NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 23 NUMBER 21

November 4, 1991 Indexed 23 N.J.R. 3193-3402

(Includes adopted rules filed through October 11, 1991)

0100330 000
EDUCATION, DEPARTMENT OF
DIV LIBRARY, ARCHIVES, & HISTORY
CN 520
TRENTON NJ 08625 INTER-OFFICE

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 19, 1991
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 16, 1991

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **December 4, 1991.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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January 6, 1992 issue:
- **Proposals ..... December 4**
- **Adoptions ..... December 11**

January 21 issue:
- **Proposals ..... December 19**
- **Adoptions ..... December 27**

NEW JERSEY REGISTER

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

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

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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 43(1991)
Governor's Task Force on Local Partnerships

Issued: October 12, 1991.
Effective: October 12, 1991.
Expiration: Indefinite.

WHEREAS, property taxes doubled from 1980 to 1989; and

WHEREAS, the 1991 property tax relief program decreased or stabilized property taxes in most municipalities and counties; and

WHEREAS, local governments still face pressure on their budgets; and

WHEREAS, there are numerous opportunities for cost savings by sharing local government services; and

WHEREAS, there exists an urgent need to improve efficiency in the providing of local government services in order that these services may continue without interruption or elimination; and

WHEREAS, inter-local service agreements will serve to improve efficiency so as to ensure the continued vitality and viability of certain local government services;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the Governor's Task Force on Local Partnerships (hereinafter referred to as the Task Force) to identify ways in which more inter-local service agreements can occur in New Jersey to increase the efficiency and effectiveness of the delivery of certain local government services. The Task Force should consider services delivered by municipalities, counties, and regional authorities.

2. The Task Force shall consist of the Commissioner of the Department of Community Affairs; a member of the Governor's staff; a representative of the League of Municipalities; a representative of the New Jersey Association of Counties; representatives from the private sector; and representatives from the academic community.

3. The responsibilities, functions, and objectives of the Task Force shall include:

a. Reviewing existing statutes dealing with inter-local service agreements.

b. Reviewing current examples of shared local services.

c. Exploring any existing barriers to shared local services.

d. Researching legislation in other states which might serve as models for sharing local services.

e. Making recommendations for regulatory changes, legislation, or administrative actions.

4. The Governor shall appoint an executive director who will report to the Task Force and shall have access to the necessary staff in state government to complete his assignment.

5. The Task Force is authorized to call upon any department office, division or agency of this State to supply it with data and any other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Task Force and furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order. The Attorney General shall act as legal counsel to the Task Force.

6. The Task Force shall periodically report to the Governor and shall submit its final report no later than June 30, 1992.

7. This Order shall take effect immediately.

RULE PROPOSALS

BANKING

(a)

DIVISION OF SUPERVISION

Notice of Administrative Correction and Extension of Comment Period
Low-Income Credit Unions
Proposed New Rule: N.J.A.C. 3:21-1

Take notice that the above-captioned proposal was published in the New Jersey Register on October 7, 1991 at 23 N.J.R. 2905(a). It erroneously indicated that the deadline for submitting comments was October 16, 1991. Because of the confusion which this error may have caused, and because of the Department's desire to provide full opportunity for comment, the Department hereby extends the deadline for accepting comments through November 22, 1991.

Submit comments by November 22, 1991 to:
Robert M. Jaworski, Asst. Comm.
Office of Regulatory Affairs
Department of Banking, CN-040
20 W. State Street
Trenton, New Jersey 08625

HIGHER EDUCATION

(b)

BOARD OF HIGHER EDUCATION

Policies and Procedures Pertaining Strictly to County Community Colleges
Regulations for New Jersey Community Colleges
Physical Facilities
Proposed Amendment: N.J.A.C. 9:4-1.12

Authorized By: Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.
Authority: N.J.S.A. 18A:64A-7.
Proposal Number: PRN 1991-548.

Submit comments by December 4, 1991 to:
Brett E. Lief
Acting Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board of Higher Education recently proposed (23 N.J.R. 2467(a)) and adopted (23 N.J.R. 3143(a)) a readoption with amendments of N.J.A.C. 9:4, Policies and Procedures Pertaining Strictly to County Community Colleges. As part of the readoption, an amendment was adopted at N.J.A.C. 9:4-1.12(g), Physical facilities, which states that any construction project that involves the renovation, rehabilitation, or alteration of existing facilities, the project cost of which does not exceed one percent of the net investment of the college's physical plant or $1,000,000, whichever is less, and is being funded in whole or in part with State funds, may proceed with the approval of the board of trustees of the college; the amendment increased the amount to $1,000,000 from $500,000. In an effort to standardize to one figure across all sectors of higher education, the Board is now proposing an amendment that increases the $1,000,000 amount to $2,000,000 and thus will enable county college boards of trustees to proceed when the total cost of the project does not exceed $2,000,000. For the same reasons of standardization and efficiency, the proposed amendment to N.J.A.C. 9:4-1.12(g) deletes the text setting out the "one percent of the net investment of the college's physical plant" provision, which had proved over time to be impractical in its application. Justification of the proposed amendment is based upon increased costs of typical facilities renovations and improvements. The statute governing county community colleges does not stipulate the dollar threshold for approval of construction projects, therefore enabling the proposed amendment.

Social Impact

N.J.A.C. 9:4-1.12(g) has enabled the Board of Higher Education to exercise its appropriate oversight of significant facilities renovation, rehabilitation, or alteration at the county colleges. The proposed amendment will assure that the Board of Higher Education may continue to exercise appropriate oversight.

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

Economic Impact

The proposed amendment to N.J.A.C. 9:4-1.12(g) may result in a savings in administrative costs to the college because there would be no need to develop planning documents for construction proposals whose costs are less than $2,000,000.

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 by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment applies strictly to county community colleges.

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

9:4-1.12 Physical facilities
(a)-(f) (No change.)
(g) Any construction project that involves the renovation, rehabilitation, or alteration of existing facilities, the total project cost of which does not exceed [one percent of the net investment of the college's physical plant as reported in the college's current audited financial statements or $1,000,000] **$2,000,000** [whichever is less,] and which is not financed in whole or in part by State funds may proceed with the approval of the college board of trustees.

INSURANCE

(c)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Unfair Claims Settlement Practices
Payment of Health Insurance Claims
Proposed Amendment: N.J.A.C. 11:2-17.7

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29B-1 et seq., 17B:26-1 et seq., 17B:27-1 et seq., 17B:30-1 et seq., P.L.1991, c.187 (subsections 78 and 79).
Proposal Number: PRN 1991-553.

Submit comments by December 4, 1991 to:
Verice M. Mason, Assistant Commissioner
Division of Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the current language in N.J.A.C. 11:2-17.7, all health insurance claims must be paid within 30 days after the date proof of loss is received by the insurer. Pursuant to Sections 78 and 79 of the recently enacted Health Care Cost Reduction Act (P.L.1991, c.187) ("the

Act"), all health insurance claims must now be paid within 60 days unless a claim is contested by the insurer. Section 78 of the Act refers to providers of individual health insurance coverage, while Section 79 concerns group health insurers. Accordingly, the Department now proposes to amend its rules to conform with the new legislative requirement contained in the Act, including provisions for extension of the maximum payment period, when a claim payment shall be considered made, and interest on overdue payments.

Social Impact

Since the proposed amendment merely conforms the Department's rules to statutory law, it does not in and of itself impose any social impact on any person or entity.

Economic Impact

Since the proposed amendment merely conforms the Department's rules to statutory law, it does not in and of itself impose any economic impact on any person or entity.

Regulatory Flexibility Statement

Since the proposed amendment merely conforms the Department's rules to statutory law, it does not impose any 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. (or any other person or entity). Accordingly, a regulatory flexibility analysis is not required by N.J.S.A. 52:14B-19.

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

11:2-17.7 Rules for prompt investigation and settlement of claims

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

(c) Unless a clear justification exists, or unless otherwise provided by the policy, all life [and health] insurance claims [must] **shall** be paid within a maximum payment period of 30 calendar days. The payment period is defined as the period between the date proof of loss is received by the insurer and the date of claims settlement.

(d) Except as provided in (d)1 below, all health insurance claims shall be paid no later than 60 calendar days after the insurer receives written notice and the amount of the claim.

1. The maximum payment period for health insurance claims may be extended under the following circumstances:

i. The health insurer contests a claim, and the insurer sends written notice of such fact to the insured within 45 calender days of the insurer's receipt of the claim. If only a portion of a claim is contested, the insurer shall remit payment for the uncontested portion in accordance with (d) above; or

ii. The health insurer requests additional information from the insured concerning a claim that the insurer is contesting. After the insurer receives the additional information requested, the insurer shall either pay or deny the claim within 90 calendar days of the insurer's receipt of the additional information.

2. Payment of a health insurance claim shall be considered to have been made either:

i. On the date a draft or other valid instrument equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope; or

ii. On the date of delivery of a draft or other valid instrument equivalent to payment.

3. If the health insurer fails to make payment on a claim within the time limits set forth in this subsection, the insurer shall pay simple interest on the amount of the overdue payment at the rate of 10 percent per year.

Recodify existing (d), (e) and (f) as **(e), (f) and (g)** (No change in text.)

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Determination of Insurers in a Hazardous Financial Condition

Proposed New Rules: N.J.A.C. 11:2-27

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:23-1 et seq., 17B:21-1 et seq., 17:30C-1 et seq. and 17B:32-1 et seq.

Proposal Number: PRN 1991-554.

Submit comments by December 4, 1991 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq. set forth specified grounds on which the Commissioner of Insurance (Commissioner) may apply to the Superior Court for an order directing him or her to rehabilitate, liquidate the business or conserve the assets of domestic, foreign or alien property and casualty insurers and life and health insurers. N.J.S.A. 17:30C-6(f), 17:30C-8, 17:30C-11a, 17B:32-6(f), 17B:32-8 and 17B:32-11a, as applicable, provide that the Commissioner may apply to the Superior Court for such an order if an insurer is found after examination to be in such a condition that its further transaction of business will be hazardous to its policyholders, stockholders, creditors or the public.

In order to ensure consistency and uniformity in determining whether an insurer is in a hazardous financial condition, the Department of Insurance (Department) proposes these rules which set forth the factors the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition. These factors reflect current Department standards. The factors set forth in these proposed rules are substantially based on a model rule from the National Association of Insurance Commissioners.

In addition, N.J.S.A. 17:22-6.46 provides that if the Commissioner believes that any eligible surplus lines insurer is, among other things, in an unsound financial condition, he or she shall withdraw the eligibility of the insurer to insure surplus lines risks of this State. Since the determination of "hazardous financial condition" and "unsound financial condition" are substantially similar, these rules also apply to determinations of unsound financial condition for the purpose of withdrawing surplus lines eligibility pursuant to N.J.S.A. 17:22-6.46.

Proposed N.J.A.C. 11:2-27.1 and 11:2-27.2 set forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:2-27.3 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:2-27.4 describes the factors that the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition.

Social Impact

These proposed rules will aid the Department in its efforts to protect the public against losses that may occur if the insurer becomes impaired or insolvent. These rules provide standards for evaluating whether an insurer is in a hazardous financial condition.

The proposed rules will also benefit insurers in that they clearly and fully set forth certain factors that the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition, thus ensuring consistency and uniformity regarding such determinations.

Economic Impact

The proposed rules will have no negative economic impact on insurers in that these rules impose no reporting or recordkeeping requirements on insurers. These rules provide the factors the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq.

Additionally, since insurers will be fully apprised of the factors the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition, an insurer may take appropriate counteraction to prevent it becoming in a hazardous financial condition. This, in turn, may reduce the likelihood that delinquency proceedings will be instituted against such an insurer, thus avoiding the costs and adverse financial impacts associated with the commencement of such proceedings on insurers and the Department's resources. Similarly, this will protect the interests of claimants and reduce the financial burden on the Property/Liability Insurance Guaranty Association.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These proposed rules only provide the factors the Commissioner may consider in determining whether an insurer is in a hazardous financial condition pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq.

Full text of the proposal follows:

SUBCHAPTER 27. DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION

11:2-27.1 Purpose

The purpose of this subchapter is to set forth the factors which the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition as defined herein. A determination of hazardous financial condition provides the grounds upon which the Commissioner may seek an order from the Superior Court to rehabilitate, liquidate the business or conserve the assets within this State of domestic, foreign or alien insurers pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq; and provides one of the grounds upon which the Commissioner shall withdraw the eligibility of an eligible surplus lines insurer to insure surplus lines risks in the State pursuant to N.J.S.A. 17:22-6.46.

11:2-27.2 Scope

This subchapter shall apply to all domestic, foreign and alien insurers and all other entities subject to N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq.; and to all eligible surplus lines insurers.

11:2-27.3 Definitions

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

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

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the insurer as defined in N.J.S.A. 17:27A-1.

"Department" means the New Jersey Department of Insurance.

"Eligible surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

"Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, an insurer, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to policyholders, certificate holders and other insureds with respect to known claims and reasonably anticipated claims; or

2. To pay other obligations in the normal course of business.

"Insurer" means a person subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the Commissioner pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq. or by the equivalent insurance supervisory official of another state. "Insurer" includes all persons purporting to be engaged in the business of insurance as an insurer in this State and all persons in the process of organization to become insurers.

"Life and health insurer" means an insurer authorized or admitted pursuant to the provisions of Title 17B of the Revised Statutes to solely transact the business of life insurance, health insurance or annuities in this State as those terms are defined in N.J.S.A. 17B:17-3, 17B:17-4 and 17B:17-5, respectively.

"MSVR" means the mandatory securities valuation reserve as described in N.J.S.A. 17B:20-2.

"NAIC" means the National Association of Insurance Commissioners.

11:2-27.4 Determination of hazardous financial condition; factors

(a) The Commissioner shall consider the following factors, either singly or in a combination of two or more, in determining whether an insurer is in a hazardous financial condition:

1. Adverse findings reported in financial condition and market conduct examination reports and/or failure to comply with recommendations contained therein;

2. Adverse findings from the NAIC Insurance Regulatory Information System and its related reports;

3. The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annualized premium and net investment income which could lead to an impairment of capital and surplus;

4. A finding that the insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

5. A finding that an assuming reinsurer is not able to meet the obligations being assumed or that the insurer's reinsurance program does not provide sufficient protection for the company's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

6. A finding that the insurer's operating loss in the last 12 month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in non-admitted assets and cash dividends paid to shareholders, is greater than 50 percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required;

7. A finding that any parent, affiliate, subsidiary or reinsurer is insolvent, or, in the opinion of the Commissioner, is threatened with insolvency or is delinquent in payment of its monetary or other obligations;

8. A finding that contingent liabilities, pledges or guarantees, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer;

9. A finding that any person controlling an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

10. The age and doubtful collectability of receivables;

11. A finding that the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, expertise and reputation deemed necessary by the Commissioner;

12. A finding that the management of an insurer has failed to respond to inquiries from the Commissioner regarding the condition of the insurer or has furnished false and misleading information concerning such inquiries;

13. A finding that the management of an insurer has filed any false or misleading financial statement, has released any false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry or has omitted an entry of a material amount in the books of the insurer;

14. A finding that, in the opinion of the Commissioner, the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meets its obligations in a timely manner;

15. A finding that, in the opinion of the Commissioner, the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems;

16. A finding that the surplus as regards policyholders is not adequate in relation to the amount of the insurer's loss and loss adjustment expense reserve liabilities established;

17. A finding that a life insurer's surplus as regards policyholders plus MSVR reserves is not adequate in relation to the amount of liabilities less MSVR reserves less separate account liabilities;

18. A finding that the insurer has reinsurance reserve credits, recoverables or receivables due from insurance companies in receivership and such credits, recoverables or receivables are greater than 25 percent of surplus or 15 percent of admitted assets;

19. A finding that a life and health insurer has taken a credit for reserves for business assumed from an insurance company in receivership under a modified co-insurance system or in any other manner in which the ceding insurer withholds assets, and such reserve credit is greater than 25 percent of surplus or 15 percent of admitted assets;

20. A finding that the insurer has issued subordinated premium or surplus debentures to finance its operations without the prior approval of the Commissioner for use as policyholder surplus;

21. A finding that the insurer has failed to maintain books and records sufficient to permit examiners to determine the financial condition of the insurer;

22. A finding that the insurer has moved the location of the books and records necessary to conduct an examination of such insurer without notifying the Department of such location;

23. A finding that the owners or management of an insurer have engaged in unlawful transactions;

24. A finding that the insurer has delegated the administration of an insurance function necessary to such insurer's survival directly or indirectly to a person without adequate controls and/or which creates a conflict of interest;

25. A finding that the insurer has a pattern of not settling valid claims within a reasonable time after due proofs of loss have been received by such insurer;

26. A finding that the insurer has been issued a final administrative or judicial order, initiated by an insurance regulatory agency of another state, with a finding that such insurer is insolvent or in a hazardous financial condition;

27. A finding that the insurer does not follow a policy on rating and underwriting standards appropriate to the risk; and

28. A finding of any other fact or circumstance that indicates that an insurer is in a hazardous financial condition.

(b) In making a determination of an insurer's financial condition pursuant to this subchapter, the Commissioner may adjust assets and liabilities as necessary to accurately reflect the insurer's financial position in any manner including, but not limited to, the following:

1. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding, or which has entered into an invalid reinsurance agreement;

2. Make appropriate adjustments to asset values in its investment portfolio or attributable to investments in or transactions with parents, subsidiaries, or affiliates;

3. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and

4. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12 month period.

(a)

DIVISION OF ADMINISTRATION

Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance

Proposed Amendments: N.J.A.C. 11:3-16.5, 16.8, 16.10, 16.11 and Appendix

Authorized By: Samuel E. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e); 17:29A-1 et seq.; 17:29A-36.2 and 36.3; 17:29A-44; 17:30A-1 et seq.; and 17:33B-1 et seq.

Proposal Number: PRN 1991-552.

Submit comments by December 4, 1991 to:

Verice M. Mason, Assistant Commissioner
New Jersey Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

Effective January 25, 1991, the Department of Insurance ("Department") adopted its concurrent reproposed rules N.J.A.C. 11:3-16 (see 23 N.J.R. 514(a)). These rules were effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(a) as implemented by N.J.A.C. 1:30-4.5), except for changes upon adoption which were effective on publication (see N.J.A.C. 1:30-4.3). These rules amended the private passenger automobile insurance rate filing rules.

Upon further review, the Department has determined that additional changes to these rules are necessary. N.J.A.C. 11:3-16.8(a)2 and 16.8(d) currently provide that an insurer making a prior approval filing may provide specified premium, loss and loss adjustment expense data either at basic or total limits. Further, N.J.A.C. 11:3-16.8(d) currently provides that an insurer may provide in its prior approval filing internal loss trend data on either a calendar year paid or incurred basis. The Department proposes to amend N.J.A.C. 11:3-16.8(a)2 and 16.8(d) to require that filers provide data at total limits and, at their option, basic limits, and to require filers to provide trend data on a calendar year paid basis and, at their option, on an incurred basis. The Department has found that data at total limits and loss trend data on a calendar year basis is most helpful in its review of individual rate filings under the standard ratemaking methodology. Further, this will ensure consistency in the Department's review of individual rate filings. It should be noted that pursuant to N.J.A.C. 11:3-16.8(h), the Department may currently require a filer to provide this information, if it provided the data at basic limits or on an incurred basis in its rate filing. The Department, however, believes it appropriate to inform filers of the information necessary in its review of rate filings to avoid requiring the submission of additional data. This, in turn, will benefit filers and should expedite the rate filing process.

The Department also proposes to amend N.J.A.C. 11:3-16.5 to require insurers making a flex rate filing to show calculations of current and proposed average rates, including the variable portion and expense fees, for each coverage.

The Department also recognized the need to amend its private passenger rate filing requirements regarding special filings made to reflect surtaxes and assessments imposed by N.J.S.A. 17:33B-49 and 17:30A-8a(a). These proposed amendments are necessary in order to insure that the Department receives comprehensive data from each filer, and to conduct a thorough review of an insurer's private passenger automobile insurance rate filing.

The Department's proposed amendment to N.J.A.C. 11:3-16.10(a)8 is more reflective of investments available to insurers. The Department anticipates that the use of Moody's seasoned AAA corporate bond rate, instead of the Treasury constant three-year maturity rate, will impute a more realistic interest rate to policyholder supplied funds.

The Department's proposed amendment to N.J.A.C. 11:3-16.11(b) provides additional data requirements that will enable the Commissioner of Insurance ("Commissioner") to evaluate the filing more accurately. These requirements include portions of the insurer's statutory property and casualty annual statement for New Jersey and combined for all states; the reserve development of an insurer; an insurer's New Jersey loss adjustment reserves by line for all lines; an insurer's New Jersey policyholder surplus; an insurer's New Jersey investment income including realized capital gains; an insurer's New Jersey Underwriting and Investments Exhibit; the filer's effective federal tax rate on investment income; and an insurer's invested assets. The proposed amendment includes technical changes that delete provisions of the current rule where the same data is required in a different format and corrects a typographical error.

Finally, the Department proposes minor technical changes to the subchapter Appendix, Exhibit AI, to reflect these proposed amendments and as a matter of form. Proposed new Exhibit H provides a format for supplementary information, as required under N.J.A.C. 11:3-16.11(b)2x.

Social Impact

These proposed amendments will benefit filers by providing the manner by which certain data must be calculated, and thus avoid Department requests for this data after initial receipt of a rate filing. Filers will benefit in that they will avoid the costs associated with filing additional information. The Department will similarly benefit in that it will more likely receive the data which is most helpful to its review of rate filings in the initial submission and thus avoid the time and expense of requiring and reviewing supplemental information. The Department will further benefit in that the calculations of data contained in a rate filing will be clearly shown.

Economic Impact

Insurers will bear any additional costs associated with providing specified data at total limits and on a calendar year basis, to the extent its systems are designed to provide the required data at basic limits or on an incurred basis. The Department, however, believes these costs to be minimal. Further, the Department currently has the authority to request this data pursuant to N.J.A.C. 11:3-16.9(h). Insurers will be informed of the required data prior to initial submission of a rate filing, thus avoiding any expenses associated with filing this information as a supplement to its initial filing.

The Department anticipates that these proposed amendments to N.J.A.C. 11:3-16.10 will affect the interest rate imputed to policyholder's supplied funds. Additionally, these proposed amendments will affect private passenger automobile insurers which make special rate filings pursuant to N.J.A.C. 11:3-16.11. Although the proposed amendments slightly increase the data required to be supplied for these filings, the Department does not believe that the additional information will significantly increase the costs insurers currently incur in order to comply with this rule.

Regulatory Flexibility Analysis

The proposed amendments may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments will apply to small businesses which are insurers making flex rate filings or prior approval filings pursuant to N.J.A.C. 11:3-16. An insurer will be required to bear any costs associated with providing data at total limits and on a calendar year paid basis, to the extent its systems are not developed to provide this information, and to bear any costs associated with showing the required calculations.

The proposed amendments revise certain requirements contained in N.J.A.C. 11:3-16 regarding flex rate filings and prior approval filings. These requirements apply to all insurers making such filings regardless of insurer size. In the interest of consistency and uniformity, different compliance requirements are not specifically provided in these proposed amendments based on insurer size.

The proposed amendments impose data requirements on insurers which make private passenger automobile rate filings to reflect surtaxes and assessments imposed by N.J.S.A. 17:33B-49 and 17:30A et seq. The proposed amendments provide additional data requirements as described in the Summary, in a system already mandated by prior rules.

Although the proposed amendments do not otherwise distinguish between insurers that qualify as "small businesses" and others, the data requirements as set forth in these proposed amendments are consistent with the statutorily mandated purposes of these rules to establish for all filers uniform data filing and ratemaking methodology in connection with the establishment of private passenger automobile insurance rates in the voluntary market.

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

11:3-16.5 Insurer flex rating filings

(a) Any insurer that desires to increase its rates in accordance with the flex rate provisions of N.J.S.A. 17:29A-44 and applicable Orders of Commissioner issued pursuant to N.J.A.C. 11:3-16A shall provide the following information in support of its flex rate filing:

1.-4. (No change.)

5. The manual rating pages and computer disk(s) containing the flex rate system to be implemented, accompanied by an explanatory memorandum showing the calculation of the new manual rates, using the current manual rates as the starting point in the calculation, **and showing the calculation of the current and proposed average rates, including the variable portion and expense fees for each coverage.** The memorandum shall also include the Department's file number and effective data of use for the current rates.

11:3-16.8 Premium, loss and loss adjustment expense data

(a) Filers shall provide the following data regarding New Jersey premium loss and loss adjustment expense:

1. (No change.)

2. For each coverage and each experience year used in setting the overall rate level, the following information [either] at [basis limits or] total limits [whichever is consistent with the filer's methodology] **and, at the filer's option, basic limits**:

i.-viii. (No change.)

3.-6. (No change.)

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

(d) Each filer, except small filers, shall provide the following data regarding trend factors and their application:

1. All internal loss trend data on [either] a calendar year paid [or] **and, at the filer's option,** incurred basis shown separately for frequency and severity for the latest available five calendar years on a quarterly year ending basis for all coverage on both a countrywide and New Jersey basis. Bodily injury liability and property damage liability trend data shall be given at [basic or] total limits [, whichever is consistent with the filer's methodology] **and, at the filer's option, basic limits.** Basic personal injury protection ("PIP") data shall be given at a per person limit retained by the insurer according to N.J.S.A. 39:6-73.1 ($75,000 of insurer payments). Physical damage coverages shall be shown on the basis of the $500.00 deductible or all deductibles combined adjusted to the $500.00 deductible basis. In the latter case the filer shall provide an explanation of the methodology for adjusting other than $500.00 deductible data to the $500.00 deductible level.

2. (No change.)

(e)-(i) (No change.)

11:3-16.10 Rate calculation using standard ratemaking methodology

(a) Investment income shall be treated by group of coverages as follows:

1.-7. (No change.)

8. The interest rate used in the calculation shall be a simple average of the most recent [12]**36** monthly numbers for the [Treasury constant three-year maturity] **Moody's seasoned AAA corporate bond** rate as published in the Federal Reserve statistical release "Selected Interest Rates", **or the insurer's actual prospective yield, whichever is higher.**

(b)-(f) (No change.)

11:3-16.11 Rate filings reflecting assessments and surtaxes.

(a) (No change.)

(b) Any insurer desiring to modify its rates to reflect assessments or surtaxes imposed pursuant to N.J.S.A. 17:30A-8A(9) and 17:33B-49, respectively, shall provide the following information in support of its application:

1. (No change.)

[2. A copy of the statutory property and casualty Annual Statement, Exhibit of Premiums and Losses (page 14) for New Jersey for each of the most recent 10 years. The insurer shall also file information combining this data for each of the most recent 10 years for all states and the District of Columbia, if applicable, in which the insurer is authorized to transact business; and shall provide a list of these jurisdictions;]

2. Exhibits that set forth the following data for each of the most recent 10 years, both separately for the filer and combined as a group with all other property and casualty insurance affiliates of the filer that transact the business of insurance in New Jersey:

i. The Exhibit of Premiums and Losses (page 14) of the statutory property and casualty Annual Statement;

ii. A copy of the Insurance Expense Exhibit (Parts I and II) of the statutory property and casualty Annual Statement for New Jersey and combined for all States;

iii. The information set forth in Schedule P Part II (reserve development) in the most recent statutory property and casualty Annual Statement for New Jersey;

iv. New Jersey loss adjustment reserves by line for all lines. If allocated from countrywide reserves, state the method of allocation;

v. New Jersey policyholder surplus (equity based). If allocated from countrywide surplus, state the method of allocation;

vi. New Jersey investment income including realized capital gains. If allocated from countrywide investment income, state the method of allocation;

vii. New Jersey Underwriting Investment Exhibits Parts 1 and 1A (page 6) of the statutory property and casualty Annual Statement;

viii. The filer's effective Federal tax rate on investment income;

ix. The statement of Invested Assets (page 2), items 1 through 8a, of the statutory property and casualty Annual Statement; and

x. The supplementary information set forth in Exhibit H in the Appendix incorporated herein by reference.

3. The following data for all of its other insurance affiliates for each of the most recent 10 years on a Statewide and countrywide basis;

[i. For property and casualty affiliates, Exhibit of Premiums and Losses (page 14) of the statutory property and casualty Annual Statement;]

Recodify existing ii.-iii. as **i.-ii.** (No change in text.)

Recodify existing iv. as **4.** (No change in text.)

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

[6. For the current year and preceding two years, a schedule of premiums, incurred losses and operating expenses by New Jersey lines of business corresponding to line items one (1) through twenty-two (22) of Part II of the IEE. In addition, provide a schedule of operating expenses by classification corresponding to line items one (1) through twenty-two (22) of Part I of the IEE. The aggregate of expenses reported by line item must agree with the total operating expenses related to New Jersey policies reported by line of business in Part II of the IEE, (sum of lines four (4) through eight (8));

7. For each line item expenditure included in the schedule required pursuant to (b)6 above, the following:

i. A description of all allocation methodologies used to allocate corporate-wide costs (including worldwide, countrywide and regionalwide costs) to New Jersey lines of business;

ii. A description of all allocation methodologies used to allocate operating expenses to New Jersey private passenger automobile liability and physical damage lines of business;

iii. An explanation for any changes in allocation methodologies between years;

iv. For NJAFIUA/MTF servicing entities which are also insurers, an explanation for differences between allocation methodologies used to prepare the schedule required pursuant to (b)6 above and the methodologies used to prepare Exhibit P of the NJAFIUA/MTF reporting package; and

v. For each operating expense classification by each New Jersey line of business, a schedule which shows the expenses directly charged to a line of business; and indirect expenses allocated to various lines of business using a reasonable allocation methodology;]

7. For each line item expenditure included on lines 1 through 22 of Part II of the Insurance Expense Exhibit, filers shall provide the following for the current year and the preceding two years:

i. A description of all allocation methodologies used to allocate corporate-wide costs (including worldwide, countrywide and regionalwide costs) to New Jersey lines of business;

ii. A description of all allocation methodologies used to allocate operating expenses to all New Jersey lines of business;

iii. An explanation for any changes in allocation methodologies between years;

iv. For NJAFIUA/MTF servicing entities which are also insurers, an explanation for differences between allocation methodologies used to prepare the schedule required pursuant to (b)6 above and the methodologies used to prepare Exhibit P of the NJAFIUA/MTF reporting package; and

v. For each operating expense classification by each New Jersey line of business, a schedule which shows the expenses directly charged to a line of business; and indirect expenses allocated to various lines of business using a reasonable allocation methodology;

8.-12. (No change.)

13. An explanation why the insurer believes that the assessment imposed by N.J.S.A. 17:30A-8A(9) should be reflected in the requested private passenger automobile rates since the assessment, by statute, is classified as a loan; and

14. (No change.)

(c) (No change.)

(d) The Commissioner shall not approve any increase in an insurer's rate on the basis that the insurer is required to pay assessments pursuant to N.J.S.A. 17:30A-8A(9), or surtaxes pursuant to N.J.S.A. 17:33B-49, unless he or she shall find that an increase in revenue is necessary to ensure that the insurer earns a constitutionally adequate return. In making that determination the Commissioner shall consider:

1.-4. (No change.)

(e)-(f) (No change.)

APPENDIX
EXHIBIT A I
FLEX RATE FILINGS

COMPANY: _____

COMPANY FILE NO. _____

RATE FILING REQUIREMENTS:		PAGE #
(1)	COVER LETTER NOTIFYING THE DEPARTMENT OF INTENTION TO INCREASE RATES IN ACCORDANCE WITH N.J.S.A. 17:29A-44	_____
(2)	STATEMENT OF PERCENT **AND TOTAL DOLLAR AMOUNT OF THE** INCREASE **IN RATES** BY COVERAGE (INCLUDING VARIABLE PORTION AND EXPENSE FEES EXCLUDING POLICY CONSTANT AND RMEC) **IN THE FORMAT OF EXHIBIT E**	_____
[(3)	STATEMENT OF DOLLAR AMOUNT OF INCREASE BY COVERAGE	_____]
[(4)]**(3)**	EFFECTIVE DATE OF CHANGE	_____
[(5)]**(4)**	NAME, ADDRESS AND TELEPHONE NUMBER OF COMPANY OFFICER FAMILIAR WITH FILING	_____
[(6)]**(5)**	MANUAL PAGES CONTAINING THE FLEX RATES	_____
[(7)]**(6)**	A COPY OF THE FILING MUST BE SUBMITTED TO THE NEW JERSEY PUBLIC ADVOCATE'S OFFICE	_____
[(8)]**(7)**	FORM AMB 10 MUST BE INCLUDED	_____
[(9)]**(8)**	CERTIFICATION BY COMPANY OFFICER THAT FILING MEETS STATUTORY AND REGULATORY REQUIREMENTS AND INFORMATION IS ACCURATE AND TRUE	_____
[(10)]**(9)**	FILER'S NAME SHOWN	_____
	FILER'S IDENTIFYING NUMBERS	_____
	FILER NAIC #	_____
	GROUP NAIC #	_____
[(11)]**(10)**	CERTIFICATION BY COMPANY OFFICER THAT EXCESS PROFITS REPORT REQUIRED BY N.J.A.C. 11:3-20 HAS BEEN FILED	_____
[(12)]**(11)**	CERTIFICATION BY COMPANY OFFICER THAT FINANCIAL EXPERIENCE REPORT AS REQUIRED BY N.J.A.C. 11:3-31 HAS BEEN FILED	_____
[(13)]**(12)**	CERTIFICATION BY COMPANY OFFICER THAT ANNUAL INFORMATION FILING AS REQUIRED BY N.J.A.C. 11:3-16.4 HAS BEEN FILED	_____
[(14)]**(13)**	THE MOST RECENT FIVE COMPLETE CALENDAR YEAR HISTORY OF THE DISTRIBUTION, BY LIMIT OF LIABILITY OF WRITTEN EXPOSURES AND PREMIUMS FOR:	

BODILY INJURY LIABILITY _____
PROPERTY DAMAGE LIABILITY _____
COMBINED SINGLE LIMIT LIABILITY _____
UNINSURED/UNDERINSURED MOTORISTS _____

[(15)](14) EXHIBIT SHOWING COVERAGE WEIGHTS AND CALCULATION OF NEW VARIABLE BASE RATES IF COVERAGES ARE COMBINED _____

[(16)](15) COMMISSION EQUALIZATION WORKSHEET _____

(16) COMPUTER DISK AS REQUIRED BY N.J.A.C. 11:3-16.3(j) _____

(17) EXPLANATORY MEMORANDUM SHOWING THE CALCULATION OF THE NEW MANUAL RATES, USING CURRENT MANUAL RATES AS STARTING POINT IN CALCULATION _____

EXHIBIT H
SUPPLEMENTARY INFORMATION
FORMAT INSTRUCTIONS

1. Cell addresses for the information reported on Exhibit H are listed below and must be adhered to.
2. Include all text except page numbers.
3. Each disk must be clearly labeled with the exhibit name, company name and NAIC number.

Cell Address	Text	Cell Address for Information/ Data
A2	EXHIBIT H	
A3	SUPPLEMENTARY INFORMATION	
A4	YEAR _____	
A6	1. Bond Income	
A7	Pg. 6, Part 1, col 8, lines 1 + 1.2 + 1.3	B7
A8	2. Stock Dividend	
A9	Pg. 6, Part 1, col 8, lines 2.1 + 2.11 + 2.2 + 2.21	B9
A10	3. Realized Capital Gains	
A11	Pg. 6, Part 1A, col 7, line 11	B11
A12	4. Tax Exempt Bonds	
A13	Pg. 6, Part 1, col 8, line 1.1	B13
A14	5. Bond Tax Rate (Current IRS rate)	B14
A15	6. Stocks Tax Rate (Current IRS rate)	B15
A16	7. Capital Gains Tax Rate (Current IRS rate)	B16
A17	8. Tax-exempt Bonds Tax Rate (Current IRS rate)	B17
A18	9. Investment Income	
A19	IEE Part II, col 32, line 11	B19
A20	10. Income on Capital	
A21	IEE Part II, col 33, line 11	B21
A22	11. NJ Direct Losses Unpaid prior year	
A23	NJ Pg. 14, col 8, line 32 from prior year	B23
A24	12. NJ Direct Losses Unpaid	
A25	NJ Pg. 14, col 8, line 32	B25
A26	13. Net Premium Earned All Lines	
A27	IEE Part II, col 32, line 2	B27
A28	14. NJ Direct Premium Earned	
A29	NJ Pg. 14, col 3, line 32	B29
A30	15. NJ Direct Premiums Written	
A31	NJ Pg. 14, col 2, line 32	B31
A32	16. NJ Direct Unearned Prem. Reserve	
A33	NJ Pg. 14, col 5, line 32	B33
A34	17. NJ Direct Unearned Prem Reserve prior year	
A35	NJ Pg. 14, col 5, line 32 prior year	B35
A36	18. Direct Losses Unpaid	
A37	Schedule T, col 7, line 98	B37
A38	19. Direct Losses Unpaid prior year	
A39	Schedule T, col 7, line 98 prior year	B39
A40	20. Loss Reserve All Lines	
A41	Pg. 3. col 1, line 1	B41
A42	21. Loss Reserve All Lines prior year	
A43	Pg. 3. col 2, line 1 prior year	B43
A44	22. LAE Reserve All Lines	
A45	Pg. 3. col 1, line 2	B45
A46	23. LAE Reserve All Lines prior year	
A47	Pg. 3. col 2, line 2 prior year	B47
A48	24. Direct Commission All Lines	
A49	IEE col 32, line 20	B49
A50	25. Other Acquisition All Lines	
A51	IEE col 32, line 6	B51
A52	26. General Expenses All Lines	
A53	IEE col 32, line 7	B53
A54	27. Taxes, Licenses and Fees	
A55	IEE col 32, line 8	B55
A56	28. Direct Premium Earned All Lines	
A57	Schedule T, col 3, line 98	B57
A58	29. Unearned Premium Reserve	
A59	Page 8, part 2A, col 5, line 32	B59
A60	30. Net Premium Written All Lines	
A61	IEE, col 32, line 1	B61
A62	31. Direct Premiums Written All Lines	
A63	Schedule T, col 2, line 98	B63
A64	32. Direct Commission All Lines prior year	
A65	IEE col 32, line 20 prior year (line 18, 1989 & prior)	B65
A66	33. Other Acquisition All Lines prior year	
A67	IEE col 32, line 6 prior year	B67
A68	34. General Expenses All Lines prior year	
A69	IEE col 32, line 7 prior year	B69
A70	35. Taxes, Licenses and Fees prior year	
A71	IEE col 32, line 8 prior year	B71
A72	36. Direct Unearned Premium Reserve prior year	
A73	Page 8, part 2A, col 5, line 32 prior year	B73
A74	37. NJ Direct Premium Written prior year	
A75	NJ Pg. 14, col 2, line 32	B75
A76	38. Net Premium Written All Lines prior year	
A77	IEE, col 32, line 1 prior year	B77
A78	39. Direct Premium Written All Lines	
A79	Schedule T, col 2, line 98 prior year	B79
A80	40. Surplus	
A81	Pg. 3, col 1, line 26	B81
A82	41. Surplus prior year	
A83	Pg. 3, col 2, line 26 prior year	B83
A84	42. NJ PPA Direct Premium Written	
A85	NJ Pg. 14, col 2, lines 19.1 + 19.2 + 21.1	B85
A86	43. NJ PPA Direct Premium Written prior year	
A87	NJ Pg. 14, col 2, lines 19.1 + 19.2 + 21.1 prior year	B87
A88	44. Surtaxes	B88
A89	45. Surtaxes prior year	B89
A90	46. Assessments	B90
A91	47. Assessments prior year	B91
A92	48. Corporate Tax Rate (Corporate income tax rate)	B92
A93	49. NJ Direct Losses Incurred	
A94	NJ Pg. 14, col 7, line 32	B94
A95	50. Direct Losses Incurred	
A96	Schedule T, col 6, line 98	B96
A97	51. Direct LAE All Lines	
A98	IEE Part II, col 32, line 19	B98
A99	52. NJ Policyholder Dividend	
A100	NJ Pg. 14, col 4, line 32	B100
A101	53. Reserve Changes	
A102	Schedule P, part 2, previous year's cumulative reserve	
A103	—current years cumulative reserve for previous years	B103
A104	54. Change in Incurred Losses	
A105	Schedule P, part 2, most recent reserve for the	
A106	year's reserve—original reserve	B106

EXHIBIT H
SUPPLEMENTARY INFORMATION
YEAR _____

1. Bond Income
   Pg. 6, Part 1, col 8, lines 1 + 1.2 + 1.3 _____
2. Stock Dividend
   Pg. 6, Part 1, col 8, lines 2.1 + 2.11 + 2.2 + 2.21 _____
3. Realized Capital Gains
   Pg. 6, Part 1A, col 7, line 11 _____

4. Tax Exempt Bonds
Pg. 6, Part 1, col 8, line 1.1 _____
5. Bond Tax Rate (Current IRS rate) _____
6. Stocks Tax Rate (Current IRS rate) _____
7. Capital Gains Tax Rate (Current IRS rate) _____
8. Tax-exempt Bonds Tax Rate (Current IRS rate) _____
9. Investment Income
IEE Part II, col 32, line 11 _____
10. Income on Capital
IEE Part II, col 33, line 11 _____
11. NJ Direct Losses Unpaid prior year
NJ Pg. 14, col 8, line 32 from prior year _____
12. NJ Direct Losses Unpaid
NJ Pg. 14, col 8, line 32 _____
13. Net Premium Earned All Lines
IEE Part II, col 32, line 2 _____
14. NJ Direct Premium Earned
NJ Pg. 14, col 3, line 32 _____
15. NJ Direct Premiums Written
NJ Pg. 14, col 2, line 32 _____
16. NJ Direct Unearned Prem. Reserve
NJ Pg. 14, col 5, line 32 _____
17. NJ Direct Unearned Prem Reserve prior year
NJ Pg. 14, col 5, line 32 prior year _____
18. Direct Losses Unpaid
Schedule T, col 7, line 98 _____
19. Direct Losses Unpaid prior year
Schedule T, col 7, line 98 prior year _____
20. Loss Reserve All Lines
Pg. 3, col 1, line 1 _____
21. Loss Reserve All Lines prior year
Pg. 3, col 2, line 1 prior year _____
22. LAE Reserve All Lines
Pg. 3, col 1, line 2 _____
23. LAE Reserve All Lines prior year
Pg. 3, col 2, line 2 prior year _____
24. Direct Commission All Lines
IEE col 32, line 20 _____
25. Other Acquisition All Lines
IEE col 32, line 6 _____
26. General Expenses All Lines
IEE col 32, line 7 _____
27. Taxes, Licenses and Fees
IEE col 32, line 8 _____
28. Direct Premium Earned All Lines
Schedule T, col 3, line 98 _____
29. Unearned Premium Reserve
Pg. 8, part 2A, col 5, line 32 _____
30. Net Premium Written All Lines
IEE, col 32, line 1 _____
31. Direct Premiums Written All Lines
Schedule T, col 2, line 98 _____
32. Direct Commission All Lines prior year
IEE col 32, line 20 prior year (line 18, 1989 & prior) _____
33. Other Acquisition All Lines prior year
IEE col 32, line 6 prior year _____
34. General Expenses All Lines prior year
IEE col 32, line 7 prior year _____
35. Taxes, Licenses and Fees prior year
IEE col 32, line 8 prior year _____
36. Direct Unearned Premium Reserve prior year
Pg. 8, part 2A, col 5, line 32 prior year _____
37. NJ Direct Premium Written prior year
NJ Pg. 14, col 2, line 32 _____
38. Net Premium Written All Lines prior year
IEE, col 32, line 1 prior year _____
39. Direct Premium Written All Lines
Schedule T, col 2, line 98 prior year _____
40. Surplus
Pg. 3, col 1, line 26 _____
41. Surplus prior year
Pg. 3, col 2, line 26 prior year _____
42. NJ PPA Direct Premium Written
NJ Pg. 14, col 2, lines 19.1 + 19.2 + 21.1 _____
43. NJ PPA Direct Premium Written prior year
NJ Pg. 14, col 2, lines 19.1 + 19.2 + 21.1 prior year _____
44. Surtaxes _____
45. Surtaxes prior year _____
46. Assessments _____
47. Assessments prior year _____
48. Corporate Tax Rate (Corporate income tax rate) _____
49. NJ Direct Losses Incurred
NJ Pg. 14, col 7, line 32 _____
50. Direct Losses Incurred
Schedule T, col 6, line 98 _____
51. Direct LAE All Lines
IEE Part II, col 32, line 19 _____
52. NJ Policyholder Dividend
NJ Pg. 14, col 4, line 32 _____
53. Reserve Changes
Schedule P, part 2, previous year's cumulative reserve —current years cumulative reserve for previous years _____
54. Change in Incurred Losses
Schedule P, part 2, most recent reserve for the year's reserve—original reserve _____ _____

(a)

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance Personal Injury Protection Coverage

Proposed Amendments: N.J.A.C. 11:3-29.2, 11:3-29.4 and 11:3-29.6

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Proposal Number: PRN 1991-555.

Submit comments by December 4, 1991 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

The Department proposes to amend N.J.A.C. 11:3-29.2 by adding a definition of "eligible charge;" and N.J.A.C. 11:3-29.4(f) relating to multiple procedures by clarifying that reduced fees may be appropriate when multiple procedures are performed "at the same visit" as well as "at the same time;" by limiting application of the multiple procedures reduction formula so as to avoid the result where a provider's usual, customary and reasonable fee, which may be well below the upper limits on the fee schedule, is substantially and unfairly undercut; and by eliminating application of the body parts language to nonsurgical procedures.

Proposed changes to the fee schedule for ambulance services at N.J.A.C. 11:3-29.6(d) are based on the most recent Medicare-approved charges for New Jersey and may be summarized as follows: Two of the listed ambulance charges have been increased slightly, while the other two are unchanged. One new item (clarification of return-trip charge) has been added.

The proposed changes to the durable medical equipment and prosthetic devices schedule at N.J.A.C. 11:3-29.6(e) are based on Medicare-allowed charges as of August, 1991. The revised schedule includes 56 new items. Additionally, charges for used equipment and/or monthly rentals are included for a number of items on which only charges for new equipment appeared previously. Of the 974 items listed

on the current schedule, the fee on the new schedule for new equipment is higher for 250 items and lower for 175 items. A large majority of the increases are due to a 3.7 percent across-the-board increase for many items. The biggest cumulative percentage increase for new equipment is 242 percent of the original charge; the biggest decrease is 82 percent. The fee for used equipment is higher on the new schedule for 192 items, and lower for 31 items. The biggest cumulative percentage increase is 310 percent of the original charge; the biggest decrease is 25 percent. The monthly rental of any item is limited by N.J.A.C. 11:3-29.4(c)1 to 10 percent of the purchase price. The Medicare-allowed monthly charges are, in some cases, higher than 10 percent of the (new) purchase price. The proposed new fee schedule, therefore, sets the maximum monthly rental at the lesser of the Medicare figure and 10 percent of the purchase price for new equipment.

Social Impact

These proposed amendments affect automobile insurers, automobile insurance purchasers, and providers of medical services and equipment to insureds injured in automobile accidents. The proposed amendments to the multiple procedures language, at N.J.A.C. 11:3-29.4(f), in particular, are intended to clarify provisions that have been subject to varying interpretations and considerable confusion on the part of insurers and providers—often leading to unfair and unexpected results. The proposed amendments to the Medical Fee Schedules for ambulance services and durable medical equipment and prosthetic devices will have the net effect of increasing the upper limits on fees for services provided in these areas.

Economic Impact

The medical fee schedules are intended to limit the amount of medical expenses paid by individuals and their automobile insurers.

One purpose of the proposed amendments is to clarify application of the various rules relating to multiple procedures. One result will be to eliminate instances where providers, particularly those engaged in physiotherapy type services, unexpectedly experience substantial and unfair undercutting of what they consider to be their usual, customary and reasonable fees. The multiple procedure rules will still apply to these providers, but application of these rules as proposed herein will produce a more equitable result.

The proposed new fee schedule for durable medical equipment and prosthetic devices will have the net effect of increasing the upper limits that help determine what providers of such services may charge. The same is true with respect to the proposed amendments relating to the medical fee schedule for ambulance services.

Regulatory Flexibility Analysis

These proposed amendments will apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" include insurers authorized to write private passenger automobile insurance. Less than 10 of the more than 200 automobile insurers in New Jersey qualify as "small businesses."

A regulatory flexibility analysis is not required because these rules do not impose reporting, recordkeeping or other compliance requirements on small businesses beyond the statutory requirements. The medical fee schedules contained in the rules set forth the limits of liability for the medical expense benefit portion of the personal injury protection coverage contained in automobile insurance policies.

While the rules do not impose reporting, recordkeeping and other compliance requirements, it is fully expected that all automobile insurers, including those qualifying as small businesses, will implement the fee schedules in their claims adjudication processes so as to reduce loss expenses for personal injury protection medical expense claims.

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

11:3-29.2 Definitions

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

. . .

"Eligible charge" means the provider's usual, customary and reasonable charge or the upper limit on the fee schedule, whichever is lower.

11:3-29.4 Application of Medical Fee Schedules

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

(f) **The following shall apply to multiple procedures:**

1. When multiple procedures are performed [in] **on** the same [body region] **patient** by the same provider at the same time **or during the same medical visit,** it is virtually never appropriate for the fee to be the sum of the fees for each procedure. The principle procedure at [an operative] **a single** session shall be paid at 100 percent of the eligible charge, the second procedure at **no more than** 50 percent **of the upper limit on the fee schedule for that particular procedure**, and if performed, any additional procedures at [a total of] **no more than** 25 percent of the [charge] **upper limits on the fee schedule for those particular procedures. If the total amount resulting from application of the multiple procedures reduction formula is in excess of the total amount of the billing, the billing may be submitted and paid without change assuming it is not in excess of usual, customary and reasonable charges for the services provided. If the total amount is less than the total amount of the billing, then the total amount of the billing must be reduced accordingly. When appropriate, providers may apply this multiple procedures reduction formula in the process of preparing their billings, clearly indicating that this has been done.**

2. [However, if] **If** two or more providers in different specialties perform procedures or if one provider performs multiple procedures on different body regions, each individual provider, or each individual body region procedure may be reimbursed separately. For purposes of such billing, the body shall be divided into: head (including skull and brain); face; neck; chest; abdomen; back; and pelvic regions. In addition, the extremities shall be subdivided into right and left[,]: upper arm, elbow, forearm, wrist and hand; and thigh, knee, lower leg, ankle and foot. **This reference to specific body parts is included as a guideline to be used in billings for operative and surgical procedures. It is not intended to apply to nor should it be used in connection with billings submitted for nonsurgical services provided during the same visit.**

3. Nothing in this subchapter shall be construed to prevent PIP insurers from paying only reasonable and appropriate fees when multiple procedures are performed at the same time or multiple services provided during the same medical visit.

(g) (No change.)

11:3-29.6 Medical Fee Schedules

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

(d) The following is the Medical Fee Schedule for ambulance services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE

AMBULANCE SERVICES

Code	Description	Fee
A0010	Ambulance service basic life support (BLS, base rate, emergency transport, one way	[100.00]**125.00**
A0020	Ambulance service (BLS) per mile, transport, one way	[4.50]**5.00**
A0070	Ambulance service, oxygen administration and supplies life sustaining situation	30.00
Z0224	Cardiac monitoring during an ambulance trip	50.00
A0222	**Ambulance service transport, return trip**	**125.00**

AGENCY NOTE: The Department is proposing for deletion the current N.J.A.C. 11:3-29.6(e), the Medical Fee Schedule for durable medical equipment and prosthetic devices. The text of that Schedule is not reproduced herein, but may be found in the New Jersey Administrative Code. The full text of the proposed new N.J.A.C. 11:3-29.6(e) follows:

(e) The following is the Medical Fee Schedule for durable medical equipment and prosthetic devices:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
DURABLE MEDICAL EQUIPMENT AND PROSTHETIC DEVICES
CODES BEGINNING WITH "A"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQUIPMENT
A4214	Sterile saline or water, 30 cc vial	.81
A4310	Insertion tray without drainage bag and without catheter (accessories only)	6.61
A4311	Insertion tray without drainage bag with indwelling catheter, Foley type, two-way latex with coating (teflon, silicone, silicone elastometer, or hydrophilic, etc.)	8.34
A4312	Insertion tray without drainage bag with indwelling catheter, Foley type, two-way, all silicone	8.34
A4313	Insertion tray without drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation	8.34
A4314	Insertion tray with drainage bag with indwelling catheter, Foley type, two-way latex with coating (Teflon, silicone, silicone elastometer, or hydrophilic, etc.)	15.46
A4315	Insertion tray with drainage bag with indwelling catheter, Foley type, two-way, all silicone	15.46
A4316	Insertion tray with drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation	15.46
A4320	Irrigation tray for bladder irrigation with bulb or piston syringe	5.00
A4322	Irrigation syringe, bulb or piston	2.50
A4323	Sterile saline irrigation solution, 1000 ml	8.00
A4328	Female external urinary collection device; pouch, each	10.00
A4329	External catheter starter set, male/female, includes catheter/urinary collection device, bag/pouch and accessories (tubing, clamps, etc.) 7 days supply	39.95
A4338	Indwelling catheter; Foley type, two-way latex with coating (Teflon, silicone, silicone elastometer or hydrophilic, etc.)	8.14
A4340	Indwelling catheter; specialty type, (e.g., Coude, Mushroom, Wing, etc.)	10.00
A4344	Indwelling catheter, Foley type, two-way, all silicone	15.52
A4346	Indwelling catheter, Foley type, three-way, for continuous irrigation	10.34
A4347	Male external catheter with or without adhesive, with or without anti-reflux device; per dozen	17.29
A4351	Intermittent urinary catheter; straight tip	5.00
A4352	Intermittent urinary catheter; Coude (curved) tip	5.00
A4354	Insertion tray with drainage bag but without catheter	9.00
A4355	Irrigation tubing set for continuous bladder irrigation through a three-way indwelling Foley catheter	6.86
A4356	External urethral clamp or compression device (not to be used for catheter clamp)	37.03
A4357	Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube	7.94
A4358	Urinary leg bag; vinyl, with or without tube	7.12
A4359	Urinary suspensory; without leg bag	27.00
A4361	Ostomy faceplate	6.20
A4362	Skin barrier; solid, 4 × 4 or equivalent; each	5.03
A4363	Skin barrier; liquid (spray, brush, etc.) powder or paste; per oz.	4.07
A4364	Adhesive for ostomy or catheter; liquid (spray, brush, etc.) cement, powder or paste; any composition (e.g., silicone, latex, etc.); per oz.	4.58
A4367	Ostomy belt	6.98
A4398	Irrigation supply, bags	2.25
A4399	Irrigation supply, cone/catheter	11.25
A4400	Ostomy irrigation set	24.61
A4402	Lubricant	1.08
A4404	Ostomy rings	1.22
A4555	Primary surgical dressing kit; e.g., sterile dressings, pads, etc.	8.00

HCPCS CODE	DESCRIPTION	FEE IF NEW	FEE IF USED	MONTHLY RENTAL
A4611	Battery, heavy duty; replacement for patient-owned ventilator	161.25	128.74	16.12
A4612	Battery cables; replacement for patient-owned ventilator	41.76	35.66	4.18
A4613	Battery charger; replacement for patient-owned ventilator	137.10	102.46	13.73
A4615	Cannula, nasal	7.50	—	—
A4616	Tubing (oxygen), per foot	1.00	—	—
A4617	Mouth piece	5.00	—	—
A4618	Breathing circuits	8.60	7.78	.86
A4619	Face tent	10.00	—	—
A4620	Variable concentration mask	10.00	—	—
A4621	Tracheotomy mask or collar	10.17	—	—
A4622	Tracheostomy or laryngectomy tube	75.00	—	—
A4623	Tracheostomy, inner cannula (replacement only)	6.00	—	—
A4624	Tracheal suction catheter, any type, each	2.00	—	—
A4625	Tracheostomy care or cleaning starter kit	8.00	—	—
A4626	Tracheostomy cleaning brush, each	3.00	—	—
A4630	Replacement batteries. Medically necessary T.E.N.S. owned by patient	2.84	—	—
A4631	Replacement batteries for medically necessary electronic wheelchair owned by patient	76.15	57.04	7.62

A4635	Underarm pad, crutch, replacement, each	9.40	6.36	.94
A4636	Replacement, handgrip, cane, crutch, or walker, each	2.83	1.90	.28
A4637	Replacement, tip, cane, crutch, walker, each	1.73	1.35	.17
A4640	Replacement pad for use with medically necessary alternating pressure pad owned by patient	47.73	32.85	4.77
A5051	Pouch, closed; with barrier attached (1 piece)	3.05	—	—
A5052	Pouch, closed; without barrier attached (1 piece)	3.05	—	—
A5053	Pouch, closed; for use on faceplate	3.05	—	—
A5054	Pouch, closed; for use on barrier with flange (2 piece)	3.05	—	—
A5055	Stoma cap	2.00	—	—
A5061	Pouch, drainable; with barrier attached (1 piece)	4.07	—	—
A5062	Pouch, drainable; without barrier attached (1 piece)	4.07	—	—
A5063	Pouch, drainable; for use on barrier with flange (2 piece system)	4.07	—	—
A5064	Pouch, drainable; with faceplate attached; plastic or rubber	4.07	—	—
A5065	Pouch, drainable; for use on faceplate; plastic or rubber	4.07	—	—
A5071	Pouch, urinary; with barrier attached (1 piece)	4.07	—	—
A5072	Pouch, urinary; without barrier attached (1 piece)	4.07	—	—
A5073	Pouch, urinary; for use on barrier with flange (2 piece)	4.07	—	—
A5074	Pouch, urinary; with faceplate attached; plastic or rubber	4.07	—	—
A5075	Pouch, urinary; for use on faceplate; plastic or rubber	4.07	—	—
A5081	Continent device; plug for continent stoma	3.50	—	—
A5082	Continent device; catheter for continent stoma	11.00	—	—
A5093	Ostomy accessory; convex insert	1.65	—	—
A5102	Bedside drainage bottle, rigid or expandable	28.00	—	—
A5105	Urinary suspensory; with leg bag, with or without tube	31.90	—	—
A5112	Urinary leg bag; latex	7.12	—	—
A5113	Leg strap; latex, per set	4.00	—	—
A5114	Leg strap; foam or fabric, per set	8.95	—	—
A5119	Skin barrier; wipes, box per 50	9.50	—	—
A5121	Skin barrier; solid, 6 × 6 or equivalent, each	5.03	—	—
A5122	Skin barrier; solid, 8 × 8 or equivalent, each	5.03	—	—
A5123	Skin barrier; with flange (solid, flexible or accordian), any size, each	6.00	—	—
A5126	Adhesive; disc or foam pad	1.25	—	—
A5131	Appliance cleaner, incontinence and ostomy appliances, per 16 oz.	16.25	—	—

CODES BEGINNING WITH "E"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQPT	FEE FOR USED EQPT	MONTHLY RENTAL
E0100	Cane, includes canes of all materials, adjustable or fixed, with tip	15.37	11.59	1.54
E0105	Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips	39.48	28.92	3.95
E0110	Crutches forearm, includes crutches of various materials, adjustable or fixed, pair, complete with tips and handgrips	57.92	43.43	5.79
E0111	Crutch forearm, includes crutches of various materials, adjustable or fixed, each, with tip and handgrip	59.61	42.05	5.96
E0112	Crutches underarm, wood, adjustable or fixed, pair, with pads, tips and handgrips	41.64	31.68	4.16
E0113	Crutch underarm, wood, adjustable or fixed, each, with pad, tip and handgrip	21.63	13.44	2.16
E0114	Crutches underarm, aluminum, adjustable or fixed, pair with pads, tips and handgrips	59.27	43.32	5.93
E0116	Crutch underarm, aluminum, adjustable or fixed, each, with pad, tip and handgrip	20.43	14.09	2.04
E0130	Walker, rigid (pickup), adjustable or fixed height	54.88	41.92	5.49
E0135	Walker, folding (pickup), adjustable or fixed height	59.43	43.76	5.94
E0141	Walker, wheeled, without seat	95.86	70.21	9.59
E0142	Rigid walker, wheeled, with seat	284.42	204.18	26.37
E0143	Folding walker, wheeled, without seat	105.41	76.83	10.54
E0145	Walker, wheeled, with seat and crutch attachments	176.60	132.45	15.29
E0146	Walker, wheeled, with seat	318.23	238.68	10.35
E0147	Heavy duty, multiple breaking system, variable wheel resistance walker	226.41	183.91	22.64
E0153	Platform attachment, forearm crutch, each	55.37	44.41	5.54
E0154	Platform attachment, walker, each	65.28	51.41	6.53
E0155	Wheel attachment, rigid pick-up walker attachments	25.18	20.28	2.52
E0156	Seat attachment, walker	21.09	14.71	2.11
E0157	Crutch attachment, walker, each	55.37	42.09	5.54
E0158	Leg extensions for a walker	29.64	23.09	2.96
E0160	Sitz type bath, portable, fits over commode seat	15.35	9.42	1.54
E0161	Sitz type bath, portable, fits over commode seat, with faucet attachments	47.93	28.59	4.68
E0163	Commode chair, stationary, with fixed arms	89.12	61.41	8.91
E0164	Commode chair, mobile, with fixed arms	186.36	76.25	18.64
E0165	Commode chair, stationary with detachable arms	181.01	163.74	14.45
E0166	Commode chair, mobile with detachable arms	265.35	199.00	20.15
E0167	Pail or pan for use with commode chair	10.06	7.64	1.01
E0175	Foot rest, for use with commode chair, each	63.63	33.51	4.49

E0176	Air pressure pad or cushion, nonpositioning	88.62	66.47	8.86
E0177	Water pressure pad or cushion, nonpositioning	88.62	66.47	8.86
E0178	Gel pressure pad or cushion, nonpositioning	88.62	66.47	8.86
E0179	Dry pressure pad or cushion, nonpositioning (e.g., Eggcrate)	88.62	66.47	8.86
E0180	Pressure pad, alternating with pump, light duty	240.44	187.93	21.04
E0181	Pressure pad, alternating with pump, heavy duty	263.73	188.25	22.74
E0182	Pump for alternating pressure pad	291.08	161.36	29.11
E0183	Flotation pad for wheelchair	88.62	66.47	8.86
E0184	Dry pressure mattress (e.g., Eggcrate)	150.70	61.64	15.07
E0185	Gel pressure pad for mattress	119.36	104.33	11.94
E0186	Air pressure mattress	250.82	210.71	25.08
E0187	Water pressure mattress	250.82	210.71	25.08
E0188	Synthetic sheepskin pad	22.03	14.70	2.20
E0189	Lambswool sheepskin pad, any size	27.94	19.10	2.79
E0190	Decubitus care mattress, includes flotation or gel mattress	250.82	210.71	25.08
E0191	Heel or elbow protector, each	10.20	7.13	1.02
E0192	Low pressure and positioning pad for wheelchair	316.39	237.26	31.64
E0193	Powered air flotation bed (low air loss therapy)	7377.14	5532.85	737.71
E0194	Air fluidized bed	31110.00	—	2471.30
E0196	Gel pressure mattress	250.82	210.71	25.08
E0197	Air pressure pad for mattress	62.22	62.22	6.22
E0198	Water pressure pad for mattress	62.22	62.22	6.22
E0199	Dry pressure pad for mattress (e.g., Eggcrate)	62.22	62.22	6.22
E0200	Heat lamp, without stand (table model), includes bulb, or infrared element	52.00	39.91	5.20
E0202	Phototherapy (bilirubin) light with photometer	—	—	139.78
E0205	Heat lamp, with stand, includes bulb, or infrared element	71.42	44.30	7.14
E0210	Electric heat pad, standard	27.07	24.29	2.71
E0215	Electric heat pad, moist	40.36	31.31	4.04
E0225	Hydrocollator unit, includes pads	100.58	93.87	9.55
E0235	Paraffin bath unit, portable	194.38	124.38	15.53
E0236	Pump for water circulating pad	—	—	30.45
E0237	Water circulating heat pad with pump	179.65	116.45	17.32
E0238	Non-electric heat pad moist	30.10	18.69	3.01
E0239	Hydrocollator unit, portable	359.00	280.91	35.90
E0249	Pad for water circulating heat unit	98.15	93.33	9.82
E0250	Hospital bed, fixed height, with any type side rails, with mattress	881.42	777.72	73.72
E0251	Hospital bed, fixed height, with any type side rails, without mattress	672.33	672.33	56.31
E0255	Hospital bed, variable height, Hi-lo, with any type side rails, with mattress	964.20	896.30	80.57
E0256	Hospital bed, variable height, Hi-lo, with any type side rails, without mattress	—	—	67.64
E0260	Hospital bed, semi-electric (head and foot adjustment), with any type side rails, with mattress	1542.26	1262.39	123.10
E0261	Hospital bed, semi-electric (head and foot adjustment), any type side rails, without mattress	—	—	110.17
E0265	Hospital bed, total electric (head, foot and height adjustments), any type side rails, w. mattress	1909.20	1504.12	152.40
E0266	Hospital bed, total electric (head, foot and height adjustments), any type side rails, w/o mattress	1940.52	1455.39	154.89
E0271	Mattress, innerspring	166.81	126.40	16.68
E0272	Mattress, foam rubber	150.54	107.61	15.05
E0275	Bed pan, standard, metal or plastic	14.90	11.37	1.49
E0276	Bed pan, fracture, metal or plastic	12.60	11.51	1.26
E0280	Bed, cradle, any type	29.53	21.13	2.95
E0290	Hospital bed, fixed height, without side rails, with mattress	—	—	61.41
E0291	Hospital bed, fixed height, without side rails, without mattress	—	—	44.93
E0292	Hospital bed, variable height, Hi-lo, without side rails, with mattress	—	—	68.25
E0293	Hospital bed, variable height, Hi-lo, without side rails, without mattress	—	—	55.32
E0294	Hospital bed, semi-electric (head and foot adjustment), without side rails, with mattress	—	—	110.78
E0295	Hospital bed, semi-electric (head and foot adjustment), without side rails, without mattress	—	—	97.85
E0296	Hospital bed, total electric (head, foot and height adjustments), without side rails, with mattress	—	—	140.08
E0297	Hospital bed, total electric (head, foot and height adjustments), without side rails, w/o mattress	—	—	118.17
E0305	Bed side rails, half length	143.77	107.83	11.92
E0310	Bed side rails, full length	152.90	123.56	15.29
E0325	Urinal; male, jug type, any material	6.62	5.78	.66
E0326	Urinal; female, jug type, any material	9.05	6.96	.90
E0430	Portable gaseous oxygen system, includes regulator with flow guage, humidifier, cannula or mask and tubing	—	—	56.57
E0435	Oxygen system, liquid, portable, includes portable container, supply reservoir, flow humidifier, cannula or masks, tubing and refill adaptor	—	—	56.57
E0450	Volume ventilator; stationary	10546.29	7909.72	885.50
E0451	Volume ventilator; portable (includes battery, battery charger, and battery cables)	5728.74	4296.56	502.23
E0457	Chest shell (cuirass)	414.80	—	41.48
E0458	Negative pressure pump	4981.74	—	498.17
E0459	Chest Wrap	539.24	—	42.62
E0460	Negative pressure ventilator; portable (e.g., Porta-lung)	—	—	445.33
E0461	Negative pressure ventilator; stationary (e.g., Iron-lung)	1898.33	1423.75	189.83

E0462	Rocking bed with or without side rails	—	—	268.33
E0480	Percussor, electric or pneumatic, home model	279.47	178.17	27.95
E0500	IPPB machines with manual valves, external power source, includes cylinder regulator, built-in nebulization	469.32	351.98	46.93
E0505	IPPB machines with manual valves, electrically driven with internal power source, built-in nebulization	685.51	514.13	68.55
E0510	IPPB machines with automatic valves, external power source includes cylinder regulator, built-in nebulization	685.51	514.13	68.55
E0515	IPPB machines with automatic valves, electrically driven with internal compressor, built-in nebulization	469.32	351.99	46.93
E0550	Humidifier, durable for extensive supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade	315.33	236.50	31.53
E0560	Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade Jr.	95.54	57.25	9.55
E0565	Compressor, air power source for equipment which is not self-contained or cylinder driven	506.07	302.54	41.11
E0570	Nebulizer, with compressor; e.g., DeVilbiss Pulmo-Aid	166.19	118.52	16.62
E0575	Nebulizer, self-contained, ultrasonic	732.97	549.73	73.30
E0580	Nebulizer, durable, glass or autoclavable plastic bottle type, for use with regulator or flowmeter	121.29	90.97	12.13
E0585	Nebulizer, with compressor and heater	121.29	90.97	12.13
E0600	Suction pump, home model, portable	409.72	307.29	40.97
E0601	Nasal continuous airway pressure (CPAP) device	1054.63	790.97	84.31
E0605	Vaporizer, room type	29.10	22.94	2.91
E0606	Postural drainage board	158.19	118.64	13.44
E0607	Home blood glucose monitor	156.49	122.17	15.65
E0608	Apnea monitor	—	—	167.75
E0609	Blood glucose monitor with special features (e.g., voice synthesizers, automatic timers, etc.)	463.73	353.98	46.37
E0610	Pacemaker monitor self-contained, (checks battery depletion, includes audible and visible check systems)	324.54	252.32	32.45
E0615	Pacemaker monitor self-contained, (checks battery depletion and other pacemaker components, includes digital/visible check systems)	340.54	209.15	34.05
E0620	Seat lift chair, motorized to assist patient in standing and sitting	828.88	549.99	26.39
E0621	Sling or seat, patient lift, canvas or nylon	63.36	55.41	6.34
E0630	Patient lift, hydraulic, with seat or sling	932.66	716.05	76.80
E0635	Patient lift, electric with seat or sling	770.15	426.93	77.02
E0650	Pneumatic compressor, non-segmental home model, (lymphedema pump)	522.05	391.54	52.20
E0651	Pneumatic compressor, segmental home model (lymphedema pump) without calibrated gradient pressure	843.56	549.73	84.36
E0652	Pneumatic compressor, segmental home model (lymphedema pump) with calibrated gradient pressure	3482.19	3128.44	342.85
E0655	Pneumatic appliance for use with pneumatic compressor, half arm	83.42	76.27	8.34
E0660	Pneumatic appliance for use with pneumatic compressor, full leg	133.20	89.28	13.32
E0665	Pneumatic appliance for use with pneumatic compressor, full arm	90.25	67.31	9.02
E0666	Pneumatic appliance for use with pneumatic compressor, half leg	120.96	95.91	12.10
E0667	Pneumatic appliance for use with segmental pneumatic compressor, leg	273.29	215.42	27.03
E0668	Pneumatic appliance for use with segmental pneumatic compressor, arm	262.15	213.90	26.22
E0680	Ultraviolet cabinet, appropriate for home use	766.25	753.58	76.62
E0720	TENS, two lead, localized stimulation	452.02	—	45.20
E0730	TENS, four lead, larger area/multiple nerve stimulation	448.08	—	44.81
E0744	Neuromuscular stimulator for scoliosis	1031.82	773.86	82.36
E0745	Neuromuscular stimulator, electronic shock unit, non-clinical model	1049.36	787.02	79.47
E0746	Electromyography (EMG), biofeedback device	694.79	521.09	69.48
E0747	Osteogenesis stimulator (non-invasive)	2713.36	2010.26	271.34
E0749	Osteogenesis stimulator (surgically implanted)	—	—	205.61
E0776	IV pole	92.02	69.74	9.20
E0781	Ambulatory infusion pump with administrative equipment, worn by patient	630.97	473.23	63.10
E0782	Infusion pump, implantable	3901.77	2957.64	390.18
EO791	Parenteral infusion pump, stationary, single or multi-channel	1965.12	1473.84	168.02
E0840	Traction frame, attached to headboard, simple cervical traction	42.63	29.82	4.26
E0850	Traction stand, free standing, simple cervical traction	46.45	32.90	4.64
E0860	Traction equipment, overdoor, cervical	27.17	20.86	2.72
E0870	Traction frame, attached to footboard, simple extremity traction (e.g., Buck's)	83.84	57.06	8.38
E0880	Traction stand, free standing, simple extremity traction (e.g., Buck's)	77.88	51.41	7.79
E0890	Traction frame, attached to footboard, simple pelvic traction	85.35	63.95	8.54
E0900	Traction stand, free standing, simple pelvic traction (e.g., Buck's)	85.31	66.63	8.53
E0910	Trapeze bars, A/K/A patient helper, attached to bed, with grab bar	163.74	163.74	15.51
E0920	Fracture frame, attached to bed, includes weights	394.43	295.82	31.49
E0930	Fracture frame, free standing, includes weights	394.43	295.82	32.14
E0935	Passive motion exercise device	—	—	530.14
E0940	Trapeze bar, free standing, complete with grab bar	314.78	221.21	25.13
E0941	Gravity assisted traction device, any type	384.94	288.71	33.28
E0942	Cervical head harness/halter	15.82	11.87	1.58

E0943	Cervical pillow	33.65	30.01	3.36
E0944	Pelvic belt/harness/boot	32.74	23.46	3.27
E0945	Extremity belt/harness	35.75	27.56	3.58
E0946	Fracture, frame, dual with cross bars, attached to bed, (e.g., Balken, 4 poster)	894.33	670.75	62.19
E0947	Fracture frame, attachments for complex pelvic traction	464.14	343.23	46.41
E0948	Fracture frame, attachments for complex cervical traction	458.95	341.49	45.90
E0950	Tray	82.78	60.44	8.28
E0951	Loop heel, each	14.28	11.28	1.43
E0952	Loop toe, each	14.01	11.28	1.40
E0953	Pneumatic tire, each	73.96	55.47	7.40
E0954	Semi-pneumatic caster, each	44.28	32.88	4.43
E0958	Wheelchair attachment to convert any wheelchair to one arm drive	421.32	270.51	33.63
E0959	Amputee adapter (device used to compensate for transfer of weight due to lost limbs to maintain proper balance)	71.13	55.37	7.11
E0961	Brake extension, for wheelchair	12.47	10.39	1.22
E0962	1″ cushion, for wheelchair	47.46	35.60	4.75
R0963	2″ cushion, for wheelchair	58.71	41.03	5.87
E0964	3″ cushion, for wheelchair	64.55	47.57	6.46
E0965	4″ cushion, for wheelchair	72.23	57.25	7.22
E0966	Hook on head rest extension	51.67	39.60	5.16
E0967	Wheelchair hand rims with 8 vertical rubber tipped projection, pair	105.46	79.10	10.35
E0968	Commode seat, wheelchair	181.39	136.04	14.48
E0969	Narrowing device, wheelchair	115.27	87.50	11.53
E0970	No. 2 footplates, except for elevating legrest	77.60	64.66	7.57
E0971	Anti-tipping device wheelchairs	50.28	37.16	5.03
E0972	Transfer board, wheelchair	37.69	27.99	3.77
E0973	Adjustable height detachable arms, desk or full length, wheelchair	81.47	72.35	8.13
E0974	"Grade-Aid" (device to prevent rolling back on an incline) for wheelchair	66.56	50.16	5.89
E0975	Reinforced seat upholstery, wheelchair	50.82	37.42	5.08
E0976	Reinforced back, wheelchair, upholstery or other material	55.10	37.42	5.28
E0977	Wedge cushion, wheelchair	52.24	37.18	3.90
E0978	Belt, safety with airplane buckle, wheelchair	36.35	26.87	3.48
E0979	Belt, safety with velcro closure, wheelchair	25.93	24.23	2.59
E0980	Safety vest, wheelchair	25.63	19.58	2.56
E0990	Elevating legrests, each	77.14	63.52	7.71
E0991	Upholstery seat	36.27	27.69	3.39
E0992	Solid seat insert	52.95	37.88	5.30
E0993	Back, upholstery	29.25	26.90	2.84
E0994	Arm rest, each	13.70	10.07	1.34
E0995	Calf rest, each	21.65	17.76	2.16
E0996	Tire, solid, each	24.33	17.39	2.41
E0997	Caster with a fork	56.46	42.71	5.65
E0998	Caster without fork	31.93	24.15	3.19
E0999	Pneumatic tire with wheel	89.85	72.73	8.98
E1000	Tire, pneumatic caster	47.23	30.42	4.72
E1001	Wheel, single	85.06	77.79	8.23
E1031	Rollabout chair, any and all types with castors 5″ or greater	—	—	47.60
E1050	Fully-reclining wheelchair, fixed full length arms, swing-away detachable elevating legrests	1222.53	677.70	113.49
E1060	Fully-reclining wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	1222.53	682.41	89.87
E1065	Power attachment (to convert any wheelchair to motorized wheelchair; e.g., Solo)	2360.43	1735.90	207.26
E1066	Battery charger	220.54	181.92	22.05
E1069	Deep cycle battery	92.99	67.77	8.80
E1070	Fully-reclining wheelchair, detachable arms, desk or full length, swing-away detachable footrests	909.61	672.33	90.96
E1083	Hemi-wheelchair, fixed full length arms, swing-away detachable elevating legrests	717.15	693.13	57.24
E1084	Hemi-wheelchair, detachable arms, desk or full length arms, swing-away detachable elevating legrests	1049.29	787.81	81.72
E1085	Hemi-wheelchair, fixed full length arms, swing-away detachable footrests	829.21	769.52	59.30
E1086	Hemi-wheelchair, detachable arms, desk or full length, swing-away detachable footrests	1105.41	658.89	84.84
E1087	High strength lightweight wheelchair, fixed full length arms, swing-away detachable elevating legrests	1152.71	775.19	92.01
E1088	High strength lightweight wheelchair, detachable arms desk or full length, swing-away detachable elevating legrests	1536.80	1004.46	122.64
E1089	High strength lightweight wheelchair, fixed length arms, swing-away detachable footrests	1133.99	732.16	74.86
E1090	High strength lightweight wheelchair, detachable arms desk or full length, swing-away detachable footrests	1499.05	831.00	93.33
E1091	Youth wheelchair, any type	1335.05	1001.37	90.50
E1092	Wide heavy duty wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	1367.22	1161.15	108.47
E1093	Wide heavy duty wheelchair, detachable arms, desk or full length, swing-away detachable footrests	1255.01	941.25	91.25

E1100	Semi-reclining wheelchair, fixed full length arms, swing-away detachable elevating legrests	1054.63	790.97	82.61
E1110	Semi-reclining wheelchair, detachable arms (desk or full length), elevating legrests	1139.73	800.07	87.58
E1130	Standard wheelchair, fixed full length arms, fixed or swing-away detachable footrests	424.49	408.72	36.09
E1140	Wheelchair, detachable arms, desk or full length, swing-away detachable footrests	697.26	494.38	55.66
E1150	Wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	776.52	638.29	61.98
E1160	Wheelchair, fixed full length arms, swing-away detachable elevating legrests	601.55	526.42	48.75
E1170	Amputee wheelchair, fixed full length arms, swing-away detachable elevating legrests	1179.70	884.78	68.05
E1171	Amputee wheelchair, fixed full length arms, without footrests or legrests	682.35	511.76	58.04
E1172	Amputee wheelchair, detachable arms (desk or full length) without footrests or legrests	877.45	658.09	70.04
E1180	Amputee wheelchair, detachable arms (desk or full length), swing-away detachable footrests	937.91	777.52	74.87
E1190	Amputee wheelchair, detachable arms (desk or full length), swing-away detachable elevating legrests	1083.63	886.87	86.50
E1195	Heavy duty wheelchair, fixed full length arms, swing-away detachable elevating legrests	1029.11	771.83	78.50
E1200	Amputee wheelchair, fixed full length arms, swing-away detachable footrests	807.14	660.47	64.42
E1210	Motorized wheelchair w/micro switch fixed full length arms, swing-away detachable elevating legrests	3010.10	2257.58	301.01
E1211	Motorized wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	3270.64	2452.98	327.06
E1212	Motorized wheelchair, fixed full length arms, swing-away detachable footrests	2330.40	1747.80	233.04
E1213	Motorized wheelchair, detachable arms, desk or full length, swing-away detachable footrests	2730.77	2048.08	273.08
E1221	Wheelchair with fixed arm, footrests	758.38	568.79	33.25
E1222	Wheelchair with fixed arm, elevating legrests	955.49	664.26	70.76
E1223	Wheelchair with detachable arms, footrests	831.05	623.29	63.70
E1224	Wheelchair with detachable arms, elevating legrests	1174.02	650.81	117.40
E1225	Semi-reclining back for customized wheelchair	449.27	336.95	33.29
E1226	Full-reclining back for customized wheelchair	498.32	352.12	41.14
E1227	Special height arms for wheelchair	221.47	166.11	21.78
E1228	Special back height for wheelchair	189.83	142.38	15.64
E1230	Power-operated vehicle (3 or 4 wheel non-highway), specify brand name & model number	1624.13	1028.27	162.41
E1240	Lightweight wheelchair, detachable arms (desk or full length), swing-away detachable elevating legrests	1057.14	621.90	82.78
E1250	Lightweight wheelchair, fixed full length arms, swing-away detchable footrests	630.67	580.13	56.28
E1260	Lightweight wheelchair, detachable arms (desk or full length), swing-away detachable footrests	870.81	870.81	82.19
E1270	Lightweight wheelchair, fixed full length arms, swing-away detachable elevating legrests	727.69	727.69	60.93
E1280	Heavy duty wheelchair, detachable arms (desk or full length), elevating legrests	1272.04	1272.04	97.42
E1285	Heavy duty wheelchair, fixed full length arms, swing-away detachable footrests	999.66	638.71	78.35
E1290	Heavy duty wheelchair, detachable arms (desk or full length), swing-away detachable footrests	1386.25	768.47	99.49
E1295	Heavy duty wheelchair, fixed full length arms, elevating legrests	943.05	707.29	92.61
E1296	Special wheelchair seat height from floor	282.64	224.82	28.26
E1297	Special wheelchair seat depth, by upholstery	61.36	56.02	6.14
E1298	Special wheelchair seat depth and/or width, by construction	296.63	237.85	29.66
E1310	Whirlpool, non-portable (built-in type)	3269.35	2090.80	279.03
E1355	Stand/rack	46.67	35.00	4.67
E1372	Immersion external heater for nebulizer	161.18	47.70	16.12
E1375	Nebulizer portable with small compressor, with limited flow	174.02	130.52	17.40

CODES BEGINNING WITH "L"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQUIPMENT
L0100	Cervical, craniostenosis, helmet molded to patient model	279.68
L0110	Cervical, craniostenosis, helmet, non-molded	76.28
L0120	Cervical, flexible, non-adjustable (foam collar)	14.03
L0130	Cervical, flexible, thermoplastic collar, molded to patient	125.00
L0140	Cervical, semi-rigid, adjustable (plastic collar)	30.51
L0150	Cervical, semi-rigid, adjustable molded chin cup (plastic collar with mandibular/occipital piece)	67.17
L0160	Cervical, semi-rigid, wire frame occipital/mandibular support	127.13
L0170	Cervical, collar, molded to patient model	274.59
L0172	Cervical, collar, semi-rigid, thermoplastic foam, two-piece	85.43
L0174	Cervical, collar, semi-rigid, thermoplastic foam, two-piece with thoracic extension	142.38
L0180	Cervical, multiple post collar, occipital/mandibular supports, adjustable	208.23
L0190	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars (SOMI, Guilford, Taylor types)	305.10
L0200	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars, and thoracic extension	249.17
L0210	Thoracic, rib belt, custom fitted	14.05
L0220	Thoracic, rib belt, custom fabricated	86.45
L0300	Thoracic-lumbar-sacral-orthoses, (TLSO), flexible dorso-lumbar surgical support, custom fitted	106.37
L0310	TLSO, flexible dorso-lumbar surgical support, custom fabricated	268.49
L0315	TLSO, flexible dorso-lumbar surgical support, elastic type, with rigid posterior panel	150.00
L0317	TLSO, flexible dorso-lumbar surgical support, hyperextension, elastic type, with rigid posterior panel	175.00
L0320	TLSO, anterior-posterior control (Taylor type), with apron front	345.27

L0330	TLSO, anterior-posterior-lateral control (Knight-Taylor type), with apron front	349.29
L0340	TLSO, anterior-posterior-lateral-rotary control (Arnold, Magnuson, Steindler types), with apron front	330.53
L0350	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket, custom fitted	483.08
L0360	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket, molded to patient	1,017.00
L0370	TLSO, anterior-posterior-lateral-rotary control, hyperextension (Jewett, Lennox, Baker, Cash types)	313.24
L0380	TLSO, anterior-posterior-lateral-rotary control, with extensions	330.53
L0390	TLSO, anterior-posterior-lateral control (body jacket), molded to patient model	1,067.85
L0400	TLSO, anterior-posterior-lateral control (body jacket), molded to patient model, with interface material	1,210.94
L0410	TLSO, anterior-posterior-lateral control (body jacket), two-piece construction, molded to patient model	940.73
L0420	TLSO, anterior-posterior-lateral control (body jacket), two-piece construction, molded to patient model, with interface material	971.24
L0430	TLSO, anterior-posterior-lateral control (body jacket), with interface material, custom fitted	866.00
L0440	TLSO, anterior-posterior-lateral control (body jacket), with overlapping front section, spring steel front, custom fitted	813.60
L0500	Lumbar-sacral-orthoses, (LSO), flexible, (lumbo-sacral surgical support), custom fitted	82.36
L0510	LSO, flexible (lumbo-sacral surgical support), custom fabricated	118.75
L0515	LSO, flexible (lumbo-sacral surgical support), elastic type, with rigid posterior panel	86.45
L0520	LSO, anterior-posterior-lateral control (Knight, Wilcox types), with apron front	320.36
L0530	LSO, anterior-posterior control (Macausland type), with apron front	244.08
L0540	LSO, lumbar flexion, (Williams flexion type)	285.00
L0550	LSO, anterior-posterior-lateral control (body jacket), molded to patient model	966.15
L0560	LSO, anterior-posterior-lateral control (body jacket), molded to patient model, with interface material	1,118.70
L0565	LSO, anterior-posterior-lateral control (body jacket), custom fitted	533.93
L0600	Sacroiliac, flexible (sacroiliac surgical support), custom fitted	50.85
L0610	Sacroiliac, flexible (sacroiliac surgical support), custom fabricated	172.89
L0700	Cervical-thoracic-lumbar-sacral-orthoses (CTLSO), anterior-posterior-lateral control, molded to patient model (Minerva type)	1,474.65
L0710	CTLSO, anterior-posterior-lateral control, molded to patient model, with interface material, (Minerva type)	1,627.20
L0810	Halo procedure, cervical halo incorporated into jacket vest	1,525.50
L0820	Halo procedure, cervical halo incorporated into plaster body jacket	1,525.50
L0830	Halo procedure, cervical halo incorporated into Milwaukee type orthosis model	1,881.45
L0860	Addition to halo procedures, magnetic resonance image compatible system	575.00
L0900	Torso support, ptosis support, custom fitted	79.33
L0910	Torso support, ptosis support, custom fabricated	152.55
L0920	Torso support, pendulous abdomen support, custom fitted	130.50
L0930	Torso support, pendulous abdomen support, custom fabricated	220.00
L0940	Torso support, post surgical support, custom fitted	125.00
L0950	Torso support, post surgical support, custom fabricated	213.57
L0960	Torso support, post surgical support, pads for post surgical support	50.85
L0972	LSO, corset front	69.00
L0976	LSO, full corset	80.00
L0978	Axillary crutch extension	122.04
L0980	Peroneal straps, pair	10.00
L1000	Cervical-thoracic-lumbar-sacral orthosis (CTLSO) (Milwaukee), inclusive of furnishing initial orthosis, including model	1,441.60
L1010	Addition to cervical-thoracic-lumbar-sacral orthosis (CTLSO) of scoliosis, axilla sling	35.60
L1020	Addition to CTLSO or scoliosis orthosis, kyphosis pad	42.00
L1025	Addition to CTLSO or scoliosis orthosis, kyphosis pad, floating	96.62
L1030	Addition to CTLSO or scoliosis orthosis, lumbar bolster pad	35.60
L1040	Addition to CTLSO or scoliosis, lumbar of lumbar rib pad	45.77
L1050	Addition to CTLSO or scoliosis orthosis, sternal pad	60.00
L1060	Addition to CTLSO or scoliosis orthosis, thoracic pad	76.28
L1070	Addition to CTLSO or scoliosis orthosis, trapeze sling	70.00
L1080	Addition to CTLSO or scoliosis orthosis, outrigger	40.68
L1085	Addition to CTLSO or scoliosis orthosis, outrigger, bilateral with vertical extensions	110.00
L1090	Addition to CTLSO or scoliosis or orthosis, lumbar sling	71.19
L1100	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather	111.87
L1110	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather, molded to patient model	142.38
L1120	Addition to CTLSO or scoliosis orthosis, cover for upright, each	20.34
L1210	Addition to TLSO (low profile), lateral thoracic extension	152.55
L1220	Addition to TLSO (low profile), anterior thoracic extension	152.55
L1230	Addition to TLSO (low profile), Milwaukee type superstructure	406.80
L1240	Addition to TLSO (low profile), lumbar derotation pad	55.94
L1250	Addition to TLSO (low profile), anterior asis pad	55.94
L1260	Addition to TLSO (low profile), anterior thoracic derotation pad	55.94
L1270	Addition to TLSO (low profile), abdominal pad	55.94
L1280	Addition to TLSO (low profile), rib gusset (elastic), each	60.00
L1290	Addition to TLSO (low profile), lateral trochanteric pad	50.85
L1300	Other scoliosis procedure, body jacket molded to patient model	1,206.00
L1310	Other scoliosis procedure, post-operative body jacket	1,206.00
L1500	Thoracic-hip-knee-ankle orthoses (THKAO), mobility frame, (Newington, Parapodium types)	966.15

