50 mg
Tablet
Novopharm

BUSPAR
Buspirone HCl
10 mg
Tablet
Danbury

BUSPAR
Buspirone HCl
5 mg
Tablet
Danbury

CAPOTEN
Captopril
100 mg
Tablet
Novopharm

CAPOTEN
Captopril
12.5 mg
Tablet
Novopharm

CAPOTEN
Captopril
25 mg
Tablet
Novopharm

CAPOTEN
Captopril
50 mg
Tablet
Novopharm

CORGARD
Nadolol
120 mg
Tablet
Danbury

CORGARD
Nadolol
40 mg
Tablet
Danbury

CORGARD
Nadolol
80 mg
Tablet
Danbury

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

DESYREL
Trazodone HCl
150 mg
Tablet
Danbury

FIORINAL
Aspirin, butalbital and caffeine
325/50/40 mg
Tablet
Danbury

GLUCOTROL
Glipizide
10 mg
Tablet
Novopharm

GLUCOTROL
Glipizide
5 mg
Tablet
Novopharm

GLUCOTROL
Glipizide
10 mg
Tablet
Watson

GLUCOTROL
Glipizide
5 mg
Tablet
Watson

ISORDIL
Isosorbide dinitrate
20 mg
Tablet
Danbury

ISORDIL
Isosorbide dinitrate
30 mg
Tablet
Danbury

ISORDIL
Isosorbide dinitrate
40 mg
Tablet
Danbury

LOPID
Gemfibrozil
600 mg
Tablet
Mylan

MAXZIDE-25 mg
Triamterene,
hydrochlorothiazide
37.5/25 mg
Tablet
Danbury

ADOPTIONS

METIMYD
Sulfacetamide 100 mg,
prednisolone 5 mg
Per ml
Ophth Susp
Schering

MICRONASE
Glyburide
1.25 mg
Tablet
Novopharm

MICRONASE
Glyburide
2.5 mg
Tablet
Novopharm

MICRONASE
Glyburide
5 mg
Tablet
Novopharm

MEXITIL
Mexiletine HCl
150 mg
Capsule
Novopharm

MEXITIL
Mexiletine HCl
200 mg
Capsule
Novopharm

MEXITIL
Mexiletine HCl
250 mg
Capsule
Novopharm

MODURETIC 5-50
Amiloride HCl with
hydrochlorothiazide
5/50 mg
Tablet
Danbury

NAPROSYN
Naproxen
250 mg
Tablet
Danbury

NAPROSYN
Naproxen
375 mg
Tablet
Danbury

NAPROSYN
Naproxen
500 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
100 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
10 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
150 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
25 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
50 mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
75 mg
Tablet
Danbury

ORGANIDIN
Iondinated glycerol
60 mg/5 ml
Elixir
Barre-National

PARLODEL
Bromocriptine mesylate
2.5 mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
10 mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
1 mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
2.5 mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
5 mg
Tablet
Danbury

REGLAN
Metoclopramide
5 mg
Tablet
Danbury

SELDANE
Terfenadine
60 mg
Tablet
Danbury

TENORMIN
Atenolol
25 mg
Tablet
Danbury

ADOPTIONS

HEALTH

TUSSI-ORGANDIN DM
Iodinated glycerol 30 mg,
dextromethorphan HBr 10
mg
Per 5 ml
Liquid
Barre-National

TUSSI-ORGANDIN
Iodinated glycerol 30 mg and
codeine phosphate 10 mg
Per 5 ml
Liquid
Barre-National

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 26 N.J.R. 4390(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: July 5, 1994 at 26 N.J.R. 2723(a).
Adopted: December 13, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: December 20, 1994 as R.1995 d.35, with portions of the proposal not adopted but still pending.

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

Effective Date: January 17, 1995.

Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

No comments were received.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on July 25, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. One person attended the hearing. No comments were offered. The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be inspected by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance with the reformatting of N.J.A.C. 8:71, which follows a standardized format for each drug product listed:

- The name of the substituted brand name drug;
- The generic name of the drug product;
- The strength of the drug product;
- The dosage delivery system of the drug product (for example, cream, capsule, tablet); and
- The name of the generic drug's manufacturer, as follows:

LOPRESSOR
Metoprolol tartrate
50 mg
Tablet
Geneva

LOPRESSOR
Metoprolol tartrate
100 mg
Tablet
Geneva

The following products and their manufacturers were **not adopted and are still pending**:

BACITRACIN
Bacitracin 500 units
Per gm
Ointment
Altana

BACTRIM
Sulfamethoxazole/trimethoprim
800 mg/160 mg
Tablet
Par

BACTRIM
Sulfamethoxazole/trimethoprim
400 mg/80 mg
Tablet
Par

CHLOROPTIC S.O.P.
Chloramphenicol 0.5%
Ophth ointment
Pharmafair/Sight

CHLOROPTIC
Chloramphenicol 1%
Ophth solution
Pharmafair/Sight
CORTISPORIN
Polymyxin B sulfate 10,000U,
neomycin sulfate 3.5 mg as
base, hydrocortisone 1%
Per ml
Otic solution
Pharmafair/Sight

DESYREL
Trazodone HCl
150 mg
Tablet
Teva

FLUORESCITE
Fluorescein 10%
Injection
Akorn/Taylor

FUNDUSCEIN
Fluorescein 25%
Injection
Akorn/Taylor

GLUCOTROL
Glipizide
5 mg
Tablet
Geneva

GLUCOTROL
Glipizide
10 mg
Tablet
Geneva

NAPHCON A
Npahazoline HCl 0.25%,
pheniramine maleate 0.3%
Ophth solution
Akorn/Taylor

NEO-DECADRON
Neomycin (as sulfate) 3.5 mg,
dexamethasone sodium
phosphate, 1 mg
Per ml
Ophth solution
Pharmafair/Sight

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

ORUDIS
Ketoprofen
50 mg
Capsule
Geneva

ORUDIS
Ketoprofen
75 mg
Capsule
Geneva

POLYSPORIN
Bacitracin zinc 500U, polymyxin
B sulfate 10,000U

Per gm
Ophth ointment
Pharmafair/Sight

TAGAMET
Cimetidine
200 mg
Tablet
Danbury

TAGAMET
Cimetidine
300 mg
Tablet
Danbury

TAGAMET
Cimetidine
400 mg
Tablet
Danbury

TAGAMET
Cimetidine
800 mg
Tablet
Danbury

TAGAMET
Cimetidine
200 mg
Tablet
Lemmon

TAGAMET
Cimetidine
300 mg
Tablet
Lemmon

TAGAMET
Cimetidine
400 mg
Tablet
Lemmon

TAGAMET
Cimetidine
800 mg
Tablet
Lemmon

XANAX
Alprazolam
0.25 mg
Tablet
Danbury

XANAX
Alprazolam
0.5 mg
Tablet
Danbury

XANAX
Alprazolam
0.1 mg
Tablet
Danbury

XANAX
Alprazolam
0.25 mg
Tablet
Geneva

| | |
|---|---|
| XANAX Alprazolam 0.5 mg Tablet Geneva | XANAX Alprazolam 0.1 mg Tablet Geneva |
|---|---|

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 26 N.J.R. 3720(a) and 4386(a).

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Placement

Adopted New Rules: N.J.A.C. 10:46B

Proposed: September 6, 1994 at 26 N.J.R. 3611(a).

Adopted: December 22, 1994 by William Waldman,

Commissioner, Department of Human Services.

Filed: December 22, 1994 as R.1995 d.44, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4-25.4, 30:4-165.2.

Effective Date: January 17, 1995.

Expiration Date: January 17, 1996.

Summary of Public Comment and Agency Response:

During the comment period, which closed on October 6, 1994, the Division received comments from three agencies: The Center for Innovative Family Achievements (CIFA), the New Jersey Center for Outreach and Services for the Autism Community, Inc. (COSAC) and the Bancroft School.

Center for Innovative Family Achievements (CIFA)

COMMENT: The Center enthusiastically supports the language contained in the proposed new rules in regards to the placement of children and youth in family settings. Our Treatment Foster Care Program currently serves children and youth with developmental disabilities and severe behavior challenges that cannot, for many reasons, live with their birth families. In any case possible, our treatment families and staff work to repair the birth family relationships with the child or youth and support family reunification wherever possible.

Our Home Based Services Program staff work in homes where families have a child that is developmentally disabled and displaying severe behavior problems. The goal of this program is through an eight week intensive in home intervention to ensure that the family learns whatever they need to keep the child in their family. Both programs can also work in concert with a family to return and keep the child in the family. We believe children and youth learn best in family settings, no matter the complications posed by their disability or their behavior. We additionally support the return of children and youth placed out of state to their families and other family settings.

RESPONSE: The Division thanks CIFA for their comments and support.

New Jersey Center for Outreach and Services for the Autistic Community, Inc. (COSAC)

COMMENT: N.J.A.C. 10:46B-4.1(i) states "If placement is offered and rejected, the urgency category of the individual shall be reevaluated. A recommendation for a change in the waiting list category may be made in accordance with a review of the individual's circumstances."

If the individual, individual's family or guardian make a claim that the placement is not appropriate, the category may be changed. The Division, however, has the right to make placement contingent upon an overnight visit at the proposed sited (N.J.A.C. 10:46B-4.1(h)). This leads us to believe that the Division has included this so it can determine if the placement is appropriate, not only for the individual, but also for the provider. COSAC believes that the individual, the individual's family or the individual's guardian must also have similar rights when considering placement. If they do not, they may take the first placement offered just so they don't lose their category level or place within that category, even if they know it is not suitable. COSAC believes that the individual,

the individual's family or the individual's guardian must have input in finding the most appropriate placements that include rejecting an offer of placement. COSAC does not believe that the individual, family or guardian can deny every offer by the Division, but they must have the right to refuse any placement they deem not appropriate.

RESPONSE: The Division agrees that the individual or his or her legal guardian should have input into the planning process and can reject offers which they deem to be inappropriate. Wording has been added to indicate that, when an offer is refused, the Division shall review the reasons for rejecting the offer with the individual or legal guardian to identify what needs were not met by the offered placement.

COMMENT: COSAC strongly suggests that a statement on current placement be added to N.J.A.C. 10:46B-5.1. COSAC urges that the following statement be added "Current placement, regardless of location or cost, will be continued and paid for by the Division until the appeal process has been completed." This ensures that individuals who have been placed by a State or local agency in a residential setting prior to turning 21 years of age are protected from service being interrupted by removal from their current placement until the appeal process is completed.

RESPONSE: The Division cannot agree to this addition. As indicated by the rule, the Division is limited in the money that it has available for placement by the budget in the current Fiscal Year. Such a requirement could force the Division to knowingly overspend its budget, which is against New Jersey law. Furthermore, the Division recently revised its appeal procedure on September 19, 1994, to address this instance. N.J.A.C. 10:48-1.1(k) states that "Except in emergencies, a placement may be deferred pending the exhaustion of the administrative appeal if the appeal is received verbally or in writing 30 calendar days before the proposed placement and the appellant can demonstrate that there may be irreparable harm to the individual as a result of the placement." The text of N.J.A.C. 10:46B-5.1(d) has been amended on adoption to repeat the text currently found at N.J.A.C. 10:48-1.1(k).

Bancroft

COMMENT: N.J.A.C. 10:46B-2.1(d)2 states that the Division shall have responsibility for placement only when an appropriate placement is available. This unclear notation appears to be a contradiction between the Division's responsibility to place and the availability of services. This statement implies that if no appropriate placement is available, the Division does not have responsibility. Refer to N.J.A.C. 10:46B-3.2. There again, "to the extent such services are available" implies a revocation of responsibility if placement is not available.

RESPONSE: The Division is limited in its ability to place by the availability of such a placement. Availability may include the limitation of funding in a given Fiscal Year. The Division does, however, recognize that it has a responsibility to provide assistance in emergencies. The Division's responsibilities in an emergency are described at N.J.A.C. 10:46-3.4.

COMMENT: N.J.A.C. 10:46B-4.1(h) states "If deemed necessary by the Division, placement shall be contingent upon an overnight visit at the proposed placement. Failure to permit an overnight visit shall be considered a rejection of the placement offer." Individuals should have the option of an overnight visit, at a minimum.

RESPONSE: The Division agrees that, in most instances, an overnight visit would be required. However, the present wording allows the Division to be flexible in considering the specific instance of an individual where an overnight visit may not be required prior to placement.

Several internal comments were received. One comment concerned the definition of "alternate services." "Alternate services" are those which are required to "maintain the stability of the individual." This could be construed to require the Division to maintain an individual in his or her current placement, regardless of whether the Division had been previously funding the person. The Division has, therefore, deleted the definition of alternate service and will repropose a new definition in the near future.

At N.J.A.C. 10:46B-3.4(h), the proposed rule indicates that the Division shall attend any meeting with the Local Education Authority to develop the IHP. It was felt that there could be confusion concerning the Division's role in attending the meeting to develop the Individual Education Plan (IEP), which is the responsibility of the school district, and the meeting to develop the Individual Habilitation Plan (IHP), which is the responsibility of the Division. Wording has been added to clarify the Division's role in each instance.

N.J.A.C. 10:46B-4.2(j), states that an IHP shall be revised when a placement in a private institution is located. This could be construed to require another meeting to revise the IHP even if the current IHP reflects the need for transfer. The wording has been amended to indicate that any offer of placement shall be consistent with the IHP.

Full text of the proposed new rules follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 46B PLACEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

10:46B-1.1 Purpose; authority

The Division of Developmental Disabilities, Department of Human Services intends this chapter to establish standards and criteria for the placement of eligible persons, pursuant to N.J.S.A. 30:4-25.6.

10:46B-1.2 Scope

The provisions of this chapter shall apply to all eligible individuals requesting placement. This chapter provides guidelines for placement decisions. Each individual's abilities and needs are different. Division staff shall consider the circumstances of each individual in light of his or her unique situation in making placement decisions. Division staff shall exercise reasonable professional judgement in making such decisions.

10:46B-1.3 Definitions

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

["Alternate service" means a service provided or funded by the Division to an individual when the most appropriate service is not available. Alternate services are those programs, interventions or options which will maintain stability of the individual. Alternate services are necessarily less appropriate than the most appropriate service. Alternate services may also prove to be more restrictive than the most appropriate service and may not fully maximize the individual's developmental potential.]

"Available" means the service may be offered within the limitations of funding in a given fiscal year.

"Basic needs" means food, shelter and personal safety.

"Congregate setting" means a community residence as defined in N.J.A.C. 10:44A, developmental center, or a nursing home.

"Director" means the Director of the Division of Developmental Disabilities.

"Division" means the Division of Developmental Disabilities.

"Individual Habilitation Plan (IHP)" means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. The IHP may identify a continuum of skill development that outline progressive steps and the anticipated outcomes of services. The IHP is a single plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan. The complexity of the IHP will vary according to the needs, capabilities and desires of the person. For an individual who has been determined by an Interdisciplinary team to require active treatment, the IHP addresses all needs identified. For an individual who makes only specific service requests, the IHP is a service plan which addresses only those specific requests.

"Interdisciplinary Team (IDT)" means an individually constituted group responsible for the development of a single, integrated IHP. The team shall consist of the individual receiving services, the individual's parents or family member (if the individual is a minor, or, if an adult, if the adult desires that the parent or family member be present), legal guardian, those persons who work most directly with the individual served, and professional and other represen-

tatives of service areas relevant to the identification of the individual's needs and the design and evaluation of programs to meet those needs.

"Long-term placement" means a placement which is anticipated to be of one year's duration, or longer.

"Private institution" means a private mental retardation facility located in New Jersey which is licensed in accordance with N.J.A.C. 10:47, or any out-of-State residential placements.

SUBCHAPTER 2. ADMINISTRATION

10:46B-2.1 General standards

(a) The Division recognizes that families function as the primary caregivers for most individuals with developmental disabilities.

(b) Individual and family support shall be provided whenever possible to avoid long-term out-of-home placements. Such support shall be provided to the family in accordance with N.J.A.C. 10:46A, subject to the availability of funding in the given fiscal year.

(c) The Division recognizes that, even with support, not all families can function as the individual's caregiver. The Division further recognizes that even when the family can support the individual, the family should not be expected to do so forever.

(d) The Division shall have responsibility for placement only:

1. If the individual is found eligible for services in accordance with N.J.A.C. 10:46; and

i. The family can no longer care for the individual; or

ii. The individual, if a competent adult, chooses to live away from his or her family; or

iii. Placement is recommended in the IHP; and

2. An appropriate placement is available.

(e) Whenever possible, the individual shall be offered an available placement in a setting which is least restrictive of his or her personal liberty.

(f) Because an individual's needs and abilities change, no out-of-home placement shall be considered permanent.

(g) When placement is appropriate, every effort shall be made to place an individual within New Jersey. Placement out-of-State shall be made only as a last resort.

(h) The Division shall make every effort to return individuals placed out-of-State to an in-State residence as soon as possible.

(i) The Division shall place an individual in appropriate licensed facilities. If an individual chooses to live independently in an unlicensed facility, but continues to receive support services from the Division, the provisions of this chapter shall not apply.

(j) When funding from a source other than the Division is available to the individual, Division staff may assist the individual in locating a placement. In such an instance, the Division shall not be responsible to provide any funding for placement.

SUBCHAPTER 3. PLACEMENTS

10:46B-3.1 Availability of placements

(a) When placement becomes necessary, the Division shall plan with the competent individual, his or her legal guardian and, where appropriate, interested family members, to identify an appropriate, available, out-of-home placement.

(b) The availability of placements shall be limited to the Division's funding in a given fiscal year. Prioritization for placement shall be governed by N.J.A.C. 10:48-4.

(c) All placements shall be in accord with all applicable Federal and State statutes, rules, and regulations, including the State Code of Criminal Justice provision at N.J.S.A. 2C:30-4, which prohibits the disbursement of public moneys, or the incurring of obligations in excess of legislative appropriation and limit of expenditure.

(d) In an effort to provide fairly for all individuals served, it is recognized that Division appropriations need to be applied across the State and across the entire fiscal Year and that planning and judgement are necessary and appropriate on a case-by-case basis as well to ensure that appropriations are not dissipated in an effort to meet extraordinary needs of one individual to the detriment of the rest of the population who require and could benefit from services needed to be funded from the same finite source.

10:46B-3.2 Waiting lists

If a placement recommended in the IHP is not immediately available, the individual shall be assigned to a waiting list category, in accordance with N.J.A.C. 10:48-4, and the Division shall provide an alternate services to the extent such services are available.

10:46B-3.3 Emergency placements

(a) An emergency need for placement shall be established when a long-term placement has been determined to be unavailable and the individual is homeless, or the Division cannot provide adequate alternate service in the existing situation to care for the individual safely.

(b) When the Division determines that the need for an emergency placement exists, the individual shall be offered a placement which can meet his or her basic needs, as required by N.J.A.C. 10:46B-1.3.

(c) When the Division determines that the need for an emergency placement exists, the development of an IHP is not required prior to placement.

(d) An emergency placement shall not be considered permanent.

(e) An IHP shall be developed within 30 days following an emergency placement to plan for an orderly transition to a more permanent placement, unless the IDT confirms the appropriateness of the emergency placement as a long term placement.

10:46B-3.4 Placement of children

(a) The placement of children shall conform to the requirements of N.J.S.A. 9:6B-1 et seq.

(b) Children shall be maintained in their own home whenever possible.

(c) When a child is placed outside his or her own home, he or she shall be placed with a relative, whenever possible.

(d) When a child cannot be maintained with his or her immediate or extended family, he or she shall be placed in a family setting, such as a community care home, as defined in N.J.A.C. 10:44B.

(e) A child may be placed in a congregate setting only when the Assistant Director certifies that no other placement exists.

(f) The IDT shall meet within the 30 days following placement to review needs of the child in the placement and to facilitate visitation by the family.

(g) A child placed outside his or her home has a right to be free from repeated changes in placement before his or her permanent placement or return home. Every effort shall be made to provide a stable placement until the child can return to his or her home and, except in emergencies, any change in the placement shall be made in accordance with the child's IHP.

(h) A child shall receive an educational program which will maximize his or her potential. Responsibility for the provision of the child's education shall remain with the local education authority (LEA). The Division shall advocate for the provision of a free and appropriate education for the child and shall attend ***[any]* meeting*s to the extent possible within existing resources*** with the LEA to develop the ***[IHP]* *Individual Education Plan (IEP). Representatives of the LEA shall be invited by the Division to attend meetings to develop the IHP***.

(i) The need for placement shall be evaluated no less than annually, at the time of the IHP. At each IHP meeting, the IDT shall consider the possibility of returning the child to his or her family.

SUBCHAPTER 4. PLACEMENT DECISIONS

10:46B-4.1 General standards

(a) In some instances, appropriations for placements received by the Division may be targeted to specific populations. The budget language will identify the persons eligible for consideration for placement. The target populations may include, but are not limited to, those affected by the closing of a particular developmental center, a specific number of individuals from the waiting list or the return of individuals from out-of-State placements.

(b) In some instances, placements are required to accommodate individuals admitted to a service on an emergency basis.

(c) When a vacancy occurs in an existing program or an appropriation is targeted for a specific population, Division staff shall identify

possible individuals appropriate for the placement using the following criteria, and considering any other information pertinent to the needs of the specific individual:

1. The waiting list category;
2. The age, sex and functioning level of the individual;
3. The present needs of the individual, as well as anticipated future needs;
4. The ability of the placement to meet the individual's needs;
5. The likelihood of the success of the placement;
6. The stability of the individual's present placement, including how well the placement meets the behavior and or medical needs of the individual;
7. The availability of a caregiver to continue to provide care;
8. The availability of continued funding by another party of another placement not funded by the Division;
9. The potential that the placement will be long term; and
10. Acceptance of the individual by the service provider.

(d) In the instance that a placement is equally appropriate for more than one individual, the placement shall be offered to the individual placed in Waiting List Category 1 the longest, unless exceptional circumstances warrant otherwise, based on each individual's circumstances and need for such services at the time placement becomes available.

(e) Information concerning the individual shall be provided to the individual(s) or agency(s) offering placement. The release of these records to further the individual's habilitation goals is consistent with the requirements of N.J.A.C. 10:41-2.13. Specific authorization from the competent individual or legal guardian shall not be required.

(f) When an individual is identified for placement, the individual and/or legal guardian shall be notified by telephone and in writing.

(g) When a placement is under consideration, the competent individual or legal guardian shall be given an opportunity to tour the placement and the site of any day programs to be provided.

(h) If deemed necessary by the Division, placement shall be contingent upon an overnight visit at the proposed placement. Failure to permit an overnight visit shall be considered a rejection of the placement offer.

(i) If a placement is offered and rejected, ***[the urgency category of the individual shall be reevaluated. A recommendation for a change in the waiting list category may be made in accordance with a review of the individual's circumstances.]* *the Division shall review the reason(s) for rejecting the offer with the individual or legal guardian to identify what needs were not met by the offered placement.***

(j) An IHP shall be developed at least 30 days prior to the projected date of placement, except in an emergency. Family members may attend, unless there is an objection by the competent individual or legal guardian.

(k) The IHP shall indicate the habilitation goals to be achieved by the placement, and the services needed.

(l) The IHP shall be reviewed and revised as necessary, but no less than 30 days following placement.

(m) Every attempt shall be made to place the individual in an area of the State that is in geographic proximity to interested family and friends, if the individual so chooses.

10:46B-4.2 Placements into private institutions

(a) Placements into private institutions shall not be considered routine and may only be approved in extraordinary circumstances by the Division Director.

(b) When a person has been placed outside the State of New Jersey, either by the Division, an LEA, a family member, or another State or county entity, the Division shall make every effort to return him or her to the State of New Jersey as soon as possible.

(c) When the Division accepts responsibility for services, an individual shall be returned from a private institution to his or her own or family home or community placement whenever possible. If an individual cannot be placed in his or her own family home and the Division's resources do not allow community placement, the individual shall be placed in the most appropriate placement available.

(d) The Division shall only place an individual in a facility licensed by the state in which it is located.

(e) Funding shall be authorized only when a contract exists between the private institution and the Division.

(f) Funding, if available, of a private institution may be authorized if one of the following conditions are met:

1. The individual is currently in a placement made by the Division and can no longer be maintained in that placement and the only option the Division Director can identify is private institutional placement; or

2. The individual's life or safety is threatened or the community is at risk and the individual cannot be appropriately cared for in a developmental center and the only option the Division Director can identify is a private institutional placement.

(g) All requests for funding shall be made through the appropriate Assistant Director.

(h) If the Assistant Director supports the request, he or she shall forward the request for funding to the Director.

(i) The Director shall communicate his or her decision to the Assistant Director in writing.

(j) When the Division has located a placement other than the private institution, the Division shall *hold a meeting to revise the IHP and an* offer *of* *a* placement *consistent with the IHP* *shall be made* in writing to the individual or legal guardian.

1. The offer of placement shall be contingent upon a successful overnight visit by the individual to the proposed placement.

2. The legal guardian, if any, shall also be invited to visit the proposed placement.

3. Once a successful overnight visit has occurred, admission to the new placement may be scheduled.

4. If the competent individual or legal guardian does not agree to an overnight visit, the Division shall determine that it cannot implement the IHP. The individual or legal guardian shall be notified in writing that the Division shall cease funding at the private institution within 90 days.

5. If the individual or legal guardian reconsiders and agrees to an overnight visit, the Division shall withdraw its notice to cease funding, once the visit has been completed.

SUBCHAPTER 5. APPEALS

10:46B-5.1 Placement appeals

(a) Placement decisions may be appealed in accordance with N.J.A.C. 10:48.

(b) Specific offers of placement shall be considered contested cases.

(c) Recommendations of placement changes, where no specific offers of placement have been made, shall be considered non-contested.

(d) Except in emergencies, a placement may be deferred pending the exhaustion of the administrative appeal if the appeal is received verbally or in writing 30 calendar days before the proposed placement and the appellant can demonstrate that there may be irreparable harm to the individual as a result of the placement. The Division Director shall decide whether or not to defer the placement.

INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

Cancellation and Nonrenewal of Homeowners' Insurance Policies

Adopted Amendments: N.J.A.C. 11:1-20.1, 20.3 and 22.1

Proposed: November 7, 1994 at 26 N.J.R. 4303(a).

Adopted: December 23, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: December 23, 1994 as R.1995 d.52, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e), 17:22-6.14a3 and 17:29C-4.

Effective Date: January 17, 1995.

Expiration Date: January 31, 1996.

Summary of Public Comments and Agency Responses:

During the comment period, which closed on December 7, 1994, a total of 10 written comments were submitted to the Department. Four comments were received from insurer trade associations and producer professional groups: the Alliance of American Insurers; American Insurance Association; Independent Insurance Agents of New Jersey; and the Professional Insurance Agents of New Jersey. Six written comments were received from insurers: Allstate Insurance Company; the Chubb Group (Chubb Custom Insurance Company, Chubb Indemnity Insurance Company of New Jersey, Federal Insurance Company, Great Northern Insurance Company, Pacific Indemnity Company and Vigilant Insurance Co.); First Trenton Indemnity Company; New Jersey Manufacturers Insurance Company; and State Farm Insurance Companies.

COMMENT: Several commenters expressed the opinion that more regulation was self-defeating and would discourage insurers from entering the market thus lessening capacity. These commenters argued that providing more regulation before the root causes of the problem were established would exacerbate the situation and that it would be better to delay adoption of the proposed amendments until the effectiveness of Windstorm MAP was evaluated.

RESPONSE: These amendments were proposed in order to respond to serious market availability problems manifested by increased volume of cancellation and nonrenewal of homeowners' insurance policies, particularly in the coastal areas of the State. The problem requires immediate action so that it does not further deteriorate. The amendments establish requirements that insurers must meet before cancelling or nonrenewing homeowners' insurance and to that extent should brake and or alleviate a lack of insurance availability before it reaches crisis proportions. This rule was effective regarding commercial lines policies when a similar problem existed in the 1980's.

The application of this rule to homeowners' insurance will provide some stability and serve in tandem with Windstorm MAP to improve availability by reducing demand for replacement coverage after a cancellation or nonrenewal.

The Department does not believe that postponing these amendments until Windstorm MAP's effectiveness is evaluated would be prudent. These amendments tend to ensure the success of the total program by ending arbitrary nonrenewals and cancellations in the homeowners' insurance market.

COMMENT: Several commenters suggested that these amendments "sunset" within a short period after their adoption.

RESPONSE: It would be premature to set a date to terminate these amendments before it is evident that the problem addressed is being solved. The Department notes that pursuant to Executive Order No. 66(1978) these rules will expire on January 31, 1996. The Department will reevaluate the continuing need for these rules in connection with readoption of this chapter.

COMMENT: Some commenters suggested a possible conflict in the regulatory framework because of rules which apply when an agency is terminated and the statutory requirement that insurers renew all policies for terminated agencies during a period of 12 months from the effective date of the agency termination.

RESPONSE: The commenter did not explain the potential conflict, and the Department sees none between these amendments and the statutory requirement.

COMMENT: One commenter questioned why the proposed amendment should be enforced Statewide if the problem is merely coastal.

RESPONSE: The amendments address the problem of cancellation and nonrenewals of homeowners' insurance which at present appears endemic to coastal areas, but which could easily spread Statewide if different standards were applied to a limited area. Moreover, limiting the rules to the coastal areas may result in disparate, discriminatory treatment of insureds in other areas, and may be more costly for insurers to implement and the Department to enforce.

COMMENT: A commenter suggested that the amendments unwarrantedly place restrictions on valid terminations when an agency book of business is not renewed, and another suggests that the amendments unfairly penalizes carriers without guidelines in place when policies were written.

RESPONSE: The Department believes that these amendments are an appropriate response to a serious market problem: constricted availability of homeowners' insurance coverage particularly in the coastal area of the State. Delay in moving towards a solution is neither wise nor acceptable because the problem will likely increase or spread. The rules prohibit arbitrary cancellations and nonrenewals, but permit some terminations for appropriate reasons under controlled circumstances. The Department believes that these amendments provide a proper, balanced approach that considers the interests of both insurers and insureds.

COMMENT: The proposal to put homeowners' insurance under the block renewal regulations was endorsed by three commenters as a warranted, measured approach to the nonrenewal aspect of the availability problem; and two of those commenters supported the full proposal as providing necessary uniform treatment and standards for the industry.

RESPONSE: The Department concurs in the observation and appreciates these commenters' support.

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 20. CANCELLATION AND NONRENEWAL OF COMMERCIAL AND HOMEOWNERS' INSURANCE POLICIES

11:1-20.1 Scope

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after November 7, 1986 by companies licensed to do business in this state except workers' compensation insurance, employers liability, fidelity, surety, performance and foregery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. With the exception of N.J.A.C. 11:1-20c3 and 11:1-20.4(d), this subchapter shall not be applicable to multi-state location risks or policies subject to retrospective rating plans.

(b) This subchapter shall also apply to all policies of homeowners' insurance as defined at N.J.A.C. 11:2-41.2 which are in force, issued or renewed on or after *[the effective date of these amendments]* *January 17, 1995*.

(c) and (d) (No change in text.)

11:1-20.3 Policy provisions relating to cancellation or nonrenewal

(a) All commercial insurance policy forms issued or renewed on or after January 6, 1987, and all homeowners' insurance policy forms issued on or after *[(60 days from the effective date of these amendments)]* *March 18, 1995* must contain a provision setting forth the following statement:

Pursuant to New Jersey law, this policy cannot be cancelled or nonrenewed for any underwriting reason or guideline which is arbitrary, capricious or unfairly discriminatory or without adequate prior notice to the insured. The underwriting reasons or guidelines that an insurer can use to cancel or nonrenew this policy are maintained by the insurer in writing and will be furnished to the insured and/or the insured's lawful representative upon written request.

This provision shall not apply to any policy which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered, unless the policy is a renewal policy.

1. (No change.)

SUBCHAPTER 22. PROHIBITION OF CERTAIN CANCELLATION AND NONRENEWAL ACTIVITY

11:1-22.1 Scope; definitions

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after the effective date of this subchapter by companies licensed to do business in this State except workers' compensation insurance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. This subchapter shall not be applicable to multi-state location risks.

(b) This subchapter shall also apply to all policies of homeowners' insurance as defined at N.J.A.C. 11:2-41.2 which are in force, issued or renewed on or after *[the effective date of these amendments]* *January 17, 1995*.

(c) and (d) (No change in text.)

(a)

DIVISION OF PROPERTY AND CASUALTY

Windstorm Market Assistance Program

Adopted New Rules: N.J.A.C. 11:2-41

Proposed: November 7, 1994 at 26 N.J.R. 4304(a).

Adopted: December 23, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: December 23, 1994 as R.1995 d.53, 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. 17:1C-6.14a1, 17:29A-14 and 17:29D-1.