L1510	THKAO, standing frame	508.50
L1600	Hip orthosis (HO), abduction control of hip joints, flexible, freika type with cover	65.00
L1610	HO, abduction control of hip joints, flexible, frejka cover only	36.00
L1620	HO, abduction control of hip joints, flexible, Pavlik harness	101.70
L1630	HO, abduction control of hip joints, semi-flexible (Von Rosen type)	89.50
L1640	HO, abduction control of hip joints, static pelvic band or spreader bar, thigh cuffs	256.28
L1650	HO, abduction control of hip joints, static, adjustable, custom fitted (llfled type)	162.72
L1660	HO, abduction control of hip joints, static, plastic, custom fitted	93.56
L1680	HO, abduction control of hip joints, dynamic, pelvic control, adjustable hip motion control, thigh cuffs (Rancho hip action type)	603.64
L1685	HO, abduction control of hip joints post-operative hip abduction type, custom fabricated	762.75
L1686	HO, abduction control of hip joints post-operative hip abduction type, custom fitted	750.00
L1700	Legg Perthes orthosis, Toronto type	750.00
L1730	Legg Perthes orthosis, Scottish Rite type	579.69
L1755	Legg Perthes orthosis, pattern bottom type	1,067.85
L1800	Knee orthosis, KO, elastic with stays	34.17
L1810	KO, elastic with joints	56.66
L1815	KO, elastic with condylar pads	60.00
L1820	KO, elastic with condylar pads and joints	90.51
L1825	KO, elastic knee cap	35.60
L1830	KO, immobilizer, canvas longitudinal	58.25
L1832	KO, adjustable knee joints, positional orthosis, rigid support, custom fitted	400.00
L1834	KO, without knee joint, rigid, molded to patient model	485.00
L1840	KO, derotation, medial-lateral, anterior cruciate ligament, custom fabricated to patient model	661.05
L1845	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, custom fitted	584.78
L1846	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, molded to patient model	661.05
L1850	KO, Swedish type	188.15
L1855	KO, molded plastic, thigh and calf sections, with double upright knee joints, molded to patient model	762.75
L1858	KO, molded plastic, polycentric knee joints, pneumatic knee pads (CTL)	762.75
L1860	KO, modification of supracondylar prosthetic socket, molded to patient model (SK)	694.61
L1870	KO, double upright, thigh and calf lacers, molded to patient model with knee joints	610.20
L1880	KO, double upright, non-molded thigh and calf cuffs/lacers with knee joints	457.65
L1900	Ankle-foot orthosis (AFO), spring wire, dorsiflexion assist, calf band	150.00
L1902	AFO, ankle gauntlet, custom fitted	61.02
L1904	AFO, molded ankle gauntlet, molded to patient model	355.95
L1906	AFO, multiligamentus ankle support	61.02
L1910	AFO, posterior, single bar, clasp attachment to shoe counter	254.25
L1920	AFO, single upright with static or adjustable stop, (Phelps or Perlstein type)	198.32
L1930	AFO, custom fitted, plastic	142.38
L1940	AFO, molded to patient model, plastic	569.98
L1945	AFO, molded to patient model, plastic, rigid anterior tibial section (floor reaction)	675.00
L1950	AFO, spiral, molded to patient model, (IRM type), plastic	493.25
L1960	AFO, posterior, solid ankle, molded to patient model, plastic	490.26
L1970	AFO, plastic molded to patient model, with ankle joint	381.38
L1980	AFO, single upright, free dorsiflexion, solid stirrup, calf band/cuff (single bar "BK" orthosis)	291.88
L1990	AFO, double upright free plantar dorsiflexion, solid stirrup, calf band/cuff (double bar "BK" orthosis)	365.10
L2000	Knee-ankle-foot-orthosis (KAFO), single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis)	722.93
L2010	KAFO, single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis), without knee joint	610.20
L2020	KAFO, double upright, free knee, free ankle, solid stirrup, thigh and calf hands/cuffs (double bar "AK" orthosis)	690.72
L2030	KAFO, double upright, free ankle, solid stirrup, thigh and calf bands/cuffs (double bar "AK" orthosis), without knee joint	1,118.70
L2036	KAFO, full plastic, double upright, free knee, molded to patient model	1,271.50
L2037	KAFO, full plastic, single upright, free, molded to patient model	1,125.00
L2038	KAFO, full plastic, without knee joint, multi-axis, molded to patient model (lively orthosis or equal)	1,250.00
L2040	HKAFO, torsion control, bilateral rotation straps, pelvic band/belt	142.38
L2050	HKAFO, torsion control, bilateral torsion cables, hip joint, pelvic band/belt	223.74
L2060	HKAFO, torsion control, bilateral torsion cables, ball bearing hip joint, pelvic band/belt	300.00
L2070	HKAFO, torsion control, unilateral rotation straps, pelvic band/belt	86.45
L2080	HKAFO, torsion control, unilateral, torsion cables, hip joint, pelvic band/belt	284.05
L2090	HKAFO, torsion control, unilateral torsion cables, ball bearing hip joint, pelvic band/belt	193.23
L2102	Ankle-foot-orthosis (AFO), fracture orthosis, tibial fracture cast orthosis, plaster type casting material, molded to patient	203.40
L2104	AFO, fracture orthosis, tibial fracture cast orthosis, synthetic type casting material, molded to patient	254.25
L2106	AFO, fracture orthosis, tibial fracture cast orthosis, thermoplastic type casting material, molded to patient	355.95
L2108	AFO, fracture orthosis, tibial fracture cast orthosis, molded to patient model	711.90
L2112	AFO, fracture orthosis, tibial fracture orthosis, soft custom fitted	305.10
L2114	AFO, fracture orthosis, tibial fracture orthosis, semi-rigid custom fitted	401.72

L2116	AFO, fracture orthosis, tibial fracture orthosis, rigid custom fitted	457.65
L2122	Knee-ankle-foot-orthosis (KAFO), fracture orthosis, femoral fracture cast orthosis, plaster type casting material, molded to patient	635.63
L2124	KAFO, fracture orthosis, femoral fracture cast orthosis, synthetic type casting material, molded to patient	711.90
L2126	KAFO, fracture orthosis, femoral fracture cast orthosis, thermoplastic type casting material, molded to patient	813.60
L2128	KAFO, fracture orthosis, femoral fracture cast orthosis, molded to patient model	1,118.70
L2132	KAFO, fracture orthosis, femoral fracture cast orthosis, soft custom fitted	610.20
L2134	KAFO, fracture orthosis, femoral fracture cast orthosis, semi-rigid custom fitted	661.02
L2136	KAFO, fracture orthosis, femoral fracture cast orthosis, rigid custom fitted	788.18
L2180	Addition to lower extremity fracture orthosis, plastic shoe insert with ankle joints	67.12
L2182	Addition to lower extremity fracture orthosis, drop lock knee joint	61.02
L2184	Addition to lower extremity fracture orthosis, limited motion knee joint	86.45
L2186	Addition to lower extremity fracture orthosis, adjustable motion knee joint, lerman type	127.13
L2188	Addition to lower extremity fracture orthosis, quadrilateral brim	254.25
L2190	Addition to lower extremity fracture orthosis, waist belt	61.02
L2192	Addition to lower extremity fracture orthosis, hip joint, pelvic band, thigh flange, and pelvic belt	254.25
L2200	Addition to lower extremity, limited ankle motion, each joint	42.94
L2210	Addition to lower extremity, dorsiflexion assist, (plantar flexion resist), each joint	54.07
L2220	Addition to lower extremity, dorsiflexion and plantar flexion assist/resist, each joint	113.21
L2230	Addition to lower extremity, split flat caliper stirrups and plate attachment	79.32
L2240	Addition to lower extremity, round caliper and plate attachment	61.02
L2250	Addition to lower extremity, foot plate, molded to patient model, stirrup attachment	254.25
L2260	Addition to lower extremity, reinforced solid stirrup (Scott-Craig type)	110.00
L2265	Addition to lower extremity, long tongue stirrup	40.00
L2270	Addition to lower extremity, varus/valgus correction ("T") strap, padded/lined or malleolus pad	66.06
L2280	Addition to lower extremity, molded inner boot	254.25
L2300	Addition to lower extremity, abduction bar (bilateral hip involvement), jointed, adjustable	190.07
L2310	Addition to lower extremity, abduction bar, straight	80.00
L2320	Addition to lower extremity, non-molded lacer	122.04
L2330	Addition to lower extremity, lacer, molded to patient model	193.23
L2335	Addition to lower extremity, anterior swing band	152.55
L2340	Addition to lower extremity, pre-tibial shell, molded to patient model	350.00
L2350	Addition to lower extremity, prosthetic type "BK" socket, molded to patient model (used for "PTB" "AFO" orthosis)	559.35
L2360	Addition to lower extremity, extended steel shank	45.22
L2370	Addition to lower extremity, patten bottom	205.00
L2375	Addition to lower extremity, torsion control, ankle joint and half solid stirrup	85.00
L2380	Addition to lower extremity, torsion control, straight knee joint, each joint	40.00
L2385	Addition to lower extremity, straight knee joint, heavy duty, each joint	66.11
L2390	Addition to lower extremity, offset knee joint, each joint	66.11
L2395	Addition to lower extremity, offset knee joint, heavy duty, each joint	91.53
L2405	Addition to knee joint, drop lock, each joint	30.51
L2415	Addition to knee joint, cam lock (Swiss, French, Bail types), each joint	127.13
L2425	Addition to knee joint, disc or dial lock for adjustable knee flexion, each joint	142.38
L2435	Addition to knee joint, polycentric joint, each joint	122.04
L2492	Addition to knee joint, lift loop for drop lock ring	86.40
L2500	Addition to lower extremity, thigh/weight bearing, gluteal/ischial weight bearing, ring	149.50
L2510	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, molded to patient model	432.33
L2520	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, custom fitted	279.68
L2525	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim, molded to patient model	825.00
L2526	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim, custom fitted	475.00
L2530	Addition to lower extremity, thigh/weight bearing, lacer, non-molded	183.06
L2540	Addition to lower extremity, thigh/weight bearing, lacer, molded to patient model	247.13
L2550	Addition to lower extremity, thigh/weight bearing, high roll cuff	89.00
L2570	Addition to lower extremity, pelvic control, hip joint, clevis type, two position hip joint, each	355.95
L2580	Addition to lower extremity, pelvic control, pelvic sling	305.10
L2600	Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, free, each	165.00
L2610	Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, lock, each	137.30
L2620	Addition to lower extremity, pelvic control, hip joint, heavy duty, each	203.40
L2622	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, each	213.57
L2624	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, extension, abduction control, each	152.55
L2627	Addition to lower extremity, pelvic control, plastic, molded to patient model, reciprocating hip joint and cables	1,050.00
L2628	Addition to lower extremity, pelvic control, metal frame, reciprocating hip joint and cables	1,050.00
L2630	Addition to lower extremity, pelvic control, band and belt unilateral	127.13
L2640	Addition to lower extremity, pelvic control, band and belt bilateral	256.28
L2650	Addition to lower extremity, pelvic and thoracic control, gluteal pad, each	86.45
L2660	Addition to lower extremity, thoracic control, thoracic band	75.00
L2670	Addition to lower extremity, thoracic control, paraspinal uprights	116.96
L2680	Addition to lower extremity, thoracic control, lateral support uprights	103.50
L2750	Addition to lower extremity orthosis, plating chrome or nickel, per bar	50.00
L2760	Addition to lower extremity orthosis, extension, per extension, per bar (for lineal adjustment for growth)	40.68

L2770	Addition to lower extremity orthosis, stainless steel, per bar or joint	40.68
L2780	Addition to lower extremity orthosis, non-corrosive finish, per bar	30.51
L2785	Addition to lower extremity orthosis, drop lock retainer, each	20.34
L2795	Addition to lower extremity orthosis, knee control, full knee cap	66.11
L2800	Addition to lower extremity orthosis, knee control, knee cap, medial or lateral pull	81.36
L2810	Addition to lower extremity orthosis, knee control, condylar pad	60.00
L2820	Addition to lower extremity orthosis, soft interface for molded plastic, below knee section	50.85
L2830	Addition to lower extremity orthosis, soft interface for molded plastic, above knee section	50.85
L2840	Addition to lower extremity orthosis, tibial length sock, fracture or equal, each	35.00
L2850	Addition to lower extremity orthosis, femoral length sock, fracture or equal each	42.00
L3300	Lift-elevation, heel, tapered to metatarsals, per inch	36.61
L3310	Lift-elevation, heel and sole, noeprene, per inch	40.68
L3320	Lift-elevation, heel and sole, cork, per inch	61.02
L3330	Lift-elevation, metal extension (skate)	81.36
L3334	Lift-elevation, heel, per inch	15.25
L3340	Heel wedge, Sach	50.85
L3350	Heel wedge	15.25
L3360	Sole wedge—outside sole	20.34
L3370	Sole wedge—between sole	34.58
L3380	Clubfoot wedge	30.51
L3390	Outflare wedge	30.51
L3400	Metatarsal bar wedge—rocker	20.34
L3410	Metatarsal bar wedge—between sole	35.60
L3420	Full sole and heel wedge—between sole	40.68
L3590	Miscellaneous shoe addition, convert instep to velcro closure	24.41
L3600	Transfer of an orthosis from one shoe to another, caliper plate existing	61.02
L3610	Transfer of an orthosis from one shoe to another, caliper plate new	96.62
L3620	Transfer of an orthosis from one shoe to another, solid stirrup existing	45.00
L3630	Transfer of an orthosis from one shoe to another, solid stirrup new	96.62
L2640	Transfer of an orthosis from one shoe to another, Dennis Browne splint (Riveton), both shoes	35.60
L3650	Shoulder orthosis (SO), figure of "8" design abduction restrainer	40.68
L3660	SO, figure of "8" design abduction restrainer, canvas and webbing	76.28
L3670	SO, acromio/clavicular (canvas and webbing type)	85.00
L3700	Elbow orthosis (EO), elastic with stays	45.77
L3710	EO, elastic with metal joints	76.28
L3720	EO, double upright with forearm/arm cuffs, free motion	450.00
L3730	EO, double upright with forearm/arm cuffs, extension/flexion assist	450.00
L3740	EO, double upright with forearm/arm cuffs, adjustable position lock with active control	503.42
L3800	Wrist-hand-finger-orthosis (WHFO) short opponens, no attachments	95.00
L3805	WHFO, long opponens, no attachment	254.25
L3810	WHFO, addition to short and long opponens, thumb abduction "C" bar	35.60
L3815	WHFO, addition to short and long opponens, second M.P. abduction assist	35.60
L3820	WHFO, addition to short and long opponens, I.P. extension assist with M.P. extension stop	76.28
L3825	WHFO, addition to short and long opponens, M.P. extension stop	35.60
L3830	WHFO, addition to short and long opponens, M.P. extension assist	55.94
L3835	WHFO, addition to short and long opponens, M.P. spring extension assist	61.02
L3840	WHFO, addition to short and long opponens, spring swivel thumb	40.68
L3845	WHFO, addition to short and long opponens, thumb I.P. extension assist, with M.P. stop	45.77
L3850	WHFO, addition to short and long opponens, action wrist with dorsiflexion assist	81.36
L3855	WHFO, addition to short and long opponens, adjustable M.P. flexion control	61.02
L3860	WHFO, addition to short and long opponens, adjustable M.P. flexion control and I.P.	96.62
L3900	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, wrist or finger driven	1,017.00
L3901	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, cable driven	1,123.79
L3902	WHFO, external powered, compressed gas	1,118.70
L3904	WHFO, external powered, electric	1,525.50
L3906	WHFO, wrist gauntlet, molded to patient model	455.00
L3907	WHFO, wrist gauntlet with thumb spica, molded to patient model	355.95
L3908	WHFO, wrist extension control cock-up, canvas or leather design, non-molded	45.00
L3910	WHFO, Swanson design	274.60
L3912	WHFO, flexion glove with elastic finger control	71.19
L3914	WHFO, wrist extension cock-up	50.00
L3916	WHFO, wrist extension cock-up, with outrigger	91.53
L3918	WHFO, knuckle bender	40.68
L3920	WHFO, knucle bender, with outrigger	76.28
L3922	WHFO, knuckle bender, two segment to flex joints	52.00
L3924	WHFO, Oppenheimer	76.28
L3926	WHFO, Thomas suspension	71.19
L3928	WHFO, finger extension with clock spring	50.85
L3930	WHFO, finger extension, with wrist support	45.00
L3932	WHFO, safety pin, spring wire	25.00
L3934	WHFO, safety pin, modified	25.43

L3936	WHFO, Palmer	61.02
L3938	WHFO, dorsal wrist	61.02
L3940	WHFO, dorsal wrist, with outrigger attachment	76.28
L3942	WHFO, reverse knuckle bender	40.68
L3944	WHFO, reverse knuckle bender, with outrigger	76.28
L3946	WHFO, composite elastic	61.02
L3948	WHFO, finger knuckle bender	45.77
L3950	WHFO, combination Oppenheimer, with knuckle bender and two attachments	122.04
L3952	WHFO, combination Oppenheimer, with reverse knuckle bender and two attachments	122.04
L3954	WHFO, spreading hand	66.11
L3960	Shoulder-elbow-wrist-hand orthosis SEWHO, abduction positioning, airplane design	575.00
L3962	SEWHO, abduction positioning, Erbs Palsey design	533.93
L3963	SEWHO, molded shoulder, arm, forearm, and wrist, with articulating elbow joint	864.45
L3964	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, adjustable	477.99
L3965	SEWHO, radial arm support attached to wheelchair, balanced and fitted to patient, adjustable Rancho type	762.75
L3966	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, reclining	666.14
L3968	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, friction arm support, (friction dampening to proximal and distal joints)	813.60
L3969	SEWHO, mobile arm support, monosuspension arm and hand support, overhead elbow forearm hand sling support, yoke type arm suspension support	508.50
L3970	SEWHO, addition to mobile arm support, elevating proximal arm	254.25
L3972	SEWHO, addition to mobile arm support, offset or lateral rocker arm with elastic balance control	160.00
L3974	SEWHO, addition to mobile arm support, supinator	135.00
L3980	Upper extremity fracture orthosis, humeral	275.00
L3982	Upper extremity fracture orthosis, radius/ulnar	215.00
L3984	Upper extremity fracture orthosis, wrist	152.55
L3985	Upper extremity fracture orthosis, forearm, hand with wrist hinge	457.65
L3986	Upper extremity fracture orthosis, combination of humeral, radius/ulnar, wrist, (example—Colles fracture)	340.70
L3995	Addition to upper extremity orthosis, sock, fracture or equal, each	18.50
L4000	Replace gridle for Milwaukee orthosis	884.79
L4010	Replace trilateral socket brim	335.61
L4020	Replace quadrilateral socket brim, molded to patient model	566.10
L4030	Replace quadrilateral socket brim, custom fitted	244.08
L4040	Replace molded thigh lacer	213.57
L4045	Replace non-molded thigh lacer	175.00
L4050	Replace molded calf lacer	200.00
L4055	Replace non-molded calf lacer	100.00
L4060	Replace high roll cuff	152.55
L4070	Replace proximal and distal upright for "AKO"	116.96
L4080	Replace metal bands "KAFO", proximal thigh	75.25
L4090	Replace metal bands "KAFO-AFO", calf or distal thigh	53.90
L4100	Replace leather cuff "KAFO", proximal thigh	76.28
L4110	Replace leather cuff "KAFO-AFO", calf or distal thigh	66.11
L4130	Replace pretibial shell	279.68
L4310	Multi-Podus or equal orthotic preparatory management system for lower extremities	250.00
L4320	Addition to AFO, Multi-Podus (or equal) orthotic preparatory management system for lower extremities, flexible foot positioner w/soft interface for AFO, with velcro closure, custom fitted	90.00
L4350	Pneumatic ankle control splint (aircast or equal)	65.00
L4360	Pneumatic walking splint (aircast or equal)	200.00
L4370	Pneumatic full leg splint (aircast or equal)	110.00
L4380	Pneumatic knee splint (aircast or equal)	70.00
L5000	Partial foot, shoe insert with longitudinal arch, toe filler	300.02
L5010	Partial foot, molded socket, ankle height, with toe filler	864.45
L5020	Partial foot, molded socket, tibial tubercle height, with toe filler	1,322.10
L5050	Ankle Symes, molded sock, Sach foot	1,728.90
L5060	Ankle Symes, metal frame, molded leather socket, articulated ankle/foot	1,703.48
L5100	Below knee, molded socket, shin, Sach foot	1,223.14
L5105	Below knee, plastic socket, joints and thigh lacer, Sach foot	2,500.00
L5150	Knee disarticulation (or through knee), molded socket, external knee joints, shin, Sach foot	3,457.80
L5160	Knee disarticulation (or through knee), molded socket, bent knee configuration, external knee joints, shin, Sach foot	3,457.80
L5200	Above knee, molded socket, single axis constant friction knee, shin, Sach foot	1,528.10
L5210	Above knee, short prosthesis, no knee joint ("stubbies"), with foot blocks, no ankle joints, each	1,728.90
L5220	Above knee, short prosthesis, no knee joint ("stubbies"), with articulated ankle/foot, dynamically aligned, each	2,135.70
L5230	Above knee, for proximal femoral focal deficiency, constant friction knee, shin, Sach foot	2,008.58
L5250	Hip disarticulation, Canadian type; molded socket, hip joint, single axis constant friction knee, Sach foot	3,864.60
L5300	Below knee, molded socket, Sach foot, endoskeletal system including soft cover and finishing	1,700.14
L5310	Knee disarticulation (or through knee), molded socket, Sach foot endoskeletal system, including soft cover and finishing	3,559.50
L5320	Above knee, molded socket, open end, Sach foot, endoskeletal system, single axis knee, including soft cover and finishing	1,983.02

L5330	Hip disarticulation, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	3,559.50
L5340	Hemipelvectomy, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	5,085.00
L5400	Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment, suspension, and one cast change, below knee	894.96
L5410	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, below knee, each additional cast change and realignment	355.95
L5420	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension and one cast change "AK" or knee disarticulation	915.30
L5430	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, "AK" or knee disarticulation, each cast change and realignment	457.65
L5450	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, below knee	254.25
L5460	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, above knee	305.10
L5500	Initial, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	923.70
L5505	Initial, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	1,228.03
L5510	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster cover, molded to model	923.70
L5520	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,220.40
L5530	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,260.00
L5535	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated, adjustable open end socket	1,250.00
L5540	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,260.84
L5560	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, molded to model	1,423.80
L5570	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,525.50
L5580	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,678.05
L5585	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated adjustable open end socket	1,561.10
L5590	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,475.29
L5595	Preparatory, hip disarticulation—hemipelvectomy, pylon, no cover, Sach foot, thermoplastic or equal, molded to patient model	2,650.00
L5600	Preparatory, hip disarticulation—hemipelvectomy, pylon, no cover, Sach foot, laminated socket, molded to patient model	2,800.00
L5611	Addition to lower extremity, above knee—knee disarticulation, "OHC" 4-bar linkage, with friction swing phase control	960.00
L5613	Addition to lower extremity, above knee—knee disarticulation, "OHC" 4-bar linkage, with hydraulic swing phase control	1,550.00
L5616	Addition to lower extremity, above knee, universal multiplex system, friction swing phase control	915.30
L5618	Addition to lower extremity, test socket, Symes	203.40
L5620	Addition to lower extremity, test socket, below knee	175.00
L5622	Addition to lower extremity, test socket, knee disarticulation	305.10
L5624	Addition to lower extremity, test socket, above knee	298.00
L5626	Addition to lower extremity, test socket, hip disarticulation	381.38
L5628	Addition to lower extremity, test socket, hemipelvectomy	380.00
L5629	Addition to lower extremity, below knee, acrylic socket	350.00
L5630	Addition to lower extremity, Symes type, expandable wall socket	355.95
L5631	Addition to lower extremity, above knee or knee disarticulation, acrylic socket	400.00
L5632	Addition to lower extremity, Symes type, "PTB" brim design socket	177.98
L5634	Addition to lower extremity, Symes type, posterior opening (Canadian) socket	200.00
L5636	Addition to lower extremity, Symes type, medial opening socket	101.70
L5637	Addition to lower extremity, below knee, total contact	200.00
L5638	Addition to lower extremity, below knee, leather socket	305.10
L5639	Addition to lower extremity, below knee, wood socket	750.00
L5640	Addition to lower extremity, knee disarticulation, leather socket	508.50
L5642	Addition to lower extremity, above knee, leather socket	406.80
L5643	Addition to lower extremity, hip disarticulation, flexible inner socket, external frame	864.45
L5644	Addition to lower extremity, above knee, wood socket	254.25
L5645	Addition to lower extremity, below knee, flexible inner socket, external frame	406.80
L5646	Addition to lower extremity, below knee, air cushion socket	330.53
L5647	Addition to lower extremity, below knee, suction socket	488.00
L5648	Addition to lower extremity, above knee, air cushion socket	381.38
L5649	Addition to lower extremity, ischial containment/narrow M-L socket	1,423.80
L5650	Addition to lower extremity, total contact, above knee or knee disarticulation socket	472.81

L5651	Addition to lower extremity, above knee, flexible inner socket, external frame	661.05
L5652	Addition to lower extremity, suction suspension, above knee or knee disarticulation, socket	207.00
L5653	Addition to lower extremity, knee disarticulation, expandable wall socket	279.68
L5654	Addition to lower extremity, socket insert, Symes (Kemblo, Pelite, Aliplast, Plastazote or equal)	203.40
L5655	Addition to lower extremity, socket insert, below knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	217.57
L5656	Addition to lower extremity, socket insert, knee disarticulation (Kemblo, Pelite, Aliplast, Plastazote or equal)	254.25
L5658	Addition to lower extremity, socket insert, above knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	228.83
L5660	Addition to lower extremity, socket insert, Symes, silicone gel or equal	406.80
L5661	Addition to lower extremity, socket insert, multi-durometer, Symes	432.23
L5662	Addition to lower extremity, socket insert, below knee, silicone gel or equal	381.38
L5663	Addition to lower extremity, socket insert, knee disarticulation, silicone gel or equal	483.08
L5664	Addition to lower extremity, socket insert, above knee, silicone gel or equal	483.08
L5665	Addition to lower extremity, socket insert, multi-durometer, below knee	279.68
L5666	Addition to lower extremity, below knee, cuff suspension	48.67
L5668	Addition to lower extremity, below knee, molded distal cushion	75.95
L5670	Addition to lower extremity, below knee, molded supracondylar suspension ("PTS" or similar)	188.15
L5672	Addition to lower extremity, below knee, removable medial brim suspension	249.17
L5674	Addition to lower extremity, below knee, latex sleeve suspension, each	45.00
L5675	Addition to lower extremity, below knee, latex sleeve suspension or equal, heavy duty, each	50.85
L5676	Addition to lower extremity, below knee, knee joints, single axis, pair	201.21
L5677	Addition to lower extremity, below knee, knee joints, polycentric, pair	254.25
L5678	Addition to lower extremity, below knee, joint covers, pair	23.42
L5680	Addition to lower extremity, below knee, thigh lacer, non-molded	208.28
L5682	Addition to lower extremity, below knee, thigh lacer, gluteal/ischial, molded	483.08
L5684	Addition to lower extremity, below knee, fork strap	39.93
L5686	Addition to lower extremity, below knee, back check (extension control)	40.68
L5688	Addition to lower extremity, below knee, waist belt, webbing	51.01
L5690	Addition to lower extremity, below knee, waist belt, padded and lined	66.11
L5692	Addition to lower extremity, above knee, pelvic control belt, light	87.97
L5694	Addition to lower extremity, above knee, pelvic control belt, padded and lined	111.87
L5695	Addition to lower extremity, above knee, pelvic control, sleeve suspension, neoprene or equal, each	125.00
L5696	Addition to lower extremity, above knee or knee disarticulation, pelvic joint	145.50
L5697	Addition to lower extremity, above knee or knee disarticulation, pelvic band	40.47
L5698	Addition to lower extremity, above knee or knee disarticulation, silesian bandage	83.99
L5699	All lower extremity prosthesis, shoulder harness	101.70
L5710	Addition, exoskeletal knee-shin system, single axis, manual lock	211.09
L5711	Addition, exoskeletal knee-shin system, single axis, manual lock, ultra-light material	355.95
L5712	Addition, exoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	282.37
L5714	Addition, exoskeletal knee-shin system, single axis, variable friction swing phase control	355.95
L5716	Addition, exoskeletal knee-shin system, polycentric mechanical stance phase lock	533.93
L5718	Addition, exoskeletal knee-shin system, polycentric friction swing and stance phase control	533.93
L5722	Addition, exoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	579.69
L5724	Addition, exoskeletal knee-shin system, single axis, fluid swing phase control	1,118.70
L5726	Addition, exoskeletal knee-shin system, single axis, external joints, fluid swing phase control	1,250.00
L5728	Addition, exoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,957.73
L5780	Addition, exoskeletal knee-shin system, single axis, pneumatic hydrapneumatic swing phase control	762.75
L5785	Addition, exoskeletal system, below knee, ultra-light material (Titanium, carbon fiber or equal)	254.25
L5790	Addition, exoskeletal system, above knee, ultra-light material (Titanium, carbon fiber or equal)	381.38
L5795	Addition, exoskeletal system, hip disarticulation, ultra-light material (Titanium, carbon fiber or equal)	508.50
L5810	Addition, endoskeletal knee-shin system, single axis, manual lock	330.53
L5811	Addition, endoskeletal knee-shin system, single axis, manual lock, ultra-light material	406.80
L5812	Addition, endoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	355.95
L5814	Addition, endoskeletal knee-shin system, single axis, variable friction swing phase control	500.00
L5816	Addition, endoskeletal knee-shin system, polycentric, mechanical stance phase lock	483.08
L5818	Addition, endoskeletal knee-shin system, polycentric, friction swing and stance phase control	690.00
L5822	Addition, endoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	1,280.00
L5824	Addition, endoskeletal knee-shin system, single axis, fluid swing phase control	762.75
L5828	Addition, endoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,800.00
L5830	Addition, endoskeletal knee-shin system, single axis, pneumatic swing phase control	1,345.00
L5850	Addition, endoskeletal system, above knee or hip disarticulation, knee extension assist	81.00
L5910	Addition, endoskeletal system, below knee, alignable system	342.00
L5920	Addition, endoskeletal system, above knee or hip disarticulation, alignable system	315.00
L5940	Addition, endoskeletal system, below knee, ultra-light material (Titanium, carbon fiber or equal)	279.68
L5950	Addition, endoskeletal system, above knee, ultra-light material (Titanium, carbon fiber or equal)	584.78
L5960	Addition, endoskeletal system, hip disarticulation, ultra-light material (Titanium, carbon fiber or equal)	584.78
L5970	All lower extremity prosthesis, foot, external keel, Sach foot	97.83
L5972	All lower extremity prosthesis, flexible keel foot (Safe, Sten, Bock, Dynamic or equal)	152.55
L5974	All lower extremity prosthesis, foot, single axis ankle/foot	136.76
L5976	All lower extremity prosthesis, energy storing foot (Seattle Carbon Copy II or equal)	355.95
L5978	All lower extremity prosthesis, foot, multi-axial ankle/foot (Greissinger or equal)	169.18
L5980	All lower extremity prosthesis, flex foot system	2,542.50

L5982	All exoskeletal lower extremity prosthesis, axial rotation unit	508.50
L5984	All endoskeletal lower extremity prosthesis, axial rotation unit	381.38
L5986	All lower extremity prosthesis, multi-axial rotation unit ("MCP" or equal)	381.38
L6010	Partial hand, Robin-Aids, little and/or ring finger remaining (or equal)	900.00
L6050	Wrist disarticulation, molded socket, flexible elbow hinges, triceps pad	1,423.80
L6055	Wrist disarticulation, molded socket with expandable interface, flexible elbow hinges, triceps pad	1,983.15
L6100	Below elbow, molded socket, flexible elbow hinge, triceps pad	1,423.80
L6110	Below elbow, molded socket (Muenster or Northwestern suspension types)	1,805.18
L6120	Below elbow, molded double wall split socket, step-up hinges, half cuff	1,383.12
L6130	Below elbow, molded double wall split socket, stump activated locking hinge, half cuff	1,601.78
L6200	Elbow disarticulation, molded socket, outside locking hinge, forearm	1,830.60
L6205	Elbow disarticulation, molded socket with expandable interface, outside locking hinges, forearm	3,152.70
L6250	Above elbow, molded double wall socket, internal locking elbow, forearm	2,008.58
L6300	Shoulder disarticulation, molded socket, shoulder bulkhead, humeral section, internal locking elbow, forearm	2,695.05
L6310	Shoulder disarticulation, passive restoration (complete prosthesis)	2,339.10
L6320	Shoulder disarticulation, passive restoration (shoulder cap only)	1,525.50
L6350	Interscapular thoracic, molded socket, shoulder bulkhead, humeral section internal locking elbow, forearm	3,025.58
L6360	Interscapular thoracic, passive restoration (complete prosthesis)	1,932.30
L6370	Interscapular thoracic, passive restoration (shoulder cap only)	1,779.75
L6380	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension of components and one cast change, wrist disarticulation or below elbow	864.45
L6382	Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment and suspension of components and one cast change, elbow disarticulation or above elbow	1,017.00
L6384	Immediate post surgical or early fitting, appication of initial rigid dressing including fitting, alignment and suspension of components and one cast change, shoulder disarticulation	1,220.40
L6386	Immediate post surgical or early fitting, each additional cast change and realignment	279.68
L6388	Immediate post surgical or early fitting, application of rigid dressing only	254.25
L6400	Below elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,505.16
L6450	Elbow disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue	1,627.20
L6500	Above elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,922.13
L6550	Shoulder disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,237.40
L6570	Interscapular thoracic, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,745.90
L6580	Preparatory, wrist disarticulation or below elbow, single wall plastic socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, molded to patient model	1,017.00
L6582	Preparatory, wrist disarticulation or below elbow, single wall socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, direct formed	864.45
L6584	Preparatory, elbow disarticulation or below elbow, single wall plastic socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	1,449.23
L6586	Preparatory, elbow disarticulation or above elbow, single wall socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, direct formed	1,245.83
L6588	Preparatory, shoulder disarticulation or interscapular thoracic, single wall plastic socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	2,166.21
L6590	Preparatory, shoulder disarticulation or interscapular thoracic, single wall socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, direct formed	1,983.15
L6600	Upper extremity additions, polycentric hinge, pair	122.04
L6605	Upper extremity additions, single pivot hinge, pair	147.47
L6610	Upper extremity additions, flexible metal hinge, pair	96.62
L6615	Upper extremity addition, disconnect locking wrist unit	137.30
L6616	Upper extremity addition, additional disconnect insert for locking wrist unit, each	75.00
L6620	Upper extremity addition, flexible-friction wrist unit	315.27
L6623	Upper extremity addition, spring assisted rotational wrist unit with latch release	483.08
L6625	Upper extremity addition, rotation wrist unit with cable lock	320.00
L6628	Upper extremity addition, quick disconnect hook adapter, Otto Bock or equal	355.95
L6630	Upper extremity addition, stainless steel, any wrist	86.45
L6632	Upper extremity addition, latex suspension sleeve, each	40.68
L6635	Upper extremity addition, lift assist for elbow	152.55
L6637	Upper extremity addition, nudge control elbow lock	255.00
L6640	Upper extremity additions, shoulder abduction joint, pair	162.72
L6641	Upper extremity addition, excursion amplifier, pulley type	122.04
L6642	Upper extremity addition, excursion amplifier, lever type	172.89
L6645	Upper extremity addition, shoulder flexion-abduction joint, each	193.23
L6650	Upper extremity addition, shoulder universal joint, each	190.00
L6655	Upper extremity addition, standard control cable, extra	40.68
L6660	Upper extremity addition, heavy duty control cable	50.85
L6665	Upper extremity addition, teflon or equal, cable lining	30.51
L6670	Upper extremity addition, hook to hand, cable adapter	61.02
L6672	Upper extremity addition, harness, chest or shoulder, saddle type	137.30
L6675	Upper extremity addition, harness, figure of "8" type, for single control	61.02
L6676	Upper extremity addition, harness, figure of "8" type, for dual control	66.11

L6680	Upper extremity addition, test socket, wrist disarticulation or below elbow	137.30
L6682	Upper extremity addition, test socket, elbow disarticulation or above elbow	177.98
L6684	Upper extremity addition, test socket, shoulder disarticulation or interscapular thoracic	188.15
L6686	Upper extremity addition, suction socket	450.00
L6687	Upper extremity addition, frame type socket, below elbow or wrist disarticulation	305.10
L6688	Upper extremity addition, frame type socket, above elbow or elbow disarticulation	355.95
L6689	Upper extremity addition, frame type socket, shoulder disarticulation	406.80
L6690	Upper extremity addition, frame type socket, interscapular thoracic	457.65
L6691	Upper extremity addition, removable insert, each	305.10
L6692	Upper extremity addition, silicone gel insert or equal, each	300.00
L6700	Terminal device, hook, dorrance, or equal Model #3	269.51
L6705	Terminal device, hook, dorrance, or equal Model #5	188.15
L6710	Terminal device, hook, dorrance, or equal Model #5X	264.42
L6715	Terminal device, hook, dorrance, or equal Model #5Xa	183.06
L6720	Terminal device, hook, dorrance, or equal Model #6	544.10
L6725	Terminal device, hook, dorrance, or equal Model #7	210.52
L6730	Terminal device, hook, dorrance, or equal Model #7L0	390.00
L6775	Terminal device, hook, dorrance, or equal Model #555	265.00
L6780	Terminal device, hook, dorrance, or equal Model #SS555	304.00
L6790	Terminal device, hook, "ACCU" hook or equal	376.29
L6795	Terminal device, hook "2" load or equal	884.80
L6800	Terminal device, hook—APRL VC or equal	701.73
L6805	Terminal device, modifier, wrist flexion unit	234.93
L6806	Terminal device, hook, TRS grip, VC	1,169.55
L6807	Terminal device, hook, TRS adept, child, VC	889.88
L6808	Terminal device, hook, TRS adept, infant, VC	737.33
L6809	Terminal device, hook, TRS Super Sport, passive	244.08
L6810	Terminal device, hook, pincher tool, Otto Bock or equal	127.13
L6825	Terminal device, hand, dorrance, VO	860.00
L6830	Terminal device, hand, APRL, VC	986.50
L6835	Terminal device, hand, Sierra, VO	864.45
L6860	Terminal device, hand, Robin-Aids, VO soft	508.50
L6865	Terminal device, hand, passive hand	213.57
L6867	Terminal device, hand, Detroit infant hand, (mechanical)	762.75
L6868	Terminal device, hand, Passive infant hand, (Steeper, Hosmer or equal)	152.55
L6872	Terminal device, hand, NYU child hand	711.90
L6873	Terminal device, hand, mechanical infant hand, Steeper or equal	203.40
L6875	Terminal device, hand, Bock, VC	686.48
L6880	Terminal device, hand, Bock, VO	406.80
L6890	Terminal device, glove for above hands, production glove	106.79
L6895	Terminal device, glove for above hands, custom glove	376.29
L6900	Hand restoration (cast, shading and measurements included), partial hand, with glove, thumb or one finger remaining	1,271.25
L6905	Hand restoration (casts, shading and measurements included), with glove, multiple fingers remaining	1,271.25
L6910	Hand restoration (cast, shading and measurements included), partial hand, with glove no fingers remaining	1,037.34
L6915	Hand restoration (shading, and measurements included), replacement glove for above	406.80
L7010	Electronic hand, Otto Bock, Steeper or equal switch controlled	1,728.90
L7015	Electronic hand, Systemteknik, Variety Village or equal switch controlled	3,966.30
L7020	Electronic Greifer, Otto Bock or equal switch controlled	2,440.80
L7025	Electronic hand, Otto Bock or equal, myoelectronically controlled	2,339.10
L7030	Electronic hand, Systemteknik, Variety Village or equal, myoelectronically controlled	4,068.00
L7035	Electronic Greifer, Otto Bock or equal, myoelectronically controlled	2,339.10
L7040	Prehensile actuator, Hosmer or equal, switch controlled	1,830.60
L7045	Electronic hook, child, Michigan or equal, switch controlled	889.88
L7170	Electronic elbow, Hosmer or equal, switch controlled	3,712.05
L7186	Electronic elbow, child, Variety Village or equal, switch controlled	6,000.00
L7191	Electronic elbow, child, Variety Village or equal, myoelectronically controlled	6,340.00
L7260	Electronic wrist rotator, Otto Bock or equal	1,678.05
L7261	Electronic wrist rotator, for Utah arm	3,051.00
L7266	Servo control, Steeper or equal	610.20
L7272	Analogue control, UNB or equal	1,423.80
L7274	Proportional control, 12 volt, Utah or equal	4,576.50
L7360	Six volt battery, Otto Bock or equal, each	203.40
L7362	Battery charger, six volt, Otto Bock or equal	172.89
L7364	Twelve volt battery, Utah or equal, each	325.44
L7366	Battery charger, twelve volt, Utah or equal	432.23
L8000	Breast prosthesis, mastectomy bra	21.69
L8010	Breast prosthesis, mastectomy sleeve	59.42
L8020	Breast prosthesis, mastectomy form	165.00
L8030	Breast prosthesis, silicone or equal	156.79
L8300	Truss, single with standard pad	56.12

L8310	Truss, double with standard pads	114.49
L8320	Truss, addition to standard pad, water pad	30.51
L8330	Truss, addition to standard pad, scrotal pad	31.53
L8400	Prosthetic sheath, below knee, each	15.26
L8410	Prosthetic sheath, above knee, each	14.29
L8415	Prosthetic sheath, upper limb, each	14.24
L8420	Prosthetic sock, wool, below knee, each	16.95
L8430	Prosthetic sock, wool, above knee, each	18.35
L8435	Prosthetic sock, wool, upper limb, each	10.17
L8440	Prosthetic shrinker, below knee, each	36.61
L8460	Prosthetic shrinker, above knee, each	46.51
L8465	Prosthetic shrinker, upper limb, each	42.21
L8470	Stump sock, single ply, fitting, below knee, each	3.22
L8480	Stump sock, single ply, fitting, above knee, each	5.00

CODES BEGINNING WITH "Q" THRU "Z"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQPT	FEE FOR USED EQPT	RENTAL PER MONTH
Q0036	Oxygen concentrator high humidity	—	—	292.06
Q0037	Oxygen and water vapor enriching system	—	—	292.06
Q0038	Oxygen contents, gaseous, per unit (for use with owned gaseous stationary systems or when both a stationary and portable gaseous system are owned; 1 unit = 50 cubic feet)	200.33	—	—
Q0039	Oxygen contents, liquid, per unit (for use with owned stationary liquid systems or when both a stationary and portable liquid system are owned; 1 unit = 10 lbs.)	200.33	—	—
Q0040	Portable oxygen contents, gaseous per unit (for use only with portable gaseous systems when no stationary gas system is used; 1 unit = 5 cubic ft.)	29.21	—	—
Q0041	Portable oxygen contents, liquid, per unit (for use only with portable liquid systems when no stationary liquid system is used; 1 unit = 1 lb.)	29.21	—	—
Q0042	Stationary compressed gas system rental, includes contents (per unit), regulator with flow gauge, humidifier, nebulizer, cannula or mask and tubing, 1 unit = 50 cubic ft.	—	—	292.06
Q0043	Stationary liquid oxygen system rental, includes content (per unit), use of reservoir, contents indicator, flowmeter, humidifier, nebulizer, cannula or mask and tubing; 1 unit of contents = 10 lbs	—	—	292.06
Q0046	Portable liquid oxygen system rental, includes flowmeter, refill adapter, contents guage, cannula and tubing	—	—	56.57
V2620	Prosthetic, eye, glass, stock	223.00	—	—
V2621	Prosthetic, eye, plastic, stock	261.00	—	—
V2622	Prosthetic, eye, glass, custom	628.56	—	—
V2623	Prosthetic, eye, plastic, custom	628.56	—	—
Y2624	Reglazing of ocular prosthesis	31.64	—	—
Z0010	Hospital bed, variable height, Hi-Lo, with mattress	983.42	717.18	98.34
Z0015	Hospital bed, semi-electric, head and foot adjustment, with mattress	1352.25	1175.22	135.22
Z0020	Hospital bed, total electric, head, foot, and height adjustment, with mattress	1909.20	1504.12	190.92
Z0460	Hand-held nebulizer	5.28	—	.53
L0462	Regulator (placement)	98.41	73.81	9.84
Z0520	Aerosol therapy unit with compressor	153.35	115.01	15.34
Z0783	Drug maintenance/supply kit for home infusion therapy—subcutaneous line or implanted access device	41.48	—	—
Z3255	Orthopedic shoes attached to brace	74.96	—	—
Z4330	Catheter plug	.89	—	—
Z4331	Irrigation solution, 500 ml	10.08	—	—
Z4332	Irrigation solution, 1000 ml	11.80	—	—
Z4351	Catheter irrigation tray with bulb syringe	5.28	—	—
Z4352	Urethral catheter tray	6.33	—	—
Z4353	Foley catheter tray	6.33	—	—
Z4405	Ostomy wafers	10.55	—	—
Z4406	Ostomy deodorant	8.31	—	—
Z4407	Skin prep wipes	6.54	—	—
Z4442	Tracheostomy suction kit	6.65	—	—

(a)

DIVISION OF PROPERTY/LIABILITY

Personal Lines Rating Plans

Proposed New Rules: N.J.A.C. 11:3-43

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:33B-32.
Proposal Number: PRN 1991-556.

Submit comments by December 4, 1991 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

Section 40 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (N.J.S.A. 17:33B-32) ("FAIR Act") directs the Commissioner of Insurance ("Commissioner") to promulgate a plan for the revision of personal private passenger automobile insurance rating systems. The FAIR Act provides that rates and premiums shall be determined by the application of the following rating factors in decreasing order of importance:

1. The insured's driving safety record, including motor vehicle violations and at-fault accidents;
2. The number of miles the insured drives annually;
3. The number of years of driving experience the insured has had;
4. The type of private passenger automobile driven; and
5. Other factors which the Commissioner may find have a substantial relationship to the risk of loss.

The FAIR Act further provides that rating factors based upon age, sex and marital status of persons insured, which formerly were used to classify risks, shall no longer be used to determine rates and premiums. The Department of Insurance ("Department") proposes these new rules to provide a plan for the implementation of these provisions of the FAIR Act.

Rating plans are a means by which insurers determine the premium to be charged on a specific policy based upon rating factors applied to the individual risk. Collectively for all insureds, however, rating factors variables cancel out each other so that the average premium is the approved Statewide average rate. Recent data from the Department's statistical agent, Insurance Services Office Inc. ("ISO"), shows average rate relativities of approximately 1.000 for all present rating factors combined.

These proposed new rules require insurers to file for approval amendments to their rating systems consistent with the requirements of the FAIR Act. The proposed rules require insurers to file these amendments within six months of the adoption of these rules and to implement them for policies issued and renewed on and after January 1, 1993. In this regard, the Department advises insurers to file as promptly as possible, so that the processes of Department approval and insurer implementation may proceed expeditiously and smoothly. The Department is aware that the required amendments will require significant internal systems changes by insurers. If most insurers wait until the filing deadline, approvals may be delayed by the Department's resulting workload, and implementation by the statutory deadline of January 1, 1993 will require insurers to make extraordinary efforts. The Department advises insurers at this juncture that no delays, deferrals or exemptions will be permitted from the statutory implementation deadline. Insurers should order their affairs during the period of development, filing, approval and implementation of these new systems so as to meet that deadline.

The Department believes that the FAIR Act is intended to encourage competition among insurers in their rating plans. Furthermore, the Department believes that it is important to permit insurers a reasonable degree of flexibility within the mandates of the law so that each may establish its own rating system suited to its business objectives. These proposed rules require each insurer to file for approval amendments to its rating system that meet the following standards:

1. The revised rating plan ("plan") shall use all of the rating factors set forth in N.J.S.A. 17:33B-32a(1) through (4);
2. The plan may include additional rating factors as may be approved by the Commissioner upon a showing that the rating factor has a substantial relationship to the risk of loss and otherwise meets all of the standards in these rules;
3. The plan shall provide for a smooth progression of flat dollar charges for each rating factor based upon the characteristics of the driver or vehicle insured;
4. The plan shall use the various rating factors in decreasing order of importance; that is, that average charge and high/low variation ("swing") for each rating factor shall be constrained by the average charge and swing of the previous factor;
5. The average charge and swing of the fourth-ranked mandatory factor (type of automobile) shall be at least 10 percent of the total of all factors;
6. The plan shall be revenue neutral, that is, it shall not provide an immediate increase or decrease in Statewide average premium. The Department will test the revenue neutrality of certain factors based upon standard distributions set forth in Appendix B and in forms accompanying the filings;
7. The plan shall provide that rates and premiums for private passenger automobile insurance shall not be determined, in whole or in part, directly or indirectly, based upon the age , sex or marital status of the persons insured. Specific provisions of existing rating systems shall be deleted if they violate this proscription; and
8. The plan shall provide that other rating factors included in currently approved rating systems that provide for discounts or surcharges be deleted unless specifically incorporated into the insurer's new plan as provided in these proposed rules.

At the outset, the Department notes that the first identified rating factor, the insured's driving safety record (see N.J.S.A. 17:33B-32a(1)) is already included in personal lines automobile rating systems pursuant to N.J.S.A. 17:29A-45 and N.J.A.C. 11:3-19. The standard/non-standard rating plans filed in accordance with that statute and those rules presently provide for an equitable, graduated scale of increased non-standard rates based upon accrued automobile insurance eligibility points ("eligibility points") calculated pursuant to N.J.S.A. 17:33B-14 and N.J.A.C. 11:3-34. Eligibility points accrue as the result of motor vehicle violations and at-fault accidents, and rate differentials based upon driving safety record are thus factored into an insured's non-standard rates. The Department believes that implementation of standard/nonstandard rating plans adequately addresses the rating of risks based upon driving safety record. An insurer may, however, provide for a discount from its standard rates based on an insured's driving safety record.

Since driving safety record is already included in personal lines automobile insurance rating systems, the next most important rating factor in N.J.S.A. 17:33B-32a is "the number of miles the insured drives annually." The Department interprets this to mean the total number of miles an insured vehicle is driven during 12 consecutive months by all persons insured under the policy. Annual mileage and further rating factors are to be added to insurers' rating systems so that the aggregate effect is revenue neutral. Whether an insurer's proposed annual mileage factor provision is revenue neutral will be tested objectively by the Department in accordance with national statistics.

The third statutorily mandated rating factor is "the number of years of driving experience the insured has had," which the Department interprets to mean the number of years an insured has held a valid automobile driver's license in New Jersey or another state. In order to determine whether the application of this rating factor is revenue neutral, a distribution of New Jersey drivers based on years of driving experience has been developed from driver's license records of the New Jersey Division of Motor Vehicles.

With respect to years of driving experience as a rating factor, the Department notes that presently approved standard/non-standard rating plans include some effect upon rates based upon eligibility points accrued by drivers with less than three years' experience. Rates filed in accordance with these proposed rules shall reflect a credit for any additional premium dollars paid by an insured as the result of the application of eligibility points for inexperienced drivers set forth in the insurer's approved standard/non-standard rating plan. Also in accordance with approved standard/non-standard rating plans, this rating factor shall be applied based on the years of driving experience of a vehicle's principal driver; years of driving experience of other operators may be used only if not used to rate another automobile in the household.

The fourth statutorily mandated rating factor is "the type of private passenger automobile driven," which the Department interprets to in-

clude design or performance characteristics of the insured automobile related to such things as engine size, weight-to-horsepower ratio, or other performance capabilities including any alterations made subsequent to manufacture. For the reasons set forth below, the Department does not interpret "type of automobile" to include vehicle age, cost or market value as such.

Automobile type is presently included in rating systems through symbol and model year rating plans which provide mainly for variations in the age and cost or "market value" for use in physical damage coverages only. Physical damage coverages are property insurance and therefore must be based to great degree on the value of the insured property, that is, the cost or value of the insured automobile. Insured automobiles vary greatly in price. Restricting the range of physical damage rates to that permitted by the diminished importance of this rating factor (that is, the fourth most important) may result in inappropriately small differences in collision and comprehensive rates between aged or inexpensive automobiles and new, costly automobiles. The Department therefore interprets the "type of automobile" rating factor so that property insurance rates based on the value of the insured automobile not be so constrained by the insurers selection of the charges attributable to higher ranked variables.

Rather, the Department interprets the diminshed importance of "type of automobile" to apply to various design and performance characteristics of automobiles that are reflected in loss experience independent of age, cost and market value. The Department notes that present symbol/model year rating systems provide for "upgrades" and "downgrades" of symbols otherwise tied strictly to value, based upon the loss experience of various types of automobiles insured. Historically, insurers have provided for these differences by raising or lowering the cost-based symbol rating of various automobiles, or refusing to insure some types of automobiles altogether. These proposed rules therefore provide separately for symbol and model year rating based solely upon age, cost or market value of the insured automobile and applicable to physical damage coverage only. In doing so, the Department notes that sections 69 and 70 of the FAIR Act, N.J.S.A. 17:33B-31 and 56:9-5 require that insurers establish symbol/model year rating systems in a manner consistent with the provisions of New Jersey's anti-trust laws. The Department will advise insurers by separate Bulletin about procedures to provide for a transition from presently approved symbol/model year rating which may be used through model year 1993.

The FAIR Act also provides for the use of other rating factors that have a "substantial relationship to the risk of loss." In order to provide a degree of flexibility, and to encourage competition, these proposed rules permit insurers to submit for approval by the Commissioner additional rating factors as variables in their rating systems. The weight to be given to any such factor may not be more than the rating system provides for the type of automobile variable, which shall be given a minimum weight of at least 10 percent. These proposed rules further provide that any additional variables likewise be revenue neutral. Insurers that wish to submit for approval rating systems including additional variables must include not only sufficient evidence to demonstrate a substantial relationship of the factor to the risk of loss, but also evidence that the use of the rating factor will be revenue neutral. In reviewing any such rating factors, the Department will also consider whether the additional rating factor is duplicative or redundant to any other rating factor already included in the insurer's rating system.

These proposed rules include worksheet forms (see Appendix A) to be submitted by insurers when filing amendments to their rating systems which will be reviewed by the Department to confirm compliance with the rules' standards. The forms require the filer to determine its Statewide average rate and then to reconstruct that rate based on its new rating plan. The forms require the use of certain standard distributions with regard to some rating factors, including annual mileage, driver experience and territory; mandatory factors are also included for deductible relativity and symbol/model year relativity based on recent Statewide data filed by ISO. Nevertheless, insurers are provided with a significant degree of flexibility permitting the filer to make individual selections of the charges attributable to each rating factor.

The forms first require the insurer to calculate a Statewide average rate by coverage or combination of coverages based on the insurer's current rates as applied to a standard Statewide distribution by territory. Only the variable portion of the rate (that is, the rate less the expense portion flattened pursuant to N.J.S.A. 17:29A-37) is to be used. Starting then with the insurer's standard/non-standard rating plan, the insurer selects a portion of the rate to be attributable to each rating factor in decreasing order of importance. The insurer also selects a flat dollar charge for increments within the range for each rating factor; in some instances the ranges use the mandatory distributions necessary to ensure that the resulting rates are revenue neutral in the aggregate. Finally, the charges attributable to each rating factor are added in order to obtain the final rates, which are evaluated for average charge and swing. For physical damage rates, the forms also consider the effect of symbol and model year rating plans.

All current automobile rating systems use territories as a rating factor. The effect of territory on rates is circumscribed by N.J.S.A. 17:29A-36, which provides that the base rate in any territory may not exceed 1.35 times the Statewide average. Although N.J.S.A. 17:29A-36 was not repealed, the Department interprets the FAIR Act as expressing a Legislative intent that territory should be, at most, a subordinate rating factor since it was not included among those factors specifically set forth in N.J.S.A. 17:33B-32. The Department believes that the use of territory as an additional rating factor, if filed by an insurer and approved by the Commissioner in accordance with these rules, will meet the limitations of N.J.S.A. 17:29A-36 by reason of its subordinate status.

These proposed rules also include procedural provisions that address the filing and approval of amendments to rating systems which permit the Division of Rate Counsel, Office of the Public Advocate ("Public Advocate"), to submit written comments for the Commissioner's consideration. The Department believes that these provisions are consistent with the Public Advocate's jurisdictional statute, N.J.S.A. 52:27E-18, while also recognizing the time constraints of the FAIR Act to make these new rating plans effective by January 1, 1993.

The specific sections of the proposed subchapter are summarized as follows:

N.J.A.C. 11:3-43.1 sets forth the purpose and scope of the proposed rules.

N.J.A.C. 11:3-43.2 sets forth definitions of words and terms used throughout the subchapter.

N.J.A.C. 11:3-43.3 sets forth general provisions and filing requirements.

N.J.A.C. 11:3-43.4 sets forth the rating factors that may be used.

N.J.A.C. 11:3-43.5 sets forth the standards for approval of rating systems.

N.J.A.C. 11:3-43.6 sets forth special provisions relating to physical damage coverages.

N.J.A.C. 11:3-43.7 sets forth procedural provisions, including the role of the Public Advocate.

N.J.A.C. 11:3-43.8 provides for penalties for violations of this subchapter.

Appendix A sets forth the worksheet forms to be submitted with the filing; Appendix B sets forth the mandatory distributions and factors to be used.

Social Impact

These proposed rules set forth the filing requirements and standards for approval of revised personal private passenger automobile insurance rating systems that include specific rating factors, and prohibit others, in accordance with the provisions of N.J.S.A. 17:33B-32. When approved, these revised rating systems will carry out the stated intent of the FAIR Act that automobile insurance rates and premiums be based primarily upon certain rating factors, and that other rating factors be deleted.

Economic Impact

These proposed rules will affect the Department and personal private passenger automobile insurers that file rating systems for approval by the Commissioner. These rating systems will affect automobile insurance consumers based upon the applicable statutory standards.

The Department expects that the statutory provisions will increase the number of insurance filings to be reviewed by the Department and approved by the Commissioner. With respect to insurers, there will be costs associated with developing and implementing these new rating systems. This is, however, a necessary cost of restructuring personal private passenger automobile insurance rating systems to provide for rates based upon rating factors required or permitted by the FAIR Act. To the extent that these proposed rules have an impact on that process, the standards for filing and approval of new automobile insurance rating systems are made clear.

Regulatory Flexibility Analysis

These proposed rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Some insurance companies authorized to write personal private

passenger automobile insurance are "small businesses" as defined.

These proposed rules implement N.J.S.A. 17:33B-32. They provide reporting, recordkeeping and compliance requirements for those insurers that qualify as "small businesses" in that they require filing of amendments to existing rating sytems that incorporate rating factors required or permitted by the FAIR Act.

These rules do not establish different compliance requirements for insurers that qualify as small businesses. Those insurers may need to obtain the services of actuarial consultants to comply with these proposed rules if such services are not available in-house. Establishing different compliance requirements for personal private passenger automobile insurance companies that qualify as "small business" would be inconsistent with the purpose of these proposed rules in carrying out the stated intent of the FAIR Act to provide revised rating systems which include specific rating factors and prohibit others.

Full text of the proposal follows:

SUBCHAPTER 43. PERSONAL LINES RATING PLANS

11:3-43.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:33B-32 by providing a plan for the implementation of new rating systems by private passenger automobile insurers. These rules set forth rating factors that are required or prohibited in determining rates and premiums for personal private passenger automobile insurance; the methodology for determining the weight to be given each factor; and the standards for approval of rating systems by the Commissioner.

(b) This subchapter applies to all voluntary market insurers that transact the business of personal private passenger automobile insurance in New Jersey, and any residual market mechanism established in accordance with N.J.S.A. 17:29D-1.

11:3-43.2 Definitions

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

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

"Coverages" means insurance for bodily injury liability, (verbal threshold), bodily injury liability (no threshold), property damage liability, basic personal injury protection, collision, comprehensive and uninsured/underinsured motorists.

"Department" means the New Jersey Department of Insurance.

"Group of coverages" means all liability coverages (including basic personal inquiry protection) combined and all physical damage coverages combined.

"Number of miles the insured drives annually" or "annual mileage" means the total miles an insured automobile is driven during 12 consecutive months by the principal driver and other persons insured under the policy.

"Number of years of driving experience the insured has had" or "years of driving experience" means the number of years a person insured under the policy has held a valid automobile driver's license in this State, or a state other than this State. For the purpose of calculating years of driving experience, there may be deducted any period of time during which the person was subject to suspension of driving privileges in this State or a state other than this State.

"Personal private passenger automobile insurance" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2, issued by an insurer in accordance with a personal lines rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

"Rating factor" means any factor used by an insurer which establishes or affects the rates or premiums chargeable for a policy of personal private passenger automobile insurance and which pertains to the characteristics or experience, whether past or present, of the insured. The term "rating factor" does not pertain to the types or limits of coverage or deductibles.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table, rating plan, or compilation by whatever name described containing the rates used by any insurer, or used by any insurer in determining or ascertaining a rate.

"Revenue neutral" means that the addition of the rating factor variable to the insurer's rating system does not immediately provide a change in Statewide average premium.

"State, other than this State," means any other state of the United States and the District of Columbia.

"Swing" means the total dollar variation of rates from lowest to highest within the range for each rating factor.

"Type of private passenger automobile" or "type of automobile" means design or performance characteristics of an automobile including, but not limited to, engine size, weight-to-horsepower ratio or other performance capabilities including alterations made subsequent to manufacture, but does not include age, cost or market value per se.

11:3-43.3 General requirements

(a) All insurers which transact the business of personal private passenger automobile insurance shall file for approval by the Commissioner rating systems that provide the rating factors and meet the standards set forth in N.J.S.A. 17:33B-32 and this subchapter. No insurer shall implement or use a rating system for personal private passenger automobile insurance policies issued or renewed on or after January 1, 1993 that has not been filed and approved in accordance with this subchapter.

(b) An insurer with an approved rating system on file with the Department as of the effective date of this subchapter shall file for approval all alterations, supplements or amendments necessary to conform its rating system with the requirements of this subchapter.

(c) A group of affiliated insurers may make a single filing on behalf of the group, provided that the alterations, supplements or amendments are uniform among all insurers that comprise the group.

(d) Insurers shall file, at minimum, the following items regarding its rating plan:

1. A narrative description of the amendments to its rating system which shall include:

i. The name and NAIC number of the company or companies to which the amendments apply, and the name, address and telephone number of a company officer familiar with the filing to whom questions and correspondence about the filing may be directed;

ii. A brief description of the insurer's standard/non-standard rating plan which shall include the average charge and swing of non-standard rates. If the insurer's standard/non-standard rating plan provides that different companies in a group write insurance at different rate levels, the cover letter should identify which companies write risks at each rate level;

iii. The rating factors in the filing, including the average charge and swing for each;

iv. The rating factors to be deleted from the insurer's currently approved rating system;

v. The proposed effective date of the new rating plan, which shall be no later than January 1, 1993;

2. A complete set of the rating rules, schedules and tables that set forth the alterations, supplements and amendments to the insurer's rating system necessary to comply with the requirements of N.J.S.A. 17:33B-32 and this subchapter;

3. An exhibit of the worksheet forms as set forth in Appendix A to this subchapter, incorporated herein by reference, which shall be submitted for each coverage and combination of coverages proposed by the filer to be rated together under the new rating plan. The forms shall be submitted both in hard copy and on 3.5 inch double side, high density diskettes;

4. Examples of the use of the various rating factors to rate typical insureds, policies or automobiles; and

5. For each rating factor other than those set forth in N.J.A.C. 11:3-43.4(a)1 through 4, the filing shall include:

i. Evidence that the proposed rating factor has a substantial relationship to the risk of loss, independent of other rating factors included in the proposed rating plan; and

ii. Evidence that the addition of the proposed rating factor to the insurer's rating system will be revenue neutral.

(e) Within 30 days of approval of the rating plan, the insurer shall file new manual rate pages with the Department that reflect all approved changes to its rating system.

11:3-43.4 Rating factors

(a) Pursuant to N.J.S.A. 17:33B-32a, personal private passenger automobile insurance rating classification plans shall provide for the application of the following rating factors in decreasing order of importance:

1. The insured's driving safety record;
2. Annual mileage;
3. Years of driving experience;
4. Type of private passenger automobile driven; and
5. Such other factors that the Commissioner may approve which have a substantial relationship to the risk of loss.

(b) Pursuant to N.J.S.A. 17:33B-32, rates and premiums for personal private passenger automobile insurance shall not be determined, in whole or in part, directly or indirectly upon the age, sex or marital status of the persons insured.

(c) Personal private passenger automobile insurance rating sytems shall provide for such other rating factor variables as may be provided by law, including, but not limited to, discounts for private passenger automobiles equipped with anti-theft, vehicle recovery and safety features as provided by N.J.A.C. 11:3-39.

11:3-43.5 Standards for approval

(a) Insurers shall acknowledge in their rating systems that the insured's driving safety record is included as a rating factor by means of the standard/non-standard rating plan filed and approved in accordance with N.J.A.C. 11:3-19.

1. No rating system filed by an insurer or group of insurers shall be approved unless it includes a standard/non-standard rating plan.

2. An insurer may include in its rating system a discount from its standard rates for those insureds whose driving safety record so merits.

(b) A rating plan shall use each rating factor set forth in N.J.A.C. 11:3-43.4(a)1 through 4.

(c) A rating plan shall provide for flat dollar charges for each rating factor applied per coverage in a logical progression that reflects anticipated losses. The series of charges may be uniantimodal, that is, concave upward when displayed on a graph.

(d) A rating plan shall use each rating factor in decreasing order of importance, so that the average charge and swing of each subsequent rating factor shall be less than the average charge and swing of the previous rating factor. The average charge and swing of the rating factor set forth in N.J.A.C. 11:3-41.4(a)4 (type of automobile) shall be not less than 10 percent of the total range and swing attributable to all rating factors combined, by coverage or combination of coverages.

(e) A rating plan shall provide a charge for each increment within the range of charges for each rating factor; the charge for a specific increment may be zero, but shall not be a negative number.

(f) A rating plan submitted for approval pursuant to this subchapter shall be revenue neutral.

1. The Department shall test whether a rating plan is revenue neutral in accordance with the tables of standard distributions included in Appendices A and B to this subchapter, incorporated herein by reference.

2. The Department shall test the revenue neutrality of other rating factors based not only upon the information submitted by the filer, but also upon national or state statistical data and other reliable information.

(g) With respect to the effect of years of driving experience:

1. The rating plan shall recognize that less than three years' driving experience is already included in the insurer's standard/non-standard rating plan pursuant to N.J.A.C. 11:3-19, and therefore shall provide that any charge based upon less than three years' driving experience shall reflect the dollar charges already included in premium for this rating factor; and

2. The rating plan shall provide that an automobile shall be rated based upon the years of driving experience of the principal driver; years of driving experience of other household members may be used to rate an automobile only if not used to rate any other automobile in the household.

(h) With regard to additional rating factors submitted by insurers for approval by the Commissioner, a rating plan shall meet all of the following minimum standards:

1. All additional rating factors shall have a substantial relationship to the risk of loss.

2. The rating plan shall provide for flat dollar charges for each rating factor applied per coverage in a logical progression that reflects anticipated losses.

3. The average charge and swing of flat dollar charges based upon each additional rating factor shall be less both in dollars and as a percentage than the average charge and swing for the rating factor set forth in N.J.A.C. 11:3-43.4(a)4.

4. If an insurer files for approval a proposed rating plan with more than one additional rating factor, the total average charge and swing of all additional rating factors combined shall not exceed 20 percent of the total average charge and swing of all rating factors combined.

5. An insurer may file for approval additional rating factors that apply to only one coverage or group of coverages, or that weight the rating factors differently by coverage.

6. The rating plan shall not include additional rating factors that unnecessarily duplicate any other rating factor.

7. Any additional rating factors shall be revenue neutral.

8. If an insurer files to use territory (that is, the insured's place of residence or the place where the automobile is principally garaged) as a rating factor, then the following standards shall apply:

i. The insurer shall use the territories as established in its currently approved rating system.

ii. The insurer shall use the statistical distribution of risks by territory as set forth in Appendix B to this subchapter.

(i) A rating plan shall be disapproved for any of the following reasons:

1. The filer fails to submit the items required for filing pursuant to N.J.A.C. 11:3-43.3;

2. The rating plan fails to meet any of the standards set forth in this subchapter;

3. The rating plan fails to delete any prohibited rating factor;

4. The rating plan fails to delete any duplicative or redundant rating factor; or

5. The rating plan otherwise violates or is inconsistent with any other statute, rule or regulation.

11:3-43.6 Special provisions for physical damage coverage

(a) All insurers which write personal private passenger automobile insurance shall file for approval amendments, alterations or supplements to their rating systems as necessary to provide for physical damage rates based upon the age, cost and/or value of the automobile insured as provided by this subchapter.

(b) An insurer may file for approval a rating system for physical damage coverage that uses or incorporates a symbol, model year or vehicle series rating system.

(c) Rating systems for physical damage insurance shall provide that any future maintenance of, or vehicles added to, the rating system on or after January 1, 1993, shall be accomplished without respect to the performance characteristics of an automobile, as defined in N.J.A.C. 11:3-43.2, and otherwise provided in the insurer's rating system pursuant to N.J.A.C. 11:3-43.4(a)4.

11:3-43.7 Procedural provisions

(a) An insurer with an approved rating system on file with the Department as of the effective date of this subchapter shall, within six months of the effective date of this subchapter, file all alterations, supplements or amendments necessary to conform its rating system with the requirements of this subchapter.

(b) Contemporaneously with filing its rating system with the Department, an insurer shall deliver a copy of the filing to the Division of Rate Counsel, Department of the Public Advocate ("Public Advocate") at the following address:

Department of the Public Advocate
Division of Rate Counsel
31 Clinton Street

P.O. Box 46005
Newark, N.J. 07101

1. The Public Advocate may intervene in the proceedings by filing notice with the Department within 10 days of the date of receipt of the filing. A copy of the notice shall be contemporaneously sent to the filer.

2. The Public Advocate may file with Department its comments regarding the insurer's proposed rating plan no later than 30 days after receipt of the filing. A copy of the comments shall be contemporaneously sent to the insurer.

3. The insurer may submit to the Department a response to the Public Advocate's comments within 10 days of receipt. A copy shall be sent contemporaneously to the Public Advocate.

4. The decision of the Commissioner to approve or disapprove the rating system shall be based upon the documents submitted, together with such other reliable information as may be necessary to determine that the application of rating factors meets the standards set forth in this subchapter.

5. The Commissioner shall promptly notify the insurer whether the rating system has been approved or disapproved. A copy of the decision shall also be sent to the Public Advocate if it has filed a notice of its intention to intervene.

(c) Insurers may, from time to time, otherwise alter, amend or supplement their rating system pursuant to the provision of N.J.S.A. 17:29A-1 et seq. and this subchapter.

11:3-43.8 Penalties

Failure to comply with the provisions of this subchapter shall subject the insurer to penalties as provided by N.J.S.A. 17:33-2.

APPENDIX A
PERSONAL LINES AUTO RATING PLAN

INSTRUCTIONS FOR COMPLETING EXHIBITS IN APPENDIX A

1. Complete one set of exhibits for each coverage and combination of coverages proposed by the filer to be separately rated under the new rating plan. For example, a separate set of exhibits must be completed for Bodily Injury Verbal, Bodily Injury Zero, Property Damage, Personal Injury Protection, CSL Liability, Comprehensive, Collision, etc. if the filer proposes to separately rate for these coverages and coverage combinations.
2. For each coverage or combination of coverages, select charges for each Personal Lines Auto Rating Plan rating factor so that the total average Personal Lines Auto Rating Plan charges Exhibit 1, Sheet 1, Column (1) Total equal the statewide average premium under the old rating system Exhibit 3, Sheet 1, Column (6) Total. To accomplish this the exhibits should be completed in the following order:
   Exhibit 3, Sheet 4 (for comprehensive and collision coverages)
   Exhibit 3, Sheet 3 (for comprehensive and collision coverages)
   Exhibit 3, Sheet 2 (for comprehensive and collision coverages)
   Exhibit 3, Sheet 1 excluding Column (6)
   Exhibit 2, Sheet 1
   Exhibit 3, Sheet 1, Column (6)
   Exhibit 3, Sheet 5 (for comprehensive and collision coverages)
   Exhibit 2, Sheet 2
   Exhibit 2, Sheet 3
   Exhibit 2, Sheet 4
   Exhibit 2, Sheet 5 (optional)
   Exhibit 2, Sheet 6 (optional)
   Exhibit 1
3. The mandatory exposure distributions and factors contained in Appendices A and B must be used.
4. The insurer selected optional rating factors may vary for each coverage or combination of coverages.
5. Each exhibit's notes have specific instructions.
6. We will provide completed examples of Appendix A for the Bodily Injury Verbal and Comprehensive coverages.
7. You must file all your completed exhibits in the form of both hardcopy and on diskette using NJDOI Lotus worksheets. Send your request for the NJDOI Lotus worksheets, a blank formatted 3.5 inch double side, high density diskette, and a self addressed stamped return envelope to:
   State of New Jersey
   Department of Insurance
   Property and Liability Division
   20 West State Street
   CN 325
   Trenton, NJ 08625
   Attention: Personal Auto Classification Filings

APPENDIX A
EXHIBIT 1

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

	FACTOR	AVERAGE CHARGE $	AVERAGE CHARGE %	HIGH CHARGE $	LOW CHARGE $	SWING $	SWING %
		(1)	(2)	(3)	(4)	(5)	(6)
A.	STD/NONSTD						
B.	MILEAGE						
C.	EXPERIENCE						
D.	VEHICLE TYPE (PERFORMANCE)						
E.							
F.							
G.							
H.							
I.	TOTAL		100.0%				100.0%

NOTES:
(1) AVERAGE CHARGES FROM EXHIBIT 2 BOXED NUMBERS.
TOTAL MUST EQUAL EXHIBIT 3, SHEET 1, COLUMN (6) TOTAL.

(2)&(6) (2) = (1)/(1) TOTAL. (6) = (5)/(5) TOTAL.
LINE A > LINE B > LINE C > LINE D > LINE E > LINE F > LINE G > LINE H, ETC.
LINE A + LINE B + LINE C + LINE D > = 80%
LINE D > = 10%
(3)&(4) HIGH AND LOW CHARGES FROM EXHIBIT 2, COLUMN (3)
(5) = [(3)–(4)]
E.,F.,G.,H.,ETC. FACTORS SELECTED BY INSURER

APPENDIX A
EXHIBIT 2
SHEET 1

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

STANDARD/NONSTANDARD AVERAGE CHARGE

POINTS	MANDATORY PERCENT	STD/NSTD CHARGE	EXTENSION (2)X(3)	BASIC LIMITS/ $500 DEDUC. CHARGE
(1)	(2)	(3)	(4)	(5)
0	84.01%			
1	0.00%			
2	3.75%			
3	0.64%			
4	2.28%			
5	6.04%			
6	0.64%			
7	1.11%			
8	0.41%			
9+	1.12%			
TOT/AVG	100.00%			= SUM COL (4)

NOTES:
(1) EXCLUDES INEXPERIENCED DRIVER POINTS
(2) APPENDIX B, SHEET 4
(3) 0 POINT CHARGE IS SELECTED BY INSURER
1 – 9+ POINT CHARGES BASED ON INSURER'S FILED STANDARD/ NONSTANDARD PLAN PLUS 0 POINT CHARGE.
(5) 0 POINTS: COLUMN (3) FOR 0 POINTS/(MANDATORY ANTI-THEFT, PASSIVE RESTRAINT DISCOUNT FACTOR)/MANDATORY INCREASED LIMITS FACTOR OR AVERAGE DEDUCTIBLE RELATIVITY FACTOR, APPENDIX B, SHEET 2
1 – 9+ POINTS: SAME AS 0 POINTS + (3) – (3) FOR 0 POINTS

APPENDIX A
EXHIBIT 2
SHEET 2

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN COVERAGE:

MILEAGE AVERAGE CHARGE

MILEAGE	MANDATORY PERCENT	MILEAGE CHARGE	EXTENSION (2)X(3)	BASIC LIMITS/ $500 DEDUC. CHARGE
(1)	(2)	(3)	(4)	(5)
0 – < 5	25.2%			
5 – < 10	22.1%			
10 – < 15	21.8%			
15 – < 20	13.0%			
20 – < 25	7.4%			
25 – < 30	6.7%			
30+	3.8%			
TOT/AVG	100.0%			= SUM COL (4)

NOTES:
(2) APPENDIX B, SHEET 5
(3) SELECTED BY INSURER, MINIMUM CHARGE MUST EQUAL ZERO
(5) (3)/(MANDATORY ANTI-THEFT, PASSIVE RESTRAINT DISCOUNT FACTOR)/MANDATORY AVERAGE INCREASED LIMITS FACTOR OR AVERAGE DEDUCTIBLE RELATIVITY FACTOR, APPENDIX B, SHEET 2

APPENDIX A
EXHIBIT 2
SHEET 3

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

EXPERIENCE AVERAGE CHARGE

YEARS EXPERIENCE	MANDATORY PERCENT	EXPERIENCE CHARGE	EXTENSION (2)X(3)	BASIC LIMITS/ $500 DEDUC. CHARGE
(1)	(2)	(3)	(4)	(5)
0 - < 3	3.8%	*		
3 - < 7	6.6%			
7 - < 17	23.0%			
17 - < 27	22.3%			
27 - < 37	16.2%			
37 - < 47	9.4%			
47 - < 57	9.7%			
57+	9.0%			
TOT/AVG	100.0%			= SUM COL (4)

NOTES:
*INCLUDES AVERAGE STD/NONSTD CHARGE FOR INEXPERIENCED DRIVERS
(2) APPENDIX B, SHEET 6
(3) SELECTED BY INSURER, MINIMUM CHARGE MUST EQUAL ZERO
(5) (3)/(MANDATORY ANTI-THEFT, PASSIVE RESTRAINT DISCOUNT FACTOR)/MANDATORY AVERAGE INCREASED LIMITS FACTOR OR AVERAGE DEDUCTIBLE RELATIVITY FACTOR, APPENDIX B, SHEET 2

APPENDIX A
EXHIBIT 2
SHEET 4

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

VEHICLE TYPE (PERFORMANCE) AVERAGE CHARGE

VEHICLE PERFORMANCE	PERCENT	PERFORMANCE CHARGE	EXTENSION (2)X(3)	BASIC LIMITS/ $500 DEDUC. CHARGE
(1)	(2)	(3)	(4)	(5)
TOT/AVG	100.0%			= SUM COL (9)

NOTES:
(1) & (2) SELECTED BY INSURER
(3) SELECTED BY INSURER, MINIMUM CHARGE MUST EQUAL ZERO
(5) (3)/(MANDATORY ANTI-THEFT, PASSIVE RESTRAINT DISCOUNT FACTOR)/MANDATORY AVERAGE INCREASED LIMITS FACTOR OR AVERAGE DEDUCTIBLE RELATIVITY FACTOR, APPENDIX B, SHEET 2

APPENDIX A
EXHIBIT 2
SHEET 5

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

TERRITORY AVERAGE CHARGE*

NAME	MANDATORY PERCENT	TERRITORY CHARGE	EXTENSION (2)X(3)	BASIC LIMITS/ $500 DEDUC. CHARGE
(1)	(2)	(3)	(4)	(5)
JERSEY CITY	3.0%			
NEWARK	1.3%			
PATERSON	4.8%			
ELIZABETH	3.6%			
BAYONNE	0.6%			
TRENTON	3.0%			
CAMDEN	0.6%			
PERTH AMBOY	1.9%			
NO. BERGEN	8.0%			
SO. BERGEN	3.7%			
CAMDEN SUB.	2.9%			
CAMDEN CO. BAL.	2.4%			
BURLINGTON CO. ET AL	9.3%			
TRENTON SUB.	2.6%			
LONG BRANCH	4.7%			
MONMOUTH CO. BAL.	2.9%			
ATLANTIC CITY	0.2%			
NEWARK SEMI-SUB.	1.0%			
HUDSON CO. BAL.	0.6%			
ESSEX CO. BAL.	1.1%			
DOVER	10.9%			
HUNTERDON CO.	5.0%			
SOUTHERN COS.	11.6%			
NEWARK SUB.	3.4%			
EAST ORANGE–ORANGE	0.7%			
PLAINFIELD	2.9%			
NEW BRUNSWICK	7.2%			
TOTAL/AVERAGE	100.0%			= SUM COL. (4)

NOTES:
*USE OF TERRITORY AS RATING FACTOR IS OPTIONAL
(3) SELECTED BY INSURER, MINIMUM CHARGE MUST EQUAL ZERO
(5) (3)/(MANDATORY ANTI-THEFT, PASSIVE RESTRAINT DISCOUNT FACTOR)/MANDATORY AVERAGE INCREASED LIMITS FACTOR OR AVERAGE DEDUCTIBLE RELATIVITY FACTOR, APPENDIX B, SHEET 2

APPENDIX A
EXHIBIT 2
SHEET 6

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

AVERAGE CHARGE

	PERCENT	CHARGE	EXTENSION (2)X(3)	BASIC LIMITS/ $500 DEDUC. CHARGE
(1)	(2)	(3)	(4)	(5)
TOT/AVG	100.0%			= SUM COL (4)

NOTES:

OPTIONAL RATING FACTOR
(1)&(2) SELECTED BY INSURER
(3) SELECTED BY INSURER, MINIMUM CHARGE MUST EQUAL ZERO
(5) (3)/(MANDATORY ANTI-THEFT, PASSIVE RESTRAINT DISCOUNT FACTOR)/MANDATORY AVERAGE INCREASED LIMITS FACTOR OR AVERAGE DEDUCTIBLE RELATIVITY FACTOR, APPENDIX B, SHEET 2

APPENDIX A
EXHIBIT 3
SHEET 1

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

AVERAGE RATE CALCULATION

TERRITORY	MANDATORY PERCENT	BASIC LIMITS/ DEDUCTIBLE RATE	MANDATORY AVERAGE ILF/DRF	EXTENSION (2)X(3)X(4)	LOAD FOR STANDARD/ NONSTD
(1)	(2)	(3)	(4)	(5)	(6)
1	3.0%				
2	1.3%				
3	4.8%				
4	3.6%				
5	0.6%				
6	3.0%				
7	0.6%				
8	1.9%				
10	8.0%				
11	3.7%				
12	2.9%				
13	2.4%				
14	9.3%				
15	2.6%				
16	4.7%				
17	2.9%				
19	0.2%				
22	1.0%				
23	0.6%				
24	1.1%				
25	10.9%				
26	5.0%				
27	11.6%				
31	3.4%				
38	0.7%				
39	2.9%				
40	7.2%				
TOTAL/ AVERAGE	100.0%				

NOTES:

(3) BASED ON INSURER'S FILED RATES, FOR COMP & COLLISION EXHIBIT 3, SHEET 2, COL (3)
(4) MANDATORY AVERAGE INCREASED LIMITS FACTOR OR MANDATORY AVERAGE DEDUCTIBLE RELATIVITY FACTOR FROM APPENDIX B, SHEET 2
(6) (5) TOTAL + EXHIBIT 2, SHEET 1 BOXED NUMBER--COLUMN (3) FOR 0 POINTS

APPENDIX A
EXHIBIT 3
SHEET 2

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

AVERAGE TERRITORY RATES

TERRITORY	TERRITORIAL RELATIVITY	$500 DEDUCTIBLE AVERAGE RATE
(1)	(2)	(3)
1	1.000	
2		
3		
4		
5		
6		
7		
8		
10		
11		
12		
13		
14		
15		
16		
17		
19		
22		
23		
24		
25		
26		
27		
31		
38		
39		
40		

NOTES:
(2) BASED ON INSURER'S FILED RATES. TERRITORY 1 = 1.000
(3) = (2) X (EXHIBIT 3, SHEET 3, ROW (3))

APPENDIX A
EXHIBIT 3
SHEET 3

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

AVERAGE RATE CALCULATION
TERRITORY 1—JERSEY CITY

ISO SYMBOL	MODEL YEAR 1990	1989	1988	1987	1986	1985	1984	PRIOR 1984
1								
2								
3								
4								
5								
6								
7								
8								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								
26								

(1) TOTAL TABLE
(2) MANDATORY ANTI-THEFT/PASSIVE RESTRAINT DISCOUNT FACTOR 0.95
(3) $500 DEDUCTIBLE AVERAGE RATE

NOTE:
TABLE = (EXHIBIT 3, SHEET 4) X (APPENDIX B, SHEET 7)
(3) = (1)X(2)

APPENDIX A
EXHIBIT 3
SHEET 4

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

TERRITORY 1—JERSEY CITY RATES

MODEL YEAR

ISO SYMBOL	1990	1989	1988	1987	1986	1985	1984	1983	PRIOR 1983
1									
2									
3									
4									
5									
6									
7									
8									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									

NOTE: BASED ON INSURER'S FILED RATES

APPENDIX A
EXHIBIT 3
SHEET 5

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

RATE RELATIVITIES

MODEL YEAR

ISO SYMBOL	1990	1989	1988	1987	1986	1985	1984	1983	PRIOR 1983
1									
2									
3									
4									
5									
6									
7									
8									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									

NOTES: TABLE = (EXHIBIT 3, SHEET 4)/(EXHIBIT 3, SHEET 3, (1))

EXHIBIT 4

GROUP NAME:
GROUP NAIC #:
COMPANY NAME:
COMPANY NAIC #:

PERSONAL LINES AUTO RATING PLAN
COVERAGE:

PREMIUM FORMULA

	FORMULA	SOURCE
A.	STANDARD BASIC LIMITS CHARGE	EXHIBIT 2, SHEET 1, COL. (5), 0 POINTS
	+	
B.	MILEAGE BASIC LIMITS CHARGE	EXHIBIT 2, SHEET 2, COL. (3)
	+	
C.	EXPERIENCE BASIC LIMITS CHARGE	EXHIBIT 2, SHEET 3, COL. (3)
	+	
D.	VEHICLE TYPE BASIC LIMITS CHARGE	EXHIBIT 2, SHEET 4, COL. (3)
	+	
E.	OPTIONAL BASIC LIMITS CHARGES	EXHIBIT 2, SHEETS 5 & 6, COL. (3)
F.	SUBTOTAL	A+B+C+D+E
	X	
G.	INCREASED LIMITS RELATIVITY FACTOR (BI, PD & UM)	INSURER'S FILED RATES
	X	
H.	DEDUCTIBLE RELATIVITY FACTOR (COMP, COLL & PIP)	INSURER'S FILED RATES
	X	
I.	MODEL YEAR/SYMBOL RELATIVITY FACTOR (COMP, COLL & PIP)	EXHIBIT 3, SHEET 5
	X	
J.	ANTI-THEFT/PASSIVE RESTRAINT DISCOUNT FACTOR (COMP, COLL & PIP)	INSURER'S FILED RATES
K.	SUBTOTAL	F × G × H × I × J
	+	
L.	NONSTANDARD CHARGE	EXHIBIT 2, SHEET 1, COL (5)–A
	+	
M.	EXPENSE FEE	INSURER'S FILED RATES
N.	PREMIUM	K+L+M

APPENDIX B

PERSONAL LINES AUTO RATING PLAN
MANDATORY FACTORS AND DISTRIBUTIONS

SHEET 1	CONTENTS
SHEET 2	MANDATORY FACTORS
SHEET 3	MANDATORY DISTRIBUTION OF EXPOSURES BY TERRITORY
SHEET 4	MANDATORY DISTRIBUTION OF DRIVER POINTS
SHEET 5	MANDATORY DISTRIBUTION OF ANNUAL MILEAGE
SHEET 6	MANDATORY DISTRIBUTION OF DRIVER EXPERIENCE
SHEET 7	MANDATORY MODEL YEAR/SYMBOL DISTRIBUTION

APPENDIX B

PERSONAL LINES AUTO RATING PLAN
SHEET 2
MANDATORY FACTORS

	MANDATORY AVERAGE DEDUCTIBLE RELATIVITY FACTOR	MANDATORY AVERAGE INCREASED LIMITS FACTOR
BI & UM		1.600
PD		1.113
CSL & UMCSL		1.211
PIP	0.951	
COMPREHENSIVE	1.218	
COLLISION	1.103	

NOTES: BASED ON ISO NEW JERSEY PERSONAL AUTO DATA FILED WITH NJDOI ON JULY 22, 1991.
PIP AVERAGE DEDUCTIBLE RELATIVITY FACTOR BASED ON NJDOI PIP AUTO COVERAGE OPTION SURVEY AS OF JUNE 30, 1991.

APPENDIX B

PERSONAL LINES AUTO RATING PLAN
SHEET 3
MANDATORY DISTRIBUTION OF EXPOSURES BY TERRITORY

NAME	TERRITORY	VOLUNTARY & INVOLUNTARY EXPOSURES	MANDATORY PERCENT
	(1)	(2)	(3)
JERSEY CITY	1	130,955	3.0%
NEWARK	2	57,399	1.3%
PATERSON	3	206,094	4.8%
ELIZABETH	4	156,757	3.6%
BAYONNE	5	27,510	0.6%
TRENTON	6	127,021	3.0%
CAMDEN	7	24,162	0.6%
PERTH AMBOY	8	81,238	1.9%
NO. BERGEN	10	346,066	8.0%
SO. BERGEN	11	158,585	3.7%
CAMDEN SUB.	12	125,440	2.9%
CAMDEN CO. BAL.	13	105,169	2.4%
BURLINGTON CO. EI	14	400,775	9.3%
TRENTON SUB.	15	112,408	2.6%
LONG BRANCH	16	204,281	4.7%
MONMOUTH CO. BAI	17	123,199	2.9%
ATLANTIC CITY	19	7,866	0.2%
NEWARK SEMI-SUB	22	44,937	1.0%
HUDSON CO. BAL.	23	26,516	0.6%
ESSEX CO. BAL.	24	45,998	1.1%
DOVER	25	469,103	10.9%
HUNTERDON CO.	26	216,629	5.0%
SOUTHERN COS.	27	497,978	11.6%
NEWARK SUB.	31	145,794	3.4%
EAST ORANGE—ORANGE	38	31,416	0.7%
PLAINFIELD	39	123,393	2.9%
NEW BRUNSWICK	40	308,497	7.2%
		4,305,186	100.0%

SOURCE: DEPOPULATION DATABASE REPORT AS OF 12/31/90
PREPARED BY NARINDER GAUTAM, NJDOI

APPENDIX B

PERSONAL LINES AUTO RATING PLAN
SHEET 4
MANDATORY DISTRIBUTION OF DRIVER POINTS

NUMBER OF POINTS	MANDATORY DISTRIBUTION
0	84.01%
1	0.00%
2	3.75%
3	0.64%
4	2.28%
5	6.04%
6	0.64%
7	1.11%
8	0.41%
9+	1.12%
TOTAL	100.00%

NOTES:

SOURCE: NJDOI STUDY OF NEW JERSEY DRIVER LICENSE DATA AND STANDARD/NONSTANDARD PLAN FILINGS WITH NJDOI.

APPENDIX B

PERSONAL LINES AUTO RATING PLAN
SHEET 5
MANDATORY DISTRIBUTION OF ANNUAL MILEAGE

ANNUAL MILEAGE	MANDATORY DISTRIBUTION
0–<5	25.2%
5–<10	22.1%
10–<15	21.8%
15–<20	13.0%
20–<25	7.4%
25–<30	6.7%
30+	3.8%

NOTES:

SOURCES:

1. U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, OFFICE OF HIGHWAY PLANNING, APRIL 1981, REPORT NO. 5, HOUSEHOLD VEHICLE UTILIZATION, 1977 NATIONAL PERSONAL TRANSPORTATION STUDY.
2. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 1990 EDITION, PAGE 51, MOTOR VEHICLE ACCIDENTS 1989.
3. JOURNAL OF INSURANCE REGULATION, NOW INSURANCE PROJECT, SEX DIVIDED MILEAGE, ACCIDENT AND INSURANCE COST DATA SHOW THAT AUTO INSURERS OVERCHARGE WOMEN, PATRICK BUTLER, TWISS BUTLER, LAURIE L. WILLIAMS.

APPENDIX B

PERSONAL LINES AUTO RATING PLAN
SHEET 6
MANDATORY DISTRIBUTION OF DRIVER EXPERIENCE

YEARS OF EXPERIENCE	MANDATORY DISTRIBUTION
0–<3	3.8%
3–<7	6.6%
7–<17	23.0%
17–<27	22.3%
27–<37	16.2%
37–<47	9.4%
47–<57	9.7%
57+	9.0%
TOTAL	100.0%

NOTES:

SOURCE: NJDOI STUDY OF NEW JERSEY DRIVER LICENSE DATA

APPENDIX B

PERSONAL LINES AUTO RATING PLAN
SHEET 7
MANDATORY MODEL YEAR/SYMBOL DISTRIBUTION

	MODEL YEAR								
ISO SYMBOL	1990	1989	1988	1987	1986	1985	1984	PRIOR 1984	TOTAL
1	0.03%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.03%
2	0.08%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.08%
3	0.12%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.12%
4	0.24%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.63%	0.87%
5	0.27%	0.00%	0.00%	0.00%	0.00%	0.12%	0.14%	1.45%	1.98%
6	0.28%	0.13%	0.24%	0.44%	0.88%	1.06%	1.14%	4.01%	8.18%
7	0.43%	1.25%	1.63%	2.45%	3.56%	3.16%	2.81%	7.54%	22.83%
8	0.35%	3.02%	3.12%	3.12%	3.04%	2.17%	1.90%	8.26%	24.98%
10	0.20%	3.30%	2.27%	2.14%	1.97%	1.71%	1.40%	4.76%	17.75%
11	0.16%	2.32%	1.57%	1.17%	1.29%	0.90%	0.53%	2.33%	10.27%
12	0.14%	1.18%	0.80%	0.77%	0.60%	0.42%	0.40%	1.13%	5.44%
13	0.10%	0.64%	0.50%	0.43%	0.37%	0.28%	0.23%	0.67%	3.22%
14	0.09%	0.44%	0.26%	0.22%	0.19%	0.18%	0.15%	0.40%	1.93%
15	0.05%	0.19%	0.12%	0.09%	0.10%	0.09%	0.07%	0.34%	1.05%
16	0.06%	0.08%	0.07%	0.07%	0.06%	0.05%	0.04%	0.11%	0.54%
17	0.05%	0.07%	0.05%	0.04%	0.03%	0.04%	0.04%	0.08%	0.40%
18	0.02%	0.04%	0.02%	0.02%	0.02%	0.01%	0.01%	0.04%	0.18%
19	0.03%	0.01%	0.01%	0.01%	0.01%	0.00%	0.00%	0.00%	0.07%
20	0.02%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.02%
21	0.03%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.03%
22	0.01%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%
23	0.01%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%
24	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
25	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
26	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	2.77%	12.67%	10.66%	10.97%	12.12%	10.19%	8.86%	31.75%	100%

NOTE:

BASED ON ISO NEW JERSEY PERSONAL AUTO DATA FILED WITH NJDOI ON JULY 22, 1991.

(a)

DIVISION OF FRAUD

Fraud and Theft Prevention Detection Plans

Proposed New Rules: N.J.A.C. 11:16-4

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:33B-46 and 17:1C-6(e).
Proposal Number: PRN 1991-551.

Submit comments by December 4, 1991 to:
Verice M. Mason, Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Insurance ("the Department") proposes new rules in accordance with Section 56 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 ("FAIR Act") (N.J.S.A. 17:33B-46). The FAIR Act requires every insurer writing private passenger automobile Insurance in this State ("insurer") to file with the Commissioner of insurance ("Commissioner") for approval, a plan for the prevention of fraudulent insurance applications and claims, and for the prevention of automobile theft ("anti-fraud plan").

N.J.S.A. 17:33B-46a requires each insurer to file its anti-fraud plan with the Department by March 7, 1991. N.J.S.A. 17:33B-46c authorizes the Commissioner to reduce the automobile physical damage base rates of any insurer which fails to submit an anti-fraud prevention plan. The Department believes that insurers can significantly reduce the cost of automobile insurance by undertaking a conscientious effort to reduce fraud. The Department encouraged insurers to implement such plans prior to the statutory deadline in Bulletin No. 90-4 (June 6, 1990) and published a Notice of Pre-Proposal on July 2, 1990 (see 22 N.J.R. 1983(a)). The Bulletin and Notice set forth the elements of a model and anti-fraud plan. The Department requested comments on the suggested criteria.

The Department received six comments on the Fraud and Theft Prevention Detection plans. One commenter suggested that the Department should exempt small private passenger insurers. The Department has exempted insurers with less than 1,000 automobiles from complying with certain elements of the fraud and theft prevention/detection plan. One insurer requested that the Department give companies more flexibility with respect to the location of the special investigations unit ("SIU"), as well as having more flexibility with respect to investigation training and credentials. These proposed rules require insurers to establish a SIU and assign at least one SIU investigator to every claim office.

In order to set forth standards for approval of anti-fraud plans by March 7, 1991, the Commissioner issued Bulletin No. 91-4 (February 13, 1991) which reminded insurers of their obligation to submit a plan to the Department while these proposed rules were being developed.

The proposed new rules set forth filing requirements; the elements of an anti-fraud plan, which include standards for approval; and recordkeeping and reporting requirements. The standards for approval establish educational program requirements that insurers shall provide for their claim personnel. The new rules set forth the requirements that shall be met in conducting an underwriting investigation.

The new rules require insurers to report suspicious claims to the Department's Division of Insurance Fraud Prevention ("IFD"), and to cooperate with an IFD investigation.

A summary of the various provisions of the proposed new rule follows:

N.J.A.C. 11:16-4.1 states the purpose and scope of the rules.

N.J.A.C. 11:16-4.2 provides definitions for terms that are used in the rules.

N.J.A.C. 11:16-4.3 establishes the elements of an anti-fraud plan.

N.J.A.C. 11:16-4.4 establishes the fraud detection educational requirements for claims personnel.

N.J.A.C. 11:16-4.5 provides the information to be included in the Fraud Detection and Procedures Manual.

N.J.A.C. 11:16-4.6 provides the procedures that shall be used in conducting underwriting investigations.

N.J.A.C. 11:16-4.7 requires insurers to report all suspicious claims to the IFD.

N.J.A.C. 11:16-4.8 establishes the record retention information that insurers shall maintain.

N.J.A.C. 11:16-4.9 establishes a 90 day approval period for fraud prevention plans.

Social Impact

The proposed new rules will have a positive social effect in carrying out the legislative policy of reducing the cost of automobile insurance by requiring automobile insurers to make a conscientious effort to reduce fraud. The proposed new rules require insurers to file for approval an anti-fraud plan. The proposed new rules set forth the elements of an anti-fraud plan which include standards for approval by the Department.

Economic Impact

The proposed new rules are expected to reduce the cost of automobile insurance by encouraging automobile insurers to undertake a conscientious effort to reduce fraud.

The Department acknowledges that insurers will incur costs as a result of the proposed new rules, which are necessary for compliance with the FAIR Act. The Department believes, however, that these costs will be more than offset by a reduction in fraudulent claims, applications and automobile theft. The cost of establishing an anti-fraud plan will vary among insurers depending upon the resources currently expended by the insurer to prevent and detect fraud.

Regulatory Flexibility Act

The proposed new rules impose reporting, recordkeeping and compliance requirements on insurance companies authorized to transact private passenger automobile insurance, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All insurers are required to maintain records and to provide reports to the Department of specific insurance fraud prevention data. The proposed new rules set forth the elements of the anti-fraud plan which is to be submitted to the Department.

These proposed rules exempt insurers which insure less than 1,000 New Jersey insureds from certain requirements of this subchapter, specifically the requirements to establish a full-time special investigations unit, to provide fraud education for claims personnel and to produce and disseminate a Fraud Detection and Procedures Manual. The Department is unable to estimate the cost that will be incurred by other insurers in order to comply with these rules, which effectuate the Fair Automobile Insurance Reform Act's fraud prevention requirements. The costs and need for services will vary substantially depending upon each insurer's internal resources and insured base and the degree to which the insurer currently seeks to prevent and detect fraud. Given the statutory plan requirements and the need for uniformity in order to produce the greatest benefit, the Department is not able to provide further lesser requirements than those proposed, based upon insurer business size.

Full text of the proposed new rules follows.

SUBCHAPTER 4. FRAUD AND THEFT PREVENTION/ DETECTION PLANS

11:16-4.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the standards for a fraud and theft prevention/detection plan to be filed for approval pursuant to N.J.S.A. 17:33B-46, by insurers which transact business of private passenger automobile insurance in this State.

(b) These rules apply to all insurers that transact the business of private passenger automobile insurance in New Jersey, including both personal lines and commercial lines of insurance.

11:16-4.2 Definitions

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

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

"Eligible person" means an individual that meets the qualifications set forth in N.J.A.C. 11:3-34.

"Fraud and theft prevention/detection plan" or "plan" means the insurer's plan for the prevention of fraudulent insurance applications and claims and for the prevention of automobile theft.

"IFD" means the New Jersey Division of Insurance Fraud Prevention established by N.J.S.A. 17:33A-8.

"Insurer" means any person authorized to transact the business of private passenger automobile insurance in New Jersey, whether in accordance with a personal lines or commercial lines rating system, and includes a group of affiliated companies.

"Special investigations unit" or "SIU" means the functional group established by an insurer to carry out the duties set forth in N.J.A.C. 11:16-4.4(a).

11:16-4.3 General requirements and filing format

(a) All insurers which transact the business of private passenger automobile insurance in New Jersey shall file for approval a fraud and theft prevention/detection plan in accordance with N.J.S.A. 17:33B-46 and this subchapter. No insurer shall use or implement any plan not filed and approved as set forth herein.

(b) Insurers shall submit their Plan on 8½ by 11 inch paper using one side of the page. The first page shall show the filer's company name, the filer's identifying number for this filing, National Association of Insurance Commissioners (NAIC) company number(s), and NAIC group number.

(c) Insurers shall file their Plan with the Department of Insurance at the following address:

Anti-Fraud/Anti-Theft Plans
New Jersey Department of Insurance
Division of Insurance Fraud Prevention
CN-324
Trenton, NJ 08625-0324

11:16-4.4 Elements of fraud and theft prevention/detection plan

(a) Except for insurers which insure less than 1,000 New Jersey automobiles, the plan filed in accordance with this subchapter shall establish a full-time special investigations unit.

1. The SIU shall conduct investigations on claims referred by the claim personnel whenever the adjuster or processor suspects fraud.

i. SIU investigators shall be a separate unit from the claims adjusting function, and at least one SIU investigator shall be assigned to every claim office.

ii. The SIU investigator shall be physically located in the office, regardless of the state in which the claims are processed.

iii. Insurers shall employ at least one SIU investigator per claim office and one additional SIU investigator for each 30,000 policies serviced by that office.

2. In addition to actually performing investigations, the duties of an SIU investigator shall include, but not be limited to, the following:

i. Providing liaison with the IFD and law enforcement personnel;

ii. Providing in-service training to claims personnel;

iii. Maintaining a data base on fraudulent claims;

iv. Informing insurance underwriters of ineligible risks by reason of prior fradulent activities;

v. Identifying persons and organizations that are involved in suspicious claim activity; and

vi. Initiating civil or criminal actions based on their investigations as authorized by the insurer.

3. An SIU investigator shall be qualified by education and/or experience, which shall include either a college degree and one to three years of insurance claim investigation experience or five years of law enforcement investigation experience involving economic crimes.

(b) Except for insurers which insure less than 1,000 New Jersey automobiles, the plan shall provide fraud education for claims personnel which shall contain a detailed and comprehensive program of insurance fraud awareness and education to prepare claims personnel for fraud detection.

1. The program shall consist of formal, specialized training for adjustors, claims processors and investigators.

2. Training shall be provided in the following specialties: automobile theft investigations, automobile property damage and fire investigations, personal injury protection investigations, and bodily injury liability claim investigation.

(c) Except for insurers which insure less than 1,000 New Jersey automobiles, the Plan shall provide a Fraud Detection Procedures Manual and disseminate it to all claims personnel for the handling of suspicious automobile insurance claims. The Fraud Detection and Procedures Manual shall include, at a minimum, the following:

1. Information for claims personnel and SIU investigators regarding general investigation guidelines; unfair claims practices; conducting interviews; report writing; information disclosure; law enforcement relations; and the New Jersey Fraud Prevention Act;

2. The process to be employed when a suspicious claim is identified;

3. The "fraud profiles" or indicators for automobile theft, automobile physical damage and bodily injury claims fraud;

4. The duties and functions of the SIU;

5. The procedure for referral of a claim to the SIU; and

6. The post-referral procedure for communication between the claims unit and the SIU.

(d) The plan shall provide for underwriting investigations to verify that the insured is an eligible person and is properly rated within 60 days of receipt of the application. These underwriting investigations shall verify the insured's residency and driving record, independent of the information provided by the insured on his or her application for insurance. The plan may provide that these investigations are generally done "in-house" by telephone and by using information from the New Jersey Division of Motor Vehicle Services (or similar agencies in other states) and prior insurers.

1. In the event an insured is found not to be an eligible person he or she shall be notified of the cancellation of coverage within 60 days, in accordance with Department administrative rules, N.J.A.C. 11:3-19, Standard/Nonstandard Rating Plans and N.J.A.C. 11:3-35, Private Passenger Automobile Insurance Underwriting Rules.

2. The Plan shall provide that the insurer shall notify the IFD of an ineligible insured within 30 days of discovery.

(e) The plan shall set forth the underwriting rules an insurer uses to accept or reject new and renewal business.

(f) The plan shall provide that all suspicious claims be referred to the IFD as soon as practical on the prescribed reporting form (as set forth in Appendix A, incorporated herein by reference), and thereafter cooperate with the IFD investigation. The IFD will assist insurers by providing necessary information, such as fraud profiles or indicators.

(g) The insurer shall permit the IFD access to its offices upon reasonable notice and at reasonable hours to conduct on site review of the insurer's compliance with its fraud prevention plan.

(h) The plan may include such other items as the insurer may wish to provide.

11:16-4.5 Record retention

(a) Insurers shall maintain up-to-date and accurate records on their fraud and theft prevention/detection plan, which shall at minimum include those necessary to prepare the report required in (b) below.

(b) Insurers shall file a report with the Commissioner annually for each calendar year beginning January 1, 1992. Such report shall include:

1. The number of claims processed for the proceeding calendar year;

2. The number of suspected fraudulent claims referred to the SIU unit;

3. The number of claims denied for fraud (based on a SIU investigation);

4. The dollar amount spent implementing a fraud prevention plan;

5. The dollar amount of claims denied for fraud; and

6. The dollar amount of restitution obtained as the result of successful fraud investigations.

(c) The report required by (b) above shall be sent to the following address:

New Jersey Department of Insurance
Division of Fraud Prevention
CN-324
Trenton, NJ 08625-0324

11:16-4.6 Approval and filing of fraud and theft prevention/detection plans

(a) An insurer's fraud and theft prevention/detection plan shall be deemed approved by the Commissioner if not affirmatively approved or disapproved by the Commissioner within 90 days of the date of filing.

(b) During the 90 day approval period, the Commissioner may request such amendments to the Plan as he or she deems necessary.

(c) An insurer may submit amendments to its plan. Any amendments to a plan filed with the Commissioner shall be deemed approved by the Commissioner if not affirmatively approved or disapproved within 90 days of the date of filing.

11:16-4.7 Penalties

Failure to comply with the provisions of this subchapter shall subject the insurer to penalties as provided by N.J.S.A. 17:33B-46c.

APPENDIX A

IFD Case # _____

State of New Jersey
Insurance Fraud Division
CN 324
Trenton, New Jersey 08625

SIU Yes ____ No ____

JUA Yes ____ No ____

Date Reported: _____ Company: _____ NAIC # _____

Contact Person: _____ Address: _____

Phone #: _____ City/State/Zip: _____

Claim # D/L Amount or Reserve STATUS Pend Denied Paid Date:

AUTO TYPE: AUTO THEFT PROP. DAMAGE PIP COLL. COMP. MISC.

TYPE OF CLAIM: _____

HOMEOWNERS TYPE: COMMERCIAL TYPE: LIFE & HEALTH TYPE: OTHER TYPE:

Location of Incident: Loc. of 1st Notification: i.e. Claims Office Agt.

Name of Insured(s) Address City/State Phone

Subject Name Relationship to Insured(s) i.e., doctor, lawyer, claimant, etc. Phone

Address DOB Employer

City/State/Zip D/L #-State SS #

Name Phone

Address DOB Employer

City/State/Zip D/L #-State SS #

Reasons for Suspicions/Describe Facts identify violations of NJ Insurance Fraud Prevention Act (MUST BE COMPLETED)

Vehicle Year Make Model Color Reg. # State Vin. #

(1)

(2)

Referral to any other agency i.e. law enforcement, NATB, Professional Boards, etc.

Name Date of Referral Phone #

REMARKS:

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Notice of Pre-Proposal
Open Network Architecture Requirements

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor, Commissioner and Carmen J. Armenti, Commissioner.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: TX91061131.
Pre-Proposal Number: PPR 1991-11.

A **public hearing** concerning this pre-proposal will be held on:
Tuesday, November 26, 1991 at 10:30 A.M.
Department of Personnel
Hearing Room, 1st Floor
Three Station Plaza Building
44 South Clinton Avenue
Trenton, New Jersey 08625

Submit written comments by December 4, 1991 to:
Michael P. Gallagher, Director
Division of Telecommunications
Board of Regulatory Commissioners
Two Gateway Center
Newark, New Jersey 07102

Take notice that the Board of Regulatory Commissioners (Board) is interested in receiving comments on the possibility of establishing rules governing the intrastate impact of the Open Network Architecture (ONA) requirements for telecommunications carriers in the State of New Jersey.

ONA involves a proceeding before the Federal Communications Commission (FCC) involving the implementation of policies intended to boost the efficiency of the telecommunications network by unbundling the components of the network and permitting service providers to purchase the individual Basic Service Elements (BSEs) or Basic Service Arrangements (BSAs) and to combine those elements with other features to produce and market new services. See, Report and Order, *In re Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Docket No. 85-229, 104 *F.C.C. 2d* 958 (1986) ("Computer III"). In the FCC's ruling, the regulation of enhanced services by state commissions was preempted. However, in *California v. F.C.C.*, 905 *F. 2d* 1217 (9th Cir. 1990), the Ninth Circuit Court of Appeals found that 47 U.S.C. Section 152(b)(1) did not permit the FCC to preempt state regulation of intrastate enhanced services. See, 905 *F.2nd* at 1240. Enhanced services use the telephone network to convey information from remote computers to a customer's terminal equipment. These services combine basic telephone service with computer processing applications to act on the format, content, code, protocol or other aspects of the transmitted information or provide the subscriber with additional, different or restructured information, or involve subscriber interaction with stored information. *Id.* at 1223, n.3. The concept of ONA and the development of enhanced services are related parts of the developing telecommunications field.

In light of the Court's decision and the development of an ONA policy at the FCC, the Board believes it is appropriate to open a proceeding and solicit comment on the proper nature of the Board's role in regulating enhanced services and/or developing a State-specific ONA policy.

Therefore, the Board seeks comment on the following:

1. What is the appropriate definition for an "enhanced service" for both interstate and intrastate purposes?
2. What is the appropriate means to separate or measure intrastate and interstate traffic of enhanced services?
3. Should the Board differentiate its regulatory treatment of enhanced service providers (ESPs) based on the type of telecommunications carrier providing the service, for example, local exchange carrier (LEC), interexchange carrier (IXC), or other entities? If so, how?
4. Should the Board require enhanced services to be tariffed?
5. Should the Board adopt a State-specific ONA policy? If so, is it essential that such a policy be uniform with the FCC's policy in all aspects?
6. Should IXCs and LECs be required to provide unbundled BSEs pursuant to a tariff? If so, what form should such a tariff take?
7. What other jurisdictional questions and issues need to be resolved prior to developing an ONA policy?
8. What structural or non-structural safeguards are appropriate on the state level?
9. Describe whether the FCC's Customer Proprietary Network Information (CPNI) requirement is adequate on the state level.
10. Describe any alternatives and/or additions to the FCC's CPNI requirement which would be appropriate for New Jersey.
11. What is the appropriate pricing methodology for enhanced services?
12. What is the appropriate pricing methodology for BSEs or BSAs used by enhanced service providers?
13. Should the Board require IXCs and LECs to allow unaffiliated ESPs to locate their equipment on the IXCs or LECs property (collocation)?
14. What measures should the Board take to prevent potential negative consequences of any development of ONA policies such as cross subsidies and tariff shopping?
15. How should ordering and billing for enhanced services be provided?
16. What is the appropriate level of uniformity on a statewide regionwide and nationwide basis? This information should include, but not be limited to, price, terms and conditions and nomenclature.
17. Please explain whether the FCC's requirement regarding the deployment of technology is adequate at the state level. If not, what additional requirements are necessary?
18. Any relevant issues not previously discussed.

(b)

BOARD OF REGULATORY COMMISSIONERS

Nuclear Generating Plant Decommissioning
Proposed New Rules: N.J.A.C. 14:5A

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman.
Authority: N.J.S.A. 48:2-13 and 48:2-21.
BRC Docket Number: EX91020247.
Proposal Number: PRN 1991-530.

Submit written comments by December 4, 1991 to:
Robert Chilton, Director
Division of Electric
Board of Regulatory Commissioners
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

On April 1, 1991, the Board published, in the New Jersey Register (23 N.J.R. 942(a)) a rulemaking pre-proposal to solicit preliminary comments on a suggested format for a periodic review mechanism of nuclear plant decommissioning cost estimates. Comments were received from Public Service Electric & Gas Company, Atlantic City Electric Company, Jersey Central Power & Light Company, and the Department of the Public Advocate, Division of Rate Counsel. Based upon review of the comments received, as well as further deliberations by the Board concerning these and related issues, the Board has developed the following proposed new rules.

While it is the responsibility of the Board to implement a process that will provide secure and adequate funds for decommissioning activities, the Board notes that there is presently an uncertainty with respect to the magnitude of funds needed due, in large measure, to the lack of experience with regard to large (over 200 megawatt) plant decommissioning. Therefore, to the greatest extent possible, accurate and timely cost estimates are required if the Board is to properly balance the need for providing sufficient funds for the safe and timely decommissioning of nuclear facilities against the need to fairly assess current ratepayers for their share of these costs. The present funding levels for decommissioning costs provided for in New Jersey base rates generally reflect generic Nuclear Regulatory Commission Guidelines and utility estimates.

Although review of decommissioning cost estimates has historically taken place within the context of electric utility base rate proceedings, the timing of base rate filings can vary substantially and can be driven by factors that have little to do with developments related to nuclear

plant decommissioning. Accordingly, the Board believes that there is a need for a mechanism to ensure periodic review of decommissioning cost estimates. Moreover, it is the Board's intent to ensure that the electric utilities properly manage the decommissioning trust funds into which ratepayer monies are placed. Said management includes the selection of fund trustees and investment managers, as well as the establishment of investment guidelines. It is intended that the utilities maximize the returns on set-aside decommissioning funds while protecting the integrity of those funds to ensure their availability to finance plant decommissioning.

The proposed rules would require electric utilities to concurrently file once every three years and, within 10 years of scheduled shut-down every 18 months, the latest estimates for decommissioning costs at their respectively owned nuclear generating plants. The Board would then conduct an administrative review within the context of these filings to assess all decommissioning activity developments since the prior review and determine the need for more formal review prior to the filing of future base rate cases.

The purpose of the Board's review would be to verify and/or identify a need to revisit the magnitude of decommissioning funds required. The proposed rules would allow the joint submission of generic industry information by the affected utilities. The proposed rules also provide for a written comment process. At the conclusion of this procedure, and subsequent to its review of the generic state of the decommissioning experience and technology, the Board would reach findings as to the need to formally review the continued efficacy of present decommissioning funding levels at each of the subject nuclear facilities and explore methods for revising funding levels where appropriate. If it is determined that there is a need to formally review the funding levels at any or all of the nuclear facilities prior to a future base rate filing, the board would initiate a proceeding including a discovery process, rights of intervention, and public and/or evidentiary hearings.

The proposed rules also require electric utilities to file annually decommissioning trust fund reports including information regarding fund asset value and portfolio mix, achieved returns on the trust funds, earnings indices used to benchmark trust fund performance and decommissioning investment manager and trustee fee structures and charges. The proposed rules also require electric utilities to notify the Board in writing of all changes in decommissioning trust fund agreements, investment managers and trustees prior to implementing the change, as well as establishing guidelines for manager and trustee procurement to ensure competitive solicitations. Upon receipt of the initial trust fund reports, the Board will review utilities' fund investment guidelines and consider the need to adopt definitive generic guidelines.

Social Impact

The intent of the proposed new rules is to currently assess contemporary electric ratepayers for only their fair share of those funds to cover costs that will be associated with subsequent nuclear plant decommissioning. In doing so, the Board, through these rules, is attempting to institute a procedure that will provide for periodic review and adjustment, where necessary, to ensure that adequate decommissioning funds are available at the cessation of operations of each nuclear generating plant. Through such procedure, the Board will be able to balance the interests of existing ratepayers and future ratepayers by timely adjustments to the amounts collected to fund decommissioning cost based upon the most recent costs estimates and technical information available. The implementation of the proposed rules will assist the Board in minimizing the possibility that either current or future ratepayers will be under or over assessed for their share of these costs.

Economic Impact

Those New Jersey electric utilities that have an ownership interest in nuclear generating plants will incur expenses in complying with the filing requirements imposed by the proposed rules. The Board would note that expenses incurred under the proposed rules can be substantially reduced through the option provided to the affected utilities for joint filing and the sharing of information. Any reasonable level of expenses incurred in the compliance of the proposed rules will be considered to be a business expense and can be recovered in an appropriate rate proceeding.

Regulatory Flexibility Statement

The proposed new rules do not impose any 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 proposed new rules affect only major New Jersey electric utilities, namely Public Service Electric and Gas Company, Jersey Central Power & Light Company and Atlantic City Electric Company. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

CHAPTER 5A
NUCLEAR PLANT DECOMMISSIONING COST AND TRUST FUND REVIEW

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

14:5A-1.1 Purpose and scope

The rules contained in this chapter are designed to provide a mechanism of periodic review of the estimated costs of decommissioning nuclear generating stations owned by New Jersey electric utilities for the purpose of assuring that adequate funds are available at the cessation of commercial operation of each of the facilities to assure completion of decommissioning activities. The rules also set forth decommissioning trust fund reporting requirements for electric utilities and procurement guidelines for the selection of investment managers and trustees, in order to provide the Board timely information related to its oversight of the utilities' management of the funds.

14:5A-1.2 Definitions

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

"Board" means the New Jersey Board of Regulatory Commissioners or its successor.

"Decommissioning" means to remove a facility safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of NRC operating license.

"DECON" means the method of decommissioning in which the equipment,
structures, and portions of a facility and site containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use shortly after cessation of operations.

"DEPE" means the New Jersey Department of Environmental Protection and Energy or its successor.

"DOH" means the New Jersey Department of Health or its successor.

"DOTNJ" means the New Jersey Department of Transportation or its successor.

"DOTUS" means the United States Department of Transportation or its successor.

"Electric public utility" means all electric public utilities as defined by N.J.S.A. 48:2-13, but does not mean municipally owned electric public utilities.

"ENTOMB" means the method by which radioactive contaminants are encased in a structurally long-lived material, such as concrete. The entombed structure is appropriately maintained, and continued surveillance is carried out until the radioactivity decays to a level permitting unrestricted release of the property.

"NRC" means the United States Nuclear Regulatory Commission or its successor.

"Public Advocate" means the New Jersey Department of the Public Advocate or its successor.

"SAFSTOR" means the method by which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use.

SUBCHAPTER 2. DECOMMISSIONING COST UPDATE

14:5A-2.1 Filing

(a) Every New Jersey electric public utility having an ownership interest in one or more nuclear generating stations shall file by January 1, 1993, and every three years thereafter, unless otherwise directed by the Board, a "Decommissioning Cost Update" (Update) with the Board for its consideration.

(b) Notwithstanding the provisions of (a) above, at such time as the scheduled cessation of commercial operation of a nuclear generating station is within 10 years, a Decommissioning Cost Update shall be filed for that station(s) at 18 month intervals.

14:5A-2.2 Update elements

(a) The Update filing shall consist of the following elements, each of which shall be accompanied by technical support sufficient to provide the Board with a basis to evaluate the filing:

1. For the initial filing on Janaury 1, 1993, a generic assessment of the current status and developing trends on all activities that affect the costs of nuclear facility decommissioning. For each subsequent filing made pursuant to this chapter, an update of the current status and trends which have developed concerning all activities that affect the cost of nuclear facility decommissioning since the previous filing or more recent base rate case review. The activities required to be assessed under this paragraph shall include, at a minimum, the following:

i. Actual facility decommissioning costs both foreign and domestic;

ii. Development and use of state of the art equipment and techniques such as robotics, heavy duty cutting methods, computer monitoring, remote observation systems and chemical cleaning methods which will increase efficiency and/or reduce radiation exposures, waste processing methods which reduce the volume of decommissioning wastes, and other innovations which have been developed since the last estimate;

iii. Development of both high level and low level radioactive waste disposal sites and their cost or pricing structures;

iv. Transportation methods and hardware;

v. Applicable regulatory changes undertaken or specific clean up standards adopted by the NRC, DEP, DOH, DOTNJ, DOTUS or other appropriate governmental bodies; and

vi. Insurance cost estimates.

2. For each nuclear generating facility owned in whole or in part by an electric public utility, the utility shall provide the latest cost estimate for decommissioning, along with all supporting documentation. In support of the information filed under this paragraph each utility shall indicate the following for each facility:

i. The current projected date for cessation of commercial operation and the current projected date for commencement of decommissioning activities;

ii. The status of any efforts by the utility to extend the date for cessation of commercial operation, and changes in plant status including extended plant shutdowns, expected levels of contamination, life extension programs and plant operability after license termination;

iii. The planned decommissioning option to be employed upon cessation of commercial operation, from the following list of options:

(1) DECON;

(2) ENTOMB;

(3) SAFSTOR; or

(4) Other options as deemed appropriate by the NRC, electric public utility and/or other applicable entities;

iv. The source of and supporting data for the decommissioning cost estimate, either resulting from a site-specific study of the particular facility or via generic NRC guidelines or some other means:

(1) In the event that the decommissioning cost estimate provided pursuant to this chapter is based upon a site-specific study, the electric public utility must provide that study, as well as any such studies previously performed for that facility.

(2) In the event that the decommissioning cost estimate provided pursuant to this chapter is based upon generic NRC guidelines, the electric public utility must provide all information which led the utility to translate these guidelines into the particular cost estimate along with an explanation and supporting documents of all adjustments made to the NRC generic guidelines for each facility;

v. The decommissioning cost estimate and assumed commercial operation cessation date which formed the basis for the existing level of decommissioning funding in the public electric utility's base rates;

vi. A description of the specific manner in which the information filed pursuant to (a)1 above affects the decommissioning cost estimate provided pursuant to this chapter;

vii. An explanation of the method used to calculate the annual contribution to the external funds including inflation rates used to estimate future value and yield rates estimated for the external fund; and

viii. The remaining spent fuel storage capacity and need, if any, for expanded storage capacity.

14:5A-2.3 Joint submissions

(a) For purposes of avoiding the filing of duplicative information, the electric public utilities subject to this chapter may jointly file information with respect to the following:

1. The generic industry activities required in N.J.A.C. 14:5A-2.2(a)1; or

2. In the event of co-ownership of a nuclear facility, the information concerning cost estimates pursuant to N.J.A.C. 14:5A-2.2(a)2, excluding N.J.A.C. 14:5A-2.2(a)2v and vi which is required to be filed by each public electric utility.

SUBCHAPTER 3. DECOMMISSIONING COST UPDATE PROCEDURES

14:5A-3.1 Public notification

(a) Concurrent with the filing with the Board as required in this chapter, each utility shall provide public notice of said filing in newspapers of general circulation in its service territory.

(b) A copy of the filing shall also be provided to the Public Advocate, NRC and DEPE.

(c) Each utility shall make available for distribution to members of the public upon request an Executive Summary of the filing made pursuant to this chapter. Said Executive Summary shall:

1. Summarize the information supplied pursuant to each section of N.J.A.C. 14:5A-1 and 2;

2. Indicate procedures for comment as set forth in N.J.A.C. 14:5A-3.2; and

3. Not exceed 10 pages in length.

14:5A-3.2 Comment period and Board review

(a) For a period ending 60 days from filing of the Update or as otherwise extended by action of the Board, interested parties may submit comments to the Board.

(b) Upon receipt and review of comments as well as the Update and other related additional information as requested, the Board shall make a determination as to the need to initiate a proceeding to formally review the present funding level for any of the trusts. Such a determination shall be set forth in a Board order and shall be based upon the following considerations:

1. A sufficient showing to provide a reasonable question as to the consistency of present funding levels with the most up-to-date estimates of decommissioning costs; and

2. The absence of an alternative proceeding or expected proceeding, such as a base rate case, in which a full review of the cost estimates is being or will be undertaken.

(c) In the event that the Board determines a need for a formal proceeding, said proceeding shall follow the procedures set forth in N.J.A.C. 14:5A-3.3 through N.J.A.C. 14:5A-3.6.

1. Within 10 days of the Board's determination of the need for a formal proceeding, the utility shall file with the Board a proposed form of public notice.

14:5A-3.3 Party status and intervention

(a) The Public Advocate and the Department of Environmental Protection and Energy shall be granted party status.

(b) Any person may make a Motion for Intervention to the Board with respect to the Update proceeding. Such Motion shall be decided pursuant to rules set forth in N.J.A.C. 1:1-16.

14:5A-3.4 Discovery

(a) Any party or intervenor as established in N.J.A.C. 14:5A-3.3 may propound discovery upon any public electric utility regarding its respective filings.

(b) The schedule for the filing of supplemental information, or testimony or propounding discovery and for responses thereto shall

be established by the Board subsequent to its determination as to the need for a formal proceeding.

14:5A-3.5 Public and evidentiary hearings

(a) Within 90 days of the initiation of a formal proceeding, the Board shall schedule and convene a public hearing, upon proper notice, at which members of the public and interested parties shall be provided the opportunity to submit comments with respect to the filing.

(b) The Board shall convene evidentiary hearings and additional public hearings as necessary concerning the filing, and entertain written position papers from the parties.

(c) All notices of public or evidentiary hearings shall be published by the utility in conformance with the requirements set out in N.J.S.A. 48:2-32.2 and 48:2-32.4 and N.J.A.C. 14:1-5.12(b) through (e).

14:5A-3.6 Findings

(a) Subsequent to the conclusion of hearings, the Board shall issue a Nuclear Facility Decommissioning Report (Report) which will address the following issues:

1. A summary of the state of industry experience and technology concerning nuclear facility decommissioning;

2. Proposed findings as to the continued efficacy of present decommissioning funding levels for each of the nuclear facilities wholly or partly owned by New Jersey electric utilities and subject to the formal review; and

3. Proposed methods for revising funding levels where deemed appropriate.

(b) In the event evidentiary hearings are held and the Board determines that decommissioning costs and related funding should be changed, a Board order shall be issued.

SUBCHAPTER 4. DECOMMISSIONING TRUST FUND REVIEW

14:5A-4.1 Investment manager and trustee procurement procedures

(a) In the procurement, by an electric utility, of any new decommissioning fund trustees and investment managers, bidding procedures which include public notification must be employed.

1. The selection process must take into account, but is not necessarily limited to, the following considerations:

i. Existing knowledge or demonstration of ability to obtain knowledge of Internal Revenue Service Rules relating to Nuclear Decommissioning Costs (26 CFR parts 1 and 602 SEC 468A);

ii. Performance record in fixed income area;

iii. Cash management capabilities;

iv. Investment manager and trustee fee structures;

v. Organizational commitment to keep abreast and maintain a presence in issues related to nuclear decommissioning trust fund management;

vi. Demonstration of sufficient resources to satisfactorily service the fund;

vii. Demonstration of a firm's ability to ensure that the assets contained in the Fund are clearly pledged to the utility and will not be considered assets of the managing or trustee institution; and

viii. The extent to which a particular firm expands the market of existing managers or trustees or otherwise provides a unique quality or creates a new and useful niche.

2. The selection process employed pursuant to (a)1 above shall be designed such that any one criteria is not the sole basis for rejection of a firm if the firm offers other unique and offsetting benefits.

3. Each electric utility must demonstrate that requests for proposals are made widely available to interested and qualified investment managers and trustees, both in and out of state.

(b) Electric utilities shall notify the Board at least four weeks prior to the solicitation of new investment managers or trustees. Said notification shall include:

i. A copy of the Requests for Proposals (RFPs) to be sent to potential investment managers and trustees;

ii. A list of firms that will be sent RFPs and the manner in which the utility chose the distribution; and

iii. The specific manner of public notification.

(c) Further notification to the Board is required as follows:

1. Identification of the firms chosen to be interviewed and the reason for selection; and

2. Final selection of the firms and the reason for selection including a discussion of the criteria as established pursuant to (a) above.

(d) Copies of all executed trust or fund management agreements, or material amendments thereto, shall be filed with the Board.

14:5A-4.2 Decommissioning trust annual reports

(a) Within 60 days of the effective date of this chapter, and annually each February 15 thereafter each electric utility shall file with the Board:

1. An annual decommissioning trust fund report which shall provide for each nuclear generating station in which the electric utility has an ownership interest:

i. The total end of year market value of the Internal Revenue Service qualified and non-qualified trust funds;

ii. The monthly pretax and after tax return earned on each fund for the year as well as the cumulative returns from the inception of the decommissioning trust fund through the end of the calendar year for which the decommissioning annual report is being issued;

iii. A comparison of the information provided in (a)1ii above to an appropriate performance benchmark, as well as description and support for the benchmark;

iv. The utility's strategy for maximizing return while monitoring and managing portfolio risk and specific investment guidelines imposed on fund managers;

v. The portfolio's asset mix, indicating types of securities, durations and quality ratings where appropriate;

vi. A financial reconciliation from the beginning of the current 12 month investment period through the end of the current 12 month period reflecting each plant's qualified and non-qualified funding history listed separately for the year to date and since inception;

vii. An accounting of all fees, commissions and other administrative costs incurred for the year;

viii. A statement of the assumed return built into the calculation of the funding annuity built into present rates;

ix. For the prior calendar year and on a cumulative basis since the fund's inception, a computation of the shortfall or excess between the actual market value of the fund and the value of the fund had the rate of return embedded in annual annuities built into rates been realized; and

x. For jointly-owned stations in which there is shared ownership with one or more out-of-State utilities, the present amount of funds set-aside by each out-of-State utility for decommissioning each station as well as the annual level of contribution toward a decommissioning fund; and

2. A copy of the utility's most recent annual certification reports to the NRC for each wholly or partially-owned station.

(b) Upon receipt of the initial Annual Reports filed pursuant to (a) above, the Board shall review the trust fund investment guidelines of each electric utility and consider the need for establishment of definitive generic investment guidelines.

(c) The apportionment of responsibility between electric utility shareholders and ratepayers for shortfalls or excesses in achieved returns on trust funds as reported pursuant to N.J.A.C. 14:5A-4.1(a)1ix shall be considered by the Board in its review of proposed adjustments to the nuclear decommissioning annuities embedded in customer rates.

14:5A-4.3 Distribution of trust fund report

A copy of the reports required by N.J.A.C. 14:5A-4.2(a)1 and 2 shall also be provided, by each utility, to the Public Advocate and DEPE.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

24 Hour Gaming
General Provisions
Accounting and Internal Controls
Gaming Equipment
Roulette; inspection procedures; security procedures
Dice; receipt, storage, inspections and removal from use
Cards; receipt, storage, inspections and removal from use
Dealing shoes
Approval of gaming equipment; retention by Commission and Division; evidence of tampering
Proposed New Rule: N.J.A.C. 19:45-1.1A
Proposed Amendments: N.J.A.C. 19:40-1.2; N.J.A.C. 19:45-1.15, 1.20, 1.25, 1.27, 1.31, 1.33, 1.34, 1.35, 1.39, 1.40, 1.40A, 1.41, 1.42, 1.43 and 1.46A; N.J.A.C. 19:46-1.1, 1.6, 1.9, 1.16, 1.18, 1.19 and 1.20

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a), 5:12-70(f), (g), (l), 5:12-97 and P.L. 1991, c.182.

Proposal Number: PRN 1991-541.

Submit comments by December 4, 1991 to:
Catherine A. Walker
Senior Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The Casino Control Act was recently amended to authorize the Commission to permit 24-hour gaming at certain times and under certain circumstances. P.L. 1991, c.182; N.J.S.A. 5:12-97. Proposed new rule, N.J.A.C. 19:45-1.1A defines what constitutes a "gaming day" and provides that each casino licensee shall submit the time when it wishes to begin and end each 24-hour period that will constitute its "gaming day" to the Commission for approval. The proposed amendments to existing rules clarify when certain accounting and internal control activities and gaming equipment activities are to occur if a casino is in operation for 24 or more consecutive hours. Most of the proposed amendments are of a minor technical nature. The substantive amendments are:

1. Removal of slot drop buckets and slot cash storage boxes—N.J.A.C. 19:45-1.42

The proposed amendment at N.J.A.C. 19:45-1.42(d) provides that a casino licensee must submit to the Commission for approval its procedures concerning collection of slot drop buckets and slot cash storage boxes when the casino is open to the public. Additionally, the amendment at N.J.A.C. 19:45-1.42(b)1ii provides that if the collection of slot drop buckets and slot cash storage boxes is performed when the casino is open to the public, at a minimum, four employees, two of whom shall be security department members and two of whom shall be accounting department members, shall participate in the collection.

2. Slot Count; procedures for counting and recording contents of slot drop buckets—N.J.A.C. 19:45-1.43

The proposed amendment at N.J.A.C. 19:45-1.43(f), (i) and (j) would permit some members of the slot count team to exit the count room after all of the drop buckets are counted or weighed and recorded, so long as each slot count team member signs the Slot Win Sheet or other approved document and a security department employee checks any persons exiting the count room at this time with a metal detector. If this amendment is adopted, some count team employees will be able to leave the count room prior to completion of the verification process rather than being required to remain in the count room after their job responsibilities are completed. If adopted, this amendment would permit casino licensees to assign some count room employees to other responsibilities after the count and recordation process is completed. This proposal will permit casinos to use their labor resources more efficiently without affecting the integrity or security of the count room since all employees must still sign the Slot Win Sheet or other approved document and pass through a metal detector before leaving the count room.

3. Roulette Inspections—N.J.A.C. 19:46-1.9

For security purposes, the proposed amendment will provide an option to casino licensees when it is necessary to make adjustments to roulette wheels with external movable parts. If adjustments must be made to the movable parts of a roulette wheel, a casino licensee may either:

(1) Make the adjustments to the wheel when the casino is not open to the public, which is the existing procedure; or

(2) Move the roulette wheel to an approved secure location off the casino floor and make any necessary adjustments.

This amendment will assure that all adjustments to the movable parts of roulette wheels are made in a secure location that is not visible to the public.

4. Dice and Card Procedures—N.J.A.C. 19:46-1.16 and 1.18

The proposed amendments modify the procedures for handling extra dice in dice reserve and extra cards in card reserve. Specifically, casino licensees are given the option of either collecting all extra unused dice and unused cards from dice and card reserves at the end of the gaming day or leaving the extra cards and dice in card and dice reserve. Under either option, a daily reconciliation must be completed. The amendments add a requirement that no cards or dice that have been placed in use for gaming can remain on a table for more than 24 hours. Additionally, cards used in baccarat must be changed at least once during that 24 hour period.

All cards with broken seals must be collected from card and dice reserve every 24 hours. All dice that remain in dice reserve for more than one gaming day, except for those stored in a locked compartment pursuant to N.J.A.C. 19:46-1.16(e)2v(2) or (e)3vi, must be reinspected in accordance with the Commission's rules, prior to use in gaming.

Social Impact

Recent amendments to the Casino Control Act permit the Commission to authorize 24-hour gaming during certain time periods and under certain circumstances. N.J.S.A. 5:12-97. The proposed new rule and amendments will bring the accounting and internal controls and gaming equipment rules into conformance with this legislative change. Authorizing 24-hour gaming should enhance and preserve the hospitality industry in New Jersey and in Atlantic City, see N.J.S.A. 5:12-1(b)5, and will be valuable to casino licensees and patrons alike because the casinos may be open for 24 consecutive hours.

Economic Impact

Casino licensees have indicated that 24-hour gaming should have a substantial, positive economic impact on their operations. Likewise, the substantive proposed amendments and new rule will have a positive economic impact on casino licensees in that certain changes in procedures should permit casinos to have more flexibility in allocating labor resources.

Regulatory Flexibility Statement

The proposed new rule and amendments apply to casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not necessary.

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

19:40-1.2 Definitions

All words and terms which are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) are used in these rules and regulations as defined in that Act. The following words and terms, when used in these rules and regulations, shall have the following meanings, unless the context clearly indicates otherwise.

...

Gaming day" is defined in N.J.A.C. 19:45-1.1A.

...

"On a daily basis" means something which occurs or is performed each gaming day.

. . .

19:45-1.1A Gaming day

(a) The "gaming day" for a casino licensee on a calendar day which has not been approved for extended hours of operation pursuant to N.J.S.A. 5:12-97(a) shall commence at 10:00 A.M. or the actual time when the casino opens to the public, whichever is later, and shall terminate:

1. At 4:00 A.M. on the next calendar day, if the next calendar day is a weekday which is not a holiday;

2. At 6:00 A.M. on the next calendar day, if the next calendar day is a Saturday, Sunday or State or Federal holiday;

3. In accordance with (b) below, if the next calendar day has been approved by the Commission for extended hours of casino operation pursuant to N.J.S.A. 5:12-97(a); or

4. When the casino actually closes if such time is earlier than the time specified in (a)1 through 3 above.

(b) The "gaming day" for a casino licensee on a calendar day which has been approved for extended hours of operation pursuant to N.J.S.A. 5:12-97(a) shall commence and terminate, and the end of the gaming day for the previous calendar day shall terminate, at those times set forth in the approved system of internal procedures and administrative and accounting controls of each casino licensee. Each casino licensee may establish a gaming day for slot machines which is different from its gaming day for table games; provided, however, that no gaming day shall be longer than 24 hours.

19:45-1.15 Accounting controls within the cashiers' cage

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

(d) At the [conclusion] **end** of **each** gaming [activity each] day, at a minimum, a copy of the Cashiers' Count Sheets and related documentation shall be forwarded to the accounting department for agreement of opening and closing inventories, agreement of amounts thereon to other forms, records, and documents required by this chapter, agreement of transportation reimbursement disbursements with supporting documentation and recording of transactions.

19:45-1.20 Table inventories

(a) (No change.)

(b) [Each] **Whenever a gaming table is not open for gaming activity, the** table inventory and the Table Inventory Slip prepared in conformity with the procedures set forth in N.J.A.C. 19:45-1.31 shall be stored [during nongaming hours] in a separate, locked clear container which shall be clearly marked on the outside with the game and the gaming table number to which it corresponds. The informaton on the Table Inventory Slip shall be visible from the outside of the container. All containers shall be stored either in the cashiers' cage [during nongaming hours] or secured to the gaming table, provided that there is adequate security, as approved by the Commission.

(c) (No change.)

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

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

(d) All checks sought to be exchanged at the cashiers' cage shall be:

1. Presented directly to the general cashier who shall:

i.-iv. (No change.)

v. Immediately exchange the check for currency and coin in an amount equal to the amount for which the check is drawn, not to exceed two hundred dollars ($200.00) per patron per day, **defined for purposes of this subparagraph as the 24 hour period extending from one midnight to the next,** if such check is exchanged for the purpose of nongaming; and

vi. (No change.)

(e)-(o) (No change.)

(p) At the end of [the] **each** gaming [activity each] day, at a minimum, the following procedures and requirements shall be observed:

1.-2. (No change.)

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

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

(n) At the end of **each** gaming [activity each] day, at a minimum, the following procedures shall be performed:

1.-3. (No change.)

(o)-(p) (No change.)

19:45-1.31 Procedure for closing game tables

(a) Whenever [the daily] gaming activity at [each] **a** gaming table is concluded, the gaming chips, coins and plaques remaining at the gaming table shall be counted by the dealer or boxman assigned to the gaming table and observed by a casino supervisor assigned to the gaming table.

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

(f) Upon meeting the signature requirements described in (d) above, the Opener and the gaming chips and plaques remaining at the table shall be placed in the container specified in N.J.A.C. 19:45-1.20, after which the container shall be locked and either transported directly to the cashiers' cage by a security department member or secured to the gaming table provided that there is adequate security, as approved by the Commisison. [(g) At the end of each gaming day, if] **If** the locked containers are transported to the cashiers' cage, a cage cashier shall determine that all locked containers have been returned [to], **or** if the locked containers are secured to the gaming table, a casino representative shall account for all the locked containers.

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

(a)-(h) (No change.)

(i) Procedures and requirements at the conclusion of the count for each gaming shift shall be the following:

1.-2. (No change.)

3. The Slot Cash Storage Box Report, after signing, shall be transported directly to the accounting department and shall not be available to any cashiers' cage personnel. The Accounting Department shall record the figures from the Slot Cash Storage Box Report on the Slot Win Report and calculate the total drop for that **gaming** day.

4. (No change.)

(j) (No change.)

19:45-1.34 Slot booths

(a) (No change.)

(b) The slot booth shall be designed and constructed to provide[, during gaming activity,] **at all times** maximum security for the materials housed therein and for the activities performed therein.

[(c) The slot booth shall be designed and constructed to provide maximum security for the materials housed therein during nongaming hours unless such booth is occupied at all times or the materials therein are transported to the cashiers' cage upon conclusion of gaming activity.]

19:45-1.35 Accounting controls for slot booths and change machines

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

(c) [At the beginning of gaming activity each day, at a minimum] **Prior to the end of the gaming day,** a copy of the Slot Cashiers' Count Sheets for the previous **gaming** day shall be forwarded to the accounting department for agreement of opening and closing inventories, agreement of amount thereon to other records and documents required by this regulation, and recording of transactions.

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

19:45-1.39 Progressive slot machines

(a)-(i) (No change.)

(j) The amount indicated on the "progressive meter(s)" and "in meter" on each slot machine shall be recorded on a Progressive Slot Summary, at a minimum, once each **gaming** day and each summary shall be signed by the preparer. Supporting documents shall be maintained to explain any reduction in the registered amount from the previous entry and shall indicate the date, asset number of the slot machine, and the amount of reduction.

(k) Unless otherwise authorized by the Commission, a progressive slot machine removed from the gaming floor shall be returned to or replaced on the gaming floor within five **gaming** days. The amount on the "progressive meter(s)" on the returned or replacement machine shall not be less than the amount of the "progressive meter(s)" at the time of removal. If the machine is not returned or replaced, then the "progressive meter(s)" amount at the time of removal shall be added to like machine or machines as approved by the Commission.

19:45-1.40 Jackpot payouts of cash

(a)-(i) (No change.)

(j) At the end of [the] **each** gaming [activity each] day, at a minimum, the original and duplicate of the Jackpot Payout Slip shall be forwarded as follows:

1.-2. (No change.)

19:45-1.40A Jackpot payouts of merchandise or other things of value

(a)-(i) (No change.)

(j) At the end of **each** gaming [activity each] day, at a minimum, the original Slip and duplicate copy of the Slip shall be forwarded as follows:

1.-2. (No change.)

(k)-(o) (No change.)

19:45-1.41 Procedure for filling payout reserve containers of slot machines

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

(k) At the end of [the] **each** gaming [activity each] day, at a minimum, the original and duplicate Hopper Fill Slip shall be forwarded as follows:

1.-2. (No change.)

19:45-1.42 Removal of slot drop buckets and slot cash storage boxes; meter readings

(a) [The drop bucket and the slot cash storage box for] **For** each slot machine and attached bill changer on the gaming floor, **the slot drop bucket and slot cash storage box** shall be removed **at least** once a week[, at a minimum,] on specific days and at times designated by the casino licensee on a schedule which shall be filed with the Commission and the Division. No **slot** drop bucket or, slot cash storage box shall be emptied or removed from its compartment at other than the times specified on such schedule except with the express [written] approval of [a] **the** Commission [inspector]. **Prior to emptying or removing any slot drop bucket or slot cash storage box, a casino licensee shall notify the Commission and the surveillance department of the transportation route that will be utilized.**

(b) Procedures and requirements for removing a **slot** drop bucket or slot cash storage box from its compartment shall be the following:

1. If the **slot** drop bucket or slot cash storage box meets the requirements of N.J.A.C. 19:45-1.36(b), (c), (d) and (e):

i. [The] **When the casino is not open to the public, the** removal of a **slot** drop bucket or slot cash storage box shall be[, at a minimum,] performed by **at least** three employees[; ii. One such employee], **one of whom** shall be a security department member **and two of whom shall be accounting department members.** [; and iii.] Such removal shall be in the presence of a Commission inspector.

ii. When the casino is open to the public, the removal of a slot bucket or slot cash storage box shall be performed by at least four employees, two of whom shall be security department members and two of whom shall be accounting department members. Such removal shall be in the presence of a Commission inspector.

2. If the **slot** drop bucket meets the requirements of N.J.A.C. 19:45-1.36[(g)] **(h),**[: i. The] **the** removal of a **slot** drop bucket shall be[, at a minimum,] performed by [two employees; and] **at least one employee of the security department and one employee of the accounting department.**

[ii. One such employee shall be a security department member.]

(c) Procedures and requirements for removing **slot** drop buckets and slot cash storage boxes from the [gaming floor] **casino** shall be the following:

1. If the **slot** drop buckets and slot cash storage boxes are removed in conformity with (b)1 above:

i. The **slot** drop bucket shall be removed from its compartment and an empty **slot** drop bucket shall be placed in the compartment after which the compartment shall be closed and locked; and on those slot machines where a bill changer is attached, the slot cash storage box shall be removed from its compartment and an empty slot cash storage box shall be placed in the compartment after which the compartment **and the bill changer door** shall be closed and locked;

ii. All **slot** drop buckets removed from the compartments shall be transported by **at least the** employees described in (b)1 above and a Commission inspector[, at a minimum,] directly to and secured in the count room for the counting of their contents; and

iii. All persons participating in the **slot** drop bucket and the slot cash storage box removal procedure, except for representatives of the Commission and Division, shall wear as outer garments only a full-length, one piece pocketless garment with openings only for the arms, feet and neck.

2. If the **slot** drop buckets are removed in conformity with (b)2 above:

i. The **slot** drop bucket shall be removed from its compartment and an empty **slot** drop bucket shall be placed into the compartment; and

ii. All **slot** drop buckets removed from compartments shall be transported by[, at a minimum,] **at least** a Commission inspector, security department member and count room supervisor directly to, and secured in, the count room for the count of the contents, except that slot cash storage boxes removed on an emergency basis shall be transported by **at least** a Commission inspector, a security department member and a cage supervisor or count room supervisor[, at a minimum,] directly to and secured in the count room.

(d) In addition to complying with the procedures included in (b) and (c) above, a casino licensee shall submit to the Commission for approval its procedures detailing how the slot drop bucket and slot cash storage box for each slot machine and attached bill changer on the gaming floor will be emptied or removed from its compartment when the casino is open to the public for 24 hours. Such submission shall include at least the following:

1. How patrons will be notified that a slot machine will be closed for emptying or removing slot drop buckets or slot cash storage boxes;

2. How patrons will be removed from slot aisles;

3. How the area will be secured while the slot drop buckets or slot cash storage boxes are emptied or removed; and

4. How the compartments in which the full slot drop buckets or slot cash storage boxes are transported will be secured when in the casino.

[(d)](**e**) Accounting department employees with no incompatible functions shall, **at least** once a week[, at a minimum,] read and record on a Slot Meter Sheet the number on the in-meter, drop meter, jackpot meter, manual jackpot meter, change meter and bill meters. These procedures shall be performed in conjunction with the removal and replacement of the **slot** drop buckets or slot cash storage boxes prior to opening the slot machines for patron play.

Recodify existing [(e)] as (**f**) (No change in text.)

19:45-1.43 Slot count; procedure for counting and recording contents of **slot** drop buckets

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

(f) Immediately prior to counting the contents of the **slot** drop buckets, the doors to the count room shall be securely locked, the counting devices to be used shall be checked for accuracy by employees with no incompatible functions, and, except as required by [(j)1] **(j)2** below, no person shall be permitted to enter or leave the count room, except during a normal work break or in an emergency, until the entire counting[,] **and** recording[, and verification] process is completed. During a work break or in the event of an emergency, the counting and recording process shall be discontinued unless the appropriate number of personnel as described in (c) above are present.

(g)-(h) (No change.)

(i) Procedures and requirements for conducting the count shall be the following:

1. Before each **slot** drop bucket is emptied, one count team member shall hold up the **slot** drop bucket, in full view of the closed circuit television camera and the person recording the count, to properly record the **slot** drop bucket number;

2. The contents of each **slot** drop bucket shall be emptied, counted, and recorded separately and such procedures shall at all times be conducted in full view of the closed circuit television cameras located in the count room;

3. The coin contents of each **slot** drop bucket shall be emptied separately into either a machine that automatically counts the coins placed therein or a scale that automatically weighs the coins placed therein;

4. Immediately after the coin contents of each **slot** drop bucket are emptied into either the count machine or scale or, if currency, on a table in the count room, the inside of the **slot** drop bucket shall be held up to the full view of the closed circuit television camera and shall be shown to at least one other slot count team member and the Commission inspector to assure all contents of the **slot** drop bucket have been removed;

5. As the contents of each **slot** drop bucket is counted by the count machine or weighed by the scale, or, if currency, by two count team members, one member shall record on the Slot Win Sheet, or supporting document, the asset number of the slot machine to which the slot drop bucket contents corresponds, if not preprinted thereon and the number of coin or the weight of the coin and/or the value of the coin and/or currency counted. If the coin value is not converted until after the count is completed, the conversion shall be prepared and the dollar value of the drop shall be entered by denomination on the Slot Win Report[.];

6. After the contents of all the **slot** drop buckets are counted or weighed and recorded, each count team member shall sign the Slot Win Sheet [attesting to the accuracy of the information recorded thereon; and] **or other document as approved by the Commission attesting to their involvement in the count;**

7. After the contents of all the slot drop buckets are counted or weighed and recorded, any count team employees not required pursuant to (i)7ii below may be permitted to exit the count room provided that the following requirements are satisfied:

i. The Slot Win Sheet or other approved document must be signed by each employee exiting the count room, in accordance with (i)6 above;

ii. At least three count team employees must remain in the count room until the verification process is completed;

iii. Surveillance must be notified prior to any employees exiting the count room;

iv. All activity in the hard count room shall be discontinued during any period when an employee is exiting the count room; and

v. A security department employee shall check all persons leaving the count room with metal detector, in the presence of a Commission inspector, at a location approved by the Commission and Division; and

[7.]**8.** At the conclusion of the count process any slugs that are found during the slot **drop** bucket pick-up or count process will be delivered to an agent of the Division together with a copy of the Slug Report. The Slug Report shall be a three-part form, at a minimum, which shall include the date, the total number of slugs received and the signature of the preparer and shall be distributed as follows:

i.-iii. (No change.)

(j) Procedures and requirements at the conclusion of the count shall be the following:

1. At least one count team member shall sign the Slot Win Sheet attesting to the accuracy of the information recorded thereon.

[1.]**2.** The wrapped coin and currency removed from the **slot** drop [bucket] **buckets** shall be counted in the count room, in the presence of a count team member and a Commission inspector, by a cage cashier or slot cashier, prior to [his] **the cashier** having access to the information recorded on the Slot Win Sheet. The cage cashier or slot cashier shall attest by signature on the Slot Win Sheet to the accuracy of the amount of coin and currency received from the slot machines; after which the Commission inspector shall sign the Slot Win Sheet evidencing [his] **the inspector's** presence during the count and the fact that both the cashier and count team have agreed on the total amount of coin and currency counted. The coin and currency thereafter shall remain in the custody of cage cashiers or slot cashiers.

Recodify existing 2.-5. as **3.-6.** (No change in text.)

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

(a)-(g) (No change.)

(h) [On a daily basis] **At the end of each gaming day**, a slot cashier, accompanied by a security department representative, shall remove the coupons accepted by the automated coupon redemption machine. Any coin or slot tokens removed from the automated coupon redemption machine during the removal of coupons or during any other time shall be placed in a secured container, as approved by the Commission, with the automated coupon redemption machine asset identification number attached or recorded thereon. Upon removal of the coupons and/or coins or slot tokens from the automated coupon redemption machine, a serially prenumbered three-part form, at a minimum, shall be prepared by the slot cashier. Each series of forms shall be used in sequential order, and the series numbers of all forms received by a casino shall be accounted for by employees with no incompatible functions. All original, duplicate and triplicate void forms shall be marked "VOID" and shall require the signature of the preparer. The following copies shall contain, at a minimum, the following information:

1.-2. (No change.)

(i)-(n) (No change.)

(o) At the end of [the] **each** gaming [activity each] day, at a minimum, the original, duplicate and triplicate copies of the forms referenced in (h), (i), (j), (k), (m) and (n) above shall be forwarded to the accounting department for agreement and shall be used to reconcile each automated coupon redemption machine in a manner as approved by the Commission.

(p) (No change.)

19:46-1.1 Gaming chips; value and non-value; physical characteristics

(a)-(k) (No change.)

(l) An impressment of each roulette table on the gaming floor shall be completed **at least** once a week[, at a minimum, on specific days and at times designated by the casino licensee on a schedule which shall be filed with the Commission and Division.] **A casino licensee shall not complete a roulette table impressment unless it provides at least one-half hour prior notice to the Commission.** The casino licensee shall record the results of such impressment in the Chip Inventory Ledger and shall utilize a "Non-Value Roulette Chip Impressment" form to perform such impressments as follows:

[1. At the end of swing shift:]

[i.]**1.** A casino department supervisor shall complete the "Non-Value Roulette Chip Impressment" form to record missing and excess chips and shall deliver the form[s] and excess chips to the main bank or fill bank; [and]

[ii. A Cage Cashier shall prepare the chips needed to impress the tables.]

2. Upon receipt of the "Non-Value Roulette Chip Impressment" form, a main bank cashier or fill bank cashier shall immediately prepare the chips needed to impress the table; and

[2. Prior to opening the roulette tables for gaming:]

[i. A] **3. The** casino department supervisor shall **then** deliver, **directly to the appropriate table,** the chips needed to impress [each] **that** table [to each pit].

(m) The completed "Non-Value Roulette Chip Impressment" form shall be maintained by the Accounting Department and shall contain, at a minimum, the following:

1.-2. (No change.)

3. Signature of the **casino department** supervisor [completing]

who completes the "Non-Value Roulette Chip Impressment" form **and the roulette table impressment; and**

4. Signature of the [Cage Cashier] **main bank cashier or fill bank cashier** preparing the impressment[; and

5. Signature of the supervisor who receives the chips from the Cage Cashier for delivery to each pit].

(n)-(p) (No change.)

19:46-1.6 Receipt of gaming chips, tokens or plaques from manufacturer or distributor; inventory, storage and destruction of chips, tokens and plaques

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

(f) [Each] **At the end of each gaming day, a** casino licensee shall[, on a daily basis,] compute and record the unredeemed liability for each denomination of chips and plaques, and shall cause to be made, at least on a monthly basis, an inventory of chips and plaques in circulation and in reserve and shall cause the result of such inventory to be recorded in the chip inventory ledger. The procedures to be utilized to compute the unredeemed liability and to inventory chips and plaques in circulation and reserve shall be submitted to the [commission] **Commission** for approval. A physical inventory of chips and plaques in reserve shall only be required annually if the inventory procedures incorporate the sealing of the locked compartment.

(g) (No change.)

(h) [During non-gaming hours] **When the casino is not open to the public,** all chips and plaques in the possession of the casino shall be stored in the chip bank, in the casino vault, or in a locked compartment in the cashiers' cage, except that chips or plaques may be locked in a transparent compartment on gaming tables provided that there is adequate security as approved by the [commission] **Commission**.

(i) (No change.)

19:46-1.9 Roulette; inspection procedures; security [during non-gaming hours] **procedures**

(a) Prior to opening a roulette table for [daily] gaming activity, a casino supervisor or member of the casino security department shall:

1.-4. (No change.)

(b) If a casino licensee uses a roulette wheel which has external movable parts, **any adjustments to the movable parts shall be made by** a casino supervisor or a member of the casino maintenance department [shall], in the presence of a security department member[, make any adjustments to the movable parts only during non-gaming hours]. **Adjustments to the movable parts of a roulette wheel that is located on the casino floor shall only be made:**

1. When the casino is not open to the public; or

2. If the roulette wheel is moved to a secure location off the casino floor as approved by the Commission.

(c) [These] **All** adjustments shall be completed prior to the required inspections in (a) above.

(d) The casino licensee may replace any of the movable parts at any time, provided, however, if any one or more of the [moveable] **movable** parts are external then an inspection must be completed by the Division prior to reopening the roulette wheel and table for gaming activity.

(e) A log shall be maintained which shall include, at a minimum, the date, the roulette table number, whether an adjustment or replacement was completed and the signature of the person making the adjustment or replacement.

[(c)]**(f)** [At the conclusion of each gaming day, each] **When a roulette table is not open for gaming activity, the** roulette wheel [in the casino] shall be secured by placing a cover over the entire wheel and securely locking such cover to the roulette table.

19:46-1.16 Dice; receipt, storage, inspections and removal from use

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

(c) Immediately prior to the commencement of [gaming] each shift or **gaming** day and at such other times as may be necessary, the assistant shift manager or person above him **or her**, in the presence of a security officer, shall open the cabinet or primary storage area and shall remove the appropriate number of sets of dice for that shift or **gaming** day.

(d) All envelopes and containers used to hold or transport preinspected dice to the casino floor and those collected by security at the end of each shift or **gaming** day shall be transparent.

1. (No change.)

2. The envelopes or containers and seals shall be approved by the Commission [or its authorized designee].

(e) Unless otherwise approved by the Commission [or its authorized designee], all dice shall be inspected and distributed to the gaming tables in accordance with one of the following alternatives:

1.-2. (No change.)

3. Alternative No. 3: Inspection in storage area and distribution to tables:

i.-iii. (No change.)

iv. At the beginning of each shift or **gaming** day and at such other times as may be necessary, an assistant shift manager or person above him **or her** and a security officer shall distribute the envelopes or containers to a craps supervisor in each craps pit or place them in a locked compartment in the pit stand, keys to which shall be in the possession of the pit boss or those persons above him **or her** in the organizational hierarchy;

v.-viii. (No change.)

(f) (No change.)

(g) At the end of each shift or **gaming** day, a craps supervisor other than the one who originally inspected the dice, shall reinspect each [dice] **die** for evidence of tampering. Such evidence discovered at this time or at any other time shall be immediately reported to an agent of the Commission and Division by the completion and delivery of an approved three-part Dice Discrepancy Report.

1. Such dice shall be placed in a sealed envelope or container.

i.-ii. (No change.)

iii. The Commission Inspector receiving the dice shall sign the original, duplicate and triplicate copy of the Dice Discrepancy Report and retain the original at the Commission Booth.

(1) (No change.)

(2) The triplicate copy shall be returned to the pit and shall be maintained in a secure place within the pit until a security officer collects it at the end of each shift or **gaming** day.

2. All other dice at this time shall be put into envelopes or containers.

i. (No change.)

ii. The envelope or container shall be appropriately sealed and maintained in a secure place within the pit until a security officer collects it at the end of each shift or **gaming** day.

(h) All extra dice in dice reserve that are to be destroyed or cancelled shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

[(h)]**(i)** At the end of each shift or **gaming** day, a security officer shall collect and sign all envelopes or containers of used dice and [collect all triplicate copies of Dice Discrepancy Reports, if any,] **any dice in dice reserve that are to be destroyed or cancelled** and shall transport them to the security department for cancellation or destruction. **The security officer shall also collect all triplicate copies of Dice Discrepancy Reports, if any. No dice that have been placed in a cup for use in gaming shall remain on a table for more than 24 hours.**

[(i)]**(j)** At the end of each shift or **gaming** day, a security officer [shall] **may** collect all extra dice in dice reserve.

1. [All sealed envelopes or containers] **If collected, dice** shall [either] be [destroyed or cancelled or] returned to the cabinet or primary storage area[.

2. All envelopes or containers with broken seals shall be returned to the security department for cancellation or destruction]; provided, however, that [unused] **any such** dice [may be returned to the cabinet or primary storage area if] **must be** reinspected in accordance with one of the alternatives listed **in (e)** above, prior to their use for [actual] gaming.

2. If not collected, all dice in dice reserve must be reinspected in accordance with one of the alternatives listed in (e) above, prior

to their use for gaming, except for those dice maintained in a locked compartment pursuant to (e)2v(2) or (e)3vi above.

[(j)](k) The casino licensee shall submit to the Commission [or its authorized designee] for approval, procedures for:

1. (No change.)

2. A [daily] reconciliation **on a daily basis** of the dice distributed [and], the dice destroyed and cancelled and/or returned to the storage room **and, if any, the dice in dice reserve**; and

3. (No change.)

[(k)](l) All dice, other than those retained for Commission or Division inspections, shall within 48 hours of collection be either destroyed or cancelled.

1.-2. (No change.)

3. The destruction and cancellation of dice shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee].

19:46-1.18 Cards; receipt, storage, inspections and removal from use

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

(c) Immediately prior to the commencement of [gaming] each shift or **gaming** day and **at** such other times as may be necessary, the assistant shift manager or person above him **or her**, in the presence of a security officer, shall open the cabinet or primary storage area and shall remove the appropriate number of decks of cards for that shift or **gaming** day.

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

(f) Card inspection at the gaming table shall require each pack to be used to be sorted into sequence and into suit to assure that all cards are in the deck.

1. (No change.)

2. All envelopes and containers used to hold or transport cards collected by security at the end of each shift or **gaming** day shall be transparent.

i. (No change.)

ii. The envelopes or containers and seals shall be approved by the Commission [or its authorized designee].

iii. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or **gaming** day.

(g) No cards that have been used in gaming shall remain on a table for more than 24 hours. Additionally, cards used to game at baccarat shall be changed at least once during the gaming day.

[(g)](h) Cards damaged during the course of play shall be replaced by the dealer who shall request a casino supervisor to bring cards in substitution from the pit stand.

1. (No change.)

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or **gaming** day.

[(h)](i) At the end of each shift or [gaming] day and at such other times as may be necessary, the casino supervisor shall collect all cards used to play out the shift or **gaming** day.

1. (No change.)

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or **gaming** day.

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

(k) All extra decks in card reserve with broken seals shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

[(j)](l) At the end of each shift or **gaming** day, a security officer shall collect and sign all envelopes or containers with damaged cards [and], cards used during the shift or **gaming** day, **and all extra decks in card reserve with broken seals** and shall return the envelopes to the security department.

[(k)](m) At the end of each shift or **gaming** day, a security officer [shall] **may** collect all extra decks in card reserve. [1. All] **If collected, all** sealed decks shall either be cancelled or destroyed or returned to the cabinet or primary storage area.

[2. All decks with broken seals shall be placed in a sealed envelope or container.

i. A label shall be attached to each envelope or container which shall identify the date, time and be signed by the pit boss, and the security officer collecting the cards.

ii. The envelopes or containers shall be returned to the security department for cancellation or destruction.]

[(l)](n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. The casino licensee shall cause to be inspected either:

i. All decks used during the **gaming** day; or

ii. A sample of decks selected at random or in accordance with an approved stratification plan provided that the procedures for selecting the sample size and for assuring a proper selection of the sample is submitted to and approved by the Commission [or its authorized designee];

2.-4. (No change.)

5. The casino licensee shall submit the training procedures for those employees performing the inspection, which shall be approved by the Commission [or its authorized designee];

6. Evidence of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play discovered at this time, or at any other time, shall be immediately reported to [an agent of] the Commission and the Division by the completion and delivery of an approved three-part Card Discrepancy Report.

i. The report shall accompany the cards when delivered to the [agent of the] Commission.

ii.-iii. (No change.)

[(m)](o) The casino licensee shall submit to the Commission [or it authorized designee] for approval, procedures for:

1. (No change.)

2. A [daily] reconciliation **on a daily basis** of the cards distributed [and], the cards destroyed and cancelled [and/] or returned to the storage room **and, if any, the cards in card reserve**;

3. A physical inventory of the cards at least once every three months.

i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of cards on hand required in [(m)1i] **(o)1i** above.

ii. (No change.)

[(n)](p) Where cards in an envelope or container are inspected and found to be without any indication of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play, those cards and all other used cards shall within 48 hours of collection be destroyed or cancelled. Once released by the Commission and Division, the cards submitted as evidence shall immediately be destroyed or cancelled.

1.-2. (No change.)

3. The destruction and cancellation of cards shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee].

19:46-1.19 Dealing shoes

(a) (No change.)

(b) Cards used to game at blackjack, minibaccarat and red dog shall be dealt from a dealing shoe which shall be securely chained to the gaming table [during gaming hours] **when the table is open for gaming activity** and secured in a locked compartment [during non-gaming hours] **when the table is not open for gaming activity.** Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment [during non-gaming hours] **when the table is not open for gaming activity**.

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

19:46-1.20 Approval of gaming equipment; retention by commission and division; evidence of tampering

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

(c) Any evidence that gaming equipment or other devices used in a casino including, without limitation, gaming tables, layouts,

roulette wheels, roulette balls, drop boxes, big six wheels, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, data processing equipment, tokens and slot machines have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino shall be immediately reported to an agent of the Commission and Division. A member of the casino licensee's security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice and cards may be found at N.J.A.C. 19:46-1.16(g) and 19:46-1.18[(l)](n), respectively.

(a)

CASINO CONTROL COMMISSION

Applications; Payment of Fees Hearings; Administrative Review

Proposed Amendment: N.J.A.C. 19:41-9.3 Proposed New Rules: 19:42-10

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), (d) and (e), 69, 70(e), 94, 95, 107, 142, and N.J.S.A. 52:14B-12.

Proposal Number: PRN 1991-540.

Submit written comments by December 4, 1991 to:
Leonard J. DiGiacomo, Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules and related amendments will establish a procedure for the Commission to suspend administratively a license or registration, or to dismiss an application, whenever a required fee or civil penalty remains unpaid.

N.J.A.C. 19:41-9.3 already provides that no application shall be accepted or processed unless all required fees are paid. For the convenience of applicants, the Commission permits payments to be made by personal check. In addition, certain fees (such as casino key employee license fees, N.J.A.C. 19:41-11) are not finally determined until after the application has been accepted for filing. Occasionally, deposited checks are returned unpaid and invoices for actually incurred costs go unheeded.

In addition, the Commission, after notice and a hearing, has imposed civil penalties on licensees and registrants who have violated the Casino Control Act (Act) or the rules promulgated thereunder. Although most of these penalties are timely paid, some remain outstanding.

Instances have arisen where a person is employed by or doing business with a casino licensee despite holding a license or registration that is invalid because all required fees have not been paid. However, the benefit of licensure, that is, working for or doing business with a casino licensee, should extend only to those persons who hold valid credentials.

Under the new rules, the Commission would notify an applicant, licensee or registrant with an unpaid fee or civil penalty obligation that it is required to attend an informal conference at which the Commission would administratively review whether there actually is an unpaid obligation. If a debt is owed, the Commission would then administratively suspend all licenses or registrations, or dismiss any application, until the indebted licensee, registrant or applicant pays for all its outstanding obligations for required fees or civil penalties.

Additionally, the rules are being amended specifically to declare that the failure to pay a civil penalty timely shall be cause for the Commission administratively to suspend any license or registration held by the person owing the civil penalty.

Social Impact

Although the Commission has the inherent authority to declare any license or registration invalid if all required fees and civil penalties are not paid, there would be a disruptive social impact on those persons who would lose their jobs or would have their business relationships severed by such a declaration. Thus, the proposed new rules and related amendment are designed to mitigate that impact by affording a fair and rational process for disposing of these cases.

It would be equally unfair, however, to permit licensees who have intentionally failed to satisfy their fee or civil penalty obligations to continue to hold and receive the benefits of their licenses. The proposed new rules and amendment would therefore promote public faith and confidence in the regulatory process in accordance with the objectives of the Act. N.J.S.A. 5:12-1(b).

Economic Impact

Under the Act, the Commission and the Division of Gaming Enforcement (Division) are to be self-supporting from the fees collected from the various entities which apply to the Commission for licensure. *Atlantic City Casino Association v. Casino Control Commission,* 203 *N.J. Super* 230 (App. Div. 1985), certif. denied, 102 *N.J.* 326 (1985). Towards that end, it is anticipated that the proposed new rules and related amendment will improve the Commission's ability to collect on unpaid fees, and thus reduce any deficit in the Casino Control Fund. Likewise, prompt collection of civil penalties will further the objectives to which those funds are dedicated. P.L. 1991, c.182, §58.

Obviously there will be an economic impact on those who are required to pay. Such an impact is justified as a natural consequence of the debtor-creditor relationship. Furthermore, by improving the Commission's ability to collect from those who actually cause the Commission and the Division to incur costs, the proposed new rules and amendment may reduce the fee obligations owed by casino licensees.

Regulatory Flexibility Analysis

Given that casino licensees are not "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., any effect that the proposed rules have on those licensees does not require compliance with that statute.

Under N.J.A.C. 19:41-9.3(a)1, casino service industries, some of which may be "small businesses," are required to pay a fee in order to have the Commission accept a license application for filing. Those entities are also currently obligated to pay such civil penalties as may be imposed.

The proposed rules do not alter those requirements. Rather, they are merely intended to enhance the Commission's ability to collect a fee or civil penalty that remains unpaid. Furthermore, any negative impact that the proposed rules may have on small businesses is minimized because the Commission's fee rules already attempt to equitably distribute liability for the payment of fees to those best able to pay, that is, casino licensees. N.J.A.C. 19:41-9.1.

To the extent that the proposed rules would require a small business to attend an administrative review conference, such a requirement is ancillary to the entity's general obligation to pay all required fees and civil penalties.

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

19:41-9.3 Payment of fees **and civil penalties**

(a) No application shall be accepted for filing by the [Chairman] **Commission** or processed by the Commission or the Division except upon proper and timely payment of all required fees **and civil penalties** in accordance with the Act and the regulations of the Commission. Any portion of a fee which is incurred or determined after the filing of the application or which is estimated in accordance with this subchapter**, and any civil penalty imposed by the Commission,** shall be payable upon demand made by the Commission through its Division of Financial Evaluation [and Control]. Failure to promptly remit any amount so demanded shall be deemed a failure to timely pay the required fee **or civil penalty** unless the [Chairman] **Commission** finds cause to permit an extension of time in which to remit the demanded amount.

(b) Any fee **or civil penalty** required to be paid in accordance with this subchapter **or pursuant to an order of the Commission** shall be paid before the Commission shall consider the application for issuance or renewal of licensure, unless the [Chairman] **Commission** finds cause to permit an extension of time in which to pay such fee or **civil penalty.**

(c) All fees **and civil penalties** shall be paid by check or money order made payable, **in the case of fees,** to the "Casino Control Fund" **and, in the case of civil penalties, to the "Casino Revenue Fund,"** and presented to the Commission at its offices. No check so presented shall be deemed payment until the Commission shall be satisfied that sufficient funds are contained in the account against which it is drawn.

(d) Unless otherwise directed by the Commission, all payments of fees or civil penalties received from licensees, registrants or applicants shall be credited against, in chronological order (the oldest shall be paid first), any outstanding debts for fees or civil penalties that the person owes pursuant to the Act and the regulations of the Commission.

(e) A required fee or civil penalty shall be considered paid only if the Commission is satisifed that the person obligated to pay the fee or civil penalty owes no other debts for fees or civil penalties.

(f) Any required fee or civil penalty that a person fails to pay despite demand therefor shall constitute cause for the Commission to dismiss administratively any application submitted by such person, or to suspend administratively any license or registration held by such person, including a license or registration that has been issued, or an application that has been submitted, before the debt arose.

SUBCHAPTER 10. ADMINISTRATIVE REVIEW OF UNPAID FEES AND CIVIL PENALTIES

19:42-10.1 Commencement

(a) The Commission may, on its own motion, administratively review the issuance or renewal of any license, the registration of any person, the acceptance of any application or the failure to pay any civil penalty where cause exists to question whether all required fees or civil penalties have been paid.

(b) The Commission shall initiate the administrative review by notifying any person who apparently has failed to pay a required fee or civil penalty that all applications, licenses or registrations held or submitted by such person will be dismissed or suspended, as applicable, unless the person attends an administrative review conference conducted by the Commission.

(c) The notice scheduling an administrative review conference shall be served either by regular and certified mail, return receipt requested, or, in the case of an individual employed at a casino hotel, by personal service through a Commission inspector. The notice shall specify a date for the conference that is not earlier than 15 days after the date the notice is served and shall schedule a date subsequent to the date of the conference on which the Commission shall consider dismissing the application or suspending the license or registration unless the matter has been resolved to the satisfaction of the Commission prior thereto.

(d) The Division shall be given notice of the administrative review conference; however, the Division's attendance is not required nor necessary unless it objects to the proposed Commission action.

19:42-10.2 Repayment plans

If, at any time after the administrative review is initiated, the person admits the debt but reasonably demonstrates that it cannot immediately pay in full, then the Commission may structure a repayment schedule consistent with the ability to pay. If the person agrees to the terms of the repayment schedule, further action in the administrative review shall be postponed in order to afford the person the opportunity to satisfy the terms of the repayment agreement. If a default occurs under a repayment agreement, the administrative review shall be reinstituted; provided, however, that no further repayment plan shall be allowed unless the debtor demonstrates that extraordinary circumstances exist. The administrative review shall cease and the matter shall be closed once the Commission is satisfied that the person has fully complied with the terms of the repayment agreement.

19:42-10.3 Administrative review conference

(a) The administrative review conference is an informal proceeding designed to facilitate a fair, expeditious and orderly disposition of the Commission's administrative review of unpaid fees and civil penalties. Any person that is notified to attend such a conference is required to appear and may be represented by counsel. If the person so notified is a corporation, it may appear without counsel provided it does so through one of its principals.

(b) Attendance at a scheduled administrative review conference is mandatory, and the failure to attend such a conference shall constitute cause to dismiss immediately all applications, or suspend all licenses or registrations, held or submitted by the person served with notice pursuant to N.J.A.C. 19:42-10.1.

(c) During the administrative review conference, the person required to attend the conference may present any information that would demonstrate that all required payments have been made.

19:42-10.4 Disposition of fee matters and civil penalties

(a) If, after the administrative review is initiated, the Commission determines that no debt is owed, or the applicant, licensee or registrant pays the debt in full, the matter shall be closed.

(b) If the matter remains open after an administrative review conference, the Commission shall so advise the person attending the conference, and the matter shall proceed to a hearing before the Commission on the date specified in the notice served pursuant to N.J.A.C. 19:42-10.1(c), unless, prior to the Commission hearing the matter, the person served with such notice pays the debt in full or agrees to a repayment plan that is acceptable to the Commission.

(c) At the hearing, the Commission may dismiss all applications, and may suspend all licenses or registrations, of any person who has failed to pay all required fees or civil penalties owed by that person.

19:42-10.5 Restoration upon payment

(a) Any license or registration that has been administratively suspended shall be reinstated upon payment of all outstanding amounts. Any application that has been administratively dismissed shall be reactivated if, within 45 days of the dismissal, all outstanding amounts are paid.

(b) An administrative suspension of any license in accordance with this subchapter shall not affect the term of such license, which shall expire on its stated expiration date.

(c) The Commission shall notify each casino licensee of any action that it has taken to administratively dismiss or reactivate any application, or to administratively suspend or reinstate any registration or any license other than a casino license, and each casino licensee, upon receiving such notice, shall comply with any Commission directions concerning any such application, license or registration.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Personnel Assigned to the Operation and Conduct of Low Limit Table Games

Proposed New Rule: N.J.A.C. 19:45-1.12A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63, 5:12-69, 5:12-70(j) and 5:12-99.
Proposal Number: PRN 1991-542.

Submit comments by December 4, 1991 to:
David C. Missimer
Senior Assistant Counsel
Casino Control Commission
Tennessee and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

In order to assure that gaming tables are sufficiently staffed to carry out the various accounting and internal control requirements set forth in N.J.A.C. 19:45, N.J.A.C. 19:45-1.12 establishes minimum staffing requirements for the operation of casino table games. Casino licensees have maintained that they are unable to offer low stakes table games to the

Atlantic City gaming public as a result of the significant operating costs which result from these minimum staffing requirements.

The proposed new rule is intended to provide casino licensees with the opportunity to offer low stakes table games to the public by allowing casino licensees to propose their own methods of reducing staffing requirements while still preserving the integrity of gaming operations. More specifically, casino licensees would be permitted to submit proposals pursuant to which low limit tables, that is, tables with $25.00 maximum wagers and minimum wagers of $5.00 or less, could be operated with less personnel than otherwise required. Each casino licensee would be required to explain in its proposal how the various requirements of the Commission's rules would be satisfied using fewer personnel. For example, it is anticipated that the elimination of casino credit at such tables might be one method of justifying the use of fewer supervisory personnel.

Social Impact

Since the offering of low limit table games under the proposed new rule would be discretionary, it is difficult to project what effect, if any, the rule would have on casino licensees and the gaming public. If utilized by casino licensees, it is possible that the new rule would allow casino licensees to offer profitable low stakes table games to the gaming public. This might encourage renewed interest and participation in casino gaming by low stakes players. It is not anticipated that the proposed rule would have any significant impact on the regulatory agencies.

Economic Impact

If low stakes table games were offered by casino licensees and accepted by the public, it is possible that the new rule would have a positive economic effect on casino licensees and those persons who benefit from programs funded by taxes raised from casino gaming. It is not anticipated that the regulatory costs of the Commission or the Division of Gaming would be significantly affected should the proposed new rule be adopted.

Regulatory Flexibility Statement

The proposed new rule will only affect the operation of casino licensees, none of which qualify as a "small business" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rule follows:

19:45-1.12A Personnel assigned to the operation and conduct of low limit table games

(a) Notwithstanding the provisions of N.J.A.C. 19:45-1.12 or any other Commission rule to the contrary, a casino licensee may offer table games which do not meet the minimum staffing requirements of N.J.A.C. 19:45-1.12 provided that:

1. The maximum wager permitted on such table games shall be $25.00;

2. Any minimum wager required on such table games shall be no higher than $5.00; and

3. The casino licensee has received Commission approval of its low limit table games submission in accordance with (b) below.

(b) Each casino licensee may request Commission approval to operate low limit table games pursuant to this section by filing a submission at least 30 days before the operation of such table games is to commence or before changes in a previous submission are to become effective, unless otherwise permitted by the Commission. Each such submission shall contain, without limitation, the following information:

1. A floor plan of the casino showing the type, location and configuration of all low limit table games proposed by the casino licensee and all other table games located within the same pit as a low limit table game;

2. The minimum staffing requirements proposed by the casino licensee for the low limit table games, the pits within which they are located and an explanation of any differences between the proposal and the requirements of N.J.A.C. 19:45-1.12; and

3. Any proposed amendments to the casino licensee's accounting and internal control submission which are necessary to enable the casino licensee to comply with the requirements of the regulations as a result of a reduction in the number of supervisory personnel or dealers involved in the operation of low limit table games.

(c) In explaining why a reduced staffing requirement is sufficient for its low limit table games, a casino licensee may justify its proposal in any way it deems appropriate including, without limitation, the elimination of the availability of casino credit at such tables.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Rules of the Games
Blackjack Table; Physical Characteristics Cards; Number of Decks; Value of Cards
Permissible Additional Wager
Proposed Amendments: N.J.A.C. 19:46-1.10 and 19:47-2.2
Proposed New Rule: N.J.A.C. 19:47-2.17

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-70(f) and 100(e).

Proposal Number: PRN 1991-544.

Submit comments by December 4, 1991 to:
Barbara A. Mattie, Chief Analyst
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendments and new rule would give a casino licensee the discretion to offer a patron the option to make an additional wager at the game of blackjack. Specifically, prior to receiving his or her first two cards, a patron could place an additional wager, up to the amount of his or her original wager, on whether the point total of his or her first two cards will be greater than or less than 13. All cards have the same value as currently assigned in N.J.A.C. 19:47-2.2, with the exception of an ace, which, for the sole purpose of determining the outcome of the additional wager, has a value of one.

If the patron wagers that the score of his or her first two cards shall be less than 13 and the point total of the first two cards is less than 13, the patron would win. Likewise, if the patron wagers that the point total of his or her first two cards shall exceed 13, and the point total of his or her first two cards exceeds 13, the patron would win. The patron's wager shall be lost if the point total of his or her first two cards equals 13, or the patron made a wager that the point total of his or her first two cards would be greater than or less than 13 and the actual point total is not consistent with his or her wager. All winning wagers would be paid at odds of one to one.

Social Impact

The proposed amendments and new rule are not anticipated to have any significant social impact. They would allow a casino licensee to offer an additional wager in the game of blackjack, which may increase interest and participation among patrons.

Economic Impact

The proposed amendments and new rules would permit casino licensees to make use of new strategies in marketing their table games, which may help them increase participation and gaming revenues. Casinos which elect to utilize this option may benefit by realizing increased revenues at the game of blackjack.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required for this proposal. The proposed amendments and new rule only affect licensed casinos in Atlantic City, none of which are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:46-1.10 Blackjack table; physical characteristics

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

(e) If a casino licensee offers the additional wager authorized by N.J.A.C. 19:47-2.17, the cloth covering the blackjack table shall have designated areas for the placement of the additional wager and the payout odds for the additional wager imprinted thereon.

19:47-2.2 Cards; number of decks; value of cards

(a) (No change.)

(b) The value of the cards contained in each deck shall be as follows:

1.-2. (No change.)

3. An ace shall have a value of [eleven]:

i. Eleven, unless that **value** would give a player or the dealer a score in excess of 21, in which case, it shall have a value of [1] **one; or**

ii. One, if the ace is one of the initial two cards dealt to a player in determination of the additional wager authorized by N.J.A.C. 19:47-2.17; provided, however, that the value of such ace for all other purposes under this subchapter shall be governed by (b)3i above.

(c) (No change.)

19:47-2.17 Permissible additional wager

(a) A casino licensee may, in its discretion, offer to all players at a blackjack table the option to make an additional wager on whether the player's initial two cards shall have a point total either greater than or less than 13, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3 prior to withdrawing the offer of this option.

(b) Prior to the first card being dealt for each round of play, each player shall make a wager against the dealer as required by N.J.A.C. 19:47-2.3(a) and (d) and shall also indicate whether he or she wishes to make an additional wager that:

1. The point total of the player's initial two cards shall exceed 13, which wager shall win if the point total does exceed 13; or

2. The point total of the player's initial two cards shall be less than 13, which wager shall win if the point total is less than 13.

(c) An additional wager made in accordance with this section shall be lost when the point total of the player's initial two cards equals 13.

(d) All losing additional wagers shall be collected by the dealer immediately after the second card is dealt to each player and prior to any additional cards being dealt to any player at the table.

(e) All winning additional wagers shall be paid at odds of one to one immediately after the second card is dealt to each player and prior to any additional cards being dealt to any player at the table.