Effective Date: January 17, 1995.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

During the comment period which closed on December 7, 1994, a total of 10 comments were submitted to the Department relative to the subject proposal. Five comments were received from insurer trade associations and producer professional groups. These included the Alliance of American Insurers, American Insurance Association, New Jersey Association of Mutual Insurance Companies, Professional Insurance Agents of New Jersey and the Independent Insurance Agency of New Jersey.

Five written comments were received from insurers: Allstate Insurance Company, New Jersey Manufacturers Insurance Companies, Prudential Insurance Company, Selective Insurance Company and State Farm Insurance Company.

COMMENT: Several insurers noted that the Windstorm Market Assistance Program (Windstorm MAP) was intended to be voluntary in all respects, questioned the need for additional regulation and suggested the problem addressed could be more appropriately solved by expanding the capacity of the voluntary market by encouraging new insurers to enter and serve this need. In furtherance of the intent to ensure that Windstorm MAP be voluntary, some commenters suggested amendments to proposed N.J.A.C. 11:2-41.1(a) and (a)2; 41.3(d) and (e); 41.5(a); and 41.7(b) and (d) which would eliminate what might be construed as mandatory language, thereby ensuring that the rule would in all respects require only voluntary participation. The following amendments to the rule set forth the suggested changes (Language to be added is underlined thus; that excised is in brackets [that]):

"N.J.A.C. 11:2-41.1 Purpose and scope

(a) The purpose of this subchapter is to establish a program to assist [ensure that] eligible property owners in the coastal areas of the State in obtaining [are able to obtain] homeowners insurance through voluntary market outlets by:

...
2. Establishing the framework for a Formal Assistance Program ("FAP") among voluntary market insurers for qualified applicants unable to secure homeowners coverage through normal market channels or the informal referral program and for the equitable distribution of qualified applicants to voluntarily participating [such risks to] insurers that choose to consider [accept] such risks;

ADOPTIONS

N.J.A.C. 11:2-41.3 Creation of the Windstorm MAP

...
(d) All insurers admitted to transact and transacting the business of homeowners' insurance [shall] may be members of the Windstorm MAP.

(e) The Independent Insurance Agents of New Jersey, Professional Insurance Agents of New Jersey and Insurance Brokers Association of New Jersey [shall] may be participants of the Windstorm MAP.

N.J.A.C. 11:2-41.5 Plan of Operation

(a) The Plan of Operation shall provide for the prompt and efficient administration of the IRP established by the Department, and for assistance in obtaining [the provision of] homeowners insurance by [to] qualified applicants under the FAP.

N.J.A.C. 11:2-41.7 Formal Assistance Program ("FAP") application process

...
(b) The FAP shall assist [arrange for coverage to] qualified applicants in obtaining coverage by [to the extent that the Windstorm MAP has capacity to] distributing applications in an equitable manner to voluntarily participating [provide such coverage based upon the participation of] insurers.

...
(d) Those insurers that have agreed to consider risks through the FAP shall do so [provide homeowners insurance coverage to qualified applicants] in accordance with each insurers voluntary commitment to participate [and to provide coverage]."

RESPONSE: The Department notes that the Windstorm MAP is created pursuant to N.J.S.A. 17:29D-1, which addresses the provision of insurance coverage to distressed markets according to a program established by administrative rules. N.J.S.A. 17:29D-1 provides that: "Every insurer admitted to transact and transacting" the distressed line of insurance "shall participate in such plan and provide coverage to the extent required in such rules and regulations." While the rules at N.J.A.C. 11:2-41.3 provide that all insurers shall be members of the Windstorm MAP, the rules further provide at N.J.A.C. 11:2-41.1(a)2, 41.5(a)3 and 41.7(d) that the obligation of an insurer to commit to accept risks from the Windstorm MAP is voluntary. The Department therefore believes that the rules as proposed provide for a voluntary level of participation by insurers, and that wholesale amendments are not required. Moreover, the Department notes that the Plan of Operation provided in N.J.A.C. 11:2-41.5 is intended and will serve to carry out the Windstorm MAP's objectives, and that appropriate provisions in that document will provide any needed clarification of an individual insurer's duties. The Department does not intend by these rules to prevent the Governing Committee from including appropriate provisions in the Plan of Operation to equitably qualified risks among those insurers that agree to accept them.

Therefore the Department has not made the suggested changes, except for including the descriptive term "qualified" with respect to "applicants" at N.J.A.C. 11:2-41.1(a)2, which provides consistency with the term as used elsewhere in the rules.

COMMENT: Several commenters addressed proposed N.J.A.C. 11:2-41.5(a)8, which provides that the Plan of Operation shall include procedures for paying commissions to licensed producers which recognize the importance of maintaining producer/consumer relationships. Some commenters suggested that the provisions be struck from the rule because it is a contractual matter between the parties; others suggested that it be amended to either further effectuate or weaken it. Another commenter suggested that this provision is unnecessary because the matter is adequately addressed at N.J.A.C. 11:2-41.5(a)9 which provides that the Plan of Operation shall include "... other provisions as are deemed necessary. ..."

RESPONSE: The matter of commissions is of course one of contractual nature between producers and insurers and is generally dealt with by the parties. Nevertheless, it should be noted that both insurers and producers are represented on the Windstorm MAP Governing Committee. This provision directs them to deal with the issue of commissions in the Plan of Operation in a manner that, where practicable, preserves producer/consumer relationships. It is intended to provide consistent treatment to producers to the extent possible. While N.J.A.C. 11:2-41.5(a)9 does provide a forum and mechanism whereby a provision acceptable to all parties may be developed to resolve this issue, it does not require that the issue be addressed. Therefore, the suggested changes have not been made.

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COMMENT: Some commenters sought a more precise definition of the term "qualified applicant." It was noted that definition is twice provided in the proposed rule text (at N.J.A.C. 11:2-41.2 and 41.7(b)1, 2 and 3). These commenters suggested an amendment which excludes coverage through the program wherever the applicant is unable to obtain coverage in the voluntary market for reasons other than the windstorm risk. The suggested amendment reads:

"Qualified applicant" means an applicant for homeowners' insurance whose property is located in the defined coastal area and who has applied for insurance to at least three admitted voluntary market insurers and has been denied coverage. Nothing in this Windstorm MAP is intended to make available coverage to an applicant which meets this definition but who is uninsurable or undesirable for reasons other than the windstorm risk. (Language to be added is underlined.)

RESPONSE: While this subchapter is intended to provide assistance to applicants for homeowners insurance in the voluntary market who meet reasonable underwriting criteria. N.J.A.C. 11:2-41.5(a)5 provides that reasonable underwriting criteria should be established in the Plan of Operation. Such a provision will ensure that applicants to the Windstorm MAP are treated equitably and consistently. Providing this definition in the rule would unduly restrict the Governing Committee in developing its underwriting criteria.

The Department agrees that the further definition of "qualified" at N.J.A.C. 11:2-41.7(b) is unnecessary and may be confusing, and so the duplicate definition is deleted.

COMMENT: Several commenters suggested increasing the voting membership on the Governing Committee and amending N.J.A.C. 11:2-41.4(a) to specify that the Governing Committee consist of nine "voting" members.

RESPONSE: The Department does not believe that an increase in the Governing Committee of Windstorm MAP is necessary. N.J.A.C. 11:2-41.4 provides sufficiently diverse representation.

The suggestion that proposed N.J.A.C. 11:2-41.4(a) be amended to read nine voting members is accepted and the change is incorporated in the rules as adopted.

COMMENT: Several commenters questioned the need for reports as required by N.J.A.C. 11:2-41.9, and suggested that since the requirement is imposed industry-wide that the format of the report should be submitted in the form of a proposed rule. Other commenters suggested a sunset provision that would terminate the obligation to file said reports.

RESPONSE: The Department believes this provision is appropriate and necessary at this time to provide for continued monitoring of the homeowners' insurance market. The specific information required may, however, change based on market conditions. If continuing reports are necessary that include specific information, rules will be proposed.

The Department notes that the expiration date for this chapter, as provided by Executive Order 66 (1978), is November 30, 1995. It would be premature to sunset a provision before it is evident that the problem addressed is being solved. The Department will review the provision in connection with the readoption of N.J.A.C. 11:2.

COMMENT: One commenter suggested that N.J.A.C. 11:2-41.10, concerning windstorm deductibles, is unnecessary since the Commissioner has authority pursuant to N.J.S.A. 17:29A-1 et seq., to approve such deductibles. Another commenter sought approval in these rules for all insurers to be permitted to use such filings without the restriction implied in the proposed rule. Conversely, one commenter supported limiting the opportunity to those writing coastal risks.

RESPONSE: The Department recognizes that the opportunity to use optional or mandatory windstorm deductibles may well increase market capacity and intended this provision to serve as an incentive for insurers to participate in the Windstorm MAP and write coastal homeowners' risks. While the Department has the general authority to approve such deductibles under N.J.S.A. 17:29A-1 et seq., its intent is to provide an incentive for full participation in Windstorm MAP. Limiting the use of such deductibles to coastal risks, however, would provide a dual rating system that is difficult for the Department to oversee and for insurers to administer. Therefore, no change has been made.

COMMENT: Two commenters requested clarification of the definition for homeowners' insurance at N.J.A.C. 11:2-41.2, stating that the definition in the proposed rule is ambiguous.

RESPONSE: The Department agrees and has revised the definition at N.J.A.C. 11:2-41.2 to clarify that it references the coverage provided to the insured, regardless of the specific policy form on which the coverage is written. The term "real and personal property" has been

added for clarification; the use of a "dwelling policy" is recognized; and the reference to the kind of residence is deleted but the descriptive term "personal lines" is substituted.

COMMENT: One commenter stated that proposed N.J.A.C. 11:2-41.1(a)3 and 41.6 could potentially raise antitrust concerns for insurers. The commenter suggested that N.J.A.C. 11:2-41.1(a)3 be deleted and N.J.A.C. 11:2-41.6 be revised to read as follows:

"(c) The Windstorm MAP may revise the IRP as necessary to provide maximum assistance to property owners seeking homeowners' insurance in the coastal area, however, only the Department may gather underwriting information from homeowner insurers the Department determines is needed for use in the IRP." (Language to be added is underlined.)

RESPONSE: The Department agrees and the suggested changes are incorporated into the rule as adopted. If further committees involving joint action by insurers are necessary, they may also be established with the same formality in order to alleviate antitrust concerns.

COMMENT: One commenter noted that insurers which are not affiliated with trade associations are precluded by proposed N.J.A.C. 11:2-41.4(c) from serving on the Governing Committee until after the Committee has drafted a plan of operation. It suggested an amendment to cure that perceived defect, as follows:

"(c) The Commissioner shall appoint one member from insurers [Insurers] which are not members of the organizations identified in (b) above. After a Plan of Operation is adopted, such insurers shall nominate two members in accordance with a fair method set forth in the plan of operation." (Language to be added is underlined and language to be deleted is in [brackets].)

RESPONSE: Department agrees and has incorporated this suggestion into the adopted rule.

COMMENT: One commenter questioned whether certain zip codes (which do not identify coastal areas and those which are designations for specific business entities within an area) should be listed in the Appendix and suggested their elimination.

RESPONSE: The areas identified by zip code in the Appendix include areas which are contiguous to tidal waters and as such are deemed coastal areas. Accordingly, the Department does not believe any change in the rule is warranted at this time. The Department will however on continuing basis examine the appropriateness of the zip code designations and may propose future amendments if necessary.

Summary of Agency-Initiated Changes:

At N.J.A.C. 11:2-41.4(b)4, "Association of Mutual Insurers" is changed to read "New Jersey Association of Mutual Insurance Companies," which is the correct organization name.

N.J.A.C. 11:2-41.7 is amended to delete the duplicate definition for "qualified" and to use the defined term "qualified applicant."

A typographical error including the word "or" in the definition of "qualified applicant" at N.J.A.C. 11:2-41.2 has been corrected.

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 41. WINDSTORM MARKET ASSISTANCE PROGRAM

11:2-41.1 Purpose and scope

(a) The purpose of this subchapter is to establish a program to ensure that eligible property owners in the coastal areas of the State are able to obtain homeowners' insurance through voluntary market outlets by:

1. Creating an Informal Referral Program ("IRP") by which information is provided to consumers and producers about insurers which are actively writing homeowners' insurance in the coastal areas of the State; ***and***

2. Establishing the framework for a Formal Assistance Program ("FAP") among voluntary market insurers for ***qualified*** applicants unable to secure homeowners' coverage through normal market channels or the informal referral program and for the equitable distribution of such risks to insurers that choose to accept risks*]; and

3. Establishing, at the discretion of the Commissioner, on a temporary or permanent basis, other committees or efforts necessary to effectuate the purpose of this subchapter]*.

(b) The provisions of this subchapter shall apply to all property and casualty insurers admitted to write homeowners' insurance in this State.

11:2-41.2 Definitions

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

"Coastal area" shall be those areas of the State identified by postal zip code as set forth in Appendix A to this subchapter which is incorporated herein by this reference.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Homeowners' insurance" means the type of ***personal lines*** insurance provided against loss to ***real and personal*** property as defined in the standard fire policy and extended coverage endorsement thereon, ***a dwelling policy,*** the homeowner's multiple peril policy, insurance against the perils of vandalism, malicious mischief, burglary, or theft, or liability insurance, or any combination thereof, delivered or issued for delivery in this State*], insuring a single family residence or an owner occupied one to four family unit dwelling, including any real property and any improvements thereon, and the contents thereof]*. These policies include, but are not limited to, coverages written under six basic forms as follows:

1. Form 1—Basic, which covers: The dwelling, other structures, and personal property against fire, lightning, the extended coverage perils, vandalism, malicious mischief, theft, and glass breakage. Loss of use and additional coverages listed below are also included in this and each of the homeowners forms.

2. Form 2—Broad, which covers: The perils listed in Form 1 above plus falling objects; weight of ice, snow or sleet; accidental discharge from a plumbing, heating, air conditioning or sprinkler system or household appliance; tearing, cracking, burning, or bulging of a steam or hot water heating system; freezing of a plumbing, heating, air conditioning or sprinkler system or a household appliance; damage from artificially generated electricity; and volcanic eruption.

3. Form 3—Special, which covers: The dwelling and other structures on an open perils basis. Coverage on personal property applies with respect to the broad named perils insured under Form 2 above, plus the peril of damage by glass or safety glazing material which is part of a building, storm door or storm window.

4. Form 4—Tenants and Renters, which primarily covers: Tenants of a rented premises and provides only personal property coverage (no coverage on dwellings or on other structures) plus a limited amount of coverage on building additions and alterations made by the insured.

5. Form 6—Condominium: This form is designed especially for residential condominium unit owners.

6. Form 8—Modified coverage: This form is designed for homes not considered eligible for replacement cost coverage.

"Insurer" means any person or persons, corporation, association, partnership, company, or other legal entity admitted to transact the business of homeowners' insurance in this State except any residual market mechanism created by or pursuant to statute.

"Qualified applicant" means an applicant for homeowners' ***[or]*** insurance whose property is located in the defined coastal area and who has applied for insurance to at least three admitted voluntary market insurers and has been denied coverage.

"Windstorm Market Assistance Program" or "Windstorm MAP" means the program created at N.J.A.C. 11:3-41.3.

11:2-41.3 Creation of the Windstorm MAP

(a) There is hereby created in the State of New Jersey a plan for the administration and apportionment of homeowners' insurance for qualified applicants to be known as the New Jersey Windstorm Market Assistance Program.

(b) The Windstorm MAP shall be administered by a governing committee appointed pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) The administrative offices of the Windstorm MAP shall be located within the State of New Jersey.

(d) All insurers admitted to transact and transacting the business of homeowners' insurance shall be members of the Windstorm MAP.

(e) The Independent Insurance Agents of New Jersey, Professional Insurance Agents of New Jersey and Insurance Brokers Association of New Jersey shall also be participants of the Windstorm MAP.

11:2-41.4 Governing committee

(a) The Windstorm MAP shall be administered by a governing committee of nine ***voting*** members.

1. Five members shall be salaried employees of insurers which are members of the Windstorm MAP. No more than one member shall be employed by the same insurer.

2. Three members shall be licensed producers.

3. One member shall be a public representative appointed by the Commissioner who is knowledgeable about homeowners' insurance matters but who is not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.

4. The Commissioner, or his or her designated representative, shall be an ex-officio, non-voting member of the governing committee.

(b) The following insurer trade organizations shall each nominate two members to represent insurers:

1. Alliance of American Insurers;

2. American Insurance Association;

3. National Association of Independent Insurers; and

4. ***[Association of Mutual Insurers]* *New Jersey Association of Mutual Insurance Companies***.

(c) ***[Insurers]* *The Commissioner shall appoint one member from insurers* which are not members of the organizations identified in (b) above*. After a Plan of Operation is adopted, such insurers* shall nominate two members in accordance with a fair method set forth in the plan of operation.**

(d) The following organizations shall each nominate two members:

1. Independent Insurance Agents of New Jersey;

2. Insurance Brokers' Association of New Jersey; and

3. Professional Insurance Agents of New Jersey.

(e) With regard to the nomination of members set forth in (b), (c) and (d) above, in the event the Commissioner fails to appoint either of the nominees, the organization shall nominate another representative.

(f) The initial governing committee appointed pursuant to this subchapter shall serve for staggered terms of one or two years or until successors are appointed. Thereafter, all members of the governing committee shall serve for one year or until a successor is appointed. Each member may designate an alternate.

(g) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

(h) The governing committee shall have the power and duty to:

1. Develop and submit to the Commissioner for approval a plan of operation;

2. Investigate complaints and hear appeals from members or participants about any matter pertaining to the proper administration of the Windstorm MAP;

3. Provide for the establishment of subcommittees, to which may be delegated specific tasks and the authority to act on behalf of the governing committee; and

4. Perform such other functions as may be necessary and proper in accordance with this subchapter and the approved plan of operation.

11:2-41.5 Plan of operation

(a) The plan of operation shall provide for the prompt and efficient administration of the IRP established by the Department, and for the provision of homeowners' insurance to qualified applicants under the FAP. The plan of operation shall provide for the following:

1. The internal organization and proceedings of the governing committee;

2. The coverages to be offered through the Windstorm MAP to qualified applicants;

3. Procedures to distribute on an equitable basis risks qualified for coverage based on the voluntary commitment of insurers to accept risks;

4. Procedures by which insurers may voluntarily agree to participate and to provide coverage through the Windstorm MAP;

5. Procedures to apply for coverage, including disqualifying characteristics;

6. Procedures for handling complaints and appeals to the governing committee;

7. Procedures for the operation of the informal referral program;

8. Procedures for the payment of commissions, where practicable, to licensed insurance producers that recognize the importance of maintaining producer/consumer relationships; and

9. Such other provisions as are deemed necessary by the governing committee for the operation of the Windstorm MAP.

(b) The governing committee shall, within 30 days of the adoption of these rules, submit to the Commissioner, for his or her review and approval, a proposed plan of operation. After approval of the plan, the governing committee may thereafter propose an amendment to the plan of operation at any time for review and approval by the Commissioner. If approved, the Commissioner shall certify approval to the governing committee.

1. If the Commissioner disapproves all or any part of the plan of operation or any amendment, he or she shall return same to the governing committee with a statement that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make.

2. If the governing committee does not submit a plan of operation ***[within 30 days of the adoption of these rules,]* *by February 16, 1995,*** or a new plan which is acceptable to the Commissioner within 30 days after the disapproval of a proposed plan, the Commissioner may promulgate a plan of operation and certify same to the governing committee, until such time as the governing committee submits its own plan of operation which is acceptable to the Commissioner.

3. The Commissioner may review the plan of operation at any time and may suggest amendments to the governing committee.

11:2-41.6 Informal Referral Program ("IRP")

(a) The IRP shall provide for the distribution to the public of information about insurers offering coverage to qualified applicants that meet current underwriting guidelines.

(b) The governing committee shall provide in the plan of operation for administration of the IRP, which shall include provision for maintaining necessary records in order to confirm the applicant's qualification for the FAP pursuant to N.J.A.C. 11:2-41.7(a)2.

(c) The Windstorm MAP may revise the IRP as necessary to provide maximum assistance to property owners seeking homeowners' insurance in the coastal area¹*****; however, only the Department may gather underwriting information from homeowner insurers the Department determines is needed for use in the IRP.***

11:2-41.7 Formal Assistance Program ("FAP") application process

(a) Any person applying for homeowners' insurance through the FAP shall demonstrate that he or she is ***a* qualified *applicant* *as provided in (b) below]*.**

(b) The FAP shall arrange for coverage to qualified applicants to the extent that the Windstorm MAP has capacity to provide such coverage based upon the participation of insurers. ***[For the purposes of this subchapter, a qualified applicant shall have:**

1. His or her property for which coverage is sought located in the defined coastal area of the State;

2. Obtained and utilized the information provided through the IRP;

3. Applied for homeowners' insurance from at least three admitted voluntary insurers in this State and been denied coverage; and

4. Completed the FAP application prescribed by the Windstorm MAP in its plan of operation.]*

(c) The governing committee shall establish procedures in the plan of operation with respect to documentation to be provided by

the applicant or the producer showing (where applicable) the reasons for termination of previous insurance coverage, including, but not limited to:

1. Previous insurance company name and policy number;
2. Reasons for termination and effective date of termination; and
3. Claim history for the preceding three years.

(d) Those insurers that have agreed to consider risks through the FAP shall provide homeowners' insurance coverage to qualified applicants in accordance with each insurers' voluntary commitment to participate and to provide coverage.

11:2-41.8 Right to petition for appeal to the Commissioner

(a) A member or participant may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.
2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.
3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted on the record before the governing committee in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:2-41.9 Reports

Member insurers shall, no less frequently than quarterly, submit reports relative to the amount of homeowners' insurance in force and new business written in a format which shall be prescribed by Order of the Commissioner.

11:2-41.10 Windstorm deductibles

Member insurers that demonstrate pursuant to the provisions of this subchapter proportionate Statewide and coastal area market shares, may file for approval, pursuant to N.J.S.A. 17:29A-1 et seq., amendments to their filed rating systems in order to offer optional and/or mandatory windstorm deductibles. In determining whether to approve such filings, the Commissioner shall consider the insurer's demonstrated participation in the homeowners' insurance market and whether approval of the filing will contribute to improve availability and affordability of homeowners' insurance in the coastal areas.

APPENDIX A

COASTAL REGION ZIP CODES

| | | | | | |
|-------|-------|-------|-------|-------|-------|
| 07002 | 07715 | 07753 | 08204 | 08411 | 08750 |
| 07008 | 07716 | 07755 | 08212 | 08721 | 08751 |
| 07036 | 07717 | 07756 | 08223 | 08723 | 08752 |
| 07064 | 07718 | 07757 | 08226 | 08724 | 08753 |
| 07077 | 07719 | 07758 | 08230 | 08730 | 08754 |
| 07201 | 07720 | 07760 | 08243 | 08731 | 08755 |
| 07202 | 07721 | 07762 | 08247 | 08732 | 08756 |
| 07206 | 07723 | 07764 | 08248 | 08734 | 08757 |
| 07302 | 07730 | 08005 | 08260 | 08735 | 08758 |
| 07304 | 07732 | 08006 | 08400 | 08736 | 08832 |
| 07305 | 07734 | 08008 | 08401 | 08738 | 08861 |
| 07306 | 07735 | 08050 | 08402 | 08739 | 08862 |
| 07709 | 07737 | 08087 | 08403 | 08740 | 08878 |
| 07711 | 07740 | 08092 | 08404 | 08742 | 08879 |
| 07712 | 07748 | 08202 | 08405 | | |
| 07713 | 07750 | 08203 | 08406 | | |

(a)

**DIVISION OF ADMINISTRATION
Market Transition Facility of New Jersey
Payment Prioritization and Claims Payment Deferral
Adopted Amendments: N.J.A.C. 11:3-2B**

Proposed: November 21, 1994 at 26 N.J.R. 4490(a).

Adopted: December 22, 1994 by Andrew J. Karpinski,
Commissioner, Department of Insurance.

Filed: December 22, 1994 as R.1995 d.50, **without change**.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:33B-11 and P.L.
1994, c.57.

Effective Date: January 17, 1995.

Expiration Date: January 4, 1996.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the adoption follows:

**SUBCHAPTER 2B. MARKET TRANSITION FACILITY OF
NEW JERSEY PAYMENT
PRIORITIZATION AND CLAIMS
PAYMENT DEFERRAL**

11:3-2B.1 Purpose and scope

(a) This subchapter provides the general procedures to be utilized for the resumption of certain claims payments by the MTF that had been suspended pursuant to this subchapter, and the deferral of certain claims payments by the MTF pursuant to amendments certified to the MTF Plan of Operation by the Commissioner on July 26, 1994 pursuant to N.J.S.A. 17:33B-11c as amended by P.L. 1994, c.57, section 17.

(b) (No change.)

11:3-2B.2 Definitions

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

...
"Closing papers" means the original, fully-executed release(s) containing the proper deferral language set forth in this subchapter and which is signed by the claimant releasing the MTF and its insured(s) from liability for the claim, or a warrant of satisfaction of judgment and/or other closing documents.

...
"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Plan of Operation" means the Plan of Operation promulgated by the Commissioner pursuant to N.J.S.A. 17:33B-11c as amended by P.L. 1994, c.57, section 17.

...
"Residual bodily injury claim" means a liability claim for the loss of any kind whatsoever, other than present economic loss, resulting from liability imposed by law for or as a result of bodily injury or death.

11:3-2B.3 Priority of claims

(a) Subject to N.J.A.C. 11:3-2B.4 and Part IV of the MTF Plan of Operation, the MTF shall have the power to make distributions from the assets of the MTF in the following order of priority:

1. Expenses of administration;
2. Claims for taxes and debts due to Federal, State or local government;
3. Covered claims by policyholders and beneficiaries thereof arising from and within the coverage of, and not in excess of, the applicable limits of insurance policies and contracts issued by the MTF, in the following order of priority:
 - i. Present economic loss;
 - ii. Collision or comprehensive loss and third party property damage loss;

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- iii. Residual bodily injury loss; and
- iv. Other creditor claims.

11:3-2B.4 Resumption of payment of certain claims previously suspended; deferral of payment for residual bodily injury claims

(a) The servicing carriers shall resume making claim payments previously suspended pursuant to this subchapter as follows:

1. Payments for claims that are due for payment that have been suspended shall be issued for the following coverages:

- i. Personal injury protection;
- ii. Collision;
- iii. Comprehensive;
- iv. Property damage;

v. Other payments for present economic loss; and

vi. Residual bodily injury claims that were resolved and for which the releases and other necessary closing papers were received and date stamped by the servicing carrier on or before March 1, 1994.

(b) The servicing carrier shall not pay interest on the suspended claims described in (a) above, except where such payment is required by law or explicitly authorized by the Commissioner.

(c) During the period when the previously suspended claims are being paid, servicing carriers shall be permitted to make payments on newly received bills for the claims described in (a)1i through v above, provided that such payment of new claims does not delay the payment of suspended claims.

(d) Payments by the MTF of any residual bodily injury claims, including uninsured motorist claims and underinsured motorist claims, are deferred from payment for a period not to exceed 18 months, except such claims as may be granted a hardship exemption from deferral as provided in N.J.A.C. 11:3-2B.6.

(e) The deferral of claim payments set forth in (d) above applies to all such residual bodily injury claims, regardless of settlement date or jurisdiction, for which closing papers have not been physically received in the offices of the appropriate MTF servicing carrier before March 2, 1994. Receipt by defense counsel or facsimile transmissions shall not constitute receipt by the appropriate MTF servicing carrier.

(f) With regard to those residual bodily injury claims for which closing papers were received in the offices of the servicing carrier after March 2, 1994, but before August 31, 1994, the servicing carriers shall prepare an amended release including proper reference to the Deferral Program and send the amended release to the claimant or the claimant's attorney for execution. If the release is properly executed and received back in the offices of the servicing carrier within 60 days after it is mailed, then the deferral date shall relate back to the date on which the original release was received in the office of the servicing carrier. Failure by claimant or the claimant's attorney to return the amended release with proper reference to the Deferral Program so as to be received by the servicing carrier within 60 days shall be deemed an election that the claimant wishes to dissolve the original settlement and reopen the claim. The date of deferral for any reopened claim shall be the date described in N.J.A.C. 11:3-2B.5(c).

(g) Payment of a claim which has been deferred pursuant to this subchapter shall occur no later than the first day of the eighteenth month following the date of deferral.

(h) When claims deferred pursuant to this subchapter are paid by the MTF, the payment shall include simple interest calculated at a rate of six percent per annum beginning on the date of deferral. If claims deferred pursuant to this section are paid prior to the first day of the eighteenth month following physical receipt of the closing papers by the MTF's servicing carrier, then payment of interest shall be pro-rated to the day of payment.

(i) Payment of claims for current economic loss shall not be deferred.

11:3-2B.5 Administrative provisions

(a) Claims shall not be considered settled and ready for deferral until the servicing carrier physically receives the appropriate closing papers. Receipt by defense counsel or facsimile transmissions shall not be accepted for these purposes.

INSURANCE

(b) Deferral releases shall contain the following language:

Payment: In consideration for making this Release, you have agreed to pay me a settlement of \$_____, plus simple interest at a rate of 6 percent per annum for a total amount of \$_____, to be paid no later than the first day of the eighteenth month after receipt of this Release by the servicing carrier or its designee. It is further understood that, if by further Order of the Commissioner of Insurance for the State of New Jersey, the settlement amount is released earlier, the interest will be pro-rated. I further understand and agree that I will not seek anything further including any other payments from you.

1. Orders for Judgment shall include language similar to that in (b) above specifically referring to the deferral of any payment until the first day of the eighteenth month following physical receipt by the MTF's servicing carrier of the Order, the inclusion of per annum, simple interest at six percent in any final payment, and the understanding that if any payment is made early, the amount of interest will be pro-rated to the date of payment.

(c) The date of deferral shall be deemed to be the date upon which closing papers are physically received in the office of the servicing carrier, except as otherwise provided in N.J.A.C. 11:3-2B.4(f) and 2B.6. Such date shall govern the period of deferral applicable to the deferred claim.

(d) Disputes regarding the date of deferral shall be resolved in the first instance by the MTF in accordance with the following procedures:

1. A claimant who disputes the date of deferral as indicated by the servicing carrier shall notify the MTF in writing of the factual basis for the dispute and shall include therewith all supporting documentation. The servicing carrier shall also provide all relevant documentation in opposition to the date of claim settlement alleged by the claimant.

2. The MTF may adjust the ultimate pay-out date of a deferred claim upon a finding of inordinate delay by defense counsel or the servicing carrier in the handling or processing of the closing papers.

3. The MTF shall establish appropriate procedures for obtaining additional information when required during the course of review.

4. The MTF's written decision shall be mailed to the applicant by regular and certified mail, return receipt requested.

(e) Servicing carriers shall not utilize their own funds to pay claims subject to deferral unless instructed and authorized to do so by the MTF, the Commissioner or his or her designated representative. Regardless of the source of funds utilized, the MTF shall not reimburse servicing carriers for the unauthorized payment of claims subject to deferral.

(f) Servicing carriers shall continue their efforts to resolve all outstanding claims. During negotiations and/or other discussions with claimants or their attorneys, the servicing carrier and defense counsel shall advise all parties that payment will be deferred for 18 months.

(g) The Plan of Operation shall set forth uniform operating procedures necessary to implement these rules consistent with this subchapter including procedures for the implementation of hardship exemptions as provided at N.J.A.C. 11:3-2B.6.; servicing carrier procedures; and the uniform handling of deferred claim payments.

11:3-2B.6 Hardship exemption procedure

(a) Notwithstanding the provisions of N.J.A.C. 11:3-2B.4, and subject to the availability of funds, an exemption from the deferral of a claim payment shall be permitted in limited circumstances upon the filing of a written application with the MTF which:

1. Demonstrates, through a written statement and sufficient supporting documentation, the existence of an extreme immediate financial emergency; and

2. Includes a statement in which the applicant attests that the emergency cannot be resolved through use of any other reasonably available financial resources. "Reasonably available financial resources" includes, but is not limited to, resources such as reimbursement or compensation through insurance coverage, reasonable liquidation of assets to the extent that liquidation would not cause further economic hardship, or borrowing from commercial sources on reasonable commercial terms.

INSURANCE

(b) Some examples which may constitute acceptable grounds for a hardship exemption are as follows:

1. The claimant, spouse or dependant has incurred substantial medical expenses (over \$5,000) not related to the subject motor vehicle accident and not covered by insurance. Copies of all medical bills and insurance coverages must be provided.

2. The claimant, spouse or dependant cannot pay for essential food and shelter or household services. For this exemption to apply, the applicant, spouse or dependant must face imminent eviction or foreclosure from their principal residence or loss of essential household services such as utility or telephone. A copy of the imminent foreclosure eviction notice or utility shut-off notification must be provided.