(f) An additional wager shall be made by placing gaming chips or plaques on the appropriate area of the blackjack layout except that a verbal wager accompanied by cash may be accepted provided that it is confirmed by the dealer and casino supervisor at the table prior to the first card being dealt to any player and such card is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(g) Any additional wager made pursuant to this section shall not exceed the amount of the blackjack wager made by the player pursuant to N.J.A.C. 19:47-2.3(a) and (d). An additional wager shall have no bearing on any other wager made by the player at the game of blackjack.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Slot Machine Denominations
Proposed Amendment: N.J.A.C. 19:46-1.27

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a), 70(f).

Proposal Number: PRN 1991-545.

Submit comments by December 4, 1991 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendment would eliminate minimum requirements for the percentage of nickel and quarter denomination slot machines in a licensed casino. The amendment is consistent with the Casino Control Commission's statutory obligation to assure the vitality of casino operations in Atlantic City and maximum participation by casino patrons (see: N.J.S.A. 5:12-100(e)). The Commission has previously determined that these goals will best be accomplished by allowing casino licensees some degree of flexibility to react to market conditions and other variables. In 1981, the Commission repealed a rule which mandated that casino licensees offer a $2.00 minimum wager at certain percentages of their gaming tables (see: 13 N.J.R. 709(b)). That rule had been adopted in 1979, at a time when the patron demand for casino gaming greatly exceeded the supply of available table games. By 1981, however, the Commission concluded that competition among the eight casino hotels then licensed in Atlantic City would provide sufficient incentive for casino licensees to offer low minimum wager table games if there was sufficient demand for such games and if such games could be operated profitably. Likewise, it is the Commission's position that the gaming public should determine the variety and denomination of slot machines offered by casino licensees through their power to choose to patronize, or not patronize, slot machines at various casinos. The Commission therefore proposes to eliminate the requirement, at N.J.A.C. 19:46-1.27(d), that at least five percent of all slot machines in a casino be of a five cent variety, and at least 10 percent be of a 25 cent variety.

Social Impact

The proposed amendment should benefit both the casino industry and the gaming public by allowing casino licensees greater flexibility to vary the denominations of slot machines offered in response to patron demand.

Economic Impact

The proposed amendment will enable individual casino management to respond to market demand and other variables of the industry, and to remain competitive with other gaming jurisdictions.

Regulatory Flexibility Statement

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

Full text of the proposed amendment follows (deletions indicated in brackets [thus]):

19:46-1.27 Aisles, grating; electrical outlets; denominations; density; floor space; arrangement; floor plan; slot stools

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

[(d) Each casino licensee having slot machines in its casino shall have at least five percent of said machines of a five cent variety and at least 10 percent of said machines of a 25 cent variety.]

Recodify existing (e)-(k) as **(d)**-**(j)** (No change in text.)

COMMUNITY AFFAIRS

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules
Interim Substantive Certification
Reproposed New Rule: N.J.A.C. 5:92-1.6

Authorized By: New Jersey Council on Affordable Housing, Kevin Quince, Acting Chairman.
Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.
Proposal Number: PRN 1991-539.

Submit comments by December 4, 1991 to:
Douglas V. Opalski, Executive Director
New Jersey Council on Affordable Housing
CN 813
Trenton, NJ 08625-0813

The agency reproposal follows:

Summary

The Fair Housing Act (FHA), N.J.S.A. 52:27D-301 et seq. required the Council to estimate the fair share need for each municipality and directed the Council to promulgate regulations. Following the mandate of the FHA, on August 4, 1986 the Council promulgated regulations that set forth each municipality's need. These fair share need numbers were projected over a six year period—from 1987 to 1993. Accordingly, in 1993, the Council will calculate and publish new need numbers for each municipality. The Council presently is in the process of reevaluating its entire methodology for calculating fair share need. This is a major undertaking as the Council is reviewing the method used to calculate the 1987-1993 numbers as well as exploring alternate methods for establishing the new need. The Council expects to publish new fair share need numbers prior to July 1, 1993.

While the Council is reviewing its methodology, there are some municipalities that have received judgments of repose or substantive certifications that will expire before the Council issues the need numbers for the 1993 to 1999 period. This problem has arisen for two reasons. First, prior to enactment of the FHA and creation of the Council, the courts determined fair share obligations in response to exclusionary zoning lawsuits. Municipal obligations were calculated on a case by case basis in response to these lawsuits as opposed to the comprehensive scheme mandated by the FHA and implemented by the Council. The courts issued judgments for a six year period. Since the courts' involvement with exclusionary zoning lawsuits predated the FHA and the judgments of repose were issued for a six year period, any judgment of repose issued prior to January, 1987 expired or will expire before the Council determines the need numbers for the next six year period. The Legislature attempted to address this problem by providing that any municipality that settled an exclusionary zoning lawsuit prior to the effective date of the FHA shall not be subject to any litigation for six years following July 5, 1985, the effective date of the FHA (see N.J.S.A. 52:27D-322). This gives such a municipality protection from litigation until July 5, 1991. Given the time the Council requires to review its methodology, there is a gap period between the expiration of the judgment of repose and determination of the municipality's new fair share obligation.

Second, there are some municipalities that have received substantive certification that will expire before the Council issues the new need numbers. This will occur because some municipalities were required to or chose to file their fair share plans on January 5, 1987 and received substantive in a relatively short period, before July, 1987. Since the Council issues certification for six years, the substantive certification of municipalities that fall into this category will expire prior to issuance of the need numbers, and, as with the court settled municipalities, there likewise will be a gap period.

The length of the gap period involved with the court municipalities may be longer than those with substantive certification. The Council issued its first substantive certifications in May, 1987. The longest the gap period will be with substantively certified municipalities is four months. Contrastingly, court judgments of repose began to expire as of July 5, 1991, pursuant to N.J.S.A. 52:27D-322, creating up to a two year gap between expiration of the judgment and issuance of new fair share estimates, although in many instances it will be shorter.

The Council is charged with establishing and implementing Statewide policy for satisfaction of fair share obligation. Recognizing that there is a problem created by the gap period, the Council undertook to address it. The Council proposed a rule in the New Jersey Register on July 15, 1991, at 23 N.J.R. 2084(b), addressing the issue. That proposal stated that any municipality whose judgment of repose or substantive certification expires before July 1, 1993 shall be deemed to have substantive certification until July 1, 1993, provided the municipality has complied with the terms of its judgment or substantive certification. The Council received comments to this proposal stating that the Council cannot assert jurisdiction over a municipality and grant interim substantive certification without some affirmative action on the part of the municipality. In support of this, the comments pointed out that the FHA requires a municipality to take affirmative procedural steps to bring itself under the Council's jurisdiction. It is these comments that have caused the Council to publish this reproposal.

After consideration of the comments and the FHA, the Council agrees that a municipality must take affirmative steps to secure interim substantive certification. Thus, the reproposed new rule requires a municipality to file a motion with the Council if it seeks interim substantive certification. Because this is a unique situation and because there is no new fair share need number and no new plan, the full substantive certification process is not warranted. As discussed subsequently, the Council has determined that it is neither appropriate nor prudent at this time to try to calculate interim fair share need numbers. The rule, however, does provide those parties who participated in the original proceedings the opportunity to be heard on the interim substantive certification.

The Council disagrees, however, with the comments received that it cannot grant the proposed interim substantive certification because the Legislature already has provided for an extension in N.J.S.A. 52:27D-322, thereby precluding the Council from any further action. While N.J.S.A. 52:27D-322 automatically offers municipalities with judgments of repose protection against exclusionary zoning lawsuits through July 5, 1991, there is nothing in the FHA to suggest that the Council cannot address the situation presented here. Indeed, the Legislature specifically invested the Council with broad authority over calculation and satisfaction of the fair share need. The Council simply is following its legislative mandate.

The Council also has clarified the rule in response to comments that it appeared that the Council was attempting to usurp the Court's jurisdiction. The rule now explicitly states that a municipality should petition the Court for an extension of its judgment of repose before the judgment expires. The Council only will consider a motion for interim substantive certification from a municipality with a judgment of repose if the court transfers the request to the Council. If the terms of the judgment of repose have expired thereby ending the Court's jurisdiction over the case, the Council also will entertain a motion. The Council never has intended to interfere with a court when it has jurisdiction over a case.

Additionally, the Council solicited the opinions of various groups and examined some municipalities that are affected. The Council's research revealed that, while a few municipalities with substantive certification were affected, the main problem was with municipalities that had received judgments of repose. Thus, this is a unique situation, since, during the next six year cycle, there will not be court judgments issued without relation to the Council's methodology for calculating need. Given the uniqueness of this problem, the Council determined that the prudent approach is to establish a procedure that will allow all municipalities to begin the 1993 to 1999 cycle on equal footing. Such an approach also will be sensitive to the Council's calculation of the new need numbers. Also, because the Council is still in the process of reevaluating its methodology, it is not appropriate to give a municipality whose judgment of repose or substantive certification expires in this gap period a six year certification.

Presently, the Council is reevaluating its methodology for calculating fair share need in preparation for the 1993 to 1999 need estimates. At this time, the Council has not made any decisions as to how it will approach the new need numbers. It is possible that the 1991 to 1993 period may be taken into account when redoing the methodology. The Council is considering numerous policy issues, including whether and how to take into account past municipal actions towards satisfaction of the need. Also, the State Development and Redevelopment Plan (SDRP) is not yet finished and the Council does not believe it prudent to fashion some type of number now to deal with a limited number of municipalities without the SDRP. The Council is convinced that the need for a comprehensive approach for calculation of the fair share need mitigates against trying to fashion some method for calculating need now for limited municipalities affected.

Also, the limited effect this rule will have convinces the Council that it is not prudent to attempt to calculate an interim need for each municipality. This rule applies only to those municipalities that received substantive certification or judgments of repose prior to July 1, 1987. The Council certified only ten municipal plans during this period. While there are more municipalities that have expiring judgments of repose, it is the Council's understanding that it is a small fraction of the total number of municipalities in the State.

The Council considered addressing the problem by calculating fair share numbers for the gap period. As discussed above, however, the Council rejected that approach because of the uncertainty that could be created. After consideration of all factors, the Council concludes that the proposed rule is the best approach. This approach ensures that the need for the original six year period is met, while at the same time providing the Council the flexibility it needs to calculate the need for the next six years.

For the above reasons, the Council concludes that the procedures set forth in this proposed rule is the most sensible. It will enable the Council or the court to ensure that a municipality is providing its initial six year fair share and will continue to provide the opportunity for that need to be met until a new fair share obligation is assigned to that municipality.

Social Impact

The reproposed new rule will have a positive social impact because it will allow the Council to develop a policy regarding communities that settled in court early, communities that received substantive certification and communities that addressed little or addressed none of their constitutional obligation. It will also allow the Council to formulate a policy consistent with the developing State Development and Redevelopment Plan. The rule also will have a positive impact because it allows parties a forum to correct components of approved plans that are not being implemented.

Economic Impact

The reproposed new rule defers the development of fair share numbers and the initiation of a process designed to address those fair share numbers until the Council formulates a comprehensive approach to a series of issues discussed in the Summary. This will result in better planning and less litigation than if the Council developed interim fair share numbers and designed a process for a short-term certification. Thus, the Council believes this rule will have a positive economic impact.

Regulatory Flexibility Statement

The reproposed new rule will 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 reproposed rule provides an interim substantive certification for municipalities, provided the municipalities have complied with the terms of substantive certification or the judgment of repose. Therefore, a regulatory flexibility analysis is not required.

Full text of the reproposed new rule follows:

5:92-1.6 Interim substantive certification

(a) Any municipality that received substantive certification that expires prior to July 1, 1993 may file a motion, in accordance with N.J.A.C. 5:91-13, with the Council for interim substantive certification to be effective through July 1, 1993. In addition to the requirements set forth in N.J.A.C. 5:91-13, any motion shall include the municipality's housing element and fair share plan and a discussion of how the municipality has complied with the terms of its substantive certification, as well as any other additional information the Council may require. In filing the motion, the municipality shall provide notice to any objector or litigant that participated in the substantive certification process or court settlement.

(b) Upon motion from any such municipality, the Council will issue an interim substantive certification if the Council finds that the municipality has complied with the terms of its original substantive certification. In issuing interim substantive certification, the Council may impose any conditions it deems appropriate or necessary in order to insure continued compliance with the substantive certification and satisfaction of the fair share obligation, including, but not limited to, requiring the municipality to leave all ordinances implementing its original substantive certification in effect for the interim substantive certification period.

1. Any objector that participated in the initial Council administrative process resulting in the original grant of substantive certification, or party to exclusionary zoning litigation resulting in a judgment of repose in those cases where (c) or (d) below apply, may oppose the municipality's motion for interim substantive certification if that party contends that the municipality has not complied with the terms of its substantive certification.

(c) If a municipality received a judgment of repose that expires prior to July 1, 1993, the municipality should apply to the Court that issued the judgment for relief prior to the expiration of its judgment of repose. The Council will consider a motion for interim certification if the Court transfers the request to the Council. In such cases, the procedures and criteria set forth in (a) and (b) above shall apply.

(d) If a municipality's judgment of repose has expired prior to the effective date of this rule or thereafter expires before the Council issues new fair share obligations, a municipality may file a motion for interim substantive certification with the Council provided that no exclusionary zoning lawsuit has been filed against the municipality. The procedures and criteria set forth in (a) and (b) above, shall apply to applications made under this subsection.

MILITARY AND VETERANS' AFFAIRS

(a)

THE ADJUTANT GENERAL

Notice of Reopening of Public Comment Period

Brigadier General William C. Doyle Veterans' Memorial Cemetery

Interment Eligibility; Operating Rules; Funeral Directors' Responsibilities

Proposed New Rules: N.J.A.C. 5A:4

Take notice that Department of Military and Veterans' Affairs is reopening the period for the submission of written comments on the above-referenced proposal published in the May 20, 1991 New Jersey Register at 23 N.J.R. 1491(a).

Submit written comments by November 18, 1991 to:
Harold R. Smith
Chief, Records and Archives Bureau
New Jersey Department of Military and Veterans' Affairs
CN 340
Trenton, NJ 08625-0340

HEALTH

(b)

DIVISION OF HEALTH FACILITIES EVALUATION

Manual of Standards for Licensure of Home Health Agencies; Medical Records Advance Directives

Proposed Amendments: N.J.A.C. 8:42-1.1, 6.1, 6.2 and 11.2

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5, and P.L.1991 c.201.

Proposal Number: PRN 1991-550.

Submit comments by December 4, 1991 to:
Robert J. Fogg, Acting Director
Licensing, Certification & Standards
Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing to amend N.J.A.C. 8:42, Manual of Standards for Licensure of Home Health Agencies, in accordance with the provisions of the recently adopted New Jersey Advance Directives for Health Care Act, (P.L.1991, c.201) ("the Act") and the Federal Patient Self Determination Act (P.L.101-508). The intent of these laws is to recognize the personal right of individuals to make voluntary, informed choices about the course of their health care, and to assure that this right is guaranteed through execution of an "advanced directive." The scope of the Act extends to all health care institutions and agencies licensed or certified by the State of New Jersey, including hospitals, nursing homes, residential health care facilities, home health agencies and mental health institutions.

The primary role of health care institutions, as defined by the Act, is to inform patients of their right to execute an advance directive and to facilitate execution of such a document by patients with expressed interest. In fulfilling this role, the facility is required to provide informational materials concerning advance directives to all interested patients, families, and health care representatives and to ensure that patients interested in discussing and/or executing an advance directive are referred for appropriate assistance. The Act ensures that patients are aware of their right to execute an advance directive, by requiring that the facility ask each adult patient prior to the provision of care about the existence of an advance directive.

The incorporation of the requirements of the Act necessitates amending N.J.A.C. 8:42-6, Continuity and Coordination of Patient Services, and N.J.A.C. 8:42-11, Medical/Health Records. The most pronounced impact on the licensure rules is the requirement to establish numerous policies and procedures specific to the various provisions of the Act. These policies and procedures are identified in N.J.A.C. 8:42-6.2, Policies and Procedures, and codified as N.J.A.C. 8:43G-6.2(c) through (h). The practices for which procedures must be established include: a routine inquiry of each adult patient, prior to service, about the existence and location of an advance directive; documentation of patient's medical record accordingly; obtaining of a copy of a current advance directive, if available; and referral of patients requesting information or assistance in executing an advance directive to appropriate resource persons.

The Act also references the New Jersey Declaration of Death Act (P.L.1991, c.90) at N.J.A.C. 8:42-6.2(h) and requires the agency to establish policies and procedures for the declaration of death of patients in accordance with established standards and the patient's religious preference, if any.

The Act recognizes the interests of health care professionals who, as a matter of professional conscience, may prefer not to participate in the execution of an advance directive. While the interests of such staff are respected, proposed N.J.A.C. 8:42-6.2(d)6 requires the agency to establish policies to ensure that a patient with an advance directive is under the care of a health professional who will comply with the wishes of the patient. The Act also recognizes that, in some instances, a private religiously affiliated health care agency may decline to participate in the implementation of advance directives. N.J.A.C. 8:42-6.2(e)3 is being amended to address such a circumstance. The transfer of a patient for the purpose of assuring implementation of an advance directive would be considered a valid reason for transfer. The approval of the receiving agency must be secured prior to transfer. The documentation to be sent with such a patient has been identified at N.J.A.C. 8:42-11.2(b).

The Act requires the establishment of a multidisciplinary bioethics committee and the inclusion of conflict resolution as one of the functions of this committee. These have been proposed as N.J.A.C. 8:42-6.1(c).

Two amendments are being proposed to address community and staff education programs. N.J.A.C. 8:42-6.1(e) will require the agency to provide periodic community education programs, while N.J.A.C. 8:42-6.2(g) is being added to ensure that staff are informed of their rights and responsibilities under both the Act and the Federal Patient Self Determination Act.

Two additions are being proposed at N.J.A.C. 8:42-11, Medical/Health Records, to address medical record documentation. A requirement to include documentation of the existence or nonexistence of an advance directive for each inpatient will be added at N.J.A.C. 8:42-11.2(a)12. An amendment at N.J.A.C. 8:42-11.2(b)7 will require that a copy of the patient's advance directive is included in the transfer record of those patients who are transferred for the purpose of assuring implementation of the directive.

Social Impact

The proposed amendments to N.J.A.C. 8:42 represent the obligatory responsibilities of health care institutions, including home health agencies, as required and defined in The New Jersey Advance Directives for Health Care Act (P.L.1991, c.201).

The Act has significant social impact. It guarantees the right of individuals to retain ultimate decision-making authority regarding the course of their medical treatment while receiving care in a health care institution.

Economic Impact

It is anticipated that continuing costs associated with implementation of the proposed requirements will be minimal. The Department recognizes, however, that compliance with the Act will initially require agencies to provide in-service education programs and establish internal mechanisms to assure compliance with the various provisions of the Act.

Regulatory Flexibility Analysis

The majority of New Jersey's 59 home health agencies may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments to N.J.A.C. 8:42, which implement the New Jersey Advance Directives for Health Care Act (P.L.1991, c.201), may result in increased reporting and recordkeeping requirements beyond those already placed upon small businesses by the current rules. The establishment of a bioethics committee is required, as well as the provision of educational/training materials, and the solicitation of consumer input.

The Department believes that these increased requirements, which are mandated by the Act for the purpose of ensuring patients' participation in health care decisions, will have minimal adverse economic impact on small businesses, on a continuing basis, although there will be initial costs for training for all home health agencies. Compliance with the proposed amendments is necessary for all facilities which provide home health services in the interest of public health and safety, and there should be no differentiation based on business size.

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

8:42-1.1 Definitions

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

. . .

"Advance directive" means a written statement of the patient's instructions and directions for health care in the event of future decisionmaking incapacity, in accordance with the New Jersey Advance Directives for Health Care Act, (P.L.1991, c.201).

. . .

8:42-6.1 Advisory groups

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

(c) The agency shall have a multidisciplinary bioethics committee, or an equivalent process which assures participation by individuals with medical, nursing, legal, social work, and clergy backgrounds. The committee or process shall have at least the following functions:

1. Participation in the formulation of agency policy related to bioethical issues;

2. Participation in the formulation of agency policy related to advance directives;

3. Participation in the resolution of patient-specific bioethical issues, and responsibility for conflict resolution in the interpretation and implementation of advance directives. The committee may partially delegate responsibility for conflict resolution to one or more qualified staff members; and

4. Providing a forum for patients, families, and staff to discuss and reach decisions on ethical concerns relating to patients.

(d) The agency shall establish a mechanism for involving consumers in the formulation of policy related to bioethical issues.

(e) The agency shall provide periodic community education programs, individually or in coordination with other area agencies or organizations, that provide information to consumers regarding advance directives and their rights under New Jersey law to execute advance directives.

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

8:42-6.2 Policies and procedures

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

(d) The agency shall have written policies and procedures governing the services provided to implement the New Jersey Advance Directives for Health Care Act (P.L.1991, c.201). These policies and procedures shall be reviewed annually, revised as needed, and shall include at least:

1. Providing to each patient prior to the provision of care, or to family member or other representative if the patient is unable to respond, a written statement of the patient's rights under New Jersey law to make decisions concerning the right to refuse medical care and to formulate an advance directive, as well as the agency's written policies and procedures regarding implementation of such rights. This statement shall be approved by the Commissioner and shall be made available in any language which is spoken by more than 10 percent of the population of the agency's service area;

2. Routinely inquiring of each adult patient, in advance of coming under the care of the agency and at other appropriate times, about the existence and location of an advance directive. If the patient is incapable of responding to this inquiry, the agency shall request the information from the patient's family or other representative. The response to this inquiry shall be documented in the patient's medical record;

3. Requesting and promptly obtaining for all patients copies of currently executed advance directives, which shall be entered into the medical records;

4. Evaluating the validity of the advance directive and establishing procedures for assisting in the execution of a currently valid advance directive;

5. Providing appropriate written informational materials concerning advance directives to all interested patients, families, and health care representatives, and assistance or referral to staff or community resource persons for patients interested in discussing and executing an advance directive;

6. Delineation of the responsibilities of attending physicians, administration, nursing, social service, and other staff in regards to (d)1 through 5 above; and

7. Policies for transfer of the responsibility for care of patients with advance directives when a health care professional declines as a matter of professional conscience to participate in withholding or withdrawing life-sustaining treatment. Such transfer shall assure that the advance directive is implemented by the agency in accordance with the patient's wishes.

(e) A patient shall be transferred to another agency only for the following reasons:

1. A valid medical reason, including the agency's inability to care for the patient;

2. In order to comply with clearly expressed and documented patient choice in accordance with applicable laws, rules or regulations; or

3. In conformance with the New Jersey Advance Directives for Health Care Act in the instance of a private, religiously affiliated home health agency which establishes policies defining circumstances in which it will decline to participate in the withholding or withdrawal of life-sustaining treatment. Such agencies shall:

i. Provide notice of the policy to patients, families or health care representatives prior to initiation of service; and

ii. Implement a timely and respectful transfer of the patient to an agency which will implement the advance directive.

(f) The sending agency shall receive approval from the receiving agency before transferring the patient.

(g) The agency shall provide staff training and education programs regarding the New Jersey Advance Directives for Health Care Act (P.L.1991, c.201) and the Federal Patient Self Determination Act (P.L.101-508). This education and training shall address at least the following:

1. The rights and responsibilities of staff; and

2. Internal policies and procedures to implement these laws.

(h) The agency shall establish policies and procedures for the declaration of death of patients in accordance with N.J.S.A. 26:6 and the New Jersey Declaration of Death Act (P.L.1991, c.90). Such policies shall also be in conformance with rules promulgated by the New Jersey Board of Medical Examiners which address declaration of death based on neurological criteria and the acceptable medical criteria, tests, and procedures that may be used. The policies and procedures must accommodate the patient's religious beliefs with respect to declaration of death.

8:42-11.2 Contents and maintenance of medical/health records

(a) The patient's medical/health record shall include at least the following:

1.-8. (No change.)

9. Copies of written instructions given to the patient and/or the patient's family; [and]

10. A record of any treatment, medication, or service offered by a staff member of the faculty and refused by the patient[.];

11. Written informed consents, if indicated; and

12. Documentation of the existence or nonexistence of an advance directive; and documentation of the agency's inquiry to the patient, family, or health care representative regarding this.

(b) If the patient is transferred to another home health agency, the agency shall maintain a transfer record reflecting the patient's immediate needs and shall send a copy of this record to the receiving agency at the time of transfer. The transfer record shall contain at least the following information:

1. Diagnosis, including history of any serious condition unrelated to the proposed treatment, which might require special attention to keep the patient safe;

2. Physician orders in effect at the time of transfer and the last time each medication was administered;

3. The patient's nursing needs;

4. Hazardous behavioral problems;

5. Drug and other allergies;

6. The reason for transfer; and

7. A copy of the patient's advance directive, if available, or notice of the existence of an advance directive.

Redesignate (b)-(d) as **(c)**-**(e)** (No change in text.)

(a)

DIVISION OF HEALTH FACILTIES EVALUATION

Hospital Licensing Standards
Administrative and Hospital Wide; Medical Records Advance Directives

Proposed Amendments: N.J.A.C. 8:43G-5.1, 5.2, 5.9 and 15.2

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5; P.L. 1991, c.201.

Proposal Number: PRN 1991-543.

Submit comments by December 4, 1991 to:

Robert J. Fogg, Acting Director
Licensing, Certification & Standards
Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing to amend N.J.A.C. 8:43G, Hospital Licensing Standards, in accordance with the provisions of recently adopted law, the New Jersey Advance Directives for Health Care Act (P.L. 1991, c.201) ("The Act") and the Federal Patient Self Determination Act (P.L. 101-508). The intent of these laws is to recognize the personal right of individuals to make voluntary, informed choices about the course of their health care, and to assure that this right is guaranteed through execution of an "advance directive." The scope of the Act extends to all health care institutions and agencies licensed or certified by the State of New Jersey, including hospitals, nursing homes,

residential health care facilities, home health agencies and mental health instititions.

The primary role of health care institutions, as defined by the Act, is to inform patients of their right to execute an advance directive and to facilitate execution of such a document by patients with expressed interest. In fulfilling this role, the hospital is required to provide informational materials concerning advance directives to all interested patients, families and health care representatives and to ensure that patients interested in discussing and/or executing an advance directive are referred for appropriate assistance. The Act ensures that hospital patients are aware of their right to execute an advanced directive, by requiring that the hospital ask each adult patient, upon admission, about the existence of an advanced directive.

The incorporation of the requirements of the Act necessitates amending N.J.A.C. 8:43G-5, Administrative and Hospital Wide Services, and N.J.A.C. 8:43G-15, Medical Records. The most pronounced impact on the licensure rules is the requirement to establish numerous policies and procedures specific to the various provisions of the Act. These policies and procedures are identified in N.J.A.C. 8:43G-5.2, Administrative and hospital-wide policies, and codified as N.J.A.C. 8:43G-5.2(a)5 through 13. The practices for which policies and/or procedures need to be established include: a routine inquiry of each adult patient, upon admission, about the existence and location of an advance directive; documentation of the advance directive into the patient's medical record accordingly; prompt notification of health care professionals providing care to individuals who informed the hospital of the existence of an advance directive but for whom a copy is not immediately available in the medical record; and referral of patients requesting information or assistance in executing an advance directive to appropriate resource persons.

The Act also references the New Jersey Declaration of Death Act (P.L. 1991, c.90) and requires the hospital to establish policies and procedures for the declaration of death of patients; this requirement is codified as N.J.A.C. 8:43G-5.1(k). The responsibilities of the hospital bioethics committee, as defined at N.J.A.C. 8:43G-5.1(h), have been expanded to include participation in the formulation of hospital policy related to advance directives and responsibility for conflict resolution in the interpretation and implementation of advance directives.

The Act recognizes the interests of health care professionals who, as a matter of professional conscience, may prefer not to participate in the execution of an advance directive. While the interests of such staff are respected, proposed N.J.A.C. 8:43G-5.2(a)9 requires the hospital to establish policies to ensure that a patient with an advance directive is under the care of a health professional who will comply with the wishes of the patient. The Act also recognizes that, in some instances, a private religiously affiliated health care institution may decline to participate in the implementation of advance directives. Accordingly, N.J.A.C. 8:43G-5.2(a)4 is being amended to identify the process which must be followed if a facility declines to participate in the withholding or withdrawing of specified measures.

An amendment to N.J.A.C. 8:43G-5.2(b) is being proposed in recognition that the transfer of a patient for the purpose of assuring implementation of an advance directive would constitute a valid reason for transfer. Approval of the receiving agency must be obtained before transfer. The documentation to be sent with such a patient has been identified at N.J.A.C. 8:43G-5.2(b)7.

Two amendments are being proposed to address community and staff education programs. N.J.A.C. 8:43G-5.1(j) will require the hospital to provide periodic community education programs while and N.J.A.C. 8:43G-5.9(b)7 is being added to ensure that staff, in each department, are informed of their rights and responsibilities under both this Act and the Federal Patient Self Determination Act.

Two additions are being proposed to N.J.A.C. 8:43G-15, Medical Records, to address medical record documentation. A requirement to include documentation of the existence or nonexistence of an advanced directive for each inpatient will be added to N.J.A.C. 8:43G-15.2(d)1. An amendment to N.J.A.C. 8:43G-15.2(e), will require that a copy of the patient's advanced directive is included in the transfer record of those patients who are transferred for the purpose of assuring implementation of the individual's advanced directive.

Social Impact

The proposed amendments to N.J.A.C. 8:43G-15 represent the obligatory responsibilities of health care institutions as required and defined in the New Jersey Advance Directives for Health Care Act (P.L. 1991, c.201), and include the establishment of a multi disciplinary bioethics committee, training and the solicitation of consumer input.

The Act, itself, has a signficant social impact. It guarantees the right of individuals to retain ultimate decision-making authority regarding the course of their medical treatment while receiving care in a health care institution.

Economic Impact

It is anticipated that costs associated with continued implementation of the proposed requirements will be minimal. The Department recognizes, however, that compliance with the Act will initially require the hospital to provide in-service education programs and establish internal mechanisms to assure compliance with the various provisions of the Act.

Regulatory Flexibility Statement

The proposed amendments would not affect small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

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

8:43G-5.1 Administrative and hospital-wide structural organization; mandatory

(a)-(g) (No change.)

(h) The hospital shall have a **multidisciplinary** bioethics committee, and/or prognosis committee(s), or equivalent(s).[, that is multidisciplinary and the] **The** hospital shall assure participation by individuals with medical, nursing, legal, social work, and clergy backgrounds. The committee or commitees shall have at least the following functions:

1. (No change.)

2. Participation in the formulation of hopsital policy related to advance directives. Advance directive means a written statement of the patient's instructions and directions for health care in the event of future decision making incapacity in accordance with the New Jersey Directives for Health Care Act (P.L. 1991, c.201).

[2.]**3.** Participation in the resolution of patient-specific bioethical issues**, and responsibility for conflict resolution in the interpretation and implementation of advance directives. The committee may partially delegate responsibility for conflict resolution to one or more qualified staff members;** and

[3.]**4.** (No change in text.)

(i) (No change.)

(j) The hospital shall provide periodic community education programs, individually or in coordination with other area facilities or organizations, that provide information to consumers regarding advance diretives and their rights under New Jersey law to execute advance directives.

(k) The hospital shall establish policies and procedures for the declaration of death of patients in accordance with N.J.S.A. 26:6 and the New Jersey Declaration of Death Act (P.L. 1991, c.90). The policies and procedures shall accommodate a patient's religious beliefs with respect to declaration of death. Such policies shall also be in conformance with regulations and policies promulgated by the New Jersey Board of Medical Examiners which address declaration of death based on neurological criteria, including the qualifications of physicians authorized to declare death based on neurological criteria and the acceptable medical criteria, tests, and procedures which may be used.

8:43G-5.2 Administrative and hospital-wide policies and procedures

(a) The hospital shall have written policies, procedures and bylaws that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Policies on the admission of patients, transfer of patients to another facility, and discharge of patients[.];

2. Procedures for obtaining the patient's written informed consent for all medical treatment[.];

3. Delineation of the responsibilities of the medical staff, nursing, and other staff in contacting the patient's family in the event of death, elopement, or a serious change in condition[.];

4. Policies addressing bio-ethical issues affecting individual patients, including at least removal of life support systems, discontinuance or refusal of treatment, and designation not to resuscitate. **In accordance with the New Jersey Directives for Health Care Act (P.L. 1991, c.201), private, religiously-affiliated health care institutions which decline to participate in the withholding or withdrawing of specified measures shall comply with the following:**

i. The hospital shall establish written policies defining circumstances in which it will decline to participate in the implementation of advance directives;

ii. The hospital shall provide prompt notice to patients or their families or health care representatives of these policies; and

iii. The hospital shall implement a timely and respectful transfer of the individual to another institution who will implement the patient's advance directive;

5. Procedures to ensure that there is a routine inquiry made of each adult patient, upon admission to the hospital and at other appropriate times, concerning the existence and location of an advance directive (as required and defined in the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201). If the patient is incapable of responding to this inquiry, the hospital shall have procedures to request the information from the patient's family or in the absence of family, another individual with personal knowledge. The procedures must assure that the patient or family's response to this inquiry is documented in the medical record. Such procedures shall also define the role of hospital admissions, nursing, social service and other staff as well as the responsibilities of the attending physician;

6. Procedures to document the existence of an advance directive in the patient's medical record for adult individuals receiving outpatient, emergency, or other non-inpatient care;

7. Procedures to request and promptly obtain a copy of currently executed advance directives from inpatients and other critically ill patients who are under treatment at the hospital. These shall be entered when received into the medical record of the patient. Where a question of validity is indicated, procedures for promptly evaluating the validity of the advance directive must be established;

8. Procedures for promptly alerting physicians, nurses, and other professionals providing care to patients who have informed the hospital of the existence of an advance directive in instances where a copy is not immediately available for the medical record;

9. Policies for transfer of the responsibility for care of patients with advanced directives in those instances where a health care professional declines as a matter of professional conscience to participate in withholding or withdrawing life-sustaining treatment. Such transfer shall assure that the patient's advance directive is implemented in accordance with their wishes within the hospital;

10. Means to provide each adult patient upon admission, or where the patient is unable to respond, family or other representative with a written statement of their rights under New Jersey law to make decisions concerning the right to refuse medical care and the right to formulate an advance directive shall be provided. This statement of rights shall be approved by the Commissioner. Appropriate written information and materials on advance directives and the institution's written policies and procedures concerning the withdrawal or withholding of life sustaining treatment shall be provided to each patient and others upon request. Such written information shall also be made available in any language which is spoken by more than 10 percent of the population of the hospital's service area;

11. Procedures for referral of patients requesting assistance in executing an advance directive or additional information to either staff or community resource persons that can promptly advise and/or assist the patient during the inpatient stay; and

12. Policies to ensure application of the hospital's procedures for advance directives to patients who are receiving emergency room care for an urgent life-threatening situation.

(b) A patient shall be transferred to another hospital only for a valid medical reason, in order to comply with other [standards and rules] **applicable laws or Department rules, to comply with** [or by] clearly expressed and documented patient choice[.], **or in conformance with the New Jersey Advance Directives for Health Care Act.**

The hospital's inability to care for the patient shall be considered a valid medical reason. The sending hospital shall receive approval from a physician and the receiving hospital before transferring the patient. Documentation for the transfer shall be sent with the patient, with a copy or summary maintained by the transferring hospital. This documentation shall include, at least:

1.-4.(No change.)

5. Patient information collected by the sending hospital, as specified in N.J.A.C. 8:43G-15.2(f); [and]

6. The name of the contact person at the receiving hospital[.]; **and**

7. A copy of the patient's advance directive where available or notice that the individual has informed the sending hospital of the existence of an advance directive.

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

8:43G-5.9 Department education programs

(a) (No change.)

(b) The plan shall include education programs that address at least the following:

1.-4. (No change.)

5. Education on statutory requirements relevant to the specific service; [and]

6. Areas identified by the hospital-wide quality assurance program as needing educational programs[.]; **and**

7. Rights and responsibilities of staff under the New Jersey Advance Directives for Health Care Act (P.L. 1991, c.201) and the federal Patient Self Determination Act (P.L. 101-508), and internal hospital policies and procedures to implement these laws.

(c) (No change.)

8:43G-15.2 Medical records policies and procedures; mandatory

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

(d) The inpatient's complete medical record shall include at least:

1. Written informed consents, if indicated **and documentation of the existence, or nonexistence, of an advanced directive and the hospital's inquiry of the patient concerning this**;

2.-15. (No change.)

(e) If the patient is transferred to another health care facility (including a home health agency) on a nonemergency basis, the hospital shall maintain a transfer record reflecting the patient's immediate needs and send a copy of this record to the receiving facility at the time of transfer. The transfer record shall contain at least the following information:

1-3. (No change.)

4. Hazardous behavioral problems; [and]

5. Drug and other allergies[.]; **and**

6. A copy of the patient's advance directive, where available.

(f)-(l) (No change.)

(a)

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

Authorized by: Drug Utilization Review Council, Robert Kowalski, Chairman

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

Proposal Number: PRN 1991-547.

A **public hearing** concerning these proposed amendments will be held on November 25, 1991, at 2:00 P.M. at the following address:

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

Submit comments by December 4, 1991 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360

Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

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

For example, the proposed metoclopramide 10mg tablets could then be used as a less expensive substitute for Reglan, a branded prescription medicine. Similarly, the proposed metoprolol 50mg and 100mg tablets could be substituted for the more costly branded product, Lopressor.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

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

Social Impact

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

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

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

Economic Impact

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

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

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.: specifically, over 1,500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

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

Full text of the proposed amendments follows:

Benzatropine mesylate tabs 1, 2mg	Mutual
Chloral hydrate syrup	LuChem
Hydrocodone/APAP tabs 2.5/500	Watson
Hydrocodone/APAP tabs 7.5/500	Watson
Hydrocodone/APAP tabs 7.5/750	Watson
Hydroxyzine Pamoate caps 25mg	Danbury
Iodinated glycerol soln 50mg/ml	LuChem
Iodinated glycerol tabs 30mg	LuChem
Levothyroxine sodium tabs 25, 50, 75 mcg	J. Stevens
Levothyroxine sodium tabs 100, 125, 150mcg	J. Stevens
Levothyroxine sodium tabs 200, 300mcg	J. Stevens
Loperamide caps 2mg	Novopharm
Mephobarbital tabs 32, 50, 100mg	Ferndale Labs.
Metoclopramide 10mg tabs	Mutual
Metoprolol tartrate tabs 50, 100mg	Mutual
Naphcon-A opth soln substitute	Optopics
Norpace CR caps substitute 100, 150mg	KV Pharm.
Proctocort cream substitute	Amer. Generics
Pindolol tabs 5, 10mg	Mutual
Rondec DM drops substitute	Esquire
Tetracaine 0.5% opth soln	Optopics

HUMAN SERVICES

(a)

THE COMMISSIONER

County Human Services Advisory Councils and State Human Services Advisory Council

Proposed Readoption with Amendments: N.J.A.C. 10:2

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12.

Proposal Number: PRN 1991-549.

Submit comments by December 4, 1991 to:
Betty Wilson, Assistant Commissioner
for Public Affairs
Department of Human Services
CN 700
Trenton, NJ 08625

The agency proposal follows:

Summary

This proposed readoption concerns the County Human Services Advisory Councils (CHSACs) and the State Human Services Advisory Council (SHSAC). In regard to the CHSACs, the chapter concerns minimum membership, procedural, planning, and implementation requirements. The chapter also provides public information about the mission and scope, membership, and administration of the SHSAC.

With the inception of the Social Services Block Grant (SSBG) Program, formerly known as Title XX of the Social Security Act, the Department of Human Services began a major initiative to transfer program planning and recommendations regarding the purchase-of-service (POS) component of the program from the State to the local level. To this end, the Department developed a human services advisory process and established the County Human Services Advisory Councils. The Department also sought to increase community input in statewide human services policy decisions and, to this end, established the State Human Services Advisory Council.

The initial rules became effective on January 5, 1987. They have not been amended since that time. Pursuant to Executive Order No. 66(1978), the rules were given an expiration date of January 5, 1992. The Department has reviewed the rules and has determined them to be of continued necessity to ensure the operation of both the CHSACs and the SHSAC; the Department is also proposing amendments to the chapter at this time. This proposed readoption with amendments was drafted with the input of the Chairpersons of the County Human Services Advisory Councils, or their officially designated representatives, and the State Human Services Advisory Council. The language herein reflects the general consensus of these participants and senior staff of the Department of Human Services.

The Department has the authority to develop guidelines and requirements expected from each CHSAC. Each are required to be ceritifed and have a contract negotiated by the Department of Human Services. In addition, the Department has the authority for developing the structure of the State Human Services Advisory Council. This authority is embodied in the Department's enabling statute and its general powers are evoked in order to promulgate these rules.

The proposed amendments include grammatical and technical changes and are indicated below in the full text of the proposed amendments.

A summary of the proposed amendments follows, by subchapter and section:

Subchapter 1 is comprised of the rules for the County Human Services Advisory Councils. N.J.A.C. 10:2-1.1, Purpose and scope, includes new text regarding CHSAC activities related to the Department's annual budget review process and the designation of appropriate representation to the State Human Services Advisory Council. CHSAC activities related to the development of a county human services plan have been revised and their activities concerning the preparation of allocation plans have been made more specific. Regarding allocation plans, the proposed new language includes a listing of some specific funding streams for which such plans are required. Finally, for the sake of consistency, N.J.A.C. 10:2-1.1(d) has been recodified to N.J.A.C. 10:2-1.7(b) and (c).

At N.J.A.C. 10:2-1.2, Definitions, the terms "certification process," "family member," and "provider representative" are added and defined. "Certification process" refers to the annual review of the CHSAC membership to determine its compliance with the membership requirements contained in this chapter. "Family member" is added to clarify who qualifies as a family member for the purpose of meeting the Consumer Representative requirements contained in N.J.A.C. 10:2-1.3(a)3. "Provider representative" is defined to make clear who is considered a provider and who would not be considered a provider for the purpose of meeting the membership requirements contained in this chapter. The definition of "Department representative" has been deleted because other sections of the proposed rules address the role of Department staff with the CHSACs. The specific term as used in the rules refers only to Department staff and not to a specific position. In addition, the definition of "target populations" has been revised to indicate that these populations are persons in need of Human Services. In addition, new language is added to the definition to include persons who are deaf or hard of hearing, and homeless individuals and families.

N.J.A.C. 10:2-1.3, Membership requirements, is amended and recodified to make a clear separation between voting and non-voting and required and optional membership. N.J.A.C. 10:2-1.3(a)1iv and v regarding State representatives have been recodified as N.J.A.C. 10:2-1.3(a)7. Consumer representation is expanded to include separate requirements for the inclusion of family members of consumers in membership. The language concerning the inclusion of representatives of each of the Department's 18 target populations is made more flexible. Other representation is expanded to include a local public housing agency representative. The proposed amendments to N.J.A.C. 10:2-1.3 also increase flexibility of membership in allowing each CHSAC to determine which sectors of the human services community it includes in its membership, according to local planning and service needs. Membership of representatives from the juvenile justice community is set out and includes representatives of the County Youth Services Commissions (YSCs), the County Inter-Agency Coordinating Councils (CIACCs), and the Case Assessment Resource Teams (CARTs). In addition, voting membership may include representatives of other county level advisory groups.

At N.J.A.C. 10:2-1.4, Relationship to other county advisory groups, language is added to encourage the CHSACs to maintain a liaison with other related planning and advisory groups in the county.

At N.J.A.C. 10:2-1.5, Required subcommittees, language concerning the Comprehensive Emergency Assistance System (CEAS) subcommittee is amended to reflect that this subcommittee is responsible for maintaining and annually updating the component part of the county human services plan and other planning documents (such as the C-CHAS plan) regarding services for homeless individuals. The proposed amendments revise rule text to clarify that the subcommittee recommends resource allocation plans for funds brought before it and that final approval of these plans is given by the full County Human Services Advisory Council.

Existing text at N.J.A.C. 10:2-1.5(a)3 has been repealed and replaced with new text so as to clearly differentiate between voting and non-voting and required and optional membership. CEAS subcommittee membership is amended to include a designee of the county welfare agency, in addition to the director, a local community development block grant representative, a local public housing agency representatives, and a provider representative of the homeless mentally ill. Non-voting membership of a representative from the New Jersey Department of Community Affairs and from the Department of Human Services' Division of Economic Assistance is included. New rule text has been added to allow the CEAS subcommittee chairperson to be chosen in accordance with the process established by each CHSAC.

Finally, new rule text is added to N.J.A.C. 10:2-1.5(b) which requires the CHSACs to establish and maintain a JOBS Oversight and Monitoring Subcommittee in accordance with guidelines established in the Public Assistance Manual at N.J.A.C. 10:81-14.23.

N.J.A.C. 10:2-1.6, Waiver requests, has been amended to "Membership waiver requests" in order to reflect that the only waivers to the requirements set out in this chapter that will be considered by the Department, are waivers concerning membership requirements. This is not a change from past practice. The proposed amendments include additional language that emphasizes the Department's policy goal of protecting the interests of at-risk, disabled, and minority populations by assuring adequate representation on the CHSACs for representatives of these groups. In addition, new rule text is added which stipulates that waivers will apply for a term of one year or until the CHSAC's certification has expired.

At N.J.A.C. 10:2-1.7, Minimum procedural requirements, the title has been amended to reflect recodification of the sections formerly designated as N.J.A.C. 10:2-1.7 and 1.8. The requirements of both sections have been collapsed, with amended and additional new rule text into N.J.A.C. 10:2-1.7 and retitled "Procedural requirements." N.J.A.C. 10:2-1.8 has, therefore, been repealed.

Language which sets out minimum requirements for the appeals process, the conflict of interest policy, and the contract review policy has been added as new N.J.A.C. 10:2-1.7(b) and (c). The appeals process section mandates that the written policy regarding appeals be sent to each applicant agency responding to a CHSAC's request for proposal for Department of Human Services funding. It also states that the membership of the appeals subcommittee should be separate from those who actively participated in the agency review and allocation process.

In regard to the conflict of interest policy, the rule specifies that CHSAC members are precluded from participating in their official capacity in discussions and/or decision making regarding funding or monitoring of programs for which they are employed, serve as a board member or as a volunteer, or have a financial interest. Members are required to review their potential for conflict on an annual basis and provide full disclosure. It is indicated that the Department will provide a model conflict of interest policy, upon request.

In regard to the contract review policy, State law (N.J.S.A. 30:4-24.3), and a Department Administrative Order (2:01) are cited in regard to CHSAC access to client records for the purpose of contract review.

The proposed amendments also add new rule text regarding the annual evaluation of the functioning of the CHSACs and annual certification of their membership composition at new N.J.A.C. 10:2-1.7(c)2 and 3.

Subchapter 2 is comprised of the rules for the State Human Services Advisory Councils.

At N.J.A.C. 10:2-2.1, Purpose and scope, the proposed amendments add new rule text regarding the activities of the State Human Services Advisory Council related to providing the Commissioner of the Department with advice on the development and implementation of human services policy, participating in the Department's annual public budget review process, and initiating discussion with the Department on statewide issues, priorities, and specific programs. (See proposed N.J.A.C. 10:2-2.1(b)1, 2 and 6.)

N.J.A.C. 10:2-2.2, Membership requirements, has been amended to include new rule text as subsections (b) through (f). Additional rule text has been amended and added to existing rule text which specifies that the membership is appointed by the Commissioner of the Department of Human Services after consultation with the Chairperson of the Council. The number of at-large members is expanded from 20 to 26. The CHSAC's are provided the option of sending a representative other than their Chairpersons to vote and attend regular meetings of the Council. It is stipulated that this representative must be a member of the CHSAC. Each Department Division is afforded not more than three Division Constituency Representatives who are appointed by the Commissioner in consultation with the respective Division Director. It is also required that one of these representatives be a consumer of services offered by the respective Division. The County Human Services Directors or the County Human Services Advisory Staff persons (in counties where there is no Director of Human Services or where the CHSAC is established outside of County Government) are included as ex-officio, non-voting members of the Council. New rule text is added that will offer membership to an expanded category of individuals who could act as liaisons between the Council and other councils, committees, and boards. These individuals would also serve as ex-officio, non-voting members. New rule text at N.J.A.C. 10:2-2.2(b) also states that the Chairperson of the Council is appointed by the Commissioner of the Department

of Human Services and serves at his or her discretion within the length of his or her term as a Council member.

Proposed new rule text at N.J.A.C. 10:2-2.2(c) specifies that the membership of the Council will reflect a balance among the sectors of the human services community (considering age, ethnicity, sex, direct service providers, and non-providers) and the Department's target populations, with special attention given to including consumers of human services in the membership.

The proposed amendments include new text at N.J.A.C. 10:2-2.2(d), which sets out terms of office. At-large and Division Constituency Representatives serve for a term of three years or until a successor is appointed by the Commissioner. Terms begin on January 1 of the respective year. Terms are staggered with one-third of the membership eligible for re-appointment or replacement each year. The terms of CHSAC representatives coincide with their terms of office at the CHSAC level. Inter-Departmental Representatives are appointed by the Commissioners of their respective Department and serve at their discretion.

New rule text regarding attendance and committee participation requirements for Council members is propsed at N.J.A.C. 10:2-2.2(e) and (f). It sets forth expected participation levels and indicates that members who have not participated in the work of the Council, either at two full Council meetings or through committee, within a six-month period will be contacted by the Chairperson in regard to his/her intent to participate. Members who have not been active in the work of the Council for a period of one year shall be recommended for removal by the Chairperson to the Commissioner.

The proposed amendments to N.J.A.C. 10:2-2.3, Administration, recodify rule text to be consistent with the other amendments proposed with this readoption.

Proposed amendments to N.J.A.C. 10:2-2.4, Standing committees, describe the six (formerly four) standing committees of the Council as follows: Executive Committee, Legislation and Regulations Committee, Policy and Operations Committee, Finance and Budget Committee, County Human Services Advisory Council Representatives' Committee, and Minority Issues Advisory Committee. The last two committees listed above have been functioning as ad hoc committees for some time and are here codified (as new rule text at N.J.A.C. 10:2-2.4(b) and 5 and 6) as standing committees of the Council.

Rule text regarding the Executive Committee at N.J.A.C. 10:2-2.4(b)1 is amended to specify that the Chairperson may appoint members in addition to those mandated. The Committee's role in reviewing the work of the Council's committees is included. Additional rule text is added at N.J.A.C. 10:2-2.4(b)1 setting forth that the Executive Committee is empowered to act on behalf of the Council on urgent matters and stipulates that any such actions must be reported to the full Council by the Chairperson at Council meetings.

The proposed amendments at N.J.A.C. 10:2-2.4(b)2 revise the name of the Former Legislative and Policy Committee to the Legislation and Regulations Committee; this new title effectuates a change in its name and function and the change is intended to emphasize the Committee's involvement in both legislation and regulatory matters. It also reflects the transfer of policy issues to the Policy and Operations Committee.

As reflected in the proposed amendments to N.J.A.C. 10:2-2.4(b)3, the Policy and Operations Committee (formerly the Operations Committee) is mandated to review the interrelationships among the Department's Divisions and other State Departments, to identify issues and urgent needs relating to the impact of Department policies on local communities and/or clients and, as proposed at N.J.A.C. 10:2-2.4(b)3iii, to investigate issues and concerns of contract providers and make recommendations where appropriate.

N.J.A.C. 10:2-2.4(b)4, regarding the Finance and Budget Committee, has been replaced with new rule text to reflect the Committee's involvement in the Department's annual public budget review process and its mission to develop an expertise among its memership on the Department's budget and the budget process and to share that expertise with the full Council.

Proposed amendments add new rule text at N.J.A.C. 10:2-2.4(b)5 to establish the County Human Services Advisory Council Representatives' Committee to review the role of the CHSAC representatives as members of the Council, make recommendations to improve their involvement, and to provide a forum for CHSAC representatives to bring CHSAC issues and concerns to the attention of the Council. This Committee has been operational since March 1990. Its major task this year was to recommend changes to the rule governing CHSAC operations and to work with Department staff toward the end product which appears in the earlier section of this rule.

Proposed amendments add new rule text to N.J.A.C. 10:2-2.4(b)6 to establish the Minority Issues Advisory Committee, which has also been functioning since March 1990. It has been organized as two subcommittees, the African American Services Advisory Committee and the Hispanic Services Advisory Committee. These committees have met jointly on a quarterly basis and would do so more often as a result of this rule. The language provides the necessary flexibility for inclusion of other minority groups as well. The Committee's mission will be to review Department programs, services, and policies for their impact on minority populations, to identify gaps in service, and to participate in Department planning and implementation of programs, services, and policies to address these gaps. In addition, N.J.A.C. 10:2-2.4(c) has been added which specifies that advice and recommendations emanating from the operation of the Standing Committees will be processed through the Executive Committees and the full Council. The chairperson is authorized to make exceptions to this process at his/her discretion.

Social Impact

N.J.A.C. 10:2 outlines and clarifies the minimum standards applicable to the County Human Services Advisory Councils and the State Human Services Advisory Council. The County Human Services Advisory Councils will be held to the requirements set out herein as part of their annual contract review and certification.

It is expected that the public's reaction to the proposed readoption with amendments will be generally positive, although the CHSACs themselves may express some concerns about the changes affecting their membership composition and overall functioning.

The proposed readoption with amendments will be a benefit to all Department applicants, recipients, and providers of service and will have a positive impact on the planning and delivery of social service at the State and local level.

The rules proposed for readoption with amendments will have a positive impact on the planning and delivery of social services at the State and local level. Applicants for funding from the Department of Human Services which flows through the CHSACs will be able to negotiate the CHSAC RFP process and appeals process with less difficulty. Recipients of services can be assured that the CHSACs' planning function is taking their human service needs into account and that representatives from their particular service area or target population will have an opportunity to participate in the CHSAC. Providers of services at the local level will be assured that they will have an opportunity to participate in the CHSAC process, that the CHSAC RFP process will be well-defined, including an appeals process, and that each CHSAC will have a contract review policy. In addition CHSAC members, providers, consumers and the public at-large will have an opportunity to participate in the Department's annual public budget review process and thereby provide input into the Department's budget request.

Economic Impact

There is no negative economic impact on Department applicants, recipients or providers of service, nor on any members of the public at-large. The Department's practice to contract with the CHSACs, through county government in most counties, will continue under these rules; these contracts are renewed on an annual basis.

The rule will help to enhance the fiscal integrity of the Department of Human Services' purchase-of-service contract process and of Statewide policy development by insuring, through the participation of knowledgeable community representatives, that minimum standards are met and that priority local and state human services are being delivered.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This proposed readoption with amendments concerns the operation of the County Human Services Advisory Councils and the State Human Services Advisory Council, neither of which is a small business under the Act.

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

SUBCHAPTER 1. COUNTY HUMAN SERVICES ADVISORY COUNCILS

10:2-1.1 Purpose and scope

(a) (No change.)

(b) County Human Services Advisory Councils' activities include, but are not limited to:

1. Facilitation and coordination of the Department of Human Services' annual public budget review process in each county;

[1.]**2.** Review and comment on human services proposals;

[2.]**3.** Preparation of allocation plans **including those required for the Social Services Block Grant (including fair funding formula funds), State appropriations for the homeless, Peer Grouping, and other funding streams as required by the Department of Human Services;**

[3.]**4.** Review of existing purchase-of-service contracts; [and]

[4.]**5.** Coordination and consolidation of the local human services delivery systems[.];

6. Development and implementation of a county human services plan to meet local needs; and

7. Designation of appropriate representation for participation on the State Human Services Advisory Council.

(c) County Human Services Advisory Councils shall be comprised of provider[s] **representatives,** [and] consumers of human services**, and other concerned individuals** and shall be generally reflective of the demographic characteristics of their respective county populations.

[(d) The functioning of the Councils shall be evaluated annually for the period January 1 to December 31 by the Department Representative to assess the functioning of the Councils as it related to the projects assigned by the Department of Human Services and to ensure that they are a broad-based, representative body within their community, as required by N.J.A.C. 10:2-1.3.]

10:2-1.2 Definitions

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

"Certification process" means the annual review and approval of the CHSAC conducted by a representative of the Department of Human Services.

"Consumer" means a person who is, or has been, a recipient of public or private human services; or, a consumer advocate (that is, a [concerned citizen,] volunteer[,] or member of an advocacy group).

"Contracting process" means the [written] action by which the New Jersey Department of Human Services enters into a written agreement with the Human Services Advisory Councils to perform specific levels of service, planning objectives, and to receive funding as set forth by the Department.

"Department" means **the** New Jersey Department of Human Services.

["Department representative" means the individual employed by the New Jersey Department of Human Services who is responsible for serving as the Department's policy representative to County government, providers, and consumer groups. This person is also responsible for the overall management of a coordinated County-based Human Services system, which consists of multiple private and public social service agencies and programs.]

"Family member" means a spouse, parent, guardian, or a sibling of a person who is, or has been, a recipient of public or private human services.

"Minority interest **representatives**" means [interested] members of major [minority] **underserved** groups such as the aged (over 60), females, blacks, or Hispanics.

"Provider representative" means an employee, board member, or other volunteer of an entity which is eligible to hold a contract(s) with the Department of Human Services.

"Target["] populations**"** means those populations currently under the purview of the New Jersey Department of Human Services, such as children **and** [family and adult services] **families in need of services, persons needing** mental health **services, persons with** developmental disabilities, low income **persons** and [/or] public assistance recipients, [veterans,] blind and [vision] **visually** impaired **persons, persons who are deaf or hard of hearing, the** disabled elderly, **homeless individuals and families,** [and] other disabled **persons,** and under-served populations **requiring services from the Department.**

10:2-1.3 Membership requirements

(a) County Human Services Advisory Councils shall contain the following membership for certification by the Department[.]**:**

1. Public and Private[:] Provider Representation**:** Councils shall be comprised of both public and private human services provider[s] **representatives**. Provider **representative** membership shall not exceed 49 percent of the total membership. **Provider representative membership shall represent as many target populations and service areas encompassed by the Department as possible.** Representation shall include:

i. County freeholder or county executive, or a designee;

ii. The county welfare agency director or designee;

iii. The county Division of Youth and Family Services District Office Manager, or another Division of Youth and Family Services' designee[;]**.**

[iv. The Department of Human Services Department Representative as an ex-officio, non-voting member; and

v. State representatives, as indicated by the meeting agenda, of the Divisions of Youth and Family Services, Public Welfare, Medical Assistance and Health Services, Mental Health and Hospitals, Developmental Disabilities, and the Commission for the Blind and Visually Impaired. Participation by these departmental employees shall be in an ex officio, non-voting capacity. The Department Representative shall be responsible for ensuring coordination and participation from these divisions when necessary.]

2. Staff of the Department of Human Services, as designated by the Commissioner, as an ex-officio, non-voting member.

[2.]**3.** Consumer **and Family Member** Representation: Consumer **and family member** [participation] **representation** shall be at least 25 percent of the total membership. Current or former recipients of service shall constitute one-half of consumer **and family member** membership. Consumers **and family members** shall represent a cross-section of the human services community **and target populations**, as **defined above** [described in (a)4 below].

[3.]**4.** Demographic Representation: The CHSAC shall reflect [a] **the** county's demographic make-up in terms of age, ethnicity and sex, according to the latest census data. Minority interests must be **at least** proportionate to the minority composition of the county. [Where other minorities represent a high proportion of the population counties shall recognize this in council composition.]

[4.]**5.** Target Population Representation: **To the fullest extent possible,** County Human Services Advisory Councils shall be representative of target populations and service areas.

[5.]**6.** [Non-Human Services representation] **Other representation shall include a local public housing agency representative and may include** the areas of [Employment, Elderly (Area Agency on Aging), Health] **employment, aging (area agency on aging), health (county and local health offices)** [Substance Abuse, Education, Community Action Program, Legal Aid and Vocational Rehabilitation] **substance abuse, education, community action, legal aid and vocational rehabilitation.**

7. State representatives, as indicated by the meeting agenda, from the Department's Divisions. Participation by these departmental employees shall be in an ex-officio, non-voting capacity. The representative of the Department shall be responsible for ensuring coordination and participation from these Divisions when necessary.

[6.]**8.** Voluntary sector representation: May include private planning councils [for example, United Way] **and** [who are] major donors or funders of local human services **(for example, United Ways)**.

[7.]**9.** Major geographic sub-divisions (for example, cities) should be encouraged to participate in County Human Services Advisory Councils.

[8.]**10.** Juvenile Justice [Representative] **Representation** [should include a representative] **Representatives** of **boards and commissions which represent the needs of at-risk children and youth (such as** the County Youth Services Commissions**, the County Inter-**

Agency Coordinating Councils (CIACCs), and the Case Assessment Resource Teams (CARTs)) shall be included as [a] voting members [of the County Human Services Advisory Council].

11. Membership from other county-level advisory boards and commissions may be included as voting members.

[9.]**12.** Other representation should include those representatives who the county believes would provide a valuable contribution to human services planning (for example, labor unions, private businesses, foundations).

10:2-1.4 Relationship to other county advisory groups

In its relations to other county advisory groups, the County Human Services Advisory Council shall be the principal human services advisory body **and, as such, should maintain a liaison with other related planning and/or advisory groups in the county.** Other human services related planning or advisory groups may function as [satellites or] subcommittees, with a member of the existing group sitting on the County Human Services Advisory Council.

10:2-1.5 Required subcommittees

(a) Each County Human Services Advisory Council shall establish a Comprehensive Emergency Assistance System (CEAS) [Committee] **Subcommittee** as a standing subcommittee. This standing subcommittee, which shall serve as the primary vehicle for insuring the delivery of emergency [food and shelter] **services** within a county, shall:

1. Maintain and annually update [a comprehensive] **the component part of the** county **human services** plan **and other planning documents regarding services** for homeless individuals and families **as required by the Department such as the County Comprehensive Homeless Assistance Plan or C-CHSAC (which is required to assist the Department to meet the Federal requirements of P.L. 101-625, 104 STAT 4079, codified at 24 C.F.R. 91.02);**

2. [Develop] **Recommend** resource allocation plans for [State of New Jersey appropriations of] funds **brought before the subcommittee** for **services to** homeless families and individuals;

i. The full County Human Services Advisory Council shall give final approval; and

[3. Maintain a core membership standard and include, at a minimum, but not limited to: County Welfare Director (as chairperson) or a designee of his/her choice; County Department of Human Services Representative; a Division of Youth and Family Services and Division of Mental Health and Hospitals Representative; a representative from the municipal welfare sector; public and private not-for-profit provider agencies service the homeless population, and consumers of emergency food and shelter services; and/or consumer advocacy organizations. Other State Department representatives (that is, Departments of Community Affairs, Health and Labor), and private planning councils (that is, United Way) should be strongly encouraged to coordinate related services through participation on the CEAS Committee.]

3. Maintain a core membership standard and include, at a minimum, but not limited to, the following voting members:

i. The County Welfare Agency Director;

ii. One additional designee of the County Welfare Agency Director's choice with expertise in homelessness;

iii. A representative of the District Office of the Division of Youth and Family Services;

iv. A local community development block grant representative;

v. A local public housing agency representative;

vi. A provider representative of the homeless mentally ill, and

vii. Representatives from the municipal welfare sector, public and private non-profit provider agencies serving the homeless population, consumers of emergency food and shelter services and/or a representative of a consumer advocacy organization.

(b) Non-voting subcommittee membership shall include:

1. A Department of Human Services representative;

2. A Department of Community Affairs representative;

3. A Division of Mental Health and Hospitals representative; and

4. A Division of Economic Assistance representative.

(c) Other State Department representatives (including Education, Health, and Labor), and private planning councils (such as United Ways) should be strongly encouraged to coordinate related services through participation on the CEAS subcommittee.

(d) The CEAS subcommittee chairperson shall be selected in accordance with the process established by each respective County Human Services Advisory Council.

(e) Each County Human Services Advisory Council shall establish and maintain a JOBS Oversight and Monitoring Subcommittee as a standing subcommittee in accordance with guidelines established in the Public Assistance Manual at N.J.A.C. 10:81-14.23.

10:2-1.6 [Waiver] **Membership waiver** requests

Membership requirements may be waived by the Department. Waiver requests shall be presented in writing from the County Human Services Advisory Council to [the] **a** Department representative. Waiver requests which violate the policy goal of protection of [vulnerable and] **the interests of at risk,** disabled **and minority** populations shall not be approved. **Waivers would apply for a term of one year or until the County HSAC's certification has expired.**

10:2-1.7 [Minimum procedural] **Procedural** requirements

(a) County Human Services Advisory Councils shall:

1. [Have] **Maintain** a clearly identified structure and operational procedures specified in by-laws;[, including an appeals process and conflict of interest policy. The appeals process should, at a minimum, be sent to each applicant agency responding to a CHSAC's Request for Proposal for Department of Human Services funding. The appeals committee should consist of membership that is separate from those who participated in the agency review and allocation process. Each CHSAC should have written a conflict of interest policy. At a minimum, this policy should preclude CHSAC members from voting or using their membership to influence council decision making on the funding of programs for which they are employed, serve as a board member, or have a financial interest.

2. Be fully representative of their local human services community; and,

3. Maintain liaison with other related planning and/or advisory groups.]

2. Maintain an allocation process, which at a minimum, includes a request for proposals process (in accordance with N.J.A.C. 10:3-3), a proposal review process, an appeals process, and a conflict of interest policy;

i. The appeals process should, at a minimum, be sent to each applicant agency responding to a CHSAC's Request for Proposal for Department of Human Services funding. The appeals committee should consist of membership that is separate from those who actively participated in the agency review and allocation process.

ii. The conflict of interest policy should, at a minimum, preclude CHSAC members from participating in their official capacity in discussions and/or decision making regarding funding or monitoring of programs for which they are employed, serve as a board member or as a volunteer, or have a financial interest. In addition, the members should review the potential for conflict on an annual basis and, as needed, provide full disclosure including information relating to themselves, their spouse, other immediate family members (including child, parent, grandparent, grandchild, uncle, aunt, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law), and any other member of the immediate household (a model Conflict of Interest Policy is available upon request); and

3. Maintain a contract review policy for all renewals of purchase-of-service contracts funded through the Human Services Advisory Council allocation recommendation process, to determine continued compliance with the county human services plan priorities and to assess qualitative aspects of the contracts. Renewal recommendations shall be submitted to the appropriate contracting Division and, when appropriate, to the County Freeholder Director or County Executive. State law (N.J.S.A. 30:4-24.3) and Department Administrative Order 2:01 concerning confidentiality of client records will determine their accessibility to the County HSAC's for the purposes of contract review.

(b) The functioning of each Council shall be evaluated through annual contract review, for the period January 1 to December 31,

by a Department representative to assess its functioning as it relates to the projects assigned by the Department of Human Services as well as the fulfillment of its level of service under its contract with the Department.

(c) The degree to which the Council meets membership requirements, as required by N.J.A.C. 10:2-1.3, shall be evaluated through the certification process by a Department representative.

[10:2-1.8 Minimum planning requirements

(a) County Human Services Advisory Councils shall:

1. Complete a needs assessment of their county, identifying the human services needs and resources available to meet those needs;

2. Develop programmatic and resource allocation objectives consistent with county needs and state policy;

3. Develop a recommended action plan to achieve goals and objectives;

4. Provide public review of the proposed plan;

5. Submit a recommended plan to county government and the Department of Human Services;

6. Utilize the comprehensive human services plan to coordinate major provider functions and to facilitate an integrated county-wide social services delivery system. In addition, CHSAC's should integrate related human services plans;

7. Update the comprehensive human services plan, and other related plans as required pursuant to guidelines provided by the New Jersey Department of Human Services. (Guidelines for Family Court Services Plan 1987-1990; Guidelines for the Comprehensive County Plan for the Homeless for Fiscal Year 1987; Minimum Comprehensive Planning Guidelines for Counties Standardized Planning Formats for Counties).

8. Maintain a contract review process for all purchase-of-service contracts funded through the Human Services Advisory Council allocation recommendation process to determined continued compliance with comprehensive human services plan priorities and assess qualitative aspects of the contracts. Recommendation shall be submitted to the area regional office of the contracting Division and, when appropriate, to county government and other funding sources.

9. Ensure ongoing compliance with Department rules regarding by-laws, representative council membership, minimum attendance requirements for members, selection of standing committees, and contract and reporting requirements.

10. Maintain an allocation process, which at a minimum, includes a request for proposals, a proposal review process, an appeals process, and conflict of interest policy. County Human Services Advisory Councils must prepare allocation plans based on Department and county priorities. The plans shall be communicated to the Department Representative.]

SUBCHAPTER 2. STATE HUMAN SERVICES ADVISORY COUNCIL

10:2-2.1 Purpose and scope

(a) The purpose and scope of the State Human Services Advisory Council is to provide a forum for public leaders to have input into [New Jersey Department of Human Services policy on statewide] **Statewide** human services [issues] **policy** and to work [with the New Jersey Department of Human Services] toward the achievement of [statewide] **Statewide** human services goals.

(b) The State Human Services Advisory Council shall be organized to:

1. Advise the Commissioner of the Department of Human Services with respect to the development and implementation of human services policy;

2. Participate and offer advice on the development of the Department's annual public budget review process;

[1.]**3.** Respond and react to information received from the [New Jersey] Department [of Human Services];

[2.]**4.** Communicate and share such information with the County Human Services Advisory Councils and the human services community at large;

[3.]**5.** Share the community response with the Department; and [;]

[4. Identify statewide trends and priorities and share with the Department.]

6. Initiate discussion with the Department on statewide issues, priorities, and specific programs.

10:2-2.2 Membership Requirements

(a) The State Human Services Advisory Council shall **be appointed by the Commissioner of the Department of Human Services after consultation with the Chairperson and shall** consist of:

1. [Twenty] **Twenty-six** at-large members who are recognized leaders in human services and who represent a wide and varied cross section of the human services community [statewide] **Statewide**;

2. [The Chairpersons] **A representative of each** of the 21 County Human Services Advisory Councils **(CHSACs)** [or a representative] officially designated by the [County Human Services Advisory] **respective** Council to vote and attend regular meetings. **This representative must be a member of the County Human Services Advisory Council (a volunteer)**;

3. [Eighteen non-state] **Non-State** employees [representatives] **representing and** designated by the **direct service related** Divisions [Public Welfare, Youth and Family Services, Developmental Disabilities, Mental Health and Hospitals, Medical Assistance and Health Services, Veterans Programs and Special Services, and the Commission for the Blind and Visually Impaired] **of the Department. These members shall be appointed by the Commissioner in consultation with the Division Director. No more than three representatives from any Division shall be designated, one of which shall be a consumer of that Division's services.** The [18] representatives may be members of a Division Advisory Group;

4. County Human Services Directors or County Human Services Advisory Council staffpersons (in counties where there is no Director of Human Services or where the CHSAC is outside of county government), one from each county, as ex officio, non-voting members; and

[4.]**5.** Representatives from various State [of New Jersey] Departments [and Committees who are non-voting members] **related to human services, appointed by the Commissioner of the respective Department,** including, but not limited to, the [Governor's Committee on Children's Services Planning and] Departments of Health, Education, Labor, Corrections, Community Affairs, and the Public Advocate. **In addition, liaisons from appropriate councils, committees, and boards may be appointed. No more than one representative from each Department or council, committee, or board shall be designated. Representatives shall be chosen who have responsibilities related to human services. Representatives in this category are ex officio, non-voting members.**

(b) The Chairperson of the State Human Services Advisory Council shall be selected by the Commissioner of the Department of Human Services and shall serve, within his or her term as a member of the Council, at the discretion of the Commissioner.

(c) The State Human Services Advisory Council shall reflect a balance among the sectors of the human services community (considering age, ethnicity, sex, direct service providers, and non-providers) and the Department's target populations. In addition, special attention shall be given to including consumers of human services in the membership.

(d) The terms of office shall be as follows:

1. Regarding at-large and Division constituency representatives, members shall serve for three-year terms or until a successor is appointed by the Commissioner. These terms shall commence on January 1st of the respective year.

i. Terms shall be staggered with one-third of the membership eligible for reappointment or replacement each year. Initially, the length of terms will be decided by random selection within categories of membership.

2. Regarding the CHSAC Representatives, if the CHSAC Chairperson is the representative, that person shall serve as a member of the Council for the length of his or her term as Chairperson or until another representative is designated. If a representative other than the Chairperson is designated, that person shall serve until another representative is so designated.

3. Regarding Inter-Departmental Representatives, members shall serve at the discretion of the respective Department's Commissioner and their terms shall commence on the date of appointment.

4. The Commissioner of the Department of Human Services, in consultation with the Chairperson, shall establish staggered memberships for both the At-Large and Division Constituency Representatives.

(e) Attendance requirements are as follows:

1. Members who have not participated in the work of the Council either at two full Council meetings or through a committee within a six-month period shall be contacted by the Chairperson regarding his or her intent to participate.

2. Members who are not active in the work of the Council for a period of one year shall be recommended for removal by the Chairperson to the Commissioner.

(f) Members are expected to actively serve on at least one of the Council's standing committees. Members may participate on the committee of their choice in consultation with the Chairperson, with the exception of the Executive Committee.

10:2-2.3 Administration

[(a) The Chairperson of the State Human Services Advisory Council shall be selected by the Commissioner of the Department and shall serve at the discretion of the Commissioner.]

[(b)]**(a)** The State Human Services Advisory Council shall meet at least quarterly throughout the year.

[(c)]**(b)** The State Human Services Advisory Council **and its standing committees** shall be staffed by employees of the Department. Resources and assistance to the Council will be provided by the Department.

10:2-2.4 Standing Committees

(a) The Chairperson of the State Human Services Advisory Council and the Commissioner of the [New Jersey] Department of Human Services shall establish such standing committees and ad hoc committees as are required to carry out the goals of the Council. The [chairperson] **Chairperson** and the [commissioner,] **Commissioner** shall determine **the** size, membership, and mandate of each committee.

(b) The State Human Services Advisory Council shall have, at a minimum, the following [four] standing committees:

1. **An** Executive Committee[: Composed], **composed** of the Chairperson and the standing committee Chairpersons, as well as the Chairpersons of any ad hoc committees [or task force]. **The Chairperson may appoint additional members.**

i. This committee is responsible for setting the agenda of each full State Human Services Advisory Council meeting. Other responsibilities include, but are not limited to, [the proposal of guidelines for the management of SHSAC and committee meetings,] reviewing [of] recommendations for membership which are forwarded to the Commissioner of the Department of Human Services, **reviewing of all committee reports and recommendations,** and [the provision of] **providing** direction for the overall [administration] **operation** of the State Human Services Advisory Council.

ii. The Executive Committee may also act on behalf of the full Council on urgent matters at the discretion of the Chairperson. Actions taken by the Executive Committee will be reported to the full Council by the Chairperson at Council meetings.

2. [Legislative and Policy] **A Legislation and Regulations** Committee[: Responsibilities], **the responsibilities of which** include, but are not limited to:

i. [The development of a mechanism for channeling support of] **Reviewing and analyzing** important human services legislation and [policy] **regulations**; and

ii. [The proposition of] **Proposing** recommendations regarding **the need for** future human services legislation **and regulations.**

3. **A Policy and** Operations Committee[: Responsibilities], the responsibilities of which include, but are not limited to:

i. [An ongoing review of] **Reviewing, on an ongoing basis,** the interrelationships of Department of Human Services' Divisions and other State [of New Jersey] Departments with the intent of channeling any problems, concerns, or ideas for improvement to the Commissioner of the Department of Human Services;

ii. [Identification and communication of] **Identifying and communicating** problems, [or] issues, **or urgent needs** relating to the [implementation of the Department of Human Services' policy] **impact of Department policies** on local communities and/or clients[.]; **and**

iii. Investigating issues and concerns of contract providers and making recommendations for improvements.

4. A Finance and Budget Committee[: Responsibilities], **the responsibilities of which** include, but are not limited to:

i. [The development of a mechanism for channeling support of important human service funding initiatives (that is, Department of Human Services fiscal year budget and/or supplemental appropriations.] **Participating in the Department of Human Services' annual public budget review process, reviewing the Department's budget and making recommendations thereon to the Commissioner;**

ii. [The identification of issues surrounding the acquisition, allocation, and implementation of funding and/or contracts, and the identification and possible recommendation of instruments which would ease statewide human services financial circumstances.] **Developing, among its members, an expertise on the composition of the Department's budget, how it is developed, the budget process overall and sharing that expertise with the full Council; and**

iii. Reviewing and analyzing important human services funding initiatives.

5. A County Human Services Advisory Council Representatives' Advisory Committee, the responsibilities of which include, but are not limited to:

i. Reviewing the role of the CHSAC representatives as members of the State Human Services Advisory Council and making recommendations to improve their involvement; and

ii. Providing a forum for the CHSAC representatives to bring CHSAC issues and concerns to the attention of the Council and, thereby, the Commissioner of the Department of Human Services.

6. A Minority Issues Advisory Committee, the responsibilities of which include, but are not limited to:

i. Reviewing the Department's programs and services and their delivery in terms of availability, accessibility, quality and sensitivity to minority populations and cultures;

ii. Informing and sensitizing the Department to the human services needs of minorities;

iii. Identifying gaps in service and making recommendations for remediation; and

iv. Participating in the planning and implementation of the Department's programs, services, and policies in regard to minorities.

(c) The advice and recommendations emanating from the operation of the standing committees will be processed through the Executive Committee and through the full Council. Exceptions to this rule are at the discretion of the Chairperson.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services Manual

Ambulatory Surgical Center Reimbursement Group System; HCPCS Procedure Codes for Independent Clinic Services

Proposed Amendments: N.J.A.C. 10:66-1.6, 1.7 and 3.2

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(3); 30:4D-6c; 30:4D-7; 30:4D-7a, b and c; 30:4D-12; 42 C.F.R. 416.1 et seq.

Agency Control Number: 91-P-22.

Proposal Number: PRN 1991-536.

Submit comments by December 4, 1991 to:

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

A copy of the proposed amendment is available for public review at any of the 17 Medicaid District Offices or the 21 county welfare agencies.

The agency proposal follows:

Summary

The proposed amendments revise the reimbursement rate schedule for services provided by ambulatory surgical centers (ASC's). The current four group classification system is being replaced by an eight group classification system. In addition, the Medicaid Program will now pay the Medicare base rate only, with no adjustment for geographic variation. The revised rate schedule reflects Federal changes effective July 1, 1990, for ASC services provided through Medicare. The proposed amendments at N.J.A.C. 10:66-1.7(c)2iii-iv set forth the reimbursement rates for ambulatory surgical centers.

Procedures rendered within the ambulatory surgical center setting are reimbursed by means of two payments. The surgical center is paid for the use of the facility and equipment, the supplies used, and nursing services. The present proposed amendments relate to the reimbursement mechanism for the surgical center facility. Practitioners may bill separately, using the same range of HCPCS procedure codes which they use in billing for surgeries rendered in the inpatient setting. The amendments will not affect reimbursement to practitioners. Practitioners' billings must accurately specify the service(s) rendered, as described in the appropriate provider manual, for example, physician, podiatrist.

The proposal to establish the eight group reimbursement structure follows the recent adoption by Medicare of a similar structure. The Division's use of this similar structure will simplify surgical center providers' billings, in that a specific procedure will be billed similarly through either Medicare or Medicaid. Although the Division is making use of the Medicare reimbursement structure, Medicaid fees are generally lower than those of Medicare. In setting up this structure, reimbursement levels have been devised which are approximately 72 percent of the corresponding Medicare base rate at the time the structure was set up. Parenthetically, Medicare has since increased their reimbursements, although the Division has not done so. The guiding principle has been to keep reimbursement for ambulatory surgical center services "budget neutral." For purposes of this proposal, the term "budget neutral" means that no additional appropriations are needed because the costs have been included in the State Fiscal Year 1992 budget.

The New Jersey Medicaid Program covers some procedures which Medicare does not provide. Consequently, these non-Medicare procedures have been assigned appropriate reimbursement levels, grouped with procedures comparable in the use of facility, staff involvement and seriousness of impact upon the patient.

The Division is eliminating the geographical variation feature of ambulatory surgical center reimbursement. The existing rule created a rate structure whereby the rates varied dependent upon where the provider was physically located. Under the proposed amendments, all providers will be paid the same based upon the surgical procedure group. The rates, therefore, will be applied uniformly state-wide. The effect of this change cannot readily be projected with accuracy. The probable effect will be that, while some procedures will be paid at a somewhat higher rate, the payments for other procedures will probably be reduced.

Surgical procedures which are permissible to be performed within the ambulatory surgical center have been defined in 42 CFR 416.1 et seq. The Federal regulations specify that only those surgical procedures be performed in ASC's which, although appropriately performed in an inpatient hospital setting, can also be performed safely on an ambulatory basis. In addition, the intent is to ensure that procedures currently performed on an ambulatory basis, especially in physicians' offices, that do not generally require the more elaborate facilities of an ASC, should not be included in the list of covered procedures. The HCPCS procedure codes listed at N.J.A.C. 10:66-3.2(m) are being deleted because they are no longer used by the Health Care Financing Administration.

The Medicaid program will continue to reimburse ASC's for providing covered surgical procedures to Medicaid recipients not requiring hospitalization. A facility must continue to meet the standards specified under the Social Security Act and 42 CFR 416.2, et seq., in order to qualify as an eligible ASC provider.

Social Impact

The proposed amendments make no revision in Program policies in respect to ambulatory surgical center services available to recipients, because neither recipient eligibility nor availability of services has been changed. There are approximately nine ASC providers in the New Jersey Medicaid Program.

Economic Impact

Medicaid providers of ASC services will continue to be reimbursed for providing Medicaid covered services to Medicaid recipients. Although the reimbursement schedule is being revised, the revised schedule has been designed to be "budget neutral." While the higher fee categories are markedly higher than the high end of the previous reimbursement structure, those high cost categories are rarely used. It is anticipated that the economic impact on the Medicaid program will be minimal.

Medicaid recipients are not required to pay for health care services.

The Division does not anticipate any additional administrative costs in converting from four categories to eight categories.

The Division does not believe that the proposed amendments will have any impact on the estimated annual aggregate expenditures of the New Jersey Title XIX (Medicaid) Program.

Regulatory Flexibility Statement

While most, if not all, of the approximately nine ambulatory surgical centers which render services through New Jersey's Medicaid Program can be considered to be small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.), the proposed amendments do not place additional reporting, recordkeeping or compliance requirements on qualified providers. All Medicaid providers are required (see N.J.S.A. 30:4D-12) to record the name of the recipient to whom the service was rendered, the date of the service, the nature and extent of each such service rendered, and any additional information as the Department may require by regulation. The proposed amendments are not expected to impose additional recordkeeping costs on providers; to the contrary, conformity with the Medicare reimbursement structure is expected to simplify recordkeeping and submission of claims for payment.

The proposed amendments concern records and billing procedures relating to health care for Program recipients. Accordingly, it is not permissible to exempt small businesses from compliance. Providers are already submitting claims for reimbursement. The proposed amendments should require no additional capital investment.

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

10:66-1.6 Scope of service

(a)-(i) (No change in text.)

(j) Surgical services rules for both minor surgery in an ambulatory care facility and for surgery in an ambulatory surgical center follow:

1.-4. (No change.)

5. For facility reimbursement, surgical procedures performed in an ASC are separated into [a four] **an eight** group classification system as designed under Medicare by the Health Care Financing Administration (HCFA). (See N.J.A.C. 10:66-1.7(c) for facility reimbursement [)].)

i. A request by an ambulatory surgical center facility to add additional surgical procedures not specifically included in one of the [four] **eight** Medicare payment groups must be reviewed and evaluated by the Division of Medical Assistance and Health Services (New Jersey Medicaid Program).

ii. If additional surgical procedures are approved, each procedure will be assigned to one of the existing [four] **eight** Medicare payment groups.

6.-7. (No change in text.)

(k)-(p) (No change in text.)

10:66-1.7 Basis for reimbursement

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

(c) New Jersey Medicaid reimbursement for covered surgical procedures performed in an approved ambulatory surgical center shall be made for services rendered by both the physician and the ambulatory surgical center facility.

1. (No change.)

2. For ambulatory surgical center reimbursement, covered procedures are separated according to [a four] **an eight** group classification system as designated in the appendix to 42 CFR 416.65, the [federal] **Federal** regulations governing ASC services.

i. A facility is reimbursed for any procedure within the same group at a single rate.

ii. A single payment is made to an ambulatory surgical center which encompasses all facility services furnished by the ASC in

connection with a covered procedure performed on a patient in a single operative session.

(1) If more than one covered surgical procedure is performed on a patient in a single operative session, payment is limited to two procedures, [but, then, only if] **provided that the second** procedure is at a separate operative site [on the patient]. Full payment will be made for the procedure with the highest reimbursement rate. Payment for the other procedure will be at 50 percent of the applicable reimbursement rate for that procedure.

[iii. The New Jersey Medicaid Program reimburses ambulatory surgical centers 80 percent of a base rate adjusted for a geographic variation.]

[iv. The New Jersey Medicaid Program utilizes the Medicare base rates in effect as of January 1, 1985. The basic rates (without the geographical adjustment) follows:

(1) Group 1—$231
(2) Group 2—$275
(3) Group 3—$296
(4) Group 4—$336]

iii. The New Jersey Medicaid Program's reimbursement rates for ambulatory surgical centers are as follows:

Classification (Group)	Maximum Fee Allowance
1	**$195.00**
2	**$261.00**
3	**$300.00**
4	**$369.00**
5	**$421.00**
6	**$541.00**
7	**$585.00**
8	**$627.00**

10:66-3.2 HCPCS Procedure code numbers and maximum fee allowance schedule for independent clinic services

AGENCY NOTE: The HCPCS coding system is not published in the New Jersey Administrative Code.

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

(m) Other services

...

[M0050	Ambulatory Surgical Center—Group 1	80% of a base rate adjusted by geographic variation
M0051	Ambulatory Surgical Center—Group 2	
M0052	Ambulatory Surgical Center—Group 3	
M0053	Ambulatory Surgical Center—Group 4	
Z1005	Ambulatory Surgical Center—for abortion only	
Z1010	Ambulatory Surgical Center—100% of Grp 1 plus 50% of Grp 1	
Z1015	Ambulatory Surgical Center—100% of Grp 2 plus 50% of Grp 1	
Z1020	Ambulatory Surgical Center—100% of Grp 2 plus 50% of Grp 2	
Z1025	Ambulatory Surgical Center—100% of Grp 3 plus 50% of Grp 1	
Z1030	Ambulatory Surgical Center—100% of Grp 3 plus 50% of Grp 2	
Z1035	Ambulatory Surgical Center—100% of Grp 3 plus 50% of Grp 3	
Z1040	Ambulatory Surgical Center—100% of Grp 4 plus 50% of Grp 1	
Z1045	Ambulatory Surgical Center—100% of Grp 4 plus 50% of Grp 2	
Z1050	Ambulatory Surgical Center—100% of Grp 4 plus 50% of Grp 3	
Z1055	Ambulatory Surgical Center—100% of Grp 4 plus 50% of Grp 4]	

...

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Application Date for Lifeline Programs
Lifeline Credit Program/Tenants' Lifeline Assistance Program

Proposed Amendment: N.J.A.C. 10:69B-4.8

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 48:2-29.15 et seq.
Agency Control Number: 91-P-28.
Proposal Number: PRN 1991-529.

Submit comments by December 4, 1991 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

Utility assistance programs have been established in New Jersey for State residents who are aged and/or disabled. The Lifeline Credit Program provides a utility credit which is directly applied to the client's utility account for residential utility customers. For residents whose utility costs are included as part of the rental, the Tenants Lifeline Assistance Program issues a check to eligible persons. Through the Special Utility Supplement, beneficiaries of SSI automatically receive a monthly supplement which is included in the SSI check in the amount of one-twelfth of the annual benefit. The annual benefit, either through the Lifeline Credit Program, the Tenants' Lifeline Assistance Program or the Special Utility Supplement, is $225.00.

The proposed amendment will extend the filing deadline for applying for Lifeline Credit and Tenants' Lifeline Assistance Programs from the present date of January 31 to March 15 of each year. Presently, the procedures for applying for these programs permit the applicants to file by the end of January. Each year, approximately 300 applications are denied because they are postmarked after January 31.

The proposed amendment is being originated within the Division, in response to the awareness that beneficiaries' delay in filing applications often stems from problems and difficulties experienced by the elderly and disabled. By extending the filing date, it is anticipated that many individuals whose applications are being denied due to late filing will be able to meet the later deadline. If the entire number of 300 applications currently being denied could be accepted, the additional cost to the programs would be $67,500 in benefits.

Language is also being added in the eligibility section of the Lifeline Credit Program/Tenants' Lifeline Assistance Program Manual at N.J.A.C. 10:69B-4.8(a) to indicate that applications are being mailed to all beneficiaries of the New Jersey Care ... Special Medicaid Programs (see N.J.A.C. 10:72); this amendment to the mailing is a codification of an administrative procedure already in practice. There is also a technical change being made at N.J.A.C. 10:69B-4.8(a). The term "long term care" is being deleted and repealed with the term "nursing" facility. This change is necessary to comply with Federal law which established the definition of a nursing facility (see 1919(a) of the Social Security Act, codified as 42 U.S.C. 1396r).

Social Impact

Most of those applications currently being denied because of late filing should be able to be filed before the new deadline, so that more eligible persons will be able to qualify for benefits.

Economic Impact

Eligible persons will receive assistance to pay for gas and/or electric utilities during the winter heating season.

If the entire group of applications which is currently being denied for lack of timeliness is approved, the additional cost to the programs would

be $67,500 in benefits. Funding for the Lifeline Programs is from the Casino Revenue Fund.

No additional administrative costs would be involved. Existing administrative mechanisms will be used to notify the utility companies to offset the benefit against the beneficiaries' accounts.

Regulatory Flexibility Statement

The proposed amendment does not impose reporting, recordkeeping, or other compliance requirements on businesses, including small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is anticipated that additional applications for assistance will be processed as a consequence of the filing date extension, but any additional processing connected with the applications will be accomplished by a government agency.

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

10:69B-4.8 Lifeline eligibility applications

(a) The Bureau of Lifeline Programs shall mail a Lifeline Application (LL-1) to all PAAD, Medical Assistance to the Aged, [and] Medicaid Only beneficiaries **and New Jersey Care ... Special Medicaid Programs**, except for those residing in [long-term care] **nursing** facilities, that are eligible at any time between July 1 and December 31, of the current year.

(b) When an individual meets the residency, income, age or disability requirements of the PAAD Program and is not an SSI beneficiary and wishes to apply for Lifeline only, the individual shall complete the Lifeline Eligibility Application form LL-3. The LL-3 must be submitted to the Bureau of Lifeline Programs on or before [January 31st] **March 15** of the year following the year of the current eligibility period. For example, [January 31] **March 15**, 1992, would be the deadline for submission for the eligibility period of July 1, [1983] **1991** through December 31, [1983] **1991**. The submission date shall be determined by the postmark on the Lifeline Eligibility Application envelope.

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

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Access to Courts
Definitions; Legal Photocopying Services
Proposed Amendments: N.J.A.C. 10A:6-1.3 and 2.5

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

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

Proposal Number: PRN 1991-538.

Submit comments by December 4, 1991 to:

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

The agency proposal follows:

Summary

The proposed amendments will modify the definitions of "legal material" and "notary service" at N.J.A.C. 10A:6-1.3 and will add a subsection to N.J.A.C. 10A:6-2.5 specifying the types of documents that are not legal to set forth clearly the Department of Corrections' legal photocopying services. These amendments are being proposed in response to *DeMarco v. M. Ginn*, Civ. No. 90-1745 (D.N.J. April 23, 1991) which mandates that certain revisions be made to clear up perceived ambiguities in the present rules. The purpose of the amendments is to clearly exclude discovery materials from inmate photocopying services and to more clearly delineate what materials can be photocopied.

Social Impact

The proposed amendments are not expected to have an adverse social impact because these rules are technical in nature, and do not regulate the conduct of inmates or staff. Clarification of legal terms to determine eligibility for and scope of photocopying services may reduce the stress placed on inmates and personnel because it is anticipated that decision making will be facilitated. The only perceived negative social impact may be the denial of specific requests by inmates for photocopying based on the amendments.

Economic Impact

Photocopying material for inmates has been and will continue to be a financial drain on correctional facilities' budgets, both because of the staff time involved and the cost of equipment and paper. These costs vary depending on the number of requests and volume of work. A small amount of money is generated to reimburse costs by charging inmates who can afford to pay, but many inmates are indigent.

Regulatory Flexibility Statement

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

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

10A:6-1.3 Definitions

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

...

"Legal material" means papers or documents that are required to be filed with the court and served upon opposing parties. **Legal material does not include papers or documents sought in the discovery process.** [These materials include] **Legal material includes**:

1. [Every order] **Orders** required by [its term] **their terms** to be served;

2. [Every pleading subsequent to the original complaint] **Pleadings**;

[3. Every paper relating to discovery which is required to be served;]

[4.]**3.** [Every written notice] **Written notices**;

[5.]**4.** [Every written motion] **Written motions**;

[6.]**5.** [A demand] **Demands, such as, for production of documents, for interrogatories**;

[7.]**6.** [An offer] **Offers** of judgment;

[8.]**7.** [Designation of record] **Designations of records** on appeal;

Recodify 9.-12. as **8.-11.** (No change in text.)

...

"Notary service" means service provided by a notary public authorized by law to certify or attest documents, take affadavits, administer oaths, [etc.] **and perform other services ordinarily performed by a notary public.**

10A:6-2.5 Legal [copying] **photocopying** services

(a) [There shall be no charge to the inmate for the legal copying services provided by the correctional facility.] **The Department of Corrections shall provide photocopies of legal material, as that term is defined in N.J.A.C. 10A:6-1.3, at no charge to the inmate, in accordance with the following guidelines and limitations.**

(b) Each correctional facility shall establish written procedures by which inmates are permitted to have legal [materials copied] **material photocopied**.

(c) At a minimum, inmates may submit **legal** material to be [copied] **photocopied** to a staff member designated by the Supervisor of Education, or an inmate paralegal under the supervision of a designated staff member, during [prescribed] **the** hours **prescribed by the correctional facility**. The original and [copies] **photocopies** of the **legal** material shall be returned to the inmate within four days of submission unless return of the **legal** material is prevented by exceptional circumstances. [When] **If** the fourth day falls on a [Saturday, Sunday] **weekend** or holiday, the **legal** material shall be returned on the weekday following the weekend or holiday.

(d) [Only material related to legal actions or research may be copied. The material may be reviewed by the Supervisor of Educa-

tion or his or her designee but only to ensure that it is legal in nature. Copies will be limited to the number required by the court plus one copy for the inmate. Extensive copying not related to litigation, such as transcripts, shall be done at the inmate's expense.] **Only legal material which must be photocopied for a legitimate purpose, related to pending litigation, will be photocopied at the Department of Correction's expense. Such legal materials may include supporting documents, such as relevant prior correspondence and copies of receipts, which are to be attached to court documents. All other photocopying of legal material will be done at the inmate's expense, except as provided in (i) below. The legal material submitted for photocopying may be reviewed by the Supervisor of Education, or his or her designee, in order to determine whether the legal material:**

1. Falls within the definition of legal material provided in N.J.A.C. 10A:6-1.3; and

2. Must be photocopied for a legitimate purpose related to pending litigation; or

3. Should be duplicated by typing instead of photocopying, as provided by (h) below.

(e) The Supervisor of Education, or his or her designee, has complete discretion in determining whether the criteria enumerated in (d) above are fulfilled. Photocopies will be limited in quantity to the number required by the court plus one photocopy for the inmate.

[(e)](**f**) Cases from [court] **judicial case law** reporters found in the inmate law library [should only be copied in the following instances:] **are not contained within the definition of legal material provided in N.J.A.C. 10A:6-1.3. However, cases may be photocopied at the Department of Correction's expense, but only in the following exceptional circumstances:**

1. (No change.)

2. If the inmate's work schedule precludes him or her from engaging in [adequate] legal research in the **inmate** law library.

[(f)](**g**) In the instances cited in [(e)1 and (e)2] **(f)1 and 2** above, the [copied] **photocopied** case will be signed out on a temporary basis and returned to the inmate law library [for future use] **within 14 days.**

[(g)](**h**) [All legal material which can be duplicated by typing will be done in that manner by the inmate] **If, in the discretion of the Supervisor of Education or his or her designee, the legal material which the inmate seeks to have photocopied should instead be duplicated by typing, the inmate himself or herself shall be required to type the duplicates and the correctional facility shall not provide photocopies.**

[(h)](**i**) Exceptional circumstances may dictate that [materials] **material** other than those defined as "legal material" [(see N.J.A.C. 10A:18-1.3)] **(see N.J.A.C. 10A:6-1.3)** would need to be [copied] **photocopied.** The [copying] **photocopying** of such [materials] **material** is left to the discretion of the Supervisor of Education or [the staff person designated by him or her to supervise copying procedures] **his or her designee.**

(j) The material referenced in (a) through (i) above will be copied at the inmate's expense unless the inmate is indigent.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Stopping and Parking Routes U.S. 9 in Atlantic County and N.J. 29 in Mercer County

Proposed Amendments: N.J.A.C. 16:28A-1.7 and 1.20

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1.
Proposal Number: PRN 1991-557.

Submit comments by December 4, 1991, to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendment will establish "restricted parking and stopping" zones along Routes U.S. 9 in the City of Port Republic, Atlantic County, and N.J. 29 in Hopewell Township, Mercer County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

The Department's Bureau of Traffic Engineering and Safety Programs, in the interest of safety, and as part of a review of current conditions, conducted traffic investigations. The investigations proved that the establishment of the "restricted parking & stopping" zones along Routes U.S. 9 in Atlantic County and N.J. 29 in Mercer County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7 and 1.20 based upon the traffic investigations and resurveys.

Social Impact

The proposed amendments will establish "restricted parking and stopping" along Routes U.S. 9 in Atlantic County and N.J. 29 in Mercer County for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect cost for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "restricted parking and stopping" 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 amendments do not place any reporting, recordkeeping, or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.7 Route U.S. 9

(a) The certain parts of State Highway Route U.S. 9 described in this subsection shall be designated and established as "no stopping or standing" zones **where stopping or standing is prohibited at all times.**

1.-21. (No change.)

22. No stopping or standing along both sides in Atlantic County:

i. City of Port Republic:

(1) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas.

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

16:28A-1.20 Route **N.J.** 29

(a) The certain parts of State highway Route **N.J.** 29 described in this [section] **subsection** shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1. No stopping or standing in Hopewell Township, Mercer County[;]**:**

[i. Along both sides between Ewing-Hopewell Townships corporate lines and Blue Ridge Road;

ii. Along the southbound side between a point 2,700 feet north of the center line of Valley Road and a point 150 feet north thereof;

iii. Along both sides between a point 200 feet south of center line of Church Road and a point 200 feet north of center line of Church Road;

iv. Along the northbound side from the center line of Valley Road, to a point 275 feet south of the center line of Old River Road.]

i. Along both sides for the entire length within the corporate limits, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas.

2.-4. (No change.)

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

(a)

DIVISION OF PROCUREMENT

Classification of Prospective Bidders
Statements under Oath, Penalties for False Statements, Types of Work; Classification Rating System; Determination of Rating for Contractors with Verifiable Work Experience; Determination of Rating for Newly Formed Contractors; Renewal of Classification Ratings; Bidding; Exclusion of Bids; Certification of Current Bid Capacity; Bidding by Out-of-State Corporations; Rejection of Bids; Information to Accompany Bids; Joint Ventures; Appeals and Enforcement
Proposed Amendment: N.J.A.C. 16:44-1.1
Proposed Repeal and New Rule: N.J.A.C. 16:44-1.2
Proposed New Rules: N.J.A.C. 16:44-1.3 through 1.16

Authorized By: Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), New Jersey Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, and 27:7-35.2 et seq.

Proposal Number: PRN 1991-528.

Submit oral or written comments by November 20, 1991 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendment and new rules fully describe the New Jersey Department of Transportation's revised contractor/prospective bidder classification policy. The revised policy is the product of extensive analysis and review by N.J.D.O.T. staff, coordinated by the Office of Procurement in the Bureau of Construction Services. The classification revisions were presented to the industry at the New Jersey Asphalt Paving Conference on March 13, 1990 and at the Construction Industry Advancement Program Conference on November 27, 1990 and were well received by the construction industry representatives. The Federal Highway Administration, which provides the Department with major funding, has concurred with the proposal of these new rules.

The proposed new rules delineate the manner in which the Department (D.O.T.) will evaluate a contractor/prospective bidder's financial capacity and engineering ability. The financial ability is evaluated through the use of the Aggregate Rating, which factors in net working capital, net book value of equipment, and unsecured lines of credit. Engineering ability is evaluated through the use of the Project Rating, which factors in a complete review of the contractor/prospective bidder's work experience. The work experience evaluated includes D.O.T. work, non-D.O.T. work, and the work experiences of the contractor/prospective bidder's key personnel. Each contractor/prospective bidder will be assigned both an Aggregate and a Project Rating.

The contractor/prospective bidder must consider its Aggregate and Project ratings each time it bids on a D.O.T. project. With the bid information supplied by D.O.T. and the ratings, the contractor/prospective bidder will know if it can bid the job, prior to bidding. This is a major effect of the proposed new rules. Under the existing rules, the Department performs a review after the bid is made, to evaluate whether the contractor has sufficient financial capacity to do the job. It is anticipated that this revised process will encourage competition among bidders and will decrease unnecessary expenditures on the part of contractors who would know in advance if they would not be eligible for particular bids.

The amendments to N.J.A.C. 16:44-1.1 supply definitions for "Aggregate Rating", "Current Bid Capacity", "Maximum Rating" and "Project Rating" and delete the definition of "Pre-qualification Committee." The subject matter of the new rules follows:

N.J.A.C. 16:44-1.2 specifies the statements, under oath, which are to be submitted by the contractor as part of the Pre-Qualification Questionnaire.

N.J.A.C. 16:44-1.3 specifies the penalties for false statements, in accordance with the provisions of N.J.S.A. 27:7-35.9.

N.J.A.C. 16:44-1.4 specifies the procedure for classification as to types of work, and includes the factors to be considered.

N.J.A.C. 16:44-1.5 specifies the components of the rating procedures.

N.J.A.C. 16:44-1.6 provides standards for the determination of a project rating for contractors who have verifiable work experience, but who have no Department rating.

N.J.A.C. 16:44-1.7 describes the process of determining a project rating for newly formed contractors.

N.J.A.C. 16:44-1.8 describes the process of renewal of classification ratings.

N.J.A.C. 16:44-1.9 describes the bidding process, including who is eligible to bid and what must be submitted to the Department.

N.J.A.C. 16:44-1.10 delineates the circumstances under which a bid may be excluded, and requires an authorized agent, employee or officer of the contractor to acknowledge receipt of all applicable addenda.

N.J.A.C. 16:44-1.11 requires a contractor to compute and to certify current bid capacity on forms provided by the Department.

N.J.A.C. 16:44-1.12 provides standards for bidding by out-of-State corporations, requiring them to be authorized to do business in New Jersey in accordance with N.J.S.A. 14A:15-1.

N.J.A.C. 16:44-1.13 delineates circumstances which may cause a bid to be rejected, including unauthorized additions, any alterations, the absence of required supporting forms, data, or a satisfactory Performance Bond.

N.J.A.C. 16:44-1.14 specifies the information which must accompany a bid.

N.J.A.C. 16:44-1.15 describes the special bidding requirements for joint ventures.

N.J.A.C. 16:44-1.16 contains appeal and enforcement provisions.

The rules currently codified as N.J.A.C. 16:44-1.3 through 1.7 have been recodified as N.J.A.C. 16:44-1.17 through 1.21, with no change in text.

Social Impact

The proposed new rules will affect construction contractors who want to be classified to bid or perform as subcontractors on Department projects. There are currently 335 classified contractors. These contractors, and contractors classified in the future, will benefit by knowing specifically how the Department will evaluate their engineering and financial capabilities. Also, they will know prior to bidding, if their rated capacity is sufficient to bid the job. The general public will be served by the implementation of publicized and legally binding requirements to ensure thorough screening of contractors/prospective bidders.

Economic Impact

The proposed new rules will impact on the contractors' ability to bid on Department construction projects. Statistical information developed by the Department has shown that 74 percent of currently classified contractors will have increased or equivalent bidding capacity using the proposed new rules. Contractors who provide high quality construction will be rewarded with the potential for increased bidding capacity. Conversely, contractors who provide poor quality construction will have decreased bidding capacity. No additional administrative costs are anticipated. Monetary savings are anticipated, since the Department will not have to evaluate the bids of contractors who do not have sufficient capacity to support the bid. Prospective bidders will be able to evaluate

their bidding capacity in advance and will not incur costs in developing bids where there is no chance of award.

Regulatory Flexibility Analysis

Almost all of the 335 currently classified contractors can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules provide a standardized means of evaluating contractors/prospective bidders. Current classification submittals from contractors/prospective bidders will not change. No changes in contractors' recordkeeping or in initial or annual costs are anticipated. Costs, such as staff overhead and professional fees, should remain the same. The contractor's ability, through these standards, to perform a more accurate assessment of capacity, may decrease its costs. The standards tend to equalize the status of all potential contractors for Department projects, and, as such, accommodate the interests of small businesses. Therefore, no specific differentiation has been provided in these rules.

OFFICE OF ADMINISTRATIVE LAW NOTE: The text of N.J.A.C. 16:44-1.2 was amended by R.1988 d.175, effective April 18, 1988, but was incorrectly reflected in the New Jersey Administrative Code. See 20 N.J.R. 380(b) and 20 N.J.R. 913(b) for the properly promulgated text.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:44-1.2.

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

SUBCHAPTER 1. CLASSIFICATIN OF CONTRACTORS AND PROSPECTIVE BIDDERS

16:44-1.1 Definitions

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

"Aggregate Rating" means the dollar limit of contract work that a contractor will be allowed to have outstanding at any given time, and includes the dollar value of all work in progress.

...

"Current Bid Capacity" means the lesser of a contractor's Project Rating or Maximum Rating.

...

"Maximum Rating" means the dollar figure established by subtracting the contractor's current dollar amont of outstanding work from its Aggregate Rating.

...

"Project Rating" means the dollar limit which a contractor shall be allowed to bid on an individual project.

...

["Pre-qualification committee" means a committee appointed by the Commissioner of Transportation to perform the duties indicated in this subtitle and composed of;

1. Director of Engineering and Operations, chairman (State highway engineer);
2. Deputy attorney general;
3. Director of Financial Management;
4. Chief Engineer, Construction and Maintenance;
5. Chief, Bureau of Contract Administration.]

16:44-1.2 Statements under oath

(a) All contractors proposing to bid on Department of Transportation work must furnish, on forms provided by the Commissioner of Transportation, a Prequalification Questionnaire including, at a minimum, the following statements:

1. A statement as to financial ability, which statement shall show current assets and current liabilities and shall include verifications of unsecured lines of credit extended by banks. The Prequalification Questionnaire must be accompanied by certified audited financial statements or a CPA review of financial statements. The financial statements must be complete with a balance sheet, related statements of income and retained earnings and cash flows. They must be completed by a certified public accountant or public accountant, as established by N.J.S.A. 45:2B-29 et seq., who is independent of and not an employee of the contractor for which the financial statements are being provided;

i. The certified audited financial statements should have an unqualified opinion. The CPA review of financial statements shall be in conformity with generally accepted accounting principles. Both the audited and CPA review financial statements shall be for a full one year accounting cycle;

ii. Submission of a CPA review of financial statements will limit the contractor's maximum project rating to $2,000,000. In addition, the aggregate rating will be limited to the total uncompleted work on hand at the time of the classification, plus $2,000,000;

iii. Submission of a consolidated financial statement is acceptable. It may be submitted with the Prequalification Questionnaire completed in the name of the parent corporation;

2. A statement as to plant and equipment, which shall give complete details as to cost, age, condition and book value and outstanding loans;

3. A statement as to organization, which shall show the ability of such organization, including key personnel, to undertake a project in the classification desired;

4. A statement as to prior experience, which shall show the length of time in which the contractor has been engaged in the contracting business. It shall also disclose the nature of the contractor's experience during that period;

5. A statement which shall give an accurate and complete record of work completed in the three prior years and which shall identify the projects undertaken, type of work performed, location, contract price, name and telephone number of the owner's engineer in charge;

i. The work record statement shall list, in detail, any liens, stop notices, default notices or claims filed with regard to any project within the previous three years. The work record statement shall also disclose labor troubles experienced, failures to complete contracts and all penalties imposed by reason of any contract undertaken within the previous three years. The contractor shall explain all such items;

ii. Any contractor which has been continuously qualified with the Department of Transportation for a period of four years shall not be required to complete this statement, unless the statement contractor desires to be classified for a different type of work than that for which it has previously been classified;

6. A statement setting forth any other pertinent and material facts which will justify the classification and rating desired;

7. A statement that the contractor has adopted an Affirmative Action Program for Equal Employment Opportunity in accordance with State and Federal laws, rules and regulations;

8. If the contractor is a corporation or partnership, a statement setting forth the names and addresses of all stockholders or partners owning 10 percent or greater interest in the contractor. If one or more stockholders or partners is, itself, a corporation or partnership, the statement shall also indicate the stockholders holding 10 percent or more of that corporation's stock or the individual partners owning a 10 percent or greater interest in that partnership. The disclosure shall be continued until the names and addresses of every noncorporate stockholder or partner exceeding the 10 percent ownership criterion has been listed;

9. A prequalification affidavit attesting that all statements conatined in the Prequalification Questionnaire are true and accurate; and

10. A statement identifying the types of work for which the contractor is seeking classification.

16:44-1.3 Penalties for false statements

(a) Any person who makes, or causes to be made, a false, deceptive or fraudulent statement in the Prequalification Questionnaire required to be submitted, or in the course of any hearing pertaining to an application for prequalification, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than $100.00, nor more than $1,000; or in the case of an individual or the officer or employee charged with the duty of making such questionnaire for a person, firm, copartnership, association or corporation, to pay such fine or undergo imprisonment, not to exceed six months, or both.

(b) All such persons and any copartnership, association, corporation, or joint stock company of which any such person is a partner

or officer or director, and any corporation of which such person owns 25 percent of the stock, shall, for five years from the date of such conviction, be disqualified from bidding on all public work in this State.

(c) As used in this rule, "person" means and includes any individual copartnership association, corporation or joint stock company their lessees, trustees, assignees or receivers appointed by any court whatsoever.

16:44-1.4 Types of work

(a) Contractors will be classified according to the type of work and the amount of work on which they may bid.

(b) The types of work for which contractors may seek classification are on file at the Department of Transportation, Bureau of Construction Services, 1035 Parkway Avenue, CN 605, Trenton, New Jersey 08625.

(c) Each contractor will be classified for one or more types of work and will be rated in accordance with its financial ability, adequacy of plant and equipment, organization, record of construction and any other factors deemed pertinent by the Department of Transportation. The contractor will be assigned a classification, designating the types and dollar values of work upon which it shall be eligible to bid.

(d) The Commissioner of Transportation will notify a contractor of its classification by first class mail within 15 days of the Department's receipt of a complete Prequalification Questionnaire. If the Department requests from the contractor additional information needed to complete the Prequalification Questionnaire submitted or to clarify information contained in the Prequalification Questionnaire, the contractor will be notified of its classification by first class mail within 15 days of the Department's receipt of the specified information. Any contractor which fails to submit a complete Prequalification Questionnaire, as determined by the Department, will be denied classification.

(e) The dollar rating ranges within which contractors may be entitled to bid are as set forth in Table I below.

TABLE I
DOLLAR RATING RANGES

$ 50,001 to 100,000	20,000,001 to 25,000,000
100,001 to 150,000	25,000,001 to 30,000,000
150,001 to 200,000	30,000,001 to 35,000,000
200,001 to 300,000	35,000,001 to 40,000,000
300,001 to 400,000	40,000,001 to 45,000,000
400,001 to 500,000	45,000,001 to 50,000,000
500,001 to 750,000	50,000,001 to 55,000,000
750,001 to 1,000,000	55,000,001 to 60,000,000
1,000,001 to 2,000,000	60,000,001 to 65,000,000
2,000,001 to 3,000,000	65,000,001 to 70,000,000
3,000,001 to 4,000,000	70,000,001 to 75,000,000
4,000,001 to 6,000,000	75,000,001 to 80,000,000
6,000,001 to 8,000,000	80,000,001 to 85,000,000
8,000,001 to 10,000,000	85,000,001 to 90,000,000
10,000,001 to 15,000,000	95,000,001 to 99,999,999
15,000,001 to 20,000,000	over 99,999,999

1. A contractor whose statements do not qualify the contractor to bid an amount in the $50,001 to $100,000 range will be classified with an Aggregate Rating equal to its calculated capacity.

2. A contractor, qualified to bid in excess of $99,999,999, will be notified when the Department of Transportation intends to put out for bid a project in the "Unlimited" class. Each such contractor that desires to bid the "Unlimited" class project shall be required to specifically prequalify to bid upon that project. The contractor must apply for such specific classification at least 20 days before the date set for the receipt of bids on the "Unlimited" class project.

16:44-1.5 Classification rating system

(a) Each contractor will be assigned both an Aggregate Rating and a Project Rating. The dollar limits of these ratings will be related to the work type classifications for which the contractor, its officers and key personnel have demonstrated sufficient experience of acceptable quality to be granted a rating.

(b) Aggregate Ratings will be established as follows:

1. The Aggregate Rating will be based on the contractor's net working capital. Net working capital is represented by the excess of current assets over current liabilities and identifies the relatively liquid portion of total enterprise capital which constitutes a margin for meeting obligations within the ordinary operating cycle of the business. A contractor's net working capital can be supplemented by unsecured lines of credit and the net book value of construction equipment. The contractor's allowed assets will be multiplied in accordance with (b)3 below.

2. The Department of Transportation reserves the right to use the contractor's net worth, as shown in the balance sheets, as the basis of the firm's net working capital when review and analysis of the financial transactions undertaken by the contractor so require.

3. The Department of Transportation will add dollar figures established by use of the multipliers indicated below. For contractors which have not had a Department of Transportation performance rating within the prior four year period, the resulting figure shall be the contractor's aggregate rated capacity. For contractors which have had a Department of Transportation performance rating within the prior four year period, the resulting figure will be multiplied by the contractor's average performance rating percentage to establish the contractor's aggregate rated capacity.

Contractors without NJDOT past performance

Aggregate rated capacity = (Net working capital × 9) + (net book value of equipment × 9) + (unsecured lines of credit × 4).

Contractors with NJDOT past performance

Aggregate rated capacity = (net working capital × 15) + (net book value of equipment × 15) + (unsecured lines of credit × 7) × average past performance rating.

4. A contractor's aggregate rated capacity will be reduced by 15 percent if it neither owns nor leases, on a continuing basis, the equipment necessary to perform the work within its work category.

5. A contractor's Aggregate Rating will be established by application of its aggregate rated capacity to Table I at N.J.A.C. 16:44-1.4(e).

6. A contractor will not be permitted to bid beyond its aggregate rating.

(c) Project Ratings, based on an evaluation of contractor's verifiable work experience and the experience profile of its officers and other key personnel, will be established as follows:

1. When a contractor has performed work for the Department of Transportation and received a performance rating within the previous four years, its Project Rating will be based on its performance rating, as applied in N.J.A.C. 16:44-1.8, for the classification work types associated with the performance rating.

2. When a contractor has never been classified by the Department of Transportation or when a contractor has not received a performance rating from the Department within the previous four years, past work experience and experience of officers and key personnel will be evaluated through the use of work experience verification letters and/or personal contacts. Recently formed contractors, with limited or no work history will be evaluated by the use of detailed individual experience profiles.

16:44-1.6 Determination of Project Rating for contractors with verifiable work experience, but no Department of Transportation past performance rating

(a) In order to evaluate the work experience of a contractor, the Department of Transportation will obtain information from public and private owners for whom the contractor has performed work. The information will be reviewed and evaluated in the manner set forth in Table II, Quality Points, below.

TABLE II
QUALITY POINTS

Rating	Excellent	Good	Fair	Poor
QUALITY OF WORK (Grading, Paving, Bridge, etc.)	1.00	0.80	0.50	0
COMPLETION OF WORK PER REQUIRED SCHEDULE	0.50	0.40	0.25	0
SUPERVISION	USED FOR GENERAL INFORMATION			
ADEQUACY OF EQUIPMENT	USED FOR GENERAL INFORMATION			

SUPPLEMENTAL QUALITY POINTS
(Only A or B Applies)

A. For work experience determined to be equivalent to NJDOT work (Equivalent work is deemed to be work for other DOT's, U.S. Army Corps of Engineers, New Jersey Turnpike Authority, New Jersey Highway Authority, etc.): 1.00
B. For work experience determined to be similar to NJDOT work (similar work is deemed to be work for County, City, Township, Municipal, or Utility Authorities): 0.50

(b) The average, to the nearest 0.1 point, of the quality points calculated for each individual work evaluation will be multiplied by the dollar value of the largest successfully completed project for which an evaluation was performed and in which the contractor engaged in the work types for which classification is being sought. A contractor's Project Rating will be established by locating the resulting dollar figure on Table I at N.J.A.C. 16:44-1.4(e).

(c) If the contractor's major work program is evaluated to be equivalent in scope and expertise level to that of NJDOT projects and work quality is evaluated to be good or excellent, the contractor's Project Rating will be set equal to its Aggregate Rating, up to $99,999,999.

(d) In no event shall a contractor's Project Rating be allowed to exceed its Aggregate Rating.

16:44-1.7 Determination of Project Rating for newly formed contractors

(a) A contractor without any verifiable past contracting work experience or a contractor with limited or no work experience of the type required for the classification being sought will be evaluated on the basis of detailed individual experience resumes. Officers and key personnel must submit individual experience resumes detailing those experiences applicable to the work type classifications for which the contractor is applying.

(b) Upon verification of acceptable work experience, the Department of Transportation will grant a Project Rating corresponding to the level and quality of past experience demonstrated by the officers and key personnel of the contractor. If the key personnel to be evaluated are not officers or stockholders of the contractor, the contractor shall submit an affidavit, stating that these individuals are currently full-time employees of the contractor and that the contractor will immediately notify the NJDOT of any change in their employment status. Upon notification of a change in the employment of key personnel, the NJDOT may reevaluate the contractor's classification.

(c) In no event shall a contractor's Project Rating be allowed to exceed its Aggregate Rating.

16:44-1.8 Renewal of classification ratings

(a) Upon renewal of classification, a contractor's Aggregate Rating will be established in accordance with the procedure set forth in N.J.A.C. 16:44-1.5.

(b) Upon renewal of classification, contractors without a NJDOT past performance rating within the previous four years will be evaluated on the basis of the information and in accordance with the procedures described in N.J.A.C. 16:44-1.6 and/or 1.7.

(c) Upon renewal of classification, contractors with a NJDOT past performance rating within the previous four years will be evaluated on the basis of their average performance rating and a Project Rating will be established in the following manner:

1. If a contractor's average performance rating is five points or more below the average performance rating of all contractors that have received a NJDOT performance rating within the previous four years, the contractor's average past performance percentage will be multiplied by a dollar level equal to three times the largest successfully completed NJDOT or equivalent contract performed during the prior four years. The contractor's Project Rating will be determined by applying the resulting dollar figure to Table I at N.J.A.C. 16:44-1.4(e).

2. If a contractor's average performance rating is 15 points or more below the average performance rating of all contractors that have received a NJDOT performance rating within the previous four years, the Department of Transportation may, in the public interest, determine to deny the contractor classification or assign a limited Project Rating instead of assigning a Project Rating pursuant to N.J.A.C. 16:44-1.8. If denied classification or assigned a limited project rating, the contractor will be accorded a hearing pursuant to N.J.A.C. 16:44-1.16.

3. If the two most recent performance ratings assigned a contractor during the prior four year period average five points or more above the average performance rating of all contractors that have received a NJDOT performance rating within the previous four years, the contractor will be entitled to a Project Rating equal to its Aggregate Rating, up to a limit of OVER $99,999,999.

4. If the four most recent performance ratings assigned a contractor during the prior four years are at least equal to the average performance rating of all contractors that have received NJDOT performance rating within the previous four years, the contractor will be entitled to a Project Rating equal to its Aggregate Rating, up to a limit of OVER $99,999,999.

16:44-1.9 Bidding

(a) Any contractor assigned a classification by the Department of Transportation may submit a bid proposal on any project within its classification for a period of 18 months from the date of the close of business shown in its Prequalification Questionnaire. However, no bid will be received from any contractor on any given date unless a complete Prequalification Questionnaire showing a close of business date less than 18 months before the bid date has been filed with the Department at least fifteen days before such bid date.

(b) Contractors shall submit a Prequalification Questionnaire as required by N.J.A.C. 16:44-1.2 or this section, or on such other intermediate occasions as may be deemed necessary by the Commissioner of Transportation.

16:44-1.10 Exclusion of bids

(a) Bids will be accepted only from a contractor which has been assigned a classification by the Department of Transportation. In no event will a bid be accepted from a contractor which is not currently classified or for work different in type or greater in amount than that to which the contractor's classification applies.

(b) When there exists a doubt as to whether a bid is within the classification for which the contractor is qualified the bid will be opened provisionally and if the bid is, in fact, within a higher

classification than that for which the prospective bidder is classified, the bid will be immediately excluded.

(c) Bids will be accepted only if an authorized agent, employee or officer of the contractor has acknowledged receipt of all applicable addenda.

16:44-1.11 Certification of current bid capacity

(a) A contractor submitting a bid proposal to the Department of Transportation must compute and certify its current bid capacity on a Form DC-74B, Contractor's Updated Financial Statement. A contractor's bid shall not be considered responsive if it does not include the required computation and certification.

(b) A contractor's Current Bid Capacity is the lesser of the contractor's Project Rating or its Maximum Rating. The contractor's Maximum Rating is the dollar figure established by subtracting the contractor's current dollar amount of outstanding work from its Aggregate Rating.

(c) In the event that a contractor submits bid proposals on two or more Department of Transportation projects on the same date and is apparent low bidder on more than one project, the contractor must have current bid capacity greater than or equal to the combined amount of its successful bids. An unsecured line of credit, in addition to any unsecured line of credit provided at the time of prequalification, may be submitted with the contractor's bids and added into the computation of Current Bid Capacity.

(d) A contractor shall not bid more than its current bid capacity. Any bid in excess of the current bid capacity will be excluded.

16:44-1.12 Bidding by out-of-State corporations

(a) In the event a corporation not incorporated in the State of New Jersey is the lowest bidder on a project, it must be authorized to do business in New Jersey, pursuant to N.J.S.A. 14A:15-1 et seq., before the contract will be executed by the Commissioner of Transportation.

(b) Each corporation, partnership or individual residing in a state other than New Jersey shall designate a resident of New Jersey to accept service of any legal process before the Commissioner of Transportation will execute a contract with such corporation, partnership or individual.

16:44-1.13 Rejection of bids

(a) The Commissioner of Transportation may disqualify any contractor and reject its bid at any time prior to the actual award of a contract where there have been developments subsequent to qualification and classification which, in the opinion of the Commissioner, would affect the responsibility of the bidder. Before taking such action, the Commissioner will notify the bidder and give it an opportunity to present additional information in support of its responsibility.

(b) Proposals may be rejected for the following reasons:

1. If the proposal is on a form other than that furnished by the Department; or if the form is altered or any part thereof is detached or incomplete;

2. If the proposal is not properly signed;

3. If there are unathorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning;

4. If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award;

i. The only exception permitted shall be a reservation limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting. However, the Commissioner will make the selection of which contract or contracts are to be awarded to such bidder within the maximum gross amount reserved;

5. If the bidder makes an alteration of the "Unit Prices" or "Amounts" that have been included by the Department, unless otherwise directed by Addendum received prior to receipt of bids;

6. If the proposal is not accompanied by an acceptable updated financial statement (Form DC-74B); or

7. If the Commissioner deems it advisable to do so in the interest of the State.

(c) Pursuant to N.J.S.A. 27:7-7.32, a proposal shall be rejected if it is not accompanied by a satisfactory Proposal Bond.

16:44-1.14 Information to accompany bid

(a) In order that the Commissioner of Transportation may have the information necessary to pass upon the ability of a bidder to satisfactorily complete a project, each contractor must submit with its bid on each proposal the status of contracts on hand as of the date specified in the Notice of Contractors, a certification of Current Bid Capacity and the proposal affidavit.

(b) Updated financial statements (Form DC-74B) submitted with bids originally advertised for receipt of bids between the 1st and 15th of the month must include information accurate as of the close of business at the end of the second month preceding that during which bids are being received.

(c) Updated financial statements (Form DC-74B) submitted with bids originally advertised for receipt of bids between the 16th and the end of the month must include information accurate as of the close of business at the end of the month preceding that during which bids are being received.

(d) A contractor may submit with its bid a new unsecured line of credit, in addition to the available unsecured line of credit submitted at the time of classification, in order to maintain a current bid capacity sufficient to cover the total amount bid.

16:44-1.15 Joint ventures

Two or three contractors holding valid classifications from the Department of Transportation may file a request to form a joint venture for the purpose of submitting a bid proposal on a specific project. A Joint Venture Statement must be filed with the Bureau of Construction Services at least five days prior to the date set for the receipt of bids on the project.

16:44-1.16 Appeals and enforcement

(a) A contractor dissatisfied with its classification may request a hearing before the Prequalification Committee and at the hearing may present further evidence to justify a different classification. A change in classification will only be effective for an advertised project if the contractor has provided to the Prequalification Committee all information necessary to support the change request at least 15 days prior to the date on which bids are received.

(b) Except where specifically and expressly permitted, no deviation from this subchapter will be allowed.

Recodify 16:44-1.3 through 1.7 as **1.17** through **1.21** (No change in text.)

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund
Creditable Salary; Extra Compensation
Proposed Amendment: N.J.A.C. 17:3-4.1

Authorized By: Teachers' Pension and Annuity Fund, Michael Weik, Secretary.

Authority: N.J.S.A. 18A:66-56.

Proposal Number: PRN 1991-533.

Submit comments by December 4, 1991 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment clarifies one area of the definition of extra compensation that is not eligible for pension benefits calculations within the Teachers' Pension and Annuity Fund. Only the base or contractual salaries are pensionable. Extra compensation received for overtime, bonuses, temporary, additional work, etc. are not pensionable. This amendment clarifies the treatment of the compensation received by a teacher teaching a temporary, additional period which is not part of that

teacher's regular duties. Such compensation has always been considered nonpensionable extra compensation but this proposed amendment is intended to clarify the treatment of such extra compensation.

Social Impact

This proposed amendment will only affect members of the Teachers' Pension and Annuity Fund who temporarily teach one or more additional periods over and above their regular assigned duties. The extra compensation earned by such teachers will not be utilized in computing their retirement benefits.

Economic Impact

It does not appear that this proposed amendment will have any practical effect upon the members of the Teachers' Pension and Annuity Fund, since only the base pay or contractual salary are pensionable under these rules. This has always been the policy of the Division and this rulemaking clarifies this practice.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this 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. Since the rules of the Division of Pensions only impact upon public employers and/or employees, this amendment will not have any adverse effect upon small business or private industry in general.

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

17:3-4.1 Creditable salary

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

(d) Some of the forms of compensation that have been defined as extra compensation are as follows:

1.-11. (No change.)

12. Additional compensation for performing additional duties, such as teaching an additional period, which are more than the regular duties of employees in the same position and are temporary in nature in that they are not part of the regular duties of a position from year to year and may or may not be assigned to an employee at the discretion of the employer or with the agreement of the employee.

(e)-(f) (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Assessment and Reassessment

Proposed Amendment: N.J.A.C. 18:7-13.1

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1991-546.

Submit comments by December 4, 1991 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
Trenton, NJ 08646

The agency proposal follows:

Summary

The Division of Taxation proposes to amend N.J.A.C. 18:7-13.1(a)4 by deleting the present language and adding language referring taxpayers to the new rule on abatements of interest at N.J.A.C. 18:2-2.7, published elsewhere in this issue of the New Jersey Register. As now written, the rule indicates that the Director may abate interest if satisfied that a deficiency was not due to fraud or evasion, the standard in N.J.S.A. 54:10A-19.1. However, the Division has adopted a more detailed rule at N.J.A.C. 18:2-2.7 on abatements of penalty and interest which is intended to apply to abatements of penalty and interest on deficiencies of any State tax, including penalty and interest on Corporation Business Tax deficiencies. The amendment to N.J.A.C. 18:7-13.1(a)4 will refer taxpayers to this new rule.

Social Impact

The proposed amendment will have a positive social impact by making clear to taxpayers the factors which the Division will consider in evaluating requests for abatements of penalty and interest on Corporation Business Tax deficiencies and pointing out to taxpayers where in the rules the criteria may be found. The proposed amendment should, therefore, eliminate confusion over which standards the Division will apply in evaluating requests for abatements.

Economic Impact

The amendment may increase revenue by enhancing taxpayer compliance and by eliminating the need for litigation regarding whether the Division properly considered requests for abatements. Expenses for administrative and legal fees may be reduced for taxpayers and tax administrators by implementing the amendment pursuant to the statute.

Regulatory Flexibility Statement

The proposed amendment does not impose mandatory reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule, as amended, will direct taxpayers to the new rule on abatements at N.J.A.C. 18:2-2.7 which applies to small businesses, as well as those employing more than 100 people.

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

18:7-13.1 Assessment and reassessment

(a) On its return, the taxpayer must compute the amount of tax payable under the law and must remit the amount of the indicated tax.

1.-3. (No change.)

[4. If the Director is satisfied that the deficiency was not due to fraud or evasion, he may abate the payment of any interest charge in excess of the annual rate of three percentage points above the prime rate, compounded daily.]

4. For the procedure to request an abatement of penalty and interest and the criteria used by the Division in reviewing and making determinations on such requests, see N.J.A.C. 18:2-2.7.

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

(b)

DIVISION OF TAXATION

Sales and Use Tax

Admission records and information; promoter registration

Proposed New Rule: N.J.A.C. 18:24-2.16

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1991-532.

Submit comments by December 4, 1991 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed new rule provides for the registration of promoters who hold, produce or sponsor an event the admission to which is subject to the New Jersey sales tax. It also requires that all admission tickets stating the admission price must include a separate statement thereon of the applicable sales tax.

The rule provides that the person selling taxable admission tickets is the person required to collect and remit the tax; however, the tax may be remitted by the promoter if all of the following requirements are met: (a) the person selling tickets and the promoter agree in writing for the promoter to remit the tax; (b) the promoter provides the person selling the tickets with a copy of his Certificate of Authority; (c) the person selling the tickets has no reason to believe the tax will not be remitted; (d) the person selling tickets maintains records of sales, tax collected, and information about the promoter; (e) the person selling tickets furnishes information to the Division of Taxation; and (f) the Division of Taxation has not advised the person selling tickets to remit the tax directly to the State.

Social Impact

The proposed rule recognizes that several parties are frequently involved when amusement events take place. A promoter may rent an auditorium from an organization and he or she may enlist the services of a ticket agent to sell admission tickets. The provisions of the rule will have a positive impact by providing standards for determining the tax responsibilities of the various parties connected with sales of tickets for entertainment events.

Economic Impact

Those entities that promote or sell tickets for entertainment events are responsible for the sales tax on admission charges. The proposed rule will ensure sales tax registration with the Division of Taxation and assist the Division in carrying out its investigation and audit programs. The rule will also afford a measure of assurance to ticket agents as well as those who allow promoters to rent or use facilities. They will now be aware of the requirements necessary to avoid potential liability for uncollected or unremitted sales tax.

The rule also clarifies and reiterates the statutory mandate that a customer is to be informed of the amount of sales tax charged and collected in a taxable sales transaction.

Regulatory Flexibility Statement

The proposed rule clarifies reporting and recordkeeping requirements for ticket sales agents, event promoters, and persons permitting others to use facilities for events, entertainments or amusements. A number of these agents, promoters and persons may be small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq.

The rule is designed to clarify the type of records that should be maintained. The rule does not require recordkeeping which would not ordinarily be maintained by the businesses and organizations involved with amusement events. Thus, any compliance cost associated with the various provisions of the rule is insignificant. In addition, parties involved with entertainment functions are required to maintain records for Federal and state tax purposes. Since these records are generally necessary and mandated for tax reporting, payment or exemption purposes under various taxing statutes, no exception for small business can be recognized in any circumstance.

The registration requirement under the rule relates to the statutory provision for sales tax registration at (N.J.S.A. 54:32B-15), wherein a person commencing business must, within three days, file an application for registration with the Division of Taxation.

Full text of the proposal follows:

18:24-2.16 Admission records and information; promoter registration

(a) Every person who contracts, agrees to or otherwise arranges to hold, produce or sponsor an event, entertainment, or amusement the admission to which is subject to tax under N.J.S.A. 54:32B-3(e) of the Sales and Use Tax Act is deemed a promoter and a person required to collect sales tax and shall, within three days after commencing business, file with the Division of Taxation an application for registration for New Jersey sales tax purposes (CIS-1). When registration is granted it will be for an indefinite period. However, the applicant must notify the Division of Taxation of any change of address, ownership, and business activity.

(b) Every person required to collect sales tax shall collect the tax on receipts from sales of taxable admissions for events, entertainments, or amusements to be held in New Jersey, including exempt organizations described in N.J.S.A. 54:32B-9 of the Sales and Use Tax Act. If the customer is given a ticket or other evidence of a right to admission which states the price of the admission, there must be a separate statement thereon of the sales tax imposed and collected with respect to the sale of the admission for remittance to the Division of Taxation.

(c) Any person who sells admission tickets or collects admission charges for a promoter is considered the recipient of amusement charges and is also a person required to register and collect and remit sales tax; provided, however, that the sales tax collected may be turned over to and remitted to the Division of Taxation by the promoter for whom the admissions were sold if all the following requirements are met:

1. The ticket sales agent is acting under a written agreement with the promoter which accounts for the sales tax and provides for the tax collected to be remitted by the promoter;
2. The promoter provides the ticket sales agent with a copy of its New Jersey Certificate of Authority;
3. The ticket sales agent has no reason to believe the sales tax will not be remitted by the promoter;
4. The ticket sales agent maintains records showing the promoter's name, address, telephone number, a copy of the promoter's New Jersey Certificate of Authority, the number of tickets sold or admissions granted, gross receipts from admission ticket sales, sales tax collected for New Jersey, and such other information as the Director may specify from time to time; and,
5. The Division of Taxation has not instructed the ticket sales agent in writing to remit the tax collected for that promoter directly to the State.

(d) A person who sells admission tickets or collects admission charges for a promoter or who rents or leases space for an event, amusement or entertainment the admission to which is subject to tax shall, upon request, furnish information to the Division of Taxation concerning any such New Jersey events, entertainment or amusements and their promoters.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF THE COMMISSIONER

Rules of Practice and Procedure
Effect of Delegation of Authority; Definitions
Proposed New Rules: N.J.A.C. 7:1-1.3 and 1.4

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

Authority: N.J.S.A. 13:1B-1 et seq., particularly 13:1B-3 and 13:1B-4; N.J.S.A. 13:1D-2, 13:1D-9; and N.J.S.A. 52:14B-1 et seq., particularly 52:14B-3.

DEP Docket Number: 039-91-10.

Proposal Number: PRN 1991-558.

Submit written comments by December 4, 1991 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

In November, 1990, the Superior Court of New Jersey Appellate Division, decided the case of **In Re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County**, 244 N.J. Super. 426 (App. Div. 1990). In that case, the Appellate Division vacated the issuance of a permit by the Department of Environmental Protection, now the Department of Environmental Protection and Energy ("Department").

The case concerned a waterfront development permit application, for which the Division of Coastal Resources in the Department had prepared

a draft decision denying the application. The Commissioner intervened, and issued a written opinion ordering issuance of the permit.

The Appellate Division held that in ordering issuance of the permit, the Commissioner failed to comply with the Department's own rules governing the review of applications for waterfront development permits. N.J.A.C. 7:7-1.5(a) provides that no person shall undertake or cause, suffer, allow or permit any regulated activity without a permit issued by the Division in accordance with N.J.A.C. 7:7. "Division" means the Division of Coastal Resources in the Department (see N.J.A.C. 7:7-1.4). The Appellate Division concluded that there could be no doubt about the Department's intention, as expressed in its regulations, to delegate the permit-issuing function to the Division. Accordingly, the court concluded that the Commissioner could not directly overrule the Division and issue his own decision on the permit application, because that issuance would violate the Department's own rules for processing permit applications. The Appellate Division reasoned that the Department's regulations deliberately distribute initial permit approval powers to the Division.

The Department agrees that its rules delegate to the Division the power to issue waterfront development permits. However, the Department believes that the Commissioner is empowered to make the initial decision on a permit application notwithstanding that delegation. While delegation is a necessary part of sound management, it would amount to an abandonment of the Commissioner's responsibility unless he or she retained a discretionary right to make any delegated decision himself or herself, which right is exercisable upon his or her own initiative. This position is consistent with N.J.S.A. 13:1B-4, which requires that any powers delegated by the Commissioner are to be exercised under his supervision and direction.

Instead of appealing the Appellate Division's decision, the Department has determined that it is simpler, more efficient and more effective to establish its position by amending its rules to make that position clear and unambiguous. Accordingly, the Department is proposing a new rule at N.J.A.C. 7:1-1.3, which expressly provides that no delegation of decision-making authority to a Department official is to be interpreted as prohibiting the Commissioner from exercising that authority.

The proposed new rule simply codifies the Department's longstanding interpretation of delegations of authority within the Department. In proposing this rule, the Department does not intend to affect any substantive or procedural provisions of its rules, except to the extent that such provisions designate any person or entity within the Department other than the Commissioner to take any action. For example, the proposed new rule does not affect time limitations for Department action provided in any other rule, or limit a person's right to an administrative hearing or administrative review under the Administrative Procedure Act, N.J.S.A. 52:14B-10 and 12.

Therefore, the Department does not expect the rule to have any significant effect upon the internal operations of the Department, or upon the regulated community; the rule instead will prevent the effects which could result from application of the Appellate Division's reasoning. For example, the Appellate Division holding could possibly be interpreted as prohibiting the Commissioner from making a decision for which responsibility has been delegated to Department staff until after the decision has been referred to the Office of Administrative Law as a contested case, and an Administrative Law Judge has rendered an Initial Decision.

The Department sees no benefit in such a prohibition, since the Administrative Law Judge has no independent decisional authority, and the Legislature has expressly reserved to the agency heads the power to decide contested cases. N.J.S.A. 52:14F-7; **In re Certain Sections of the Uniform Administrative Procedure Rules**, 90 **N.J.** 85, 94 (1982). The New Jersey Supreme Court has also noted that the agency head can hear a contested case directly, by determining that the case is "not contested;" the Court added that the agency head could do so solely for the purpose of withholding the case from OAL, without changing the contested character of the case. 90 **N.J.** at 104-105, n.8.

The Department notes that under the proposed new rule, the Commissioner's exercise of delegated authority is subject to the same procedural requirements as a decision initially rendered by the delegee.

Proposed new rule N.J.A.C. 7:1-1.4 provides definitions of words and terms used in the chapter, for purposes of clarity, including definitions of "appellant, "permit decision" and "third party" as used in N.J.A.C. 7:1-2, proposed elsewhere in this issue of the New Jersey Register.

Social Impact

The proposed new rules will have a positive social impact, by preventing the possible negative social impacts of the Appellate Division decision. As discussed in the Summary above, the proposed new rules will make it clear that the Commissioner can, in his or her discretion, issue his or her own decision in place of the decision of the delegee, without the requirement that a person affected by the decision must pursue several intermediate steps of review before the decision reaches the Commissioner. The proposed new rules also will have a positive social impact by insuring the Commissioner's ability to be accountable for the actions of the Department.

Economic Impact

The proposed new rules will have a positive economic impact by preventing the possible negative economic impacts of the Appellate Division decision. As discussed in the Summary and in the Social Impact statement above, the proposed new rules will make it clear that the Commissioner can, in his or her discretion, issue his or her own decision in place of the decision of Department staff, without the requirement that a person affected by the decision must pursue several intermediate steps of review before the decision reaches the Commissioner. In those cases in which the Commissioner exercises this discretion, the expense of those intermediate steps of review will be avoided.

Environmental Impact

The Department does not expect the proposed new rules to have any environmental impact, since they solely concern matters of Department procedure.

Regulatory Flexibility Statement

The proposed new rules impose no reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules concern only matters of internal Department procedure. Accordingly, no regulatory flexibility analysis is required.

Full text of the proposed new rules follows (additions shown in boldface **thus**):

SUBCHAPTER 1. GENERAL PROVISIONS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

7:1-1.3 Effect of delegation of authority

(a) No provision of this Title 7 or of any other rules of the Department which delegates any power, duty or authority of the Department or the Commissioner to any delegee shall be construed to limit the power or authority of the Commissioner over the delegated subject matter. Without limiting the generality of the foregoing, the Commissioner may take any action for which responsibility has been delegated to a delegee, with the same force and effect as if such responsibility had not been delegated. Such actions include, without limitation, the grant or denial of an application for a permit; revocation of a permit; action on any other application to the Department; or the issuance of an administrative order, administrative consent order, directive, notice of violation, or penalty assessment.

(b) The election to exercise any delegated power, duty or authority shall be solely within the discretion of the Commissioner.

(c) No provision of this section shall be construed as affecting any substantive or procedural provisions of this Title 7 or of any other rules of the Department, except to the extent that any such provision delegates any power, duty or authority of the Department or the Commissioner to any delegee. No provision of this section shall be construed as affecting the right of any person to an administrative hearing under N.J.S.A. 52:14B-10, or administrative review under N.J.S.A. 52:14B-12.

7:1-1.4 Definitions

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

"Appellant" means a person requesting an appeal pursuant to N.J.A.C. 7:1-2.2.

"Commissioner" means the Commissioner of the Department.

"Delegee" means any Assistant Commissioner, Director, or other individual within the Department, or any organizational unit within the Department, to whom or to which any power, duty or authority of the Commissioner or the Department has been delegated.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Organizational unit" means any division, office, bureau or other entity within the Department.

"Permit decision" means a decision of the Department or any organizational unit to issue or to deny a permit.

"Third party" means, with respect to any permit decision, any person other than the applicant for the permit.

(a)

OFFICE OF THE COMMISSIONER

Rules of Practice and Procedure Appeals of Permit Decisions

Proposed New Rules: N.J.A.C. 7:1-2

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

Authority: N.J.S.A. 13:1B-1 et seq., particularly 13:1B-3 and 13:1B-4; N.J.S.A. 13:1D-2, 13:1D-9; and N.J.S.A. 52:14B-1 et seq., particularly 52:14B-3 and 52:14B-12.

DEP Docket Number: 041-91-10.

Proposal Number: PRN 1991-559.

Submit written comments by December 4, 1991 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy ("Department") is proposing new rules to codify its procedures for appeals of the issuance and denial of permits by persons other than the permit applicant. The Department believes that such third-party appeals are frequently helpful in ensuring that the Department receives all information relevant to a permit application. In addition, such appeals enable the Department to be responsive to concerns which otherwise may not have been brought to light during the permitting process. The Department notes that the Administrative Procedure Act acknowledges the ability of an agency to provide for a mode of administrative review within the agency, and to establish that mode in a rule. N.J.S.A. 52:14B-12.

It has been the Department's position that it has the ability to accept third-party appeals (in addition to those third-party appeals it is required to accept because the appellant has a statutory or constitutional right to an appeal); the Department believes that it can serve several important goals by codifying the procedure for such appeals in rules. First, the promulgation of the rules will bring the procedure to the attention of persons who would not have asserted third-party appeals simply because they were unaware that the procedure was available. Second, the proposed new rules will clarify the procedure and ensure that it is applied consistently.

The Department notes that its existing permitting rules generally provide for third parties to participate in the permitting process, through public hearings and an opportunity to submit written comments. The Department does not intend that the third-party appeal process will become a substitute for these other means of public participation; rather, the rules reflect an assumption that such active participation will continue. See proposed N.J.A.C. 7:1-2.2(c)5 and 6, which provide for the appeal request to contain a description of the appellant's participation in the public comment process, and a summary of the additional information which the appellant seeks to place before the Department. In addition, these rules recognize the possibility that errors of law and fact may arise in the context of a permit decision, and provide for such errors to be addressed by third parties. The Department notes that it has also proposed amendments, elsewhere in this issue of the New Jersey Register, to its coastal permit rules at N.J.A.C. 7:7-4.5 and 4.6, to strengthen and underscore the importance of the Department's public hearing procedures for coastal permits.

The Department is also proposing new rule N.J.A.C. 7:1-2.5 to provide a procedure under which a permit applicant or third party may petition the Commissioner to hear a permit appeal directly, in lieu of transmitting the matter to the Office of Administrative Law for a hearing. This type of procedure is consisent with the Administrative Procedure Act, in which the Legislature has expressly reserved to the agency heads the power to decide contested cases. N.J.S.A. 52:14F-7; *In re Certain Sections of the Uniform Administrative Procedure Rules,* 90 *N.J.* 85, 94(1982). The New Jersey Supreme Court has also noted that the agency head can hear a contested case directly, by determining that the case is "not contested;" the Court added that the agency head could do so solely for the purpose of withholding the case from OAL, without changing the contested character of the case. 90 *N.J.* at 104-105, n. 8.

The following is a summary of the particular provisions of the proposed new rules:

It should be noted that proposed new rule N.J.A.C. 7:1-1.4, published elsewhere in this issue of the New Jersey Register, includes definitions of terms used in N.J.A.C. 7:1-2. The definition of "third party" establishes a broad class of persons who can request an appeal under N.J.A.C. 7:1-2.2. With respect to any decision of the Department (or one of its organizational units) issuing or denying a permit, a "third party" is any person other than the applicant for that permit. For the purpose of clarity, the proposed new rule also includes definitions of "permit decision" and "appellant."

The proposed new rules at N.J.A.C. 7:1-2.1 through 2.4 establish procedures for appeals of permit decisions by third parties and review of those appeals by the Department.

N.J.A.C. 7:1-2.2 requires that the third party's appeal request must be in writing, and provides time periods for filing the appeal request. The third party must have provided the permit applicant with a copy of the request; N.J.A.C. 7:1-2.2(c)2 requires that the request must include evidence that the third party delivered the request to the permit applicant. Examples of such evidence would include a certified mail receipt, or a receipt from an overnight courier or other delivery service. For appeals concerning CAFRA permits, N.J.A.C. 7:1-2.2(c)8 requires evidence that the request was mailed to the clerks of the county and municipality in which the site which is the subject of the permit application is located.

N.J.A.C. 7:1-2.2(c) sets forth the required contents of the appeal request. The request must include a detailed description of how the appellant is aggrieved by the permit decision, and which findings of fact and conclusions of law are being challenged. In addition, the request must also describe the appellant's participation in any public hearings on the permit, the nature of the information the appellant seeks to provide to the Department, and whether that information was available at the time of the public hearing. This information is necessary to enable the Department to determine whether the appellant has taken the opportunity to present information to the Department before the permit decision was made.

Under N.J.A.C. 7:1-2.2(c)10, the appellant may request that the permit decision be stayed pending the resolution of the appeal. The Commissioner of the Department may, for good cause shown, stay the permit decision under N.J.A.C. 7:1-2.4(e).

N.J.A.C. 7:1-2.3 provides for the permit applicant and additional interested third parties to file responses to the appeal request. The mailing of the appeal request to the applicant under N.J.A.C. 7:1-2.2(c)2, and the publication of notice of the appeal request in the DEPE Bulletin under N.J.A.C. 7:1-2.4, will provide these persons with notice of the need to file a response.

N.J.A.C. 7:1-2.4 establishes the standards for the Commisioner's review of the appeal request. Generally, the decision whether to conduct further proceedings based upon the appeal is left to the Commissioner's sole discretion. Similarly, the decision concerning the type of any further proceedings is within the Commissioner's sole discretion as well. The proceeding may be a trial-type proceeding, at which witnesses give sworn testimony and are cross-examined, or a non-trial-type proceeding. The Commissioner will grant a trial-type hearing if required by statute or by due process of law.

Generally, the Department will refer appeal requests for which trial-type hearings are granted to the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10(c). However, N.J.A.C. 7:1-2.5 provides that the permit applicant or the third party may petition the Commissioner to hear the appeal directly in lieu of transmitting the matter to the Office

of Administrative Law for a hearing. The petition is to be made at the time of the appeal request.

Social Impact

The Department expects the proposed new rules to have a positive social impact. While the proposed new rules codify procedures which already are available, persons employing those procedures will benefit from greater certainty, consistency and predictability resulting from the existence of rules. In addition, the Department expects that the existence of rules will heighten public awareness of the availability of these procedures, and make it more likely that interested persons will take advantage of the opportunity to appeal permit decisions.

The Department expects that the proposed new rules for petitions to the Commissioner to hear a permit appeal directly will have a positive social impact as well. The availability of this procedure will, in cases in which such a hearing is granted, avoid the need for a person affected by a permit decision to pursue several intermediate steps of review before the decision reaches the Commissioner.

Economic Impact

The cost likely to be incurred by a person requesting an appeal under the proposed new rules will vary, depending upon the complexity of the matters presented by the appellant. An appellant is unlikely to incur significant expenses in the preparation of relatively simple appeal requests; however, a complex request presenting a wide variety of factual, legal and policy issues is likely to require a substantial investment of the appellant's time. In addition, if the appellant chooses to retain an attorney and/or other professionals to assist in the preparation of the request, the cost of preparation would increase substantially. The cost to the applicant and to other third parties responding to the appeal request will vary based upon the same factors.

If the Commissioner grants a hearing, both the applicant and any participating third parties will incur additional costs in presenting their cases. Again, these costs will vary depending upon the complexity of the issues presented, the time required to prepare for and conduct the hearing, and the decision of the applicant and the participating third parties whether to retain counsel to represent them at the hearing and other professionals to provide testimony or additional assistance.

Since the procedures established by the proposed new rules exist even in the absence of rules, the Department notes that interested third parties and permit applicants would incur the costs discussed above notwithstanding the existence of the rules. In addition, the Department expects that the pursuit of appeal rights through alternate procedures (such as judicial proceedings) would carry a higher cost than the procedures under the proposed new rules.

If the Department grants a stay of a permit decision, the permit applicant may incur additional costs resulting from the delay in commencing the permitted activity. Again, the applicant would incur these costs if the stay were instead granted through judicial proceedings or other alternate procedures.

As discussed in the Summary and in the Social Impact statement above, the proposed new rules providing for the Commissioner to hear a permit appeal directly rather than transmitting the matter to the Office of Administrative Law will have a positive social impact in cases in which the Commissioner grants the direct appeal. This procedure will enable a person affected by the permit decision to avoid pursuing several intermediate steps of review before the decison reaches the Commissioner. In those cases in which the Commissioner grants the direct appeal, the expense of those intermediate steps of review will be avoided.

Environmental Impact

While the proposed new rules focus upon matters of Department procedure, the proposed amendment and new rules may have a positive environmental impact by enhancing the opportunity for persons to present information concerning the effect of a permit decision on the environment.

Regulatory Flexibility Analysis

The Department expects that small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., will be among those persons requesting third-party appeals under the proposed new rules. However, the Department cannot estimate how many small businesses will request such appeals, because the proposed new rules make a procedure available to any person aggrieved by a permit decision, rather than imposing the procedure upon a specific type of small business. For the same reasons, the Department cannot estimate how many small businesses will petition the Commissioner to hear a permit appeal directly in lieu of transmitting the matter to the Office of Administrative Law.

The proposed new rules impose no reporting or recordkeeping requirements. The proposed new rules do set forth requirements for compliance with specific procedures for asserting a third-party appeal and for petitioning the Commissioner to hear a permit appeal directly in lieu of transmitting the matter to the Office of Administrative Law. As discussed above in the Economic Impact Statement, the cost likely to be incurred by a small business requesting an appeal under the proposed amendments and new rules will vary, depending upon the complexity of the matters presented by the appellant, and upon the appellant's election to retain an attorney and/or other professionals to assist in the preparation of the request. The cost to the applicant and to other third parties responding to the appeal request will vary based upon the same factors. The proposed new rules do not require small businesses to incur any initial capital costs.

The Department has proposed procedures which are intended to require persons requesting a third-party appeal or petitioning the Commissioner for a hearing (as well as the applicant and other third parties responding to the appeal request) to incur only minimal costs, unless the appellant or petitioner elects to incur greater costs. Therefore, the proposed new rules contain no provisions aimed specifically at limiting the costs imposed upon small businesses.

Full text of the proposed new rules follows:

SUBCHAPTER 2. SPECIAL APPEAL PROCEDURES

7:1-2.1 Scope and applicability

This subchapter establishes procedures for the appeals by third parties from permit decisions made by the Department. This subchapter also establishes procedures by which permit applicants and third parties may request that the Commissioner hear appeals directly, in lieu of transmitting the matter to the Office of Administrative Law for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. If there is a conflict between a provision of this subchapter and any other provision of this Title 7, the provision of this subchapter shall control, unless any applicable statute requires otherwise.

7:1-2.2 Requests by third parties for review on appeal

(a) Any third party who considers himself or herself aggrieved by a permit decision may request a hearing. The appeal request shall be in writing, addressed to the Office of Legal Affairs, Department of Environmental Protection and Energy, 401 East State Street, CN 402, Trenton, New Jersey 08625-0402.

(b) An appeal request made under (a) above shall be delivered to the Department by the earliest applicable time set forth below:

1. For an appeal request concerning a permit decision required to be published in the DEPE Bulletin, within 10 days after the date of publication of notice of the permit decision in the DEPE Bulletin.

2. For permit decisions published pursuant to N.J.A.C. 7:7-4.8(b), within 10 days after the date of such publication of notice by the permittee.

3. For all other permit decisions, unless a different period is prescribed by statute, within 30 days after the Department issues the permit decision.

4. Upon written request by the appellant, for good cause shown, the Department may extend the time periods provided in (b)1 through 3 above.

(c) An appeal request under (a) above shall include the following:

1. The appropriate agency project number;

2. Evidence that a copy of the request has been delivered to the applicant for the permit which is the subject of the permit decision (including, without limitation, a certified mail return receipt, or a receipt for delivery from an overnight courier or delivery service);

3. A detailed explanation of how the appellant is aggrieved by the permit decision;

4. A detailed statement of which findings of fact and conclusions of law are being challenged;

5. A description of the participation by the appellant in any public hearings held in connection with the permit application, and copies of any written comments submitted by the appellant;

6. A summary of any information other than that listed in (c)5 above which the appellant seeks to provide to the Department, and a statement of whether that information was available at the time of any public hearing or other opportunity to submit public comments;

7. Whether the appellant claims a statutory or constitutional right to a hearing, and, if the appellant claims such a right, a reference to the applicable statute or a description of the appellant's particularized property interest affected by the permit decision;

8. If the appeal request concerns a CAFRA permit decision, evidence that a copy of the request has been delivered to the clerks of the county and the municipality in which the project which is the subject of the permit decision is located;

9. If the appellant so desires, a request that the permit decision be stayed pending the resolution of the appeal, together with any supporting affidavits or other documents which the appellant believes supports the request; and

10. If the appellant so desires, a request pursuant to N.J.A.C. 7:1-2.5 that the Commissioner hear the appeal directly in lieu of transmitting the matter to the Office of Administrative Law for hearing.

7:1-2.3 Response to appeal request

(a) The applicant, or any additional third party having an interest in the outcome of an appeal request, may submit a written response to the Department. Such response shall be in writing, addressed to the Office of Legal Affairs, Department of Environmental Protection and Energy, 401 East State Street, CN 402, Trenton, New Jersey 08625-0402. The response shall be delivered to the Department by the date which is 10 days after the earlier of the following:

1. The date on which the person responding receives a copy of the appeal request; or

2. The date on which notice of the appeal request is published in the DEPE Bulletin.

(b) Upon written request by the person responding, for good cause shown, the Department may extend the time periods provided in (a)1 and 2 above.

(c) The response shall include the following:

1. Any statements which the person submitting the response desires to make in rebutting any statement of fact, law or policy in the appeal request;

2. If the person submitting the response contends that the Department should deny the appeal request, an explanation of the basis for that contention;

3. If the person submitting the response desires to participate in any hearing which may be granted on the appeal request, a request to participate; and

4. If the person submitting the response is someone other than the permit applicant, evidence that a copy of the response has been delivered to the permit applicant.

7:1-2.4 Action on appeal request

(a) If an appeal request does not satisfy the requirements of N.J.A.C. 7:1-2.2, within 20 days after receiving the request the Department shall advise the appellant of all deficiencies.

(b) The Department shall publish notice of all appeal requests satisfying the requirements of N.J.A.C. 7:1-2.2 in the DEPE Bulletin.

(c) The Commissioner shall act upon any appeal request which complies with the requirements of N.J.A.C. 7:1-2.2 within 45 days after publication of notice of the appeal request in the DEPE Bulletin. For good cause, the Department may extend the time period provided in this subsection.

(d) The Commissioner shall determine, in his or her discretion, whether any further proceedings are warranted based upon the appeal request and any timely responses submitted. If the Commissioner determines that further proceedings are warranted, the Commissioner shall decide whether to grant a trial-type hearing or a non-trial type proceeding.

1. The Commissioner shall grant a trial-type hearing if required by statute or to satisfy due process of law.

2. The Commissioner may grant a trial-type hearing if he or she determines, in his or her discretion, that good cause exists which would justify reconsidering the original permit decision. In determining whether good cause exists, the Commissioner may consider factors including, but not limited to, the following:

i. Whether the case is of general public interest;

ii. Whether the project which is the subject of the permit decision may result in harm to the environment;

iii. Whether, despite reasonable efforts by the appellant, the factual record for the permit decision has not been fully or accurately developed; and

iv. Whether there are material facts in dispute which can best be resolved through a trial-type hearing.

3. The Commissioner may grant a non-trial-type hearing if he or she determines, in his or her discretion, that the project which is the subject of the permit decision may result in harm to the environment, or that other good cause warranting reconsideration of the permit decision exists.

(e) The Commissioner may, upon request and for good cause shown, stay the operation of the permit decision pending a final disposition of the requested appeal.

(f) Except as provided in N.J.A.C. 7:1-2.5, if the Commissioner grants a trial-type hearing pursuant to N.J.A.C. 7:1-2.4(d)1, he or she shall refer the matter to the Office of Administrative Law for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. If the Commissioner grants a trial-type hearing pursuant to N.J.A.C. 7:1-2.4(d)2, he or she may, with the consent of the Director of the Office of Administrative Law, refer the matter to the OAL for a non-contested case hearing or may retain the matter within the agency.

(g) If the Commissioner grants a non-trial-type hearing, the matter shall be decided upon the submission of briefs, and, when allowed in the Commissioner's discretion, after oral argument.

7:1-2.5 Hearing by Commissioner

Any permit applicant or third party requesting an apeal may, at the time of the appeal request, petition the Commissioner to hear a permit appeal directly in lieu of transmitting the matter to the Office of Administrative Law for hearing. All such petitions shall specify whether the appellant is seeking an adjudication of contested facts, an adjudication of legal issues, and/or a reconsideration of policy issues relating to the permit. The Commissioner may grant or deny the request for direct appeal, in his or her discretion.

(a)

OFFICE OF THE COMMISSIONER

Coastal Permit Program Rules
Public Hearings; Final Review of Application
Proposed Amendments: N.J.A.C. 7:7-4.5 and 4.6

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

Authority: N.J.S.A. 12:5-3; N.J.S.A. 13:9A-1 et seq., N.J.S.A. 13:19-17; N.J.S.A. 13:1B-3.

DEP Docket Number: 040-91-10.

Proposal Number: PRN 1991-560.

Submit written comments by December 4, 1991 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The purpose of the proposed amendment to N.J.A.C. 7:7-4.5 is to strengthen and underscore the importance of the Department's public hearing procedures for coastal permits (CAFRA, coastal Wetlands, and Waterfront Development) in order to make those hearings more meaningful to both the affected public and permit applicants. To achieve these goals, the proposed amendment creates a public hearing procedure that will better inform the affected public about the proposed project, allow

the applicant an opportunity to respond to the public's concerns, and insure that in reviewing the application the Department will make its decision based upon a more fully and accurately developed factual record as well as a more fully informed perspective on the benefits and/or detriments of the project. The proposed amendment also informs third parties who may want to object to a proposed project that the public hearing is their primary forum to do so.

The purpose of the proposed amendment to N.J.A.C. 7:7-4.6 is to clarify and codify the discretionary authority of the Department to hold a second public hearing for CAFRA applications when, after the initial public hearing, the applicant makes substantial changes to the project which raise new and significant environmental issues in response to a request by the Division for additional information. In such circumstances, the second public hearing will allow the affected public and applicant an appropriate opportunity to be heard with respect to the changes.

The proposed amendments concern public hearings held in connection with coastal development permits. These hearings constitute the bulk of the public hearings the Department holds on permits. The Department is considering making similar changes to strengthen the public hearing procedures of other permit programs.

Social Impact

The proposed amendments will have a constructive social impact by improving the public's ability to learn about and comment on CAFRA and other coastal permits applications and by better informing Department personnel responsible for making coastal permit decisions about the strengths and/or weaknesses of a proposed project.

Economic Impact

The proposed amendments will not necessarily impose any additional costs upon the public; however, the strengthened hearing procedure does offer a more complete opportunity for those who wish to be heard about a proposed project to make their case. In fully availing themselves of this opportunity, additional costs in the form of expert and legal representation fees may be voluntarily incurred. The process, with its possible additional costs, is viewed as having an overall positive economic impact since it will lead to better informed, more factually accurate decision making by the Department and, thereby, the avoidance of otherwise unforeseen adverse environmental consequences and costs.

Under N.J.A.C. 7:7-4.5(d) and (f), the permit applicant will be required to give public notice and bear the cost when a second public hearing is held under N.J.A.C. 7:7-4.6(b). To comply with the public notice requirement, the applicant must obtain from the appropriate municipality a list of property owners who must receive notice, provide notice to those property owners by certified mail (except for applications involving linear facilities such as pipelines or roads, pursuant to N.J.A.C. 7:7-4.6(d)2), and publish notice in a newspaper of general circulation in the municipality. The list of property owners is available at nominal cost; the cost of the certified mailing will be in proportion to the number of property owners who must receive notice; and the cost of the newspaper notice varies depending upon the newspaper, but is normally less than $100.00. The cost of the public hearing itself includes the rental of the hearing room, and the charges of the stenographer preparing the written transcript of the hearing. The hearing room is normally available free of charge, but when there is a charge it generally does not exceed $40.00. The stenographer's charges vary depending upon the length of the hearing and the fee schedule of the particular stenographer; however, in the Department's experience, these charges rarely exceed $500.00, and more frequently range from $100.00 to $200.00.

In addition, the applicant may incur additional costs in presenting its case at the hearing. These costs will vary depending upon the complexity of the issues presented. The time required to prepare for and conduct the hearing, and the decision of the applicant whether to retain counsel to represent it at the hearing and other professionals to provide testimony or additional assistance.

Environmental Impact

The Department expects these proposed amendments to have a positive environmental impact by leading to more factually accurate, better informed decision making and thereby the avoidance of otherwise unforeseen adverse environmental consequences.

Regulatory Flexibility Analysis

The proposed amendments impose no 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 amendments primarily add detail to existing Department procedural regulations, and clarify and codify existing Department procedures.

However, the Department notes that the proposed amendments provide for the possibility of a second public hearing, which will cause permit applicants to incur additional costs when a second hearing is granted. The permit applicants affected will include small businesses, but the Department cannot estimate how many small businesses will be affected, because the proposed amendments do not subject any particular type of small business to the possibility of the second hearing.

As discussed above in the Economic Impact Statement, the cost likely to be incurred by a small business applicant when a second hearing is granted will vary, depending upon the factors discussed in that Statement. However, the bulk of the cost of the hearing will be within the control of the applicant, because it will depend upon the complexity of the issues presented by the substantial changes proposed by the applicant, and the decision of the applicant whether to retain counsel to represent it at the hearing and other professionals to provide testimony or additional assistance. For this reason, and in light of the importance of providing the affected public with an appropriate opportunity to be heard regarding substantial changes to a project, the Department has not exempted small businesses from applicability of the proposed amendments.

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

7:7-4.5 Public hearings

(a) [Public hearings shall be convened in accordance with the following:] **Public hearings held pursuant to this section perform the important functions of providing the affected public and applicant with a better understanding of the proposed project and its impacts as well as a meaningful opportunity to insure that the Division's decision will be based on a fully developed and accurate factual record and well informed perspective. In light of the limited rights accorded third parties by law or regulation to a trial type hearing to challenge Division decisions (see N.J.A.C. 7:1-2), it is especially important that interested persons use these hearings to completely present, orally and in writing, their and their experts' and counsels' positions, facts, data, opinions and arguments concerning the application.**

1. The Division shall hold a non-[adversarial]**trial type** public hearing for all CAFRA permit applications[, to afford the applicant and interested persons the opportunity to present, orally and in writing, their position concerning the application, the preliminary analysis, and any data they may have developed in relation to the proposed facility].

2. The Division may, in its discretion, hold a non-[adversarial]**trial type** public hearing for CAFRA permit modification applications and for Wetland and Waterfront Development permit applications when it determines that additional information is necessary to assist it in its review and that this information can be obtained only by providing an opportunity for a public hearing. Such determination will be made within 20 working days of the filing of the application.

(b)-(f) (No change.)

(g) The presiding official at the public hearing shall have broad discretion [with respect to oral and written presentations by interested persons. This] **to control the proceedings, which** discretion shall be exercised to allow every person the opportunity to speak and insure the maintenance of an orderly forum. [At the conclusion of statements by interested persons, the applicant shall be afforded the opportunity to speak to the statements offered by interested persons.] **Generally the hearing will be conducted in the following sequence:**

1. The applicant, through counsel, experts or otherwise, shall begin the hearing with a description of the proposed project and an explanation of how it meets the relevant Coastal Policies.

2. The presentations of interested persons, their counsel and experts shall proceed next. The presiding official may require those who want to participate at this phase to sign up before the hearing begins and may determine the order or presentation.

3. General public comment shall be heard next.

4. Finally, the applicant, through counsel, experts, or otherwise, may respond to any presentations or comments about the application.

(h) (No change.)

7:7-4.6 Final review of the application

(a) (No change.)

(b) [The] **In the case of CAFRA applications,** the Division shall, within 15 days of the receipt of any required additional information, either declare the application complete for review, [or] notify the applicant that the application is still not complete for final review[.], **or, where appropriate, follow the second public hearing procedure set forth below.**

1. If the applicant makes substantial changes to the project raising new and significant environmental issues in response to the request for additional information, the Division may, in its discretion, hold a second public hearing on those changes and new issues.

2. The decision to hold a second public hearing shall be made within 15 days of receipt of the required additional information. Such hearings shall follow the procedures set forth in N.J.A.C. 7:7-4.5(b) through (g).

3. When a second public hearing is held, the application shall be declared complete for review on the date of the hearing and acted upon within 60 days as provided in N.J.A.C. 7:7-4.7(a).

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

(a)

ENVIRONMENTAL PROTECTION AND ENERGY AND NEW JERSEY WASTEWATER TREATMENT TRUST

Financial Assistance Programs for Wastewater Treatment Facilities

Proposed Redoption With Amendments: N.J.A.C. 7:22

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

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

DEPE Docket Number: 038-91-10.

Proposal Number: PRN 1991-537.

A **public hearing** concerning this proposed readoption with amendments will be held as follows:

Friday, November 22, 1991 at 10:00 A.M.
Large Conference Room
1333 Brunswick Avenue
Trenton, New Jersey

Submit comments by December 4, 1991 to:
Samuel Wolfe, Administrative Practice Officer
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:22 expires on January 5, 1992. The Department of Environmental Protection and Energy (Department) and the New Jersey Wastewater Treatment Trust, as appropriate, have reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The title of the chapter is proposed to be modified to reflect that the chapter applies to financial assistance programs (that is, both loans and grants) for wastewater treatment facilities. In addition, certain amendments are being proposed to the chapter to expand the scope of the rules and for clarification purposes as discussed below. It should be noted that all references to subcomponents of the Department (that is, Divisions, Elements, etc. and persons) have been deleted from the rules; references are simply to the Department, which reflects a more global perspective, and would not render the terms of the regulations out-of-date as a result of organizational changes.

Summaries of the chapter's subchapters and the proposed amendments follows:

Subchapter 1 is reserved.

Subchapter 2

N.J.A.C. 7:22-2, Matching Grant Procedures and Requirements, prescribes the eligibility and application requirements for local government units (that is, municipalities, utility authorities, sewerage authorities, etc.) which seek a State grant to supplement Federal grants awarded pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended, for the planning, design or construction of wastewater treatment facilities. The State grant amount will not exceed eight percent of those costs determined in accordance with 40 CFR Part 35 to be allowable for Federal grant funding. This subchapter also describes the procedures to be followed by the Department in the evaluation of applications and in the related grant award process. Also included in N.J.A.C. 7:22-2 are sanctions (that is, stop work orders, termination, etc.) which the Department may invoke on grantees that do not comply with these rules. The rules are intended to insure that State funds appropriated are spent in a proper manner and for their intended uses.

The proposed amendments were necessitated primarily for clarification purposes. The proposed modification in N.J.A.C. 7:22-2.3 addresses the applicability of two additional State programs (the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.) and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L.1989, c.181)), which would consider eligible scopes of work which are similar to those which are eligible for State matching grants. This section prohibits those local government units which received a State grant for a particular scope of work from receiving funding through the Department's other financial assistance programs for the same scope of work.

N.J.A.C. 7:22-2.18 has been amended to incorporate standards regarding auditing and to ensure consistent practices by local government units receiving a loan pursuant to this subchapter. In addition, the regulations have also been amended to clearly indicate that a local government unit is subject to the ethics standards of the Local Government Ethics Law (P.L.1991, c.29; N.J.S.A. 40A:9-22) as well as those requirements included within N.J.A.C. 7:22-8.

Subchapter 3

This subchapter, to be entitled Fund Procedures and Requirements, establishes the procedures by which the Department provides loans to local government units for the construction of wastewater treatment facilities. It assures that the moneys are distributed by the Department according to the laws and policies of the State and in a manner which protects the public interest. Requirements for loan application and repayments are included as well as general terms and conditions of the loan agreements and minimum standards for the construction of wastewater treatment facilities.

The Wastewater Treatment Bond Act of 1985 (P.L.1985, c.329) established the authority under which this subchapter was initially promulgated. The 1985 Bond Act created the Wastewater Treatment Fund administered by the Department to provide low-cost financing for the construction of wastewater treatment facilities.

In order to maximize available monies and project funding subsidies, the Wastewater Treatment Financing Program was established, which provides loans to project sponsors jointly from two sources. Loans are

awarded by the Department pursuant to N.J.A.C. 7:22-3 for 50 percent of allowable project costs (excluding reserve capacity). In addition, the New Jersey Wastewater Treatment Trust (Trust) awards loans pursuant to N.J.A.C. 7:22-4 for the remaining 50 percent of allowable project costs (excluding reserve capacity). With regard to reserve capacity, the amendments to N.J.A.C. 7:22-4.36 propose that the Trust may provide funding for reserve capacity to be provided beyond the date of initiation of operation.

The amendments being proposed fall into three major categories: (1) amendments which will implement the provisions of the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989, (2) amendments which reflect the deposit of Federal funds in the Wastewater Treatment Fund and the Federal requirements applicable to projects which receive Wastewater Treatment Fund loan awards; and (3) amendments to better specify actual operating procedures and to correct typographical errors.

The Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 was approved by the electorate in November 1989. The 1989 Bond Act created the Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund to provide financial assistance to local government units for the costs of the construction of combined sewer overflow abatement systems and stormwater management facilities. Combined sewer systems discharge untreated sanitary wastewater and stormwater into the rivers, streams and coastal waters during wet weather. Some of these systems have deteriorated to the point that overflows occur regularly, even during dry weather. Inadequate stormwater management facilities also contribute to the degradation of the State's waterways. The definition of "wastewater treatment facilities" has been modified to include both wastewater treatment (which already includes combined sewer systems) and stormwater management facilities as defined in the 1985 and 1989 Bond Acts, respectively. Since the basic requirements which apply to both types of projects are similar, the use of one term reduces repetition in the rules. Similarly, since the basic loan administrative processes are identical for both the Wastewater Treatment Fund and the Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund, the term "Fund" is used in these rules to apply to awards from either or both funds.

The approval of the Federal Water Quality Act of 1987 (33 U.S.C. 1251 et seq.), an amendment to the Federal Water Pollution Control Act Amendments of 1972, has resulted in the need for amendments to the State's regulations. Title VI of the Federal act required states to establish a state revolving fund (SRF) program in order to be considered eligible for capitalization grants from the United States Environmental Protection Agency (EPA). In 1988, New Jersey established its SRF program within the existing structure of the Wastewater Treatment Financing Program (Program) through legislative approval of the State Fiscal Year 1989 Project Appropriations Bills (P.L.1988, c.132 and c.133). As a condition of receipt of these capitalization grants, the State was required to acknowledge that (1) only certain types of projects could receive SRF assistance, (2) projects receiving SRF assistance must comply with 16 specific Federal requirements (including the requirement to undergo an environmental assessment as per subchapter 10), and (3) compliance and financial reporting on the use of Federal monies within the State's Program would be required. Although many of the project specific requirements associated with receipt of SRF assistance pursuant to this subchapter were already applicable under the State's Program, the proposed amendments to the rules clarify and provide greater detail on these requirements.

N.J.A.C. 7:22-3.1 and 3.3, Scope and Purpose, have been revised to include within the amended rule appropriations under the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 and the amendments to the Federal Water Pollution Control Act Amendments of 1972 and their legislative objectives.

N.J.A.C. 7:22-3.4 has been amended to provide definitions applicable to the test of the amendments being included in subsequent sections of the subchapter.

N.J.A.C. 7:22-3.7 provides the Department's intent to provide priority (1) to projects eligible for supplemental Fund loans to increase a project's loan amount to the allowable costs based on the low bid building cost for all project-related contracts (a practice which has been used since the program's inception and accomplished through the provisions of the annual New Jersey State appropriations bills) and (2) to projects which correct a public health hazard situation as determined by the Department. Such public health hazard projects deserved priority consideration due to the direct impact on human health.

N.J.A.C. 7:22-3.8 prohibits projects from receiving Department funding through more than one Department source for the same project scope. In addition, references to ineligibility for Federal grants if pursuing a State loan have been deleted, since Federal grants are no longer available.

N.J.A.C. 7:22-3.11, Application procedures, has been amended to provide greater detail as to the components of a Project Report/Facilities Plan and as to what constitutes a Department-approvable user charge system and sewer use ordinance. This detail, which was not included in the initial drafting of the rules, helps applicants to better understand the specific program requirements and provides uniform guidelines for the Department's evaluation of such documents.

N.J.A.C. 7:22-3.15 has been modified to identify the procedures related to the execution of the Fund loan agreement, including the requirements for the applicant to provide a loan commitment letter, escrow agreement or other similar document to irrevocably commit itself to borrow the amount included within the Fund loan agreement, if such commitment is required by the Department, in accordance with current program practice.

N.J.A.C. 7:22-3.17, Loan conditions, has been modified to conform with Federal requirements as a result of the deposit of Federal monies into the Wastewater Treatment Fund. Certain Federal laws have been deemed applicable by EPA to state SRF programs (known as Federal cross-cutters). Examples of such Federal cross-cutters include: (1) recipients must obtain adequate flood insurance under the National Flood Insurance Act of 1968 (P.L.90-448) during construction and throughout the useful life of the facility and (2) recipients must include in their contracts provisions to pay not less than the prevailing State or Federal wage rate, whichever is greater, and provisions regarding labor standards for Federally assisted construction contracts. In addition, this section clarifies requirements regarding affirmative action programs, compliance with the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), certification of compliance with the provisions of the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9) and identifies the program goal of awarding not less than 10 percent (or higher level, if required by the Federal government as a condition of receipt of Federal funds) of project contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals.

N.J.A.C. 7:22-3.17 has also been amended to incorporate standards regarding auditing and to ensure consistent practices by local government units receiving a loan pursuant to this subchapter. In addition, the rule has also been amended to clearly indicate that a local government unit is subject to the ethics standards of the Local Government Ethics Law (P.L.1991, c.29; N.J.S.A. 40A:9-22) as well as those requirements included within N.J.A.C. 7:22-8. Further, N.J.A.C. 7:22-3.17 has been modified to identify program requirements related to implementation of a user charge system, liability and flood insurance requirements, wage rates, labor standards, contractor/subcontractor certification provisions and surety companies acceptable under the program. These requirements have been incorporated to reflect Federal program requirements and enhanced project management provisions.

N.J.A.C. 7:22-3.20 and 3.26 clarify operating procedures and the parameters under which a recipient may request a line item adjustment within a Fund loan agreement. Line item adjustments provide recipients with the ability to transfer "savings" in one cost category to cover allowable cost "increases" in other cost categories.

N.J.A.C. 7:22-3.25 has been modified to reflect that assignment of loan disbursements and/or repayments (although expected to be an unlikely event) may be allowed if approved by the Department pursuant to the conditions of the Fund loan agreement.

N.J.A.C. 7:22-3.28 includes another Federal cross-cutter which requires the EPA Regional Administrator to determine compliance with 40 CFR Part 4, entitled Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, prior to the purchase of land with Fund-SRF monies.

N.J.A.C. 7:22-3.29 requires the Department's approval of addenda to project-related contracts prior to their issuance by a recipient or prospective recipient. In addition, eligible entities are now required to execute the Department-approved engineering agreement for building services prior to, or concurrently with, the receipt of authorization to advertise their first project-related building contract.

N.J.A.C. 7:22-3.30 has been modified to clearly indicate that, at a minimum, project performance standards will include the NJPDES

permit effluent discharge limitations as well as the design criteria within the Technical Design Report for the wastewater treatment facilities project.

N.J.A.C. 7:22-3.36 deals with the eligibility for costs related to reserve capacity. The Department is not proposing to change past practice, in that funding will continue to be limited to the costs of the wastewater treatment facility capacity needed as of the date of initiation of operation. The Trust, in N.J.A.C. 7:22-4.36, is proposing to modify its current practice and provide market rate loans for the incremental costs associated with reserve capacity. A detailed discussion of this is included in the subchapter 4 summary following.

N.J.A.C. 7:22-3.35 has been amended to reflect that an infilitration/inflow analysis is required for all wastewater treatment facilities projects, and to clarify that the capacity necessary to transport and treat existing infiltration where wastewater flow rates of less than 120 gallons per capita per day during periods of high groundwater are involved must be used as a basis for design by the local government unit. In addition, this section also identifies that an infiltration/inflow analysis may be required for stormwater management facilities projects.

Subchapter 4

This subchapter, entitled Wastewater Treatment Trust Procedures and Requirements, establishes the procedures by which the New Jersey Wastewater Treatment Trust provides loans to local government units for the construction of wastewater treatment facilities. It assures that the moneys are distributed by the Trust according to the laws and policies of the State and in a manner which protects the public interest. Requirements for loan applications and repayments are included as well as general terms and conditions of the loan agreements and minimum standards for the construction of wastewater treatment facilities.

The New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) in conjunction with the Wastewater Treatment Bond Act of 1985 established the authority under which this subchapter was initially promulgated and the framework under which the Wastewater Treatment Financing Program (Program) was created. The Program provides low-cost loans to a project sponsor for the construction of wastewater treatment facilities, through a combination of a loan award from the Trust pursuant to this subchapter and from the Department pursuant to N.J.A.C. 7:22-3.

The amendments being proposed fall into two major categories: (1) amendments which reflect the deposit of State funds (which constitute the State match to Federal funds received by the Department) in the Wastewater Treatment Trust Fund and the Federal requirements applicable to projects which receive loan awards through the Program and (2) amendments to better specify actual operating procedures and to correct typographical errors.

The approval of the Federal Water Quality Act of 1987 has resulted in the need for amendments to the State's financing program regulations. Title VI of the Federal act required states to establish an SRF program and deposit a 20 percent State match into the SRF in order to be considered eligible for capitalization grants from the EPA. In 1988, New Jersey established its SRF program within the existing structure of the Program through legislative approval of State Fiscal Year 1989 Project Appropriations Bills (P.L.1988, c.132 and c.133). As a condition of receipt of these capitalization grants, the State was required to acknowledge that (1) only certain types of projects could receive SRF assistance, (2) projects receiving SRF assistance must comply with 16 specific Federal requirements (including the requirement to undergo an environmental assessment as per subchapter 10), and (3) compliance and financial reporting on the use of SRF monies within the State's Program would be required. Although many of the project specific requirements associated with receipt of SRF assistance pursuant to this subchapter were already applicable under the State's Program, the proposed amendments to the rules clarify and provide greater detail on these requirements.

N.J.A.C. 7:22-4.4, Definitions, has been modified for clarification purposes. The modifications include a detailing of systems which would qualify as stormwater runoff collection systems. The Trust is authorized to fund stormwater runoff collection systems as they are included within the definition of the term wastewater treatment systems in the Trust Act. In addition, N.J.A.C. 7:22-4.4 has been amended to provide definitions applicable to the test of the amendments being included in subsequent sections of the subchapter.

N.J.A.C. 7:22-4.7 provides the Trust's intent to provide priority (1) to projects eligible for supplemental Trust loans to increase a project's loan amount to the allowable costs based on the low bid building cost for all project-related contracts (a practice which has been used since the Program's inception and accomplished through the provisions of the annual appropriations bills), (2) to projects which have been certified by the Trust for financial assistance for reserve capacity costs under the amended provisions of N.J.A.C. 7:22-4.36 and (3) to projects which correct a public health hazard situation as determined by the Department. Such public health hazard projects deserve priority consideration due to the direct impact on human health.

N.J.A.C. 7:22-4.8 prohibits local government units from receiving Trust funding if receiving funding from the Department (other than an intended source, like the Wastewater Treatment Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund under N.J.A.C. 7:22-3) for the same project scope.