3. The claimant, spouse or dependant faces immediate removal from a nursing home, hospital or other medical care institution due to the inability to pay, although continued medical care is prescribed by medical health care providers and such care is not related to the subject motor vehicle accident. Copies of bills for treatment and medical insurance coverages, along with an original written statement from the medical institution advising that removal due to the inability to pay is imminent, must be provided.

4. The applicant cannot pay funeral expenses of the claimant, spouse or dependant and the death is not related to the subject motor vehicle accident. Copies of the unpaid funeral bills must be provided.

5. Such other emergency or situation of an unusual nature which may be deemed to be appropriate based upon information provided.

(c) Applications for a hardship exemption may be obtained from the servicing carriers or by submitting a written request to the Market Transition Facility of New Jersey, 293 Eisenhower Parkway, Livingston, New Jersey 07039.

1. A hardship application shall contain the following information:

- i. The name, address, social security number, telephone number and date of birth of the claimant;
- ii. The claim number and policy number;
- iii. The caption of the case;
- iv. The name of the MTF insured;
- v. The amount deferred and date deferred;
- vi. A description of the examples which constitute a hardship as set forth at (b) above;
- vii. The documents required to be appended to the application as set forth at (c) below;
- viii. The amount of exemption being sought and the grounds for the exemption; and
- ix. An appropriate certification executed by the applicant.

2. Completed applications shall be submitted directly to the MTF at the address noted in (c) above and shall include a certified-to-be-true copy of the associated judgment or fully-executed deferral release, a copy of the written acknowledgment of receipt of the deferral release or order for judgment issued by the MTF's servicing carrier, copies of all unpaid medical bills, insurance coverages, foreclosure notices, eviction notices, funeral bills and other appropriate documentation. Original documents shall be available for review upon the request of the MTF.

(d) The amount requested and the amount released from deferral, if a hardship exemption is granted, shall not exceed the minimum amount required to meet the financial emergency, nor the net amount due the claimant.

(e) The MTF shall establish appropriate procedures for obtaining additional information when required during the course of review.

(f) The MTF's written decision shall be delivered to the applicant or his or her legal representative by certified mail, return receipt requested or by an express mail service of the MTF's choice.

(g) Where an exemption is granted, the decision shall include a hardship exemption release amendment, prepared by the MTF, to be reviewed by the applicant or his or her legal representative, executed by the applicant, and forwarded directly to the MTF's servicing carrier. Additionally, where an exemption is granted, the appropriate servicing carrier shall be notified, in writing, with instructions to make the appropriate payment directly to and in the name

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of the claimant, upon receipt of the fully-executed hardship exemption release amendment. The servicing carriers shall proceed in accordance with procedures developed by the MTF.

(h) Where an exemption is either denied or only partially granted, the MTF decision shall enclose a copy of the appropriate documents required to file an appeal.

11:3-2B.7 Appeal to the Commissioner

(a) An applicant may appeal the decision of the MTF denying a request for a hardship exemption or from the MTF's decision regarding a dispute about the date of deferral within 20 days of receipt of the MTF's written decision by submitting to the Commissioner an appeal of the MTF's decision addressed to the Residual Markets Unit, Department of Insurance, 20 West State Street, CN 325, Trenton, NJ 08625.

(b) The Notice of Appeal shall include those items presented in the initial request, a written statement explaining why the decision of the MTF denying the request was incorrect, and any additional documentation in support of the exemption request.

1. A copy of the appeal shall be simultaneously filed by the claimant with the MTF.

2. The MTF, upon receipt of notice of the appeal, shall forward the claimant's file to the Commissioner for his or her review.

(c) The Commissioner's final decision shall be provided to the MTF and shall be mailed to the applicant or his or her legal representative by certified mail, return receipt requested and by regular mail.

11:3-2B.8 Confidentiality of documents

The information provided by a claimant pursuant to N.J.A.C. 11:3-2B.6 or 2B.7 as part of an application for a hardship exemption or appeal from a decision of the MTF shall be confidential and not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq.

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Salesperson's License; Age Limit

Qualifications for Corporate Licensing, Limited Partnership and General Partnership Licensing Examination Rules

Branch Office Compliance with N.J.A.C. 11:5-1.18, (Maintained Offices)

Criminal History Record Check

Adopted Amendments: N.J.A.C. 11:5-1.2, 1.4, 1.5, 1.19 and 1.29

Proposed: August 1, 1994 at 26 N.J.R. 3111(a).

Adopted: December 6, 1994 by the New Jersey Real Estate Commission, Anita B. Kartalopoulos, Executive Director.

Filed: December 12, 1994 as R.1995 d.23, **without change**.

Authority: N.J.S.A. 45:15-6.

Effective Date: January 17, 1995.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

11:5-1.2 Salesperson's license; age requirement

(a) (No change.)

(b) Every applicant for licensure as a salesperson shall present with his/her application for licensure a certificate of satisfactory completion of a course of education in real estate subjects at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.1(a) and 10.4 and N.J.A.C. 11:5-1.28, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:25-10.2.

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(c) An applicant must apply for and request the issuance of a salesperson's license not later than one year after the date of successful completion of the course prescribed at N.J.A.C. 11:5-1.27. Any person who fails to apply for the issuance of salesperson's license within the one year period shall be required to retake and successfully complete the prescribed course in real estate and the examination.

(d) (No change.)

(e) Every applicant shall present with his/her application for examination evidence of satisfactory completion of a course of education in real estate subjects prescribed under N.J.S.A. 45:15-10.1(a) and Sections 27 and 28 of this subchapter, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2. Holders of a current school certificate which bears an issue date within one year as defined by (c) above, will be permitted to take the salesperson's examination and secure a license, provided said certificate is in compliance with (c) above.

(f) (No change.)

11:5-1.4 Qualifications for corporate, limited partnership and general partnership licensing

(a) In interpreting N.J.S.A. 45:15-9, the following shall apply:

1. The Commission will hold responsible the individual broker or brokers licensed to transact business in the name and on behalf of a corporate or partnership broker licensee in accordance with the provisions of N.J.S.A. 45:15-9 for any actions of the corporate or partnership licensee or its agents in the pursuit of its real estate brokerage business, which violate any of the provisions of the real estate statutes or the regulations promulgated thereunder.

2. Every real estate transaction in which a corporate or partnership licensee participates as a broker shall be under the supervision of a broker or brokers licensed to transact business in the name and on behalf of the corporation or partnership.

3. The broker licensed to transact business in the name and on behalf of the corporate or partnership licensee, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the licensee, shall make certain that no such funds of others are disbursed or utilized without his or her express authorization and knowledge.

4. The provisions of this subsection do not apply to persons licensed as broker-salespersons.

11:5-1.5 Examination rules

(a) In the administration of examinations for licensure as a real estate broker, broker-salesperson or salesperson, the following examination rules shall apply:

1. Examinees shall not be permitted to refer to any notes, books, or memoranda.

2. The copying of questions or making of notes for personal use is strictly prohibited.

3. No examinee shall leave the examining room except at the discretion of the examiner.

4. The real estate broker license and salesperson license examinations, required by N.J.S.A. 45:15-10 to be taken and successfully passed by all applicants for a real estate broker, broker-salesperson or salesperson license before said license may be issued, shall be in the form of a multiple choice examination prepared by a testing service as designated by the Commission. Fees charged applicants to take the real estate examinations shall be considered service fees to be paid directly to the testing service separate and apart from any fee required by N.J.S.A. 45:15-9 to be paid to the Commission at the time of the license application.

(b) A request for an oral examination may be made if the applicant is blind, physically handicapped making it difficult to respond to the examination questions or if there is an extreme language barrier. The request may be granted at the discretion of the Real Estate Commission.

11:5-1.19 Branch office compliance with N.J.A.C. 11:5-1.18 (Maintained offices)

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

INSURANCE

(f) When a branch office license is issued to a broker it shall specifically set forth the name of the broker and the address of the branch office, and shall be conspicuously displayed at all times in the branch office. The branch office shall also prominently display the name of the broker-salesperson licensee in charge as "office supervisor" and the names of all other broker-salespersons and the salespersons doing business at that branch office.

(g) (No change.)

11:5-1.29 Criminal history record check

(a) (No change.)

(b) The applicant, if a corporation or partnership, shall submit with its application for license New Jersey State Police Requests for Criminal History Record Information, and certified checks or money orders to pay for their processing, for each officer, director, partner, or owner of a controlling interest.

(c) The Commission may require an individual licensee or any officer, director, partner or owner of a controlling interest of a licensed corporation or partnership to complete and submit to the Commission a New Jersey State Police fingerprint card, and submit a certified check or money order in payment of the processing fee for the card.

(a)

DIVISION OF ADMINISTRATION New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge

Readoption: N.J.A.C. 11:18

Proposed: June 6, 1994 at 26 N.J.R. 2195(a).

Adopted: December 13, 1994 by Andrew J. Karpinski,
Commissioner, Department of Insurance.

Filed: December 14, 1994 as R.1995 d.26, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6 and 17:30D-1 et seq.

Effective Date: December 13, 1994.

Expiration Date: December 13, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 11:18.

(b)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Definitions

Conversion Health Benefits Plan; Individual Health Benefits Plan

Adopted Amendment: N.J.A.C. 11:20-1.2

Proposed: November 17, 1994 at 26 N.J.R. 41(b), in accordance
with N.J.S.A. 17B:27A-16.1.

Adopted: December 13, 1994 by the New Jersey Individual
Health Coverage Program Board of Directors, Kevin O'Leary,
Executive Director.

Filed: December 20, 1994 as R.1995 d.37, **with substantive
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: December 20, 1994.

Expiration Date: August 13, 1998.

These amendments are being adopted pursuant to the procedures of N.J.S.A. 17B:27A-16.1 as therein authorized. Accordingly, notice of the proposal of this amendment was published in three newspapers of

general circulation in New Jersey, and simultaneously mailed to all known interested parties when submitted to the Office of Administrative Law ("OAL") for publication in the New Jersey Register.

Pursuant to N.J.S.A. 17B:27A-16.1(d), all interested persons were provided at least 20 days comment period, which comment period ended December 10, 1994. Pursuant to N.J.S.A. 17B:27A-16.1(e), the Board has adopted these rules immediately upon the expiration of the public comment period by filing notice of the adoption with the OAL for publication in the New Jersey Register. Because of the expedited nature of this special rulemaking process, notice of the adoption appears in the New Jersey Register after the Board has adopted the amendment and it has become effective.

Comments on the proposed amendments were received from the following parties:

1. Home Life Financial Assurance Corporation
2. LeBoeuf, Lamb, Greene & MacRae

Summary of Public Comments and Agency Responses:

COMMENT: One commenter suggested that the amendment to the definition of "individual health benefits plan" could be misleading because, in certain circumstances, a certificate issued to a "part-time employee" may legitimately be offered under the rules of the Small Employer Health Benefits ("SEH") Program, N.J.A.C. 11:21-7.3, as group coverage.

RESPONSE: The Board intended to clarify the definition of individual health benefits plan, not to cause confusion with respect to persons legitimately covered by a small employer health benefits plan in conformance with the SEH Program rules, N.J.A.C. 11:21. The amendment only describes coverage issued to a part-time employee on an individual basis, meaning when the part-time employee is covered by a certificate issued through a trust or association policy "if the employer does not contribute to, and remit payment for, the coverage of" the employee. The commenter is correct that, under certain circumstances, a part-time employee working on a part-time basis for a small employer may be covered by a small employer health benefits plan. In order to ensure there is no confusion, the Board has inserted on adoption the phrase "except as may be provided under N.J.A.C. 11:21-7.3," a reference to the SEH Program rule that describes the circumstances in which a part-time employee may receive small group coverage.

COMMENT: The commenter recommended that, where the phrase "except as provided under N.J.S.A. 17B:27A-17 et seq." appeared in the proposed amendment the definition of individual health benefits plan, that the specific examples of legitimate coverage of one person by a small employer group health benefits plan under the SEH Program rules be set forth: where one employee of a small employer lives outside the service area of the HMO covering the small employer; where a small employer offers both an indemnity and HMO plan to its employees; and where the number of employees required to meet the SEH Program's minimum participation requirements, except one, are covered under their spouses' health benefits plans.

RESPONSE: The Board agrees that the commenter cites appropriate examples of the circumstances in which a small employer health benefits plan, issued in accordance with the SEH rules, may be issued covering one person who is an eligible employee of a small employer. In the situations cited above, the correct number of eligible employees exists (two to 49) and the group has met the SEH Program's requirement of a minimum participation of 75 percent of eligible employees, by virtue of counting toward participation those eligible employees covered by a spouse's health plan or by an indemnity or HMO plan offered by the same small employer. However, the Board believes that it would be sufficient to provide a citation to the specific provisions of the SEH law and rules that permit the issuance of a small employer health benefits plan covering just one eligible employee of a small employer. In the event the SEH Program law or rules change, the Board does not wish to cause confusion by defining group coverage in its definition of "individual health benefits plan." Further, the Board wants to ensure that any group health benefits plan covering just one eligible employee of a small employer is issued only after careful evaluation of the SEH Program rules, rather than on the basis of a reference to the IHC Program rules. In general, one person may not be covered by a group health benefits plan. The exceptions to the general rule are embodied in the SEH Program rules and must be carefully understood and adhered to by a carrier that is a member of the SEH Program before such coverage may be issued. Therefore, the Board has, on adoption, added a more specific reference to the provisions of the SEH law and Program rules

that allow the issuance of a small employer health benefits plan covering just one eligible employee of a small employer, that is, N.J.S.A. 17B:27A-17 et seq. and N.J.A.C. 11:21-7.6.

COMMENT: One commenter objected to the inclusion, in the definition of individual health benefits plan, of the language that refers to certificates issued to employees "if the employer does not contribute to, and remit payment for, the coverage of such employees" to the extent that the definition might affect hospital confinement and supplemental limited benefit policies issued on an indemnity, non-expense incurred basis. The commenter asserted that such policies, under P.L. 1994, c.11, amending the SEH law, were subject to the exclusive authority of the Department of Insurance. The commenter asked that the rule be amended, or the Board clarify through its response to the comment, that hospital confinement and supplemental limited benefit policies issued on an indemnity, non-expense incurred basis were not covered by the amended definition of individual health benefits plan.

RESPONSE: The Board agrees that P.L. 1994, c.11, amending the SEH Act, addressed hospital confinement and supplemental limited benefit policies issued on an indemnity, non-expense incurred basis, whether issued to a small employer or other group health benefits plan provider, or to individual employees of a small employer or other group health benefits provider. Further, the IHC Board did not intend, in its amendment to the term "individual health benefits plan," to change the treatment of such plans under the IHC Program or the extent to which such plans are covered by the definition of "health benefits plan," which was not amended herein. The Board does not believe the amendment substantively changed the treatment of such plans, therefore, a change to the rule is not necessary.

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

11:20-1.2 Definitions

Words and terms contained in the Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise, or as such words and terms are further defined by this chapter.

... "Conversion health benefits plan" means a group conversion contract or policy issued on or after August 1, 1993 that is not subsidized by either:

1. A single charge or ongoing increase in premium rates chargeable to the group policy or contract, identifiable as an excess morbidity charge in the group rating formula to cover group conversion excess morbidity costs; or
2. A reduction in dividends or returns paid to a group policy or contract holder, identifiable as a charge to or reduction in the group dividend or return formula to cover group conversion excess morbidity costs.

... "Individual health benefits plan" means: (a) a health benefits plan for eligible persons and their dependents; and (b) a certificate issued to an eligible person which evidences coverage under a policy or contract issued to a trust or association, regardless of the situs of delivery of the policy or contract, if the eligible person pays the premium and is not being covered under the policy or contract pursuant to continuation of benefits provisions applicable under Federal or State law. The term "individual health benefits plan" shall include a policy, contract, or certificate evidencing coverage by a policy or contract issued to a trust or association, issued to an eligible person described in, but not limited to, the following examples: a student; an unemployed individual or part-time employee*, **except as may be provided pursuant to N.J.S.A. 17B:27A-17 et seq. and N.J.A.C. 11:21-7.3***; a self-employed person; an employer, when he or she (and dependents) is the only person seeking coverage*, **except as may be provided pursuant to N.J.S.A. 17B:27A-17 et seq. and N.J.A.C. 11:21-7.6***; any person who is the sole employee seeking coverage by a health benefits plan, except as *may be* provided *[under]* *pursuant to* N.J.S.A. 17B:27A-17 et seq. *and N.J.A.C. 11:21-7.6******; a husband and wife who have their own business, if one spouse is seeking coverage as a dependent of the other rather than as a separate employee; and an employee who is one of several employees of the same employer who are covered by certificates,

contracts or policies issued by the same carrier, trust or association, if the employer does not contribute to, and remit payment for, the coverage of such employees.

The term "individual health benefits plan" shall not include a certificate issued under a policy or contract issued to a trust, or to the trustees of a fund, which trust or fund is established or adopted by two or more employers, by one or more labor unions or similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, to insure employees of the employers or members of the unions or organizations *as long as* ***provided*** such arrangement qualifies as an employee welfare benefit plan that is exempt from state insurance regulation pursuant to the Employee Retirement Income Security Act, 29 U.S.C. 1001 et seq.

LABOR

(a)

STATE DISLOCATED WORKERS UNIT

Worker Adjustment and Retraining Notification Procedures

Readoption with Amendments: N.J.A.C. 12:40

Proposed: November 7, 1994 at 26 N.J.R. 4311(b).

Adopted: December 22, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: December 22, 1994 as R.1995 d.42, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), P.L. 100-379 and 20 C.F.R. Section 639.6(c).

Effective Date: December 22, 1994, Readoption; January 17, 1995, Amendments.

Expiration Date: December 22, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed readoption with amendments was held on November 28, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, Regulatory Officer, was available to preside at the hearing and receive testimony. However, no one appeared to give testimony on the proposed readoption with amendments. As a result, the hearing officer recommended that the readoption with amendments be adopted as proposed. The public hearing record may be reviewed by contacting Deirdre L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, New Jersey 08625-0110.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption with amendments follows:

**CHAPTER 40
WARN NOTIFICATION PROCEDURES**

SUBCHAPTER 1. PROCEDURES FOR SERVING NOTICE TO THE STATE DISLOCATED WORKER UNIT

12:40-1.1 Purpose and scope

(a) The purpose of this subchapter is to provide procedures for New Jersey employers to follow when submitting a notice of a plant closing or mass layoff to the State Dislocated Worker Unit.

(b) The requirements of this subchapter apply to all employers of 100 or more workers within the State of New Jersey.

12:40-1.2 Adoption by reference

The procedures contained in 20 C.F.R. Part 639, Worker Adjustment and Retraining Notification, are adopted and incorporated herein by reference as requirements for the notification of a plant closing or mass layoff to affected employees, their representatives,

local government officials and the State Dislocated Worker Unit. All notices to the State Dislocated Worker Unit shall be addressed to:

Coordinator, Department of Labor Response Team
State Dislocated Worker Unit
Labor Building, Seventh Floor
CN 058
Trenton, New Jersey 08625
Fax (609) 777-3202

(b)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Respiratory Protection Devices

Adopted Amendment: N.J.A.C. 12:100-10.10

Proposed: November 7, 1994 at 26 N.J.R. 4313(a).

Adopted: December 22, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: December 22, 1994 as R.1995 d.43, **without change**.

Authority: N.J.S.A. 34:20-1, 34:1A-3(c); and 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Effective Date: January 17, 1995.

Expiration Date: August 26, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed amendment was held on November 30, 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 amendment be adopted as proposed.

Persons wishing to review the transcript of the hearing may contact Deirdre L. Webster, Regulatory Officer, Office of Regulatory Services, Department of Labor, CN 110, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

Oral and/or written comments were received from the following individual: Mary Rudakewych, Program Manager, Office of Occupational Health and Safety, Department of Environmental Protection.

COMMENT: N.J.A.C. 12:100-10.4 is not an adequate substitute for Section 3.3 of the American National Standards Institute (ANSI) standard. Physical capabilities should not be equated with medical fitness. An employee could be deemed physically capable by his employer to perform the duties of fire fighting and yet be medically unqualified to wear respiratory protection. The wearing of a respirator exerts considerable additional stress on the pulmonary and cardiovascular systems of wearers, and cardio-pulmonary fitness cannot be evaluated by non-medical personnel conducting physical capability assessments. Furthermore, Section 3.3 of the ANSI standard insures that respiratory protection programs for firefighters are as equally protective as other respiratory protection regulations under the Occupational Safety and Health Act such as 29 C.F.R. Sections 1910:134 and 1910:120, both of which require medical evaluations for the respirator wearer. Deleting Section 3.3 would mean that firefighters would be provided less protection than other workers under the proposed amendment of N.J.A.C. 12:100-10.10(e).

RESPONSE: There is inconclusive information to justify the requirement of a medical fitness determination for wearing a self contained breathing apparatus (SCBA). Several studies have been performed to examine the effects of utilizing SCBA. These independent studies conducted by the Los Alamos National Scientific Laboratory and the United States Air Force School of Aerospace Medicine have been accepted by the International Association of Fire Fighters, AFL-CIO-CLC and noted in its publication "Life Support: A Fire Fighters Guide to Self-Contained Breathing Apparatus." Based on the findings of these studies, including the finding that heart rate and oxygen consumption does not appear to be affected by breathing with a SCBA, the Department believes that determination should be based on an evaluation of whether the firefighter is physically able to carry the apparatus during firefighting

duties. As a result, at N.J.A.C. 12:100-10.4, the Department has continued to require the employer to ensure that employees are physically capable of performing their duties. This determination may, at the employer's discretion, be based on a medical evaluation. As long as there is a determination that the firefighter is physically able to carry a SCBA during firefighter duties, there is no compromise to his or her health and safety.

Full text of the adoption follows:

12:100-10.10 Respiratory protection devices

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

(e) The employer shall establish and maintain a respiratory protection program which includes;

1.-2. (No change.)

3. The requirements of ANSI Z88.5-1981, Practice for Respiratory Protection for the Fire Service, are incorporated and adopted herein by reference as if fully set forth, except for Section 3.3, Medical Limitations, which is a subject of Department of Labor regulation N.J.A.C. 12:100-10.4.

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

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS LEGALIZED GAMES OF CHANCE CONTROL COMMISSION

Rules of Legalized Games of Chance

Adopted Amendments: N.J.A.C. 13:47-1 through 4, 6 through 9, and 13 through 16

Proposed: November 7, 1994 at 26 N.J.R. 4326(a).

Adopted: December 19, 1994 by the Legalized Games of Chance Control Commission, Russell Lupo, Chairman.

Filed: December 22, 1994 as R.1995 d.41, **without change**.

Authority: N.J.S.A. 5:8-6.

Effective Date: January 17, 1995.

Expiration Date: January 27, 1997.

Summary of Public Comments and Agency Responses:

A notice of proposal appeared in the New Jersey Register on November 7, 1994 at 26 N.J.R. 4326(a), and copies of the published proposal were forwarded to the Star Ledger, the Trenton Times and other interested parties.

During the official 30 day comment period, which ended December 7, 1994, the Commission received five written comments. The Commission addressed each of the written comments at its regularly scheduled meeting on December 14, 1994. A full record of the opportunity to be heard may be inspected by contacting the Legalized Games of Chance Control Commission at Post Office Box 46000, Newark, New Jersey 07010.

Summary of Public Comments and Agency Responses:

COMMENT: Mt. Ephraim Police Reserves, Inc., submitted its suggestion for modifying the procedure for the jackpot game by withholding a portion of the current prize and carrying it forward rather than selling "specials," the receipts from which would determine the prizes to be awarded.

RESPONSE: The amendments to the Bingo Licensing Law, N.J.S.A. 5:8-24 et seq., require that the jackpot bingo game and the 50/50 bingo game award as prizes a percentage of the gross receipts from the sale of cards to play the game. As such, the Commission is without statutory authority to authorize a bingo game as suggested by the commenter.

COMMENT: Sondra A. Connor, Executive Director of the Foundation for Servicing Children and Young Adults with Learning Disabilities of N.J., Inc., asks that the charge to play the progressive jackpot game be set at \$.50 per card. She states that the increase is necessary to attempt to compete with bingo games in other jurisdictions and will enhance fundraising capabilities.

RESPONSE: The Commission understands the needs of organizations to raise funds through games of chance and is promulgating regulations

to enhance those fundraising abilities. Games of chance in New Jersey are operated completely by volunteers with net proceeds used for enumerated, authorized purposes. The large jackpot games referred to by the commenter are games operated outside the State of New Jersey for commercial purposes. The Commission has determined that the fee of \$.25 per card is appropriate at this time because it will allow for significant increases in money raised through bingo yet continue to ensure that the games are not commercialized. The Commission will monitor the progressive jackpot bingo game and, based on the effectiveness of the new games, will address any need for an increase in the price to play in the future.

COMMENT: Patricia S. Salvatore, President of the Little Rocky Hill Volunteer Fire Company, Ladies Auxiliary, states the new registration fees and additional raffle fees and the requirement to maintain a separate bank account for games of chance proceeds will impact negatively on the group's fundraising efforts.

Florence Van Pelt, Secretary of the Franklin Women's Club, similarly states that the increased fees for licensure and the registration cost will have a negative impact on small groups.

RESPONSE: P.L. 1994, c.63 requires that the Legalized Games of Chance Control Commission be operated by revenues generated through registration fees and licensing fees. The Commission has established its fee schedule at the lowest rate possible while still maintaining an operations budget that will enable it to fulfill its statutory obligation to ensure games are conducted for an authorized, and not a commercial, purpose and in a uniform fashion throughout the State. The Commission expects that registered organizations will find any increased costs associated with licensing and registration will be offset by their expanded fundraising ability.

COMMENT: Dolores Colucci, Executive Director of "Today's Children Tomorrow's Leaders," thanked the Commission for providing improved fund raising capabilities.

RESPONSE: The Commission thanks Ms. Colucci for her comments.

Full text of the adoption follows:

13:47-1.1 Words and phrases defined

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

...

"Bingo occasion" means a single gathering or session at which a series of successive bingo games is played not to exceed 35 in number.

"Consolation prize" means 25 percent of the gross receipts derived from the sale of cards to participate in a Progressive Jackpot Bingo Game on each occasion.

...

"50/50 bingo game" means a bingo game played on non-reusable cards that are permanently marked wherein the prizes awarded are 50 percent of the gross receipts derived from the sale of cards for participation in the game.

"50/50 bingo game prize" means 50 percent of the gross receipts from the sale of all cards to participate in the game.

"Progressive jackpot bingo game" means a bingo game played on a non-reusable card which is indelibly marked, wherein the prize(s) is determined by a percentage of the gross receipts derived from the sale of cards to participate in the game. The jackpot prize winner is the player(s) who completes a full card pattern within a pre-designated number of numbers called. The jackpot game shall on all occasions be played to a conclusion and award a consolation prize to the player(s) who completes the full card pattern notwithstanding the number of calls in excess of the pre-designated number of calls permitted to win the jackpot prize.

"Progressive jackpot prize" means 50 percent of the gross receipts derived from the sale of cards to participate in a progressive jackpot bingo game on the occasion it is won and all previous occasions in the particular progression.

...

"Raffle" means a specific kind of game of chance played by drawing for prizes or the allotment of prizes by chance, by the selling of shares or tickets or rights to participate in such game. Nothing

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contained in this chapter shall be deemed to authorize as a raffle the playing for money or other valuable thing at any game not specifically authorized by the Control Commission.

...
"Raffle occasion" means the day upon which the drawing or allotment of prize(s) takes place.

...
"Successive occasion" means the next occasion in the sequence of occasions for which the license is issued.

13:47-2.1 General provisions

(a) Every organization desiring to apply for a license to conduct bingo or raffles or to allow its members to assist a licensed affiliated organization, as described in N.J.A.C. 13:47-6.4 shall, before making any such application or allowing any assistance, register with the Control Commission and secure an identification number.

(b) An identification number issued by the Control Commission shall be valid for a period of two years or until modified, suspended or revoked by the Control Commission.

13:47-2.3 Application for registration: renewal; fees

(a) Each applicant for registration shall remit by check payable to the Legalized Games of Chance Control Commission, a non-refundable fee of \$50.00 together with proof of eligibility as set forth in (b) below.

(b) Each organization requesting registration shall submit a written request signed by an elected officer of the organization together with sufficient proof of the organization's eligibility for registration. Such proofs shall include at least;

1. The by-laws and constitution or any other written authority under which the applicant organization operates;

2. A detailed financial summary, showing all sources and amounts of income and expenditures, including the amounts, recipients and the purpose for which the expended funds were used, for a period of not less than one year prior to the date of application;

3. A complete list of the organization's members, including the name, address and age of each member; and

4. If incorporated, a copy of the applicant organization's articles of incorporation which have been filed with the Secretary of State of New Jersey.

(c) (No change in text.)

(d) Each registered organization requesting renewal of its registration with the Control Commission shall apply for renewal on the form provided by the Commission. The renewal form shall report any changes in the information previously supplied or shall confirm that the information previously supplied to the Commission has not changed.

(e) Each registered organization requesting renewal of its registration with the Control Commission shall remit by check payable to the Legalized Games of Chance Control Commission, a non-refundable fee of \$50.00 together with any additional information requested by the Control Commission.

13:47-2.8 Duplicate registration certificate

(a) Upon loss of its original registration certificate a registered organization shall obtain a duplicate registration certificate by filing a written request with the Control Commission which is signed by an elected officer of the registered organization. The request shall state the following:

1. The reason the request is being made;

2. The approximate date upon which the original certificate was lost;

3. The name and address of last person known to have possession of the original certificate;

4. The name and address of the person to whom the duplicate registration form is to be sent; and

5. The name, address, signature of and office held by the officer making the request on behalf of the organization.

(b) The signature and statement of the elected officer making the request must be notarized.

(c) The request must be forwarded to the Control Commission together with a non-refundable fee of \$50.00, by check payable to

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the Legalized Games of Chance Control Commission, together with any additional information requested by the Control Commission.

13:47-2.9 License to conduct games of chance

(a) No registered organization shall conduct bingo, any type of raffle, or other forms of games of chance, except a special door prize raffle, without having first obtained a license to conduct the same from the municipality in which the game or games are to be held, operated or conducted.

(b) No registered organization shall conduct any unauthorized bingo, raffle or other game of chance.

13:47-2.10 Suspension; revocation; penalties; other sanctions

(a) Any registered organization that violates any provision of the Legalized Games of Chance Commission Law, N.J.S.A. 5:8-1 et seq., the Bingo Licensing Law, N.J.S.A. 5:8-24 et seq., the Raffles Licensing Law, N.J.S.A. 5:8-50 et seq., or the rules and regulations promulgated by the Control Commission shall be subject to suspension or revocation of the identification number or other sanction in the same manner as established under N.J.A.C. 13:47-10.

(b) Only the Control Commission shall conduct proceedings to suspend or to revoke an organization's identification number.

(c) Any person violating any provision of any law or regulation administered by the Control Commission shall in addition to any other sanctions provided in section 7 of P.L. 1954, c.6 (N.J.S.A. 5:8-30) or section 8 of P.L. 1954 c.5 (N.J.S.A. 5:8-57) be liable to a civil penalty of not more than \$7,500 for the first offense and not more than \$15,000 for the second and each subsequent offense.

13:47-3.4 Exhibits required for filing application for municipal license

No application shall be accepted unless the applicant at the time of filing the application exhibits a valid registration certificate issued to it by the Control Commission bearing its identification number which shall be entered on the application.

13:47-3.6 Separate application and license

(a) An application and license to conduct Bingo may include up to 72 occasions, provided the application does not include:

1. More than six occasions in any one calendar month;
2. Dates of occasions for a period of more than one year; or
3. A date of an occasion beyond the date upon which the applicant's registration with the Control Commission expires.

(b) A separate application and license shall be used for each of the following types of raffles and shall, in each instance, specify the particular type of raffle as follows:

1. On-premise draw raffle offering merchandise as a prize;
2. On-premise 50-50 raffle offering a cash or money prize;
3. Off-premise draw raffle offering a merchandise prize;
4. Non-draw raffles (carnival games and wheels); and
5. Off-premise 50-50 raffle offering a cash or money prize.

(c) In the case of a special door prize raffle, see N.J.A.C. 13:47-3.11, Notice to clerk, and N.J.A.C. 13:47-8.15, Special door-prize raffle.

(d) No application for a license to conduct any type of game of chance shall be accepted if the application includes:

1. Dates that exceed a period of one year;
2. Dates in a specific time period in excess of the maximum allowable frequency with which that type of game of chance may be held, operated or conducted as set forth in N.J.A.C. 13:47-6.11;
3. A date beyond the date upon which the applicant's registration with the Control Commission expires; or
4. A date in a period during which the applicant organization's registration has been suspended by the Control Commission.

(e) No application shall be accepted if the applicant organization's registration has been revoked by the Control Commission.