N.J.A.C. 7:22-4.11, Application procedures, has been amended to provide greater detail as to the components of a Project Report/Facilities Plan and as to what constitutes a Department-approvable user charge system and sewer use ordinance. This detail, which was not included in the initial drafting of the regulations, helps applicants to better understand the specific program requirements and provides uniform guidelines for the Trust's evaluation of such documents.

N.J.A.C. 7:22-4.15 has been modified to identify the procedures related to the execution of the Trust loan agreement, including the requirements for the applicant to provide a loan commitment letter, escrow agreement or other similar document to irrevocably commit itself to borrow the amount included within the Trust loan agreement, if such commitment is required by the Trust, in accordance with current program practice.

N.J.A.C. 7:22-4.17, Loan conditions, has been modified to conform with Federal requirements as a result of the deposit of Federal monies into the Wastewater Treatment Financing Program. Of note are the following Federal cross-cutter requirements: (1) recipients must obtain adequate flood insurance under the National Flood Insurance Act of 1968 during construction and throughout the useful life of the facility and (2) recipients must include in their contracts provisions to pay not less than the prevailing State or Federal wage rate, whichever is greater, and provisions regarding labor standards for Federally assisted construction contracts. In addition, this section clarifies requirements regarding affirmative action programs, compliance with the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), certification of compliance with the provisions of the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9) and identifies the program goal of awarding not less than 10 percent (or higher level, if required by the Federal government as a condition of receipt of Federal funds) of project contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals.

N.J.A.C. 7:22-4.17 has also been amended to incorporate standards regarding auditing and to ensure consistent practices by local government units receiving a loan pursuant to this subchapter. In addition, the rule has also been amended to clearly indicate that a local government unit is subject to the ethics standards of the Local Government Ethics Law (P.L.1991, c.29; N.J.S.A. 40A:9-22) as well as those requirements included within N.J.A.C. 7:22-8. Further, N.J.A.C. 7:22-4.17 has been modified to identify program requirements related to implementation of a user charge system, liability and flood insurance requirements, wage rates, labor standards, contractor/subcontractor certification provisions and surety companies acceptable under the program. These requirements have been incorporated to reflect Federal program requirements and enhanced project management provisions.

N.J.A.C. 7:22-4.20 and 4.26 clarify operating procedures and the parameters under which a recipient may request a line item adjustment within a Trust loan agreement. Line item adjustments provide recipients with the ability to transfer "savings" in one cost category to cover allowable cost "increases" in other cost categories.

N.J.A.C. 7:22-4.28 includes another Federal cross-cutter which requires the EPA Regional Administrator to determine compliance with 40 CFR Part 4, entitled Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, prior to the purchase of land with Trust SRF monies.

N.J.A.C. 7:22-4.29 requires the Department's approval of addenda to project-related contracts prior to their issuance by a recipient or prospective recipient. In addition, eligible entities are now required to execute the Department-approved engineering agreement for building services prior to, or concurrently with, the receipt of authorization to advertise their first project-related building contract.

N.J.A.C. 7:22-4.30 has been modified to clearly indicate that, at a minimum, project performance standards will include the NJPDES

permit effluent discharge limitations as well as the design criteria within the Technical Design Report for the wastewater treatment facilities project.

N.J.A.C. 7:22-4.35 has been amended to reflect that an infiltration/inflow analysis is required for all wastewater treatment facilities project, and to clarify that the capacity necessary to transport and treat existing infiltration where wastewater flow rates of less than 120 gallons per capita per day during periods of high groundwater are involved must be used as a basis for design by the local government unit. In addition, this section also identifies that an infiltration/inflow analysis may be required for stormwater management facilities projects.

N.J.A.C. 7:22-4.36 deals with eligibility for costs related to reserve capacity. The Trust is proposing to modify its current practice and provide market rate loans for the incremental costs associated with reserve capacity. It should be noted that the Department is not proposing to change its current practice, in that funding will continue to be limited to the costs of the wastewater treatment facility capacity needed as of the date of initiation of operation, regardless of whether the Trust provides financial assistance for reserve capacity.

Project sponsors typically build a facility which includes reserve capacity, particularly in the case of conveyance systems. Without the Trust's ability to provide loans for reserve capacity, sponsors may have to provide their own financing for a small portion of projects. The cost of local financing for small bond sales can be significant, resulting in increases in the overall project costs, and thus, the cost to the users of the system. In order to reduce this, the Trust is proposing to provide funding for reserve capacity. This would result in nominal additional bonding costs, since the Trust is already selling bonds for the projects. The environmental benefit from improving inadequate wastewater treatment facilities, as well as the potentially substantial cost savings for system users, support the proposed policy to provide market rate loans to fund reserve capacity. Note that funds for reserve capacity originate from the Trust's market rate bond issues, not taxpayer dollars. Reserve funds for the bond issues for the existing capacity needs portion of projects (an amount equal to 10 percent of the bond sale) come from State funds, but the Trust can require projects sponsors (that is, local governments) to provide reserve funds associated with the reserve capacity portion of projects.

There are various regulatory mechanisms to ensure that the proposed reserve capacity is reasonable. The water quality management planning process, required pursuant to the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), establishes a mechanism by which municipalities comprehensively address their overall wastewater treatment needs during a 20-year planning period. In addition, the environmental assessment requirements provided for at N.J.A.C. 7:22-10 as well as the Discharge Allocation Certificate requirements at N.J.A.C. 7:14A-3 include requirements to assess secondary impacts that would be associated with induced growth, as well as including specific public participation/notice requirements. In addition, N.J.A.C. 7:22-10 requires that a detailed constraints analysis be developed by project sponsors in order to establish the ultimate capacity that may be built (that is, environmentally sensitive areas as defined in the rules are excluded from the sewer service capacity). As a result, the Department will ensure that appropriate consideration of both direct and indirect impacts will be addressed by all project sponsors.

The Department and the Trust welcome public comments regarding the proposal to provide market rate loans for reserve capacity.

Subchapter 5

This subchapter, to be entitled Determination of Allowable Costs: Fund and Trust, sets forth policies for determining the allowability of costs for projects which are awarded Fund and Trust loans. It describes the general criteria for, and gives specific examples of, expenditures which, according to State cost principles, are necessary for efficient administration of the loan project. Such costs are differentiated from those expenses required to carry out functions routine to the operation of a wastewater treatment facility.

The amendments being proposed include: (1) amendments which will implement the provisions of the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 and (2) amendments to better specify actual operating procedures and to correct typographical errors.

N.J.A.C. 7:22-5.4 has been revised to limit all costs related to subagreements (except for the subagreement(s) to plan, design or build the project) to 12 percent of the low bid building cost. The proposal to provide an allowance for construction management-related subagreements is consistent with the current practice of providing an allowance for planning and/or design-related subagreements. These allowances are calculated based on a percentage of the low bid building cost for the project. Subagreements for construction management activities must still be submitted to the Department for review and approval. This proposed modification provides greater consistency in program management since all allowable costs for subagreements which are not required to be bid under the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) will be based on a percentage of the project's building contracts.

N.J.A.C. 7:22-5.5 has been modified to reflect allowability and unallowability of project costs related to the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). These rules were originally adopted on December 20, 1988 and are being readopted with minor amendments under this readoption. These regulations supersede the Environmental Guidelines (which have not been codified).

N.J.A.C. 7:22-5.6 has been modified to clarify that only publicly owned small and on-site systems are eligible under the Program. The Department may, however, deem the public ownership requirement to be met, and therefore eligible under the Program, if the privately owned facilities are included within a septage management district that ensures adequate operation and maintenance of the system (thus protecting the public benefit obtained through the State's investment of public funds that are provided for the system).

N.J.A.C. 7:22-5.9 has been modified to provide additional detail regarding unallowable costs related to industrial and Federal users.

N.J.A.C. 7:22-5.10 has been amended to reflect the allowability and unallowability of costs related to reserve capacity to clarify operating procedures as well as to address the proposed reserve capacity funding amendments at N.J.A.C. 7:22-4.36.

N.J.A.C. 7:22-5.11 has been revised to clearly identify in the regulations a State policy which has been in effect for several years and which has been clearly identified in the annual Priority System. The policy of limiting the allowable costs for salaries, benefits and expendable materials (including legal, fiscal and administrative costs) to one percent of the low bid building cost has been included in this section.

Subchapter 6

This subchapter, to be entitled Pinelands Fund Procedures and Requirements, regulates the distribution of funds for the construction of wastewater treatment facilities appropriated for the award of Pinelands Infrastructure Trust loans and/or grants. Among its purposes is to assure that moneys in the Pinelands Infrastructure Trust Fund are expended in a manner consistent with State laws and policies. N.J.A.C. 7:22-6 also establishes loan repayment requirements, grant/loan application and award processing provisions and minimum standards for the construction of wastewater treatment facilities.

The Pinelands Infrastructure Trust Bond Act of 1985 (P.L.1985, c.306) established the authority under which this subchapter was initially promulgated. The 1985 Bond Act created the Pinelands Infrastructure Trust Financing Program administered by the Department to provide low-cost financing for the construction of infrastructure projects. This subchapter governs projects involving the construction of wastewater treatment facilities. The amendments being proposed better specify actual operating procedures and program requirements and to correct typographical errors. In addition, the proposed amendments to the rules provides uniformity and consistent review procedures for wastewater projects seeking State assistance.

N.J.A.C. 7:22-6.4 has been amended to provide definitions applicable to the test of the amendments being included in subsequent sections of the subchapter.

N.J.A.C. 7:22-6.8 allows projects to receive Federal funding in addition to funding pursuant to N.J.A.C. 7:22-6 but prohibits projects from receiving funding in excess of the total allowable costs for the same project scope. Since the Wastewater Treatment Financing Program provides funding for 100 percent of the allowable costs, such projects are not eligible for Pinelands assistance.

N.J.A.C. 7:22-6.11, Application procedures, has been amended to provide greater detail as to the components of a Project Report/Facilities Plan and as to what constitutes a Department-approvable user charge system and sewer use ordinance. This detail, which was not included in the initial drafting of the rules, helps applicants to better understand the specific program requirements and provides uniform guidelines for the Department's evaluation of such documents for approval.

N.J.A.C. 7:22-6.15 has been modified to identify the procedures related to the execution of the Pinelands Infrastructure Trust Fund grant or

loan agreement, including the requirements for the applicant to provide a loan commitment letter, escrow agreement or other similar document to irrevocably commit itself to borrow the amount included within the loan agreement, if such commitment is required by the Department.

N.J.A.C. 7:22-6.17, Pinelands grant or loan conditions, has been modified to conform with program requirements applied to projects funded under the Wastewater Treatment Financing Program and generally reflect good management practices. These requirements include the following: (1) recipients must obtain adequate flood insurance under the National Flood Insurance Act of 1968 during construction and throughout the useful life of the facility and (2) recipients must include in their contracts provisions to pay not less than the prevailing State or Federal wage rate, whichever is greater, and provisions regarding labor standards for construction contracts.

N.J.A.C. 7:22-6.17 has also been amended to incorporate standards regarding auditing and to ensure consistent practices by local government units receiving a loan pursuant to this subchapter. In addition, the rule has also been amended to clearly indicate that a local government unit is subject to the ethics standards of the Local Government Ethics Law (P.L.1991, c.29; N.J.S.A. 40A:9-22) as well as those requirements included within N.J.A.C. 7:22-8. Further, N.J.A.C. 7:22-6.17 has been modified to identify program requirements related to implementation of a user charge system, liability and flood insurance requirements, wage rates, labor standards, contractor/subcontrator certification provisions and surety companies acceptable under the program. These requirements have been incorporated to reflect enhanced project management provisions.

N.J.A.C. 7:22-6.20 and 6.26 clarify operating procedures and the parameters under which a recipient may request a line item adjustment within a Pinelands Infrastructure Trust Fund grant or loan agreement. Line item adjustments provide recipients with the ability to transfer "savings" in one cost category to cover allowable cost "increases" in other cost categories.

N.J.A.C. 7:22-6.25 has been modified to reflect that assignment of loan disbursements and/or repayments (although expected to be an unlikely event) may be allowed if approved by the Department pursuant to the conditions of the Fund loan agreement.

N.J.A.C. 7:22-6.29 requires the Department's approval of addenda to project-related contracts prior to their issuance by a recipient or prospective recipient. In addition, eligible entities are now required to execute the Department-approved engineering agreement for building services prior to, or concurrently with, the receipt of authorization to advertise their first project-related building contract.

N.J.A.C. 7:22-6.30 has been modified to clearly indicate that, at a minimum, project performance standards will include the NJPDES permit effluent discharge limitations as well as the design criteria within the Technical Design Report for the wastewater treatment facilities project.

N.J.A.C. 7:22-6.35 has been amended to reflect that an infiltration/inflow analysis is required for all wastewater treatment facilities projects, and to clarify that the capacity necessary to transport and treat existing infiltration where wastewater flow rates of less than 120 gallons per capita per day during periods of high groundwater are involved must be used as a basis for design by the local government unit.

Subchapter 7

This subchapter, to be entitled Determination of Allowable Costs: Pinelands, establishes the criteria for determining the allowability of costs for projects funded by Pinelands Infrastructure Trust grants and loans. It describes State and Department policy, supplemented by examples, for determining allowability of cost items for such projects. Project-specific allowability determinations are made by the Department on a case by case basis.

The amendments being proposed generally reflect amendments to better specify actual operating procedures, to provide consistency and uniformity in the administration of the State's wastewater assistance programs.

N.J.A.C. 7:22-7.4 has been revised to limit all costs related to subagreements (except for the subagreement(s) to build the project) to 12 percent of the low bid building cost. The proposal to provide an allowance for construction management-related subagreements is consistent with the current practice of providing an allowance for planning and/or design-related subagreements. These allowances are calculated based on a percentage of the low bid building cost for the project. Subagreements for construction management activities must still be submitted to the Department for review and approval. This proposed modification provides greater consistency in program management since all allowable costs for subagreements which are not required to be bid under the local Public Contracts Law will be based on a percentage of the project's building contracts.

N.J.A.C. 7:22-7.5 has been modified to reflect allowability and unallowability of project costs related to the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). These rules were originally adopted on December 20, 1988 and are being readopted with minor amendments under this readoption. These rules supersede the Environmental Guidelines (which have not been codified).

N.J.A.C. 7:22-7.9 has been modified to provide additional detail regarding unallowable costs related to industrial and Federal users.

N.J.A.C. 7:22-7.10 has been amended to reflect the allowability and unallowability of costs related to reserve capacity to clarify operating procedures.

N.J.A.C. 7:22-7.11 has been revised to clearly identify in the regulations a State policy which has been in effect for several years. The policy of limiting the allowable costs for salaries, benefits and expendable materials (including legal, fiscal and administrative costs) to one percent of the low bid building cost has been included in this section.

Subchapter 8

The Department is proposing the deletion of portions of subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of Wastewater Utilities, as a result of the enactment of the Local Government Ethics Law (P.L.1991, c.29; N.J.S.A. 40A:9-22). The provisions of this new law provide a method of assuring that standards of ethical conduct and financial disclosure requirements for local government officers and employees are clear, consistent, uniform in their application and enforceable on a statewide basis. The provisions of this law, to be administered by the Department of Community Affairs, are duplicative and/or contradict provisions of N.J.A.C. 7:22-8.4, 8.8, 8.9 and 8.10 and, as such, support the Department's proposal to allow these four sections to be deleted. The remaining sections of N.J.A.C. 7:22-8 are being proposed for readoption without change.

Subchapter 9

N.J.A.C. 7:22-9, Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, established procedures for providing opportunities for socially and economically disadvantaged (SED) contractors and vendors to supply materials and services under contracts for construction of wastewater treatment facilities that are financed by the Trust and the Department (through the Fund or through the Pinelands program).

This subchapter outlines the requirements to be followed by recipients of financial assistance for wastewater treatment facilities in establishing programs to encourage participation by SED businesses. It specifies which small vendors or contractors are considered SED firms and sets minimum utilization goals for those whose services or materials are obtained with Department or Trust financing.

The Department is continuing to administer its set-aside program as outlined in this subchapter not only to further the State's policy of encouraging SED utilization but because the State's financing program includes a significant amount of Federal funds. Implementation of a SED participation program is one of the conditions for the State's receipt of the Federal funds. Further, the regulations establish a goal-oriented program designed to increase participation by SED firms in the construction of wastewater treatment facilities projects that receive State and indirect Federal funds.

The proposed amendments to N.J.A.C. 7:22-9.2, 9.3 and 9.13 were necessitated primarily for clarification purposes and to prevent non-compliance with the intent of the Trust's enabling legislation to promote SED participation.

The definition of New Jersey wastewater treatment financing program, for the purposes of N.J.A.C. 7:22-9, has been modified to identify that projects funded under the 1989 Bond Act and a component of the Sewage Infrastructure Improvement Act (i.e., for planning and design grants for combined sewer overflow projects under N.J.A.C. 7:22A-6) are subject to the provisions of N.J.A.C. 7:22-9. In addition, the definition of a SED firm has been modified to indicate that only those firms that are responsible for and actually carry out specific project tasks (as opposed to a broker, middleman or passive conduit) qualifies as a SED firm in order to meet the legislative and policy intent of the subchapter.

N.J.A.C. 7:22-9.3 has been modified to clearly indicate that the 10 percent SED utilization requirement under the subchapter is a goal rather than an absolute requirement. In addition, this section indicates that a higher SED utiliziation level would be necessary if Federal law (most likely as a result of Federal appropriations of monies for SRF programs) requires a higher level as a condition of receipt of Federal funds.

N.J.A.C. 7:22-9.13 reemphasizes that the SED utilization requirement is a goal-oriented requirement and good faith efforts taken to meet this will be taken into consideration when the Department assesses compliance with the requirement by the local government unit or contractor.

Subchapter 10

N.J.A.C. 7:22-10, Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities, prescribes the requirements for environmental assessment which apply to local government units seeking financial assistance through the Department for the construction of wastewater treatment facilities. Three levels of environmental review for the planning phase are provided under this subchapter. Requirements for re-evaluating environmental decision statements, cultural resource impact assessments, environmental coordination and public participation are also set forth. Environmental review requirements and procedures for design and construction phases are included as well.

Amendments are being proposed to clarify a number of the provisions of the previously adopted rules and to expand the scope of the rules to include projects funded under certain aspects of the Sewage Infrastructure Improvement Act (pursuant to N.J.A.C. 7:22A-6) and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989. In addition, in the course of implementing the rules, a number of applicants have requested clarification with respect to several provisions of the rules. Most of the proposed revisions are intended to provide the desired clarification and do not alter the intent of the original adopted rules.

N.J.A.C. 7:22-10.1 describes the scope and construction of the rule and has been revised to include references to the Sewage Infrastructure Improvement Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989. These Acts were approved subsequent to the original adoption of the rules. It is proposed that projects which receive financial assistance under the programs developed pursuant to these Acts be subject to these environmental assessment requirements. Appropriate references have been added elsewhere in the rules, where appropriate, to be consistent with the text of the rules.

N.J.A.C. 7:22-10.2 was modified to correct several citations in the definition of wetlands.

N.J.A.C. 7:22-10.3 describes the process for establishing the level of environmental review. To answer the often asked question, the required extent of the planning area and the planning period are identified.

N.J.A.C. 7:22-10.4 describes the Level 1 environmental review process. This section was modified to clarify that cultural resource impact assessments must be determined in accordance with N.J.A.C. 7:22-10.8. Also, the content of a Level 1 environmental decision document is described. Language was added to this section, as well as to N.J.A.C. 7:22-10.5 and 10.6, to the effect that the selected plan must be the most cost effective, environmentally sound and implementable alternative.

N.J.A.C. 7:22-10.5 describes the Level 2 environmental review process. Modifications include a clarification regarding the public hearing; with the change, documentation related to the hearing is a part of but need not be submitted prior to the complete planning documentation. Requirements related to describing and mapping plant and animal communities were clarified so as not to imply that this feature should be mapped for the entire planning area. Requirements for describing and mapping existing wastewater treatment facilities were clarified so as not to imply that the service area of each conveyance component must be mapped. Presentation requirements for the environmental constraints analysis have been specified more clearly. The intended extent of consideration for social and economic factors was clarified by including in the enumeration impacts to environmental and social infrastructure.

N.J.A.C. 7:22-10.7 describes the procedure for re-evaluating environmental decision statements. This section was modified to reflect the need for re-evaluation under circumstances that were not initially envisioned, specifically where design modifications are made after design approval. Types of project modifications which are of concern were described in generic terms.

N.J.A.C. 7:22-10.8 describes cultural resource survey requirements. Modifications were made to specify certain documentation and curation requirements.

N.J.A.C. 7:22-10.10 describes public participation requirements. A minor modification was made clarifying circumstances under which a project change could trigger additional public participation activities.

N.J.A.C. 7:22-10.11 describes requirements for design documentation. Clarification was added regarding access roads, acid producing deposits, dewatering, stockpiling, and noise control to clarify intent and reflect practical experience.

N.J.A.C. 7:22-10.12 describes construction phase requirements. Clarification regarding the number and qualifications of environmental inspectors to be provided was added. Responsibilities of the Department and the loan recipient were spelled out more clearly with regard to daily or other periodic inspections, deficiencies and final inspections of work.

Social Impact

Subchapters 2, 3, 4, 5, 6, 7 and 8

The proposed readoption with amendments of N.J.A.C. 7:22 is anticipated to have a beneficial social impact. The bulk of the chapter (that is, N.J.A.C. 7:22-2 through 7) provides the program framework for the award of financial assistance for the construction of wastewater treatment facilities. The construction of these projects maintains and improves water quality and water quality-related activities (that is, swimming, fishing, boating, etc.) throughout the State. By maintaining and improving water quality, recreational activities and tourism within the State will be impacted in a positive manner. Subchapter 8 establishes the minimum standards of conduct for persons participating in any State or Federal financing program for wastewater treatment facilities.

Subchapter 9

N.J.A.C. 7:22-9 provides a mechanism to encourage local government units to seek SED utilization for the construction of wastewater treatment facilities. Thus, a broad distribution of contracts among many small, female and minority business concerns is encouraged rather than all of the contracts and profits going to large companies only.

Subchapter 10

A positive social impact is expected as a result of the proposed amendment rules. N.J.A.C. 7:22-10 requires that, during the planning process, potential social impacts that could result from proposed projects be identified. The potentially affected public will be informed of such impacts through public outreach procedures required at each level of environmental review. Both the public and other potentially affected agencies will have the opportunity to have meaningful input during the planning phase in the selection of the alternative to be proposed.

Economic Impact

Subchapter 2

The State grants awarded to local units, in combination with the Federal grants which these entities have received, provide the major share of the costs associated with the construction of wastewater treatment facilities. In many cases, the construction of these facilities promotes controlled growth and increased tax ratables in the project area through the elimination of sewer bans. These factors, coupled with the reduced user charges than would have been necessary if the local government unit had obtained financing on their own, provide for a positive economic impact.

There is not expected to be any increase in project costs as a result of adoption of the proposed amendments to the rules. The proposed amendments do not substantively change planning, design or construction provisions required for a project pursuing financial assistance under this subchapter.

Subchapters 3, 4 and 5

N.J.A.C. 7:22-3, 4 and 5 will have a positive economic impact on the local government units receiving loans under the New Jersey Wastewater Treatment Financing Program. The Program has been established to provide low-interest loans to local government units for the construction of wastewater treatment facilities and as a vehicle for using Federal funds made available for the same purposes. The infusion of Federal funds into the Program provides a stable funding source through State Fiscal Year 1995. Therefore, the Program will continue to provide substantial financial assistance to local government units for constructing wastewater treatment facilities. Favorable public reaction is anticipated to this readoption with amendments since the low-cost loans awarded help reduce the financial burden of the users of the system.

There is not expected to be significant, if any, increase in project costs as a result of adoption of the proposed amendments to the rules. The proposed amendments do not substantively change planning, design or construction provisions required for a project pursuing financial assistance under these subchapters.

Subchapters 6 and 7

The provisions of N.J.A.C. 7:22-6 and 7 will have a positive economic impact on the local government units receiving assistance under the Pinelands Infrastructure Improvement Financing Program. The program has been established to provide grants and/or loans to local government units for the construction of wastewater treatment facilities. The program will continue to provide substantial financial assistance to local government units for constructing wastewater treatment facilities. The combined grants and/or loans provided to recipients ultimately result in lower costs to the system's users or customers than would have been necessary if the local government unit had obtained financing on their own.

There is not expected to be a significant, if any, increase in project costs as a result of adoption of the proposed amendments to the rules. The proposed amendments do not substantively change planning, design or construction provisions required for a project pursuing financial assistance under these subchapters.

Subchapter 8

There is no direct economic impact as a result of the provisions of N.J.A.C. 7:22-8, since the requirements of this subchapter establish standards of conduct. However, compliance with this subchapter allows local government units to receive the economic advantages of the financing programs discussed above.

Subchapter 9

There will continue to be a minimal expense incurred by the Department and by the local government units as a result of the reporting requirements of N.J.A.C. 7:22-9. The Department will incur expenses by providing the reporting forms, by providing guidance in general and in monitoring for compliance. The local government unit may incur additional expenses through the necessity of appointing a public agency compliance officer and developing a SED utilization plan as well as by complying with the reporting requirements.

The price of constructing a wastewater treatment facility may possibly be slightly higher if the SED firms cannot perform for as low a price as a contractor whose business concern is so large that it is dominant in its field. This negative impact, if it occurs, will be offset by the positive impact that will be the result of an increase in the number of successful small businesses owned and controlled by SED individuals. Eventually, as there are more and more small business concerns submitting contract bids, lower overall costs for constructing a wastewater treatment facility may be realized through increased competition.

Subchapter 10

Project documentation that is required as a result of the originally adopted and proposed amended rule is comparable to that which has typically been required to obtain Federal construction grants. No additional economic burden for development of the required documentation is anticipated.

The proposed amended rules require selection of the most cost effective, environmentally sound and implementable alternative which will address the identified need. As a result of the environmental assessment process, it is possible that the least cost alternative identified to achieve a particular wastewater management objective may be rejected for an alternative which has a higher apparent cost but has a greater environmental acceptability. However, the purpose of the environmental assessment process is to take into account those factors which are not readily assigned a dollar value when selecting the best overall alternative. Therefore, any apparent higher project costs are expected to be offset by the value of the environmental resource thereby protected.

Environmental Impact

The construction of new or improved wastewater treatment facilities has been known to have the potential to directly and indirectly impact the environment in both beneficial and adverse ways. Selection of the sites where facilities will be located and the techniques to be used during construction will determine whether a proposed project will result in a significant or insignificant adverse impact on the environment. Sizing of facilities and designation of sewer service areas will determine whether a proposed project will have indirect adverse impacts on the environment, primarily as the result of induced growth in undesirable amounts or locations. Environmental assessment procedures have been required since 1969 at the Federal level and since 1973 in New Jersey to encourage the development and evaluation of alternative solutions to identified needs to determine the significance of environmental impacts of various alternatives before selecting a proposed plan. These proposed amended rules provide clarification and continue the environmental assessment procedure to be applied to wastewater project seeking financial assistance. This environmental assessment procedure incorporates the essential elements embodied in Executive Order No. 215 (Kean, 1989) and the National Environmental Policy Act's implementing regulations (40 CFR Part 6). Construction of wastewater treatment facilities under the financing programs will result in water quality improvement and elimination of public health problems. By conforming to the environmental assessment procedures established in N.J.A.C. 7:22-10, it is expected that these wastewater treatment projects will be selected in such a way that water quality or public health problems will be addressed without incurring significant adverse environmental impacts. It should be noted that there are also secondary impact assessment requirements under the provisions of the Discharge Allocation Certificate regulations at N.J.A.C. 7:14A-3.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that N.J.A.C. 7:22-2 through 8 and 10 do not impose reporting, record keeping or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. Their purpose is to provide financial assistance to certain local units, none of which are considered to be a small business, for the planning, design and construction of wastewater treatment facilities.

N.J.A.C. 7:22-9 requires small businesses to be registered and certified by the Department of Commerce and Economic Development as minority or female businesses pursuant to N.J.S.A. 52:32-17 et seq. and the New Jersey Uniform Certification Act, N.J.S.A. 52:27H-21.17, in order to qualify as an eligible firm under this subchapter. This slight imposition is more than offset by the opportunity for small business concerns owned and controlled by socially and economically disadvantaged individuals to be awarded 10 percent of the total amount of all contracts for building materials and equipment, or services for the construction of a wastewater treatment project receiving financial assistance.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:22.

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

SUBCHAPTER 2. MATCHING GRANT PROCEDURES AND REQUIREMENTS

7:22-2.1 Scope and construction

(a) This subchapter [shall] constitutes the rules governing disposition of appropriations for the purposes of planning, design, and construction of wastewater treatment facilities. State matching grants (to match Federal grant awards) [shall] **will** be made pursuant to the Clean Waters Bond Act of 1976[.] (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); N.J.S.A. 13:1D-1 et seq.; and N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Environmental Protection **and Energy** for the purpose of providing a State matching share to projects funded under the Federal Clean Water Act and its subsequent amendments.

(b) (No change.)

(c) The rules in this subchapter are promulgated for the following purposes:

1. To implement the purposes and objectives of the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Enviromental Protection **and Energy** for the purpose of providing a State matching share to projects funded under the Federal Clean Water Act and its subsequent amendments;

2.-6. (No change.)

7:22-2.2 Definitions

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

...

["Assistant Director" means the Assistant Director, Construction Grants Admnistration Element, Division of Water Resources, New Jersey Department of Environmental Protection.]

...

["Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection.]

...

"Department" means the New Jersey Department of Environmental Protection **and Energy and its successors and assigns.**

["Director" means the Director of the Division of Water Resources of the Department of Environmental Protection.

"Division" means the Division of Water Resources, New Jersey Department of Environmental Protection.]

"Eligible costs" means costs which are determined [under regulations of the United States Environmental Protection Agency] to be eligible for Federal grant funds **in accordance with 40 CFR Part 35.**

"Federal Act" means the [Clean Water Act] **Federal Water Pollution Control Act Amendments of 1972** (33 U.S.C. 1251 et [al] **seq.**) and any amendatory or supplementary acts thereto.

...

"[N.J.P.D.E.S.] **NJPDES**" means the New Jersey Pollutant Discharge Elimination System, N.J.A.C. 7:14A[-1 et seq].

...

7:22-2.3 State matching grants

(a) (No change.)

(b) The Department shall award State matching grants pursuant to N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:11A-1 et seq., and any appropriations bills providing funds to the Department for the purposes of this subchapter.

1. [No] **A** project that is eligible for a State matching grant pursuant to this section is **not** eligible for State assistance from the Wastewater Treatment Fund (P.L. 1985, c.329) pursuant to N.J.A.C. 7:22-3 [or from], the Wastewater Treatment Trust Fund [(N.J.A.C. 58:11B-1 et seq.)] pursuant to N.J.A.C. 7:22-4 [or from], the Pinelands Infrastructure Trust Fund [(P.L. 1985, c.302)] pursuant to N.J.A.C. 7:22-6, **the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6 or the Stormwater Management and Combined Sewer Overflow Abatement Fund pursuant to N.J.A.C. 7:22-3.**

2. (No change.)

3. The maximum amount for each project receiving a State matching grant shall be eight percent of the **eligible** costs [which are determined under regulations of the United States Environmental Protection Agency (USEPA) to be eligible for Federal grant funds].

7:22-2.4 Pre-application procedures

The Department encourages informal inquiries by potential State grant applicants prior to application submission in order to expedite preparation and evaluation of the grant application documents. Such inquiries may relate to procedural or substantive matters and may range from informal telephone advice to pre-arranged briefings of potential applicants. [Questions should be directed to: Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN-029, Trenton, New Jersey 08625; Telephone: (609) 292-8961.]

7:22-2.5 Application procedures

(a) A grant application [shall] includes the completed application forms, technical documents[,] and supplementary materials furnished by the applicant. It is the responsibility of the applicant to ensure that the Department has received all necessary documentation in a timely manner. Submissions which do not substantially comply with this subchapter shall not be processed further. Applications shall comply with the following standards:

1. Applications shall be signed by the [applicant or a] person authorized by resolution to obligate the applicant to the terms and conditions of the grant.

2. Each [grant shall] **application** constitutes an offer to accept the requirements of this subchapter and the terms and conditions of the grant agreement.

3. Applications shall be submitted well in advance of the desired grant award date. Generally, processing of a grant application by the [Division] **Department** requires 60 calendar days after receipt of a complete application by the [Division] **Department** where a Federal grant has been awarded. A State grant shall not be made until a Federal grant has been awarded. [Nor shall a] **A** grant **shall not** be made until a State appropriation is made therefor.

4. [Applications shall be sent to: Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN-029, Trenton, New Jersey 08625.] **(Reserved)**

5. The following documents shall be submitted when applying for a State grant:

i.-iv. (No change.)

v. [An] **A copy of an** executed Federal grant agreement; and

vi. (No change.)

6. (No change.)

7:22-2.8 Supplemental information

At any stage during the evaluation process, the Department may request the applicant to furnish documents or information required by this subchapter [and] **as** necessary to complete a full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22-2.13 Effect of the grant award

(a) (No change.)

(b) [Neither the] **The** approval of a project [nor] **or** the award of any grant shall **not** commit or obligate the Department to award any continuation grant **or** to enter into any grant agreement, including grant increases to cover cost overruns, with respect to any approved project or portion thereof.

(c) [Nor shall the] **The** Department's approval **can not** be used as a defense, by the applicant, to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates.

7:22-2.17 Fraud and other unlawful or corrupt practices

(a) (No change.)

(b) The recipient shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the [Director] **Department** when such allegation or evidence comes to its attention, and shall periodically advise the [Director] **Department** of the status and ultimate disposition of any matter.

7:22-2.18 Grant conditions

(a) The following requirements, in addition to such statutes and regulation as may be applicable to particular grants, are conditions to each grant and conditions to each payment under a grant award.

1. (No change.)

2. The recipient shall certify this it **is,** and **shall** assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. **The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department.**

3. The recipient shall comply with the Department's standards of conduct in [(See:] N.J.A.C. 7:22-8[)] **and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22).**

4. The recipient shall provide a copy of the [N.J.P.D.E.S.] **NJPDES** permit or otherwise provide an identification of effluent discharge limitations.

5.-17. (No change.)

(b) (No change.)

7:22-2.21 State payment

Payment of State funds shall be made at intervals as work progresses and expenses are incurred, but in no event shall payment exceed eight percent of the eligible costs which have been incurred to that time. Each payment shall be [signed and] approved by the [Commissioner or his authorized representative] **Department prior to disbursement to the recipient.**

7:22-2.24 Debarment

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

(e) Any person included on the Treasurer's List as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded under this subchapter, may present information to the Department why this section should not apply to such person. If the [Commissioner] **Department** determines that it is essential to the public interest and files a finding thereof with the Attorney General, the [Commissioner] **Department** may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-2.25 Project changes and grant modifications

(a) (No change.)

(b) The recipient shall promptly notify the [Assistant Director, Construction Grants Administration Element, Division of Water Resources] **Department** in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant modification, including, but not limited to:

1.-8. (No change.)

(c) (No change.)

7:22-2.28 Other changes

All other project changes, which do not require formal grant amendment, require written approval of the [Assistant Director] **Department**.

7:22-2.33 Termination of grants

(a) (No change.)

(b) A recipient shall not unilaterally terminate the project work for which a grant has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the [director] **Department** of any complete or partial termination of the project work by the recipient. If the Department determines that there is a good cause for the termination of all or any portion of a project for which the grant has been awarded, the Department may enter into a termination agreement or unilaterally terminate the grant effective with the date of cessation of the project work by the recipient. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the grant pursuant to this section or rescind the grant pursuant to N.J.A.C. 7:22-2.34.

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

7:22-2.34 Rescission of grants

(a) The Department may, in writing, rescind the grant if it determines that:

1. Without good cause [therefore], substantial performance of the project work has not occurred;

2.-3. (No change.)

(b) (No change.)

7:22-2.36 Administrative hearings

(a) The [Director] **Department** shall attempt to decide all disputes arising under a grant. When a recipient so requests, the [Division] **Department** shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the recipient.

(b) [A] **If a recipient wishes to appeal the Department's decision under (a) above, the** recipient [may] **shall** request a hearing within 15 **calendar** days of a decision by the [Director] **Department**. Where required by law, the [Division] **Department** shall grant an administrative hearing based upon such request and file the matter with the Office of Administrative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14D-1 et seq., N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1[-1 et seq.], promulgated pursuant to those acts.

SUBCHAPTER 3. [WASTEWATER TREATMENT] FUND PROCEDURES AND REQUIREMENTS

7:22-3.1 Scope

This [chapter shall] **subchapter** constitutes the rules of the New Jersey Department of Environmental Protection **and Energy** governing the disposition of appropriations pursuant to **the Wastewater Treatment Bond Act** [P.L. 1985, c.329]**, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the Federal Water Pollution Control Act Amendments** or **any** other monies [appropriated] **available** to the Wastewater Treatment Fund **or to the Stormwater Management and Combined Sewer overflow Abatement Fund**.

7:22-3.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act [of 1985 (P.L. 1985, c.329)] **and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act**;

2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Bond Acts**, the Federal Water Pollution Control Act Amendments** and other moneys [appropriated] **available** to the Wastewater Treatment Fund **or to the Stormwater Management and Combined Sewer Overflow Abatement Fund**, for the purpose of providing financial assistance to local government units through the issuance of Fund loans for [paying] the costs of the construction of wastewater treatment facilities **or stormwater management facilities**;

3.-8. (No change.)

7:22-3.4 Definitions

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

"Ad valorem tax" means a tax based upon the value of real property.

"Allowable costs" means those costs that are eligible, reasonable, necessary[,] allocable to the project; permitted by generally accepted accounting principles; and approved by the Department in the Fund loan agreement. Allowable costs shall be determined on a project [specified] **specific** basis in accordance with N.J.A.C. 7:22-5[.1 through 5.11].

. . .

"Alternative technology" means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, aquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and onsite systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

. . .

["Assistant Director" means the Assistant Director, Construction Grants Administration Element, Division of Water Resources, New Jersey Department of Environmental Protection.]

"Best Management Practices" means proven procedures for reducing nonpoint source pollution through both structural and nonstructural controls, including improvements to operation and maintenance procedures.

"Best Practicable Waste Treatment Technology" (BPWTT) means the most cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in

publicly owned or individual wastewater treatment facilities, to meet the applicable provisions of:

1. 40 CFR Part 133—secondary treatment of wastewater;

2. 40 CFR Part 125, Subpart G-marine discharge waivers;

3. 40 CFR 122.44(d)—more stringent water quality standards and State standards; and/or

4. 41 FR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

"Bond Acts" mean[s] the Wastewater Treatment Bond Act [of 1985 (P.L. 1985, c.329)] **and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act.**

"Bonds" mean[s] the bonds authorized to be issued, or issued, under the Bond Acts.

...

"Change order" means an alteration of the cost, scope or time of performance of a subagreement occurring subsequent to the execution of that subagreement.

...

"Combined sewer" means a sewer that is designed to function as both a sanitary sewer and a storm sewer.

...

["Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his designated representatives.]

...

"Contract" means a subagreement as defined in this subchapter.

"Conventional technology" means the processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

...

"DAC" means "Discharge Allocation Certificate."

"Department" means the New Jersey Department of Environmental Protection **and Energy and its successors and assigns.**

"Design life" means the length of time during which a wastewater treatment facility is planned and designed to be operated.

["Director" means the Director of the Division of Water Resources of the Department.]

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department **pursuant to N.J.A.C. 7:14A** which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which [shall] **will** result in a discharge to surface water or a substantial modification in a discharge to surface water [pursuant to the New Jersey Pollutant Discharge Elimination System (N.J.P.D.E.S.) (N.J.A.C. 7:14A-1.1 et seq.].

["Division" means the Division of Water Resources, New Jersey Department of Environmental Protection.]

...

"EPA" means the United States Environmental Protection Agency.

...

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments [of 1972 (33 U.S.C. 1251 et al.) and any amendments or supplements thereto].

"Federal Water Pollution Control Act Amendments" means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory or supplementary acts thereto.

"Final building cost" means the total actual allowable cost of the final work in place for the project in accordance with the **project** scope as defined in the Fund loan agreement.

...

"Fund", **"Stormwater Management and Combined Sewer Overflow Abatement Fund"** or "Wastewater Treatment Fund" means the Wastewater Treatment Fund **and/or the Stormwater Management and Combined Sewer Overflow Abatement Fund** established pursuant to the applicable Bond Acts.

"Fund loan" means a loan from the Wastewater Treatment Fund **or the Stormwater Management and Combined Sewer Overflow Abatement Fund or both Funds** for the allowable costs of a project.

...

"Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

...

"Low bid building cost" means the total [actual] allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s). **Excluded from this cost is any cost due to change orders.**

"Operation and maintenance" means the following activities required to assure the dependable and economical functioning of wastewater treatment facilities:

1. Maintenance: Preservation of functional integrity and efficiency of equipment and structures, including, but not limited to, preventive maintenance, corrective maintenance, and replacement of equipment as needed.

2. Operation: Control of the unit processes and equipment which make up the wastewater treatment facilities, including but not limited to financial and personnel management, recordkeeping, laboratory control, process control, safety and emergency operation planning.

"Priority System, **Intended Use Plan** and Project Priority List" means the [mechanism by] **document through** which projects are **evaluated and** ranked **for funding eligibility** [and a subsequent list developed] by the [State] **Department** in conformance with the Federal Water Pollution Control Act Amendments [of 1972 (33 U.S.C. 1251 et al.) and any amendatory or supplementary acts thereto] and State law. **The Priority System establishes the ranking methodology. The Intended Use Plan establishes various funding policies and provides general information regarding the use of Federal funds for financing wastewater treatment facilities. The Project Priority List presents the eligible projects in rank order.**

...

"Project performance standards" means the performance and operations requirements applicable to a project including the enforceable requirements of the Federal Water Pollution Control Act Amendments and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated which the project is planned and designed to meet.

"Project scope" or "scope of work" means the scope of services and/or activities for which a Fund loan agreement has been executed by the Department and a recipient.

"Recipient" means any local government unit which has received **preaward approval pursuant to N.J.A.C. 7:22-3.32 or** a Fund loan pursuant to this subchapter.

"Responsible bidder" means a bidder that satisfactorily demonstrates to the Department that it has:

1. Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

2. Resources to meet the completion schedule contained in the subagreement;

3. A satisfactory performance record for completion of subagreements;

4. Accounting and auditing procedures adequate to control property, funds and assets; and

5. A demonstrated record of compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under this subchapter.

...

["Scope of work" means the detailed description of the extent of services required to construct the wastewater treatment facilities.]

"Sewage Infrastructure Improvement Act" means the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.) and any amendatory or supplementary acts thereto.

...

"State" means the State of New Jersey.

"Stormwater Management and Combined Sewer Overflow Abatement Bond Act" means the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) and any amendatory or supplementary acts thereto.

"Stormwater management facilities" includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit to prevent non-point source pollution, minimize stormwater runoff, reduce soil erosion, correct interconnections or cross-connections, or induce groundwater recharge or any combination thereof.

"Subagreement" means a written agreement between a recipient and another party (other than another public agency) and may include the prime building agreement for the project, any lower tier agreement for services, supplies, or construction necessary to complete the project; agreements for personal and professional services with consultants; and purchase orders.

...

"User charge" means a charge levied on users of a wastewater treatment facility or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operaton and maintenance (including replacement) of such facilities and may include debt service.

...

Wastewater Treatment Bond Act" means the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) and any amendatory or supplemntary acts thereto.

"Wastewater treatment facilities" includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, land that [shall] **will** be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes, including, but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections, extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunklines, sewage collection systems, stormwater runoff collection systems, and other equipment, personal property and appurtenances necessary thereto. **Included in this definition are stormwater management facilities.**

...

7:22-3.5 Wastewater Treatment Fund **and Stormwater Management and Combined Sewer Overflow Abatement Fund**

(a) The proceeds from the sale of bonds, allocated and issued pursuant to [Section 6A of] the Bond Acts shall be paid to the State Treasurer and held thereby in [a] separate interest bearing accounts specifically dedicated to making zero or low interest Fund loans to local government units for financing the cost of the construction of wastewater treatment facilities.

(b) Any [federal] **Federal** or State funds which may be made available to the State for loans to local government units for the construction of wastewater treatment [systems] **facilities** may be [appropriated] **deposited into** the Wastewater Treatment Fund **or the Stormwater Management and Combined Sewer Overflow Abatement Fund, as appropriate.**

(c) The moneys in the Fund are specifically dedicated and [have been appropriated] **shall be used** for the purposes identified in N.J.A.C. 7:22-3.3; however, no moneys shall be expended from the Fund for those purposes without the specific appropriaton thereof by the Legislature.

(d) (No change.)

7:22-3.6 Terms of the loans from the Wastewater Treatment Fund **and the Stormwater Management and Combined Sewer Overflow Abatement Fund**

(a) (No change.)

(b) The [total] term of the **Fund** loans [shall be] **will** generally **be** 20 years[. Repayments shall begin no later than one month after the initiation of operation or final inspection of the wastewater treatment faciliites, or four years from date of loan award, whichever occurs first] or as indicated in the Fund loan agreement. [Thereafter,] **Fund** loan repayments shall be made **by the recipient** in accordance with the repayment schedule indicated in the Fund loan agreement. Principal and accrued interest, **if any,** with respect to a particular Fund loan may, however, be prepaid in accordance with the provisions of the relevant Fund loan agreement. Interest, **if any,** on the Fund loan [shall] **will** accrue as indicated in the Fund [Loan Agreement] **loan agreement.**

(c) (No change.)

(d) Fund loan proceeds will be disbursed to recipients **in accordance with N.J.A.C. 7:22-3.24.** [at intervals as work progresses and expenses are incurred and approved, unless the Fund loan is awarded on a retroactive basis for the reimbursement of prior expenditures. In this case, Fund loan disbursements shall be made as indicated in the Fund loan agreement.]

(e) (No change.)

7:22-3.7 Criteria for project loan priority

(a) Each year, the [Division] **Department** shall develop a Priority System, **Intended Use Plan** and Project Priority List [under the federal grant program] for the forthcoming [federal Fiscal Year] **Federal fiscal year**. The Priority System **includes the ranking methodology which** evaluates [wastewater treatment] projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. **The Intended Use Plan includes information on the timing, use and distribution of Federal funds anticipated to be made available to New Jersey for financing the construction of wastewater treatment facilities. The Project Priority List presents the projects initially eligible for funding according to their cumulative scores derived from application of the Priority System.** [Each year, the proposed Priority System and Project Priority List shall be the subject of public hearings, including a public comment period. Local government units desiring to be placed on the Project Priority List shall make their request for placement before or during this time. Concurrently, all local government units listed or eligible for listing on the Project Priority List shall be required to advise the Division in writing whether they will commit to the project document submitted schedule identified in the annual Priority System and Project Priority List proposal. The following shall be submitted by the authorized representative of the local government unit when requesting placement on the Project Priority List:]

(b) Each year, the proposed Priority System, Intended Use Plan and Project Priority List will be the subject of at least one public hearing, including a public comment period. Local government units desiring to be included in the Project Priority List shall request inclusion before the close of the public comment period. Concurrently, all local government units included or eligible for inclusion in the Project Priority List shall be required to advise the Department in writing whether they will commit to the project document submittal schedule identified in the annual Priority System, Intended Use Plan and Project Priority List proposal. The authorized representative of the local government unit shall submit the following when requesting inclusion in the Project Priority List:

1.-2. (No change.)

3. Estimated costs associated with building the project excluding planning and design expenses.

[All requests shall be sent to:

Bureau Chief
Bureau of Design and Technical Services
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625]

(c) The Department shall consider a project eligible for funding in the forthcoming State fiscal year only where the local government unit commits to the project document submittal schedule as identified in the annual Priority System, Intended Use Plan and Project Priority List.

(d) The Department shall give a project funding priority over other projects on the Priority System, Intended Use Plan and Project Priority List in instances where the project conditions are determined to constitute a public health hazard.

(e) The Department shall give funding priority to a project which has previously received a Fund loan in instances where the allowable loan amount due to low bid building costs as determined by the Department exceeds the Fund loan amount previously awarded.

7:22-3.8 Eligibility for State and [federal] **Federal** funding

(a) The Department, in conjunction with the Trust, shall develop and submit to the Legislature for the forthcoming State fiscal year a priority system and project priority list as required by the Trust Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, which is based, in all substantial respects, upon the applicable sections of the Priority System, Intended Use Plan and Project Priority List.

(b) Local government units receiving funding through a [federal] **Federal** grant, **State matching funds pursuant to N.J.A.C. 7:22-2, the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6, or from the Pinelands Infrastructure Trust Fund pursuant to N.J.A.C. 7:22-6 and 7** shall be ineligible for a Fund loan for the same [step] **scope of** work (planning, design or building) **of the wastewater treatment facilities project** for which they received a [federal] **Federal** grant, **State matching funds, Sewage Infrastructure Improvement Act funding or Pinelands Infrastructure Trust funding** [for the wastewater treatment facilities project]. Further, local government units [receiving] **which have executed a loan agreement to receive** a Fund loan pursuant to this subchapter shall be ineligible to receive a [federal] **Federal** grant, **Pinelands Infrastructure Trust funds, Sewage Infrastructure Improvement Act funding** or State matching funds [pursuant to N.J.A.C. 7:22-2.1 et seq.] for the same scope of work for the planning, design or building of [a] **that** wastewater treatment faciliites project.

[(b) Those local government units exercising their option for a Fund loan shall have their project ranked in accordance with the Priority System. As part of their decision, local government units shall waive and lose their discretion to accept a federal grant for the two forthcoming federal fiscal years for their project contingent upon the passage of the legislative appropriations act containing the specific project of concern.

(c) The decision, whereby local government units waive and lose their discretion to accept a federal grant for the projects for which they exercise their option for a Fund loan, shall become effective only upon receiving legislative approval in the form of an appropriations act. A local government unit whose project is on the State Funding List, but is not part of a legislative appropriations act, remains eligible to receive a federal grant for that project.]

7:22-3.9 Project bypassing

(a) Failure of the local government unit to advise the [Division] **Department**, in writing of the local government unit's commitment to meet the project document submittal schedule by the close of the comment period for the proposed Priority System, **Intended Use Plan** and project Priority List [shall] **will**, without further notice by the [Division] **Department**, result in the project becoming ineligible for a Fund loan for the forthcoming State [Fiscal Year] **fiscal year**.

(b) Failure **of the local government unit** to submit [the] complete **planning documents, design documents and** applications within the time periods specified **in the Priority System, Intended Use Plan and Project Priority List for the forthcoming State fiscal year** [shall] **will** result in the Department's bypassing of the local government unit's [Fund loan application] **project** unless the Department, at its discretion approves, for good cause, an extension to [this] **these** periods.

(c) (No change.)

(d) The Department shall bypass a local government unit's project on the Project Priority List in cases where the Department has given priority to funding other projects on the Project Priority List in accordance with N.J.A.C. 7:22-3.7(d) or (e).

7:22-3.10 Pre-application procedures

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

[(c) Questions concerning the program and requests for a pre-application conference should be directed to:

Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625]

7:22-3.11 Application procedures

(a) Each application for a Fund loan shall be submitted to the Department in conformance with the time period specified in the Proposed Priority System, **Intended Use Plan** and Project Priority List or as otherwise extended by the Department and shall include full and complete documentation and any supplementary materials that **the Department requires** an applicant [is required] to furnish.

(b) Submissions which do not substantially comply with this subchapter [shall] **will** not be processed further and [shall be returned to the applicant] **the applicant shall be so advised**.

(c) Processing of a Fund loan application generally requires 60 calendar days after receipt of a complete application by the [Division] **Department**.

(d) The following shall be submitted when applying for a Fund loan, **as applicable**:

1. An application **(CGA Form LP-3)** for a Fund loan pursuant to this subchapter for **the** construction of wastewater treatment facilities. Each application [shall] constitutes an [offer] **agreement** to accept the requirements of this subchapter [and, upon execution of the agreement by the State and the applicant, acceptance of the terms and conditions of the Fund loan agreement];

2. A resolution passed by the local government unit authorizing the filing of an application for a Fund loan[,] **and** specifying the individual authorized to sign the Fund loan application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution [is required from each,] indicating the lead applicant and the authorized representative **is required from each**;

3.-4. (No change.)

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans **in accordance with the provisions of N.J.A.C. 7:15** and **the** Environmental Assessment [Guidelines;] **Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). A complete Project Report/Facilities Plan must include:**

i. A description of both the proposed wastewater treatment facilities and the complete wastewater treatment system of which it is a part;

ii. A description of the Best Practicable Wastewater Treatment Technology or, for stormwater management facilities, a description of the Best Management Practices that shall be utilized;

iii. A cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan. A cost effectiveness analysis must include:

(1) An evaluation of flow reduction methods. If the applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Department determines the area has an effective existing flow reduction program, this evaluation is not required;

(2) A description of the relationship between the capacity of alternatives analyzed and the needs to be served, including capacity for future growth expected after the wastewater treatment facilities become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(4) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(5) A consideration of systems with revenue generating applications;

(6) An evaluation of opportunities to reduce use of or recover energy; and

(7) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users;

iv. An infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-3.35;

v. An analysis of the potential open space and recreation opportunities associated with the project;

vi. An adequate evaluation of the environmental impacts of the alternatives analyzed in (d)5iii above;

vii. An evaluation of the water supply implications of the project;

viii. For the selected alternative, a concise description, at an appropriate level of detail, of at least the following:

(1) Relevant design parameters, including a description of the treatment units and/or sewer system to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;

(2) Estimated capital construction and operation and maintenance costs identifying the Fund, Trust and local shares, and a description of the manner in which local costs will be financed;

(3) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(4) Cost impacts on wastewater system users; and

(5) Institutional and management arrangements necessary for successful implementation;

6. **For sewer rehabilitation projects, a** Sewer System Evaluation Survey [(for Rehabilitation projects only)] **in accordance with N.J.A.C. 7:22-3.35;**

7. (No change.)

8. A description of the public participation process to date**. Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible;**

9. A [statement indicating] **report on the** [small, minority and women's business enterprise] participation **by socially and economically disadvantaged individuals** during planning and design **as required by N.J.A.C. 7:22-9.12(a);**

10. Project cost breakdown **for each subagreement;**

11. Projected cash flow schedule **to be used to establish the Fund loan disbursement schedule;**

12. Project construction schedule. [Should the anticipated date of the initiation of operation occur after July 1, 1988, a] **A** court-sanctioned order **or a Department-issued Administrative Consent Order indicating** [specifying] a compliance schedule shall be required where applicable;

13. [Department-approvable] **A** sewer use ordinance [and], user charge system **and draft plan of operation acceptable to the Department;**

i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and constructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

ii. The user charge system shall be designed to produce adequate revenues required for operation and maintenance (including replacement) and, in most cases, to cover debt service costs for the local government unit's wastewater treatment facilities. It must provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment facilities shall pay for such increased cost. Unless otherwise approved by the Department, the user charge system must be based on either actual use under (d)13ii(1) below, ad valorem taxes under (d)13ii(2) below or a combination of the two. It must also meet the requirements set forth in (d)13ii(3) through (8) below.

(1) A user charge system based on actual use (or estimated use) of wastewater treatment services must provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment facilities within the service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(2) A user charge system which is based on ad valorem taxes may be approved if:

(A) On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment facilities within the service area and the applicant has continued to use that system;

(B) The ad valorem user charge system distributes the operation and maintenance costs for all treatment facilities in the applicant's jurisdiction to the residential and small nonresidential user class (including at the applicant's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment facilities), in proportion to the use of the treatment facilities by this class; and

(C) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance of the treatment facilities based upon charges for actual use.

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(5) The user charge system must provide that the costs of operation and maintenance for all flow not directly attributable to users (that is, infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use; or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(I) Flow volume of the users;

(II) Number of hookups or discharges of the users; and/or

(III) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

(6) After completion of construction of a project, revenue from the project (for example, sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased

under the Fund loan agreement) shall be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.

(7) One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment facilities.

iii. The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete waste treatment system;

14. (No change.)

15. [A certification] **An affidavit (CGA Form LP-8) certifying** that required permits and approvals[, if applicable] for building the wastewater treatment facilities, were received from **applicable Federal, State and local agencies;** [the following agencies:

i. Monitoring and Planning Element within the Division;

ii. Water Quality Management Element within the Division;

iii. Water Supply and Watershed Management Element within the Division;

iv. Division of Environmental Quality within the Department;

v. Division of Waste Management within the Department;

vi. Division of Fish and Game within the Department;

vii. Division of Coastal Resources within the Department;

viii. Office of Equal Opportunity and Public Contract Assistance within the Department;

ix. Office of New Jersey Heritage within the Division of Parks and Forestry;

x. New Jersey Department of Community Affairs;

xi. U.S. Army Corps of Engineers;

xii. New Jersey Pinelands Commission;

xiii. Hackensack Meadowlands Development Commission;

xiv. Delaware and Raritan Canal Commission;

xv. Delaware River Basin Commission;

xvi. Interstate Sanitation Commission;

xvii. Local Soil Conservation District Office;]

16.-17. (No change.)

18. Executed **service, and/or deficiency or other** intermunicipal agreements, if [required] **applicable. If the project will serve two or more local government units, the applicant shall submit the executed service agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed wastewater treatment facilities. At a minimum, these documents must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered;**

19.-22. (No change.)

(e) Applicants shall obtain all necessary Federal, State and local permits and approvals prior to the award of a loan unless prior approval for an extension for one or more specific permits has been granted by the [Division] **Department** that does not significantly affect the loan award. Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award ([e.g.] **for example**, road opening permit, blasting permit, etc.).

[(f) All applications shall be sent to:
Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN-029
Trenton, New Jersey 08625]

7:22-3.13 Evaluation of application

(a) [The Division shall notify the applicant that it has received the application and is evaluating it pursuant to this section.] Each application shall be subject to:

1.-4. (No change.)

(b) Upon the completion of a full review and evaluation of each application, the [Division] **Department** shall either [approve the application] **certify the project for funding** or [make the determination that the Fund loan award shall be deferred] **bypass the project for funding in the State fiscal year for which the application was submitted.**

[(c) The Division shall promptly notify applicants in writing of any deferral action, indicating the reasons for the deferral and a time frame for the resolution of any outstanding issues. A deferral action shall result in one of the following:

1. An approval of the application if the outstanding issues are addressed to the satisfaction of the Division within the specified time frame; or

2. A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Division within the specified time frame.]

[(d)](c) The [Division] **Department** shall promptly notify **an** applicant[s in writing] **by certified mail if its project has been bypassed.** [of any disapproval. A disapproval of an application shall not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Fund loan application and/or processing of a Fund loan agreement for the project within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected applicants shall be notified in writing of such action.] As a result of a [disapproval and] project bypass action, the next highest ranked [contingency] project on the Project Priority List may fall within the fundable range.

7:22-3.14 Supplemental information

At any stage during the evaluation process, the [Division] **Department** may require supplemental documents or information necessary to complete full review of the application. The [Division] **Department** may suspend its evaluation until such additional information or documents have been received.

7:22-3.15 Fund loan agreement

(a) The Department shall prepare and transmit the Fund loan agreement to the applicant. **The Fund loan agreement sets forth the terms and conditions of the Fund loan, approved project scope, allowable and unallowable project costs, estimated Fund loan disbursement schedule, estimated loan repayment schedule and the approved commencement and completion dates for the project or major phases thereof.**

[1. The applicant shall execute the Fund loan agreement and return it within 45 calendar days after receipt. The Department may, at its discretion, extend the time for execution. The Fund loan agreement shall be signed by a person authorized by resolution to obligate the applicant to the terms and conditions of the Fund loan agreement being executed. The authorizing resolution shall also be submitted at this time.

2. The Fund loan agreement shall set forth the terms and conditions of the Fund loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.]

(b) The Fund loan agreement shall be executed by the applicant within such period of time and pursuant to such terms and conditions as the Department may determine.

(c) The Department, pursuant to such terms and conditions as it may determine, may require the applicant to irrevocably commit itself through a loan commitment letter, escrow agreement or other similar document to borrow the amount for which it has made application under the terms and conditions of the Fund loan agreement transmitted to the applicant.

(d) The Fund loan agreement and/or loan commitment letter, escrow agreement or other similar document shall be executed by a person authorized by resolution to obligate the applicant to the

terms and conditions of the particular document for the project specified therein. A certified copy of the authorizing resolution shall be delivered to the Department at the time that the executed Fund loan agreement, loan commitment letter, escrow agreement or other similar document is delivered to the Department.

[3.]**(e)** The Fund loan agreement [shall be] **is** deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the [Division] **Department** in the application process.

[4.]**(f)** The Fund loan agreement shall not be executed by the State if the applicant is in current default on any State loan.

[5. After the State has completed its internal processing of the Fund loan agreement, it shall transmit a copy of the executed Fund loan agreement to the recipient.]

7:22-3.16 [Effect of] **Fund** loan award **and closing**

(a) [At the time of] **Upon the** execution of the Fund loan agreement by the State and the recipient, the **Fund** loan [shall] **is awarded and the agreement** becomes effective and [shall] constitutes an obligation of the Wastewater Treatment Fund **and/or the Stormwater Management and Combined Sewer Overflow Abatement Fund, as appropriate** [in the amount and for the purposes stated in the Fund loan agreement.] **in accordance with its terms and conditions. The obligation of the State under a Fund loan agreement is contingent upon the availability of appropriated funds from which disbursements can be made. The Fund loan is considered closed as indicated in the Fund loan agreement.**

(b) The award **or closing** of the Fund loan [shall] **does** not commit or obligate the State to award any continuation **or supplemental** Fund loan to cover cost overruns of the project. Cost overruns for any project or portion thereof [shall be] **are** the sole responsibility of the recipient.

(c) The award **or closing** of a Fund loan by the State [shall] **can**not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates for its respective projects.

7:22-3.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-3.18 through 3.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Fund loan, and conditions to each disbursement under a Fund loan agreement:

1. (No change.)

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. **The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department;**

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8[.1 et seq.]) **and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);**

4. The recipient shall comply with the requirements of the [N.J.P.D.E.S.] **NJPDES** permit pursuant to N.J.A.C. 7:14A[-1 et seq.];

5. The recipient shall adopt a sewer use ordinance **and implement the user charge system** consistent with the [requirements of the Department] **provisions of N.J.A.C. 7:22-3.11(d)13;**

6.-7. (No change.)

8. The recipient shall pay the unallowable costs of the construction of the project [(that is, facilities planning, design, building and relating costs)] **and shall pay the allowable costs not covered by the Fund loan, or supplemental Fund loan, if any;**

9.-12. (No change.)

13. An amount of any Fund loan disbursement equal to [50 percent] any unpaid portion of a **finally determined** State assessed penalty pursuant to N.J.A.C. 7:14-8[.1 et seq.], Assessment of Civil Administrative Penalties, shall **at the discretion of the Department,** be held in escrow until said penalty is paid in full. **In no case will the total amount withheld under this subsection exceed the unpaid amount of said penalty;**

14.-15. (No change.)

16. The recipient shall [have an operations and maintenance manual developed.] **certify to the Department that an operations and maintenance manual, acceptable to the local government unit, has been developed for the project;**

17.-18. (No change.)

19. The recipient [must submit proof] **shall certify** that it and its contractors and subcontractors shall comply with all insurance requirements of the Fund loan agreement and [that it shall be able to] certify, **when appropriate,** that the insurance is in full force and effect and that the premiums have been paid. **The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The recipient shall provide the Department with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L. 90-448), as amended. Flood insurance coverage must begin with the period of building and continue for the entire period during which the wastewater treatment facility operates. The insurance must be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the recipient under the National Flood Insurance Act of 1968, whichever is less. The recipient shall comply with each requirement of this subsection prior to the release of the initial Fund loan disbursement for building the project;**

20. The recipient shall certify that it and its contractors and [their] subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27[-1 et seq.];

21. The recipient shall [establish] **certify that it has established** an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project [and to establish a program to provide opportunities for socially and economically disadvantaged contractors and vendors to supply materials and services for the contract], consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.)[.];

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 **and N.J.A.C. 7:22-9.11;**

23. [The recipient shall submit its affirmative action program, the name of its designated compliance officer, and its procurement plan for implementing 21 above with its application] **The recipient shall certify that it shall comply with the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);**

24. [Not] **A goal of not** less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in [section 637(a) and 637(d) of] the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government

unit's goals shall take precedence over State goals[. Procedures to be followed in implementing this paragraph shall be found in the Local Public Contracts Law, N.J.S.A. 40A:11-41 et seq., and in guidelines to be published by the Department to assist recipients in complying with statutory and regulatory reporting requirements]; and

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any [construction] contract for [that] **the** project, in accordance with the rate determined by the Commissioner of **the New Jersey Department of** Labor pursuant to N.J.S.A. 34:11-56.25 et seq. **or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater.**

(b) (No change.)

(c) The Department may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Bond Acts.

[(d) Neither the State of New Jersey nor the New Jersey Wastewater Treatment Trust will be a party to any contracts and subcontracts awarded pursuant to this Chapter. All such contracts and subcontracts shall include the following statement:

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection and the New Jersey Wastewater Treatment Trust. Neither the State of New Jersey, the New Jersey Wastewater Treatment Trust nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to regulations contained in N.J.A.C. 7:22-3.1 et seq., 4.1 et seq., 5.1 et seq., and 9.1 et seq."]

(d) The recipient shall insert in all contracts or subcontracts awarded pursuant to this subchapter the Department's Subcontractor Certification Form.

(e) The recipient shall insert into the contracts for building the project EPA Form 5720-4 (5-13), Labor Standards Provisions for Federally Assisted Construction Contracts.

(f) The recipient shall insert into the contracts, and shall ensure that their contractor(s) include within their subcontract(s), the following statement:

"In accordance with the provisions of N.J.S.A. 58:11B-26, N.J.A.C. 7:22-3.17(a)24 and 4.17(a)24, the contractor (subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9."

(g) All applicable surety bonds required in connection with the advertisement and award of building contracts or subagreements must be written by a surety company listed on the Federal Treasury List (Department Circular 570—Surety Companies Acceptable on Federal Bonds), incorporated herein by reference. Copies of this document may be obtained from the Department.

7:22-3.18 Administration and performance of loan

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Fund loan objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice [shall] **does** not shift the responsibility for final decisions from the recipient to the Department. [The primary concern of the Department is that Fund loan monies be used in conformance with these rules and the Fund loan agreement to achieve the Fund loan objectives and to ensure that the purposes set forth in the Bond act are fully executed.]

7:22-3.19 Project changes and loan modifications

(a) A **Fund** loan modification means any written alteration of the [Fund loan] terms or conditions, budget or project method or other administrative, technical or financial [agreements] **provisions of the Fund loan agreement.**

[(b) There shall be no Fund loan modifications increasing the funding amount beyond adjustments to cover the low bid building costs. Adjustments due to the low bid building costs will be made only after a subsequent passage of a legislative appropriations act containing the specific project of concern. All other increased costs shall be the responsibility of the recipient.]

[(c)](**b**) The recipient shall promptly notify the [Assistant Director, Construction Grants Administration Element, Division of Water Resources] **Department** in writing (certified mail, return receipt requested) of events or proposed changes which may require a **Fund** loan modification, including, but not limited to:

1.-6. (No change.)

[(d)](**c**) If the Department [and the Trust decide] **determines that** a [formal] Fund loan **modification by means of a Fund loan agreement** amendment is necessary **in accordance with N.J.A.C. 7:22-3.20,** the recipient shall be notified and a [formal] Fund loan **agreement** amendment shall be processed [in accordance with N.J.A.C. 7:22-3.20]. If the Department [decides] **determines that** a [formal] Fund loan **agreement** amendment is not necessary, [it] **the Department and the recipient** shall follow the procedures of N.J.A.C. 7:22-3.21 or 3.22, as applicable.

7:22-3.20 [Formal] **Fund** loan **agreement** amendments

(a) The Department shall require a [formal] Fund loan **agreement** amendment to change principal provisions of a Fund loan **agreement** where **the Department determines that** project changes substantially alter the [cost] **objective or scope of the project** or time of performance of the project or any major phase thereof, or [substantially alter the objective or scope of the project] **to change substantially a term or condition of the Fund loan agreement.**

(b) [The State and recipient shall effect a formal Fund loan amendment only by a written amendment to the Fund loan agreement executed by the State and the recipient.] **In the event that a project has a need for additional moneys due to the low bid building cost being higher than the original Fund loan amount, the local government unit may request a supplemental Fund loan. The Department may award a supplemental Fund loan only after passage of a subsequent legislative appropriations act providing moneys for the specific project of concern and only with a Fund loan agreement. The recipient shall be responsible for all other increased costs.**

7:22-3.22 Other changes

All other project changes, which do not require a [formal] Fund loan **agreement** amendment as stated in N.J.A.C. 7:22-3.20 [shall be undertaken only upon] **require** written approval of the [Assistant Director, Construction Grants Administration Element] **Department.**

7:22-3.24 State disbursement

Disbursement of Fund loan moneys shall be made **as indicated in the Fund loan agreement** at intervals as work progresses and expenses are incurred **by the local government unit** and **as** approved **by the Department,** but in no event [shall] **will total** disbursements **at any time** exceed the **cumulative Fund loan amounts indicated in the disbursement schedule of the Fund loan agreement or the** allowable costs which have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which [shall] **must** include all forms and information required by the Department and completed in a manner satisfactory to the Department. [Should the recipient be receiving Fund loan moneys for expenditures incurred prior to the award of the Fund loan, the disbursement schedule shall be as indicated in the Fund loan agreement.]

7:22-3.25 Assignment

The right of a recipient to receive disbursements from the State under a Fund loan may not be assigned, nor may repayments due under a Fund loan be similarly encumbered**, unless such assignment or encumberance has been approved in writing pursuant to the conditions set forth in the Fund loan agreement.**

7:22-3.26 Unused funds

Where the total amount disbursed under a Fund loan due to the low bid building cost is less than the initial **Fund** loan award, and/or where the total amount disbursed under a Fund loan due to the final building cost is less than the **Fund loan amount due to the** low bid building cost, the Fund loan [agreement] shall be adjusted**, if necessary,** and the difference shall be retained by the Fund to be reallocated, pursuant to [subsequent] **the provisions of a**

legislative appropriations act[s], to other wastewater treatment facilities projects. However, where allowable cost overruns occur, Fund moneys may be used to cover these cost overruns up to the loan amount adjusted due to the low bid building cost. **Line item adjustments for allowable project costs may be made at the request of the recipient provided the Fund loan amount in the Fund loan agreement is not exceeded and provided all project related contracts have been awarded. However, the Department shall not allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope.**

7:22-3.28 Land acquisition

[Land that shall be an integral part of the treatment process is eligible for Fund loan moneys] **The cost for land may be determined to be an allowable cost by the Department** in accordance with N.J.A.C. 7:22-5.7. **If required by Federal law, the recipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646 (84 Stat. 1894) approved January 2, 1971). Further, if required by Federal law, the local government unit shall not acquire real property the cost of which the Department has determined to be allowable for Fund loan moneys until the Regional Administrator of EPA or his or her designee has determined that the applicable provisions of 40 CFR Part 4 have been met.**

7:22-3.29 Project initiation

(a) (No change.)

(b) The recipient shall not advertise any contract **or any addendum thereto for the building of the project** until authorization to advertise **the contract or any addendum thereto** has been granted by the Department. **Further, the recipient shall be required to execute the engineering agreement for building services prior to, or concurrently with, receipt of authorization to advertise. The recipient shall transmit an executed copy of the engineering agreement for building services to the Department immediately upon its execution.**

(c) Once bids for building the project are received, the recipient shall not award [the] **any** subagreement(s) until authorization to award has been given by the Department.

(d) (No change.)

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project no later than 12 months after the loan [award] **closing** unless a specific extension has been approved by the Department.

(f) (No change.)

7:22-3.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the project, the recipient shall, in writing, notify the [Assistant Director] **Department.**

(b) [For the wastewater treatment process portion of the project, on] **On** the date one year after the initiation of operation, the recipient shall certify to the [Assistant Director] **Department** the performance record of the project. If the Department or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as specified in the Fund loan agreement, the recipient shall submit the following:

1.-2. (No change.)

3. The scheduled date for certifying to the [Assistant Director] **Department** that the project is meeting the specified performance standards.

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

(e) At a minimum, unless further specified, the project performance standards consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the Project.

7:22-3.32 Preaward costs

(a) The Department shall not [award loan assistance for] **consider allowable those** costs incurred for building performed prior to [the award of] **closing** the loan for the project, except:

1. Where the local government unit's project is ranked one through 70, inclusive, on the most currently approved **Priority System, Intended Use Plan and** Project Priority List or is part of the Department's request to the Legislature for [placement] **inclusion** in an appropriations bill providing Fund moneys **in the forthcoming fiscal year** for that project and [has met] **of** the following conditions **has met (a)1i through iii or (d)1iv below:**

i. The local government unit has submitted items [three through nineteen of] **required at** N.J.A.C. 7:22-3.11(d)**3 through 19,** to the Department prior to the advertisement of any contract for which cost reimbursement is being sought[;].

ii. The local government unit has not advertised any contract **or any addendum thereto,** for which cost reimbursement is being sought, without the authorization to advertise the contracts **or any addendum thereto** being given by the Department[; and].

iii. The local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department[; or].

iv. The local government unit has [compiled with (a)1i above] **submitted items required at N.J.A.C. 7:22-3.11(d)3 through 19 to the Department prior to the issuance of a notice to proceed with building the project** and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

2. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the [Assistant Director, Construction Grants Administration Element,] **Department** may approve preliminary building activities such as procurement of major equipment requiring long lead times, minor sewer rehabilitation, acquisition of allowable land or advance building of minor portions of **the** wastewater treatment facilities. However, advance approval shall not be given until after the Department reviews and approves an environmental assessment and any specific documents necessary to adequately evaluate the proposed action.

(b) If the [Assistant Director] **Department** approves preliminary building activities, such approval is not an actual or implied commitment of Fund loan moneys and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act **and closing a Fund loan** for the project [in concern].

(c) (No change.)

7:22-3.33 Force account work

(a) A recipient must secure the [Assistant Director's] **Department's** prior written approval for use of force account work for construction, construction-related activities or for repairs or improvements to a facility where costs exceed $25,000.

(b) (No change.)

7:22-3.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are not [eligible] **allowable** for reimbursement from the [Wastewater Treatment] Fund. However, an allowance to assist in defraying the planning and design costs shall be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. **Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, or the Sewage Infrastructure Improvement Act for costs associated with any portion of the project scope or for costs to address the project need, will not be eligible to receive an allowance for planning and/or design as appropriate in accordance with N.J.A.C. 7:22-5.12.**

7:22-3.35 Infiltration/Inflow

(a) [This section stipulates the requirements for proposed sewer system rehabilitation projects only] **An infiltration/inflow analysis is required as part of the Project Report/Facilities Plan.**

(b) The applicant shall demonstrate to the [Assistant Director's] **Department's** satisfaction that [the project area] **each sewer system discharging into the wastewater treatment facility** is **not or will not be** subject to excessive infiltration/inflow [and that an adequate rehabilitation plan has been developed]. For combined sewer

overflow projects, **in no case shall** inflow [is not] **be** considered excessive [in any event].

(c) If the rainfall induced peak inflow rate results **or will result** in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) **If the flow rate at the existing wastewater treatment facility is less than 120 gallons per capita per day during periods of high groundwater, the recipient shall build the project including sufficient capacity to transport and treat any existing infiltration.** If the [applicant can] **recipient** demonstrates that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the [applicant] **recipient** shall perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excessive infiltration.

(e) The provisions of (a) through (d) above are not intended to apply to stormwater management facilities projects. However, a similar analysis regarding the quality and quantity of infiltration/inflow into a stormwater sewer system may be required.

7:22-3.36 Reserve capacity

(a) (No change.)

(b) For any project providing for capacity in excess of that provided by this section, all incremental costs shall be paid by the recipient. Incremental costs include all costs which would not have been incurred but for the additional excess capacity (that is, any cost in addition to the most cost effective alternative with allowable capacity as described in [paragraph] (a) [of this section] **above.)**

7:22-3.38 Fraud and other unlawful or corrupt practices

(a) (No change.)

(b) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the [Assistant Director, Construction grants Administration Element,] **Department** when such allegation or evidence comes to its attention, and shall periodically advise the [Assistant Director] **Department** of the status and ultimate disposition of any related matter.

7:22-3.39 Debarment

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

(e) Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any contract which is or [shall] **will** be funded by a Fund loan under this subchapter, may present information to the Department why this section shall not apply to such person. If the [Commissioner] **Department** determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the [Commissioner] **Department** may grant an exception from the [Application] **application** of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-3.44 Termination of loans

(a) (No change.)

(b) Project termination by the recipient shall be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Fund loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the [Director] **Department** of any complete or partial termination of the project work by the recipient.

2.-3. (No change.)

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

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the [Assistant Director] **Department** the uncommitted balance of Fund moneys awarded under the Fund loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

(f) (No change.)

7:22-3.45 Administrative hearings

(a) The [Director] **Department** shall make the initial decision regarding all disputes arising under a loan. The recipient shall specifically detail in writing the basis for its appeal. When a recipient so requests, the [Division] **Department** shall produce a decision in writing and mail or otherwise furnish a copy thereof to the recipient.

(b) [A] **If a recipient wishes to appeal the Department's decision under (a) above, the** recipient [may] **shall** request an administrative hearing within 15 **calendar** days of a decision by the [Director] **Department**. The request for an administrative hearing [shall] **must** specify in detail the basis for the appeal.

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

SUBCHAPTER 4. WASTEWATER TREATMENT TRUST PROCEDURES AND REQUIREMENTS

7:22-4.1 Scope

This subchapter [shall] constitutes the rules of the New Jersey Wastewater Treatment Trust established pursuant to the [New Jersey Wastewater Treatment] Trust Act [(N.J.S.A. 58:11B et seq.)] governing the disposition of appropriations made available pursuant to the Wastewater Treatment Bond Act [of 1985 (P.L. 1985, c.329)] or **any** other moneys [appropriated] **available** to the New Jersey Wastewater Treatment Trust.

7:22-4.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. (No change.)

2. To establish policies and procedures for the distribution of funds appropriated **or otherwise available** to the New Jersey Wastewater Treatment Trust for the purpose of providing financial assistance to local government units through the issuance of Trust loans for [paying] the costs of the construction of [Wastewater Treatment Facilities] **wastewater treatment facilities**;

3.-8. (No change.)

7:22-4.4 Definitions

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

"Ad valorem tax" means a tax based upon the value of real property.

"Allowable costs" means those costs that are eligible, reasonable, necessary[,] and allocable to the project; permitted by generally accepted accounting principles; and approved by the Trust in the Trust loan agreement. Allowable costs shall be determined on a project specific basis in accordance with N.J.A.C. 7:22-5[.1 through 5.11].

. . .

"Alternative technology" means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, aquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and onsite systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying a partially or fully treated wastewater.

. . .

["Assistant Director" means the Assistant Director, Construction Grants Administration Element, Division of Water Resources, New Jersey Department of Environmental Protection.]

"Best Management Practices" means proven procedures for reducing nonpoint source pollution through both structural and

nonstructural controls, including improvements to operation and maintenance procedures.

"Best Practicable Waste Treatment Technology" (BPWTT) means the most cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment facilities, to meet the applicable provisions of:

1. 40 CFR Part 133—secondary treatment of wastewater;

2. 40 CFR Part 125, Subpart G—marine discharge waivers;

3. 40 CFR 122.44(d)—more stringent water quality standards and State standards; and/or

4. 41 FR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

"Bond Act" means the Wastewater Treatment Bond Act [of 1985 (P.L. 1985, c.329)].

"Bond Acts" mean the Wastewater Treatment Bond Act of 1985 and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act.

...

"Change order" means an alteration of the cost, scope or time of performance of a subagreement occurring subsequent to the execution of that subagreement.

...

"Combined sewer" means a sewer that is designed to function as both a sanitary sewer and a storm sewer.

...

[**"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his designated representative.]**

...

"Contract" means a subagreement as defined in this subchapter.

"Conventional technology" means wastewater treatment processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

"DAC" means "Discharge Allocation Certificate."

"Department" means the New Jersey Department of Environmental Protection **and Energy and its successors and assigns**, duly authorized agent of the Trust.

"Design life" means the length of time during which a wastewater treatment facility is planned and designed to be operated.

[**"Director" means the Director of the Division of Water Resources of the Department.]**

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department **pursuant to N.J.A.C. 7:14A** which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which [shall] **will** result in a discharge to surface water or a substantial modification in a discharge to surface water [pursuant to the New Jersey Pollutant Discharge Elimination System (N.J.P.D.E.S.), N.J.A.C. 7:14A-1.1 et seq].

[**"Division" means the Division of Water Resources, New Jersey Department of Environmental Protection.]**

...

"EPA" means the United States Environmental Protection Agency.

...

[**"Executive Director" means the Executive Director of the Trust.]**

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments [of 1972 (33 USC 1251 et al.) and any amendments or supplements thereto].

"Federal Water Pollution Control Act Amendments" means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory or supplementary acts thereto.

"Final building cost" means the total actual allowable cost of the final work in place for the project, in accordance with the **project** scope as defined in the Trust loan agreement.

...

"Fund", **"Stormwater Management and Combined Sewer Overflow Abatement Fund"** or "Wastewater Treatment Fund" means the Wastewater Treatment Fund **and/or the Stormwater Management and Combined Sewer Overflow Abatement Fund** established pursuant to the **applicable** Bond Acts.

"Fund loan" means a loan from the Wastewater Treatment Fund **or the Stormwater Management and Combined Sewer Overflow Abatement Fund or both Funds** for the allowable costs of the project.

...

"Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of signficant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

...

"Low bid building cost" means the total [actual] allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s). **Excluded from this cost is any cost due to change orders.**

...

"Operation and maintenance" means the following activities required to assure the dependable and economical functioning of wastewater treatment facilities:

1. Maintenance: Preservation of functional integrity and efficiency of equipment and structures, including, but not limited to, preventive maintenance, corrective maintenance, and replacement of equipment as needed.

2. Operation: Control of the unit processes and equipment which make up the wastewater treatment facilities, including, but not limited to, financial and personnel management, recordkeeping, laboratory control, process control, safety and emergency operation planning.

"Priority System, **Intended Use Plan** and Project Priority List" means the [mechanism by] **document through** which projects are **evaluated and** ranked **for funding eligibility** [and a subsequent list developed] by the [State] **Department** in conformance with the Federal Water Pollution Control Act Amendments [of 1972 (33 U.S.C. 1251 et al.) and any amendatory or supplementary acts thereto] and State law. **The Priority System establishes the ranking methodology. The Intended Use Plan establishes various funding policies and provides general information regarding the use of federal funds for financing wastewater treatment facilities. The Project Priority List presents the eligible projects in rank order.**

...

"Project performance standards" means the performance and operations requirements applicable to a project including the enforceable requirements of the Federal Water Pollution Control Act Amendments and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned and designed to meet.

"Project scope" or "scope of work" means the scope of services and/or activities for which a Trust loan agreement has been executed by the Trust and a recipient.

"Recipient" means any local government unit which has received **preaward approval pursuant to N.J.A.C. 7:22-4.32 or** a Trust loan pursuant to this subchapter.

"Responsible bidder" means a bidder that satisfactorily demonstrates to the Trust that it has:

1. Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

2. Resources to meet the completion schedule contained in the subagreement;

3. A satisfactory performance record for completion of subagreements;

4. Accounting and auditing procedures adequate to control property, funds and assets; and

5. A demonstrated record of compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under this subchapter.

...

["Scope of work" means the detailed description of the extent of services required to construct the wastewater treatment facilities.]

"Sewage Infrastructure Improvement Act" means the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.) and any amendatory or supplementary acts thereto.

...

"State" means the State of New Jersey.

"Stormwater Management and Combined Sewer Overflow Abatement Bond Act" means the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) and any amendatory or supplementary acts thereto.

"Stormwater runoff collection systems" includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit to minimize stormwater runoff, correct interconnections or cross-connections, or induce groundwater recharge or any combination thereof.

"Subagreement" means a written agreement between a recipient and another party (other than another public agency) and may include the prime building agreement for the project, any lower tier agreement for services, supplies, or construction necessary to complete the project; agreements for personal and professional services with consultants; and purchase orders.

...

"Trust bond resolution" means any resolution together with any amendments or supplements, adopted by the Trust in accordance with the Trust Act, governing the issuance of Bonds.

...

"User charge" means a charge levied on users of a wastewater treatment facility or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such facilities and may include debt service.

...

"Wastewater Treatment Bond Act" means the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) and any amendatory or supplementary acts thereto.

...

7:22-4.5 New Jersey Wastewater Treatment Trust

(a) (No change.)

(b) The Trust shall establish reserve and guarantee funds into which shall be deposited the proceeds from any State bonds issued pursuant to section 6b of the Bond Act authorized for deposit in the Trust or other funds appropriated by law to the Trust for deposit in the reserve and guarantee funds. The reserve funds shall be used by the Trust to secure debt issued by the Trust. The guarantee funds shall be used by the Trust to secure debt issued by a local government unit.

(c) (No change.)

7:22-4.6 Terms of the loans from the New Jersey Wastewater Treatment Trust

(a) (No change.)

(b) The [total] term of the Trust loans [shall] **will** not exceed 20 years[. Repayments shall begin no later than one month after the date of the initiation of operation or final inspection of the wastewater treatment facilities, or four years from date of loan award, whichever occurs first,] or as indicated in the Trust loan agreement. [Thereafter,] Trust loan repayments shall be made **by the recipient** in accordance with the repayment schedule indicated in the Trust loan agreement. Principal and accrued interest with respect to a particular Trust loan may, however, be prepaid in accordance with the provisions of the relevant Trust loan agreement. Interest on the Trust loan [shall] **will** accrue as indicated in the financial plan submitted **to the Legislature** pursuant to Section 21 of the Trust Act.

(c) (No change.)

(d) Trust loan proceeds will be disbursed to recipients **in accordance with N.J.A.C. 7:22-4.24.** [at intervals as work progresses and expenses are incurred and approved, unless the Trust loan is awarded on a retroactive basis for the reimbursement of prior expenditures. In this case, Trust loan disbursements shall be made as indicated in the Trust loan agreement.]

(e) (No change.)

7:22-4.7 Criteria for project loan priority

(a) Each year, **the Department shall develop** a Priority System, **Intended Use Plan** and Project Priority List [is developed under the Federal grant program] for the forthcoming Federal [Fiscal Year] **fiscal year.** The Priority System **includes the ranking methodology which** evaluates [wastewater treatment] projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. **The Intended Use Plan includes information on the timing, use and distribution of federal funds anticipated to be made available to New Jersey for financing the construction of wastewater treatment facilities. The Project Priority List presents the projects initially eligible for funding according to their cumulative scores derived from application of the Priority System.** [Each year, the Priority System and Project Priority List is the subject of public hearings, including a public comment period. Local government units desiring to be placed on the Project Priority List shall make their request for placement in accordance with N.J.A.C. 7:22-3.7 before or during this time. Concurrently, all local government units listed or eligible for listing on the Project Priority List shall be required to advise the Trust in writing whether they will commit to the project document submittal schedule identified in the annual Priority System and Project Priority List proposal.] **Criteria for project loan priority shall be developed by the Department in accordance with the provisions of N.J.A.C. 7:22-3.7.**

(b) Each year, the proposed Priority System, Intended Use Plan and Project Priority List will be the subject of at least one public hearing, including a public comment period. Local government units desiring to be included in the Project Priority List shall request inclusion before the close of the public comment period. Concurrently, all local government units included or eligible for inclusion in the Project Priority List shall be required to advise the Department in writing whether they will commit to the project document submittal schedule identified in the annual Priority System, Intended Use Plan and Project Priority List proposal in conformance with the provisions of N.J.A.C. 7:22-3.7(b).

(c) The Trust shall consider a project eligible for funding in the forthcoming State fiscal year only where the local goverment unit commits to the project document submittal schedule identified in the annual Priority System, Intended Use Plan and Project Priority List.

(d) The Trust shall give a project funding priority over other projects on the Project Priority List, in instances where the project conditions are determined to constitute a public health hazard.

(e) The Trust shall give funding priority over other projects on the Project Priority List to a project which has previously received a Trust loan in instances where the allowable loan amount due to low bid building costs as determined by the Trust exceeds the Trust loan amount previously awarded or in instances where a project has been certified by the Trust for Trust financial assistance for costs related to reserve capacity under the provisions of N.J.A.C. 7:22-4.36.

7:22-4.8 **Eligibility for** State and Federal funding

(a) The Department, in conjunction with the Trust, shall develop and submit to the Legislature for the forthcoming State fiscal year a priority system and project priority list as required by the Trust Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, which shall be based, in all substantial respects, upon the applicable sections of the Priority System, Intended Use Plan and Project Priority List.

[(a)](**b**) Local government units receiving funding through a Federal grant, **State matching funds pursuant to N.J.A.C. 7:22-2,**

the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6, or from the Pinelands Infrastructure Trust Fund pursuant to N.J.A.C. 7:22-6 and 7:22-7 shall be ineligible for a Trust loan for the same [step] **scope of** work (planning, design or building) **of the wastewater treatment facilities project** for which they received a [federal] **Federal** grant, **State matching funds, Sewage Infrastructure Improvement Act funding or Pinelands Infrastructure Trust funding.** [for the wastewater treatment facilities project.] Further, local government units [receiving] **which have executed a loan agreement to receive** a Trust loan pursuant to this subchapter shall be ineligible to receive a Federal grant, **Pinelands Infrastructure Trust funds, Sewage Infrastructure Improvement Act funding** or State matching funds [pursuant to N.J.A.C. 7:22-2.1 et seq.] for the same scope of work for the planning, design or building of [a] **that** wastewater treatment facilities project.

[(b) Those local government units exercising their option for a Trust loan shall have their project ranked in accordance with the Priority System. As part of their decision, local government units shall waive and lose their discretion to accept a Federal grant for the two forthcoming Federal fiscal years for their project contingent upon the passage of the legislative appropriations act containing the specific project of concern.

(c) The decision, whereby local government units waive and lose their discretion to accept a Federal grant for the projects for which they exercise their option for a Trust loan, shall become effective only upon receiving legislative approval in the form of an appropriations act. A local government unit whose project is on the project priority list, but is not part of a legislative appropriations act, remains eligible to receive a federal grant for that project.]

7:22-4.9 Project bypassing

(a) Failure of the local government unit to advise the [Division] **Department**, in writing, of the local government unit's commitment to meet the project document submittal schedule by the close of the comment period for the proposed Priority System, **Intended Use Plan** and Project Priority List [shall result] **will**, without further notice by the [Division] **Department, result** in the project becoming ineligible for a Trust loan for the forthcoming State fiscal year.

(b) Failure **of the local government unit** to submit [the] complete **planning documents, design documents and** applications within the time periods specified **in the Priority System, Intended Use Plan and Project Priority List for the forthcoming State fiscal year** [shall] **will** result in the Trust's bypassing of the local government [units **unit's** [Trust loan application] **project** unless the Trust, at its discretion approves, for good cause, an extension to [this] **these** periods.

(c) (No change.)

(d) The Trust shall bypass a local government unit's project on the Project Priority List in cases where the Trust has given priority to funding other projects on the Project Priority List in accordance with N.J.A.C. 7:22-4.7(d) or (e).

7:22-4.10 Pre-application procedures

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

[(c) Questions concerning the program and requests for a pre-application conference should be directed to:

Executive Director
New Jersey Wastewater Treatment Trust
CN-029
Trenton, New Jersey 08625]

7:22-4.11 Application procedures

(a) Each application for a Trust loan shall be submitted to the trust in conformance with the time period specified in the [Notice of Project Eligibility] **Proposed Priority System, Intended Use Plan and Project Priority List** or otherwise extended by the Trust and [shall] **must** include full and complete documentation and any supplementary materials that **the Trust requires** an applicant [is required] to furnish.

(b) Submissions which do not substantially comply with this subchapter shall not be processed further [and shall be returned to the applicant] **and the applicant shall be so advised.**

(c) (No change.)

(d) The following shall be submitted when applying for a Trust loan, **as applicable**:

1. An application **(CGA Form LP-2)** for a Trust loan pursuant to this subchapter for **the** construction of wastewater treatment facilities. Each application [shall] constitutes an [offer] **agreement** to accept the requirements of this subchapter [and, upon execution of the agreement by the Trust and the applicant, acceptance of the terms and conditions of the Trust loan agreement];

2. A resolution passed by the local government unit authorizing the filing of an application for a Trust loan[,] **and** specifying the individual authorized to sign the Trust loan application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution [is required from each,] indicating the lead applicant and the authorized representative **is required from each**;

3.-4. (No change.)

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans **in accordance with the provisions of N.J.A.C. 7:15** and **the** Environmental Assessment [Guidelines;] **Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). A complete Project Report/Facilities Plan must include:**

i. A description of both the proposed wastewater treatment facilities and the complete wastewater treatment system of which it is a part;

ii. A description of the Best Practicable Wastewater Treatment Technology or, for stormwater runoff collection systems, a description of the Best Management Practices that will be utilized;

iii. A cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan. A cost effectiveness analysis must include:

(1) An evaluation of flow reduction methods. If the applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Department determines the area has an effective existing flow reduction program, this evalution is not required;

(2) A description of the relationship between the capacity of alternatives analyzed and the needs to be served, including capacity for future growth expected after the wastewater treatment facilities become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(4) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(5) A consideration of systems with revenue generating applications;

(6) An evaluation of opportunities to reduce use of or recover energy; and

(7) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users;

iv. An infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-4.35;

v. An analysis of the potential open space and recreation opportunities associated with the project;

vi. An adequate evaluation of the environmental impacts of the alternatives analyzed in N.J.A.C. 7:22-4.11(d)5iii;

vii. An evaluation of the water supply implications of the project; and

viii. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(1) Relevant design parameters, including a description of the treatment units and/or sewer system to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;

(2) Estimated capital construction and operation and maintenance costs identifying the Fund, Trust and local shares, and a description of the manner in which local costs will be financed;

(3) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(4) Cost impacts on wastewater system users; and

(5) Institutional and management arrangements necessary for successful implementation;

6. **For sewer rehabilitation projects, a** Sewer System Evaluation Survey [(for Rehabilitation projects only)] **in accordance with N.J.A.C. 7:22-4.35**;

7. (No change.)

8. A description of the public participation process to date**. Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible**;

9. A [statement indicating] **report on the** [small, minority and women's business enterprise] participation **by socially and economically disadvantaged individuals** during planning and design **as required by N.J.A.C. 7:22-9.12(a)**;

10. Project cost breakdown **for each subagreement**;

11. Projected cash flow schedule **to be used to establish the Trust loan disbursement schedule**;

12. Project construction schedule. [Should the anticipated date of the initiation of operation occur after July 1, 1988, a] **A** court-sanctioned order **or a Department-issued Administrative Consent Order indicating** [specifying] a compliance schedule [shall] **will** be required[,] where applicable;

13. [Department-approvable] **A** sewer use ordinance [and], user charge system **and draft plan of operation acceptable to the Trust**;

i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and constructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

ii. The user charge system shall be designed to produce adequate revenues required for operation and maintenance (including replacement) and, in most cases, to cover debt service costs for the local government unit's wastewater treatment facilities. It must provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment facilities shall pay for such increased cost. Unless otherwise approved by the Department, the user charge system must be based on either actual use under (d)13ii(1) below, ad valorem taxes under (d)13ii(2) below or a combination of the two. It must meet the requirements set forth in (d)13ii(3) through (8) below.

(1) A user charge system based on actual use (or estimated use) of wastewater treatment services must provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment facilities within the service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(2) A user charge system which is based on ad valorem taxes may be approved if:

(A) On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment facilities within the service area and the applicant has continued to use that system;

(B) The ad valorem user charge system distributes the operation and maintenance costs for all treatment facilities in the applicant's jurisdiction to the residential and small nonresidential user class (including at the applicant's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment facilities), in proportion to the use of the treatment facilities by this class; and

(C) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance of the treatment facilities based upon charges for actual use.

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(5) The user charge system must provide that the costs of operation and maintenance for all flow not directly attributable to users (that is, infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use; or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(I) Flow volume of the users;

(II) Number of hookups or discharges of the users;

(III) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

(6) After completion of construction of a project, revenue from the project (for example, sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased under the Trust loan agreement) must be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.

(7) One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this section. These user charge systems must also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment facilities.

iii. The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete waste treatment system;

14. (No change.)

15. [A certification] **An affidavit (CGA Form LP-8) certifying** that required permits and approvals[, if applicable] for building the wastewater treatment facilities, were received from **applicable Federal, State and local agencies;** [the following agencies:

i. Monitoring and Planning Element within the Division;

ii. Water Quality Management Element within the Division;

iii. Water Supply and Watershed Management Element within the Division;

iv. Division of Environmental Quality within the Department;
v. Division of Waste Management within the Department;
vi. Division of Fish and Game within the Department;
vii. Division of Coastal Resources within the Department;
viii. Office of Equal Opportunity and Public Contract Assistance within the Department;
ix. Office of New Jersey Heritage within the Division of Parks and Forestry;
x. New Jersey Department of Community Affairs;
xi. U.S. Army Corps of Engineers;
xii. New Jersey Pinelands Commission;
xiii. Hackensack Meadowlands Development Commission;
xiv. Delaware and Raritan Canal Commission;
xv. Delaware River Basin Commission;
xvi. Interstate Sanitation Commission;
xvii. Local Soil Conservation District Office;]
16.-17. (No change.)
18. Executed **service, joint and/or deficiency or other** intermunicipal agreements, if [required] **applicable. If the project will serve two or more local government units, the applicant shall submit the executed service agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed wastewater treatment facilities. At a minimum, these documents must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered**;
19.-22. (No change.)
(e) Applicants shall obtain all necessary Federal, State and local permits and approvals [must be obtained] prior to the award of a loan unless prior approval for an extension for one or more specific permits has been granted by the Trust that does not significantly affect the loan award. Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award ([e.g.] **for example,** road opening permit, blasting permit, etc.).
[(f) All applications shall be sent to:
Executive Director
New Jersey Wastewater Treatment Trust
CN-029
Trenton, New Jersey 08625]

7:22-4.13 Evaluation of application
(a) [The Trust shall notify the applicant that it has received the application and is evaluating it pursuant to this section.] Each applicant shall be subject to:
1.-4. (No change.)
(b) Upon the completion of a full review and evaluation of each application, the Trust shall either [approve the application] **certify the project for funding** or [make the determination that the Trust loan award shall be deferred] **bypass the project for funding in the State fiscal year for which the application was submitted.**
[(c) The Trust shall promptly notify applicants in writing of any deferral action, indicating the reasons for the deferral and a time frame for the resolution of any outstanding issues. A deferral action shall result in one of the following:
1. An approval of the application if the outstanding issues are addressed to the satisfaction of the Trust within the specified time frame; or
2. A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Trust within the specified time frame.]
[(d)](**c**) The Trust shall promptly notify **an** applicant[s in writing] **by certified mail if its project has been bypassed.** [of any disapproval. A disapproval of an application shall not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Trust loan application and/or processing of a Trust loan agreement for the project within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected applicants shall be notified in writing of such action.] As a result of a [disapproval and] project bypass action, the next highest ranked [contingency] project on the Project Priority List may fall within the fundable range.

7:22-4.15 Trust loan agreement
(a) The Trust shall prepare and transmit the Trust loan agreement to the applicant. **The Trust loan agreement shall set forth the terms and conditions of the Trust loan, approved project scope, allowable and unallowable project costs, estimated Trust loan disbursement schedule, estimated loan repayment schedule and the approved commencement and completion dates for the project or major phases thereof.**
[1. The applicant shall execute the Trust loan agreement and return it within 45 calendar days after receipt. The Trust may, at its discretion, extend the time for execution. The Trust loan agreement shall be signed by a person authorized by resolution to obligate the recipient to the terms and conditions of the Trust loan agreement being executed. The authorizing resolution shall also be submitted at this time.
2. The Trust loan agreement shall set forth the terms and conditions of the Trust loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.]
(b) The Trust loan agreement shall be executed by the applicant within such period of time and pursuant to such terms and conditions as the Trust may determine.
(c) The Trust, pursuant to such terms and conditions as it may determine, may require the applicant to irrevocably commit itself through a loan commitment letter, escrow agreement or other similar document to borrow the amount for which it has made application under the terms and conditions of the Trust loan agreement transmitted to the applicant.
(d) The Trust loan agreement and/or loan commitment letter, escrow agreement or other similar document shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the particular document for the project specified therein. A certified copy of the authorizing resolution shall be delivered to the Trust at the time that the executed Trust loan agreement, loan commitment letter, escrow agreement or similar document is delivered to the Trust.
[3.](**e**) The Trust loan agreement [shall be] **is** deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Trust in the application process.
[4.](**f**) The Trust loan agreement shall not be executed by the Trust if the applicant is in current default on any State loan.
[5. After the Trust has completed its internal processing of the Trust loan agreement, it shall transmit a copy of the executed Trust loan agreement to the recipient.]

7:22-4.16 [Effect of] **Trust** loan award **and closing**
(a) [At the time of] **Upon the** execution of the Trust loan agreement by the Trust and the recipient, the **Trust** loan [shall] **is awarded and the agreement** becomes effective and [shall] constitutes an obligation of the Trust [in the amount and for the purposes stated in the Trust loan agreement.] **in accordance with its terms and conditions. The obligation of the Trust under a Trust loan agreement is contingent upon the availablity of funds from which disbursements can be made. The Trust loan is considered closed as indicated in the Trust loan agreement.**
(b) The award **or closing** of the Trust loan [shall] **does** not commit or obligate the Trust to award any continuation **or supplemental** Trust loan to cover cost overruns of the project. Cost overruns for any project or portion thereof [shall be] **are** the sole responsibility of the recipient.
(c) The award **or closing** of a **Trust** loan by the Trust shall not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates for its respective projects.

7:22-4.17 Loan conditions
(a) The following requirements, in addition to N.J.A.C. 7:22-4.18 through 4.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Trust loan, and conditions to each disbursement under a Trust loan agreement:
1. (No change.)

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. **The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department;**

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8[.1 et seq.]) **and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);**

4. The recipient shall comply with the requirements of the [N.J.P.D.E.S.] **NJPDES** permit pursuant to N.J.A.C. 7:14A[-1 et seq.];

5. The recipient shall adopt a sewer use ordinance **and implement the user charge system** consistent with the [requirements of the Department] **provisions of N.J.A.C. 7:22-4.11(d)13;**

6.-7. (No change.)

8. The recipient shall pay the unallowable costs of the construction of the project (that is, facilities planning, design, building and related costs) **and shall pay the allowable costs not covered by the Trust loan, or supplemental Trust loan, if any;**

9.-12. (No change.)

13. [An amount of any Trust loan disbursement equal to fifty percent any unpaid portion of a State assessed penalty pursuant to N.J.A.C. 7:14-8.1 et seq., Assessment of Civil Administrative Penalties, shall be held in escrow until said penalty is paid in full] **(Reserved);**

14.-15. (No change.)

16. The recipient shall [have an operations and maintenance manual developed.] **certify to the Department that an operations and maintenance manual, acceptable to the local government unit, has been developed for the project;**

17.-18. (No change.)

19. The recipient [must submit proof] **shall certify** that it and its contractors and subcontractors shall comply with all insurance requirements of the Trust loan agreement and [that it shall be able to] certify, **when appropriate,** that the insurance is in full force and effect and that the premiums have been paid. **The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The recipient shall provide the trust with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Trust, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L. 90-448), as amended. Flood insurance coverage must begin with the period of building and continue for the entire period during which the wastewater treatment facility operates. The insurance must be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the recipient under the National Flood Insurance Act, whichever is less. The recipient shall comply with every requirement of this subsection prior to the release of the initial Trust loan disbursement for building the project;**

20. The recipient shall certify that it and its contractors and [their] subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27[-1 et seq.];

21. The recipient shall [establish] **certify that it has established** an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project [and to establish a program to provide opportunities for socially and economically disadvantaged contractors and vendors to supply materials and services for the contract,] consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.);

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 **and N.J.A.C. 7:22-9.11;**

23. [The recipient shall submit its affirmative action program, the name of its designated compliance officer, and its procurement plan for implementing 21. above with its application] **The recipient shall certify that it shall comply with the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);**

24. [Not] **A goal of not** less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in [section 637(a) and 637(d) of] the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals [shall] **will** take precedence over State goals[. Procedures to be followed in implementing this paragraph shall be found in the Local Public Contracts Law, N.J.S.A. 40A:11-41 et seq., and in guidelines to be published by the Department to assist recipients in complying with statutory and regulatory reporting requirements]; and

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any [construction] contract for [that] **the** project, in accordance with the rate determined by the Commissioner of **the New Jersey Department of** Labor pursuant to N.J.S.A. 34:11-56.25 et seq. **or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater.**

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

[(d) Neither the State of New Jersey nor the New Jersey Wastewater Treatment Trust will be a party to any contracts and subcontracts awarded pursuant to this Chapter. All such contracts and subcontracts shall include the following statement:

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection and the New Jersey Wastewater Treatment Trust. Neither the State of New Jersey, the New Jersey Wastewater Treatment Trust nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to regulations contained in N.J.A.C. 7:22-3.1 et seq., 4.1 et seq., 5.1 et seq., and 9.1 et seq."]

(d) The recipient shall insert in all contracts or subcontracts awarded pursuant to this subchapter the Department's Subcontractor Certification Form.

(e) The recipient shall insert into the contracts for building the project EPA Form 5720-4 (5-13), Labor Standards Provisions for Federally Assisted Construction Contracts.

(f) The recipient shall insert into the contracts, and shall ensure that their contractor(s) include within their subcontract(s), the following statement:

"In accordance with the provisions of N.J.S.A. 58:11B-26, N.J.A.C. 7:22-3.17(a)24 and 4.17(a)24, the contractor (subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9."

(g) All applicable surety bonds required in connection with the advertisement and award of building contracts or subagreements must be written by a surety company listed on the Federal Treasury List (Department Circular 570-Surety Companies Acceptable on Federal Bonds), incorporated herein by reference. Copies of this document may be obtained from the Department.

7:22-4.18 Administration and performance of loan

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Trust loan objectives. Although recipients are encouraged to seek the advice and opinion of the Trust on problems that may arise, the giving of such advice [shall] **does** not shift the responsibility for final decisions from the recipient to the Trust. [The primary concern of the Trust is that Trust moneys be used in conformance with these rules and the Trust loan agreements to achieve the Trust loan objectives and to ensure that the purposes set forth in the Trust Act are fully executed.]

7:22-4.19 Project changes and loan modifications

(a) A Trust loan modification means any written alteration of the [Trust loan] terms or conditions, budget or project method or other administrative, technical or financial [agreements] **provisions of the Trust loan agreement.**

[(b) There shall be no Trust loan modifications increasing the funding amount beyond adjustments to cover the low bid building costs. Adjustments due to the low bid building costs will be made only after a subsequent passage of a legislative appropriations act containing the specific project of concern. All other increased costs shall be the responsibility of the recipient. No Trust loan modifications may be entered into which materially affect the right of the holders of the Trust bonds.]

[(c)]**(b)** The recipient shall promptly notify the [Assistant Director, Construction Grants Administration Element, Division of Water Resources] **Trust** in writing (certified mail, return receipt requested) of events or proposed changes which may require a Trust loan modification, including but not limited to:

1.-6. (No change.)

[(d) The Department shall evaluate the need for any change or modification and shall recommend to the Trust an approval or disapproval of the proposed action.]

[(e)]**(c)** If the Trust [decides] **determines** that a [formal] Trust loan **modification by means of a Trust loan agreement** amendment is necessary **in accordance with N.J.A.C. 7:22-4.20**, the recipient shall be notified and a [formal] Trust loan **agreement** amendment shall be [with N.J.A.C. 7:22-4.20] **processed**. If the Trust decides a [formal] Trust loan **agreement** amendment is not necessary, [it] **the Trust and the recipient** shall follow the procedures of N.J.A.C. 7:22-4.21 or 4.22, as applicable.

7:22-4.20 [Formal] **Trust** loan **agreement** amendments

(a) The Trust shall require a [formal] Trust loan **agreement** amendment to change principal provisions of a Trust loan **agreement** where **the Trust determines that** project changes substantially alter the [cost] **objective or scope of the project** or time of performance of the project or any major phase thereof [or substantially alter the objective or scope of the project] **or to change substantially a term or condition of the Trust loan agreement.**

(b) [The Trust and recipient shall effect a formal Trust loan amendment only by a written amendment to the Trust loan agreement executed by the Trust and the recipient.] **In the event that a project has a need for additional moneys due to the low bid building cost being higher than the original Trust loan amount, the local government unit may request a supplemental Trust loan. The Trust may award a supplemental Trust loan only after passage of a subsequent legislative appropriatons act providing moneys for the specific project of concern and only with a Trust loan agreement. The recipient shall be responsible for all other increased costs.**

7:22-4.22 other changes

All other project changes, which do not require a [formal] Trust loan **agreement** amendment as stated in N.J.A.C. 7:22-4.20, [shall be undertaken only upon] **require** written approval of the Trust.

7:22-4.24 Trust disbursement

Disbursement of Trust loan moneys shall be made **as indicated in the Trust loan agreement** at intervals as work progresses and expenses are incurred **by the local government unit and as approved by the Trust**, but in no event shall **total** disbursements **at any time** exceed the **cumulative Trust loan amounts indicated in the disbursement schedule of the Trust loan agreement or the** allowable costs which have been incurred at that time. No disbursement shall be made until the Trust receives satisfactory cost documentation which [shall] **must** include all forms and information required by the Trust and completed in a manner satisfactory to the Trust. [Should the recipient be receiving Trust loan moneys for expenditures incurred prior to the award of the Trust loan, the disbursement schedule shall be as indicated in the Trust loan agreement.]

7:22-4.26 Unused funds

Where the total amount disbursed under a Trust loan due to the low bid building cost is less than the initial Trust loan award, and/or where the total amount disbursed under a Trust loan due to the final building cost is less than the **Trust loan amount due to the** low bid building cost, [the Trust loan agreement shall be adjusted and] the difference shall be retained by the Trust to be [reallocated, pursuant to subsequent Legislative appropriations acts, to other wastewater treatment facilities projects. However, where allowable cost overruns occur, Trust moneys may be used to cover these cost overruns up to the loan amount adjusted due to the low bid building cost.] **used for making a recipient's debt service payments until exhausted or for any other purpose as determined by the Trust in accordance with the applicable Trust loan agreement and Trust bond resolution. Line item adjustments for allowable project costs may be made at the request of the recipient as long as the Trust loan amount in the Trust loan agreement is not exceeded and provided all project related contracts have been awarded. However, the Trust shall not allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope.**

7:22-4.28 Land acquisition

[Land that shall be an integral part of the treatment process is eligible for Trust loan moneys] **The cost for land may be determined to be an allowable cost by the Department** in accordance with N.J.A.C. 7:22-5.7. **If required by Federal law, the recipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646 (84 Stat. 1894) approved Janaury 2, 1971). Further, if required by Federal law, the local government unit shall not acquire real property the cost of which the Department has determined to be allowable for Trust loan moneys until the Regional Administrator of EPA or his or her designee has determined that the applicable provisions of 40 CFR Part 4 have been met.**

7:22-4.29 Project initiation

(a) (No change.)

(b) The recipient shall not advertise any contract **or any addendum thereto for the building of the project** until authorization to advertise **the contract or any addendum thereto** has been granted by the [Trust] **Department.**

(c) Once bids for building the project are received, the recipient shall not award [the] **any** subagreement(s) until authorization to award has been given by the [Trust] **Department.**

(d) The recipient and the contractor to whom the subagreement(s) has been awarded shall attend a preconstruction conference with [Trust] **Department** personnel prior to the issuance of a notice to proceed.

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project no later than 12 months after the loan [award] **closing**, unless a specific extension has been approved by the Trust.

(f) (No change.)

7:22-4.30 Project performance

(a) (No change.)

(b) [For the wastewater treatment process portion of the project, on] **On** the date one year after the initiation of operation, the recipient shall certify to the Trust the performance record of the project. If the Trust or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as spcified in the Trust loan agreement, the recipient shall submit the following:

1.-3. (No change.)
(c)-(d) (No change.)
(e) At a minimum, unless further specified, the project performance standards consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the Project.

7:22-4.32 Preaward costs

(a) The Trust shall not [award loan assistance for] **consider allowable those** costs incurred for building performed prior to [the award of] **closing** the loan for the project, except:

1. Where the local government unit's project is ranked one through seventy, inclusive, on the most currently approved **Priority System, Intended Use Plan and** Project Priority List or is part of the Department's request to the Legislature for [placement on] **inclusion in** an appropriations bill providing Trust moneys **in the forthcoming fiscal year** for [the] **that** project and [has met] **of** the following conditions **has met (a)1i through iii or (a)1iv below:**

i. The local government unit has submitted items [three through nineteen of] **required at** N.J.A.C. 7:22-4.11(d)**3 through 19**, to the [Trust] **Department** prior to the advertisement of any contract for which cost reimbursement is being sought[;].

ii. The local government unit has not advertised any contract **or any addendum thereto**, for which cost reimbursement is being sought, without the authorization to advertise the contracts **or any addendum thereto** being given by the [Trust] **Department**[; and].

iii. The local government unit has not awarded any contract, for which cost reimbursement is being sought, without the authorization to award the contracts being given by the [Trust] **Department**[; or].

iv. The local government unit has [complied with (a)1i above] **submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19 to the Department prior to the issuance of a notice to proceed with building the project** and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A 58:27-1 et seq.).

2. (No change.)

(b) If the [Trust] **Department** approves preliminary building activities, such approval is not an actual or implied commitment of Trust loan moneys and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act **and closing a Trust loan** for the project [in concern].

(c) (No change.)

7:22-4.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are not [eligible] **allowable** for reimbursement from the Trust. However, an allowance to assist in defraying the planning and design costs [shall] **will** be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. **Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, or the Sewage Infrastructure Improvement Act for costs associated with any portion of the project scope or for costs to address the project need, will not be eligible to receive an allowance for planning and/or design as appropriate in accordance with N.J.A.C. 7:22-5.12.**

7:22-4.35 Infiltration/Inflow

(a) [This section stipulates the requirements for proposed sewer system rehabilitation projects only] **An infiltration/inflow analysis shall be required as part of the Project Report/Facilities Plan.**

(b) The applicant shall demonstrate to the [Trust's] **Department's** satisfaction that [the project area is] **each sewer system discharging into the wastewater treatment facility is not or will not be** subject to excessive infiltration/inflow [and that an adequate rehabilitation plan has been developed]. For combined sewer overflow projects, **in no case shall** inflow [is not] **be** considered excessive [in any event].

(c) If the rainfall induced peak inflow rate results **or will result** in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) **If the flow rate at the existing wastewater treatment facility is less than 120 gallons per capita per day during periods of high groundwater, the recipient shall build the project including sufficient capacity to transport and treat any existing infiltration.** If the [applicant can] **recipient** demonstrates that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the [applicant] **recipient** shall perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excessive infiltration.

(e) The provisions of (a) through (d) above are not intended to apply to stormwater runoff collection systems. However, a similar analysis regarding the quality and quantity of infiltration/inflow into a stormwater runoff collection system may be required.

7:22-4.36 Reserve capacity

(a) [The] **For those projects eligible for Trust loans in State fiscal year 1993 and beyond whose sponsor indicates in their initial loan application that they do not want to exercise their option to receive Trust loan assistance for those costs related to reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36, the** Trust shall limit the recipient's Trust loan assistance to the cost of the project with a capacity based upon flow records, existing unsewered needs and flows anticipated prior to the date of initiation of operation as established in the Trust loan agreement. [In no case, however, shall the allowable capacity for existing systems exceed 120 gallons per capita per day. Design flows of 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, shall be allowable for existing unsewered needs and for collection systems being built between the date of the Trust loan award and the date of initiation of operation.

(b)] For any project providing for capacity in excess of that provided by this **sub**section, all incremental costs shall be paid by the recipient. Incremental costs include all costs which would not have been incurred but for the additional excess capacity [(that is, any cost in addition to the most cost effective alternative with allowable capacity as described in (a) above)].

(b) For those projects eligible for Trust loans in State fiscal year 1993 and beyond in which the local government unit indicates in their initial loan application that they want to exercise their option to receive Trust loan assistance for those costs related to reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36, the Trust may offer a market rate Trust loan for such costs.

(c) For those projects which received their initial Trust loan in State fiscal year 1992, the Trust may offer a market rate Trust loan for the costs related to the reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36 provided the local government unit submits a Trust loan application for such costs in State fiscal year 1993 or 1994 and provided the local government unit submits the loan application for such costs in conjunction with their supplemental Trust loan application (if eligible to receive a supplemental Trust loan).

(d) In no case, however, shall the allowable capacity for existing systems exceed 120 gallons per capita per day. Design flows of 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, shall be allowable for existing unsewered needs and for collection systems projected to be built during the design life.

(e) For those projects which received Trust loans in State fiscal year 1991 or earlier, the Trust shall limit the recipient's Trust loan assistance as described in (a) above.

7:22-4.45 Administrative hearings

(a)(No change.)

(b) [A] **If a recipient wishes to appeal the Department's decision under (a) above, the** recipient [may] **shall** request an administrative hearing within 15 **calendar** days of a decision by the Trust. The request for an administrative hearing [shall] **must** specify in detail the basis for the appeal.

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

7:22-4.46 Assistance in the administration of trust rules

In evaluating whether a project has complied with or satisfied any requirement or criteria under these New Jersey Wastewater Treatment Rules, including, but not limited to, N.J.A.C. 7:22-4.11, 4.13, 4.17, 4.29, 4.31, 4.35, 4.36, 4.37, [or] 4.43 **or 4.45**, or in determining what course of action the Trust may decide upon regarding those sections, the Trust shall be entitled to rely upon any advice, certifications or opinions which may be provided to it by the engineering, professional or legal staff of the Department or of any other State governmental unit to which it may call upon for assistance pursuant to N.J.S.A. 58:11B-5(f) of the Trust Act.

SUBCHAPTER 5. DETERMINATION OF ALLOWABLE COSTS: [FOR WASTEWATER TREATMENT] FUND AND [WASTEWATER TREATMENT] TRUST [FINANCIAL ASSISTANCE]

7:22-5.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1. (No change.)

2. The costs for establishing or using [small, minority and women's business] liaison services **for small business concerns owned and controlled by socially and economically disadvantaged individuals pursuant to N.J.A.C. 7:22-9**;

3. (No change.)

4. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement, provided that:

i.-iii. (No change.)

iv. The [Assistant Director] **Department** or Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim; and

v. (No change.)

5. Change orders for increased costs under subagreements as follows:

i. Change orders provided the costs are:

(1) Within the scope of the project;

(2) Not caused by the recipient's mismanagement;

(3) Not caused by the recipient's vicarious liability for the improper action of others; and

(4) The cost of which when added to the **allowable costs due to the** final building cost, does not exceed the **allowable costs due to the** low bid building cost.

ii. Provided the requirements of [paragraph] (a)5i **above** are met, the following is an example of allowable change orders and contractor claim costs:

(1) (No change.)

iii. Settlements, arbitration awards, [and] **or** court judgements, which resolve contractor claims shall be reviewed by the [Assistant Director] **Department or the Trust, as appropriate, and** [shall be] **are** allowable only to the extent that they meet the requirements of (a)5i above, are reasonable, and do not attempt to pass on to the Department or the Trust the cost of events that were the responsibility of the recipient, the contractor, or others.

iv. (No change.)

6. The costs of the [services of the prime engineer] **recipient** required by N.J.A.C. 7:22-3.30 or N.J.A.C. 7:22-4.30, as applicable, during the first year following initiation of operation of the project;

7.-8. (No change.)

(b) The sum total of the allowable costs in (a)2 through 8 above will not exceed 12 percent of the low bid building cost.

[(b)](c) Unallowable costs related to subagreements include:

1. (No change.)

2. Except as provided in [paragraph] (a)5 above, architectural or engineering services or other services necessary to correct defects in a planning document, design drawings and specifications, or other subagreement documents;

3. The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

i.-iv. (No change.)

v. The [Assistant Director] **Department** or the Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim; and

vi. (No change.)

4. (No change.)

5. All costs associated with the award of any subagreement for building significant elements of the project more than 12 months after the Fund or Trust [award] **closing** unless an extension is specified in the project schedule approved by the [Assistant Director] **Department** or the Trust, as appropriate[, at the time of Fund or Trust loan award].

7:22-5.5 Mitigation

(a) Allowable costs related to mitigation include:

1. (No change.)

2. The costs of site screening necessary to comply with [State] **the** Environmental [Guidelines] **Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10)**, to complete related studies and plans, or necessary to screen adjacent properties;

3. (No change.)

[(6)](**b**) Unallowable costs related to mitigation include:

1. (No change.)

2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under [State Environmental Guidelines] **the provisions of N.J.A.C. 7:22-10**.

7:22-5.6 [Privately or publicly] **Publicly** owned small and onsite systems

(a) Allowable costs for **publicly owned** small and onsite systems serving residences and small commercial establishments include:

1. The cost of major rehabilitation, upgrading, enlarging and installing **publicly owned** small and onsite systems [but in the case of privately owned systems, only for principal residences];

2.-5. (No change.)

(b) Unallowable costs for small and onsite systems include:

1. Modification to [physicial] **the physical** structure of homes or commercial establishments;

2. (No change.)

3. Wastewater generating fixtures such as commodes, sinks, tubs, and drains[.]; **and**

4. The cost of rehabilitation, upgrade, enlarging and installing privately owned small and onsite systems (unless the Department determines that such a system constitutes, or is included within, a septage management district, in which case the Department may deem the public ownership requirement to be satisfied).

7:22-5.7 Real property

(a) Allowable costs for land and rights-of-way include:

1. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the [Assistant Director] **Department** or the Trust, as appropriate, approves it and it is identified as such in the Fund or Trust loan agreement. These costs include:

i.-iv. (No change.)

2.-4. (No change.)

(b) Unallowable costs for land and rights-of-way include:

1. (No change.)

2. Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, as determined by the [Assistant Director] **Department** or the Trust, as appropriate.

3. (No change.)

7:22-5.8 Equipment, materials and supplies

(a) Allowable costs of equipment, materials and supplies include:

1.-6. (No change.)

7. Replacement parts identified and approved in advance by the [Assistant Director] **Department** or the Trust, as appropriate, as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

i.-iii. (No change.)

(b) (No change.)

7:22-5.9 Industrial and [federal] **Federal** users

(a) (No change.)

(b) Unallowable costs for wastewater treatment facilities serving industrial and [federal] **Federal** users include:

1.-3. (No change.)

4. The cost of interceptor or collector sewers constructed exclusively, or almost exclusively, to serve industrial users; and

5. The cost for control or removal of pollutants in wastewater introduced into the wastewater treatment facilities by industrial users, unless the local government unit is required to remove such pollutants introduced from nonindustrial users.

7:22-5.10 Infiltration/inflow **and reserve capacity**

(a) Allowable costs related to infiltration/inflow **and reserve capacity** include:

1. The cost of the wastewater treatment facilities' capacity adequate to transport and treat nonexcessive infiltration/inflow under N.J.A.C. 7:22-3.35 or [7:22-]4.35, as applicable**, and reserve capacity in accordance with N.J.A.C. 7:22-3.36 or 4.36, as applicable**.

2. (No change.)

(b) Unallowable costs related to infiltration/inflow **and reserve capacity** include:

1. (No change.)

2. All costs related to reserve capacity are unallowable except as provided for under the provisions of N.J.A.C. 7:22-4.36.

7:22-5.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. The costs of salaries, benefits and expendable materials the recipient incurs for the project. **However, the allowable portion of these administrative costs will be limited to one percent of the low bid building cost;**

2. The costs of additions to wastewater treatment facilities that were assisted under the [federal] **Federal** Water Pollution Control Act **Amendments** [of 1956 (P.L. 84-660) or its amendments], [or] the Wastewater Treatment Bond Act [of 1985 (P.L. 1985, c.329) or its amendments], [or] the [New Jersey Wastewater Treatment] Trust Act [(N.J.S.A. 58:11B-1 et seq.) or its amendments], [or] the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c. 302) or its amendments, **or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act** and that fails to meet its performance standards as specified in the Fund or Trust loan agreement, provided:

i. The project is identified on the Project Priority List as a project for additions to wastewater treatment facilities that [has] **have** received previous State or Federal funds;

ii. (No change.)

iii. The additions could have been included in the original grant or loan award; and

(1) Are the result of one of the following:

(A)-(B) (No change.)

(C) A written understanding between the [Assistant Director] **Department** and the recipient prior to or included in the original Federal grant award;

(D)-(E) (No change.)

(F) A written direction by the Regional Administrator of EPA or the [Assistant Director] **Department** or the Pinelands Commission or the Trust to delay building part of the wastewater treatment facilities; or

(G) (No change.)

(2) (No change.)

iv. (No change.)

3. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the [Assistant Director] **Department** or the Trust, as appropriate.

4. Costs of recipient's employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the wastewater treatment facilities, if approved in advance by the [Assistant Director] **Department** or the Trust, as appropriate.

(b) Unallowable miscellaneous costs include:

1.-4. (No change.)

5. The costs of replacing, through reconstruction or substitution, wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act **Amendments** [of 1956 (Pub. L. 84-660) or its amendments], [or] the Wastewater Treatment Bond Act [of 1985 (P.L. 1985, c.329) or its amendments or], the [New Jersey Wastewater Treatment] Trust Act [(N.J.S.A. 58:11B-1 et seq.) or its amendments], [or] the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985 c. 302) or its amendments, **or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act** and that fail to meet its project performance standards. This provision applies to failures [to] **that** occur either before or after the initiation of operation but does not apply to wastewater treatment facilities that fail at the end of its design life;

6.-12. (No change.)

7:22-5.12 Allowance for planning and design

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

(d) The estimated and final allowance will be determined in accordance with this section and Tables 1 and 2. Table 2 is to be used in the event that the recipient received a [federal] **Federal** grant**, Sewerage Infrastructure Improvement Act funding,** or [a] Pinelands funding for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

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

(i) The allowance does not include architect or engineering services provided during the building of the project, [e.g.] **for example**, reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and the Local Public Contracts Law, (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

TABLE 1—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building Cost	Allowance as a Percentage of Building Cost+
$ 100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3597
200,000	13.1023
250,000	12.6832
300,000	12.3507
350,000	12.0764
400,000	11.8438
500,000	11.4649
600,000	11.1644
700,000	10.9165
800,000	10.7062
900,000	10.5240
1,000,000	10.3637
1,200,000	10.0920
1,500,000	9.7692
1,750,000	9.5523
2,000,000	9.3682

2,500,000	9.0686	
3,000,000	8.8309	
3,500,000	8.6348	
4,000,000	8.4684	
5,000,000	8.1975	
6,000,000	7.9827	
7,000,000	7.8054	
8,000,000	7.6550	
9,000,000	7.5248	
10,000,000	7.4101	
12,000,000	7.2159	
15,000,000	6.9851	
17,500,000	6.8300	
20,000,000	6.6984	
25,000,000	6.4841	
30,000,000	6.3142	
35,000,000	6.1739	
40,000,000	6.0550	
50,000,000	5.8613	
60,000,000	5.7077	
70,000,000	5.5809	
80,000,000	5.4734	
90,000,000	5.3803	
100,000,000	5.2983	
120,000,000	5.1594	
150,000,000	4.9944	
175,000,000	4.8835	
$200,000,000	[4.7894]	**4.7984**

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.
+ Interpolate between values.

TABLE 2—ALLOWANCE FOR DESIGN ONLY

(No change.)

SUBCHAPTER 6. PINELANDS [INFRASTRUCTURE TRUST FUND] PROCEDURES AND REQUIREMENTS [FOR THE CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES]

7:22-6.1 Scope

This subchapter shall constitute the rules of the New Jersey Department of Environmental Protection **and Energy** governing the disposition of appropriations pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c. 302) or other moneys appropriated to the Pinelands Infrastructure Trust Fund, for the purposes of awarding financial assistance to local government units through the issuance of Pinelands grants or loans for the planning, design, and construction of wastewater treatment facilities. These rules prescribe the procedures to be followed by the applicant and the Department respectively, in the application for grants and loans from the Pinelands Infrastructure Trust as well as the administration of these funds, including accounting and recordkeeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and standards for the construction of wastewater treatment facilities.

7:22-6.4 Definitions

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

"Ad valorem tax" means a tax based upon the value of real property.

"Allowable costs" means those costs that are [:] eligible, reasonable, necessary [,] and allocable to the project; permitted by generally accepted accounting principles; and approved by the Department in the Pinelands grant or loan agreement. Allowable costs [shall] **will** be determined on a project specific basis in accordance with N.J.A.C. 7:22-7[.1 through 7.11].

. . .

"Alternative technology" means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, acquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and on-site systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

. . .

["Assistant Director" means the Assistant Director, Construction Grants Administration Element, Division of Water Resources, New Jersey Department of Environmental Protection.]

"Best Practicable Waste Treatment Technology" (BPWTT) means the cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment facilities, to meet the applicable provisions of:

1. 40 CFR Part 133-secondary treatment of wastewater;

2. 40 CFR Part 125, Subpart G-marine discharge waivers;

3. 40 CFR 122.44(d)-more stringent water quality standards and State standards; and/or

4. 41 FR 6190 (February 11, 1976)-Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

"Bond Act" means the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) **and any amendatory or supplementary acts thereto.**

. . .

"Change order" means an alteration of the cost, scope or time of performance of a subagreement occurring subsequent to the execution of that subagreement.

. . .

"Combined sewer" means a sewer that is designed to function as both a sanitary sewer and storm sewer.

. . .

["Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his designated representative.]

. . .

"Contract" means a subagreement as defined in this subchapter.

"Conventional technology" means the processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

"DAC" means "Discharge Allocation Certificate".

"Department" means the New Jersey Department of Environmental Protection **and Energy and its successors and assigns.**

"Design life" means the length of time during which a wastewater treatment facility is planned and designed to be operated.

["Director" means the Director of the Division of Water Resources of the Department of Environmental Protection.]

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department **pursuant to N.J.A.C. 7:14A** which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which [shall] **will** result in a discharge to surface water or a substantial modification in a discharge to surface water [pursuant to the New Jersey Pollutant Discharge Elimination System (N.J.P.D.E.S.), N.J.A.C. 7:14A-1.1 et seq.].

["Division" means the Division of Water Resources, New Jersey Department of Environmental Protection.]

. . .

"EPA" means the United States Environmental Protection Agency.

. . .

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments [of 1972 (33 U.S.C. 1251 et al.), and any amendments or supplements thereto].

"Federal Water Pollution Control Act Amendments" means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory of supplementary acts thereto.

"Final building cost" means the total actual allowable cost of the final work in place for the project, in accordance with the **project** scope as defined in the Pinelands grant or loan agreement.

. . .

"Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

. . .

"Low bid building cost" means the total [actual] allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s). **Excluded from this cost is any cost due to change orders.**

"Operation and maintenance" means the following activities required to assure the dependable and economical functioning of wastewater treatment facilities:

1. Maintenance: Preservation of functional integrity and efficiency of equipment and structures, including, but not limited to, preventive maintenance, corrective maintenance, and replacement of equipment as needed.

2. Operation: Control of the unit processes and equipment which make up the wastewater treatment facilities, including, but not limited to, financial and personnel management, recordkeeping, laboratory control, process control, safety and emergency operation planning.

. . .

"Pinelands Bond Act" means the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985 c.302) **and any amendatory or supplementary acts thereto.**

"Project performance standards" means the performance and operations requirements applicable to a project including the enforceable requirements of the Federal Water Pollution Control Act Amendments and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned and designed to meet.

"Project scope" or "scope of work" means the scope of services and/or activities for which a Pinelands grant or loan agreement has been executed by the Department and a recipient.

"Recipient" means any local government unit which has received **preaward approval pursuant to N.J.A.C. 7:22-6.32 or** a Pinelands grant or loan pursuant to this subchapter.

"Responsible bidder" means a bidder that satisfactorily demonstrates to the Department that it has:

1. Financial resources, technical qualfications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

2. Resources to meet the completion schedule contained in the subagreement;

3. A satisfactory performance record for completion of subagreements;

4. Accounting and auditing procedures adequate to control property, funds and assets; and

5. A demonstrated record of compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under this subchapter.

["Scope of work" means the detailed description of the extent of services required to construct the wastewater treatment facilities.]

. . .

"State" means the State of New Jersey.

. . .

"Subagreement" means a written agreement between a recipient and another party (other than another public agency) which may include the prime building agreement for the project, and any lower tier agreement for services, supplies, or construction necessary to complete the project; agreements for personal and professional services with consultants; and purchase orders.

. . .

"User charge" means a charge levied on users of a wastewater treatment facility or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such facilities and may include debt service.

. . .

7:22-6.5 Pinelands Infrastructure Trust Fund

(a) (No change.)

(b) The moneys in the Pinelands Fund are specifically dedicated and [have been appropriated] **shall be used** for the purposes identified in N.J.A.C. 7:22-6.3; however, no moneys shall be expended from the Pinelands Fund for those purposes without the specific appropriation thereof by the Legislature.

(c) (No change.)

7:22-6.6 Terms of grants and loans from the Pineland Infrastructure Trust Fund

(a) (No change.)

(b) The [total] term of the **Pinelands** loans [shall be] **will** generally **be** 20 years **or as indicated in the Pinelands grant or loan agreement**. The interest rate [shall] **will** not exceed 50 percent of the Bond Buyer Municipal Bond Index for bonds available for purchase during the last 26 weeks preceding the date of the execution of the loan agreement by the Department. [Repayments shall begin no later than one month after the date of the initiation of operation or final inspection of the wastewater treatment facilities, or four years from date of loan award, whichever occurs first or as indicated in the Pinelands loan agreement. Thereafter,] **Pinelands** loan repayments shall be made **by the recipient** in accordance with the repayment schedule indicated in the Pinelands loan agreement. Principal and accrued interest with respect to a particular Pinelands loan may, however, be prepaid in accordance with the provisions of the relevant Pinelands loan agreement.

(c) (No change.)

(d) Pinelands grant and loan proceeds will be disbursed to recipients **in accordance with N.J.A.C. 7:22-6.24**. [at intervals as work progresses and expenses are incurred and approved. Pinelands grant or loan disbursements shall be made as indicated in the Pinelands grant or loan agreement where the grant or loan is awarded on a retroactive basis for reimbursement of prior expenditures.]

(e) (No change.)

7:22-6.7 Criteria for project funding priority

(a) The [Division] **Department** shall utilize a Pinelands Infrastructure Trust Funding List which [shall] **will** be the same as the priority list of projects contained within the Pinelands Infrastructure Master Plan developed by the Pinelands Commission. The Pinelands Infrastructure Master Plan [shall] **will** be the subject of at least one public hearing held by the Pinelands Commission including a public comment period. Local government units are only eligible for Pinelands Infrastructure Trust funding if they are on the priority list and are ranked by the Pinelands Infrastructure Master Plan. Eligible projects placed on the Pinelands Infrastructure Trust Funding List shall be eligible to receive a Notice of Project Eligibility in accordance with N.J.A.C. 7:22-6.8. The following must be submitted by the authorized representative of the local government unit

to be considered for ranking on the Pinelands Infrastructure Trust Funding List:

1.-2. (No change.)

3. Estimated costs associated with building the project, excluding planning and design except as provided in 7:22-6.11(e), (f), and (g). Significant changes in estimated costs shall be outlined.

(b) (No change.)

[(c) All information shall be submitted to:
The Pinelands Commission
P.O. Box 7
New Lisbon, New Jersey 08064
with copies to:
Bureau Chief
Bureau of Design and Technical Services
Construction Grants Administration Element
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625]

7:22-6.8 Pinelands Infrastructure Trust State and [federal] **Federal** funding

(a) [(Reserved)] **Local government units which receive funding through a grant from any Federal program shall also be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for the construction of the same scope of work (planning, design, or building). However, in no case shall the total funding assistance under a Federal grant and the Pinelands Fund exceed the total eligible project costs. However, local government units which receive funding through a loan from the Wastewater Treatment Fund pursuant to N.J.A.C. 7:22-3 and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-4 shall not be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for construction of the same wastewater treatment facilities.**

(b) (No change.)

7:22-6.10 Pre-application procedures

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

[(c) Questions concerning the program and requests for a pre-application conference should be directed to:
Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625]

7:22-6.11 Application procedures

(a) Each application for Pinelands Infrastructure Trust funds shall be submitted to the Department in conformance with the time period specified in the Notice of Project Eligibility or as otherwise extended by the Department and [shall] **must** include full and complete documentation and any supplementary materials that **the Department requires** an applicant [is required] to furnish.

(b) Submissions which do not substantially comply with this subchapter shall not be processed further [shall be returned to the applicant] and **the applicant shall be so advised.**

(c) Processing of a Pinelands grant or loan application generally requires 60 calendar days after receipt of a complete application by the [Division] **Department.**

(d) The following shall be submitted when applying for [a] Pinelands Infrastructure Trust funding for the construction of [the] wastewater treatment facilities:

1. An application for Pinelands Infrastructure Trust funding pursuant to this subchapter for **the** construction of wastewater treatment facilities. Each application [shall] constitutes an [offer] **agreement** to accept the requirements of this subchapter [and, upon execution of the agreement by the State and the applicant, acceptance of the terms and conditions of the Pinelands grant or loan agreement];

2. A resolution passed by the local government unit authorizing the filing of an application for Pinelands Infrastructure Trust funding **and** specifying the individual authorized to sign the Pinelands grant or loan application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution [is required from each,] indicating the lead applicant and the authorized representative **is required from each;**

3.-4. (No change.)

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans **in accordance with the provisions of N.J.A.C. 7:15** and **the** Environmental Assessment [Guidelines;] **Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). A complete Project Report/Facilities Plan must include:**

i. A description of both the proposed wastewater treatment facilities and the complete wastewater treatment system of which it is a part;

ii. A description of the Best Practicable Wastewater Treatment Technology;

iii. A cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan. A cost effectiveness analysis must include:

(1) An evaluation of flow reduction methods. If the applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Department determines the area has an effective existing flow reduction program, this evaluation is not required;

(2) A description of the relationship between the capacity of alternatives analyzed and the needs to be served, including capacity for future growth expected after the wastewater treatment facilities become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(4) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(5) A consideration of systems with revenue generating applications;

(6) An evaluation of opportunities to reduce use of or recover energy; and

(7) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users;

iv. An infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-6.35;

v. An analysis of the potential open space and recreation opportunities associated with the project;

vi. An adequate evaluation of the environmental impacts of the alternatives analyzed in N.J.A.C. 7:22-6.11(d)5iii;

vii. An evaluation of the water supply implications of the project; and

viii. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(1) Relevant design parameters, including a description of the treatment units and/or sewer system to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;

(2) Estimated capital construction and operation and maintenance costs identifying the Pinelands Funds and local (or other source) shares, and a description of the manner in which local costs will be financed;

(3) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(4) Cost impacts on wastewater system users; and

(5) Institutional and management arrangements necessary for successful implementation;

6. For sewer rehabilitation projects, a Sewer System Evaluation Survey [(for Rehabilitation projects only)] **in accordance with N.J.A.C. 7:22-6.35;**

7. (No change.)

8. A description of the public participation process to date. **Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible;**

9. A [statement indicating small, minority and women's business enterprise] **report on the** participation **by socially and economically disadvantaged individuals** during planning and design **as required by N.J.A.C. 7:22-9.12(a);**

10. Project cost breakdown **for each subagreement;**

11. Projected cash flow schedule **to be used to establish the disbursement schedule;**

12. [Projected] **Project** construction schedule. [Should the anticipated date of the initiation of operation occur after July 1, 1988, a] **A** court-sanctioned order **or a Department-issued Administrative Consent Order indicating** [specifying] a compliance schedule [shall] **will** be required where applicable;

13. [Department-approvable] **A** sewer use ordinance [and], user charge system **and draft plan of operation acceptable to the Department;**

i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and contructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

ii. The user charge system shall be designed to produce adequate revenues required for operation and maintenance (including replacement) and, in most cases, to cover debt service costs for the local government unit's wastewater treatment facilities. It must provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment facilities shall pay for such increased cost. Unless otherwise approved by the Department, the user charge system shall be based on either actual use under (d)13ii(1) below, ad valorem taxes under (d)13ii(2) below, or a combination of the two. It must also meet the requirements set forth in (d)13ii(3) through (8) below.

(1) A user charge system based on actual use (or estimated use) of wastewater treatment services must provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment facilities within the service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(2) A user charge system which is based on ad valorem taxes may be approved if:

(A) On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment facilities within the service area and the applicant has continued to use that system;

(B) The ad valorem user charge system distributes the operation and maintenance costs for all treatment facilities in the applicant's jurisdiction to the residential and small nonresidential user class (including at the applicant's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment facilities), in proportion to the use of the treatment facilities by this class; and

(C) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance of the treatment facilities based upon charges for actual use.

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(5) The user charge system must provide that the costs of operation and maintenance for all flow not directly attributable to user (that is, infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use; or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(I) Flow volume of the users;

(II) Number of hookups or discharges of the users;

(III) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

(6) After completion of construction of a project, revenue from the project (for example, sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased under the Pinelands grant or loan agreement) must be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.

(7) One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this section. These user charge systems must also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment facilities.

iii. The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete waste treatment system;

14. (No change.)

15. [A certification] **An affidavit (CGA Form LP-8) certifying** that required permits and approvals[, if applicable] for building the wastewater treatment facilities, were received from **applicable Federal, State, and local agencies;** [the following agencies

i. Monitoring and Planning Element within the Division;

ii. Water Quality Management Element with the Division;

iii. Water Supply and Watershed Management Element within the Division;

iv. Division of Environmental Quality within the Department;

v. Division of Waste Management within the Department;

vi. Division of Fish and Game within the Department;

vii. Division of Coastal Resources within the Department;

viii. Office of Equal Opportunity and Public Contract Assistance within the Department;

ix. Office of New Jersey Heritage within the Division of Parks and Forestry;

x. New Jersey Department of Community Affairs;

xi. U.S. Army Corps of Engineers;

xii. New Jersey Pinelands Commission;

xiii. Delaware River Basin Commission;
xiv. Local Soil Conservation District Office;]
16.-17. (No change.)
18. Executed **service, and/or deficiency or other** intermunicipal agreements, if [required] **applicable. If the project will serve two or more local government units, the applicant shall submit the executed service agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed wastewater treatment facilities. At a minimum, these documents must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered;**
19. (No change.)
20. A description of how the applicant plans to repay the Pinelands loan, if applicable, and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Pinelands loan that [shall] guarantee that at the time of the signing of the Pinelands loan agreement it [shall be] **is** irrevocably committed to repay the Pinelands loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description [shall nclude] **must include:** pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Pinelands Fund loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all loans in a manner acceptable to the State pledging to provide funds to repay the debt, even if the Pinelands loan is terminated pursuant to N.J.A.C. 7:22-6.43. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, municipal bond insurance, and service/deficiency agreement(s) with government units with general taxing power and surety bonds.
21.-22. (No change.)
(e)-(g) (No change.)
(h) Applicants shall obtain all necessary [federal] **Federal**, State, and local permits and approvals prior to the award of a Pinelands grant or loan unless prior approval for an extension for one or more specific permits has been granted by the [Division] **Department** that does not significantly affect the grant or loan award. Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award (such as, road opening permit and blasting permit).
[(i) All applications shall be sent to:
Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN-029
Trenton, New Jersey 08625]

7:22-6.13 Evaluation of application

(a) [The Department shall notify the applicant that it has received the application and is evaluating it pursuant to this section.] Each application shall be subject to:
1.-4. (No change.)
(b) Upon the completion of a full review and evaluation of each application, the [Division] **Department** shall either [approve the application] **certify the project for funding** or make the determination that the awarding of Pinelands Infrastructure Trust funds shall be deferred. An approval by the [Division] **Department** shall only be issued after certification by the Pinelands Commission that the master plan and zoning ordinance of the municipalities and the Master Plan of the [County] **county** wherein the project is to take place is in conformance with the Comprehensive Management Plan.
(c) The [Division] **Department** shall promptly notify applicants in writing of any deferral action, indicating the reasons for the deferral and a time frame for the resolution of any outstanding issues. A deferral action [shall] results in one of the following:
1. An approval of the application if the outstanding issues are addressed to the satisfaction of the [Division] **Department** within the specified time frame; or
2. A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the [Division] **Department** within the specified time frame.
(d) The Department shall promptly notify **an** appplicant[s in writing] **by certified mail** of any disapproval. A disapproval of an application [shall] **will** not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Pinelands application and/or processing of a Pinelands grant or loan agreement for the project within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected applicants shall be notified in writing of such action. As a result of a disapproval and project bypass action, the next highest ranked [contingency] project on the Pinelands Infrastructure Trust Funding List may fall within the fundable range.

7:22-6.15 Pinelands Infrastructure Trust Fund grant and loan agreements

(a) The Department shall prepare and transmit the Pinelands Infrastructure Trust Fund grant or loan agreement to the applicant. **The Pinelands grant or loan agreement sets forth the terms and conditions of the Pinelands Infrastructure Trust Fund grant or loan, approved project scope, allowable and unallowable project costs, estimated disbursement schedule, estimated loan repayment schedule and the approved commencement and completion dates for the project or major phases thereof.**
[1. The applicant shall execute the Fund loan agreement and return it within 45 calendar days after receipt. The Department may, at its discretion, extend the time for execution. The Pinelands grant or loan agreement shall be signed by a person authorized by resolution to obligate the applicant to the terms and conditions of the Pinelands grant or loan agreement being executed. The authorizing resolution shall also be submitted at this time.
2. The Pinelands grant or loan agreement shall set forth the terms and conditions of the Pinelands grant or loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.]
(b) The Pinelands Infrastructure Trust Fund grant or loan agreement shall be executed by the applicant within such period of time and pursuant to such terms and conditions as the Department may determine. Such determinations shall be made in consultation with the Pinelands Commission and in consideration of any conditions identified in the Pinelands Infrastructure Master Plan.
(c) The Department, pursuant to such terms and conditions as it may determine, may require the applicant to irrevocably commit itself through a loan commitment letter, escrow agreement or other similar document to borrow the amount for which it has made application under the terms and conditions of the Pinelands Infrastructure Trust Fund grant or loan agreement transmitted to the applicant.
(d) The Pinelands grant or loan agreement and/or loan commitment letter, escrow agreement or other similar document shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the particular document for the project specified therein. A certified copy of the authorizing resolution shall be delivered to the Department at the time that the executed Pinelands grant or loan agreement, loan commitment letter, escrow agreement or other similar document is delivered to the Department.
[3.]**(e)** The Pinelands grant or loan agreement [shall be] **is** deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.
[4.]**(f)** The Pinelands grant or loan agreement shall not be executed by the State if the applicant is in current default on any State loan.
[5. After the State has completed its internal processing of the Pinelands grant or loan agreement, it shall transmit a copy of the executed Pinelands grant or loan agreement to the recipient.]

7:22-6.16 [Effect of grant] **Grant** and loan awards **and closing**

(a) [At the time of] **Upon the** execution of the Pinelands grant or loan agreement by the Department and the recipient, the grant or loan shall **be deemed awarded and the agreement** becomes effective and [shall] constitutes an obligation of the Pinelands Infrastructure Trust Fund [in the amount and for the purposes stated in the Pinelands grant or loan agreement.] **in accordance with its terms and conditions. The obligation of the State under a Pinelands grant or loan agreement is contingent upon the availability of appropriated funds from which disbursements can be made. The Pinelands grant or loan is considered closed as indicated in the Pinelands grant or loan agreement.**

(b) The award **or closing** of [funds shall] **the Pinelands grant or loan does** not commit or obligate the Department to award any continuation **or supplemental** funds to cover cost overruns of the project. Cost overruns for any project or portion thereof [shall be] **are** the sole responsibility of the recipient.

(c) The award **or closing** of [funds] **a Pinelands grant or loan** by the State [shall] **can** not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates.

7:22-6.17 Grant and loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-6.18 through 6.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Pinelands grant and loan, and conditions to each disbursement under a Pinelands grant or loan agreement:

1. (No change.)

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. **The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department;**

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-[5.1 et seq.]**8) and the Local Government Ethics Law (P.L.1991, c.29; N.J.S.A. 40A:9-22)**;

4. The recipient shall comply with the requirements of the [N.J.P.D.E.S.] **NJPDES** permit pursuant to N.J.A.C. 7:14A[-1 et seq];

5. The recipient shall adopt a sewer use ordinance **and implement the user charge system** consistent with the [requirements of the Department] **provisions of N.J.A.C. 7:22-6.11(d)13**;

6.-7. (No change.)

8. The recipient shall pay the unallowable costs of the construction of the project **and shall pay the allowable costs not covered by the Pinelands grant or loan, if any**;

9.-12. (No change.)

13. An amount of any Pinelands grant or loan disbursement equal to [fifty percent] any unpaid portion of a **finally determined** State assessed penalty pursuant to N.J.A.C. 7:14-8[.1 et seq.], Assessment of Civil Administrative Penalties, shall**, at the discretion of the Department,** be held in escrow until said penalty is paid in full. **In no case will the total amount withheld under this subsection exceed the unpaid amount of said penalty**;

14. The Department may assess penalties to late loan repayments as appropriate as specified in the Pinelands grant[s] or loan agreement[s];

15. [(Reserved)] **The recipient shall comply with the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10);**

16. The recipient shall [have an operations and maintenance manual developed.] **certify to the Department that an operations and maintenance manual, acceptable to the local government unit, has been developed for the project;**

17.-18. (No change.)

19. The recipient [must submit proof] **shall certify** that it and its contractors and subcontractors shall comply with all insurance requirements of the Pinelands grant[s] or loan agreement and [that it shall be able to] certify, **when appropriate,** that the insurance is in full force and effect and that the premiums have been paid. **The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance coverage of the contractor. The recipient shall provide the Department with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L.90-448), as amended. Flood insurance coverage shall begin with the period of building and continue for the entire period during which the wastewater treatment facility operates. The insurance must be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the recipient under the National Flood Insurance Act, whichever is less. The recipient shall comply with each requirement of this subsection prior to the release of the initial disbursement for building the project;**

20. The recipient shall certify that it and its contractors and [their] subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto, including, but not limited to, N.J.A.C. 17:27[-1 et seq.];

21. The recipient shall [establish] **certify that it has established** an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project [and to establish a program to provide opportunities for socially and economically disadvantaged contractors and vendors to supply materials and services for the contract], consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.)[. Not less than 10 percent of the amount of any contract for construction, materials or services for a project should be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in sections 637(a) and 637(d) of the Small Business Act (15 U.S.C. 637(a) and (d)), and any regulations promulgated pursuant thereto]; [and]

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 **and N.J.A.C. 7:22-9.11**;

23. [The recipient shall submit its affirmative action program, the name of its designated compliance officer, and its procurement plan for implementing 21 above with its application] **The recipient shall certify that it shall comply with the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9)**;

24. [Not] **A goal of not** less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in [section 637(a) and 637(d) of] the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals [shall] **will** take precedence over State goals[. Procedures to be followed in implementing this paragraph shall be found in the Local Public Contracts Law, N.J.S.A. 40A:11-41 et seq., and in guidelines to be published by the Department to assist recipients in complying with statutory and regulatory reporting requirements]; and

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any [construction] con-

tract for [that] **the** project, in accordance with the rate determined by the Commissioner of **the New Jersey Department of** Labor pursuant to N.J.S.A. 34:11-56.25 et seq. **or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater.**

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

(d) The recipient shall insert in all contracts or subcontracts awarded pursuant to this subchapter the Department's Subcontractor Certification Form.

(e) The recipient shall insert into the contracts for building the project EPA Form 5720-4 (5-13), Labor Standards Provisions for Federally Assisted Construction Contracts.

(f) The recipient shall insert into the contracts, and shall ensure that their contractor(s) include within their subcontractor(s), the following statement:

"In accordance with the provisions of N.J.S.A. 58:11B-26 and N.J.A.C. 7:22-6.17(a)24, the contractor (subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9."

(g) All applicable surety bonds required in connection with the advertisement and award of building contracts or subagreements shall be written by a surety company listed on the Federal Treasury List (Department Circular 570—Surety Companies Acceptable on Federal Bonds), incorporated herein by reference. Copies of this document may be obtained from the Department.

7:22-6.18 Administration and performance of funds

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing funding objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice [shall] **does** not shift the responsibility for final decisions from the recipient to the Department. [The primary concern of the Department is that Pinelands grant and loan moneys be used in conformance with these rules and the grant and loan agreements to achieve grant or loan objectives and to insure that the purposes set forth in the Pinelands Bond Act are fully executed.]

7:22-6.19 Project changes and grant or loan modifications

(a) A Pinelands grant or loan modification means any written alteration of the [grant or loan] terms or conditions, budget or project method or other administrative, technical or financial [agreements] **provisions of the Pinelands grant or loan agreement**.

[(b) There shall be no Pinelands grant or loan modifications increasing the funding amount beyond adjustments to cover the low bid building costs. Adjustments due to the low bid building costs will be made only after a subsequent passage of a legislative appropriations act containing the specific project of concern. All other increased costs shall be the responsibility of the recipient.]

[(c)]**(b)** The recipient shall promptly notify the [Assistant Director, Construction Grants Administration Element, Division of Water Resources] **Department** in writing (certified mail, return receipt requested) of events or proposed changes which may require a **Pinelands** grant or loan modification, including, but not limited to:

1.-6. (No change.)

[(d)]**(c)** If the Department [decides] **determines that** a [formal] Pinelands grant or loan **modification by means of a Pinelands grant or loan agreement** amendment is necessary **in accordance with N.J.A.C. 7:22-6.20**, the recipient shall be notified and a [formal] Pinelands grant or loan **agreement** amendment shall be processed [in accordance with N.J.A.C. 7:22-6.20]. If the Department decides a [formal] Pinelands grant or loan **agrement** amendment is not necessary, [it] **the Department and the recipient** shall follow the procedures of N.J.A.C. 7:22-6.21 or 6.22, as applicable.

7:22-6.20 [Formal] **Pinelands** grant or loan **agreement** amendments

(a) The Department**, in consultation with the Pinelands Commission,** shall require a [formal] Pinelands grant or loan **agreement** amendment to change principal provisions of a Pinelands grant or loan **agreement** where **the Department determines that** project changes substantially alter the [cost] **objective or scope of the project** or time of performance of the project or any major phase thereof, [or substantially alter the objective or scope of the project] **or to change substantially a term or condition of the Pinelands grant or loan agreement.**

(b) [The State and recipient shall effect a formal Pinelands grant or loan amendment only by a written amendment to the Pinelands grant or loan agreement executed by the State and the recipient.] **In the event that a project has a need for additional moneys due to the low bid building cost being higher than the original Pinelands grant or loan amount, the local government unit may request a supplemental Pinelands grant or loan. After consultation with the Pinelands Commission, the Department may award a supplemental Pinelands grant or loan only after legislative approval, and only with a Pinelands grant or loan agreement. The recipient shall be responsible for all other increased costs.**

7:22-6.22 Other changes

All other project changes, which do not require [formal] Pinelands grant or loan **agreement** amendment, as stated in N.J.A.C. 7:22-6.20 [shall be undertaken only upon] **require** written approval of the [Assistant Director, Construction Grants Administration Element] **Department.**

7:22-6.24 State disbursement

Disbursement of Pinelands grant[s] and loan moneys shall be made **as indicated in the Pinelands grant or loan agreement** at intervals as work progresses and expenses are incurred **by the local government unit** and **as** approved **by the Department,** but in no event shall **total** disbursements **at any time** exceed the **cumulative Pinelands grant and loan amounts indicated in the disbursement schedule of the Pinelands grant and loan agreement or the** allowable costs which have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which [shall] **must** include all forms and information required by the Department and completed in a manner satisfactory to the Department. [Should the recipient be receiving Pinelands grant or loan moneys for expenditures incurred prior to the award of the Pinelands grant or loan, the disbursement schedule shall be as indicated in the Pinelands grant or loan agreement.]

7:22-6.25 Assignment

The right of a recipient to receive disbursements from the State under a Pinelands grant or loan may not be assigned, nor may repayments due under a Pinelands loan be similarly encumbered, **unless such assignment or encumbrance has been approved in writing pursuant to the conditions set forth in the Pinelands grant or loan agreement.**

7:22-6.26 Unused funds

Where the total amount disbursed under a grant or loan due to the low bid building cost is less than the initial Pinelands grant or loan award, and/or where the total amount disbursed under a Pinelands grant or loan due to the final building cost is less than **the Pinelands grant or loan amount due to** the low bid building cost, the Pinelands grant or loan [agreement] shall be adjusted**, if necessary,** and the difference shall be retained by the Pinelands Infrastructure Trust Fund to be reallocated, pursuant to [subsequent] **the provisions of a** legislative appropriations act[s], to other wastewater treatment facilities projects. However, where allowable cost overruns occur, Pinelands moneys may be used to cover these cost overruns up to the grant or loan amount adjusted due to the low bid building cost. **Line item adjustments for allowable project costs may be made at the request of the recipient provided the Pinelands grant or loan amount in the Pinelands grant or loan agreement is not exceeded and provided all project related contracts have been awarded. However, the Department shall not allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope.**

7:22-6.28 Land acquisition

The acquisition of land (including sewer [right-of-ways] **rights-of-way**) shall be eligible for Pinelands Infrastructure Trust [Funding] **funding** in accordance with N.J.A.C. 7:22-7.7.

7:22-6.29 Project initiation

(a) (No change.)

(b) The recipient shall not advertise any contract **and or addendum thereto** for the building of the wastewater treatment facilities until authorization to advertise [said] **the** contract **or any addendum thereto** has been granted by the Department. **Further, the recipient shall be required to execute the engineering agreement for building services prior to, or concurrently with, receipt of authorization to advertise. The recipient shall transmit an executed copy of the engineering agreement for building services to the Department immediately upon its execution.**

(c) Once bids for building the wastewater treatment facilities are received, the recipient shall not award [the] **any** subagreement(s) until authorization to award has been given by the Department.

(d) (No change.)

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the [wastwater treatment facilities] **project** no later than 12 months after the grant or loan [award] **closing**, unless a specific extension has been approved by the Department.

(f) (No change.)

7:22-6.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the wastewater treatment facilities the recipient shall, in writing, notify the [Assistant Director] **Department**.

(b) For the wastewater treatment process portion of the project, on the date one year after the initiation of operation, the recipient shall certify to the [Assistant Director] **Department** the performance record of the project. If the Department or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as specified in the Pinelands **grant or** loan agreement, the recipient shall submit the following:

1.-2. (No change.)

3. The scheduled date for certifying to the [Assistant Director] **Department** that the project is meeting the specified performance standards.

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

(e) At a minimum, unless further specified, the project performance standards consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the Project.

7:22-6.31 Allowable project costs

(a) (No change.)

(b) Notwithstanding (a) above, the Department shall not participate in costs for work that the Department determines is not in compliance with specifications or requirements of project contracts or Pinelands grant or loan agreement. Costs for work not in compliance with the contracts or agreement **are** unallowable.

7:22-6.32 Preaward costs

(a) The Department shall not [award grant or loan assistance for] **consider allowable those** costs incurred for building performed prior to [the award of] **closing** the [funds] **grant or loan** for the project, except:

1. For building costs, otherwise eligible for funding[, incurred within one year prior to grant or loan award] that [have met] **of** the following conditions **has met (a)1i through iii or (a)1iv below**:

i. The local government unit has submitted items [three through twenty of] **required at** N.J.A.C. 7:22-6.11(d)**3 through 20**, to the Department prior to the advertisement of any contract for which cost reimbursement is being sought[;].

ii. The local government unit has not advertised any contract **or any addendum thereto**, for which cost reimbursement is being sought, without the authorization to advertise the contracts **or any addendum thereto** being given by the Department[; and].

iii. The local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department[; or].

iv. The local government unit has [complied with i above] **submitted items required at N.J.A.C. 7:22-6.11(d)3 through 20 to the Department prior to the issuance of a notice to proceed for building the project** and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

2. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the [Assistant Director, Construction Grants Administration Element,] **Department** may approve preliminary building activities [(]such as procurement of major equipment requiring long lead times, minor sewer rehabilitation, acquisition of allowable land or advance building of minor portions of wastewater treatment facilities[)]. However, advance approval shall not be given until after the Department reviews and approves an environmental assessment and any specific documents necessary to adequately evaluate the proposed action.

(b) If the [Assistant Director] **Department** approves preliminary building activities, such approval is not an actual or implied commitment of Pinelands Infrastructure Trust funds and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act **and closing a Pinelands grant or loan** for the project [in concern].

(c) (No change.)

7:22-6.33 Force account work

(a) A recipient must secure the [Assistant Director's] **Department's** prior written approval for use of force account work for construction, construction-related activities or for repairs or improvements to a facility where costs [shall] exceed $25,000.

(b) (No change.)

7:22-6.35 Infiltration/Inflow

(a) [This section stipulates the requirements for proposed sewer system rehabilitation projects only] **An infiltration/inflow analysis shall be required as part of the Project Report/Facilities Plan.**

(b) The applicant shall demonstrate to the [Assistant Director's] **Department's** satisfaction that [the project area] **each sewer system discharging into the wastewater treatment facility** is **not or will not be** subject to excessive infiltration/inflow [and that an adequate rehabilitation plan has been developed]. For combined sewer overflow projects, **in no case shall** inflow [is not] **be** considered excessive [in any event].

(c) If the rainfall induced peak inflow rate results **or will result** in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a study of the sewer system to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) **If the flow rate at the existing wastewater treatment facility is less than 120 gallons per capita per day during periods of high groundwater, the recipient shall build the project including sufficient capacity to transport and treat any existing infiltration.** If the [applicant can] **recipient** demonstrates that any specific portion of its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the [applicant] **recipient** shall perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excessive infiltration.

7:22-6.36 Reserve capacity

The Department shall limit the recipient's Pinelands grant or loan assistance to the cost of the project based on the ultimate buildout capacity as defined by the Pinelands Commission. Design shall be based on up to 120 gallons per capita per day for existing systems and 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, for systems **projected to be** built [after the effective date of this regulations] **during the design life.**

7:22-6.37 Fraud and other unlawful or corrupt practices

(a) (No change.)

(b) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the [Assistant Director, Construction Grants Administration Element] **Department** when such allegation or evidence comes to its attention, and shall periodically advise the [Assistant Director] **Department** of the status and ultimate disposition of any related matter.

7:22-6.38 Debarment

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

(e) Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any contract which is or [shall] **will** be funded by a Pinelands grant or loan under this subchapter, may present information to the Department why this section should not apply to such person. If the [Commissioner] **Department** determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the [Commissioner] **Department** may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-6.43 Termination of grants or loans

(a) (No change.)

(b) Project termination by the recipient [shall] **will** be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Pinelands grant or loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the [Director] **Department** of any complete or partial termination of the project work by the recipient or intent thereof.

2.-3. (No change.)

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

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the [Assistant Director] **Department** the uncommitted balance of Pinelands Infrastructure Trust funds awarded under the Pinelands loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

(f) (No change.)

7:22-6.45 Administrative hearings

(a) The [Director of the Division] **Department** shall make the initial decision regarding all disputes arising under a Pinelands grant or loan. The recipient shall specifically detail in writing and in detail the basis for its appeal. When a recipient so requests, the [Division] **Department** shall produce a decision in writing and mail or otherwise furnish a copy thereof to the recipient.

(b) [A] **If a recipient wishes to appeal the Department's decision under (a) above, the** recipient [may] **shall** request an administrative hearing within 15 **calendar** days of a decision by the [Director of the Division] **Department**. The request for an administrative hearing [shall] **must** specify in detail the basis for the appeal.

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

SUBCHAPTER 7. DETERMINATION OF ALLOWABLE COSTS: [FOR] PINELANDS [INFRASTRUCTURE TRUST FUND FINANCIAL ASSISTANCE]

7:22-7.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1. (No change.)

2. The costs for establishing or using [small, minority and women's business] liaison services **for small business concerns owned and controlled by socially and economically disadvantaged individuals pursuant to N.J.A.C. 7:22-9**;

3. (No change.)

4. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement, provided that:

i.-iii. (No change.)

iv. The [Assistant Director] **Department** determines that there is a significant State interest in the issues involved in the claim; and

v. (No change.)

5. Change orders for increased costs under subagreements as follows:

i. Change orders provided the costs are:

(1) Within the scope of the project;

(2) Not caused by the recipient's mismanagement;

(3) Not caused by the recipient's vicarious liability for the improper action of others; and

(4) The cost of which when added to the **allowable costs due to the** final building cost, does not exceed the **allowable costs due to the** low bid building cost.

ii.-iii. (No change.)

6. The costs of the [services of the prime engineer] **recipient** required by N.J.A.C. 7:22-6.30 during the first year following initiation of operation of the project;

7.-8. (No change.)

(b) The sum total of the allowable costs in (a)2 through 8 above will not exceed 12 percent of the low bid building cost.

[(b)](**c**) Unallowable costs related to subagreements include:

1. (No change.)

2. The costs (including legal, technical[,] and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

i.-iv. (No change.)

v. The [Assistant Director] **Department** determines that there is a significant State interest in the issues involved in the claim; and

vi. (No change.)

3. (No change.)

4. All costs associated with the award of any subagreement for building significant elements of the project more than 12 months after the grant or loan [award] **closing**, unless an extension is specified in the project schedule approved by the [Assistant Director at the time of grant or loan award] **Department**.

7:22-7.5 Mitigation

(a) Allowable costs related to mitigation include:

1. (No change.)

2. The costs of site screening necessary to comply with [State Environmental Guidelines] **the provisions of N.J.A.C. 7:22-10**, to complete related studies and plans, or necessary to screen adjacent properties;

3. (No change.)

(b) Unallowable costs related to mitigation include:

1. (No change.)

2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under [State Environmental Guidelines] **the provisions of N.J.A.C. 7:22-10**.

7:22-7.7 Real property

(a) (No change.)

(b) Unallowable costs for land and rights-of-way include:

1. Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, the recipient's record of negotiation or any condemnation proceeding, as determined by the [Assistant Director] **Department**;

2. (No change.)

7:22-7.8 Equipment, materials and supplies

(a) Allowable costs of equipement, materials and supplies include:

1.-6. (No change.)

7. Replacement parts identified and approved in advance by the [Assistant Director] **Department** as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

i.-iii. (No change.)

[(c)](b) Unallowable costs of equipment, materials and supplies include:

1.-5. (No change.)

7:22-7.9 Industrial and federal users

(a) (No change.)

(b) Unallowable costs for wastewater treatment facilities serving industrial and [federal] **Federal** users include;

1.-3. (No change.)

4. Costs for control or removal of pollutants in wastewater introduced into the wastewater treatment facilities by industrial users, unless the local government unit is required to remove such pollutants introduced from nonindustrial users.

7:22-7.10 Infiltration/inflow **and reserve capacity**

(a) Allowable costs related to infiltration/inflow **and reserve capacity** include:

1. The cost of the wastewater treatment facilities capacity adequate to transport and treat nonexcessive infiltration/inflow under N.J.A.C. 7:22-6.35 **and reserve capacity in accordance with N.J.A.C. 7:22-6.36**.

2. (No change.)

(b) Unallowable costs related to infiltration/inflow **and reserve capacity** include:

1. (No change.)

7:22-7.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. The costs of salaries, benefits and expendable materials the recipient incurs for the project. **However, the allowable portion of these administrative costs shall be limited to one percent of the low bid building cost.**

2. The costs of additions to wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act **Amendments** [of 1956 (P.L. 84-660) or its amendments], [or] the Wastewater Treatment Bond Act [of 1985 (P.L. 1985, c.329) or its amendments], [or] the [Wastewater Treatment] Trust Act [of 1985 (N.J.S.A. 58:11B-1 et seq.) or its amendments], [or] the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments **or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act** and that fails to meet its performance standards provided:

i.-ii. (No change.)

iii. The additions could have been included in the original [federal] **Federal** grant or State assistance award; and

(1) Are the results of one of the following:

(A)-(B) (No change.)

(C) A written understanding between the [Assistant Director] **Department** and the recipient prior to or included in the original Fund loan award;

(D) (No change.)

(E) A written understanding between the [Assistant Director] **Department** and the recipient prior to or included in the original Pinelands grant or loan award:

(F) A written direction by the Regional Administrator of EPA or the [Assistant Director] **Department** to delay building part of the wastewater treatment facilities; or

(G) (No change.)

(2) (No change.)

iv. (No change.)

3. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the [Assistant Director] **Department**.

4. Costs of recipient's employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the wastewater treatment facilities, if approved in advance by the [Assistant Director] **Department**.

(b) Unallowable miscellaneous costs include:

1.-4. (No change.)

5. The costs of replacing, through reconstruction or substitution, wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act **Amendments** [of 1956 (Pub. L. 84-660) or its amendments], [or] the Wastewater Treatment Bond Act [of 1985 (P.L. 1985, c.329) or its amendments], [or] the [New Jersey Wastewater Treatment] Trust Act [(N.J.S.A. 58:11B-1 et seq.) or its amendments], [or] the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments, **or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act** and that fail to meet its project performance standards. This provision applies to failures [to] **that** occur either before or after the initiation of operation but does not apply to wastewater treatment facilities that fail at the end of its design life;

6.-12. (No change.)

7:22-7.12 Allowance for planning and design

(a)-(g) (No change.)

(h) The recipient may request payment of 50 percent of the Pinelands Infrastructure Trust share of the estimated allowance immediately after the Pinelands Infrastructure Trust loan award. Final payment of the Pinelands Infrastructure Trust share of the allowance may be requested in the first disbursement after the recipient has awarded all prime subagreements for building the project, received the [Assistant Director's] **Department's** approval for force account work, and completed the acquisition of all eligible real property.

(i) (No change.)

SUBCHAPTER 8. MINIMUM STANDARDS OF CONDUCT FOR OFFICERS, EMPLOYEES, AGENTS AND MEMBERS OF WASTEWATER UTILITIES

7:22-8.4 [Disclosure] **(Reserved)**

[(a) All supervisors, officers and members of an Authority shall prepare annually, on or before the required date of submission, an individual statement of financial interests. The statements of supervisors and officers shall be submitted to the members. Each member's statement shall be submitted to the governing body. Each statement prepared by one of these individuals shall disclose, at a minimum, the following:

1. All business interests held by the individual or others on the individual's account. Such interests would include ownership or partnership in a business, the holding of an office or directorship in a business, or the ownership of more than 10 percent of the stock of a corporation. No percentage of interest need be given.

2. All real property, other than the individual's personal residence, held directly or indirectly by the individual or others on the individual's account which is located within the area served by their employing Authority. No value of property need be identified.

3. All sources contributing to annual income. No amounts need be given.]

[7:22-8.8 Gifts and gratuities

(a) No associated party shall solicit or accept, whether directly or indirectly or through their spouse or any member of their family, any compensation, gift, favor, or service of value which they know or should know is offered or obtained to influence them in the performance of their public duties and responsibilities. The acceptance of infrequent business meals of nominal value does not fall in such a category.

(b) Any gift or gratuity, prohibited by paragraph (a) of this section, received by an associated party from any person or firm should immediately be returned. The associated party shall promptly report the receipt of such gift to the members of the Authority. If the gift is perishable or for some reason cannot be returned, it shall be turned over to a charitable or public institution. In such instances, the associated party should notify the donor in writing that they are not permitted to accept such gifts and have contributed the gift to a charitable institution. A copy of this notification shall be provided to the Authority.

7:22-8.9 Administration of code of conduct

(a) Rules on the review of allegations of misconduct are as follows:

1. Persons desiring to make complaints concerning violations of the code of conduct or other misconduct should be requested to make such allegations in writing, to present information or evidence in support of their allegations and be available to meet representatives of the Authority in question in person.

2. All allegations of violations or misconduct in the part of employees, officers or agents shall be referred to the members. Allegations of misconduct of members shall be referred to the governing body which appointed those members. All investigations and proceedings related to resolution of the alleged misconduct shall be handled on a confidential basis.

3. Upon receiving such complaints, the members or governing body shall initially review the apparent merits of the allegations. Where the complaint is deemed completely frivolous and without merit, no further action need be taken. If, however, the allegation may have merit, the members or governing body shall initiate an investigation to gather facts and evidence upon which to base a conclusion as to the validity of the allegations made.

4. Upon completing its investigation, the members or governing body shall prepare a written report containing its findings and conclusions. This report shall provide the basis for the members or governing body to take appropriate action with respect to the allegations. The members shall have the responsibility for judging any allegations related to misconduct by its employees, officers, and agents. Allegations of misconduct on the part of a member shall be handled by the governing body in the manner set forth in law.

5. In instances where the allegations have been substantiated and a violation of State or local law may have had occurred, copies of the report shall be provided to the applicable county prosecutor or to the Attorney General. In instances where substantiated allegations involve a State or federal grant or loan project, copies of the report shall be provided to responsible officials of the applicable federal or State agencies.

(b) Whenever an associated party is found to have violated the ethical standards in this subchapter, the members or governing body shall take appropriate disciplinary action. Such action may range from a letter of reprimand to the discharge of involved employees, officers, and agents. Where misconduct resulted in increased costs to the employee Authority, it shall take appropriate action to terminate any related contract or purchase order and initiate appropriate litigation to recover such monies.

7:22-8.10 Effective date of code of conduct

Upon its promulgation, this code of conduct shall apply immediately to all actions existing and future associated parties.]

SUBCHAPTER 9. AWARDING CONTRACTS FOR STATE ASSISTED PROJECTS TO SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

7:22-9.1 Scope and purpose

(a) This subchapter establishes procedures for providing opportunities for socially and economically disadvantaged ("SED") contractors and vendors to supply materials and services under State financed construction contracts for wastewater treatment facilities. To implement the policies established in N.J.S.A. 58:11B-26, N.J.S.A. 40:11A-41 et seq., and N.J.S.A. 52:32-17 et seq., this subchapter applies to wastewater treatment projects receiving financial assistance from the New Jersey Department of Environmental Protection **and Energy** and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-3, 7:22-4 [and], 7:22-6 **and 7:22A-6**. Under the provisions of N.J.A.C. 7:22-3, 7:22-4 [and], 7:22-6 **and 7:22A-6**, the Department and the Trust require recipients of Trust and Fund loans **and other Departmental financial assistance** to establish such programs for socially and economically disadvantaged small business concerns, to designate a public agency compliance officer, and to submit to the Department and Trust procurement plans for implementing the SED program. In addition, N.J.A.C. 7:22-3.17(a)24, [7:22-]4.17(a)24 [and], [7:22-]6.17(a)24 **and 7:22A-2.4(a)** provide that **a goal of** not less than 10 percent of the total amount of all contracts for building, materials and equipment, or services for a construction project shall be awarded to small business concerns owned and controlled by **one or more** socially and economically disadvantaged individuals. Where a local government unit has a SED participation goal which exceeds 10 percent of the total amount of all contracts, the local government unit must comply with both the Department's rules and the local set-aside ordinance.

(b) (No change.)

7:22-9.2 Definitions

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

. . .

"Department" means the New Jersey Department of Environmental Protection **and Energy and its successors and assigns.**

. . .

"New Jersey wastewater treatment financing program" means [the New Jersey Wastewater Treatment Trust, the New Jersey Wastewater Treatment Fund and/or the Pinelands Infrastructure Trust Fund providing loans or grants for the construction of wastewater treatment facility pursuant to the Wastewater Treatment Bond Act of 1985, P.L. 1985, c.329, the New Jersey Wastewater Treatment Trust Act, N.J.S.A. 58:11B-1 et seq., the Pinelands Infrastructure Trust Act, P.L. 1985, c.302, and the rules promulgated pursuant thereto, N.J.A.C. 7:22-3.1 et seq., 7:22-4.1 et seq., and 7:22-6.1 et seq.] **financing provided to local government units pursuant to N.J.A.C. 7:22-3, 4 and 6, and 7:22A-6.**

. . .

"Office" means the Office of Equal Opportunity and Public Contract Assistance **or other program** of the Department of Environmental Protection **and Energy** with the responsibility for administration of this subchapter.

. . .

"Socially and economically disadvantaged small business concern" or "SED" means any small business concern:

1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; or, in the case of a joint venture, at least 51 percent of the beneficial ownership interests are legitimately held by SEDs; and

2. Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals; and

3. Which is a full participation subcontractor in that the SED is responsible for the execution of a distinct element of work and carries out the work responsibility by actually performing, managing and supervising the task involved. Any deviation from this definition will automatically classify the SED as a broker, middleman or passive conduit. These three functions are contrary to the spirit of the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) and will not qualify a SED enterprise for State of New Jersey certification; and

[3.]**4.** Which, prior to July 1, 1988, has been approved by and registered with the New Jersey Department of Commerce and Economic Development pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses (N.J.S.A. 52:32-17 et seq.) and [on July 1] **after June 30**, 1988, has been certified by the New Jersey Department of Commerce and Economic Development pursuant to the New Jersey Uniform Certification Act ([P.L. 1986, c.195] **N.J.S.A. 52:27H-1 et seq.**), as an eligible minority business or female business.

i.-iii. (No change.)

. . .

7:22-9.3 SED utilization requirements for projects

(a) [Not] **A goal of not** less than 10 percent **(or a higher percentage as may be required by Federal law)** of the total amount of all contracts for building, materials and equipment, or services for

a project funded by a New Jersey wastewater treatment financing program [shall] **must** be awarded to SEDs.

(b) (No change.)

7:22-9.7 Advertisements for SED utilization

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

[(e) The advertisement for bids shall also state that a business which is not already registered or certified by the Department of Commerce, Energy and Economic Development as a minority or female business, may submit a bid but then must apply to the Department of Commerce and Economic Development in accordance with N.J.A.C. 12A:11-1 for registration or certification as a minority or female business as appropriate, no later than the bid opening date, and in order to be eligible for an award must be registered or certified no later than five working days after the bid opening date. The advertisement for bids shall state that if, for whatever reason, the contracting agency does not receive approval of that bidder from the Department of Commerce within five working days after the bid opening date, the contracting agency shall reject that bid without any obligation or recourse to the bidder.

NOTE: Pursuant to N.J.A.C. 12A:11-1, firms are required to apply to the Department of Commerce, Energy and Economic Development 30 working days prior to receipt of certification.]

(f) (No change.)

7:22-9.13 Assessment of compliance

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

(c) The Office shall summarize in writing its evaluation of the reason given for noncompliance and the efforts made by the local government unit or contractor to comply with its plan for achieving the 10 percent SED utilization requirement. **The Office shall take into consideration good faith efforts made by the local government unit or contractor to meet the goal to achieve the ten percent SED utilization requirement.** These findings shall be submitted to the Department and, in the case of a Trust loan, to the Trust who, in conjunction with the Office, shall determine the nature and extent of the local government unit's or contractor's noncompliance.

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED WASTEWATER TREATMENT FACILITIES

7:22-10.1 Scope and construction

(a) This subchapter [shall] constitutes the rules of the New Jersey Department of Environmental Protection **and Energy** regarding the environmental assessment requirements for projects receiving financial assistance pursuant to N.J.A.C. 7:22-3, 4 and 6 **and N.J.A.C. 7:22A-6**.

(b) This subchapter shall be liberally construed to permit the Department to effectuate the purposes of the Wastewater Treatment Bond Act [of 1985 (P.L. 1985 c.329)], the Wastewater Treatment Trust Act [of 1985,] (N.J.S.A. 58:11B-1 et seq.), [and] the Pinelands Infrastructure Trust Bond Act [of 1985 (P.L. 1985 c.302)], **the Sewage Infrastructure Improvement Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act**.

(c) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act [of 1985 (P.L. 1985 c.329)], the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), [and] the Pinelands Infrastructure Trust Bond Act [(N.J.S.A. 58:25-23 et seq.)], **the Sewage Infrastructure Improvement Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act**;

2. To establish environmental assessment requirements which must be complied with in order to receive financial assistance provided pursuant to N.J.A.C. 7:22-3, 4[,] and 6 **and N.J.A.C. 7:22A-6**;

3.-4. (No change.)

7:22-10.2 Definitions

Unless otherwise specified, the terms used herein [shall] **will** have the same meanings as those terms defined in N.J.A.C. 7:22-3 and 4. Additional definitions are as follows:

. . .

"Wetlands" means those areas defined as wetlands under any of the following statutes and implementing rules as applicable.

1.-3. (No change.)

4. Pinelands Protection Act, N.J.S.A. 13:18-1 et seq., at N.J.S.A. 13:18A-3, (Definitions), and N.J.S.A. 13:18A-11, (Boundaries of pinelands and preservation areas; official state planning maps of Pinelands National Reserve, and pinelands protection and preservation areas); N.J.A.C. 7:50-3.1 (Purpose); N.J.A.C. 7:50-6.3 (Wetlands), N.J.A.C. [60-60.4] **7:50-6.4** (Coastal Wetland) and N.J.A.C. [50-6.5] **7:50-6.5** (Inland wetlands).

7:22-10.3 Establishing the level of environmental review

(a) To initiate the planning process, the local government unit may be required by the Department to attend a preplanning meeting with the Department. When a preplanning meeting is required, the local government unit shall be required to provide a preplanning summary including a brief written description of the proposed planning area, the wastewater management needs, the preliminary wastewater management alternatives to be considered, and a preliminary appraisal of potential beneficial and adverse environmental and cultural resource impacts of the alternatives. A map of the proposed planning area shall also be included. **The planning area shall be defined as the entire area expected to benefit from the proposed project as a whole (that is, at a minimum, the potential service area) without regard to the eligibility of individual project components. The length of the planning period will be 20 years, unless otherwise approved by the Department.** On the basis of this information, as well as any other information that may be available to the Department, the Department shall make a preliminary decision regarding the level of environmental review, Level 1, 2, or 3, that shall be required.

(b) (No change.)