13:47-4.3 Duties of municipal clerk; computation of fees; notice of denial; license issuance

(a) Upon receiving the finding and determination of the governing body the municipal clerk shall, if the license is granted, compute the fee payable by law, collect any fee due the municipality or the State from the applicant organization and forward any fee due the State together with the application to the Control Commission.

(b) At least 14 days shall have elapsed between the time the municipality forwards the application and licensing fee to the Control Commission and the license is issued by the municipality.

(c) If the license is denied, the municipal clerk shall forward a copy of the application marked denied, together with a copy of the findings and determinations of the governing body to the Control Commission and notify the applicant by regular mail. The notification of the Control Commission and the applicant shall be made within three days of the governing body's decision to deny the license.

13:47-4.4 Form of license issuance

(a) (No change.)

(b) In the case of Raffles licenses, the license must show the specific type and number of raffle games or allotment of prizes by chance to be conducted under the license.

13:47-4.7 Duration of license

No licenses for the holding, operating and conducting of any game of chance shall be effective for a period of more than one year or for a date beyond the date upon which the organization's registration with the Control Commission expires.

13:47-4.9 Licensing fees payable to the Control Commission

(a) All licensing fees are to be paid by check made payable to the Legalized Games of Chance Control Commission at the time the application is filed with the municipality, except as set forth in (b)5 below.

(b) The licensing fees payable by law to the Control Commission which are set forth in this chapter are non-refundable.

(c) The licensing fees payable the Control Commission are:

1. Bingo: \$10.00 for each occasion on which any game or games of bingo are to be conducted under the license;

2. On-premise draw raffle for cash (50/50) or merchandise prizes: \$10.00 for each day on which a drawing is to be conducted under the license;

3. Off-premise draw raffle awarding merchandise as a prize: \$10.00 for each \$1,000 or part thereof of the retail value of the awarded prize(s) to be awarded;

4. Carnival games or wheels: \$10.00 for each game or wheel held on any one day, or any series of consecutive days not exceeding six in any one week at one location;

5. Off-premise cash (50-50) raffle: A \$10.00 fee shall be paid at the time the application is filed. In the event the awarded prize exceeds \$1,000 then an additional fee of \$10.00 for each \$1,000 or part thereof in value of the awarded prize shall be forwarded to the Control Commission by check made payable to the Legalized Games of Chance Control Commission together with the Report of Operations as required by N.J.A.C. 13:47-9;

6. (No change.)

13:47-4.10 Licensing fees payable to the licensing municipality

(a) Where no specific ordinance setting fees due the licensing municipality exists, the licensing municipality shall charge a fee in an amount equal to the amount charged by the Control Commission.

(b) Each licensing municipality may set by ordinance a licensing fee in an amount necessary to defray all proper expenses incurred by the municipality in the administration of the Bingo Licensing Law, the Raffles Licensing Law and the regulations governing the conduct of any game or games held, operated or conducted under any license issued by it. No municipal licensing fee shall be set at an amount in excess of the amount charged by the Control Commission.

(c) A municipality may by ordinance exempt all qualified organizations from the payment of any municipal licensing fee.

(d) No municipal ordinance shall exempt any organization from payment of any fee due the Control Commission.

(e) Each licensing municipality shall forward a copy of any such ordinance to the Control Commission immediately upon adoption.

13:47-6.1 Member in charge of conduct of games

(a) (No change.)

(b) The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report of operations thereof.

(c) (No change.)

13:47-6.2 Member in charge of proceeds; separate bank account

(a) The officers of a licensee shall designate an officer or member to be in full charge of, and responsible for, the proper utilization of the entire net proceeds of the games of chance in accordance with the law and the rules and regulations of this Chapter.

(b) Each registered organization shall establish, keep and maintain a bank account in a State or Federal chartered banking institution in which only the proceeds derived from the conduct of games of chance shall be deposited and from which only payments for authorized expenses and utilization of net proceeds for authorized purposes shall be made.

13:47-6.4 Conduct by active members exclusively

(a) No person shall assist in the holding, operating or conducting of a game of chance except active members of the licensee, active members of its parent organization, active members of an auxiliary organization, active members of an organization of which the licensee is an auxiliary or active members of an organization having a common parent organization, provided that the assisting organization is registered with the Control Commission.

(b) Before members of an affiliated organization assist the licensee in the conduct of a game of chance, the affiliated organization shall register with the Control Commission and secure an identification number.

(c) Bookkeepers and accountants who assist by rendering their professional services need not be within the categories stated in (a) above, provided the professional services of bookkeepers and accountants are limited to making bookkeeping entries for the operation of games of chance on any one day, preparing reports of operations required by this chapter for any game of chance, opening books for a games of chance account, or supervising bookkeeping and accounting systems for the operation of games of chance.

(d) No bookkeeper or accountant shall receive or handle any of the proceeds of a game of chance during the conduct of the game of chance or be present in the money room or other place on the licensed premises where the proceeds of the game of chance are received by the member of the licensee designated to be in charge of and primarily responsible for the proceeds.

(e) No bookkeeper or accountant shall assist in the holding, operating or conducting of a game of chance except as specified in (c) above.

(f) No person who has participated as a player in any game of chance held, operated or conducted concurrently with the holding, operating or conducting of bingo, including, but not limited to, participating in the playing of bingo shall hold, operate or conduct or assist in the holding, operating or conducting of any game of chance conducted on that occasion.

(g) No person who has held, operated or conducted or assisted in the holding, operating or conducting of any game of chance held, operated or conducted concurrently with the holding, operating or conducting of bingo shall participate as a player in any game of chance held, operated or conducted on that occasion including, but not limited to, the playing of bingo.

13:47-6.6 Display of license; other notice

(a) Each license issued for the conduct of a game of chance shall be conspicuously displayed at the place where the game of chance is being conducted at all times during the conduct of the game.

(b) Whenever an organization shall conduct a game of chance it shall display, adjacent to the wheel or the place of the allotment of prize(s) by chance, a sign as follows: "Is gambling a problem for you or someone in your family? Dial 1-800-GAMBLER." The sign shall be provided by the Control Commission.

13:47-6.10 Player age limitation

(a) No person under the age of 18 years shall be permitted to participate as a player in any game of bingo.

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(b) No person under the age of 18 years shall participate in any manner in any draw raffle.

(c) No person under the age of 18 years shall hold, operate or conduct or assist in the holding, operating or conducting of any game of chance held, operated or conducted under any license issued pursuant to the Bingo Licensing Law, N.J.S.A. 5:8-24 et seq. or the Raffles Licensing Law, N.J.S.A. 5:8-50 et seq., and the rule set forth in this chapter.

(d) Whenever an organization shall conduct a draw raffle, it shall cause a sign to be displayed adjacent to the the place of the allotment of prize(s) by chance as follows: "Persons under the age of 18 years are not permitted to participate in this game of chance (N.J.S.A. 5:8-59)." Said sign shall not be smaller than 144 square inches and shall be posted in such a location as to be in the view of all persons who shall desire to participate.

13:47-6.12 Expenses

(a) No item of expense shall be incurred or paid in connection with the holding, operating, or conducting of a game of chance, except such expenses as are bona fide items of reasonable amount for goods, wares and merchandise furnished or services rendered, which are reasonably necessary to be purchased or furnished for the holding, operating or conducting of the game of chance.

(b) No item of expense shall be incurred or paid for any goods, wares, merchandise, service, equipment or premises provided for use in or in connection with the holding, operating, or conducting of any game of chance that is not provided by a person approved by the Control Commission.

(c) No expense other than cash prizes, incurred in the holding, operating or conducting of any game of chance shall be paid from any source other than the account required by N.J.A.C. 13:47-6.2.

13:47-7.1 (Reserved)

13:47-7.2 Amount of prize limitation

(a) No prize may be offered or awarded in excess of the sum or value of \$250.00 for a single game, nor may the aggregate of all prizes offered and awarded in all games held on one occasion exceed \$1,000, except as provided in (b) below.

(b) No prize awarded in a progressive jackpot bingo game or a 50/50 bingo game shall be subject to the limitations set forth in (a) above.

(c) No prize shall be offered or awarded in any bingo game in any manner that is not specifically authorized by this subchapter.

13:47-7.4 Equipment, premises: limitation

(a) No licensee shall use any equipment or premises for the holding, operating or conducting of bingo unless:

1. The equipment or premises is wholly owned by the licensee;

2. The equipment or premises is provided by a person, and at a rate approved by the Control Commission; or

3. The equipment or premises is loaned free of charge to the licensee by another qualified organization that is registered with the Control Commission.

(b) Any premises used for the holding, operating or conducting of bingo shall be used in accordance with the provisions of N.J.A.C. 13:47-14.

13:47-7.5 Charge for playing bingo

(a) A charge shall be made for the playing of bingo. No more than \$1.00 and no less than \$0.50 shall be charged for admission to a room or place in which bingo is to be held, operated or conducted. This fee shall entitle a person to one card allowing him to participate without additional charge in all regular games to be played on that occasion.

(b) No charge in excess of \$0.25 may be made for a single opportunity to participate in any special game to be played on an occasion.

(c) No more than \$1.00 and no less than \$0.25 may be charged for any extra card with which a player may participate in all regular games on an occasion.

(d) All charges to participate in a bingo game shall be paid in cash. No check shall be accepted or extension of credit allowed as

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payment of a charge to participate in a bingo game. Extension of credit shall include, but not be limited to, purchases on account or through the use of a credit card or a bank card.

(e) No charge to participate in a bingo game shall be made to or accepted from any person under the age of 18 years.

(f) All cards shall be sold for a uniform unit price without any discount or allowance for the purchase of more than one card.

(g) Legally blind or otherwise disabled players may use their personal bingo card(s) or licensees may provide such players with modified bingo card(s) to participate in any bingo game upon payment of an amount equal to that paid by players using traditional cards.

(h) Legally blind or otherwise disabled players using modified card(s) to participate in a special bingo game shall purchase traditional special cards and keep them as proof of purchase until the game is won, at which time the member in charge of the occasion shall cause the paper special cards to be destroyed.

13:47-7.7 Notice

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

(e) The notice shall include the statement "Is gambling a problem for you or someone in your family? Dial 1-800-GAMBLER." The notice shall be provided by the Control Commission.

13:47-7.9 Equipment; general operation of bingo

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

(g) No licensed organization shall reserve or allow to be reserved, any bingo card for use by players except modified cards for use by legally blind or otherwise disabled players.

(h) Legally blind or otherwise disabled players may use bingo cards provided by the licensed organization or their personal cards when the licensed organization does not provide such cards.

(i) A legally blind or otherwise disabled player may use a hard braille card in place of a disposable paper card in the manner set forth in N.J.A.C. 13:47-7.5(g).

(j) Modified cards used by legally blind or otherwise disabled players shall be commercially produced by a manufacturer approved by the Control Commission.

(k) A licensed organization shall have and exercise the right to inspect, accept or reject, with due cause, any personal bingo card used by a legally blind or otherwise disabled player.

(l) A card to participate in any bingo game shall be purchased prior to the call of the first number in the game.

(m) Any card to participate in a regular bingo game purchased after the call of the first number in the game shall not be valid until the commencement of the next regular bingo game.

13:47-7.15 One day time limit

(a) All cards to participate in a bingo game shall be purchased within the same occasion that the game is played.

(b) All prizes shall be awarded immediately upon verification of a winner.

13:47-7.18 Physical presence

(a) In the playing of bingo, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(b) No seat or place shall be reserved in any room or area where bingo is held, operated or conducted for any person who is not physically present in that room or area.

(c) No person shall be admitted to the room or area where bingo is held, operated or conducted, except a person who has paid the charge for admission or a person authorized to conduct or assist in the conduct of the game.

(d) No person under the age of 18 years shall be physically present in any room or area where bingo is held, operated or conducted.

13:47-7.24 Progressive jackpot game; authorization

In addition to the schedule of regular and special games played within the prize limits set forth in N.J.A.C. 13:47-7.2(a), it shall be lawful for a licensee to hold, operate and conduct a progressive jackpot bingo game as defined in this chapter, in the manner described in N.J.A.C. 13:47-7.25 through 7.36.

13:47-7.25 Progressive jackpot game; arrangement of numbers

No arrangement of numbers other than a full card pattern shall be required to win a progressive jackpot prize or a consolation prize.

13:47-7.26 Progressive jackpot game; schedule of play

The progressive jackpot game shall not be played as the last game of an occasion.

13:47-7.27 Progressive jackpot game; use of disposable cards; indelible marking

No progressive jackpot game shall be played on other than a non-reusable card which shall be indelibly marked by the player who purchased the card.

13:47-7.28 Progressive jackpot game; charge to play; uniform charge to play

(a) No charge in excess of or less than \$0.25 shall be made for each card with which a player participates in a progressive jackpot game.

(b) All cards shall be sold at a uniform price with no discount or allowance for the purchase of more than one card.

(c) All cards shall be sold prior to the drawing of the first number in the game.

13:47-7.29 Progressive jackpot game; notice to be posted at game

(a) Whenever a progressive jackpot game is conducted the licensee shall conspicuously post a notice stating:

1. The date of each potential successive occasion in the particular progression being conducted;

2. The maximum number of calls in which a player must complete a full card pattern in order to win the jackpot prize on each occasion; and

3. The prize amount offered to the winner of the progressive jackpot and the consolation prize on that occasion.

13:47-7.30 Progressive jackpot game; announcement; amount of prize; number of calls

(a) On each occasion, prior to the drawing of the first number of the progressive jackpot game the caller shall announce to all players:

1. The maximum number of numbers to be called within which a player must achieve bingo in order to win the jackpot prize on that occasion; and

2. The dollar amount to be awarded to the winner of the jackpot game prize and the consolation prize on that occasion.

13:47-7.31 Progressive jackpot game; number of calls; number of successive occasions

(a) On the first occasion of a progressive jackpot bingo game, a player shall not be required to attain bingo in less than 50 numbers called in order to win the progressive jackpot prize.

(b) The number of allowable calls required in order to win the progressive jackpot prize shall be increased by one number on each successive occasion in a particular progression.

(c) The progressive jackpot prize must be offered at each successive occasion in a particular progression.

(d) No progression shall continue for more than 10 successive occasions.

(e) If the progressive jackpot prize has not been awarded by the tenth successive occasion in a particular progression, a progressive jackpot winner must be determined and the progressive jackpot prize must be awarded regardless of the number of calls necessary.

13:47-7.32 Progressive jackpot game; award of prizes; exclusion

(a) The progressive jackpot prize shall be awarded to the player or players who complete the full card pattern in the predesignated number of numbers called, except in the case of the tenth successive occasion of a particular progression when it shall be awarded to the player or players who first complete the full card pattern.

(b) A consolation prize shall be awarded on each occasion at which a progressive jackpot bingo game is played including an occasion upon which the progressive jackpot prize is won.

(c) The consolation prize shall be awarded to the player or players who complete the full card pattern on each occasion, notwithstanding

the number of numbers called in excess of the predesignated number of numbers allowed to be called in order to win the progressive jackpot prize.

(d) On an occasion when the jackpot prize is awarded, the game shall continue and the consolation prize shall be awarded to the player or players who next complete the full card pattern.

(e) No card that has been determined to be a winner of a progressive jackpot prize shall be eligible to win any portion of the consolation prize.

(f) Any card determined to be a winner of a consolation prize shall contain the last number called in the game prior to the player declaring "Bingo."

13:47-7.33 Progressive jackpot game; verification prior to award of prize

(a) When a player claims to be a winner of a progressive jackpot game prize, prior to awarding the prize, the member in charge of the occasion shall make a verification of all of the numbers on all of the objects drawn from the receptacle and shall inspect the objects in the presence of at least one player other than the player claiming to be the winner of the prize and determine that:

1. The numbers appearing on the card presented as a winner correspond with numbers on the objects drawn from the receptacle;

2. The numbers on all objects drawn from the receptacle were announced and displayed correctly;

3. The actual number of numbers called did not exceed the maximum number of numbers allowed to be called in order to win the progressive jackpot prize; and

4. The color of the card and the serial number printed on the card presented as a winner are identical to the color of the cards and the serial number of the series of cards sold for the progressive jackpot game on that occasion.

(b) No progressive jackpot prize shall be awarded unless a verification of the card presented as a winner and the numbers on the objects drawn from the receptacle is made in accordance with the provisions of (a) above.

13:47-7.34 Progressive jackpot game; license expiration

When a license expires prior to the tenth occasion of a particular progression, all winners shall be determined and all prizes awarded on the last occasion authorized under the license.

13:47-7.35 Progressive jackpot game; emergency termination of progression; notification

(a) In the event a progression cannot be completed due to an emergency condition, the licensee shall give written notification to the Control Commission and the licensing municipality no later than the close of the business day next following the day upon which the licensee has knowledge of its inability to complete the progression.

(b) The notification shall be made on LGCCC Form 7-A, and shall contain at least the following information:

1. The reason for the cancellation;

2. The name, address and telephone number of the member in charge of the operation of the game and of the member responsible for the proceeds held as the progressive jackpot prize;

3. The name, address of the bank and the number of the account in which the progressive jackpot prize is deposited;

4. The dollar amount of the progressive jackpot prize held in the account; and

5. The time, date and location where the progression will continue.

13:47-7.36 Progressive jackpot game; maintenance of progressive jackpot prize

(a) All proceeds from the sale of cards to participate in the progressive jackpot game shall be held in the licensed organization's bank account required by N.J.A.C. 13:47-6.2(b) for the duration of the progression.

(b) All proceeds must be deposited in the bank account no later than the close of the business day next following the day upon which they were received or made available as a prize.

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13:47-7.37 50/50 bingo game; authorization

In addition to the schedule of regular and special games played within the prize limits set forth in N.J.A.C. 13:47-7.2(a), it shall be lawful for a licensee to hold, operate and conduct a bingo game known as a 50/50 bingo game as described in N.J.A.C. 13:47-1.1.

13:47-7.38 50/50 bingo game; division of prizes

If the prize pool is to be divided into multiple sections, the schedule of games shall indicate the percentage of the prize pool to be awarded to the winner(s) of each section.

13:47-7.39 50/50 bingo game; schedule of play

The 50/50 bingo game shall not be played as the last game of an occasion.

13:47-7.40 50/50 bingo game; use of disposable cards; indelible marking

No 50/50 bingo game shall be played on other than a nonreusable card which shall be indelibly marked by the player who purchased the card.

13:47-7.41 50/50 bingo game; charge to play; uniform charge to play

(a) No charge in excess of or less than \$0.25 shall be made for each card with which a player participates in a 50/50 bingo game.

(b) All cards shall be sold at a uniform price with no discount or allowance for the purchase of more than one card.

(c) All cards shall be sold prior to the drawing of the first number of the game.

13:47-7.42 50/50 bingo game; amount of prize; announcement

On each occasion, prior to the drawing of the first number of the 50/50 bingo game the caller shall announce to all players the dollar amount of the prize to be awarded to the winner(s) of the game.

13:47-7.43 50/50 bingo game; verification prior to award of prize

(a) When a player claims to be a winner of a 50/50 bingo game prize, prior to awarding the prize, the member in charge of the occasion shall make a verification of all of the numbers on all of the objects drawn from the receptacle and shall inspect the objects in the presence of at least one player other than the player claiming to be the winner of the prize and determine that:

1. The numbers appearing on the card presented as a winner correspond with numbers on the objects drawn from the receptacle;

2. The numbers on all objects drawn from the receptacle were announced correctly; and

3. The color of the card and the serial number printed on the card presented as a winner are identical to the color of the card and the serial number of the series of cards sold for the 50/50 bingo game on that occasion.

(b) No 50/50 bingo game prize shall be awarded unless a verification of the card presented as a winner and the numbers on the objects drawn from the receptacle is made in accordance with the provisions of (a) above.

13:47-8.1 (Reserved)

13:47-8.3 Amount of prize limitation

(a) (No change.)

(b) The aggregate retail value of all prizes to be offered or awarded by a licensee in any one calendar year shall not exceed \$500,000 except that no licensee shall offer or award a prize or prizes of a sum or value greater than \$100,000, in any one raffle conducted by drawing.

(c) The limit of the aggregate retail value of the prizes which may be awarded in any one calendar year shall not apply to on-premise raffles or where all of the prizes are wholly donated.

(d) No prize having a retail value greater than \$500.00 shall be offered or awarded in any raffle not conducted by drawing.

13:47-8.7 Contents of ticket; off-premise raffle awarding merchandise as a prize

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

(c) The stub of each ticket shall bear the name and address of the holder, the number of the ticket, the raffle license issued for the occasion and the identification of the licensed organization.

(d) (No change.)

13:47-8.8 Contents of ticket; off-premise raffle awarding cash or money as a prize

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

(c) The stub of each ticket shall bear the name and address of the holder, the number of the ticket, the raffle license issued for the occasion and the identification of the licensed organization.

(d) (No change.)

13:47-9.1 Form; time

(a) The report of operation shall be on the form provided by the Control Commission. The report shall contain the following information:

1. Gross receipts derived from each game;

2. Expenses incurred or paid, to whom paid and a description of the merchandise purchased or the services rendered therefor;

3. Net profit from each game and the uses to which the net profit has been or will be applied; and

4. A list of prizes offered or given and their respective values.

(b) The licensee shall file one copy of the report with the Control Commission no later than the 15th day of the calendar month immediately following the calendar month in which the licensed activity was held, operated or conducted.

13:47-9.3 Separate report form; special door prize raffle

(a) In the case of Raffles, a separate report form shall be used for each type of raffle for which a license is issued.

(b) A monthly report need not be submitted for a special door prize raffle. An organization conducting any special door prize raffle shall submit annually in writing to the Control Commission a report containing the following information:

1.-3. (No change.)

4. Purposes to which the net proceeds of each occasion were applied; and

5. The name of the municipality in which a special door prize raffle drawing was held.

13:47-9.4 Report; No game held

When a game is not held on any date when a license authorizes it to be held, a report to that effect shall nonetheless be filed with the Control Commission.

13:47-9.6 Expiration

Upon the filing of the report for the last game authorized in the license, the license shall be attached to the report of operations filed with the Control Commission.

13:47-9.7 Annual report by municipality

(a) The municipal clerk of a municipality which has adopted the Bingo Licensing Law or the Raffles Licensing Law or both shall submit to the Control Commission annually for the 12 month period ending December 31, each year on or before January 31 of the following year, a report containing the following information as to the operation of both bingo and raffles within the municipality for the preceding 12 month period:

1. The number of licenses issued pursuant to each law;

2. The names and addresses and identification number issued by the Control Commission, of each licensee;

3. The aggregate amount of municipal license fees collected;

4. The name and address of all persons detected in violation of the laws or regulations; and

5. The names and address of all persons prosecuted for such violations, the result of each prosecution and the penalty imposed.

(b) The report may contain recommendations for the improvement of the Bingo Licensing Law or the Raffles Licensing Law or the administration thereof.

SUBCHAPTER 13. QUALIFICATIONS OF RAFFLES OR BINGO EQUIPMENT PROVIDER

13:47-13.1 Application

(a) Persons desiring to provide equipment for use in or in connection with the holding, operating or conducting raffles or bingo shall first be approved by the Control Commission.

(b) Any person desiring such approval shall apply to the Control Commission, in writing and in duplicate, on Form 11 which is hereby adopted, and shall provide the Control Commission with any additional information requested.

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

13:47-13.3 Approval

(a) If, upon considering such application the Control Commission shall be satisfied that the applicant (or its officers and stockholders of 10 percent or more of its stock when the applicant is a corporation) is of good moral character and has not been convicted of crime, it shall enter its approval in its records, shall notify the applicant accordingly, and shall issue its certificate with an identifying number.

(b) No person approved by the Control Commission to provide equipment for use in or in connection with any game licensable pursuant to the Bingo Licensing Law, N.J.S.A. 5:8-24 et seq., or the Raffles Licensing Law, N.J.S.A. 5:8-50 et seq., shall provide any such equipment to a person not registered with the Control Commission.

SUBCHAPTER 14. RENTAL OF PREMISES FOR BINGO

13:47-14.2 Applications and licensing

(a)-(g) (No change.)

(h) When the Commission is satisfied that the applicant possesses the qualifications to receive a license, the Secretary shall issue and deliver a license to an applicant as an approved rentor of specified premises upon the payment by the applicant of an annual license fee in the amount of \$500.00. Such payment shall be made by certified check payable to the order of the Legalized Games of Chance Control Commission.

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

(k) The Commission may issue a temporary permit to an applicant pending final action on the application. Any such temporary permit shall be valid for a period not in excess of 180 days.

(l)-(m) (No change.)

13:47-14.3 Regulations concerning rentals

(a)-(g) (No change.)

(h) (No change in text.)

(i) A \$10.00 fee, in the form of a certified check payable to the Legalized Games of Chance Control Commission, shall be forwarded by the renter to the Commission for each occasion on which bingo games are held, pursuant to N.J.S.A. 5:8-24 et seq. Payment of this fee shall be made no later than the 10th day of the month immediately following the month in which the premises was used for the holding, operating or conducting of bingo together with a statement disclosing:

1.-3. (No change.)

4. Date when bingo was conducted; and

5. The commercial renter's license number issued by the Control Commission for the premises.

Recodify existing (k)-(r) as (j)-(q) (No change in text.)

13:47-16.11 (Reserved)

13:47-16.12 (Reserved)

(a)

DIVISION OF CRIMINAL JUSTICE

Autopsies and Death Investigations

Potential Organ Donors

Adopted Concurrent Amendments: N.J.A.C. 13:49-1.1 and 1.5

Adopted Concurrent New Rule: N.J.A.C. 13:49-1.8

Proposed: November 7, 1994 at 26 N.J.R. 4447(a).

Adopted: December 15, 1994 by Geetha A. Natarajan, Acting State Medical Examiner.

Filed: December 20, 1994 as R.1995 d.36, **without change**.

Authority: N.J.S.A. 52:17B-80.

Effective Date: December 20, 1994.

Expiration Date: December 16, 1998.

The State Medical Examiner Office afforded all interested persons with an opportunity to provide written comments on the adopted emergency amendments and new rule and concurrent proposed amendments and new rule of N.J.A.C. 13:49. These amendments and new rule set forth the procedures to be followed by State and county medical examiners when a deceased person whose death is under investigation is a potential organ donor. Announcement of the opportunity to comment on the adopted emergency amendments and concurrent proposed amendments appeared in the New Jersey Register on November 7, 1994 at 26 N.J.R. 4447(a). Secondary notice of the proposed amendments was provided to all county medical examiners, and through notice in the Trenton Times and Newark Star-Ledger.

The State Medical Examiner received four comments in response to the emergency amendments and concurrent proposed amendments. A summary of the comments and this agency's responses follows:

COMMENT: Dr. Michael J. Dunne, the Sussex County Medical Examiner, stated that the language pertaining to autopsies being the least intrusive in N.J.A.C. 13:49-1.1(a) should be deleted as superfluous and unnecessary; that the term "children" suspected of having died of sudden infant death syndrome (SIDS) in N.J.A.C. 13:49-1.1(a)5 should be changed to "infants"; and that N.J.A.C. 13:49-1.1(b)7 should be deleted because it is not the function of the medical examiner to "check the function of transplanted organ." He further recommended deletion of N.J.A.C. 13:49-1.5(c) on the basis that it will result in malpractice for medical examiners and suggested that a new subsection, N.J.A.C. 13:49-1.8(c), be added to provide that "proper forensic practice" also requires the medical examiner to render an opinion at the end of autopsy dissection about the "manner of death."

RESPONSE: The agency responds that N.J.A.C. 13:49-1.1(a) mirrors the language of the organ harvesting statute and was placed in the regulations after lengthy discussions with the New Jersey Organ and Tissue Sharing Network, one of the parties most affected by the legislation. This provision was included to allay the Sharing Network's concern about the need for clarity to ensure compliance by medical examiners. The term "children" in N.J.A.C. 13:49-1.1(a)5 reflects the pre-existing language in the regulations. With respect to N.J.A.C. 13:49-1.1(b)7 which requires the harvesting team to advise the medical examiner of the immediate functioning of the transplanted organ, the agency notes that this provision is important because evidence that the transplanted organ is functional can counter a criminal defendant's claim of innocence based on the assertion that the transported organ caused or contributed to the victim's death. Finally, the agency notes that N.J.A.C. 13:49-1.5(c) repeats the language in the statute and thus it is unnecessary to add another definition of forensic practice because the "manner of death," which is a combination of the autopsy and the death investigation, is included in the definition set forth in N.J.A.C. 13:49-1.5(b). In sum, in the opinion of the agency, the comments do not require further amendment of the concurrent proposed amendments.

COMMENT: Dr. Yury Kogan, Acting Essex County Medical Examiner, stated that he does not believe in "legislating medical practice" and therefore objected to any provision that would tell him "when and how" to perform his dissection. He also asked whether he would go to jail if he deviated from the proscribed procedures.

RESPONSE: The agency responds that the State Medical Examiner Act itself constitutes legislation of forensic medical practice and that

neither the Act nor the regulations impose criminal penalties. In the opinion of the agency, the comment does not require further amendment of the concurrent proposed amendments.

COMMENT: Dr. Dante A. Ragasa, Burlington County Medical Examiner, suggests that the first sentence of N.J.A.C. 13:49-1.1(b) read as follows: "The harvesting team shall complete a surgical report form (including any unexpected finding on the organ harvested) and shall provide a copy to the medical examiner as soon as possible."

RESPONSE: The agency responds that the suggested addendum is already contained in N.J.A.C. 13:49-1.1(b)6. In the opinion of the agency, the comment does not require further amendment of the concurrent proposed amendments.

COMMENT: Jean Paashaus opined that the regulations will seriously compromise homicide and related investigations because medical examiners will not be able to conduct a thorough investigation within a period compatible with organ transplantation and, therefore, urges that N.J.A.C. 13:49-1.1(b)1 provide that the medical examiner complete his preliminary investigation "where possible" within the time period for an organ transplant.

RESPONSE: The agency is aware of the conceivable adverse impact that the statute may have on a criminal investigation and raised these concerns prior to the passing of the statute and at both the public hearing on State Medical Examiner System and at the Assembly Committee hearing on the organ harvesting regulations. The Legislature, nevertheless, passed the organ harvesting statute and the regulations are consistent with the legislative will in that regard. To that end, the State Medical Examiner's Office will make all efforts to ensure that both societal's interests, organ transplants and complete and competent homicide investigations, are accomplished. In the opinion of the agency, the comment does not require further amendment of the concurrent proposed amendments.

No further comments were received by the agency as a result of the public notice of the adoption of the concurrent proposed amendments in the New Jersey Register and the distribution list.

Full text of the adoption follows:

13:49-1.1 Mandatory autopsies

(a) In the absence of an objection based on the religious beliefs of the decedent, autopsies shall be performed in all cases of human death occurring in the following circumstances; however, the autopsy should be the least intrusive procedure consistent with proper forensic practice (as defined in N.J.A.C. 13:49-1.8) and the duty to preserve organs for transplant:

1. All cases of apparent homicidal deaths;
2. All deaths occurring under suspicious or unusual circumstances;
3. All deaths from causes which might constitute a threat to public health;
4. All deaths of inmates of jail, prison, or penitentiary and all prisoners and suspects who were in the process of being detained, arrested or transported by guards, police and law enforcement or court officers unless the suspected cause of death is a known condition for which the inmate, prisoner or suspect is hospitalized and being treated at the time of death, and the medical examiner's investigation, review of hospital records, and examination of the decedent's body permit him or her to determine the cause of death beyond a reasonable doubt without an autopsy, and no other issues of public interest compel his or her conclusion that an autopsy is necessary;
5. All infants and children suspected of having been abused or neglected and children suspected of having died from sudden infant death syndrome (SIDS);
6. In all cases wherein the State Medical Examiner, the Attorney General, any assignment judge of the Superior Court, or the county prosecutor (of the county wherein the injury occurred or where the decedent expired) requests an autopsy;
7. In all cases otherwise under the Medical Examiner's jurisdiction where the decedent has been identified as a potential donor pursuant to P.L. 1969, c.161 (N.J.S.A. 26:6-57 et seq.), the medical examiner shall perform any necessary examination, autopsy or analysis of any organ or tissue in a manner and within a time period compatible with preservation of the organ or tissue for the purpose of transplantation.

(b) Upon notification that a deceased person whose death is under investigation is a donor under the Uniform Anatomical Gift Act, P.L. 1969, c.161 (N.J.S.A. 26:6-57 et seq.), the medical examiner shall commence an immediate investigation concerning the cause of death. The medical examiner, with the cooperation of the police, prosecutors and medical personnel, shall complete the preliminary investigation concerning cause of death within a time period compatible with preservation of organs for transplantation.

1. The medical examiner shall have access to and may request all necessary information, including copies of medical records, laboratory test results, x-rays and other diagnostic results. This information should be provided as expeditiously as possible, through reasonable means, to the medical examiner so the medical examiner can continue the investigation into the cause of death and complete the examination within a time period compatible with the preservation of the organ or tissue for purposes of transplantation.

2. The medical examiner shall release all requested organs and tissue which in his or her opinion are not involved in the cause of death (as defined in N.J.A.C. 13:49-1.8).

3. Should the medical examiner believe that a specific organ or area of tissue is involved in the cause of death, the medical examiner shall attend the removal procedure in order to make a final determination and allow recovery to proceed, request a biopsy or deny removal of said organ if in the medical examiner's judgment those tissues or organs may be involved in the cause of death.

4. The medical examiner or designee shall explain in writing the reasons for determining that organs or tissues for which authorization for removal was denied may be involved in the cause of death and shall include the explanation in the records and provide a copy to the organ procurement agency.

5. The medical examiner shall have access to medical records, pathology reports and to the body of the donor, post-removal. In the event an organ is not transplanted and there is no consent to donate the organ for research, the medical examiner shall be notified. The medical examiner who performed the autopsy shall make the determination as to whether and when the organ should be returned.

6. The harvesting team shall complete a surgical report form. Subsequently, information on the immediate functioning of the transplanted organ(s) and pathology reports, if available, shall be provided to the medical examiner.

7. If the medical examiner releases the organ for procurement, a pre-mortem blood sample (labelled and dated with time of blood draw), sample of catheterised urine, sample of bile if the liver is recovered for transplantation, and a biopsy specimen in fixative of the organs procured, as requested, shall be delivered to the medical examiner at the time of the transport of the body to the medical examiner's office.

13:49-1.5 Medical examiner autopsies

(a) Medical examiner autopsies shall be performed only in conjunction with investigations of reportable deaths in order to establish the cause of death; to provide medical facts upon which to base a determination of the manner of death; to collect evidence and medical specimens and documentation with probative value; to clarify investigation information, or to serve the needs of public health and safety and of the courts.

(b) Medical examiner autopsies shall not be performed solely to satisfy the academic interest of a hospital or medical staff, or to circumvent the lack of family permission for hospital autopsy.

(c) In the case of potential organ donors as defined by P.L. 1969, c.161 (N.J.S.A. 26:6-57 et seq.), the medical examiner shall perform the least intrusive procedure consistent with proper forensic practice and the duty to preserve organs for transplant in a manner and within a time period compatible with the preservation of the organ or tissue for the purpose of transplantation.

(d) Except as provided in (c) above, the autopsy standard for apparent homicides, suicides, suspicious deaths, and deaths with no visible anatomic cause shall include a complete inspection, removal and dissection of the cranial compartment and contents, the neck viscera and tongue, the thoracic, abdominal and pelvic compartments and viscera, and any additional dissections which may be indicated

by the circumstances of death; and shall include the collection and preservation of body tissues for toxicological and microscopic examination and any additional examinations which may be required by the nature of the circumstances.

(e) X-ray examination of the whole body shall be performed in all instances where child abuse or neglect is a possibility and in the investigation of human skeletal remains. X-ray examination shall also be undertaken in all gunshot injuries where indicated for complete recovery of evidence, and in conjunction with examination and identification of human bodies in an advanced state of decomposition, or unrecognizable bodies.

(f) No person, technician, or aide shall perform any part of the postmortem dissection of the body, without the direct and immediate supervision and observation of the medical examiner or designated pathologist and then, only after proper training and guidance.

(g) Except as provided in (c) above, microscopic examination shall be conducted in the following circumstances:

1. In all cases of infant death;
2. Whenever an autopsy including toxicological testing fails to disclose a cause of death;
3. When the age of an injury requires further evaluation;
4. Whenever indicated by the circumstances of the death; and
5. Whenever else it is deemed necessary at the discretion of the medical examiner.

(h) The slides from microscopic examinations pursuant to (g) above shall be retained permanently, properly labeled with medical examiner case number.

(i) Microbiologic, toxicologic, and or nuclear radiation tests, and any other pertinent examination and study shall be conducted where applicable in death investigations involving a threat to public health.

13:49-1.8 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

“Involved in the cause of death”: an organ is involved in the cause of death when disruption to that organ’s structure is a required element of the fatal sequence and/or provides the means of diagnosing the cause of death.

“Proper forensic practice” consists of those procedures which are required to perform the mandated role of medical examiner, which is to determine the cause and manner of death within a reasonable degree of medical probability; to identify and analyze evidence in criminal matters; to preserve organs for transplant and to otherwise preserve the public health.

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(a)

**CASINO CONTROL COMMISSION
Notice of Administrative Correction
Renewal of Casino License; Contents of Renewal
Application
Accounting and Internal Controls; Definitions;
Computer Recordation and Monitoring of Slot
Machines**

N.J.A.C. 19:43-11.2, and 19:45-1.1 and 1.44

Take notice that the Casino Control Commission has discovered errors in the current text of N.J.A.C. 19:43-11.2 and 19:45-1.1 and 1.44.

The references in N.J.A.C. 19:43-11.2(a)1 and 2 to forms in N.J.A.C. 19:43-5.2(a)1 and 2, respectively, are incorrect; the correct references are to N.J.A.C. 19:43-5(a)1 and 2, respectively.

In N.J.A.C. 19:45-1.1, the definition of “slug” was repealed effective October 3, 1994 (see 26 N.J.R. 2872(a) and 4089(a)), as a new definition was added at N.J.A.C. 19:40-1.2.

At 26 N.J.R. 4788(a), the reference to N.J.A.C. 19:45-1.42(d) in N.J.A.C. 19:45-1.44(a) was administratively corrected to N.J.A.C. 19:44-1.42(e). However, the correct reference is, instead, to N.J.A.C. 19:45-1.42(o), which contains various slot machine meter readings which

would be compatible with direct computer recording and monitoring. The information in N.J.A.C. 19:45-1.42(e) is not compatible with such automatic recording and monitoring.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

19:43-11.2 Contents of renewal application

(a) An application for the renewal of a casino license shall include, without limitation, the following, which shall be completed in accordance with the requirements of the Act and the rules of the Commission and any instructions included with the application materials:

1. The Business Entity Disclosure (BED) Forms required by N.J.A.C. 19:43-[5.2(a)1] **5.3(a)1**;
 2. The Personal History Disclosure Forms required by N.J.A.C. 19:43-[5.2(a)2] **5.3(a)2**, in accordance with the qualifier renewal procedures set forth in N.J.A.C. 19:43-2.7A;
 - 3.-8. (No change.)
- (b) (No change.)

19:45-1.1 Definitions

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

...
[“Slug” is defined as a metal disk having no cash value.]
...

19:45-1.44 Computer recordation and monitoring of slot machines

- (a) In lieu of the requirements of N.J.A.C. 19:45-1.37(b) and (c), and N.J.A.C. 19:45-1.42[(e)](o), a casino licensee may have a computer connected to slot machines in the casino to record and monitor the activities of such machines.
- (b)-(c) (No change.)

(b)

**CASINO CONTROL COMMISSION
Accounting and Internal Controls
Substitution, Redemption and Consolidation of
Patron Checks
Payments for Redemptions**

**Adopted New Rule: N.J.A.C. 19:46-1.26A
Adopted Amendments: N.J.A.C. 19:45-1.1, 1.15 and
1.26**

Proposed: September 19, 1994 at 26 N.J.R. 3825(a).
Adopted: December 19, 1994, by the Casino Control Commission, Bradford S. Smith, Chairman.
Filed: December 22, 1994 as R.1995 d.40, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 5:12-63c, 69, 70g, l and m, 99 and 101.
Effective Date: January 17, 1995.
Expiration Dates: August 15, 1997, N.J.A.C. 19:45;
April 15, 1998, N.J.A.C. 19:46.

Summary of Agency-Initiated Changes:

The amendments to N.J.A.C. 19:45-1.26(b) and (e) make clear that general cashiers are authorized to perform consolidations, redemptions and substitutions at the cashiers’ cage upon the presentation of cash, cash equivalents, patron checks, gaming chips or gaming plaques, and those items are also specifically enumerated in N.J.A.C. 19:45-1.15(c)1i, which describes a portion of the functions of general cashiers. However, N.J.A.C. 19:45-1.26(b) and (e) also allow general cashiers to perform redemptions upon the presentation of complimentary cash gifts, casino checks or slot tokens, whereas N.J.A.C. 19:45-1.15(c)1i is silent as to those items.

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Given that a general cashier's functions include, but are not limited to, the items specifically enumerated in N.J.A.C. 19:45-1.15(c), N.J.A.C. 19:45-1.26(b) and (e) are sufficient by themselves to confer the authority on general cashiers to accept complimentary cash gifts, casino checks or slot tokens for redemptions. Nevertheless, for consistency with the amendments to N.J.A.C. 19:45-1.26, the Commission upon adoption and without the need for further public notice or comment is amending N.J.A.C. 19:45-1.15(c)1i to add complimentary cash gifts, casino checks and slot tokens to that subparagraph.

"Check bank cashier" as used in N.J.A.C. 19:45-1.26(h) refers to the "check cashier" whose duties are described in N.J.A.C. 19:45-1.15(c)2. Given that those terms are used interchangeably throughout the Commission's regulations, the Commission is amending N.J.A.C. 19:45-1.15(c)2 upon adoption to make that clear.

Stylistic changes intended to clarify N.J.A.C. 19:45-1.26(c)2 and 1.26(A)g are also being made upon adoption.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division), Sands Hotel & Casino (Sands) and Caesars Atlantic City (Caesars).

COMMENT: The Division does not object to the adoption of the proposal.

RESPONSE: Accepted.

COMMENT: Sands comments on N.J.A.C. 19:45-1.26A(c), which, among other things, requires a casino licensee to return an original patron check to a drawer in accordance with N.J.A.C. 19:45-1.26 whenever the drawer is entitled to redeem the original patron check in part as a result of payments that are received pursuant to N.J.A.C. 19:45-1.26A from a person acting on behalf of the drawer in conjunction with the submission of a new patron check from the drawer for the difference between the amount of the payments and the amount of the original patron check. Given that a "patron check" is defined to be a Counter Check, a Slot Counter Check or a replacement check, Sands suggests that the "new patron check" that is submitted "in conjunction with" the payments from the third party can never be a Counter Check or a Slot Counter Check because the drawer will not be present to sign that type of instrument upon the third party tendering the separate payment on the drawer's behalf. Consequently, Sands recommends that "replacement check" be substituted for the phrase "new patron check" in N.J.A.C. 19:45-1.26A(c).

RESPONSE: Rejected. Sands assumes that N.J.A.C. 19:45-1.26A(c) requires the new patron check to be submitted simultaneously with a third party tendering a payment on the drawer's behalf. Consequently, Sands concludes that the only way a third party can make a payment on behalf of a drawer is if the drawer has given a third party a replacement check to submit along with the payment.

However, N.J.A.C. 19:45-1.26A(d) specifically contemplates that casino licensees may receive payments for third parties that are less than the amount necessary to redeem an original patron check. If the drawer does not redeem the original patron check by its deposit deadline, the casino licensee is then obligated to deposit the check by that deadline, and the payments received from the third party are then allocated in accordance with the priorities found in N.J.A.C. 19:45-1.26A(d)1 through 3. Of course, if the drawer goes to the cashiers' cage prior to the deposit deadline and presents a new patron check for the difference between the amount of the third party payment and the amount of the original patron check being redeemed, the casino licensee is required to apply the third party payment and the new patron check towards the redemption of the original patron check, which must be returned in accordance with N.J.A.C. 19:45-1.26.

Given that the proposed new regulation never required the simultaneous submission of a third party payment and a new patron check, limiting N.J.A.C. 19:45-1.26A(c) to "replacement checks" as suggested by Sands is unnecessary. Ironically, the example Sands uses of a third party appearing at the cashiers' cage to present a drawer's replacement check is not currently authorized by the regulations, which contemplate that the drawer will personally present the instrument. Nor do the regulations authorize a third party to present a cash equivalent or a casino check that is made payable to the drawer of the patron check to be redeemed.

The Commission has, however, approved internal controls allowing casino licensees to process checks or cash equivalents that are received through the mail for purposes of transactions covered by N.J.S.A. 5:12-101c. Given that the mails are an approved method for drawers

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to present checks or cash equivalents at the cashiers' cage in a section 101c transaction, the Commission considers it a reasonable extension also to permit drawers to present such instruments through third parties who personally appear at the cashiers' cage. (The same flexibility does not exist for casino checks because the Legislature has required that they be "presented to the cashier or the cashier's representative by the original payee," N.J.S.A. 5:12-101g(4); emphasis supplied.)

Such amendments, however, are beyond the scope of the pending proposal and, consequently, the Commission is taking no action on them as part of this adoption. The Commission does anticipate, however, shortly publishing for comment a proposal that would codify the current mail-in process for checks and cash equivalents submitted in redemptions, consolidations or substitutions, at which time serious consideration will be given to including in that proposal a mechanism to authorize the presentation of such instruments at the cashiers' cage by third parties acting on behalf of a drawer of a patron check to be redeemed, consolidated or substituted.

COMMENT: Sands and Caesars also comment on N.J.A.C. 19:45-1.26(h)2, which authorizes a casino licensee to return a redeemed patron check to a patron through the mail. Specifically, Sands and Caesars recommend deleting the requirement that the patron check be sent to the patron by a method, such as certified mail, return receipt requested, that assures the casino licensee that it receives confirmation of delivery to the drawer.

RESPONSE: Accepted in part and rejected in part. In every redemption transaction, a casino licensee is obligated to return a redeemed patron check only to the drawer. N.J.S.A. 5:12-101d(1). For that reason, the existing regulations require a drawer to appear personally at the cashiers' cage in order for a general cashier to release a redeemed patron check to the drawer.

When a redeemed patron check is mailed to the drawer from the cashiers' cage, the drawer is obviously not present at the cage for the casino licensee to verify his or her identity. To attempt to address the statutory concerns, the proposal requires the casino licensee to send the patron check by a method, such as certified mail, return receipt requested, that assures that it obtains confirmation that the redeemed patron check was, in fact, delivered to the drawer. However, only for the residence address would the casino licensee routinely have obtained a certification of the accuracy of the address information. N.J.A.C. 19:45-1.27(a)2 and 11.

In the usual case the patron check will be mailed to the drawer's residence, where there is a high degree of confidence that the drawer will actually receive the patron check. Given that a patron establishing a credit account is required to certify the accuracy of, among other things, the information on residence address, N.J.A.C. 19:45-1.27(a)11, and that the casino licensee verifies that information in establishing the credit limit and periodically reverifies it or suspends the drawer's credit, N.J.A.C. 19:45-1.27(c)1 and (i), returning redeemed patron checks by ordinary mail to only that address is reasonable and consistent with the intent of the proposal.

As an exception to the residence address, it is likewise reasonable and consistent to permit patron checks to be returned by ordinary mail to any other address requested by the drawer, provided that the drawer certifies, comparable to N.J.A.C. 19:45-1.27(a)11, that the address is accurate and provided also that the casino licensee maintains a record and log of the pertinent information. In the unlikely event that a casino licensee receives an oral request to return a redeemed patron check to a non-residence address for which the drawer refuses to supply a written certification of the accuracy of the address, then a casino licensee's only options should be to return the check to the drawer personally at the cashiers' cage or, if requested, to mail the check to the drawer's residence as indicated in the credit file.

Accordingly, the Commission upon adoption and without the need for further public notice or comment will permit redeemed patron checks to be returned by ordinary mail in the limited circumstances discussed above.

COMMENT: In order for a casino licensee to return a redeemed patron check by mail, the casino licensee must maintain in the drawer's credit file a record of the request, which the drawer may make either orally or in writing. If written, the casino licensee must also compare the signature on the patron check with the signature on the request before returning the patron check to the drawer through the mail. Sands recommends that the Commission upon adoption delete each of those requirements.

In similarly commenting on the requirement that a drawer request the return of redeemed, consolidated or substituted patron checks by mail, Caesars notes that patrons who initiate those transactions by mailing in their payments, a practice presently authorized only through approved internal controls, "obviously" want the patron checks returned by mail, rendering the request superfluous.

RESPONSE: Accepted in part and rejected in part. There is no reason to presume that a drawer, even one who has mailed in a payment, would want every, or any, patron check that is redeemed to be returned by mail. However, deleting the requirement that the drawer first request that such instruments be returned by mail creates such a presumption, which the Commission is not prepared to do.

Given that a documented oral request from the patron will be sufficient, the Commission perceives that any administrative burden on casino licensees is more illusory than real. Moreover, if the patron has made the request for return by mail, it seems to the Commission that a casino licensee would want a record of those instructions for future reference so that it could comply with them and thereby maintain good customer relations which, contrary to Sands' and Caesars' assertions, should not create an administrative burden.

As for making a signature comparison between the signature on the patron check and the signature on the request, such a requirement serves to ensure the validity of a drawer's request to have patron checks returned by mail. Nevertheless, the proposal already permits the return to be made without such a comparison whenever the request is made orally. Therefore, the Commission perceives no reason to require the comparison to be made, and the adoption so provides. Of course, nothing precludes a casino licensee from providing in its internal controls for the comparison to be made.

COMMENT: The proposal requires a casino licensee to document in the credit file that a request to return patron checks by mail has been made. Caesars comments that doing so is "inappropriate" because the requests would be received by cashiers' cage personnel. Thus, it recommends that requests be "maintained with the daily Check Bank paperwork."

RESPONSE: Rejected. Requiring the credit file to serve as the central repository for all pertinent information on a drawer is reasonable and, in itself, poses no problem of incompatible functions, especially since the credit department shares other relevant information from a credit file with various departments. To the extent that a casino licensee finds it useful to also maintain in the check bank a copy of the request information recorded in the credit file, nothing in the proposal prevents it from doing so.

COMMENT: Caesars comments that N.J.A.C. 19:45-1.26(d) should permit consolidations where two or more new patron checks equal the total amount of all the patron checks being consolidated, even though no single new patron check equals the total of two or more consolidatable patron checks. For example, Caesars seeks permission to consolidate five patron checks of \$10,000 apiece with two replacement checks each for \$25,000.

RESPONSE: Rejected. N.J.S.A. 5:12-101c provides that a drawer may consolidate patron checks by issuing "one check which meets the requirements of [N.J.S.A. 5:12-101b] in an amount sufficient to redeem two or more checks drawn to the order of the casino licensee" (emphasis supplied). Although, in Caesars' example, each of the two replacement checks for \$25,000 is "sufficient" to redeem two of the redeemable patron checks for \$10,000, a "sufficient" consolidating check necessarily must equal and not exceed the amount of the checks to be consolidated, otherwise the excess would be available to the patron for further gaming and thereby compromise the credit limit established for the patron.

For instance, a patron with a \$20,000 credit limit at Casino "A" who draws two checks of \$10,000 apiece will have depleted all available credit resources at Casino "A", assuming, of course, that a credit limit increase is not appropriate. However, allowing the patron to consolidate the two \$10,000 checks with a \$25,000 replacement check produces a \$5,000 credit to the patron. If the patron receives cash for the credit, then Casino "A" will have essentially increased the patron's credit limit by that amount.

To avoid such an improper result, "sufficient" as used in section 101c necessarily means that the amount of the consolidating check must equal the amount of the checks being consolidated. Furthermore, section 101c insists that only "one" check be used for the consolidation of two or more patron checks, whereas, in Caesars' example, at least one of the

\$10,000 checks would be consolidated by each of the two \$25,000 checks. Consequently, the statute precludes the consolidation of the five \$10,000 checks in the manner that Caesars posits.

COMMENT: Caesars next seeks clarification regarding the use of the word "personal" in N.J.A.C. 19:45-1.26(e), and inquires whether its practice of allowing patrons to use Counter Check forms for the purpose of obtaining non-gaming funds is prohibited.

RESPONSE: By definition, Counter Checks and Slot Counter Checks are gaming instruments. Using those forms as an accommodation to patrons in order for them to obtain non-gaming funds is not authorized and the practice should be discontinued.

The Division is free to pursue whatever action it may deem appropriate.

COMMENT: N.J.A.C. 19:45-1.26(h)ii obligates general cashiers to verify the identity of a drawer redeeming a patron check at the cashiers' cage and provides, as Caesars notes, several means by which a casino licensee can make the identification. Nevertheless, Caesars comments that requiring casino licensees to make that identification will add steps that will delay the process and thereby unnecessarily frustrate patrons. At most, Caesars believes that the personal attestation of a cage cashier, rather than of a cage or casino supervisor as provided in the proposal, is adequate to establish a patron's identity.

RESPONSE: Rejected. N.J.S.A. 5:12-101d(1) specifically provides that redeemed or consolidated patron checks shall be given only to the "drawer of the check." When a person presents, for example, chips at the cage for a total redemption, the Commission is baffled as to how Caesars can satisfy its obligation to return the patron check only to the drawer without performing some procedure that establishes the identity of the person at the cage as the drawer.

The need for such procedures is especially apparent under the proposal because a casino licensee is, for the first time, allowed to accept chips, for example, from someone other than the drawer in order to initiate a redemption. Clearly, if the casino licensee takes no steps to identify the third party who presented the chips, then it is at serious risk of violating N.J.S.A. 5:12-101d(1) by releasing a patron check to someone other than the drawer of the instrument.

Assuming as true for the sake of argument only that Caesars compares, as it states in its comments, the signature on a replacement check with the signature on the check being redeemed or consolidated and that it compares the signature on a cash equivalent or a casino check with the signature in the patron's credit file, Caesars nevertheless cannot reasonably conclude from those comparisons alone whether the person at the cage is the drawer of the patron checks, unless, of course, the patron affixes his or her signature while at the cage in the presence of authorized cage personnel. Thus, any verification of identity has to be adequate to the task under all the circumstances without regard to Caesars' asserted "inconvenience to the patron."

Insofar as Caesars seeks to minimize that "inconvenience" by recommending that the attestation of a cage cashier, without supervisor input, be deemed a sufficient method for identifying a patron, the Commission ultimately may conclude that such a system is feasible once it and the industry have gained experience in allowing third parties to make payments on behalf of drawers. However, the Commission perceives that doing so at this time is premature.

COMMENT: Where a drawer requests the return of a patron check by mail, the check bank cashier is required under the proposal to present the instrument to a cage supervisor, who in turn directs a cashiers' cage employee, as authorized in the casino licensee's internal controls, to mail the instrument to the drawer. Caesars comments that any accounting department employee who is authorized by a casino licensee's internal controls to return patron checks by mail should be allowed to do so if directed by a cage supervisor or a check cashier.

RESPONSE: Accepted in part and rejected in part. Although the current regulations authorize a general cashier alone to return a patron check to a drawer who is present at the cage, N.J.A.C. 19:45-1.15(c)ix, the new procedures fully contemplate that an original patron check will not be personally delivered to the drawer but rather will be removed at some point from the cage for mailing directly to the drawer. At worst, allowing a patron check to be removed from the cage to the accounting department for transmittal to the drawer marginally increases without significant regulatory consequence the risk to the integrity of gaming operations as compared with the removal of the patron check from the cage in a stamped sealed envelope.

Thus, the Commission upon adoption and without the need for further public notice or comment will permit casino accounting department

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employees to return patron checks by mail provided that those employees are designated in and approved through that casino licensee's internal controls. This change is being made to N.J.A.C. 19:45-1.26(h)2ii. Given that cashiers' cage employees are part of casino accounting, N.J.A.C. 19:45-1.11(b)8iv, these changes at adoption afford reasonable flexibility by increasing the range of staff to which a casino licensee may assign the task for returning patron checks by mail, while at the same time preserving the Commission oversight that is necessary to ensure that patron checks are returned only by those employees with no incompatible functions.

In particular, for those casino licensees that have elected to operate an independent slot machine cage through a department that is separate from casino accounting, N.J.A.C. 19:45-1.11(b)9, this adoption permits casino accounting department employees, but not employees assigned to the separate slot machine cage department, to return patron checks by mail.

Caesars' suggestion to permit a check cashier as well as a cage supervisor to direct the transmittal of patron checks by mail is rejected. Regulatory interests continue to demand that the power to authorize the removal of an original patron check from the cage must be closely circumscribed and confined to those who serve in a supervisory capacity.

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

19:45-1.1 Definitions

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

...
"Patron check" means a Counter Check, a Slot Counter Check or a replacement check.

...
"Replacement check" is defined in N.J.A.C. 19:45-1.26.

19:45-1.15 Accounting controls for the cashiers' cage, satellite cages, master coin bank, and coin vaults

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

(c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash and, at the discretion of the casino licensee, slot tokens, and such cashiers' functions shall include, but are not limited to, the following:

i. Receive cash, cash equivalents, ***patron*** checks, gaming chips*, **complimentary cash gifts, casino checks, slot tokens*** and ***gaming*** plaques from patrons for check consolidations, total or partial redemptions or substitutions;

ii. xv. (No change.)

2. Check cashiers ***(also known as "check bank cashiers")*** shall not have access to cash, gaming chips and plaques and such cashiers' functions shall include, but are not limited to, the following:

3.-5. (No change.)

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

19:45-1.26 Substitution, redemption and consolidation of patron checks

(a) The drawer of an undeposited Counter Check or Slot Counter Check may use a personal check to substitute for or partially redeem such Counter Check or Slot Counter Check or to consolidate two or more undeposited Counter Checks or Slot Counter Checks if the personal check is drawn on an account which has been verified pursuant to N.J.A.C. 19:45-1.27, complies with the requirements of N.J.A.C. 19:45-1.25(b) and (c), and is deposited or redeemed in accordance with the requirements of N.J.S.A. 5:12-101 and this chapter.

1. For purposes of this chapter, a personal check which is used by a drawer in a substitution, partial redemption or consolidation transaction shall be referred to as a "replacement check."

2. The drawer of an undeposited replacement check may use another replacement check in a substitution, consolidation or partial redemption transaction involving the original replacement check.

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(b) The drawer of an undeposited patron check may redeem it:

1. In its entirety by exchanging cash, cash equivalents, complimentary cash gifts, casino checks, slot tokens, gaming chips or gaming plaques in an amount equal to the amount of the patron check being redeemed; or

2. In part by exchanging:

- i. Another patron check in a lesser amount; and

- ii. Cash, cash equivalents, complimentary cash gifts, casino checks, slot tokens, gaming chips or gaming plaques in an amount which equals the difference between the amount of the check exchanged in (b)2i above and the amount of the patron check being partially redeemed.

(c) If a drawer has more than one undeposited patron check outstanding, such checks shall be redeemed in reverse chronological order (the most recently dated patron check shall always be redeemed first).

1. If more than one patron check bears the same date, the drawer may choose the order in which to redeem the identically dated checks.

2. If, pursuant to its internal controls, a casino licensee does not require a patron check used in a substitution, consolidation or partial redemption transaction to be dated with the date of the initial patron check being substituted, consolidated or partially redeemed, ***then*** the date of the initial patron check, ***and*** not the date of the replacement, consolidation or partial redemption check, shall be used to determine the order in which outstanding patron checks shall be redeemed.

(d) The drawer of a patron check may consolidate some or all undeposited patron checks by exchanging another patron check in an amount equal to the total amount of the outstanding patron checks being consolidated.

(e) All consolidations, total or partial redemptions or substitutions of patron checks by gaming patrons shall be made by general cashiers' at the cashiers' cage. Consolidation, redemption or substitution of personal checks exchanged for non-gaming purposes pursuant to N.J.A.C. 19:45-1.25(d)lv shall not be allowed.

(f) No casino licensees or any other person licensed under the Act, or any other person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Act, shall accept any patron check in redemption, consolidation or substitution of any patron check for the purpose of avoiding or delaying the deposit of a patron check in a bank for collection or payment within the time periods specified in N.J.A.C. 19:45-1.28.

(g) Upon completion of a redemption, consolidation or substitution transaction pursuant to this section, the general cashier shall return any original patron check being redeemed, consolidated or substituted to the drawer in accordance with the requirements in (h) below. If the redemption, consolidation or substitution of a patron check is accomplished by the acceptance of another patron check, the general cashier accepting the new patron check shall date and time stamp the new check, place his or her initials on the new check, and record on the new check the serial number of any Counter Check, Slot Counter Check or replacement check being redeemed, consolidated or substituted. The new patron check shall be dated with the date of the initial patron check being redeemed, consolidated or substituted unless the internal controls of the casino licensee include an independent procedure to ensure that the date of the initial patron check shall be used to determine the date by which the new patron check shall be redeemed or deposited pursuant to N.J.A.C. 19:45-1.28.

(h) Any original patron check which may be returned to the drawer pursuant to this section or N.J.A.C. 19:45-1.26A shall be returned directly to the drawer by one of the following methods:

1. If the drawer personally appears at the cashiers' cage and requests the return of the check, the general cashier shall:

- i. Obtain the original patron check from the check bank cashier;

- ii. Verify the identity of the drawer through signature comparison, examination of identification credentials, comparison of the drawer's actual appearance to the physical description in the drawer's credit file or personal attestation by a cage or casino supervisor as to the identity of the drawer; and

iii. Return the original patron check to the drawer contemporaneously with the request.

2. If the drawer requests, either orally or in writing, that one, some or all of his or her patron checks be returned by mail, the casino licensee shall maintain a record of the specific terms of any oral request or a copy of the written request in the credit file of the drawer and the check bank cashier shall:

i. Obtain the original patron check;

[ii. Compare the signature on the patron check to the signature on the written request, if any;] and

*[iii.]***ii.** Present the original patron check to a cage supervisor who shall direct a *[cashiers' cage]* ***casino accounting department*** employee, as authorized in the casino licensee's internal controls, to mail the patron check ***by ordinary mail*** to ***only*** the ***address of the*** drawer's current *[address]* ***residence*** as indicated in his or her credit file *[or]* ***pursuant to N.J.A.C. 19:45-1.27; provided, however, that the patron check may be returned by ordinary mail*** to any other address requested by the drawer ***for which the drawer certifies, in a writing comparable to N.J.A.C. 19:45-1.27(a)11, that the address information is accurate*** and ***[documented]*** ***for which the casino licensee maintains*** in the credit file*[, with the mailing to be made by a method, such as certified mail, return receipt requested, that ensures that the casino licensee receives written confirmation of the delivery to the drawer]* ***a record of the request and the certification, and a log of the details of each patron check so mailed***.

19:45-1.26A Acceptance of payments toward outstanding patron checks

(a) A casino licensee may, in its discretion, permit the drawer of an undeposited patron check or any person acting for the benefit of such drawer to deposit cash, cash equivalents, casino checks, slot tokens, gaming chips or gaming plaques with a general cashier for the purpose of having such payment applied to the total or partial redemption of the patron check by the drawer pursuant to N.J.A.C. 19:45-1.26.

(b) Prior to a casino licensee accepting payments pursuant to (a) above, the casino licensee shall establish a system of internal controls for such transactions, which internal controls shall, at a minimum, provide for:

1. A method of documenting or recording the receipt of each such payment, which method shall include, without limitation, the following:

- i. The names of the drawer and the person making the payment;
 - ii. All significant details concerning the transaction;
 - iii. The signatures of the person making the payment and the general cashier accepting the payment; and
 - iv. The issuance of a receipt to the person making the payment;
2. The maintenance of the general cashier's imprest inventory; and
3. The notation in the drawer's credit account of the receipt of the payment.

(c) If any payments received by a casino licensee pursuant to this section entitle the drawer of a patron check to redeem the original patron check in its entirety, or if any such payments received in conjunction with the submission of a new patron check by the drawer in a lesser amount entitle the drawer of a patron check to redeem the original patron check in part, the casino licensee shall return the original patron check to the drawer in accordance with the provisions of N.J.A.C. 19:45-1.26.

(d) If the drawer of a patron check fails to redeem it prior to the date on which the patron check must be deposited pursuant to N.J.A.C. 19:45-1.28, the casino licensee shall deposit the patron check regardless whether any payment has been received pursuant to the provisions of this section. The casino licensee, after timely depositing the patron check and allowing a commercially reasonable time for the patron check to clear in accordance with its internal controls established pursuant to N.J.A.C. 19:45-1.28(f), shall apply any payments received pursuant to this section in accordance with the following priorities:

1. If the casino licensee has any returned checks issued by the drawer which have not been completely satisfied, the payments shall be applied to such obligations;

2. If the casino licensee, after all obligations of the drawer described in (d)1 above have been completely satisfied, possesses any outstanding patron checks issued by the drawer which have not been deposited or cleared in accordance with the requirements of N.J.A.C. 19:45-1.28, the casino licensee shall hold the payments until all outstanding patron checks of the drawer have cleared; or

3. If the casino licensee does not have any unpaid returned checks or outstanding patron checks issued by the drawer, the payments shall be returned immediately to the drawer unless the drawer has orally or in writing instructed the casino licensee to retain the payments in a cash deposit account and the casino licensee maintains in the credit file a record of the specific terms of those instructions, including a copy of any written instructions.

(e) Any payment received pursuant to this section that the drawer directs be deposited in a cash deposit account pursuant to (d)3 above shall be deposited by the casino licensee in accordance with the requirements of N.J.A.C. 19:45-1.24 except that, if the drawer is not present in the casino hotel:

1. The Customer Deposit Form may be prepared without the patron's signature on the duplicate copy;

2. The original of the Customer Deposit Form shall be mailed to the drawer in accordance with N.J.A.C. 19:45-1.26(h)2; and

3. After the payment is deposited in the patron cash deposit account, it shall only be used by or refunded to the drawer in accordance with N.J.A.C. 19:45-1.24 and, if applicable, N.J.A.C. 19:45-1.24B.

(f) If a patron check is dishonored by the drawer's bank upon presentation for payment and returned to the casino licensee, any payments received pursuant to this section, including payments that have been transferred to a patron cash deposit account pursuant to (d)3 above, that have not been returned to the drawer shall be used to reduce the amount to be collected from the drawer or to be deemed uncollectible pursuant to the provisions of N.J.A.C. 19:45-1.29.

(g) Except as otherwise provided in this section, any payment authorized by this section shall be made for the sole benefit of the drawer. No junket representative, junket enterprise*[,]* ***or*** employee or agent of a junket enterprise*[,]* ***shall, and no*** casino licensee or employee or agent of a casino licensee shall, except as specifically authorized by the rules of the Commission, make a payment for the benefit of the drawer of a patron check pursuant to this section. No casino licensee, or employee or agent thereof, shall require the drawer of a patron check to make, or to have some other person make, the payments authorized by this section as a pre-condition to initially approving or subsequently increasing a credit limit for the drawer or for any other reason whatsoever.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment Rules of the Games Let It Ride

Temporary Adoption of Amendments to N.J.A.C.

19:46-1.17, 1.18 and 1.19; and New Rules N.J.A.C.

19:46-1.13H and 19:47-18.1 through 18.12

Authority: N.J.S.A. 5:12-5, 69(e), 70(f), 99(a) and 100.

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether a game known as Let It Ride is suitable for casino use.

The experiment will be conducted in accordance with temporary rules, which will be posted in each casino participating in this experiment, and will also be available from the Commission upon request.

This test would allow a casino licensee which wishes to participate in the experiment, and which meets all the terms and conditions

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established by the Commission, to conduct the game of Let It Ride in its casino.

This experiment could begin on or after January 24, 1995, and continue for a maximum of 270 days from that date, unless otherwise terminated by the Commission or any of the participating casino licensees prior to that time, pursuant to the terms and conditions of the experiment.

Should the temporary amendments prove successful, in the judgment of the Commission, the Commission will propose them for adoption, in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

(a)

CASINO CONTROL COMMISSION

Taxes

Readoption: N.J.A.C. 19:54

Proposed: October 17, 1994 at 26 N.J.R. 4181(a).

Adopted: December 5, 1994 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: December 15, 1994 as R.1995 d.28, **without change**.

Authority: N.J.S.A. 5:12-63c, 70e, 144a and f and 144.1c.

Effective Date: December 15, 1994.

Expiration Date: December 15, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:54.

(b)

DELAWARE RIVER BASIN COMMISSION

Amendment to Comprehensive Plan and Basin Regulations

Water Supply Charges Regarding the Termination of Certificates of Entitlement

Adopted: December 7, 1994 by the Delaware River Basin

Commission, Susan M. Weisman, Secretary.

Filed: December 12, 1994 as R.1995 d.22.

Effective: December 7, 1994.

A RESOLUTION to amend the Comprehensive Plan and Basin Regulations—Water Supply Charges regarding the termination of certificates of entitlement.

WHEREAS, in May 1974 the Commission adopted Resolution No. 74-6 which imposed water charges on diversions or withdrawals of surface water from the Delaware River Basin; and

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WHEREAS, the water charge regulation exempted diversions or withdrawals that were legally permissible prior to the 1961 adoption of the Delaware River Basin Compact and surface water users exempted because of their pre-Compact status were issued certificates of entitlement; and

WHEREAS, Resolution No. 74-6 further provided that certificates of entitlement would be terminated when transferred with certain specified exceptions; and

WHEREAS, existing Commission policy, which provides for termination when there is a transfer of ownership and/or control, has been ruled inconsistent with the wording of Resolution No. 74-6; and

WHEREAS, the Commission is now proposing to amend its Basin Regulations—Water Supply Charges so that transfer exceptions are consistent with existing Commission policy to terminate certificates of entitlement when a transfer of ownership and/or control of a water using facility occurs; and

WHEREAS, the proposed amendments would 1) define “transfer”, 2) delete two categories of exemptions from the existing rule that terminates certificates of entitlement upon transfer and 3) revise a third such category; and

WHEREAS, the Commission held a public hearing on October 26, 1994 on the proposed amendments and has reviewed and considered testimony from water users and other interested parties; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

I. The Comprehensive Plan and Basin Regulations—Water Supply Charges are hereby amended as follows:

1. Section 5.2.1D. of the Basin Regulations—Water Supply Charges is amended to read as follows:

D. A certificate of entitlement is not transferable, except as provided in paragraphs E. and F. of this section. For the purposes of this section, “transfer” shall mean any sale or other conveyance by a holder of a certificate of entitlement involving a specific facility and shall include any transfer which results in a change of ownership and/or control of the facility or of the stock, or other indicia of ownership of a corporation which holds title to the facility.

2. Section 5.2.1F. of the Basin Regulations—Water Supply Charges is amended to read as follows:

F. A certificate of entitlement may be transferred in connection with a corporate reorganization within any of the following categories:

(1) whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation; that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation; or

(2) where such transfer is merely a result of a change of the name, identity, internal corporate structure or place of organization of a corporate holder of a certificate of entitlement and does not affect ownership and/or control.

II. These amendments shall be effective immediately.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

BUREAU OF STORMWATER PERMITTING

Notice of Public Hearing New Jersey Pollutant Discharge Elimination System Statewide Stormwater Permitting Program 1995 Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection (Department) will hold a public hearing to present the 1995 Annual Fee Report and Proposed Fee Schedule for the Stormwater Permitting Program that is administered by the Department's Bureau of Stormwater Permitting, and that is part of the New Jersey Pollutant Discharge Elimination System (NJPDES) Permit Program.

The public hearing will be held on Tuesday, February 21, 1995 from 3:00 P.M. to 6:00 P.M. at:

New Jersey Department of Environmental Protection
Public Hearing Room, First Floor
401 East State Street
Trenton, New Jersey

The public comment period on the 1995 Annual Fee Report and Proposed Fee Schedule for the Stormwater Permitting Program will remain open until February 24, 1995. Please submit written comments to:

Barry Chalofsky, Manager
1995 Annual Fee Report
Bureau of Stormwater Permitting
Department of Environmental Protection
CN 423
Trenton, New Jersey 08625

The Department will mail copies of the 1995 Annual Fee Report and Proposed Fee Schedule to Stormwater NJPDES applicants and permittees. Others wishing copies may contact the Bureau of Stormwater Permitting at (609) 633-7026.

(b)

OFFICE OF LAND AND WATER PLANNING

Notice of Action on Petition for Rulemaking N.J.A.C. 7:9-6 Ground Water Quality Standards: Criterion for Chlorobenzene

Petitioner: CPS Chemical Co., Inc.

Take notice that on November 28, 1994, the Department of Environmental Protection (Department) received a petition for rulemaking concerning an amendment to the Department's Class II-A Ground Water Quality Criteria referenced at N.J.A.C. 7:9-6.7(c).

The petitioner requests that the Department update the Ground Water Quality Standards, N.J.A.C. 7:9-6 in accordance with recent recommendations made by the New Jersey Drinking Water Quality Institute. Specifically, the Petitioner requested that the human health based ground water quality criterion for chlorobenzene as referenced at N.J.A.C. 7:9-6.7(c) be changed from the present standard of four ug/l to 50 ug/l. The petitioner is under a 1992 Court Order to finance remediation of chlorobenzene contamination in ground water in the Old Bridge Aquifer.

The New Jersey Drinking Water Quality Institute, established within the Department pursuant to N.J.S.A. 58:12A-20, is one of the Department's primary sources of information utilized as a basis for drinking water standards adopted by the Department pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. In addition, Institute recommendations are the first priority source for data that are used in deriving human health based ground water quality criteria.

On January 7, 1993 the Department adopted the current ground water quality criterion of four ug/l for chlorobenzene which reflected, at that time, the current recommendations of the New Jersey Drinking Water Quality Institute. On June 15, 1993 the New Jersey Drinking Water

Quality Institute voted to recommend to the Department that a Maximum Contaminant Level (MCL) of 50 ug/l be used to regulate drinking water pursuant to N.J.S.A. 58:12A-1 et seq. As a result of this recommendation, the Department will amend the Class II-A ground water quality criterion for chlorobenzene as part of the readoption of N.J.A.C. 7:9-6. The Department plans to propose readoption of the New Jersey Ground Water Quality Standards during 1995 and complete the readoption process prior to January 18, 1996, the expiration date of the standards.

As required under N.J.A.C. 1:30-3.6, the Department has mailed the notice of action on the petition to the petitioner.

(c)

DIVISION OF PARKS AND FORESTRY

Natural Areas System

Notice of Adoption of Management Plan and Boundary Revision for Dryden Kuser Natural Area

Authority: N.J.S.A. 13:1B-3; 13:1B-15.4 et seq.;
13:1B-15.12a et seq.; and 13:1D-9; and N.J.A.C.
7:5A.

Take notice that in accordance with N.J.A.C. 7:5A-1.8 and 1.12, and the recommendation of the Natural Areas Council (Council), Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection (Department), has adopted a management plan and revised the boundary for the Dryden Kuser Natural Area.

The Dryden Kuser Natural Area is a 1,451-acre tract located within High Point State Park in Wantage and Montague Townships, Sussex County. The tract is characterized primarily by Atlantic white cedar swamp, pitch pine-scrub oak forest, siliceous rock outcrops, and chestnut-mixed oak forest communities and is administered by the Division of Parks and Forestry through High Point State Park (hereinafter referred to as the administering agency). The Dryden Kuser Natural Area was designated to the Natural Areas System in 1978. The Natural Areas System is established and maintained pursuant to N.J.S.A. 13:1B-15.4 et seq. and 13:1B-15.12a et seq. These statutes give the Department the responsibility of acquiring, maintaining and preserving natural areas as examples of the State's natural heritage and as places of scientific study. Currently the System contains 42 areas totalling nearly 31,000 acres.

The rules governing the Natural Areas System provide guidelines for the preparation of management plans at N.J.A.C. 7:5A-1.8. The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long- and short-term management techniques and public uses to ensure preservation of the area in accordance with its management objective (see N.J.A.C. 7:5A-1.8). After a management plan is drafted by the Department and subjected to internal review, it is submitted to the Natural Areas Council, an advisory group to the Commissioner of the Department, for review and comment. The Council may then recommend to the Commissioner that the plan be adopted. Adoption is accomplished through publication of a notice in the New Jersey Register by the Commissioner.

The management objective for the Dryden Kuser Natural Area is preservation of a northern bog habitat and rare species habitat (N.J.A.C. 7:5A-1.13(a)14). The management plan for this area primarily specifies actions that will be taken to ensure preservation of several forest communities and populations of State endangered and threatened species. The most significant plant species within the natural area is the State endangered three-toothed cinquefoil (*Potentilla tridentata*). New Jersey's only confirmed extant population of this plant occurs in the rock outcrop habitat on the crest of the Kittatinny Ridge in this natural area. Also, the highest elevation Atlantic white cedar swamp in the world is found in this natural area. Management actions include mapping locations of populations of State endangered species and plant species of concern, monitoring these species, establishing criteria for gypsy moth suppression efforts, and studying natural regeneration of the Atlantic white cedar swamp and developing a strategy for cedar regeneration if needed. Adoption of this management plan will help to ensure protection of

several State endangered species and will have a long-term positive effect on the public, including those who conduct research and educational activities.

Under N.J.A.C. 7:5A-1.12, Boundaries of Natural Areas, revisions to the boundary of a natural area may be proposed if the boundary change conforms with physical features identifiable in the field and serves to protect the natural area or further its management objective. A boundary change proposal that will result in a net change of not more than 25 percent of the total acreage of the natural area is reviewed by the Council and submitted to the Commissioner of the Department for approval. If approved, the boundary change is effective upon publication of a notice of the boundary change in the New Jersey Register. Through this procedure, the Council has recommended adding 169.7 acres to the Dryden Kuser Natural Area and removing 45.4 acres from the natural area for a net addition of 124.3 acres. This boundary change will serve to protect the natural area and further its management objective by preserving additional suitable rare species habitat.

At its July 7, 1994 meeting, the Natural Areas Council reviewed and received staff recommendations on a draft management plan and boundary change proposal prepared by the Department for the Dryden Kuser Natural Area. By unanimous resolution, the Council adopted recommendations for management of the Dryden Kuser Natural Area, including revisions to the boundary, and submitted these recommendations in the form of a management plan to the Commissioner of Environmental Protection for approval in accordance with the procedure at N.J.A.C. 7:5A-1.8. The Commissioner agreed with all of the recommendations of the Council and approved the Dryden Kuser Natural Area Management Plan on December 15, 1994.

Following is a summary of the management techniques prescribed in the Dryden Kuser Natural Area Management Plan along with an explanation for each:

1. The Office of Natural Lands Management (ONLM) in cooperation with the Bureau of Forest Management and the administering agency, will gather baseline data on forest composition, distribution and age within the Atlantic white cedar swamp in order to assess the potential for forest regeneration without human intervention. If, as suspected from casual observation, the potential for cedar regeneration is found to be low, a strategy for cedar regeneration within the swamp will be developed and implemented. Techniques that may be used to preserve this forest community include deer management (exclosures, contraceptives, hunting, repellants) and silvicultural techniques such as hardwood control/removal.

This management technique serves to further the management objective of preservation of a northern bog habitat by fostering cedar regeneration in this Atlantic white cedar swamp. Baseline data is necessary because it provides a foundation for future management decisions. The growth habit of cedar is such that it has difficulty regenerating. Cedar seedlings require open sunlight and are intolerant to shade. However, when openings occur in cedar stands, hardwoods often develop in the understory, inhibiting cedar seedlings from establishing in the opening. Eventually the cedar swamp may convert to a hardwood swamp. Should baseline data confirm the need for fostering cedar regeneration, several potential methods should be explored to control herbivory by deer and promote cedar establishment.

2. The Division of Parks and Forestry may perform gypsy moth control activities in the natural area if the following three criteria are met: counts of at least 400 egg masses/acre are recorded; the previous year defoliation occurred during or immediately preceded a severe drought; and a significant amount of tree mortality (not defoliation) will be expected if control activities are not performed. If these criteria are met, the Division should submit a gypsy moth control plan, including a spraying program environmental impact statement (EIS), with data that substantiates the above criteria, to the ONLM. The EIS should contact methods to avoid impacts on Lepidoptera, rare and endangered species and other on-target species. If spraying is conducted, the following spraying guidelines must be followed: one application of B.t. is permitted per year, spraying will be conducted from mid to late May; and the pitch pine-scrub oak, hemlock, and Atlantic white cedar communities will be considered no spray zones. Should a more environmentally sound method of gypsy moth control become available in the future, this new gypsy moth control method will be allowed upon Natural Areas Council review and Commissioner approval.

The Commissioner hereby approves of gypsy moth control activities in accordance with N.J.A.C. 7:5A-1.9(e)13. Performing gypsy moth control will further the management objective by helping to maintain suitable

habitat for State endangered and threatened species documented at High Point State Park, such as the timber rattlesnake and barred owl, and preserve mass producing capability needed for maintaining the small mammal population which is a major food source for the State endangered timber rattlesnake. High egg mass counts and defoliation during or preceding a drought are known to increase the susceptibility of the forest to mortality from gypsy moth defoliation. Drought places an additional stress on already defoliated trees which increases the chance of mortality from a second defoliation. Gypsy moth control within the pitch pine-scrub oak, hemlock and Atlantic white cedar swamp communities is prohibited for the following reasons: pitch pine and the vegetation within the Atlantic white cedar and hemlock communities is not considered a primary food source for gypsy moth, therefore, is not in jeopardy of defoliation; defoliation will not kill scrub oak trees; and spraying may negatively impact non-target invertebrates inhabiting these communities.

3. No specific techniques are proposed to control the hemlock wooly adelgid. Should a control technique be developed, woolly adelgid control methods will be allowed upon Natural Areas Council review and Commissioner approval.

This technique is included to address the significant threat that hemlock wooly adelgid poses to the integrity of hemlock stands within the natural area. However, there is currently no proven technique for adequate treatment in an inferior forest condition.

4. The administering agency will remove the binocular stand, binocular base and wooden benches on the rocky outcrop near the High Point Monument by December 31, 1995.

This management requirement is included to help ensure preservation of New Jersey's only population of the State endangered three-toothed cinquefoil by reducing trampling in a high visitation area of the park. The plant is considered critically imperiled in New Jersey because of extreme rarity.

5. The ONLM will survey/monitor the three-toothed cinquefoil population on a periodic basis and assess future management needs. Special attention will be paid to monitoring any impacts of succession, trampling and browsing by deer on this species. Should additional locations of this or other endangered or threatened species be discovered in the natural area, they too will be monitored on a periodic basis.

This management requirement is included to help ensure the preservation of the State endangered three-toothed cinquefoil population. The plant is considered critically imperiled in New Jersey because of extreme rarity.

6. The ONLM will, within the limits of available staff and funding, perform surveys for historically known plant species.

This technique is included to help ensure the preservation of these species and to ensure consideration of these species in future planning of the natural area.

7. The ONLM will, within the limits of available staff and funding, conduct Lepidoptera surveys with the assistance of qualified volunteers.

This technique is included to assess the current status of this segment of the fauna and as an indicator of forest health in terms of past pesticide use.

8. Should a timber rattlesnake den be found to exist in the natural area where canopy cover at the site exceeds 75 percent, State Forestry Services may perform selective cutting to increase the amount of sunlight reaching the area. The cutting should take place during winter while the snakes are in hibernation. However, selective cutting should not take place if a gypsy moth infestation is imminent. The size of the cut will depend on the size of the population and will be determined in cooperation with the Division of Fish, Game and Wildlife. Cutting should begin at or near the den and radiate in the direction of the least public use to minimize human-snake conflicts. Care should be taken to avoid damage to standing trees, and slash may be removed or left around the perimeter of the cut to create habitat for prey species and other wildlife. The ONLM and the Division of Fish, Game and Wildlife will provide assistance in determining the optimum size and location of the cutting.

This management technique is included to prevent natural succession from causing den sites to become unsuitable should a den be discovered in the natural area. This technique furthers the management objective of preserving rare species habitat.

9. The ONLM will provide the administering agency with a map indicating known and possible locations of all endangered and threatened species as well as the extent of their habitat, a written description of

the species and, if possible, an illustration of the plant species by June 30, 1995. These materials will be updated by the ONLM should locations for any additional species be discovered.

This management requirement is included so that the administering agency can more effectively manage the natural area for rare species and their habitats, and to ensure consideration of these species in future planning in the natural area.

10. The boundary of the natural area is hereby revised as follows to include 169.7 acres in the southern section of the natural area and remove a total of 45.4 acres from the eastern and southern sections of the natural area. The resulting acreage of the Dryden Kuser Natural Area is 1,451 acres. The revised boundary description is as follows: from the northwest corner of the natural area follow the State Park property line south and then northwest to Route 23, proceed south along Route 23 for approximately 1.5 miles, then east along the Steenykill Lake boat launch road approximately 1/5 mile to its terminus, continue east on the Steenykill Trail to the intersection with Monument Trail, south on the Monument Trail to the Nature Center driveway, east on Kuser Road, back on Monument Trail to the High Point Monument, around the monument and associated parking lot and buildings, south along Monument Drive, south on Monument Trail/Long Path, east and then north along the Appalachian Trail, west and then north along the State Park property line and then west along the New Jersey-New York state line to the starting point. If a trail delineating the boundary of the natural area is relocated or closed, it will continue to be maintained so that the boundary is identifiable in the field.

Changing the natural area boundary as described conforms with the Natural Areas System Rules at N.J.A.C. 7:5A-1.12 by creating a boundary that better conforms with physical features identifiable in the field and would also further the management objective by adding habitat that may be suitable for rare species such as the timber rattlesnake and possible the short-tailed shrew. In accordance with N.J.A.C. 7:5A-1.12, revisions to the boundary of a natural area that result in a net change of not more than 25 percent of the total acreage of the natural area may be made, upon public notice, if the boundary change conforms with physical features identifiable in the field or the extent of State ownership and serves to protect the natural area or further its management objective. The revision will make the boundary more distinct, thus, more enforceable and will further the management objective by increasing protection of suitable habitat for State endangered and threatened species documented at High Point State Park. The net increase of 124 acres equates to a 10 percent net increase in size of the natural area.

11. The administering agency will post State Natural Area boundary signs at trail access points and along the natural area boundary, where practicable, at a maximum of ten per mile by December 31, 1995. These signs will be replaced as needed. The ONLM will provide the administering agency with boundary signs as needed.

Posting of the boundaries of all natural areas is required in accordance with N.J.A.C. 7:5A-1.9(e)1. The ONLM, which is responsible for overall administration of the Natural Areas System, designs and distributes paper boundary signs for posting of all State Natural Areas.

12. Current uses of the natural area, which include picnicking in designated areas, hiking, nature interpretation, cross country skiing, snowshoeing, birdwatching, and botanizing are allowed to continue in the natural area. The ONLM and the administering agency will continue to monitor the above uses and/or any illegal uses to assess their effect on the natural features occurring in this area.

The above uses are compatible with preservation of the species and natural communities that occur within the natural area and should continue to be allowed.

13. Picnic facilities may be maintained or expanded within the areas where these facilities currently exist, but clearing of undisturbed areas for such purpose is not permissible.

Use of the picnic facilities does not have a negative impact on the natural area nor does it conflict with the management objective.

14. Horseback riding and bicycle riding are prohibited on natural area trails.

Horseback riding is prohibited within the natural area by the Superintendent of High Point State Park due to incompatibility with other uses. The Superintendent allows horseback riding and other non-passive recreation in the southern section of High Point State Park, south of Route 23, where there are fewer facilities and the density of users is less. The Superintendent has the authority to restrict such use in accordance with NJ State Park Rules and Regulations at N.J.A.C.

7:2-2.21. Bicycle riding is prohibited on natural area trails according to New Jersey State Park Service Rules and Regulations at N.J.A.C. 7:2-2.25(l).

15. Cross-country skiing may continue on natural area trails, however the following activities are prohibited in the natural area: mechanical grooming of trails, tracksetting on trails, removal of trees, creating snow and transporting natural or artificial snow onto the trails. Any modification must be presented for Natural Areas Council review and Commissioner approval.

Although cross-country skiing is permitted in the natural area, actions to enhance this use will not be taken. It is believed that excessive use of these trails along with use of mechanized vehicles could negatively impact the natural area and its features.

16. Running sled dogs with sleds in season or sled dogs with wheeled sleds out of season on trails within the natural area will continue to be prohibited.

This prohibition is included to eliminate possible conflict with other users on the trails and to prevent any additional damage to the trail system.

17. The administering agency will obtain all applications to conduct research or collect specimens, forward a copy to the ONLM, and provide a response within a reasonable date of application submittal. The administering agency shall coordinate a response with the ONLM.

This requirement is included in accordance with procedures for conducting research and collecting specimens in natural areas as outlined at N.J.A.C. 7:5A-1.10, and to ensure thorough review of all proposals.

18. The Park Superintendent is responsible for maintenance of all natural area trails, through Park staff, or others. Maintenance includes marking trails using paint blazes, pruning bushes and trees necessary to clear the foot path and erosion-control work. No widening of existing trails is permitted. Trails are to be used during daylight hours. No camping or open campfires are allowed along the trails. Horseback riding or use of any wheeled vehicles shall at all times be prohibited.

The use of these trails has no deleterious effect on the natural features within the natural area as long as there is no widening of the existing trails.

19. The administering agency may maintain existing scenic vistas around the High Point Monument and along the Monument Trail. Precautions will be taken by the administering agency during clearing activity to avoid vehicular or other impacts to areas which support the three-toothed cinquefoil (*Potentilla tridentata*). Should the administering agency wish to create a new scenic vista, Natural Areas Council review and Commissioner approval of a proposal by the administering agency will be required.

Scenic vistas are one of the main attractions to visitors of High Point State Park. Maintenance of existing scenic vistas provides visitors with an uninterrupted view of the surrounding landscape from the highest natural elevation in New Jersey. Continuation of this activity will not significantly impact the features of the management objective, including nearby colonies of the three-toothed cinquefoil, and may benefit timber rattlesnake.

20. Should creation of a new trail or enlargement of an existing trail be proposed in the area of High Point Monument, the administering agency will submit a plan for Natural Areas Council review and Commissioner approval.

The State endangered three-toothed cinquefoil exists in several locations at the High Point Monument. This requirement is included to help ensure the preservation of the species and is in accordance with N.J.A.C. 7:5A-1.9(e)16iii(1), which states that creation of new trails or enlargement of existing trails for interpretive purposes may be initiated subsequent to review of a plan by the Council and approval of that plan by the Commissioner. It is possible that in the future trail access for the disabled may be required.

21. The Appalachian Trail (AT) Management Committee will forward to the ONLM any proposal to relocate, widen, or create a new side trail within the natural area for Natural Areas Council review and Commissioner approval.

This requirement is included to ensure proper review of actions that could affect rare plant species as well as other natural features within the natural area.

22. According to a signed Memorandum of Understanding, the administering agency will forward proposals for management activities within the primary and/or secondary management zone(s) of the AT to the AT Management Committee for review.

PUBLIC NOTICES

This requirement is included to ensure that all organizations represented by the AT Management Committee have input on management activities that affect the Appalachian Trail corridor and its users.

23. The proposed location of a new nature center at the gravel parking area on the east side of the paved access road immediately south of the gate is acceptable as long as no new clearing of the adjacent forest occurs and approval is received from the Historic Preservation Office.

The Commissioner hereby approves of location of a new nature center at the location indicated in accordance with N.J.A.C. 7:5A-1.9(e)5 which states that new structures or enlargement of existing structures may be undertaken provided the structures directly or indirectly contribute to the management objective.

24. The administering agency will forward any plans that include ground disturbance or any activity that may disturb historical features of the natural area to the New Jersey Historic Preservation Office for review.

This requirement is included to help ensure preservation of any historical features within the natural area. It is likely that historical features are present within the natural area based on the history of the area.

25. The construction of communication, transmission or any other type of tower is prohibited in the natural area.

This prohibition is in accordance with N.J.A.C. 7:5A-1.9(e)5 which states that new structures or enlargement of existing structures may be undertaken provided the structures directly or indirectly contribute to the management objective. The construction of any type of transmission tower will not contribute to the management objective.

Copies of the adopted plan may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625
Department of Environmental Protection
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
Trenton, New Jersey 08625

This notice is published as a matter of public information.

(a)

OFFICE OF LAND AND WATER PLANNING Amendment to the Upper Delaware Water Quality Management Plan Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Upper Delaware Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of Allamuchy Township Board of Education. This amendment would allow for expansion of the Allamuchy Township Elementary School (Block 401, Lot 100) on-site discharge to ground water facility to accommodate a maximum of 450 students with a wastewater planning flow of 11,250 gallons per day (gpd). The existing wastewater treatment system consists of a conventional subsurface disposal system including septic tanks and a leaching field. The proposed system will consist of a package type sewage treatment plant which treats the wastewater prior to discharge into a new subsurface leaching field. The Allamuchy Township Wastewater Management Plan will additionally be updated to clarify the "Areas To Be Served By On-Site Ground Water Disposal Systems" designation as systems with wastewater planning flows of less than 20,000 gpd.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Delaware WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at

ENVIRONMENTAL PROTECTION

the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the NJDEP address cited above with copies sent to Mr. Thomas Grau, Killam Associates, 6 Emery Avenue, Randolph, New Jersey 07869 and Dr. James Dwyer, Allamuchy Township Board of Education, P.O. J, Allamuchy, New Jersey 07820. All comments must be submitted within 10 working days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within ten working days of this public notice to Dr. Van Abs at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

OFFICE OF LAND AND WATER PLANNING Amendment to the Monmouth County Water Quality Management Plan Public Notice

Take notice that on December 8, 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 Monmouth County Water Quality Management (WQM) Plan was adopted by the Department. This amendment updates the Western Monmouth Utilities Authority (WMUA) Wastewater Management Plan (WMP) in Marlboro and Manalapan Townships. The WMP identifies a sewer service area expansion to the Pine Brook Sewage Treatment Plant (STP) to serve the Samaritan Center site in Manalapan and the Marlboro Manse, Marlboro Hillside Apartments, and Marlboro YMCA sites in Marlboro with a projected wastewater planning flow of 108,000 gallons per day for these sites. This brings the projected wastewater planning flow need of the Pine Brook STP to 8.918 million gallons per day (MGD). The present permitted capacity of the Pine Brook STP is 6.6 MGD with existing and committed flows of 5.520 MGD.

As part of this amendment, the WMP document was updated for the Pine Brook STP service area flows. In addition, some minor boundary shifts were made to the overall sewer service area map for the Pine Brook STP. The Raceway Park site in Oldbridge Township, Middlesex County, is shown as service area of the Pine Brook STP as identified in an Administrative Consent Order with the NJDEP in 1992. The "Existing and Proposed Service Areas" Map also identifies the previously unmapped but revised sewer service area boundary with the Bayshore Regional Sewerage Authority as identified by an agreement between the two authorities and a previously adopted WQM plan amendment.

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.

(a)

OFFICE OF LAND AND WATER PLANNING
Amendment to the Monmouth County Water Quality
Management Plan
Public Notice

Take notice that on December 15, 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 Monmouth County Water Quality Management Plan was adopted by the Department. This amendment proposal was submitted on behalf of the Western Monmouth Utilities Authority (WMUA). The amendment updates the WMUA and Bayshore Regional Sewerage Authority (BRSA) Wastewater Management Plans (WMPs) in Marlboro Township. The WMPs identify a sewer service area expansion to the BRSA Union Beach Sewage Treatment Plant (STP) to serve the proposed Woodbury Oaks single family home development to be located at Block 120, Lots 32.02, 64 and 67 in the Morganville section of Marlboro Township. The projected wastewater planning flow from this site is 30,000 gallons per day. This brings the projected wastewater planning flow need of the BRSA Union Beach STP for Marlboro Township to 917,000 gallons per day.

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.

HEALTH**(b)**

OFFICE OF FINANCIAL AND GENERAL SERVICES
Notice of Availability of Grants in the Directory of
Department of Health Grant Programs

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Health hereby publishes notice of grant availability in the Directory of Department of Health Grant Programs. Copies of the Directory can be obtained by contacting the Grant Evaluation and Review Program, Office of Financial and General Services, Department of Health at 609-588-7448.

(c)

THE COMMISSIONER
Notice of Invitation for Certificate of Need
Applications for Transfer of Ownership of an Entire
Acute Care Hospital, and Closure of an Acute Care
Hospital

Take notice that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Len Fishman, Commissioner, New Jersey Department of Health, is inviting certificate of need applications for the following types of health care activities:

1. The transfer of ownership of an entire acute care hospital, as referenced at N.J.A.C. 8:33-3.3 and 8:33A-1.17.
2. The closure of an acute care hospital, as referenced at N.J.A.C. 8:33-3.2(c).

Such certificate of need applications will be received in the Department of Health on the first day of any month in 1995 and will be processed in accordance with full review procedures as set forth in N.J.A.C. 8:33.

Certificate of Need applications shall be filed in accordance with the Certificate of Need Application and Review Process, N.J.A.C. 8:33, and shall be in compliance with all applicable planning and licensing rules.

IN ACCORDANCE WITH N.J.A.C. 8:33-1.2(d), CERTIFICATE OF NEED APPLICATIONS SHALL BE REVIEWED FOR CONFORMANCE WITH THE RULES IN EFFECT ON THE DATE THE CERTIFICATE OF NEED APPLICATION IS DEEMED COMPLETE FOR PROCESSING.

GEOGRAPHIC AREA TO BE SERVED: Applications will be received from anywhere in the State of New Jersey.

DATE APPLICATION IS DUE: Applications are to be received in the offices of the New Jersey Department of Health's Certificate of Need Program, Room 603, CN 360, Trenton, New Jersey 08625 on the first day of any month in 1995.

DATE COMPLETENESS REVIEW DECISION ISSUED: Upon receipt of all information and documentation requested during completeness review.

DATE LOCAL ADVISORY BOARDS WILL REVIEW THE APPLICATIONS AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER AND THE STATE HEALTH PLANNING BOARD: In accordance with the time-frames set forth in N.J.A.C. 8:33-4.

DATE STATE HEALTH PLANNING BOARD WILL REVIEW APPLICATIONS AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER: In accordance with the time-frames set forth in N.J.A.C. 8:33-4.

APPLICATIONS MAY BE REQUESTED FROM AND MUST BE FILED WITH:

Certificate of Need Program
 New Jersey State Department of Health
 CN 360
 Trenton, New Jersey 08625-0360
 Telephone: 609-292-6552

APPLICATIONS MUST ALSO BE FILED WITH: Local Advisory Board(s) serving the region of the subject health planning service or facility.

(d)

THE COMMISSIONER
Notice of Invitation for Certificate of Need
Applications from All Health Care Facilities Except
General Acute Care Hospitals

Take notice that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Len Fishman, Commissioner, New Jersey Department of Health, is inviting certificate of need applications for the following types of health care activities from all health care facilities except general acute care hospitals.

1. Any decrease in the number of licensed beds by licensure and/or health planning category where the reduction in licensed beds will result in a capital expenditure greater than \$1,000,000 as referenced at N.J.A.C. 8:33-3.4.
2. Acquisition of a building, new construction and/or renovation of a health care facility which under generally accepted accounting principles results in a cumulative total project cost for all such projects within a fiscal year in excess of \$1,000,000, per N.J.A.C. 8:33-3.6, providing that the acquisition of a building, new construction and/or renovation does not include the addition of any new health care services or the addition and/or conversion of beds.

Such certificate of need applications will be received in the Department of Health on the first day of any month in 1995 and will be processed in accordance with full review procedures as set forth in N.J.A.C. 8:33.

Certificate of Need applications shall be filed in accordance with the Certificate of Need Application and Review Process, N.J.A.C. 8:33, and shall be in compliance with all applicable planning and licensing rules.

IN ACCORDANCE WITH N.J.A.C. 8:33-1.2(d), CERTIFICATE OF NEED APPLICATIONS SHALL BE REVIEWED FOR CONFORMANCE WITH THE RULES IN EFFECT ON THE DATE THE CERTIFICATE OF NEED APPLICATION IS DEEMED COMPLETE FOR PROCESSING.

GEOGRAPHIC AREA TO BE SERVED: Applications will be received from anywhere in the State of New Jersey.

DATE APPLICATION IS DUE: Applications are to be received in the offices of the New Jersey Department of Health's Certificate of Need Program, Room 603, CN 360, Trenton, New Jersey 08625 on the first day of any month in 1995.

DATE COMPLETENESS REVIEW DECISION ISSUED: Upon receipt of all information and documentation requested during completeness review.

DATE LOCAL ADVISORY BOARDS WILL REVIEW THE APPLICATIONS AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER AND THE STATE HEALTH PLANNING BOARD: In accordance with the time-frames set forth in N.J.A.C. 8:33-4.

DATE STATE HEALTH PLANNING BOARD WILL REVIEW APPLICATIONS AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER: In accordance with the time-frames set forth in N.J.A.C. 8:33-4.

APPLICATIONS MAY BE REQUESTED FROM AND MUST BE FILED WITH:

Certificate of Need Program
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625-0360
Telephone: 609-292-6552

APPLICATIONS MUST ALSO BE FILED WITH: Local Advisory Board(s) serving the region of the subject health planning service or facility.

(a)

THE COMMISSIONER

Notice of Invitation for Certificate of Need Application for Acute Care Hospital Services, Major Moveable Equipment, Surgical Facilities, and Birthing Center

Take notice that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Len Fishman, Commissioner, New Jersey Department of Health, is inviting certificate of need applications for the following types of health care activities:

1. Acute care hospital services in accordance with N.J.A.C. 8:33A:

a. Construction, renovation, modernization, and expansion of medical/surgical units, adult ICU/CCU units, obstetric units, neonatal units, surgical services, emergency departments, nontertiary hospital-based diagnostic and treatment services, and ancillary and administrative functions.

(Certificate of need applications will not be accepted for processing at this time for construction, renovation, modernization, and expansion affecting pediatric services including pediatric ICU, cardiac catheterization services, psychiatric services or cardiac surgery services.)

b. Changes in bed complement

(1) Addition of medical/surgical and adult ICU/CCU beds.

(2) Initiation or expansion of alcohol detoxification and obstetric services.

(3) Reduction of medical/surgical, adult ICU/CCU, pediatric ICU/CCU, alcohol detoxification, psychiatric, pediatric and obstetric beds.

(Certificate of need applications will not be accepted for processing at this time for the addition of pediatric beds including pediatric ICU, or for the addition to any category of psychiatric beds as defined at N.J.A.C. 8:33R.)

c. Complex electrophysiology studies

Initiation of complex electrophysiology studies in accordance with N.J.A.C. 8:33E by acute care hospitals currently approved to provide cardiac surgery services.

2. Major moveable equipment

Initiation, expansion, upgrade or replacement of megavoltage radiation oncology services and equipment by all providers in accordance with N.J.A.C. 8:33-I.

3. Surgical facilities

a. Establishment of new surgical facilities by all providers in accordance with N.J.A.C. 8:33S.

b. Additions, deletions or alterations of existing surgical facilities by all providers in accordance with N.J.A.C. 8:33S.

(Certificate of need applications will not be accepted for processing at this time for the initiation or expansion of cardiac surgical services.)

4. Birthing Centers

Initiation of Birthing Centers by all providers.

Certificate of Need applications shall be filed in accordance with the Certificate of Need Application and Review Process, N.J.A.C. 8:33, and shall be in compliance with all applicable planning and licensing rules.

IN ACCORDANCE WITH N.J.A.C. 8:33-1.2(d), CERTIFICATE OF NEED APPLICATIONS SHALL BE REVIEWED FOR CONFORMANCE WITH THE RULES IN EFFECT ON THE DATE THE CERTIFICATE OF NEED APPLICATION IS DEEMED COMPLETE FOR PROCESSING.

GEOGRAPHIC AREA TO BE SERVED: Statewide

DATE APPLICATION IS DUE: March 10, 1995

DATE COMPLETENESS REVIEW DECISION ISSUED: June 10, 1995

DATE LOCAL ADVISORY BOARDS WILL REVIEW THE APPLICATIONS AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER AND THE STATE HEALTH PLANNING BOARD: On or before July 25, 1995

DATE STATE HEALTH PLANNING BOARD WILL REVIEW THE APPLICATION AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER: On or before September 10, 1995

APPLICATIONS MAY BE REQUESTED FROM AND MUST BE FILED WITH:

Certificate of Need Program
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360
609-292-6552

APPLICATIONS MUST ALSO BE FILED WITH: All affected Local Advisory Board(s).

(b)

THE COMMISSIONER

Notice of Invitation for Certificate of Need Applications from Licensed Acute Care Hospitals

Take notice that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Len Fishman, Commissioner, New Jersey Department of Health, is inviting certificate of need applications from licensed acute care hospitals for the addition of beds within any of the bed categories for which the hospital is currently licensed by the Department of Health solely through the conversion of underutilized and permanently licensed beds and only where the total cost of the project is not in excess of the five percent certificate of need threshold set forth at N.J.S.A. 26:2H-7b and N.J.A.C. 8:33-6.1(b). Accordingly, capital expenditures resulting from implementation of certificates of need approved pursuant to this call will not be considered subject to the Statewide limit on capital construction projects established pursuant to N.J.S.A. 26:2H-9. Proposals for the conversion of underutilized beds will be accepted for processing only if they result in bed increases in any of the following categories and only if the hospital proposing the bed conversion is currently licensed for beds in the category to which the conversion is proposed: medical/surgical, adult ICU/CCU, acute psychiatric, and alcohol beds dedicated exclusively to medical detoxification.

The total number of permanent beds for which the hospital is licensed at the time the certificate of need application is submitted to the Department may not increase as a result of the proposed bed conversions. Bed additions must occur in the same hospital facility from which the underutilized beds are being proposed for conversion. Applications will not be accepted for processing pursuant to this call if they propose the expansion of a hospital's physical plant or the construction of a new health care facility. Applications will not be accepted at this time for bed additions within the following licensed bed categories: obstetrics, pediatrics, and burn beds. Applications will not be accepted for processing if the proposed conversion will result in the introduction of a new bed category for which the hospital is not currently licensed.

Applications for bed conversions will be reviewed in accordance with the provisions of N.J.S.A. 26:2H-1 et seq., N.J.A.C. 8:33 and N.J.A.C. 8:33A.

Such applications will be received in the Department of Health on the first day of any month in 1995 and will be processed in accordance with full review procedures as set forth in N.J.A.C. 8:33.

Certificate of Need applications shall be filed in accordance with the Certificate of Need Application and Review Process, N.J.A.C. 8:33, and shall be in compliance with all applicable planning and licensing rules.

IN ACCORDANCE WITH N.J.A.C. 8:33-1.2(d), CERTIFICATE OF NEED APPLICATIONS SHALL BE REVIEWED FOR CON-

HEALTH

PERFORMANCE WITH THE RULES IN EFFECT ON THE DATE THE CERTIFICATE OF NEED APPLICATION IS DEEMED COMPLETE FOR PROCESSING.

GEOGRAPHIC AREA TO BE SERVED: Applications will be received from any licensed acute care hospital in the State of New Jersey.

DATE APPLICATION IS DUE: Applications are to be received in the offices of the New Jersey Department of Health's Certificate of Need Program, Room 603, CN 360, Trenton, New Jersey 08625 on the first day of any month in 1995.

DATE COMPLETENESS REVIEW DECISION ISSUED: Upon receipt of all information and documentation requested during completeness review.

DATE LOCAL ADVISORY BOARDS WILL REVIEW THE APPLICATIONS AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER AND THE STATE HEALTH PLANNING BOARD: In accordance with the time-frames set forth in N.J.A.C. 8:33-4.

DATE STATE HEALTH PLANNING BOARD WILL REVIEW APPLICATIONS AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER: In accordance with the time-frames set forth in N.J.A.C. 8:33-4.

APPLICATIONS MAY BE REQUESTED FROM AND MUST BE FILED WITH:

Certificate of Need Program
New Jersey State Department of Health
Room 604
CN 360
Trenton, New Jersey 08625-0360
609-292-6552

APPLICATIONS MUST ALSO BE FILED WITH: Local Advisory Board(s) serving the region in which the applicant hospital is located.

(a)

THE COMMISSIONER

Notice of Invitation for Certificate of Need Applications for Designation of Perinatal Services and Modifications to Approved Perinatal Designations and Maternal and Child Health Consortia

Take notice that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Len Fishman, Commissioner, New Jersey Department of Health, is inviting certificate of need applications for the following types of health care activities:

Designation of perinatal services and modifications to approved perinatal designations and maternal and child health consortia in accordance with N.J.A.C. 8:33C.

(Certificate of need applications will not be accepted for processing at this time for designation of pediatric services.)

Certificate of Need applications shall be filed in accordance with the Certificate of Need Application and Review Process, N.J.A.C. 8:33, and shall be in compliance with all applicable planning and licensing rules.

IN ACCORDANCE WITH N.J.A.C. 8:33-1.2(d), CERTIFICATE OF NEED APPLICATIONS SHALL BE REVIEWED FOR CONFORMANCE WITH THE RULES IN EFFECT ON THE DATE THE CERTIFICATE OF NEED APPLICATION IS DEEMED COMPLETE FOR PROCESSING.

GEOGRAPHIC AREA TO BE SERVED: Statewide

DATE APPLICATION IS DUE: March 10, 1995

DATE COMPLETENESS REVIEW DECISION ISSUED: June 10, 1995

DATE LOCAL ADVISORY BOARDS WILL REVIEW THE APPLICATIONS AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER AND THE STATE HEALTH PLANNING BOARD: On or before July 25, 1995

DATE STATE HEALTH PLANNING BOARD WILL REVIEW THE APPLICATIONS AND SUBMIT RECOMMENDATIONS TO THE COMMISSIONER: On or before September 10, 1995

APPLICATIONS MAY BE REQUESTED FROM AND MUST BE FILED WITH:

PUBLIC NOTICES

Certificate of Need Program
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360
609-292-6552

APPLICATIONS MUST ALSO BE FILED WITH: All affected Local Advisory Board(s)

HUMAN SERVICES

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds Facility Repairs and Renovations to Meet Child Care Center Physical Facility Requirements

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

Name of grant program: Facility Repairs and Renovations to Meet Child Care Center Physical Facility Requirements.

Purpose for which the grant program funds shall be used: This program is intended to complete one-time repairs or minor renovations to, or to purchase equipment for, new or existing child care facilities, so that these facilities may comply with licensing physical facility regulations and applicable state and local building, fire and health codes.

Amount of money in the grant program: Funding in the amount of \$184,528 in Federal funds under the Child Care and Development Block Grant is available for this program. The minimum for each grant awarded to licensed or prospective licensed child care centers is \$2,500, the maximum is \$25,000. There is no match requirement.

Organizations which may be eligible to apply for funding under this program: In response to this announcement, prospective operators and operators of licensed child care centers within the State, as defined in N.J.A.C. 10:122, Manual of Requirements for Child Care Centers (N.J.S.A. 30:5B-1 through 15) may submit proposals, specifically for one-time facility repairs, minor renovations and purchasing equipment necessary to meet licensing physical facility regulations and applicable State and local building and/or fire and health codes.

Qualifications needed by an applicant to be considered for funding: Child care centers that are requesting funding for costs relative to meeting physical facility requirements for the licensing of a program site are expected to possess a temporary or regular certificate of occupancy for the building targeted for funding and must provide evidence that the requested repairs or renovations will permit the applicant to obtain a temporary or a regular license or to maintain a current license. In situations where the applicant does not possess a certificate of occupancy and requires the renovations or repairs to obtain one, the applicant must show evidence that the requested renovation or repair will result in the issuance of the same.

Applicants must comply with all Federal, Departmental and DYFS rules and regulations governing the purchase of services contract process, in addition to the terms and conditions set forth in this announcement. Additionally, selected grantees are required to comply with:

- Affirmative Action requirements of P.L. 1975 c.127 (N.J.A.C. 17:27); and
- Executive Order No. 189 (1988) regarding conflict of interest as it pertains to N.J.A.C. 10:3.1, Debarment, Suspension and Disqualification of a Person(s). (See Attachment C: Executive Commission on Ethical Standards—Guidelines for Executive Order No. 189, pages C-3 and C-4.)

All proposals must include a statement of assurance, signed by the designated official of the applicant agency, agreeing to: not refuse to provide services to children who are under DYFS protective service supervision and who have been referred by a DYFS District Office for day care placement; and/or who are eligible for the New Jersey Cares for Kids child care certificate/voucher payment program, in accordance with the terms and conditions identified within the context of this document. This assurance shall indicate that the applicant agency shall not deny services to children should they be so referred, provided that there is space available at the time of the referral and that the applicant

PUBLIC NOTICES

HEALTH

agency will accept payment on the basis of the maximum prevailing rates established by the New Jersey Department of Human Services and a co-payment from the parent for any remaining unpaid balance.

Application selection criteria: Applications for funds will be selected on the basis of demonstrated need and shall be evaluated and scored on the basis of the criteria listed below.

The maximum score for all criteria is 100 points and shall be computed in accordance with the following:

- Extent and seriousness of the problem in relation to the requirements specified in the State licensing law and regulations (Manual of Standards for Child Care Centers, N.J.A.C. 10:122) (for example, impact of the problem on the center's licensing status, as indicated in supporting documentation from the DYFS Bureau of Licensing). (max. 40 points)
- Efficiency of the proposed budget in relation to the anticipated result (that is, unit cost) and, if applicable, factors such as: the number of years remaining on the applicant's building lease and/or agency non-compliance with all terms and conditions of previous contracts held with the Division. (max. 20 points)
- The soundness of the project as indicated by the quality and completeness of the project description and justification, and availability and accuracy of all supporting documentation. (max. 15 points)
- The feasibility of the timetable for completing the project by the end of the liquidation period. (max. five points)
- Community characteristics of the geographic areas served (specifically, the demonstrated need for child care services and the applicant's ability to provide services to address the needs of bilingual/bicultural families) and as justification for maintaining or expanding center-based child care services. (max. 10 points)
- Compatibility of the applicant's goals and objectives in relation to the priorities identified by the Division (that is, services to school-aged children and infants and children under two and a half years of age). (max. 10 points)

Lower priority consideration will be given to proposals requesting funding approval for a licensed child care center facility that had previously received funding within the last 12 months for life/safety equipment or remodeling/renovations from the DYFS Child Care Center Renovation and Equipment Fund, Child Care and Development Block Grant or through 1984 Capital Bond Funding Program. Such applications will not be considered for an award under this funding cycle unless there are insufficient qualifying applications from applicants that did not receive funding under this program within the last 12 months to encumber the funding allocated by region.

Procedures for eligible organizations to apply: Agencies or organizations interested in applying for these funds may obtain a copy of the Request For Proposals by contacting the appropriate DYFS Regional Office or by attending one of the regionally scheduled technical assistance (bidders) conferences, as indicated below. Additional requests for technical assistance or questions regarding the funding guidelines for child care facility improvement grants should be directed to the appropriate contact person in the DYFS Regional Office.

- For projects located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties (that is, DYFS Southern Region), a technical assistance conference has been scheduled for:

Date and Time: Monday, January 23, 1995, 10:00 A.M.
 Location: DYFS Southern Regional Office
 392 North White Horse Pike
 Hammonton, NJ

Contact Person: William Michener, Administrative Analyst
 Telephone: (609) 567-0010

- For projects located in Essex, Middlesex, and Union Counties (that is, DYFS Metropolitan Region), a technical assistance conference has been scheduled for:

Date and Time: Tuesday, January 24, 1995, 10:00 A.M.
 Location: DYFS Metropolitan Regional Office
 153 Halsey Street
 3rd Floor Community Room
 Newark, NJ

Contact Person: Joseph Makowski, Regional Planner
 Telephone: (201) 648-4100

- For projects located in Hunterdon, Mercer, Monmouth, Ocean, and Somerset Counties (that is, DYFS Central Region), a technical assistance conference has been scheduled for:

Date and Time: Wednesday, January 25, 1995, 10:00 A.M.
 Location: DYFS Central Regional Office
 50 East State Street, 5th Floor, Room 536
 Trenton, NJ

Contact Person: Oksana Koziak, Regional Planner
 Telephone: (609) 777-2000

- For projects located in Bergen, Hudson, Morris, Passaic, Sussex, and Warren Counties (that is, DYFS Northern Region), a technical assistance conference has been scheduled for:

Date and Time: Thursday, January 26, 1995, 10:00 A.M.
 Location: County of Passaic Administration Building
 401 Grand Street
 Paterson, NJ

Contact Person: John Michalski, Regional Planner
 Telephone: (201) 977-4000

Address to which applications must be submitted: Operators of licensed child care facilities interested in applying for these funds should submit one signed original and five copies of the Request For Proposal and all attachments comprising the project proposal application package. These documents must be received by 4:00 P.M., on March 1, 1995, by the appropriate DYFS Regional Administrator listed below:

- For projects located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties (that is, DYFS Southern Region):

Bonnie Schwebel, Acting Regional Administrator
 DYFS Southern Regional Office
 392 North White Horse Pike
 P.O. Box 594
 Hammonton, NJ 08037

- For projects located in Essex, Middlesex, and Union Counties (that is, DYFS Metropolitan Region):

Charles Venti, Regional Administrator
 DYFS Metropolitan Regional Office
 153 Halsey Street, 2nd Floor
 P.O. Box 47010
 Newark, NJ 07101

- For projects located in Hunterdon, Mercer, Monmouth, Ocean, and Somerset Counties (that is, DYFS Central Region):

Janice Malec, Regional Administrator
 DYFS Central Regional Office
 50 East State Street, 5th Floor
 CN 717
 Trenton, NJ 08625-0717

- For projects located in Bergen, Hudson, Morris, Passaic, Sussex, and Warren Counties (that is, DYFS Northern Region):

Jean Mendres, Regional Administrator
 DYFS Northern Regional Office
 100 Hamilton Plaza, Room 710
 Paterson, NJ 07505

An additional copy of the Request For Proposal and all attachments comprising the project proposal application package must also be submitted to:

Richard Crane, Chief
 DYFS Bureau of Licensing
 50 East State Street, 5th Floor
 CN 717
 Trenton, NJ 08625-0717

Deadline by which applications must be submitted: The completed application and all supporting materials and copies must be received by 4:00 P.M., on March 1, 1995, by the appropriate DYFS Regional Administrator and the Chief of the DYFS Bureau of Licensing, as indicated above. Applications may be mailed or hand delivered. No late applications will be considered for funding, regardless of postmark. Facsimiles will not be accepted.

Date by which applicants will be notified of acceptance or rejection: The Division will notify the respondents of the outcome of the proposal review process on or before April 1, 1995.

STATE

(a)

STATE COUNCIL ON THE ARTS

**Notice of Grants Applications Available for
Organization Grants Fiscal Year 1996 (July 1, 1995-
June 30, 1996)**

Take notice that the New Jersey State Council on the Arts, acting under the authority of Public Law 1966, Chapter 214, hereby announces the availability of the following grant program.

Name of program: Organization Grant Program, Fiscal Year 1996
General Operating Support
Special Project Support
Arts Basic to Education Expansion Project Support
Folk Arts Programs and Project Support
Major Impact Organization Designation

Purpose: To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey through the award of matching grants to eligible organizations. Matching grants under this program are exclusively to support arts projects, programs and services and the operation of arts organizations during the fiscal year 1995/96 (July 1, 1995 to June 30, 1996).

Eligible applicant: Must be a New Jersey incorporated, nonprofit organization that is tax exempt 501(c)3 or 4 by determination of the Internal Revenue Service; must have been in existence and active for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finances; and must comply with all existing State and Federal regulations and laws as described in guidelines and application.

Ineligible applicants: Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

Grant size: Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50% of project expenses.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for FY96.

Match: All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must indicate at least a 4:1 match of applicant cash to NJSCA dollars, Special Project applicants who are arts organizations, at least 1:1 match of applicant cash to NJSCA dollars; and Special Project applicants, who are not an arts organization, at least 3:1 match of applicant cash to NJSCA dollars. Indirect costs, however, may not be included. **Matches may be different for Folk Arts Organizations and Projects.**

Deadline for Submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices not later than **January 20, 1995** (5:00 P.M. if delivered in person to office). All prospective applicants that are **not** direct recipients of FY95 NJSCA grants must submit a Letter of Intent.

Letters of intent are due on **December 15, 1994** (5:00 P.M. Receipt)—All organizations that are **not** FY95 NJSCA grantees must submit a letter of intent, **as must all Folk Arts applicants.** The Letter of Intent is a form contained in the Guidelines and Application, which when completed briefly describes the prospective applicant organization and the purposes for which funds would be sought.

Decisions: Each complete application by eligible applicants will be evaluated by an independent panel of experts appropriate to the category or arts discipline of the applicant and by the NJSCA according to the published criteria for evaluation. The consensus of the panel is further reviewed by the Council. The Council's final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 25, 1995. Applicants are notified in writing of the Council's decision immediately following the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after **December 1, 1994.** Call (609) 292-6130 (Voice) or (609) 633-1186 (TDD) or write GRANTS 96, NJ State Council on the Arts, CN 306, Trenton, NJ 08625.

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 December 5, 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.1995 d.1 means the first rule filed for 1995.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT NOVEMBER 21, 1994

NEXT UPDATE: SUPPLEMENT DECEMBER 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

| If the N.J.R. citation is between: | Then the rule proposal or adoption appears in this issue of the Register | If the N.J.R. citation is between: | Then the rule proposal or adoption appears in this issue of the Register |
|------------------------------------|--|------------------------------------|--|
| 26 N.J.R. 1 and 280 | January 3, 1994 | 26 N.J.R. 2829 and 3102 | July 18, 1994 |
| 26 N.J.R. 281 and 520 | January 18, 1994 | 26 N.J.R. 3103 and 3230 | August 1, 1994 |
| 26 N.J.R. 521 and 878 | February 7, 1994 | 26 N.J.R. 3231 and 3504 | August 15, 1994 |
| 26 N.J.R. 879 and 1178 | February 22, 1994 | 26 N.J.R. 3505 and 3780 | September 6, 1994 |
| 26 N.J.R. 1179 and 1272 | March 7, 1994 | 26 N.J.R. 3781 and 3916 | September 19, 1994 |
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N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

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| 1:7A | Department of Environmental Protection cases | 26 N.J.R. 4124(a) | | |
| 1:7A-1.1, 8.1 | Department of Environmental Protection Cases: public hearing and extension of comment period | 26 N.J.R. 4863(a) | | |
| 1:14-10 | BRC ratemaking hearings: discovery | 26 N.J.R. 3(a) | | |
| 1:14-10 | BRC ratemaking hearings: extension of comment period regarding discovery process | 26 N.J.R. 883(a) | | |

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| 2:24 | Diseases of bees | 27 N.J.R. 5(a) | | |
| 2:33 | Agricultural fairs | 26 N.J.R. 285(a) | | |
| 2:34 | Equine Advisory Board rules | 26 N.J.R. 3919(a) | R.1995 d.7 | 27 N.J.R. 89(a) |
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| 2:76-4.3, 4.5, 4.6, 4.9, 4.11 | Creation of municipally approved farmland preservation programs | 27 N.J.R. 10(a) | | |
| 2:76-6.2, 6.5, 6.6, 6.7, 6.9-6.18B | Acquisition of development easements | 27 N.J.R. 13(a) | | |

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| 3:1-6.7 | Failure to pay license fees and examination charges | 27 N.J.R. 20(b) | | |
| 3:3-2, 3 | Department of Banking organization: nonpublic records; grievance procedure pursuant to ADA | 27 N.J.R. 20(a) | | |
| 3:4-3 | Banking institutions: sale of alternative investments | 25 N.J.R. 5733(a) | Expired | |
| 3:18-1.1, 1.3, 3.2, 7.4, 8.1, 8.2, 12 | Secondary Mortgage Loan Act rules | 26 N.J.R. 3920(a) | R.1995 d.14 | 27 N.J.R. 89(b) |
| 3:18-10.5 | Failure to pay license fees and examination charges | 27 N.J.R. 20(b) | | |
| 3:23-2.1 | Check cashing businesses | 26 N.J.R. 4863(b) | | |
| 3:24 | Check cashing businesses | 26 N.J.R. 4863(b) | | |
| 3:38-1.1, 1.10, 5.3 | Net worth of mortgage lenders | 26 N.J.R. 4124(b) | R.1994 d.629 | 26 N.J.R. 4999(a) |
| 3:38-1.6 | Failure to pay license fees and examination charges | 27 N.J.R. 20(b) | | |
| 3:38-5.3 | Mortgage referrals by real estate agents | 26 N.J.R. 6(a) | | |
| 3:38-5.3 | Mortgage referrals by real estate agents: extension of comment period | 26 N.J.R. 884(a) | | |
| 3:40-1.9 | New Jersey Cemetery Board: organizational meetings | 26 N.J.R. 4475(a) | | |
| 3:41-12 | Cemetery Board: service contractors and service contracts | 26 N.J.R. 6(b) | | |

Most recent update to Title 3: TRANSMITTAL 1994-7 (supplement November 21, 1994)

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| 4A:2-2.3 | Sexual harassment | 26 N.J.R. 3507(a) | R.1994 d.618 | 26 N.J.R. 5000(a) |
| 4A:2-3.1 | Department use of Social Security numbers | 26 N.J.R. 287(a) | | |
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| 4A:3-3.1 | Department use of Social Security numbers | 26 N.J.R. 287(a) | | |
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| 4A:4-1.10 | Personnel action freezes | 26 N.J.R. 3510(a) | R.1994 d.619 | 26 N.J.R. 5002(a) |
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| 4A:4-2.15, 5.2 | Voluntary furlough program | 26 N.J.R. 4126(a) | R.1995 d.12 | 27 N.J.R. 145(a) |
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| 4A:8 | Layoffs | 26 N.J.R. 3518(a) | | |
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Most recent update to Title 4A: TRANSMITTAL 1994-6 (supplement October 17, 1994)

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| 5:18-1.5, 2.7, 2.8, 2.22, 3.3, 3.4, 3.5, 4.9, 4.13 | Uniform Fire Code requirements | 26 N.J.R. 4249(a) | | |
| 5:18-2.4A | Uniform Fire Code: overnight camps life hazard use category | 26 N.J.R. 4254(a) | | |
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| 5:18A | Fire Code Enforcement | 26 N.J.R. 4258(a) | | |
| 5:18B | High Level Alarms | 26 N.J.R. 4258(a) | | |
| 5:18C | Standards for Fire Service Training and Certification | 26 N.J.R. 4258(a) | | |
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| 5:23-3.14, 7 | Uniform Construction Code: Barrier Free Subcode | 26 N.J.R. 2698(a) | | |
| 5:23-3.14, 7 | Barrier Free Subcode: correction of public hearing date | 26 N.J.R. 3524(a) | | |
| 5:23-3.15 | Uniform Construction Code: abandonment of septic systems | 26 N.J.R. 4874(a) | | |
| 5:23-3.20 | Uniform Construction Code: mechanical subcode | 26 N.J.R. 4874(b) | | |
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| 5:25-2.5 | New home warranties and builder registration: denial of registration | 26 N.J.R. 1913(a) | R.1994 d.610 | 26 N.J.R. 5010(a) |
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| 5:34-7.6, 7.8, 7.9 | Local government finance: renewal of registration of Cooperative Purchasing System | 26 N.J.R. 4724(a) | | |
| 5:52 | Volunteer Coaches' Safety Orientation and Training Skills Programs | 27 N.J.R. 21(a) | | |
| 5:80-5.10 | Housing and Mortgage Finance Agency: prepayment of project mortgage | 26 N.J.R. 1187(a) | R.1995 d.20 | 27 N.J.R. 321(b) |
| 5:93-3.6, 5.6 | New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development | 26 N.J.R. 2514(a) | R.1994 d.563 | 26 N.J.R. 4349(a) |

Most recent update to Title 5: TRANSMITTAL 1994-10 (supplement November 21, 1994)

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
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| MILITARY AND VETERANS' AFFAIRS—TITLE 5A | | | | |
| Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994) | | | | |
| EDUCATION—TITLE 6 | | | | |
| 6:7 | State-operated school districts | 26 N.J.R. 3524(b) | R.1994 d.616 | 26 N.J.R. 5010(b) |
| Most recent update to Title 6: TRANSMITTAL 1994-8 (supplement October 17, 1994) | | | | |
| ENVIRONMENTAL PROTECTION—TITLE 7 | | | | |
| 7:0 | Management of waste oil: request for public comment | 26 N.J.R. 1466(a) | | |
| 7:1C-1.5 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:1H | County Environmental Health Act rules: pre-proposal | 26 N.J.R. 3526(a) | | |
| 7:1H | County Environmental Health Act rules: postponement of new rules proposal | 27 N.J.R. 22(a) | | |
| 7:1L | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:2-17.1, 17.4 | Berth and launch ramp use fees at State marinas: administrative change | 27 N.J.R. 92(a) | | |
| 7:5C | Endangered Plant Species Program | 26 N.J.R. 3790(a) | R.1995 d.45 | 27 N.J.R. 322(a) |
| 7:5D | State Trails System | 26 N.J.R. 1459(a) | | |
| 7:7A-16.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:9 | NJPDES permitting program: proposal summary and request for public comment | 26 N.J.R. 3927(a) | | |
| 7:9B | NJPDES permitting program: proposal summary and request for public comment | 26 N.J.R. 3927(a) | | |
| 7:10-15.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:11-2.2, 2.3, 2.4, 2.10, 2.12 | Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System: sale of water | 26 N.J.R. 4907(a) | | |
| 7:11-4.3, 4.4, 4.9, 4.13 | Manasquan Reservoir Water Supply System: sale of water | 26 N.J.R. 4910(a) | | |
| 7:12-1.2, 2.1, 3.2, 4.1, 4.2, 9.1 | Shellfish growing water classifications | 26 N.J.R. 4475(b) | | |
| 7:13 | Flood hazard area control | 26 N.J.R. 1009(a) | | |
| 7:13-7.1 | Flood plain redelineation of Pascack and Fieldstone brooks in Montvale | 26 N.J.R. 2834(a) | R.1995 d.46 | 27 N.J.R. 324(a) |
| 7:14 | NJPDES permitting program: proposal summary and request for public comment | 26 N.J.R. 3927(a) | | |
| 7:14-8.1, 8.3, 8.4, 8.15 | Water supply allocation | 26 N.J.R. 4912(a) | | |
| 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) | | |
| 7:14B-3.9 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 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 | NJPDES permitting program: proposal summary and request for public comment | 26 N.J.R. 3927(a) | | |
| 7:19 | Water supply allocation | 26 N.J.R. 4912(a) | | |
| 7:19-3.8 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:19A | Water supply allocation | 26 N.J.R. 4912(a) | | |
| 7:19B | Water supply allocation | 26 N.J.R. 4912(a) | | |
| 7:22A | Sewage Infrastructure Improvement Act grants | 26 N.J.R. 3793(a) | R.1995 d.47 | 27 N.J.R. 324(b) |
| 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) | R.1995 d.48 | 27 N.J.R. 329(a) |
| 7:25-6.9 | 1995-96 Fish Code: administrative correction | 26 N.J.R. 3258(a) | | |
| 7:25-18.1, 18.4, 18.5, 18.13-18.15 | Marine fisheries management: winter flounder, bluefish, weakfish, Atlantic sturgeon, American lobster | 26 N.J.R. 4277(b) | | |
| 7:25-18.1, 18.5 | Directed conch fishery | 26 N.J.R. 1931(a) | R.1994 d.615 | 26 N.J.R. 5011(a) |
| 7:25-24.7, 24.9 | Leasing of Atlantic coast bottom for aquaculture | 26 N.J.R. 3109(a) | | |
| 7:26-1.4 | Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule" | 26 N.J.R. 294(a) | | |
| 7:26-3A.1, 4.1, 4A.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:26A-2.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:26B-1.10 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 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) | | |
| 7:27-8.11 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:27-15 | Motor vehicle enhanced inspection and maintenance program | 26 N.J.R. 3258(b) | | |
| 7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17, 16.18 | Control and prohibition of air pollution by volatile organic compounds | 26 N.J.R. 4478(a) | | |

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| 7:27-16.3, 16.7, 16.13, 16.17, 16.18 | Control and prohibition of air pollution by volatile organic compounds: administrative corrections | | | 26 N.J.R. 4793(a) |
| 7:27-19 | Control and prohibition of air pollution from oxides of nitrogen | 26 N.J.R. 3298(a) | | |
| 7:27-22.1, 22.31 | Air Quality Regulation Program: facility operating permit fees | 27 N.J.R. 22(b) | | |
| 7:27-25.1, 25.3 | Oxygenated fuels program | 26 N.J.R. 1148(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) | | |
| 7:27-26 | Low Emission Vehicles Program: extension of comment period | 26 N.J.R. 4482(a) | | |
| 7:27A | Air pollution control: civil administrative penalties | 26 N.J.R. 3566(a) | R.1995 d.5 | 27 N.J.R. 93(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) | | |
| 7:28 | Radiation protection | 26 N.J.R. 4942(a) | | |
| 7:28-3.12 | Ionizing radiation-producing machines: application and annual registration renewal fees | 26 N.J.R. 3797(a) | R.1995 d.49 | 27 N.J.R. 336(a) |
| 7:28-48 | Non-ionizing radiation producing sources: registration fees | 25 N.J.R. 5422(a) | R.1995 d.6 | 27 N.J.R. 99(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) | R.1994 d.590 | 26 N.J.R. 4795(a) |
| 7:60-1.2, 1.3, 1.4, 1.6 | Assessment of generators for cost of siting and developing low-level radioactive waste disposal facility | 26 N.J.R. 4946(a) | | |

Most recent update to Title 7: TRANSMITTAL 1994-11 (supplement November 21, 1994)

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| 8:1-1 | Disability discrimination grievance procedure | 26 N.J.R. 2005(a) | | |
| 8:8-8.3, 8.5, 8.8 | Collection of human blood | 26 N.J.R. 3141(b) | R.1995 d.25 | 27 N.J.R. 343(a) |
| 8:23 | Veterinary public health | 26 N.J.R. 4129(a) | R.1995 d.24 | 27 N.J.R. 343(b) |
| 8:23A | Veterinary public health | 26 N.J.R. 4129(a) | R.1995 d.24 | 27 N.J.R. 343(b) |
| 8:31 | Health facilities construction plan review fee | 26 N.J.R. 4135(a) | R.1995 d.38 | 27 N.J.R. 351(a) |
| 8:31B-3.3, 3.70 | Health care financing: monitoring and reporting | 26 N.J.R. 12(a) | | |
| 8:31B-4.37 | Charity care audit functions | 26 N.J.R. 13(a) | | |
| 8:331 | Megavoltage radiation oncology services: certificate of need | 26 N.J.R. 4875(b) | | |
| 8:39-2.2, 2.12 | Long-term care facilities: application for licensure; add-a-bed | 26 N.J.R. 4641(a) | | |
| 8:43E | Health care facilities: enforcement of licensure standards | 26 N.J.R. 4527(a) | | |
| 8:43F | Adult day health care facilities: standards for licensure | 26 N.J.R. 4532(a) | | |
| 8:43G | Hospital licensing standards | 26 N.J.R. 4537(a) | | |
| 8:44-2.5 | Clinical laboratory Proficiency Testing Program | 26 N.J.R. 1070(a) | | |
| 8:44-2.11 | Clinical laboratories: reopening of comment period on reporting of blood lead levels | 26 N.J.R. 1190(a) | | |
| 8:45 | Clinical laboratory services | 27 N.J.R. 32(a) | | |
| 8:57-5 | Confinement of persons with tuberculosis | 26 N.J.R. 3236(a) | | |
| 8:57-5 | Confinement of persons with tuberculosis: public hearing | 26 N.J.R. 3574(a) | | |
| 8:57-6 | Hepatitis Inoculation Fund | 27 N.J.R. 28(a) | | |
| 8:59-App. A, B | Worker and Community Right to Know Hazardous Substance List | 26 N.J.R. 540(a) | | |
| 8:60 | Asbestos licenses and permits | 27 N.J.R. 71(a) | | |
| 8:62 | Certification of lead abatement workers, supervisors, inspectors, project designers | 26 N.J.R. 3575(a) | | |
| 8:71 | List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a)) | 26 N.J.R. 13(b) | R.1994 d.456 | 26 N.J.R. 3716(a) |
| 8:71 | List of Interchangeable Drug Products | 26 N.J.R. 14(a) | R.1994 d.244 | 26 N.J.R. 2039(a) |
| 8:71 | List of Interchangeable Drug Products | 26 N.J.R. 69(a) | R.1994 d.243 | 26 N.J.R. 2028(a) |
| 8:71 | Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a), 3715(b), 4387(a)) | 26 N.J.R. 1190(b) | R.1995 d.31 | 27 N.J.R. 355(a) |
| 8:71 | Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a), 4388(a)) | 26 N.J.R. 1821(a) | R.1995 d.33 | 27 N.J.R. 357(a) |
| 8:71 | Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b), 4388(b)) | 26 N.J.R. 1822(a) | R.1995 d.32 | 27 N.J.R. 355(b) |
| 8:71 | Interchangeable drug products (see 26 N.J.R. 3720(a), 4386(a)) | 26 N.J.R. 2723(a) | R.1995 d.35 | 27 N.J.R. 359(a) |
| 8:71 | Interchangeable drug products (see 26 N.J.R. 4390(a)) | 26 N.J.R. 3583(a) | R.1995 d.34 | 27 N.J.R. 357(b) |

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| 8:71 | Interchangeable drug products | 26 N.J.R. 4288(a) | R.1995 d.39 | 27 N.J.R. 351(b) |
| 8:71 | Interchangeable drug products | 26 N.J.R. 4293(a) | R.1995 d.30 | 27 N.J.R. 354(a) |
| 8:71 | Interchangeable drug products | 26 N.J.R. 4294(a) | R.1995 d.29 | 27 N.J.R. 351(c) |
| 8:71 | Interchangeable drug products | 27 N.J.R. 30(a) | | |

Most recent update to Title 8: TRANSMITTAL 1994-9 (supplement November 21, 1994)

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| 9:4-1.7 | Curriculum coordinating committee | 26 N.J.R. 1751(a) | | |
| 9:9-7.1, 7.2, 7.3 | Eligibility criteria for NJCLASS loans | 26 N.J.R. 3242(a) | R.1994 d.617 | 26 N.J.R. 5012(a) |
| 9:11-1.2, 1.7, 1.8, 1.19, 1.20, 1.22, 1.23 | Educational Opportunity Fund Program | 26 N.J.R. 3586(a) | R.1994 d.596 | 26 N.J.R. 4760(b) |
| 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) | R.1994 d.596 | 26 N.J.R. 4760(b) |
| 9:17 | Recodification (see 9A:14) | 26 N.J.R. 4878(a) | | |
| 9:18 | Recodification (see 9A:15) | 26 N.J.R. 4879(a) | | |
| 9A:14 | Implementation of Higher Education Equipment Leasing Fund Act | 26 N.J.R. 4878(a) | | |
| 9A:15 | Implementation of Higher Education Facilities Trust Fund Act | 26 N.J.R. 4879(a) | | |

Most recent update to Title 9: TRANSMITTAL 1994-5 (supplement September 19, 1994)

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| 10:11 | Department instructional staff: tenure status | 26 N.J.R. 4297(a) | | |
| 10:15 | Child Care Services Manual | 26 N.J.R. 3327(a) | R.1994 d.628 | 26 N.J.R. 5012(b) |
| 10:15A | Child Care Services Manual | 26 N.J.R. 3327(a) | R.1994 d.628 | 26 N.J.R. 5012(b) |
| 10:15B | Child Care Services Manual | 26 N.J.R. 3327(a) | R.1994 d.628 | 26 N.J.R. 5012(b) |
| 10:15C | Child Care Services Manual | 26 N.J.R. 3327(a) | R.1994 d.628 | 26 N.J.R. 5012(b) |
| 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) | | |
| 10:37-5.46-5.51 | Repeal (see 10:37F) | 26 N.J.R. 4547(a) | | |
| 10:37E | Division of Mental Health and Hospitals: outpatient service standards | 26 N.J.R. 3608(a) | | |
| 10:37F | Adult Partial Care Services for individuals with severe and persistent mental illness | 26 N.J.R. 4547(a) | | |
| 10:43 | Division of Developmental Disabilities: determination of need for guardian | 26 N.J.R. 2838(a) | R.1994 d.611 | 26 N.J.R. 5020(a) |
| 10:43 | Division of Developmental Disabilities: extension of comment period concerning determination of need for guardian | 26 N.J.R. 3341(a) | | |
| 10:46A | Family Support Service System | 26 N.J.R. 3341(b) | R.1995 d.1 | 27 N.J.R. 147(a) |
| 10:46A | Family Support Service System: administrative correction and extension of comment period | 26 N.J.R. 3610(a) | | |
| 10:46B | Division of Developmental Disabilities: placement of eligible persons | 26 N.J.R. 3611(a) | R.1995 d.44 | 27 N.J.R. 360(a) |
| 10:48-4 | Eligibility for services | 26 N.J.R. 1752(a) | | |
| 10:48-4 | Division of Developmental Disabilities: public hearing and reopening of comment period regarding management of waiting lists for services | 26 N.J.R. 2756(a) | | |
| 10:49-5.2, 5.3, 5.4 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | R.1994 d.600 | 26 N.J.R. 4762(a) |
| 10:49-14.4 | Medical assistance recoveries involving county welfare agencies | 26 N.J.R. 3348(a) | | |
| 10:50-2.2 | Transportation services for Medicaid recipients: provider reimbursement | 26 N.J.R. 3929(a) | R.1994 d.622 | 26 N.J.R. 5020(b) |
| 10:51-1.6, 1.23, 2.6, 2.21, 4.6, 4.22, App. E | Medicaid and Pharmaceutical Assistance to the Aged and Disabled programs: EMC billing | 26 N.J.R. 4136(a) | | |
| 10:51-1.12 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | R.1994 d.600 | 26 N.J.R. 4762(a) |
| 10:51-1.12, 2.11, 4.13 | Medicaid and PAAD programs: unit-dose-packaged drugs | 26 N.J.R. 3349(a) | | |
| 10:52 | Manual for Hospital Services | 26 N.J.R. 4551(a) | | |
| 10:52-1.3, 1.7, 1.8 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | R.1994 d.600 | 26 N.J.R. 4762(a) |
| 10:52-5.1, 5.3, 5.4, 5.6, 5.9, 5.12-5.15, 5.17, 5.18, 5.20, 6.13, 7.2, 9.1 | Manual of Hospital Services: inpatient reimbursement methodology | 27 N.J.R. 34(a) | | |
| 10:52-8.2 | Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component | 26 N.J.R. 2239(a) | R.1995 d.13 | 27 N.J.R. 152(a) |
| 10:53-1.6, 1.7 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | R.1994 d.600 | 26 N.J.R. 4762(a) |
| 10:54-1.2 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | R.1994 d.600 | 26 N.J.R. 4762(a) |
| 10:55 | Medicaid program: Prosthetic and Orthotic Services Manual | 26 N.J.R. 4979(a) | | |

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| 10:58-1.3 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | R.1994 d.600 | 26 N.J.R. 4762(a) |
| 10:59-1.9 | Medical Supplier Manual: reimbursement for certain services | 26 N.J.R. 2839(a) | | |
| 10:60-1.3 | Home Care Services: accreditation of private duty nursing agencies | 26 N.J.R. 2840(a) | R.1994 d.623 | 26 N.J.R. 5021(a) |
| 10:61-1.3, 3.2 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | R.1994 d.600 | 26 N.J.R. 4762(a) |
| 10:63 | Long-Term Care Services | 26 N.J.R. 3614(a) | R.1994 d.624 | 27 N.J.R. 156(a) |
| 10:66-2.3 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | R.1994. d.600 | 26 N.J.R. 4762(a) |
| 10:69A-5.3, 5.6, 6.2, 6.12 | Pharmaceutical Assistance to the Aged and Disabled: eligibility and income criteria | 26 N.J.R. 3142(a) | R.1995 d.10 | 27 N.J.R. 242(a) |
| 10:81-2.6, 3.9, 3.10, 13.3 | Public Assistance Manual: AFDC-N segment eligibility of aliens | 26 N.J.R. 3930(a) | R.1994 d.612 | 26 N.J.R. 5022(a) |
| 10:81-11.9 | Public Assistance Manual: \$50 disregarded child support payment | 26 N.J.R. 1937(a) | | |
| 10:82-2.3 | Assistance Standards Handbook: AFDC-N segment eligibility of aliens | 26 N.J.R. 3932(a) | R.1994 d.613 | 26 N.J.R. 5022(b) |
| 10:82-3.14 | Assistant Standards Handbook: administrative correction regarding guardians of adolescent parents | _____ | _____ | 26 N.J.R. 4765(a) |
| 10:83-1.11 | Supplemental Security Income payment levels for 1995 | _____ | _____ | 26 N.J.R. 5023(a) |
| 10:85 | General Assistance Manual | 26 N.J.R. 2757(b) | R.1994 d.591 | 26 N.J.R. 4765(b) |
| 10:85-4.6 | General Assistance Program: extension of temporary rental assistance benefits | 26 N.J.R. 1756(a) | | |
| 10:87-2.31 | Food Stamp Program: applications in pending status | 26 N.J.R. 4298(a) | | |
| 10:89 | Home Energy Assistance Handbook | 26 N.J.R. 4726(a) | | |
| 10:122-2.4, 2.5, 4.5, 4.8, 5.2, 9.1-9.5 | Manual of Requirements for Child Care Centers | 26 N.J.R. 4139(a) | | |
| 10:123-3.4 | Personal needs allowance for SSI and GPA recipients in residential health care facilities and boarding home | _____ | _____ | 26 N.J.R. 5023(b) |
| 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) | R.1994 d.625 | 26 N.J.R. 5023(c) |
| 10:129A | Child protective services investigations and determinations of abuse and neglect | 26 N.J.R. 3700(a) | | |
| 10:133A-1.7, 1.9, 1.10, 1.11, 1.12 | Division of Youth and Family Services: initial reponse | 26 N.J.R. 3355(a) | | |
| 10:133G | Division of Youth and Family Services: client information | 27 N.J.R. 38(a) | | |

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CORRECTIONS—TITLE 10A

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| 10A:2 | Fiscal management of inmate accounts, welfare funds, claims, and other financial matters | 26 N.J.R. 4299(a) | R.1995 d.21 | 27 N.J.R. 118(a) |
| 10A:12-2 | Inmate liaison committees | 26 N.J.R. 4881(a) | | |
| 10A:26 | Bureau of Parole: policies and procedures | 26 N.J.R. 4143(a) | | |
| 10A:71 | State Parole Board rules | 26 N.J.R. 4150(a) | | |
| 10A:71-7.16 | State Parole Board: administrative correction regarding board panel action | _____ | _____ | 26 N.J.R. 4771(a) |

Most recent update to Title 10A: TRANSMITTAL 1994-9 (supplement October 17, 1994)

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| 11:1-20.1, 20.3, 22.1 | Cancellation and nonrenewal of homeowners' policies | 26 N.J.R. 4303(a) | R.1995 d.52 | 27 N.J.R. 363(a) |
| 11:2-1 | Admission requirements for foreign and alien life and health insurers | 26 N.J.R. 4586(a) | | |
| 11:2-41 | Windstorm Market Assistance Program for voluntary market homeowners' coverage | 26 N.J.R. 4304(a) | R.1995 d.53 | 27 N.J.R. 364(a) |
| 11:3-2B | Market Transition Facility of New Jersey: payment prioritization and claims payment deferral | 26 N.J.R. 4590(a) | R.1995 d.50 | 27 N.J.R. 368(a) |
| 11:3-16.4, 16.5, 31, App. | Private passenger automobile insurers: examination of financial experience | 27 N.J.R. 41(a) | | |
| 11:3-16.7 | Automobile insurers rate filing requirements | 26 N.J.R. 900(a) | | |
| 11:3-28.2, 28.14-28.17 | Unsatisfied Claim and Judgment Fund: uninsured motorists case assignment procedures | 26 N.J.R. 2190(a) | R.1994 d.597 | 26 N.J.R. 4772(a) |
| 11:3-28.13, 28.16 | Unsatisfied Claim and Judgment Fund: insurer's obligation to obtain recovery of paid medical expense benefit claims and paid benefits (UCJ claims) | 26 N.J.R. 4595(a) | | |
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| 11:3-33.2, 44.3, 44.4 | Automobile insurance: provision of coverage to all eligible persons | 26 N.J.R. 3591(a) | R.1994 d.598 | 26 N.J.R. 4777(a) |
| 11:4-25 | Funeral insurance policies | 26 N.J.R. 4727(a) | | |

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| 11:5-1.2, 1.4, 1.5, 1.19, 1.29 | Real Estate Commission: licensing requirements | 26 N.J.R. 3111(a) | R.1995 d.23 | 27 N.J.R. 370(a) |
| 11:5-1.7 | Real Estate Commission: preproposal concerning mass marketing and brokerage licensure requirement | 26 N.J.R. 3110(a) | | |
| 11:5-1.43 | Real Estate Commission: consumer information statement | 26 N.J.R. 3113(a) | | |
| 11:13-7.4, 7.5 | Commercial lines insurance: exclusions from coverage; refiling of policy forms | 26 N.J.R. 3805(b) | | |
| 11:15-2 | Joint insurance funds for local governmental units | 26 N.J.R. 2725(a) | | |
| 11:15-2 | Joint insurance funds for local governmental units: extension of comment period | 26 N.J.R. 3592(a) | | |
| 11:16-5 | Insurer's health fraud prevention/detection plan | 26 N.J.R. 4882(a) | | |
| 11:17A | Insurance producers and limited insurance representatives: marketing conduct standards | 26 N.J.R. 4307(a) | | |
| 11:17A-1.2, 1.7 | Automobile insurance: provision of coverage to all eligible persons | 26 N.J.R. 3591(a) | R.1994 d.598 | 26 N.J.R. 4777(a) |
| 11:17B | Insurance producers and limited insurance representatives: commissions and fees | 26 N.J.R. 4307(a) | | |
| 11:17C | Insurance producer standards of conduct: management of funds | 26 N.J.R. 4307(a) | | |
| 11:17D | Insurance producers and limited insurance representatives: administrative procedures and penalties | 26 N.J.R. 4307(a) | | |
| 11:18 | Medical Malpractice Reinsurance Recovery Fund surcharge | 26 N.J.R. 2195(a) | R.1995 d.26 | 27 N.J.R. 371(a) |
| 11:19-4 | Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers | 26 N.J.R. 1195(a) | | |
| 11:20-1.2 | Individual Health Coverage Program: conversion and individual health benefits plans | 27 N.J.R. 41(b) | R.1995 d.37 | 27 N.J.R. 371(b) |
| 11:20-3.2, 4.1, 12.3, 12.5, Exh. A-G, Q | Individual Health Coverage Program: standard policy forms | 26 N.J.R. 4884(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) | R.1994 d.614 | 26 N.J.R. 5041(b) |
| 11:21-2.1, 2.5 | Small Employer Health Benefits Program: Board membership | 26 N.J.R. 4310(a) | | |
| 11:21-2.5 | Small Employer Health Benefits Program: public hearing regarding Board membership | 26 N.J.R. 4311(a) | | |
| 11:21-3.2 | Small Employer Health Benefits Program: optional benefit riders | 26 N.J.R. 4729(a) | | |
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| 12:16-23 | Services excluded from coverage by the Unemployment Compensation Law | 26 N.J.R. 4730(a) | | |
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| 12:20 | Department of Labor hearings | 26 N.J.R. 2174(a) | | |
| 12:40 | Worker Adjustment and Retraining Notification (WARN) procedures | 26 N.J.R. 4311(b) | R.1995 d.42 | 27 N.J.R. 373(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) | R.1994 d.599 | 26 N.J.R. 4828(a) |
| 12:100-10.10 | Safety and health standards for public employees: respiratory protection devices | 26 N.J.R. 4313(a) | R.1995 d.43 | 27 N.J.R. 373(b) |
| 12:120 | Asbestos licenses and permits | 27 N.J.R. 71(a) | | |
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| 12:235-14.7 | Uninsured Employer's Fund: attorney fees | 26 N.J.R. 2199(a) | | |
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| 12A:10A | Minority and Female Contractor and Subcontractor Participation in State Construction Contracts | 25 N.J.R. 4461(b) | R.1994 d.310 | 27 N.J.R. 135(a) |
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| 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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| 13:18-1.5-1.9, 1.12, 1.15 | Division of Motor Vehicles: overweight oceanborne containers | 26 N.J.R. 2521(a) | | |
| 13:27 | Board of Architects rules | 26 N.J.R. 4952(a) | | |
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| 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) | R.1994 d.594 | 26 N.J.R. 4780(a) |
| 13:33-4.1 | Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing | 26 N.J.R. 1595(a) | | |
| 13:35-5.1 | Board of Medical Examiners: release of contact lens specification to patient | 26 N.J.R. 1219(a) | | |
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| 13:37 | Board of Nursing rules | 26 N.J.R. 4731(a) | | |
| 13:38-6.1 | Board of Optometrists: release of contact lens specification to patient | 26 N.J.R. 1220(a) | | |
| 13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1 | Board of Pharmacy: pharmacy technicians | 26 N.J.R. 2743(a) | | |
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| 13:39A-2.3 | Board of Physical Therapy: public forum on direct supervision of physical therapist assistants | 26 N.J.R. 1604(a) | | |
| 13:40-6.1, 11 | Board of Professional Engineers and Land Surveyors: continuing competency requirements for land surveyors | 26 N.J.R. 4314(a) | | |
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| 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) | R.1995 d.9 | 27 N.J.R. 125(a) |
| 13:44E-1.1 | Board of Chiropractic Examiners: scope of chiropractic practice | 26 N.J.R. 3932(b) | | |
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| 13:44E-2.6 | Board of Chiropractic Examiners: practice identification | 26 N.J.R. 4964(a) | | |
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| 13:45A-27 | Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency | 26 N.J.R. 3128(a) | | |
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| 13:47B-1.5 | Weighing and measuring devices: type approval | 26 N.J.R. 4966(a) | | |
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| 13:59 | State Police: criminal history background checks for non-criminal justice purposes | 26 N.J.R. 3595(a) | R.1995 d.601 | 26 N.J.R. 4782(a) |
| 13:70 | Thoroughbred racing rules | 26 N.J.R. 4742(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) | | |
| 13:71 | Harness racing rules | 26 N.J.R. 4744(a) | | |
| 13:71-3.3 | Harness racing: State Steward and Board of Judges decisions | 26 N.J.R. 4969(a) | | |
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| 13:71-19.6 | Harness racing: safety vests | 26 N.J.R. 4482(b) | | |
| 13:71-23.1 | Thoroughbred racing: administration of phenylbutazone on day of race | 26 N.J.R. 1956(b) | | |
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| 14:17-6.17 | Office of Cable Television: scheduling hearings for public comment | 27 N.J.R. 46(a) | | |
| 14:18-3.24 | Cable television: late fees and charges | 26 N.J.R. 105(a) | | |
| 14:31 | Business Energy Improvement Program | 26 N.J.R. 4482(c) | | |
| 14:33 | Energy Facility Review Board | 26 N.J.R. 4484(a) | | |
| 14:34 | Periodic reporting of energy information by energy industries | 26 N.J.R. 4484(b) | | |

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| 14A:6 | Business Energy Improvement Program: recodify as 14:31 | 26 N.J.R. 4482(c) | | |
| 14A:8 | Energy Facility Review Board: recodify as 14:33 | 26 N.J.R. 4484(a) | | |
| 14A:11 | Periodic reporting by energy industries: recodify as 14:34 | 26 N.J.R. 4484(c) | | |

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STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)

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| 16:20B | Transportation Trust Fund Authority Act: municipal fund for road and bridge improvement projects | 26 N.J.R. 4486(a) | | |
| 16:24 | Public utility rearrangement agreements | 26 N.J.R. 4160(a) | R.1995 d.15 | 27 N.J.R. 126(a) |
| 16:28-1.61 | Speed limit zones along Collins Avenue-Nixon Drive under State jurisdiction in Burlington County | 26 N.J.R. 4337(b) | | |
| 16:28-1.62 | Speed limits along connector roads to U.S. 202, U.S. 206, and Route 28 in Somerset County | 27 N.J.R. 46(b) | | |
| 16:28-1.69 | Speed limit zones along U.S. 130, including parts of I-295, U.S. 30 and U.S. 206, in East Windsor | 27 N.J.R. 47(a) | | |
| 16:28-1.77 | Speed limits along Route 29 in Mercer and Hunterdon counties | 26 N.J.R. 3821(a) | R.1994 d.586 | 26 N.J.R. 4786(a) |
| 16:28-1.79 | Speed limit zones along Route 94 in Sussex County | 26 N.J.R. 3133(a) | | |
| 16:28-1.96 | Speed limit zones along Route 45 in Harrison Township | 26 N.J.R. 4970(a) | | |
| 16:28-1.132 | Speed limit zones along Route 47 in Dennis Township, Cape May | 26 N.J.R. 4745(a) | | |
| 16:28-1.158 | Speed limits along Route 179 in Lambertville | 26 N.J.R. 3820(b) | R.1994 d.587 | 26 N.J.R. 4787(a) |
| 16:28-1.158 | Speed limit zones along Route 179 in West Amwell Township | 26 N.J.R. 4486(b) | | |

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| 16:28-1.181 | Speed limit zones along Rising Sun Square Road-Old York Road in Bordentown Township | 26 N.J.R. 3934(a) | R.1994 d.605 | 26 N.J.R. 5033(a) |
| 16:28A-1.7 | Restricted parking along U.S. 9 in Middle Township, Cape May | 26 N.J.R. 3935(a) | R.1994 d.602 | 26 N.J.R. 5034(a) |
| 16:28A-1.21 | No stopping or standing zones along U.S. 30 in Oaklyn Borough | 26 N.J.R. 4971(a) | | |
| 16:28A-1.28 | No stopping or standing zones along U.S. 40 in Pilesgrove Township, Salem County | 26 N.J.R. 3936(a) | R.1994 d.603 | 26 N.J.R. 5034(b) |
| 16:28A-1.33 | No stopping or standing zone along Route 47 in Middle Township, Cape May | 26 N.J.R. 3936(b) | R.1994 d.604 | 26 N.J.R. 5034(c) |
| 16:28A-1.36 | Handicapped parking along Route 57 in Washington Borough, Warren County | 26 N.J.R. 4160(b) | | |
| 16:28A-1.37 | No stopping or standing zones along Route 70 in Cherry Hill and Pennsauken | 26 N.J.R. 4338(a) | | |
| 16:28A-1.38 | No stopping or standing along Route 71 in Bradley Beach Borough | 26 N.J.R. 4161(a) | | |
| 16:28A-1.38 | Parking restrictions along Route 71 in Asbury Park | 27 N.J.R. 48(a) | | |
| 16:28A-1.41 | Bus stops along Route 77 in Bridgeton | 27 N.J.R. 49(a) | | |
| 16:28A-1.52 | No stopping or standing zones along Route 173 in Town of Clinton | 26 N.J.R. 4971(b) | | |
| 16:28A-1.57 | Bus stop on U.S. 206 in Princeton Township | 26 N.J.R. 3820(a) | | |
| 16:28A-1.57 | Bus stop on U.S. 206 in Princeton Township: administrative correction and extension of comment period | 26 N.J.R. 4487(a) | | |
| 16:28A-1.58 | Parking restrictions along U.S. 206-94 in Newton | 27 N.J.R. 49(b) | | |
| 16:30-1.4 | One-way access along U.S. 202 in Bernardsville | 27 N.J.R. 50(a) | | |
| 16:30-3.9 | Truck lane-usage restriction along Route I-80 in Morris County | 26 N.J.R. 4162(a) | | |
| 16:30-3.11 | Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period | 26 N.J.R. 1317(a) | | |
| 16:30-3.13 | Left turns along U.S. 9 in Middle Township, Cape May | 26 N.J.R. 4746(a) | | |
| 16:30-3.14 | Left turn lane along Route 154 in Cherry Hill | 27 N.J.R. 51(a) | | |
| 16:30-3.15 | Left turn lane along Route 34 in Old Bridge | 27 N.J.R. 51(b) | | |
| 16:30-7.4 | Interstate highways: classes of traffic | 26 N.J.R. 4162(b) | R.1995 d.16 | 27 N.J.R. 126(b) |
| 16:30-9.14 | Bidwells Creek bridge restrictions, Route 47 in Middle Township, Cape May | 26 N.J.R. 3937(a) | R.1994 d.606 | 26 N.J.R. 5035(a) |
| 16:30-9.23 | Drawbridge usage along Route 152 in Atlantic County | 26 N.J.R. 4487(b) | | |
| 16:31-1.8 | Left turn prohibitions along Route 47 in Vineland | 26 N.J.R. 3822(a) | R.1994 d.589 | 26 N.J.R. 4787(c) |
| 16:31-1.8 | Turn prohibitions along Route 47 in Middle Township, Cape May | 26 N.J.R. 3937(b) | | |
| 16:31-1.22 | Turn prohibitions along U.S. 130 in Burlington City | 26 N.J.R. 3938(a) | R.1994 d.608 | 26 N.J.R. 5035(b) |
| 16:31-1.26 | Left turn prohibitions along Route 27 in Metuchen and Highland Park | 26 N.J.R. 4488(a) | | |
| 16:32 | Truck operations within State | 26 N.J.R. 4163(a) | | |
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| 16:49 | Transportation of hazardous materials | 26 N.J.R. 4488(b) | | |
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| 16:51 | Regulation of autobuses and transportation public utilities: pre-proposal | 26 N.J.R. 1317(b) | | |
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| 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) | R.1995 d.2 | 27 N.J.R. 127(a) |
| 17:9-4.1, 4.5 | State Health Benefits Program: appointive officer eligibility | 26 N.J.R. 109(a) | | |

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| 17:9-4.2, 8.3, 9.1 | State Health Benefits Program: continued coverage under voluntary furlough program | 26 N.J.R. 2202(a) | R.1995 d.3 | 27 N.J.R. 128(a) |
| 17:12 | Purchase Bureau | 26 N.J.R. 3248(a) | R.1995 d.18 | 27 N.J.R. 128(b) |
| 17:12 | Purchase Bureau rules: extension of comment period | 26 N.J.R. 4166(a) | | |
| 17:13 | Goods and services contracts for small businesses, minority businesses and female businesses | 25 N.J.R. 4889(a) | R.1994 d.309 | 27 N.J.R. 129(a) |
| 17:13 | Goods and services contracts for small businesses and female and minority businesses | 27 N.J.R. 52(a) | | |
| 17:14 | Minority and female contractor and subcontractor participation in State construction contracts | 25 N.J.R. 4461(a) | R.1994 d.310 | 27 N.J.R. 135(a) |
| 17:14 | Minority and female contractor and subcontractor participation in State construction contracts | 27 N.J.R. 54(a) | | |
| 17:19 | Division of Building and Construction: classification and qualification of bidders | 26 N.J.R. 4747(b) | | |

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| 18:1-2.4 | Issuance of warrants by Division of Taxation | 26 N.J.R. 4975(a) | | |
| 19:7-3.6 | Corporation Business Tax rates | 27 N.J.R. 57(a) | | |
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