7:22-10.4 Level 1 environmental review

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

(c) Where a Level 1 review has been determined to be appropriate, a Level 1 environmental planning document shall be submitted by the local government unit to the Department for review. The Level 1 environmental planning document [shall] **must** be of sufficient scope to permit the Department to verify the preliminary determination to proceed with this level of review. Information to be provided in the environmental planning document [shall] includes the following:

1.-2. (No change.)

3. A narrative describing the extent of beneficial and adverse impact on environmental or cultural resource features that can be expected as a result of implementing the proposed project and basis for concluding that the proposed project qualifies for a Level 1 environmental review in accordance with (a) and (b) above. **Cultural resource impacts must be determined in accordance with N.J.A.C. 7:22-10.8**;

4. A summary of alternatives available, including, at a minimum, the no action alternative, and the basis for selecting the proposed action. **The selected plan must be the most cost effective, environmentally sound alternative which will address the need which has been identified and which is implementable. The most cost effective alternative is determined by taking into account the cost of environmental impacts and the cost of construction.** The basis discussion [shall] **must** include the costs, impacts and effectiveness of the proposed alternatives relative to achieving the identified need as compared with other alternatives considered; and

5. (No change.)

(d) The Department will review the environmental planning document submitted by the local government unit and will make one of the following determinations:

1. The Level 1 environmental planning document is complete, acceptable, and verifies the preliminary determination to proceed

with this level of environmental review. In this case, the Department will **prepare and** issue a Level 1 decision statement **as set forth in (e) below,** which will be sent to a project mailing list developed in accordance with N.J.A.C. 7:22-10.10(c). The local government unit shall publish a notice in a newspaper of general circulation in the planning area within two weeks of the date of the Department's decision statement. The notice [shall] **must** describe the proposed action, indicate the decision by the Department to approve the project, and advise the public that the local government unit shall, upon written request, make available for public review both the planning documents and the Department's decision statement. Upon issuance of the decision statement, **planning is approved and** the Department may proceed with award of a loan, subject to the provisions of (e) below, and provided the other requirements of the program have been met as specified in N.J.A.C. 7:22-3, 4 and 6 **and N.J.A.C. 7:22A-6**.

2.-3. (No change.)

(e) A Level 1 environmental decision statement will include a description of the proposed project, a summary of the need for the proposed project, alternatives considered, environmental, cultural resource and social impacts of the proposed project, costs, mitigating measures, public input, and the basis for the determination that the proposed project qualifies for a Level 1 environmental decision statement.

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

7:22-10.5 Level 2 environmental review

(a) (No change.)

(b) For a Level 2 review, environmental planning documentation shall be submitted by the local government unit consisting of an environmental information document, results of investigations and consultations conducted pursuant to N.J.A.C. 7:22-10.9, and results of public participation conducted pursuant to N.J.A.C. 7:22-10.10. At a minimum, a public hearing shall be required [prior to submittal of the] **and proof of same shall be included as part of a complete** planning document **submittal** to the Department. The environmental information document [shall] **must** include, where applicable, the following information:

1.-2. (No change.)

3. A description of and mapping, where applicable, of existing environmental conditions and features including:

i.-v. (No change.)

vi. [General] **A general description of** plant and animal communities existing in the planning area **and a map of habitat types in the project impact area**;

vii.-ix. (No change.)

4.-5. (No change.)

6. A description **and map** of existing wastewater treatment facilities. Include the location of **all** facilities, the service areas[,] **and** treatment level of treatment plants, **as well as the** design capacities[,] and the actual wastewater flows **for treatment plants and conveyance facilities. Include a map of areas served by individual on-site systems.** Provide the actual wastewater flow according to source:

i.-iv. (No change.)

7. An environmental constraints analysis is required and shall be prepared according to the following procedure:

i. (No change.)

ii. **Identify existing population and flow by source.** Determine the extent of development which could occur according to permitted zoning in developable areas. This should be represented as a number of dwelling units and population for residential areas and area coverage for commercial and industrial areas. These figures shall be **presented in a table and** used in calculating the maximum wastewater flow that may be considered in planning wastewater treatment facilities. **All assumptions used in calculating flow from units and coverage shall be explained.**

8.-9. (No change.)

10. A description of the environmental impacts for each alternative including beneficial and adverse direct, indirect **(that is, secondary impacts)** and cumulative effects with other projects. Include an assessment of impacts of alternatives on the following:

i.-iii. (No change.)

iv. Air quality, especially with respect to consistency with the New Jersey State Implementation Plan prepared pursuant to the Federal Clean Air Act, 42 U.S.C. §§7401 et seq., and the New Jersey Air [pollution] **Pollution** Control Act, N.J.S.A. 26:2C-1 et seq.; [and]

v. Social and economic factors including, but not limited to, dust, noise, odors, nuisances, traffic or hazards[.]; **and**

vi. Where significant increases in treatment capacity will be provided, effects of induced growth on environmental and social infrastructure.

11. A description of the selected plan [including,]. **The selected plan must be the most cost effective, environmentally sound alternative which addresses the identified need and which is implementable. Include,** where applicable, the following:

i.-x. (No change.)

12-16. (No change.)

(c) (No change.)

(d) When appropriate, in accordance with (c)1 above, the Department will prepare and issue a preliminary Level 2 decision statement and environmental appraisal to the mailing list developed for the project in accordance with N.J.A.C. 7:22-10.10(c). The Department will take no further administrative action until after the conclusion of a 30-day comment period on the decision statement. If no significant adverse comment is received at that point, the Department will approve the planning and may proceed with an offer of loan assistance, provided that other requirements of the program, as set forth at N.J.A.C. 7:22-3, 4 and 6 **and N.J.A.C. 7:22A-6** have been met.

(e) (No change.)

7:22-10.6 Level 3 environmental review

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

(c) If a Level 3 environmental review is required by the Department prior to completion of a Level 2 environmental information document, then an environmental information document shall be prepared in accordance with N.J.A.C. 7:22-10.5(b). In addition, an environmental impact statement shall be prepared under a Level 3 environmental review. Environmental impact statements shall be prepared by the local government unit. The Department [will] **must** approve the scope, content and conclusion of both draft and final environmental impact statements prior to publication. The procedure [shall] **will** be as follows:

1.-9. (No change.)

10. After the conclusion of the comment period for the final environmental impact statement, the Department will prepare a Level 3 decision statement which will respond to comments received on the final environmental impact statement, set forth the decision made by the Department, and the basis for the decision. No administrative action will be taken by the Department prior to the conclusion of a 30-day comment period for the decision statement. If no further significant adverse comment is received during the comment period for the decision statement, the Department will approve the planning and the Department may proceed with an offer of assistance, provided other program requirements as set forth in N.J.A.C. 7:22-3, 4 and 6 **and N.J.A.C. 7:22A-6**, have been met. If adverse comment is received which was not adequately addressed in the environmental impact statement process, the Department may require a supplemental evaluation and decision statement or may determine not to participate in the proposed project.

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

7:22-10.7 Re-evaluation of environmental decision statements

(a) The local government unit shall certify in writing that the project submitted in the design phase**, or for which authorization to advertise or authorization to award is requested,** is the same as that which was described in the environmental decision statement and approved in the planning phase and includes all mitigating measures developed for the project in the planning **or design** phase. If this certification cannot be made, then the local government unit shall describe the proposed project modifications, the reason for the changes, and the costs and environmental impacts of the revised project. **Project modifications that may be included from the time of planning approval through construction of the project that re-**

quire notification by the local government unit to the Department include, but are not limited to, changes in facility location, size, capacity or type and changes in the depth or limits of construction disturbance. The Department may request additional information or additional public participation regarding the proposed modifications. On the basis of the information available, the Department will determine if there is a need to issue a revised environmental decision statement or elevate the project to a Level 2 or Level 3 environmental review and proceed accordingly.

(b) (No change.)

7:22-10.8 Cultural resource survey requirements

(a) Based upon the preplanning summary prepared in accordance with N.J.A.C. 7:22-10.3, **or other information available,** the Department will make a preliminary determination regarding the need for and scope of a cultural resource survey. Factors that will affect this preliminary evaluation include:

1.-3. (No change.)

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

(f) The following are the levels of cultural resource survey that the Department may require:

1. The first level of investigation is the Stage IA Documentation Review and Strategy Development Survey which consists of the following:

i. A broad-based literature search that provides a concise but comprehensive discussion of the prehistoric and historic development of the planning area **referencing all known sites**;

ii. (No change.)

iii. An environmental and geological analysis of the planning area[,] which, taken with the archaeological and historic documentation, will predict areas of varying potential for the presence of cultural resources;

iv.-v. (No change.)

2. The next level of investigation is the Stage IB Site Recognition Survey which consists of the following:

i. Subsurface testing for the identification of previously undocumented archaeological sites. [The subsurface] **Subsurface** tests, **placed at frequencies approved by the Department,** [shall] **must** be of sufficient depth to sample all soil strata that may potentially contain evidence of past human activity;

ii.-v. (No change.)

3. (No change.)

(g)-(j) (No change.)

(k) All reports of cultural resource surveys **shall be** submitted for review by the Department [shall contain the following elements]. **All cartographic and document reproduction contained in the report must be clear and legible. Reports must have original photographic plates or high quality offsets. Professional procedures and reports shall meet the criteria set forth in the U.S. Department of Interior's "Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines" (Federal Register, Vol. 48, No. 190; September 29, 1983) and the professional reporting and survey guidelines of the Office of New Jersey Heritage of the Department, once these guidelines are promulgated as rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.), incorporated herein by reference. All reports must contain:**

1.-11. (No change.)

[(1) All cartographic and document reproductions contained in the report must be clear and legible.

(m) Reports shall have original photographic plates or high quality offsets.

(n) All reports shall satisfy the requirements set forth in "Certain Technical Prescription for Preparing Reports of Surveys of Cultural Resources" which are to be reviewed by the Office of New Jersey Heritage, New Jersey Department of Environmental Protection, which is available upon request from the Department.]

(l) All archaeological materials and records resulting from investigations required by this rule shall be curated in accordance with 36 CFR 66.3, "Recovery of Scientific, Prehistoric, Historic and Archaeological Data: Methods, Standards and Reporting Requirements," incorporated herein by reference.

7:22-10.10 Public participation

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

(d) The Department may require supplemental measures to inform and solicit comment from the public under the following conditions:

1. (No change.)

2. Where, as a result of the re-evaluation of the environmental review conducted in accordance with N.J.A.C. 7:22-10.7, the Department determines that significant changes in the project or project impact have occurred, **which warrant public input,** the Department may determine that a supplemental public advertisement as in (d)1 above or a public hearing as in (b) above is required prior to award of financial assistance.

7:22-10.11 Design requirements

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

(d) Site and access clearing shall be confined to approved construction areas. Protection of existing vegetation shall be practiced wherever possible. At a minimum, the local government unit shall include provisions in the contract documents which conform to the following:

1. Easement widths shall be reduced to the minimum feasible for the proposed construction. Unless specifically approved by the Department, permanent access roads [shall] **must** not be more than eight feet wide and there shall be no permanent access roads in environmentally critical areas. **Access roads may be paved only where absolutely necessary, as determined by the Department.**

2.-5. (No change.)

(e)-(i) (No change.)

(j) If there is the possibility of encountering acid-producing deposits in the course of construction, as identified during the planning process, special requirements and conditions [shall] **will** apply and shall be incorporated in the specifications as follows:

1.-2. (No change.)

3. In both vegetated and paved areas, when acid-producing deposits are encountered, as determined by the soil specialist, excavated trench material shall be returned to the trench in order of removal, that is, lower material first, followed by upper material. In addition, the top one to two inches of soil on which the deeper soil was stockpiled shall be scraped and placed below a depth of two feet. For interceptor construction, the quantity of material to be displaced by bedding and pipe, as well as soil scraped from the stockpile area, shall be subtracted from the deeper, excavated material and this quantity of deeper material removed to an approved disposal site and covered as described above. After backfilling the deeper soil, one ton of limestone per 2,000 square feet shall be spread over the deeper soil in the trench. This liming requirement [shall be] **is** applicable in areas of well drained, non-saturated soils, as determined by the soils specialist. In vegetated areas, the top two feet of soil, stockpiled for this purpose, shall then be replaced. If the top two feet of soil was also contaminated, clean backfill material similar to the native topsoil shall be used **in place of the contaminated material**.

4. The excavated acid-producing deposits shall not be exposed for a period longer than eight hours. When acid-producing deposits are encountered, the trench opened in any construction day shall be backfilled and the areas cleaned up by the close of the day. [Alternatively] **Where this is impracticable, such as in the construction of pumping station and treatment plants**, exposed acid-producing deposits shall be covered with limestone screenings at a rate of 100 tons per acre and then covered with six inches of compacted solid within one week of exposure or before the exposed soil drops to pH 3, whichever occurs first. The pH shall be monitored daily under this [option] **procedure**.

5.-6. (No change.)

7. Lime requirement tests shall be performed by the soil specialist to determine the lime application rates. This [shall] **will** require an incubation test in which the sample is oxidized for a period of six weeks, as follows. The sample shall be air dried and ground so that the whole sample passes a 0.5 millimeter sieve. The lime requirement to reach pH 6.5 shall be determined initially, and again at two week

intervals for six weeks, using standard soil testing techniques. The **total** lime requirement **determined by this method** can be extrapolated to the area under consideration.

8.-9. (No change.)

(k) **When dewatering will occur in the vicinity of structures or potable wells, the contractor shall monitor for adverse effects to structures or wells due to dewatering and shall be responsible to remedy same to the satisfaction of the Department.** Discharges from dewatering activities which contain silt or hydrogen sulfide [shall be] **is** subject to the following controls:

1.-2. (No change.)

3. In coastal areas, it is possible that water emanating from dewatering operations may contain hydrogen sulfide concentrations that could adversely impact areas to which the water is discharged. In these areas, at no time [shall] **may** the water emanating from dewatering operations be [allowed to contain] **discharged if** concentrations of hydrogen sulfide in excess of 40 parts per billion (ppb) **are present**. Prior to, and periodically during, dewatering, tests shall be conducted on the groundwater and dewatering discharge to determine if the hydrogen sulfide concentration is within the prescribed limits. In the event that these limits are exceeded, the contractor shall pretreat the discharge water prior to disposal. Pretreatment [shall] **must** maintain the hydrogen sulfide concentrations at or below the 40 ppb level and shall **must** be in use during those times when dewatering is occurring and the **specified** concentrations are exceeded.

(l) Contract requirements with regard to the location **and control** of stockpile, storage and disposal areas [and erosion control measures] **whether provided by the local government unit or the contractor,** [shall] **must** conform to the following:

1. Only environmentally suitable stockpile sites [shall] **may** be used for the purposes of **staging or** storing materials, equipment and suitable trench backfill material. Environmentally suitable sites [shall] **must** be level, and devoid of mature stands of natural vegetation. Drainage facilities and features, wetlands and stream corridors are not environmentally suitable sites.

2.-3. (No change.)

(m) (No change.)

(n) In order to limit noise impacts **in the vicinity of sensitive receptors,** construction operations and activities shall be limited [to] **as follows. Time limits are** Monday through Friday between the hours of 7:00 A.M. and 6:00 P.M. unless variances to these times are granted in times of emergency. No driving, pulling, or other operations entailing the use of vibratory hammers or compactors shall be permitted, other than between the hours of 8:00 A.M. and 5:00 P.M. The number of machines in operation at a given time shall be limited to the minimum practicable. All engine generators or pumps [shall] **must** have mufflers and be enclosed within a temporary structure.

(o)-(q) (No change.)

7:22-10.12 Construction phase requirements

(a) The local government unit shall employ [a sufficient number of] **one, or more if warranted by the scope of the project,** environmental inspector[s] to ensure that the requirements of the specifications relating to environmental and cultural resource protection and restoration are effectively carried out. **Individuals designated as environmental inspectors by the local government unit shall possess, at a minimum, the education/experience qualifications of an Environmental Specialist employed with the Department.** The Department shall utilize environmental inspectors to oversee the conduct of the protection/restoration measures. Responsibilities of the environmental inspectors include the following:

1. Daily inspections of active work areas and periodic inspection of maintenance or restoration areas sufficient to ensure performance of protection measures in accordance with contract documents.

[1.]**2.** The maintenance of a daily job diary in which they shall record the progress of the work and of any problems encountered. The environmental inspectors shall notify the contractor in writing immediately upon noticing that environmental specifications are not being met.

[2.]**3.** At frequent intervals during construction, the loan recipient, the resident engineer, the environmental inspectors and the Department inspectors shall meet to review progress and to resolve difficulties that might result in unnecessary delays in the work. **The Department shall notify the loan recipient if deficiencies are not immediately corrected. The loan recipient shall then direct compliance with environmental requirements.**

(b) (No change.)

(c) A final inspection shall be required following completion of all construction and restoration work encompassed by each contract. The final inspection shall be conducted as follows:

1.-2. (No change.)

[3.]**(d)** The Department shall make [a determination within 12 days of] **periodic determinations and following** the final inspection, **make a final determination,** regarding the adequacy of the contractor's performance of the specifications relative to environmental and cultural resource protection and restoration. If the performance is not acceptable, this finding and the procedures and schedules needed to effect acceptable performance will be conveyed in writing to the local government unit. Failure of the local government unit to comply with the Department's requirements may subject the local government unit to the non-compliance provisions of N.J.A.C. 7:22-3.40, 4.40 and 6.40 and N.J.A.C. 7:22A-1.8.

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code
Fees for Type Ch Life Hazard Uses
Adopted Amendment: N.J.A.C. 5:18-2.8(a)33

Proposed: August 5, 1991 at 23 N.J.R. 2234(a) and 2453(a) (Notice of Administrative Correction).
Adopted: September 25, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: October 2, 1991 as R.1991 d.530, **without change.**

Authority: N.J.S.A. 52:27D-198 and 201.

Effective Date: November 4, 1991.
Expiration Date: January 4, 1995.

Summary of Public Comments and Agency Responses:
No comments were received in response to the corrected proposal (see 23 N.J.R. 2453(a)). For comments and responses concerning the original proposal, see the adoption notice in the October 7, 1991 New Jersey Register at 23 N.J.R. 2999(a).

Full text of the adoption follows (deletion indicated in brackets with asterisks *[thus]*).

5:18-2.8 Fees, registration and permit
(a) The annual registration fee for life hazard uses shall be as follows:
1.-32. (No change.)
33. *[Reserved]* Type Ch—2,080.00 per year;
34.-37. (No change.)
(b)-(d) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF THE COMMISSIONER

Notice of Administrative Change and Correction
Centralized Filing of Requests for Adjudicatory Hearings
N.J.A.C. 7

Take notice that the Department of Environmental Protection and Energy (Department) has requested, and the Office of Administrative Law has approved, administrative changes and corrections to the Department's rules throughout Title 7 of the New Jersey Administrative Code, concerning the place of filing for requests for adjudicatory hearings. The Department desires to provide that the Office of Legal Affairs in the Department will be the single filing point for all such hearing requests. The Department expects that this change will simplify filing of requests for such hearings, enhance the Department's administrative efficiency in receiving and responding to such requests, and provide a single contact for persons seeking information about the status of hearing requests. These changes and corrections are effective **December 1, 1991.**

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

CHAPTER 1
RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER 5. DEBARMENT, SUSPENSION AND DISQUALIFICATION FROM DEPARTMENT CONTRACTING

7:1-5.4 Procedures, period and scope of debarment
(a) When the [department] **Department** or any agency within its control or jurisdiction seeks to debar a person or his affiliates, the person or persons shall be furnished with a written notice stating that:
1.-2. (No change.)
3. An opportunity will be afforded to such person or persons for a hearing if the hearing is requested within seven days from the date of personal delivery or the date of mailing of such notice. **Such request shall be filed with the Department at the following address:**

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

7:1-5.7 Procedures, period and scope of suspension
(a)-(c) (No change.)
(d) A request for a hearing under (a) above shall be filed with the Department at the following address:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

CHAPTER 1A
WATER SUPPLY BOND LOAN PROGRAMS

SUBCHAPTER 2. LOAN PROCEDURES AND REQUIREMENTS

7:1A-2.34 Administrative hearing
(a) (No change.)
(b) A borrower may request a hearing within 15 days of a decision by the Director of the Division. **The hearing request shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** The request for the hearing shall specify in detail the basis for the appeal.
(c)-(d) (No changee)

CHAPTER 1C
NINETY-DAY CONSTRUCTION PERMITS

SUBCHAPTER 1. 90 DAY CONSTRUCTION PERMIT RULES

7:1C-1.9 Appeals
(a) (No change.)
(b) Any interested person who considers [themselves] **himself or herself** aggrieved by the approval or denial of a stream encroachment permit or a treatment works approval for the construction, change, improvement, alteration or extension of sanitary sewage collection systems may, within 10 days of publication of notice of the decision in the DEP Bulletin, or within 10 days of publication of notice of the decision by the permittee pursuant to (c) below, whichever occurs first, request a hearing by addressing a written request for such hearing to the [Commissioner] **Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests,** Department of Environmental Protection **and Energy**, CN 402, Trenton, New Jersey 08625-**0402.**
(b)-(e) (No change.)

CHAPTER 1G
WORKER AND COMMUNITY RIGHT TO KNOW REGULATIONS

SUBCHAPTER 6. TRADE SECRETS

7:1G-6.13 Appeal to determination

(a) If the [department] **Department** denies an employer's trade secret claim, the employer shall have 45 days from the receipt of the [department's] **Department's** determination to file with the [department] **Department** a written request for an administrative hearing on the determination. **Such request shall be filed with the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

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

SUBCHAPTER 7. ASSESSMENT OF CIVIL ADMINISTRATIVE PENALTIES

7:1G-7.3 Procedures for assessment of civil administrative penalties

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

(c) The alleged violator shall have 20 calendar days from receipt of the notice of civil administrative penalty assessment within which to deliver a written request for a hearing to:

[Assistant Director
Environmental Enforcement
Division of Environmental Quality
CN 027
Trenton, New Jersey 08625]

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

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

CHAPTER 1I
SANITARY LANDFILL FACILITY CONTINGENCY FUND

SUBCHAPTER 5. SETTLEMENT AND INVESTIGATION OF CLAIM

7:1I-5.4 Adjudicatory hearings

(a) Within 20 calendar days from receipt of a decision by the Department rendered pursuant to N.J.A.C. 7:1I-5.3, the claimant may submit a written request to the Department for an adjudicatory hearing to contest such action.

1.-2. (No change.)

3. A request for an adjudicatory hearing shall be filed with the Department at the following address:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

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

CHAPTER 3
BUREAU OF FORESTRY

SUBCHAPTER 2. APPROVED FORESTRY LIST

7:3-2.9 Appeal from adverse determination on entry or deletion from list of approved foresters

(a) (No change.)

(b) The applicant or forester requesting an administrative hearing shall submit to the Department, **at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, 401 East State Street, CN 402, Trenton, New Jersey 08625-0402,** the following information in writing:

1.-4. (No change.)

(c) (No change.)

CHAPTER 7
DIVISION OF COASTAL RESOURCES
COASTAL PERMIT PROGRAM RULES

SUBCHAPTER 4. PERMIT REVIEW PROCEDURES

7:7-4.11 Suspension and revocation of permits

(a) (No change.)

(b) A suspended permit is revocable for good cause.

1. Prior to revocation, the Division shall provide the permittee with written notice, **by certified mail,** of intent to revoke the permit [by certified mail] and of the permittee's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5. **A request for a hearing shall be addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

2.-3. (No change.)

SUBCHAPTER 5. APPEALS

7:7-5.1 Request for review on appeal

(a) Any interested person who considers himself aggrieved by a final action of the Division may, within 10 days of publication of notice of the final decision in the DEP Bulletin, or within 10 days of publication of notice by the permittee pursuant to N.J.A.C. 7:7-4.8(b), whichever occurs first, request a hearing by addressing a written request to the [Commissioner] **Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests,** Department of Environmental Protection **and Energy,** CN 402, Trenton, New Jersey 08625**-0402.**

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

CHAPTER 7A
FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 12. REVIEW OF APPLICATIONS

7:7A-12.8 Hearings and appeals

(a) An applicant for a freshwater wetlands or open water fill permit or other affected party may request of the Commissioner an administrative hearing on any decision to issue or deny a permit made by the Department pursuant to the Act and this chapter. Such request shall be submitted in writing, within 30 days of the contested decision, **to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

1.-3. (No change.)

SUBCHAPTER 15. ENFORCEMENT

7:7A-15.10 Termination of permits

(a) (No change.)

(b) Prior to a termination, the Department shall furnish written notice to the permittee by certified mail. The notice shall provide 10 days within which the permittee shall either remedy the violations, request a hearing **pursuant to (f) below,** or offer a mitigation plan as to how the violation will be corrected. Within 90 days of Department approval of a plan, the violations shall be remedied.

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

(f) A request for a hearing under (b) above shall be filed with the Department at the following address:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

SUBCHAPTER 17. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:7A-17.9 Procedures to request an adjudicatory hearing to contest an Administrative Order and/or a Notice of Civil Administrative Penalty Assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, and/or a notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department[.], **addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402**;

1.-6. (No change.)

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

CHAPTER 10
SAFE DRINKING WATER ACT

SUBCHAPTER 2. GENERAL REQUIREMENTS

7:10-2.5 Ban on further connections to over-extended or otherwise inadequate system

(a) (No change.)

(b) The request for a hearing shall be sent to:

[Assistant Director, Water Supply and
Flood Plain Management
Division of Water Resources
P.O. Box CN-29
Trenton, New Jersey 08625]
Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

CHAPTER 12
SHELLFISH-GROWING WATER CLASSIFICATION

SUBCHAPTER 9. SPECIAL PERMIT

7:12-9.1 General provisions

(a)-(g) (No change.)

(h) Due to the necessity to closely monitor this program for the purpose of protecting public health, the Division of Water Resources shall immediately suspend the Special Permit [or] **of** any participant who violates any condition of the permit or any provision of this chapter and thereby creates a threat to public health by compromising the purity of shellfish as a food product. The Division of Water Resources may suspend the Special Permit of any participant who violates any other condition of the permit or any other provision of this chapter. The right to **a** post-suspension hearing shall be granted by the [Division of Water Resources] **Department** in accordance with the procedures established by 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. **Requests for post-suspension hearings shall be submitted to the Department at the following address:**

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The hearing shall be held on an expedited basis, unless an adjournment is requested by the participant.

(i)-(m) (No change.)

CHAPTER 13
FLOOD HAZARD AREA CONTROL

SUBCHAPTER 2. GENERAL PROCEDURES FOR THE STREAM ENCROACHMENT PERMITTING PROCESS

7:13-2.11 Appeal procedure to the Department

(a) The applicant or any person alleging to be adversely affected by the Department's decision shall have a right to apply for a hearing thereon pursuant to N.J.A.C. 1:1 (Uniform Administrative Procedure **Rules**). **The request for the hearing shall be submitted to the Department at the following address:**

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

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

CHAPTER 14
WATER POLLUTION CONTROL ACT

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.4 Procedures to request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment or a notice of civil administrative cost assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment, or a notice of civil administrative cost assessment issued pursuant to the Water Pollution Control Act, the New Jersey Undergorund Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act, the violator shall submit the following information in writing to the Department **at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402**:

1.-9. (No change.)

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

CHAPTER 14A
THE NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM

SUBCHAPTER 7. PROCEDURES FOR DECISION-MAKING

7:14A-7.2 Procedures for decision-making

(a) Initial issuance of a new source NJPDES permit (except a DSW new source which shall comply with N.J.A.C. 7:14A-3.3 and (b) below) includes the following procedural stages:

1.-4. (No change.)

5. The permittee or applicant may request an adjudicatory hearing to contest the final determination of the Department to grant, deny, modify, suspend or revoke a permit. **The request shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** The Department shall determine whether a hearing shall be granted. The Department shall refer all hearings to the Office of Administrative Law, except as provided in N.J.S.A. 52:14F-1 et seq.

6.-14. (No change.)

(b) Reissuance of NJPDES permits and issuance of NJPDES permits which do not require a treatment works approval in accordance with [subchapter 12 of this chapter] **N.J.A.C. 7:14A-12** (or have an approved 201 facility plan) includes seven major procedural stages. These stages are:

1.-3. (No change.)

4. The permittee may request an adjudicatory hearing to contest the final determination of the Department to grant, deny, modify, suspend or revoke a permit. **The request shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** The Department shall determine whether a hearing shall be granted. The Department shall refer all hearings which are granted to the Office of Administrative Law, except as provided in N.J.S.A. 52:14F-1 et seq.

5.-7. (No change.)

7:14A-7.5 Modification, revocation and reissuance, or termination of permits

(a) (No change.)

(b) If the Department decides the request is not justified, the Department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Director may be informally appealed to the Commissioner by a letter briefly setting forth the relevant facts. **The letter shall be submitted to the Department at the following address:**

Office of Legal Affairs
ATTENTION: Informal Appeals
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The Commissioner may direct the Director to begin modification, revocation and reissuance, or termination proceedings under (b)1 below. The appeal shall be considered denied if the Commissioner takes no action on the letter within 60 days of receiving it. This informal appeal is a prerequisite to seeking judicial review of Department action in denying a request for modification, revocation and reissuance, or termination.

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

SUBCHAPTER 8. PUBLIC COMMENT AND NOTICE PROCEDURES

7:14A-8.9 Adjudicatory hearing

(a) The permittee, within 30 days following the service of notice of the Department's issuance of a final permit or DAC decision under N.J.A.C. 7:14A-8.6, may submit a written request to the Department under (b) below for an adjudicatory hearing to contest the conditions of that permit. **The request shall be submitted to the Department at the following address:**

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

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

SUBCHAPTER 12. REQUIREMENTS FOR A TREATMENT WORKS APPROVAL

7:14A-12.26 Requests for adjudicatory hearings

(a) (No change.)

(b) A hearing request shall be in writing, **addressed to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402,** and it shall be accompanied by a copy of the denial and the same documents that were submitted with the connection ban exemption application.

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

CHAPTER 15
STATEWIDE WATER QUALITY MANAGEMENT PLANNING

SUBCHAPTER 3. PLAN ASSESSMENT, AMENDMENT AND ADOPTION

7:15-3.9 Appeals of Department decisions

(a) Within 20 calendar days from the receipt by the applicant of a written notification from the Department of the decision of the Department made pursuant to N.J.A.C. 7:15-3.4(g)2i or ii or 8ii through iv, the applicant may request an adjudicatory hearing to contest the Department decision by submitting a written request to the Department [which], **addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402. The request** shall include the following information:

1.-5. (No change.)

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

CHAPTER 16
GENERAL ADMINISTRATION

SUBCHAPTER 1. STATE FINANCIAL ASSISTANCE FOR PUBLIC SANITARY SEWAGE COLLECTION SYSTEMS

7:16-1.7 Decision of the [department] **Department**; hearing

(a) (No change.)

(b) If the [department] **Department** rejects the eligibility of the local government unit, the local government unit shall have 15 days from receipt of such notice to request a hearing before the [department] **Department.** [Request] **The request** for a hearing shall be in writing and sent to: [Division of Water Resources, Office of Regulatory Affairs, P.O. Box 2809, Trenton, New Jersey 08625] **Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

CHAPTER 18
REGULATIONS GOVERNING LABORATORY CERTIFICATION AND STANDARDS OF PERFORMANCE

SUBCHAPTER 2. PROGRAM PROCEDURES AND REQUIREMENTS

7:18-2.13 Effect and duration of suspension notification and revocation orders

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

(e) Recipients of certification revocation orders shall have a right to a hearing thereon, if requested in writing within 20 days of receipt of the revocation order. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** Said hearing shall be held before an Administrative Law Judge and in accordance with the Administrative [Procedures] **Procedure** Act, N.J.S.A. 52:14B-1 et seq. The decision by the Commissioner, based on the hearing record and the recommendations of the Administrative Law Judge, shall be the final administrative decision on the revocation.

(f) (No change.)

CHAPTER 19
WATER SUPPLY ALLOCATION PERMITS

SUBCHAPTER 2. PERMIT PROCEDURE

7:19-2.15 Appeal procedure

(a) (No change.)

(b) Requests for a contested case hearing shall be submitted to:

[Assistant Director
Water Supply Element
Department of Environmental Protection

CN 029
Trenton, New Jersey 08625]
Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(c)-(h) (No change.)

SUBCHAPTER 6. WATER SUPPLY MANAGEMENT ACT RULES

7:19-6.13 Administrative hearings

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

(c) **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** The request for a hearing shall specify in detail the basis for the request. The Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate. Should the efforts to settle the dispute fail, and the Department determines that the matter is a [contest] **contested** case, the Department will forward the request for a hearing to the Office of Administrative Law, pursuant to the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

CHAPTER 19A
EMERGENCY WATER SUPPLY ALLOCATION PLAN REGULATIONS

SUBCHAPTER 10. DEPARTMENT ORDERS

7:19A-10.2 Appeal procedure

(a) The party to whom an order has been issued, and/or aggrieved by a decision of the Department shall have the right to request a hearing thereon, if requested in writing within 20 days of receipt of the order. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

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

CHAPTER 20
DAM SAFETY STANDARDS

SUBCHAPTER 1. APPLICATION PROCEDURE; DESIGN CRITERIA FOR DAM CONSTRUCTION; DAM INSPECTION PROCEDURE

7:20-1.5 General application procedures

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

(d) Appeal procedures; permit denials

1. An applicant for a dam permit may request in writing an administrative hearing from the Department within 15 days of receipt of the decision by the Department to deny the application. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

2. (No change.)

(e) (No change.)

CHAPTER 20A
STANDARDS AND PROCEDURES FOR ESTABLISHING PRIVILEGES TO DIVERT WATER AND FOR OBTAINING WATER USAGE CERTIFICATIONS FOR AGRICULTURAL OR HORTICULTURAL PURPOSES

SUBCHAPTER 2. WATER USAGE CERTIFICATION PROCEDURE

7:20A-2.20 Appeal procedure

(a) The applicant, the Department or any person alleging to be adversely affected by the decision on a water usage certification application shall have a right to a hearing thereon if requested in writing within 20 days of receipt of a copy of the decision. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** Any person or entity alleging to be adversely affected by the decision on a water usage certification shall be required to specify in writing and in detail the basis for its appeal.

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

CHAPTER 22
CONSTRUCTION GRANTS FOR WASTEWATER TREATMENT FACILITIES

SUBCHAPTER 2. MATCHING GRANT PROCEDURES AND REQUIREMENTS

7:22-2.36 Administrative hearings

(a) (No change.)

(b) A recipient may request a hearing within 15 days of a decision by the Director. Where required by law, the Division shall grant an administrative hearing based upon such request and file the matter with the Office of Administrative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14D-1 et seq., N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq., promulgated pursuant to those acts. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

SUBCHAPTER 3. WASTEWATER TREATMENT FUND PROCEDURES AND REQUIREMENTS

7:22-3.45 Administrative hearings

(a) (No change.)

(b) A recipient may request a hearing within 15 days of a decision by the Director. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** The request for an administrative hearing shall specify in detail the basis for the appeal.

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

SUBCHAPTER 4. WASTEWATER TREATMENT TRUST PROCEDURES AND REQUIREMENTS

7:22-4.45 Administrative hearings

(a) (No change.)

(b) A recipient may request a hearing within 15 days of a decision by the Trust. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** The request for an administrative hearing shall specify in detail the basis for the appeal.

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

SUBCHAPTER 9. AWARDING CONTRACTS FOR STATE ASSISTED PROJECTS TO SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

7:22-9.15 Adjudicatory hearings

(a) (No change.)

(b) A local government unit may request an administrative hearing within 20 days of receipt of a decision by the Department and/or the Trust. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** The request for an administrative hearing shall specify in detail the basis for the appeal. Administrative hearings shall be conducted in accordance with the requirements 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.

(c) (No change.)

CHAPTER 23
FLOOD CONTROL BOND GRANTS

SUBCHAPTER 2. GRANT PROCEDURES AND REQUIREMENTS

7:23-2.35 Administrative hearings

(a) (No change.)

(b) A grantee may request a hearing within 15 days of a decision by the Commissioner. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** Where [requested] **required** by law the Department shall grant a hearing based upon such request.

(c) (No change.)

CHAPTER 24
DAM RESTORATION GRANT REGULATIONS

SUBCHAPTER 2. GRANT PROCEDURES AND REQUIREMENTS

7:24-2.35 Administrative hearings

(a) (No change.)

(b) A grantee may request **a hearing** within 15 days of a decision by the Commissioner. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** Where required by law the Department shall grant a hearing based upon such request.

(c) (No change.)

CHAPTER 25
DIVISION OF FISH, GAME AND WILDLIFE

SUBCHAPTER 4. ENDANGERED, NONGAME AND EXOTIC WILDLIFE

7:25-4.12 Notice of a denial of permit, procedure, review, time limitations, hearing

(a) (No change.)

(b) Any such person may **request a hearing for a review of such determination within 30 days from the date of issuance of the denial**, pursuant to the applicable provisions of the Administrative Procedure Act[, within 30 days from the date of issuance of the denial, request a hearing for a review of such determination]. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

(c) (No change.)

7:25-4.14 Requirements for possession of endangered wildlife species

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

(f) The [department] **Department** may suspend the permit described in (a) above for up to two years upon the violation of any permit condition or any regulations appearing at N.J.A.C. 7:25-4. The [department] **Department** may revoke the permit described in (a) above upon finding in any five-year period two or more violations of any permit condition(s) or any regulations appearing at N.J.A.C. 7:25-4. No permit shall be issued to the violator within two years from the date of the second violation, or within three years from the date of the third or subsequent violation.,

1. The violator may request a suspension or revocation hearing, 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[-1 et seq.]. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

2. (No change.)

SUBCHAPTER 10. POSSESSION, PROPAGATION, LIBERATION, SALE AND IMPORTATION OF GAME ANIMALS AND GAME BIRDS

7:25-10.12 Denial, suspension, revocation, and hearings

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

(c) The recipient of the notice of intent may request a contested case hearing 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, by filing a written request [to] **with** the [department] **Department** therefor within 20 days from the receipt of the notice of intent described above at (b). **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

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

SUBCHAPTER 12. SURF CLAMS

7:25-12.20 Hearings

(a) Except as provided in (b) below, prior to the suspension or revocation of any license, the licensee has the right to a hearing, upon the licensee's request to the Department. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B and 52:14F, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) (No change.)

CHAPTER 26
DIVISION OF WASTE MANAGEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

7:26-1.7 Exemption from SWF permitting

(a) (No change.)

(b) The owner or operator of any facility or operation of a class exempted pursuant to N.J.A.C. 7:26-1.7 shall comply with all conditions set forth in its certificate of authority to operate. Noncompliance with a certificate of authority to operate shall subject the holder to penalty pursuant to N.J.S.A. 13:1E-9 and/or suspension or revocation of authority to operate.

1. The owner or operator of a facility for which authority to operate has been revoked or suspended shall be afforded the opportunity [of] **for** a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., subsequent to the revocation or suspension. **The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, De-**

partment of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.

2. (No change.)

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

SUBCHAPTER 2. DISPOSAL

7:26-2.4 Application procedures for a solid waste facility permit

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

(g) The procedures for Department review and approval or denial of a SWF permit application shall be in accordance with the following:

1.-21. (No change.)

22. Within 20 calendar days of receipt of the Department's decision, the applicant may submit a written request to the Department for an adjudicatory hearing to contest any aspect of the Department's decision.

i.-ii. (No change.)

iii. The Department may base a denial of a request for an adjudicatory hearing on the failure of the applicant to have raised the issue during the public comment period; [and]

iv. The request for an adjudicatory hearing shall state the applicant's factual position on each question alleged to be at issue, its relevance to the permit decision, specific reference to contested permit conditions as well as suggested revised or alternative permit conditions and an estimate of the amount of hearing time necessary to adjudicate each factual issue. Supporting documentation shall be identified in the administrative record and shall be properly referenced[.]; **and**

vi. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.

23.-25. (No change.)

SUBCHAPTER 5. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:26-5.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department, **at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402**:

1.-6. (No change.)

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

SUBCHAPTER 7. LABELING, RECORDS AND TRANSPORTATION REQUIREMENTS

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8 are as follows:

1.-11. (No change.)

12. If the Department denies the approval required by (a)11[,] **et seq.** above, the generator may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 **et seq.** and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The hearing request shall be in writing and shall be filed with the Department within 10 calendar days of receipt of the denial. **The hearing request shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.**

13. (No change.)

(b)-(j) (No change.)

SUBCHAPTER 8. HAZARDOUS WASTE CRITERIA, IDENTIFICATION AND LISTING

7:26-8.7 Procedures for decision-making in generator; specific hazardous waste determination

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

(c) Within 30 days following the receipt of a hazard determination, the generator may submit a request to the Department for an adjudicatory hearing on the factual matters.

1. (No change.)

2. Such requests shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.

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

SUBCHAPTER 14. RESOURCE RECOVERY GRANTS OR LOANS

7:26-14.35 Administrative hearing

(a) (No change.)

(b) An awardee may request a hearing within 15 days of a decision by the Commissioner. **Such hearing requests shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** Where required by law, the Department shall grant a hearing based upon such request.

(c) (No change.)

SUBCHAPTER 14A. RESOURCE RECOVERY AND SOLID WASTE DISPOSAL FACILITY LOANS

7:26-14A.25 Administrative hearing

(a) (No change.)

(b) A borrower may request an administrative hearing within 15 days of a written decision by the Department. **Such hearing requests shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** The borrower shall be required to specify in writing and in detail the basis for its appeal.

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

SUBCHAPTER 16. SOLID AND HAZARDOUS WASTE LICENSING AND REVOCATION DISCLOSURE—STATEMENTS AND INTEGRITY REVIEW

7:26-16.10 Administrative hearing; [Requests] **requests**

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

(c) Requests for hearings shall be sent to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.

CHAPTER 27
BUREAU OF AIR POLLUTION CONTROL

SUBCHAPTER 8. PERMITS AND CERTIFICATES

7:27-8.12 Request for an adjudicatory hearing

(a) (No change.)

(b) Requests for a contested case hearing shall be submitted to:

[Assistant Director
Environmental Enforcement Element
Division of Environmental Quality
Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027]

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street

CN 402
Trenton, New Jersey 08625-0402
(c)-(e) (No change.)

CHAPTER 27A
AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:27A-3.4 Procedures to request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department, **at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402**:
1.-6. (No change.)
(b)-(d) (No change.)

CHAPTER 28
BUREAU OF RADIATION PROTECTION

SUBCHAPTER 4. LICENSING OF NATURALLY OCCURRING AND ACCELERATOR PRODUCED RADIOACTIVE MATERIALS

7:28-4.18 Requests for an adjudicatory hearing
(a)-(b) (No change.)
(c) All requests for a contested case hearing shall be submitted in writing to the Department [and], **at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402. The request** shall contain:
1.-4. (No change.)
(d) (No change.)

SUBCHAPTER 19. MEDICAL EXPOSURE TO IONIZING RADIATION BY RADIOLOGIC TECHNOLOGISTS

7:28-19.9 Program approval
(a)-(h) (No change.)
(i) Accreditation and/or Provisional accreditation may be withheld or withdrawn, for failure to correct specified deficiencies and where the Department has determined that the institution is engaging in practices that are not consistent with acceptable standards for the operation of an educational institution. The sponsoring institution shall be notified in writing of the violation or violations resulting in withholding of accreditation or of the intent to withdraw accreditation and may, within 30 days of said notification, petition the Department in writing for a review thereof, and shall thereupon be given the opportunity to be heard on the violations by the Commissioner of Environmental Protection or shall be referred to the Office of Administrative Law. **The petition shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** Hearings referred to the Office of Administrative Law shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1[-1 et seq.]).
(j)-(q) (No change.)

CHAPTER 30
PESTICIDE CONTROL CODE

SUBCHAPTER 5. PESTICIDE OPERATORS

7:30-5.8 Requirement for pesticide operator certification and registration as pesticide applicators
(a)-(b) (No change.)
(c) Failure to comply with (a) and (b) above will result in the pesticide operator registration being immediately suspended pending the outcome of a hearing which shall be granted the registrant upon request. **The request shall be sent to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** Such hearing shall be scheduled on an expedited basis and shall be conducted pursuant to 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[-1 et seq.].

CHAPTER 31
TOXIC CATASTROPHE PREVENTION ACT PROGRAM

SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:31-6.3 Procedures to request an adjudicatory hearing
(a)-(b) (No change.)
(c) **A request for an adjudicatory hearing shall be sent to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.** A hearing request not received within 20 days after receipt by the registrant or violator of the notice of a civil administrative penalty assessment and/or an administrative order and/or a written notification from the Department withholding approval of a new EHS facility or rejecting a modification and/or a certified letter denying a confidentiality claim or denying a petition to withhold privileged trade secret or security information, shall be denied by the Department.
(d)-(f) (No change.)

HEALTH

(a)

DIVISION OF AIDS PREVENTION AND CONTROL

Acquired Immunodeficiency Syndrome

Readoption with Amendments: N.J.A.C. 8:61

Proposed: August 5, 1991 at 23 N.J.R. 2245(b).
Adopted: October 4, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.
Filed: October 4, 1991 as R.1991 d.538, **without change.**

Authority: N.J.S.A. 26:1A-15.

Effective Date: October 4, 1991, Readoption;
November 4, 1991, Amendments.
Expiration Date: October 4, 1996.

Summary of Public Comments and Agency Responses:
The proposed readoption with amendments to N.J.A.C. 8:61 appeared in the August 5, 1991 New Jersey Register at 23 N.J.R. 2245(b). The comment period was scheduled to end on September 4, 1991, but, because no comments were initially received, the comment period was extended to October 3, 1991 (see 23 N.J.R. 2882(e)). The Department issued a press release and sent letters of notification concerning the extension of the comment period. The letters of notification were sent to all District Superintendents of Schools, all County Superintendents of Schools, the Pediatric AIDS Network, the New Jersey School Boards Association and the New Jersey Education Association. Copies of the written comments may be reviewed by the public at the office of the Administrative Practice Officer, New Jersey Department of Health, Health and Agriculture Building, Trenton, New Jersey.

The following submitted written comments:
The Children's Hospital AIDS program, represented by Mary Boland.
New Jersey School Boards Association, represented by Dr. Robert E. Boose.
St. Joseph's Hospital and Medical Center, represented by Joan Everson.
Salem County Vocational Technical Schools, Division of Special Needs, represented by R. J. Bielicki.
Governor Livingston Regional High School, represented by Benjamin Jones.
University of Medicine and Dentistry of New Jersey, Robert Wood Johnson
Medical School, Central New Jersey Pediatric AIDS Program, represented by Robin C. Scudder.
Stone Harbor Public School, represented by Eileen Marinakis.

The written comments and the Department responses follow:

COMMENT: The Children's Hospital AIDS Program supported the proposed amendments to the readoption of N.J.A.C. 8:61. The Hospital believed that the proposed amendments are designed to protect the confidentiality of HIV-infected children and their families. In addition, the amendments would allow the HIV-infected children who might otherwise be denied admission to attend school. The Hospital also believed that the proposed amendments are based on accurate and current knowledge of HIV/AIDS disease.

RESPONSE: The Department appreciates the Children's Hospital support of the proposed amendments to the readoption of N.J.A.C. 8:61.

COMMENT: The New Jersey School Boards Association offered no specific comments to the proposed amendments to this chapter. The Association believed that the amendments reflect the present State and Federal laws guiding the public on HIV/AIDS issues, and would advise its members to comply with the proposed rules when they are readopted.

RESPONSE: The Department thanks the New Jersey School Boards Association for responding to the proposed amendments.

COMMENT: St. Joseph's Hospital and Medical Center supported the proposed amendments to the readoption of N.J.A.C. 8:61. The Hospital believed that the quality of life for HIV-infected children has improved in recent years due to the availability of treatment and comprehensive care. The Hospital contended that these children can lead normal lives and attend school. Lack of education for the public regarding infection control has become a problem for people caring for HIV-infected children.

RESPONSE: The Department appreciates the support from St. Joseph's Hospital for the proposed amendments to this regulation. The Department is aware that much more education and public awareness in preventive measures are needed to lessen public fear of this disease. The Department is undertaking many projects to educate as many people as possible about the disease.

COMMENT: Salem County Vocational Technical Schools, Division of Special Needs, supported the proposed readoption with reservations. The Schools agreed with the proposed readoption only if the intent of the amended rules is to protect HIV-infected children or adults from being excluded from school based on inappropriate reasons. The Schools sought clarification regarding the conditions for HIV transmission. The Schools raised the following questions:

1. Can HIV infection be transmitted through any type of body fluid?
2. Once an individual has an HIV infection, is such an infection curable or is the condition ultimately fatal?
3. How can the HIV virus be transmitted?
4. Is the number of cases of HIV-infected persons increasing or decreasing?
5. If it is assumed that body fluids no longer transmit HIV infection, why does the new regulation require policies and procedures for sanitation and hygiene when handling body fluids?

The School also asked whether an HIV-infected student can be treated as any other student under N.J.S.A. 18A:40-8, and excluded if their presence is detrimental to health and cleanliness.

RESPONSE: The response to the above questions is as follows:

1. HIV infection is transmitted by blood, semen, and vaginal fluid. It is not considered to be transmitted by urine, feces, tears, or saliva.
2. At the present time, there is no cure for HIV infection. HIV infection is thought to eventually progress to AIDS in most infected persons, and, with current therapy, eventually progress to fatality. However, many years can elapse between the time of initial HIV infection and the progression to AIDS and death.
3. HIV is transmitted through sexual intercourse; from blood from an infected person, usually by injection of such blood; and from mother to infant during pregnancy, parturition, or, rarely, post-partum through breast milk.
4. Investigations by the Department indicate that the prevalence of HIV infection in New Jersey appears to be neither increasing or decreasing significantly over the last three years.
5. The answers above indicate the certain body fluids are not considered to transmit HIV, but that blood is considered to pose some risk of HIV transmission. In addition, blood and other body fluids can result in the transmission of other infectious agents. It is for this reason that procedures for handling blood and body fluids should be in place in all schools. This requirement is not new, but only detailed more precisely in the readoption.

The readoption stated that HIV-infected pupils cannot be excluded from schools solely because of their HIV-infection. HIV-infected pupils should be treated as other pupils in the matter of exclusion from school, whether under N.J.S.A. 18A:40-8 or other relevant laws and rules. However, the presence of HIV-infected pupils is not considered detrimental to health and cleanliness, so that N.J.S.A. 18A:40-8 is not directly relevant to these rules.

COMMENT: The Governor Livingston Regional High School, representing school nurses and their respective school physicians of the Union County Regional High School District No. 1, suggested an amendment to the proposed readoption stating "that any student that is HIV positive must notify the school nurse and/or the school physician." The School District believed that "this would enable the school nurse to comfortably deal with the physical and emotional aspect of the disease."

RESPONSE: The Department assumes that the School District meant that notification should be given by either the HIV-infected pupil's parent or physician, as it would be inappropriate for a pupil to notify the school nurse or school physician that the pupil is infected with HIV.

The Department carefully considered the issue of whether or not there should be special notification of an appropriate person at school that a pupil is HIV-infected. The Department felt that the HIV-infected pupil did not pose a risk of HIV transmission in school, so that special notification was not necessary. All schools require a medical form on each pupil to be given to the school nurse. If these forms are completed honestly, then the school nurse will be informed that a pupil is HIV-infected.

COMMENT: The University of Medicine and Dentistry of New Jersey, Robert Wood Johnson Medical School, supported the proposed amendments to the rules. The University believed that the changes were based on the scientific knowledge and understanding of HIV/AIDS disease. However, the University was concerned of a possible conflict that might occur with N.J.S.A. 26:5C-5 et seq. and completion of school medical forms. The University is sometimes requested to complete school medical forms which might include information on the HIV status of a child. If such request is made by a child's school, the Medical School is obligated to disclose complete information on the child's health status or may be faced with an "act of omission" if the full medical condition of the child is not disclosed. On the other hand, the above statute requires consent of the parent or guardian of the child before an HIV-infected child's health status could be disclosed.

RESPONSE: The Department appreciates the support from the University of Medicine and Dentistry of New Jersey, Robert Wood Johnson Medical School. The response to the question raised is partially covered in the response to the comments from Governor Livingston High School above. Since a school form is required to be submitted, the Department believes that a physician can honestly complete the form on an HIV-infected child. However, confidentiality issues related to N.J.S.A. 26:5C-5 et seq. have not yet undergone interpretations, so that the University might need to seek legal advice if it believes that there is a conflict between the law and completing a school medical form without parental consent. These rules do not directly involve the school medical form.

COMMENT: The Stone Harbor Public School opposed the proposed amendments to the readoption. The school believed that an HIV-infected child who is "unusually physically aggressive with a documented history of biting or harming others" should not be admitted to school. The school stated that there is an abundance of scientific evidence that instruments, including medical and street weapons, can transmit HIV. The school stated that at this time there is strong sentiment for HIV testing of health care professionals. It is then inconsistent and irresponsible to permit attendance of an HIV-infected, physically aggressive student who would jeopardize the well-being of others in the school setting.

RESPONSE: The Department disagrees with the Stone Harbor Public School. The Department proposed the amendments to the readoption

after studying the related medical literature and consultation with experts in the field. There is no scientific evidence of HIV transmission in a school setting. There are methods in a school system for handling an unusually physically aggressive pupil, irrespective of the HIV infection status of the pupil. The Department does not consider the issue of HIV testing of health care workers as relevant to the school setting.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:61.

Full text of the adopted amendment follows.

8:61-1.1 Attendance at school by pupils or adults infected by Human Immnodeficiency Virus (HIV)

(a) (No change.)

(b) Pupils with HIV infection shall not be excluded from attending school for reason of the HIV infection. Exclusion of HIV-infected pupils can only be for reasons that would lead to exclusion of any other pupil.

Recodify (d) as (c) (No change in text.)

(d) No pupil or adult shall be excluded from school solely by virtue of the fact of living with or being related to an HIV-infected individual.

Recodify (i) as (e) (No change in text.)

(f) All schools and day care facilities, regardless of whether pupils or adults with HIV are present, shall adopt routine procedures for handling blood and body fluids. District boards of education shall develop written policies and procedures for sanitation and hygiene when handling body fluids and shall make available training and appropriate supplies to all school personnel, in conformance with N.J.A.C. 6:29-2.5.

(g) It is not necessary that anyone in the school be specially notified that an HIV-infected individual is registered to attend school or is an employee of the school. Should school officials receive notification of the presence of an HIV-infected individual, records containing identifying information regarding the HIV status of the individual must be kept confidential as required by N.J.S.A. 26:5C-5 et seq. Such information can be shared, only with the written consent of the pupil's parent or guardian, with those who need to know the status to determine the educational program for the pupil.

(a)

DIVISION OF AIDS PREVENTION AND CONTROL

Eligibility Criteria to Participate in the AIDS Drug Distribution Program

Adopted Amendments: N.J.A.C. 8:61-2.1, 2.2, 2.3 and 2.6

Adopted New Rule: N.J.A.C. 8:61-2.6

Proposed: August 5, 1991 at 23 N.J.R. 2247(a).
Adopted: October 4, 1991 by Francis J. Dunston, M.D., M.P.H., Commissioner, Department of Health.
Filed: October 4, 1991 as R.1991 d.539, **without change.**

Authority: N.J.S.A. 26:1A-15.

Effective Date: November 4, 1991.
Expiration Date: October 4, 1996.

Summary of Public Comments and Agency Responses:

The proposed amendments to N.J.A.C. 8:61 appeared in the August 5, 1991 New Jersey Register at 23 N.J.R. 2247(a). The comment period was scheduled to end on September 4, 1991, but because no comments were initially received, the comment period was extended to October 3, 1991 (see 23 N.J.R. 2883(a)). The Department issued a press release and sent letters of notification concerning the extension of the comment period. The letters of notification were sent to all Division grantees and all members of the Advisory Committee of the State AIDS Plan. Copies of the written comments may be reviewed by the public at the Office of the Administrative Practice Officer, New Jersey Department of Health, Health and Agriculture Building, Trenton, New Jersey.

The following submitted written comments: Raritan Bay Medical Center, represented by Sandra Nilsson. AIDS Resource Foundation for Children, represented by Jacqueline McReynolds.

COMMENT: Raritan Bay Medical Center offered no specific comments to the proposed amendments to this subchapter. The Medical Center made a suggestion to include a specific medication in the ADDP formulary.

RESPONSE: The proposed amendments allow for the Division of AIDS Prevention and Control to administratively determine the medications to be included in the ADDP formulary. It is beyond the scope of the proposed amendments to discuss the merits of a particular medication and its appropriateness for inclusion in the ADDP formulary.

COMMENT: The AIDS Resource Foundation for Children supports the proposed amendments to this subchapter. The Foundation believes the amendments are necessary and appropriate and will allow the program to be managed effectively.

RESPONSE: The Department agrees with the Foundation.

Full text of the adoption follows.

SUBCHAPTER 2. ELIGIBILITY CRITERIA TO PARTICIPATE IN THE AIDS DRUG DISTRIBUTION PROGRAM

8:61-2.1 Purpose; scope

The purpose of this subchapter is to describe the clinical and financial criteria which individuals must meet in order to become enrolled in the AIDS Drug Distribution Program.

8:61-2.2 Definitions

The following term, as used in this subchapter, shall have the following meaning:

"AIDS Drug Distribution Program" means the program by which eligible individuals will receive designated medications approved by the Federal Food and Drug Administration which have been recognized as either prolonging or enhancing the life of individuals with HIV infection from funds appropriated to the State from the Federal government.

1. The medications designated for coverage will be determined administratively within the Division of AIDS Prevention and Control based on considerations of cost, efficacy and frequency of use.

8:61-2.3 Clinical eligibility

To be considered clinically eligible to participate in the AIDS Drug Distribution Program, an individual must meet the clinical criteria established by the manufacturer of the drug, as determined by a physician.

8:61-2.6 Third party coverage

Individuals who are eligible to receive the covered medications from entitlement programs or third party payors are not eligible to receive benefits under this program.

8:61-2.7 Application process

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

(c) If approved for participation in the Program, the Department or its designee will notify the individual, his or her physician, and the pharmacy from which the prescription will be filled.

(b)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: September 3, 1991 at 23 N.J.R. 2610(a).
Adopted: October 9, 1991 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: October 11, 1991 as R.1991 d.558, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: November 4, 1991.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: Regarding "propoxyphene caps/APAP 50/325, 100/650," Mutual Pharmaceutical Company, its manufacturer, pointed out that the proposal should state propoxyphene naps/APAP 50/325, 100/650 tabs. (The proposal has a typographical error.)

RESPONSE: The Council agreed and will consider this product under its correct name, "propoxyphene naps/APAP 50/325, 100/650" tablets. However, this product was deferred pending FDA approval.

COMMENT: In opposition to Mutual Pharmaceutical Company's and Geneva Pharmaceutical's (formerly Cord Laboratories) tolmetin, McNeil Pharmaceutical stated that no generic versions of Tolectin have received FDA approval.

RESPONSE: The Council agreed and deferred taking action on these products pending FDA approval.

COMMENT: In opposition to Warner-Chilcott's and Geneva Pharmaceutical's (formerly Cord Laboratories) atenolol, ICI Pharmaceutical Group, manufacturer of the brand Tenormin, stated that although the patent for the use of atenolol to treat angina has expired, a patent does currently exist for the use of atenolol to treat hypertension. ICI requested that a note be included in the Formulary that generic atenolol is only indicated for angina in order to avoid patent violation. ICI contended that the addition of atenolol to the Formulary without clarification of approved indication would induce patent infringement and thereby violate Federal law, 35 U.S.C. 271(b).

ICI also requested that the Council defer action on Geneva's atenolol product pending FDA approval.

RESPONSE: The Council denied ICI's request and approved Geneva's atenolol. The Council noted that its province is to consider therapeutics and bioequivalency in evaluating and accepting drugs into the Formulary. In addition, the Council does not consider matters of patents nor indications in reviewing application for the inclusion of drug products in the Formulary. The Council verified that Geneva received an AB rating from the FDA.

COMMENT: In opposition to Warner-Chilcott's atenolol product, ICI requested that it should not be considered until bioequivalency data is submitted and made available to interested parties for analysis and comment.

RESPONSE: The Council agreed and Warner-Chilcott's atenolol product was deferred.

COMMENT: In support of its atenolol product, Geneva Pharmaceuticals requested that it be placed in the Formulary without any restrictions. Geneva noted that the Council has established a precedent not to include indication restrictions in the Formulary.

Geneva provided correspondence from the Hon. Henry A. Waxman, Chairman of the Subcommittee on Health and Environment, and Thomas Scarlett, Chief Counsel to the FDA, which support the substitution of a generic drug found by the FDA to be therapeutically equivalent to the brand name drug even if the generic were not approved for an indication approved for the brand name.

RESPONSE: The Council agreed and approved Geneva's atenolol product based on its bioequivalency data.

COMMENT: In opposition to Danbury Pharmaceuticals' haloperidol product, Johnson & Johnson requested the Council to defer action until the biodata could be retrieved from the Department of Health's record storage.

RESPONSE: The Council denied Johnson & Johnson's request for deferral since the biodata has been available for three years for their review and therefore further delay was not warranted. The Council noted that the Danbury biodata was not out of the ordinary from the data presented by several other companies that have received approval for haloperidol products. The Council approved Danbury's haloperidol 10 & 20mg tablets.

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 24, 1991. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Two persons attended the hearing. Six comments were received 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 futher study.

A record of the public hearing may be reviewed or obtained by contacting:

Eileen O'Donnell, Administrative Practice Officer
Department of Health
CN 360
Trenton, N.J. 08625

The following products and their manufacturers were **adopted**:

Albuterol tabs 2, 4 mg	**Mylan**
Atenolol tabs 50, 100 mg	**IPR**
Atenolol tabs 25, 50, 100 mg	**Cord**
Atropine ophth soln 1%	**Adv. Remedies**
Clindamycin Caps 75, 150 mg	**Danbury**
Cyclobenzaprine HCL tabs 10 mg	**Mylan**
Entex liquid substitute	**Tri-Med**
Fenoprofen caps 200, 300 mg	**Danbury**
Flurazepam caps 15, 30 mg	**Cord**
Haloperidol tabs 10, 20 mg	**Danbury**
Hydrocortisone suppos. 25 mg	**G&W**
Hydroxyzine pamoate caps 25, 50, 100 mg	**Cord**
Iodinated glycerol tabs 30 mg	**Anabolic**
Phenylephrine/PPA/Guaifenesin liquid	**LuChem**
Pilocarpine ophth soln 1%, 2%, 4%	**Adv. Remedies**
Rondec drops substitute	**Tri-Med**
Rynatan Ped. susp substitute	**Duramed**
Sodium fluoride 0.275 mg/drop	**Hi-Tech**
Sodium fluoride drops 0.275 mg/drop	**Tri-Med**
Sodium fluoride tabs 1.1, 2.2 mg	**Able**
Sulindac tabs 150, 200 mg	**Cord**
Theophylline ER tabs 100, 200 mg	**Inwood**
Trazodone tabs 50, 100 mg	**Mylan**

The following products and their manufacturers were **not adopted**:

Aspirin ER tabs 800 mg	Able
Atropine ophth oint 1%	Adv. Remedies
Lincomycin inj 300 mg/ml	Steris
Methenamine mandelate 1.0 gm 1000's tabs	Able
Methenamine mandelate tabs 0.5, 1.0 gm	Able

The following drugs were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Purepac
Amoxapine tabs 25, 50, 100, 150 mg	Cord
Atenolol tabs 50, 100 mg	W-C
Carisoprodol tabs 350 mg	Mutual
Cephalexin 250, 500 mg	Yoshitomi
Chlorthalidone tabs 25, 50, 100 mg	Zenith
Clemastine fumarate tabs 1.34, 2.68 mg	Lemmon
Cyclobenzaprine tabs 10 mg	Cord
Ergoloid mesylates tabs 1 mg	Mutual
Ethinyl estradiol .035, Norethindrone .5 mg	Syntex
Ibuprofen tabs 200, 400, 600, 800 mg	Invamed
Loperamide HCL caps 2 mg	Lemmon
Methocarbamol tabs 500, 750 mg	Mutual
Minoxidil tabs 2.5, 10 mg	Mutual
Piroxicam caps 10, 20 mg	Mutual
Propoxyphene naps/APAP 50/325, 100/650	Mutual
Stuartnatal 1+1 substitute	J. Stevens
Sulindac tabs 150, 200 mg	Purepac
Tolmetin caps 400 mg	Cord
Tolmetin tabs 200 mg and caps 400 mg	Mutual
Trazondone tabs 50, 100, 150 mg	Mutual
Triamterene/HCTZ tabs 37.5/25	Cord
Verapamil tabs 40 mg	Cord
Verapamil tabs 40 mg	Purepac

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: May 20, 1991 at 23 N.J.R. 1509(a).
Adopted: October 9, 1991 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: October 11, 1991 as R.1991 d.559, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: November 4, 1991.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: Regarding desoximetasone cream by Taro Pharmaceuticals, Ms. S. Krich, representing Hoechst-Roussel Pharmaceuticals manufacturer of the brand Topicort, expressed opposition to the Taro product based on: (1) the Taro product may separate at room temperature, (2) the Taro emulsion did separate at 40 degrees C., (3) the Taro product has crystals which may decrease its bioavailability, (4) the Taro vasoconstrictor study used occlusion, which may decrease sensitivity, (5) the Taro study could not distinguish desoximetasone from betamethasone, (6) the FDA has not established standards for assays of topical products, and (7) Hoechst has a good record on recalls.

RESPONSE: The Council deferred action to allow Taro to submit further clarification concerning its bioequivalency data.

COMMENT: In support of its product, desoximetasone cream, Taro Pharmaceuticals requested that the Council summarily reject Hoechst-Roussel Pharmaceuticals' claims that the Taro product is not equivalent to the brand, Topicort. Taro claimed: (a) Hoechst's statements are conjecture, (2) the Taro product meets applicable standards, both USP and FDA, (3) appearance differences are not clinically relevant, (4) accelerated stability studies support Taro's equivalency, (5) even Topicort separates over time, (6) use of occlusion does not invalidate the Taro vasoconstrictor study, (7) the Taro product was not compared to betamethasone, (8) the Hoechst statistical analysis supports Taro's claims, and (9) any Taro recalls were voluntary and trivial and not for desoximetasone cream.

RESPONSE: The Council deferred action to allow Taro to submit further clarification concerning its bioequivalency data.

COMMENT: In opposition to Amide's Natalins RX substitute, Bristol-Myers Squibb commented that disintegration/dissolution data was not submitted. Bristol noted that the brand Natalins RX has a special core construction and recent reformulation.

RESPONSE: The Council did not take action on this product because Amide withdrew its application.

COMMENT: Regarding Amide's Natalins RX substitute, Amide withdrew its application for inclusion in the Formulary.

RESPONSE: No Council action was necessary.

COMMENT: In opposition to Amide's substitute for Stuartnatal 1 + 1, ICI Pharmaceutical Group requested that the Council reject Amide's product until comparative dissolution data, sources of calcium and iron, and comments on biostudies to establish serum iron levels are furnished.

RESPONSE: The Council deferred action on this product to allow Amide to submit formulation information and comparative dissolution/disintegration data.

COMMENT: In opposition to Novopharm's tolmetin, McNeil Pharmaceutical stated that no generic versions of Tolection have received FDA approval.

RESPONSE: The Council deferred taking action on this product pending FDA approval.

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 June 11, 1991. Thomas T. Culkin, Pharm. D., M.P.H., served as hearing officer. Four persons attended the hearing. Six comments were offered, as summarized below. The hearing officer recommended that the decisions made be based upon available biodata, and that in regard to Amide's substitute for Stuartnatal 1 + 1, further data on bioequivalency be supplied. The Council adopted the products specified as "adopted," declined to adopt the products specified as "not adopted," and referred the products identified as "pending" for further study.

A record of the public hearing may be reviewed or obtained by contacting:

Eileen O'Donnell, Administrative Practice Officer
Department of Health
CN 360
Trenton, N.J. 08625

The following products and their manufacturers were **adopted**:

Albuterol tabs 2, 4 mg	**Danbury**
Baclofen tabs 10, 20 mg	**Danbury**
Belladonna alk w/phenobarbital tab	**Rexar**
Berocca tabs substitute	**Copley**
Chlorzoxazone tabs 250 mg	**Amide**
Chlorzoxazone tabs 500 mg	**Danbury**
Erythromycin topical soln 2%	**Clay-Park**
Granulex spray substitute	**ARI**
Hydrocortisone acetate suppos. 25 mg	**Upsher-Smith**
Hydrocortisone cream 1%, 2.5%	**C&M**
Hydrocortisone oint 1%	**C&M**
Iberet-folic 500 substitute	**Amide**
Indomethacin caps 25, 50 mg	**Danbury**
Iodinated glycerol tabs 30 mg	**Copley**
Lorazepam tabs 0.5, 1, 2 mg	**Mutual**
Metaproterenol tabs 10, 20 mg	**Danbury**
Midrin caps substitute	**Amide**
Nucofed expect. substitute	**Barre-Nat'l**
Nucofed ped. expect. substitute	**Barre-Nat'l**
Poly-Vi-Flor/Iron 1 mg substitute	**Amide**
Rondec DM drops substitute	**Hi-Tech**
Rondec DM syrup substitute	**Hi-Tech**
Rynatan Ped. susp substitute	**Hi-Tech**
Rynatuss Ped. susp substitute	**Hi-Tech**
Salsalate tabs 500, 750 mg	**Amide**
Salsalate tabs 500, 750 mg	**PharmBasics**
Sulfanilamide vag. cream 15%	**Clay-Park**
Timolol maleate tabs 5, 10, 20 mg	**Danbury**
Triamterene/HCTZ caps 50/25	**Cord**
Trilisate substitutes 500, 750, 1000 mg	**Able**

The following products and their manufacturers were **not adopted**:

Cyclopentolate ophth soln 1%	Steris
Tropicamide ophth soln 0.5%, 1%	Steris

The following products were **not adopted but are still pending**:

Amiloride/HCTZ tabs 5/50	Danbury
Betamethasone valerate lotion 0.1%	Clay-Park
Clorazepate tabs 3.75, 7.5, 15 mg	Danbury
Cyclandelate caps 200, 400 mg	Amide
Desoximetasone cream 0.05, 0.25%	Taro
Dipyridamole tabs 25, 50, 75 mg	Lederle
Duofilm substitute	C&M
Entex LA tabs substitute	Sidmak
Fenoprofen caps 200, 300 mg, tabs	W-C
Iodinated glycerol soln 50 mg/5 ml	Cenci
Leucovorin tabs 25 mg	W-C
Loperamide caps 2 mg	W-C
Minocycline caps 100 mg	Danbury
Natalins RX tabs substitute	Amide
Propranolol/HCTZ tabs 40/25, 80/25	Danbury
Stuartnatal 1 + 1 tabs substitute	Amide
Sulindac tabs 150, 200 mg	W-C
Temazepam caps 15, 30 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	W-C
Tolmetin sodium caps 400 mg	Novopharm
Tolmetin tabs 200 mg, caps 400 mg	W-C

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: January 22, 1991 at 23 N.J.R. 178(a).
Adopted: October 9, 1991 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: October 11, 1991 as R.1991 d.560, **with portions of the proposal not adopted but still pending.**

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

Effective Date: November 4, 1991.
Expiration Date: February 17, 1994.

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 February 13, 1991. Thomas T. Culkin, Pharm.D., M.P.H., served as hearing officer. Six persons attended the hearing. Five comments were offered, as summarized in a previous Register (see 23 N.J.R. 1670(a)). The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted" and referred the products identified as "pending" for further study.

Summary of Public Comments and Agency Responses:

No comments were received regarding the adopted products.

The following products and their manufacturers were **adopted**:

Albuterol tabs 2, 4 mg	**Watson**
Nifedipine caps 20 mg	**Chase**

The following products were **not adopted but are still pending**:

Benzonatate caps 100 mg	Chase
CDP/Amitriptyline tabs 5/12.5, 10/25	PBI
Carisoprodol 350 mg	Mutual
Chlorzoxazone tabs 250, 500 mg	Ohm
Clemastine fumarate syrup 0.67 mg/5 ml	Lemmon
Clemastine fumarate tabs 1.34, 2.68 mg	Cord
Clofibrate caps 500 mg	Novopharm
Clonidine 0.1, 0.2, 0.3/chlorthal. 15 tabs	Cord
Dipyridamole tabs 25, 50, 75 mg	Purepac
Doxycycline caps 100 mg	Sidmak
Ethosuximide caps 100 mg	Chase
Loperamide caps 2 mg	Cord
Loxapine succ. caps 5, 10, 25, 50 mg	Cord
Methocarbamol tabs 500, 750 mg	Mutual
Minoxidil tabs 2.5, 10 mg	Mutual
Nifedipine caps 10 mg	Novopharm
Propoxyphene naps/APAP 50/325, 100/650	Mutual
Propoxyphene naps/APAP tabs 100/650	LuChem
Sulindac tabs 150, 200 mg	Lemmon
Theophylline CR tabs 450 mg	Sidmak
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Tolmetin tabs 200 mg, caps 400 mg	Mutual
Tolmetin sodium caps 400 mg	Purepac
Trazodone tabs 50, 100, 150 mg	Mutual

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 23 N.J.R. 1670(a), 2136(a) and 2783(a).

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARDS OF ARCHITECTS, PROFESSIONAL ENGINEERS AND LAND SURVEYORS, AND PROFESSIONAL PLANNERS

Certified Landscape Architects

Adopted Amendments: N.J.A.C. 13:27-6.2 through 6.5; 13:40-7.2 through 7.5; 13:41-4.2 through 4.5

Proposed: May 20, 1991 at 23 N.J.R. 1516(a).
Adopted: September 12, 1991 (as to N.J.A.C. 13:27-6.2 through 6.5) by the State Board of Architects, Ann C. Parker, President; September 19, 1991 (as to N.J.A.C. 13:40-7.2 through 7.5) by the State Board of Professional Engineers and Land Surveyors, John DeGrace, President; and September 11, 1991 (as to N.J.A.C. 13:41-4.2 through 4.5) by the State Board of Professional Planners, Shirley Bishop, President.
Filed: October 9, 1991 as R.1991 d.550, **with a substantive change** not requiring additional public notice and comment (see, N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:3-3; 45:8-27 et seq.; 45:14A-4.

Effective Date: November 4, 1991.
Expiration Date: February 20, 1995, N.J.A.C. 13:27;
August 3, 1995, N.J.A.C. 13:40;
July 17, 1995, N.J.A.C. 13:41.

The State Boards of Architects, Professional Engineers and Land Surveyors and Professional Planners afforded all interested parties an opportunity to comment on the proposed rule amendments which would permit certified landscape architects to perform certain tasks relating to site planning. Announcements of the opportunity to respond to the Board appeared in the New Jersey Register on May 20, 1991 at 23 N.J.R. 1516(a). Secondary notice was accomplished by forwarding announcements to the Trenton Times, the Star-Ledger, the Camden Courier Post, the Bergen Record, the Atlantic City Press, and other interested parties and professional associations.

A full record of this opportunity to be heard can be inspected by contacting the Board of Architects, P.O. Box 45001, Newark, New Jersey, 07101.

Summary of Public Comments and Agency Responses:

The following is a list of commenters:
Marica R. Shiffman, PP, CLA
Irving E. Kinney, Jr., PLS, PP
Bernard R. Berson, President, New Jersey Society of Professional Engineers
Albert N. Faraldi, President, New Jersey Society of Professional Land Surveyors
Constance A. Webster, LA
Daniel Dobromilsky, LA
Catherine M. Burkett, LA
Luciano Miceli, LA
John P. Williams, LA
Bruce Kulik, LA
Mair Roberts, LA
Michael F. Sullivan, LA
Richard L. Miller, LA
Joseph A. Simonetta, Executive Director, New Jersey Society of Professional Land Surveyors
Joseph D. Perello, LA
David R. Troast, LA
Kurt Snyder, LA
Henry F. Arnold, LA
Brian W. Bosenberg, LA
D. Thomas Stearns, LA
John F. Webster, LA
David G. Roberts, PP, LA
Stephen Lederach

John J. McDonough, LA
Jean M. Reince, LA
John Paul Carmen, LA
Thomas E. Tully, PE
F. Robert Perry, LA
Randall J. Brockway, Soil Conservationist
Keller Realty Associates, Inc.
J. Robert Hillier, RA
William C. Burkett, Jr., PLS, PP
John T. Moore, PE, PP
Christopher D. Burkett, LA
G. Christopher Baker, Esq.
David J. Minno, RA, PP
John F. McCarthy, Jr., Esq.
Bryce M. Bennett, LA
Andrew Kinzler, LA
Lawrence J. Tencza, LA
S. Lawrence Bencze, LA
Glenn K. Brackmann, PE
Robert J. Wolfe, K.S. Sweet Associates
Russell L. Walters, LA
Raymond H. Bateman, Public Affairs Consultants
Michael J. LoFurno, LA
Peter W. Drake, RA
Peter J. Segal, LA
David H. Knights, Princeton Forrestal Center
Michael K. Mueller, PP
Michael G. LaMelza, President, River View Executive Park, Inc.
George A. Ritter, LA
Lawrence S. Butynski, LA
Janet Garwood, LA
Carol L. Franklin, LA
Peter M. Mahony, LA
G. Barry Esslinger, LA
David N. Zelig, LA
Cecil Baker, RA
Bruce John Davies, President, New Jersey Chapter, American Society of Landscape Architects
Frank A. Wong, LA
John K. Schneider, II, PE
Joseph M. Petrongolo, LA
Thomas J. Scangarelli, PP
Julie Gandy, Councilwoman, Evesham Twp., Burlington County
Daniel R. Millen, Jr., President, New Jersey Society of Architects
Andrew R. Stockton, LS, PP
Henry E. Sensi, LA
Catherine A. Sokol, LA
Michael Kaneletz, PE
Henry A. Puzio, RA
C. DiTomasso, RA
Robert Zaccone, RA
Samuel J. Surtees, Director, Community Development, West Winsdor Township
Samir K. Ohan, PE
Anna Cheng Young, LA
Roger D. Schlicht, PE
Michael Simone, PE
James J. Kennedy, PE
Gerard J. Rolling, PE
Clark E. Tuttle, Jr., PE
Mary Ann Kotlarich, LA
Wells, Larsen, Appel, Landscape Architects
James M. Burke, LA
Bradford N. Erney, E.D.A. Associates, P.A.
J. Robertson Cox, RA
Kenneth J. Field, LA
Richard E. Stockton, LS, PP

During the 30 day comment period, 88 letters were received regarding this proposal to permit certified landscape architects ("CLAs") to perform certain site planning tasks now restricted to architects, engineers, planners and land surveyers. Eighty commenters, including, among others, 47 landscape architects, 11 engineers, five architects and four planners, stated their support for the proposal. These commenters stated generally that CLAs are well qualified to perform the specified site planning services because their education provides comprehensive training in all facets of land planning. Several commenters stated more specifically that landscape architects bring to the task of site planning a unique variety of environmentally and aesthetically sensitive skills and that permitting CLAs to provide these services will enhance the quality of the environment. Additional comments in support of the proposal included that the rule changes will provide consumers with a broader selection of appropriate professionals; will foster greater inter-professional collaboration; and will put New Jersey on par with adjoining states with regard to the permissible division of responsibility in site planning. These comments are acknowledged by the three boards.

Four commenters expressing support for the proposal raised additional concerns and eight commenters stated they were opposed to the proposed rule changes. Those opposing the amendments were the New Jersey Society of Professional Engineers, the New Jersey Society of Land Surveyors, and the New Jersey Society of Architects, three individual architects and two land surveyors. A summary of the specific issues raised by these commenters as well as the Boards' responses follows:

COMMENT: Several commenters expressed the opinion that CLAs are not qualified to perform site planning tasks which require the application of mathematics. For example, Irving E. Kinney, Jr., P.L.S., P.P. expressed the opinion that CLAs should not be permitted to depict on a site plan the locations of drives, parking layout, pedestrian circulation and the means of ingress and egress because "what sometimes works aesthetically can be incompatible with radial geometry and vehicular circulation." Mr. Kinney stated furthermore that use of the words "general layout" and "general locations" permit a casual approach to dimension and measurements.

RESPONSE: These amendments were initially drafted in order to clarify for licensees the permissible division of site planning responsibility under the Municipal Land Use Act, N.J.S.A. 40:55D et seq. The three Boards intended to permit various design professionals (and, in some instances, others acceptable to the reviewing governmental body), to have input into preliminary, "concept" plans. The Boards believe it would be undesirable and unreasonable to exclude the contributions of these individuals to concept plans, and by these amendments specifically recognize the ability of CLAs to perform certain tasks with regard to concept plans. The Boards stress, however, that a distinction is to be made between preliminary "concept" plans and fiscal plans. In particular, it was and is the intent of the Boards that, pursuant to N.J.A.C. 13:27-6.3(a), 13:40-7.3(a) and 13:41-4.3(a), final site plans may be prepared only by an architect or an engineer and that, pursuant to N.J.A.C. 13:27-6.4(b), 13:40-7.4(b) and 13:41-4.4(b), final subdivision plans may be prepared only by a land surveyor.

COMMENT: Three commenters, including the New Jersey Society of Professional Engineers and the New Jersey Society of Architects, stated that the proposal is in conflict with the Municipal Land Use Act, which prohibits anyone other than an architect or an engineer to locate on a site plan proposed buildings and their relationship to the site and immediate surroundings. The New Jersey Society of Professional Engineers stated more specifically that subsection (j) of N.J.A.C. 13:27-6.3, 13:40-7.3 and 13:41-4.3, which permits a CLA to prepare the general layout of a preliminary site plan for a multiple building project, is inconsistent with subsection (a) of the same sections, since subsection (a) permits only an architect or an engineer to show the location of proposed buildings. The Society stated it assumed the words "general layout" mean something other than a comprehensive site plan as spelled out in the Municipal Land Use Act.

RESPONSE: These subsections are not inconsistent. The Society is correct that subsection (j) was not intended to refer to a comprehensive site plan or to a preliminary site plan as defined in the Act; rather, this subsection was intended to refer to a concept plan only. In order to clarify this matter, the Boards have determined to substitute the word "conceptual" for the word "preliminary" in subsection (j) so as to avoid confusion with the term "preliminary site plan" as it is used in the Act. The Board reiterates that subsection (j) refers only to concept plans and accordingly is not inconsistent with subsection (a), which refers to final plans.

COMMENT: Several commenters questioned the validity of permitting CLAs to perform services which will eventually have to be finalized by an architect or an engineer, at additional cost to the consumer.

RESPONSE: As stated, the Boards believe it is reasonable to permit the input of various design professionals into concept plans. The Boards trust that the consumer who does not wish to incur the additional expense involved in having an architect or an engineer prepare final plans will

not choose to have concept plans prepared by a design professional who is not authorized to prepare the final plans.

COMMENT: One commenter requested the Boards to amend the rules to require that a landscape plan be presented only by a licensed design professional, and one commenter suggested that only CLAs should be permitted to prepare landscape plans.

RESPONSE: The current rules state that, in addition to licensed design professionals, other persons acceptable to the reviewing governmental body may prepare landscape plans (see N.J.A.C. 13:27-6.3(i), 13:40-7.3(i) and 13:41-4.3(i)). Since the plans referred to here are concept plans only, they may appropriately be prepared by all design professionals as well as other individuals acceptable to the reviewing governmental body. Again, only an architect or an engineer may prepare the final site plan.

COMMENT: Three commenters suggested that CLAs should be permitted to perform additional site planning duties, such as grading and drainage plans.

RESPONSE: This suggestion is beyond the scope of the current proposal and the Boards are not prepared to consider it at this time.

COMMENT: Alfred Kinney suggested that all consulting offices should layer information on a development plan in different colors so that there will be less confusion and a more distinct separation of liability exposure. If this is not possible, then within the site plan the development plans should be broken down into base element plans.

RESPONSE: This suggestion is beyond the scope of the current proposal and the Boards are not prepared to consider it at this time.

COMMENT: The New Jersey Society of Professional Land Surveyors expressed its concern about the transposing of survey data to a site plan. The Society stated that the public can only be protected if the municipality reviews the unabridged report. The suggestion was made to require the person transposing the data to use only a signed and sealed document and to require that a copy of the survey be submitted with the site plan.

RESPONSE: This suggestion is beyond the scope of the current proposal. It is presently being considered by the Boards as a separate issue.

COMMENT: Two commenters stated that CLAs are not accountable to the consumer or to the State Boards for the work they produce and therefore the public will not have the proper recourse in the event of complaints. These commenters suggested that CLAs be licensed in order to bring them under the jurisdiction of the Boards.

RESPONSE: CLAs are, in fact, accountable to the consumer and to the State Board of Architects for the work they produce. P.L. 1983, c. 337 provided for the certification and regulation of landscape architects under the New Jersey Board of Architects and created a Landscape Architect Examination and Evaluation Committee. CLAs are, accordingly, subject to the provisions of the statute and regulations governing the State Board of Architects, N.J.S.A. 45:3-1 et seq. and N.J.A.C. 13:27-1.1 et seq., as well as to the provisions of the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq.

COMMENT: One commenter opined that CLAs will provide site planning services beyond the scope and intent of the rules.

RESPONSE: The Boards do not view this as likely. In any event, CLAs are prohibited by N.J.A.C. 13:27-8.13(c), Rules of Professional Conduct, from signing or sealing any plan or document dealing with subject matter in which there is a lack of competence by virtue of education or experience.

COMMENT: One commenter suggested that the current rules should be updated to conform to current local, State and Federal regulations governing site development.

RESPONSE: The Boards are confident that their rules are consistent with other current site development regulations.

Summary of Changes Made Between Proposal and Adoption:

1. The word "conceptual" has been substituted for the word "preliminary" in subsection (j) of N.J.A.C. 13:27-6.3, 13:40-7.3 and 13:41-4.3, which concerns the general layout of a plan for a multiple building project, The Boards have made this change to clarify that the plans referred to here are concept plans only and not "preliminary site plans" as that term is used in the Municipal Land Use Act. This distinction will further clarify who may prepare the general layout of plans for multiple building projects. Since they are concept plans only, they may appropriately be prepared by design professionals other than architects or engineers.

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

THE FOLLOWING ARE AMENDMENTS TO THE RULES OF THE BOARD OF ARCHITECTS:

13:27-6.2 Depiction of existing conditions on a site plan

(a) (No change.)

(b) Vegetation, general flood plain determination, or general location of utilities, buildings, or structures: By an architect, planner, engineer, land surveyor, certified landscape architect, or other person acceptable to the reviewing governmental body.

13:27-6.3 Preparation of site plan

(a) (No change.)

(b) The locations of drives; parking layout; pedestrian circulation; and means of ingress and egress: By an architect, planner, engineer, or certified landscape architect.

(c)-(h) (No change.)

(i) Landscaping, signs, lighting, screening or other information not specified above: By an architect, planner, engineer, certified landscape architect, or other person acceptable to the reviewing governmental body.

(j) The general layout of a *[preliminary]* ***conceptual*** site plan for a multiple building project, showing the development elements including their relationship to the site and immediate environs: By an architect, planner, engineer, or certified landscape architect.

13:27-6.4 Preparation of a major subdivision plan

(a) The general location of facilities, site improvements, and lot layouts: By an architect, engineer, land surveyor, planner, or certified landscape architect.

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

13:27-6.5 Effect of local ordinances

(a) (No change.)

(b) No municipal or county ordinance, policy or action purporting to define the scope of professional activity of architects, engineers, land surveyors, planners, or certified landscape architects in the preparation of site plans or major subdivisions shall reduce or expand the scope of professional practice recognized by the Boards.

THE FOLLOWING ARE AMENDMENTS TO THE RULES OF THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS:

13:40-7.2 Depiction of existing conditions on a site plan

(a) (No change.)

(b) Vegetation, general flood plain determination, or general location of utilities, buildings, or structures: By an architect, planner, engineer, land surveyor, certified landscape architect, or other person acceptable to the reviewing governmental body.

13:40-7.3 Preparation of site plan

(a) (No change.)

(b) The locations of drives; parking layout; pedestrian circulation; and means of ingress and egress: By an architect, planner, engineer, or certified landscape architect.

(c)-(h) (No change.)

(i) Landscaping, signs, lighting, screening or other information not specified above: By an architect, planner, engineer, certified landscape architect, or other person acceptable to the reviewing governmental body.

(j) The general layout of a *[preliminary]* ***conceptual*** site plan for a multiple building project, showing the development elements including their relationship to the site and immediate environs: By an architect, planner, engineer, or certified landscape architect.

13:40-7.4 Preparation of a major subdivision plan

(a) The general location of facilities, site improvements, and lot layouts: By an architect, engineer, land surveyor, planner, or certified landscape architect.

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

13:40-7.5 Effect of local ordinances
(a) (No change.)
(b) No municipal or county ordinance, policy or action purporting to define the scope of professional activity of architects, engineers, land surveyors, planners, or certified landscape architects in the preparation of site plans or major subdivision shall reduce or expand the scope of professional practice recognized by the boards.

THE FOLLOWING ARE AMENDMENTS TO RULES OF THE BOARD OF PROFESSIONAL PLANNERS:

13:41-4.2 Depiction of existing conditions on a site plan
(a) (No change.)
(b) Vegetation, general flood plain determination, or general location of utilities, buildings, or structures: By an architect, planner, engineer, land surveyor, certified landscape architect, or other person acceptable to the reviewing governmental body.

13:41-4.3 Preparation of site plan
(a) (No change.)
(b) The location of drives; parking layout; pedestrian circulation; and means of ingress and egress: By an architect, planner, engineer or certified landscape architect.
(c)-(h) (No change.)
(i) Landscaping, signs, lighting, screening or other information not specified above: By an architect, planner, engineer, certified landscape architect, or other person acceptable to the reviewing governmental body.
(j) The general layout of a *[preliminary]* ***conceptual*** site plan for a multiple building project, showing the development elements including their relationship to the site and immediate environs: By an architect, engineer, planner or certified landscape architect.

13:41-4.4 Preparation of a major subdivision plan
(a) The general location of facilities, site improvements, and lot layouts: By an architect, engineer, land surveyor, planner or certified landscape architect.
(b)-(c) (No change.)

13:41-4.5 Effects of local ordinances
(a) (No change.)
(b) No municipal or county ordinance, policy or action purporting to define the scope of professional activity of architects, engineers, land surveyors, planners or certified landscape architects in the preparation of site plans or major subdivision shall reduce or expand the scope of professional practice recognized by the boards.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Definitions

Adopted Amendment: N.J.A.C. 13:70-2.1.

Proposed: August 5, 1991 at 23 N.J.R. 2266(a).
Adopted: September 26, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 7, 1991 as R.1991 d.546, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 4, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-2.1 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.
...
"Advance wagers" means any wager placed at least one race in advance of the current race.
...
"Delay period" means the set period of time between the sounding of the bell to signal the end of wagering in each race and the time mutuel machines will not accept cancellations and are completely deactivated for the current race. This delay period can be adjusted at the discretion of the Commission from zero to 20 seconds and is available only for the protection of the mutuel clerks by permitting them to cancel wagers that patrons place and refuse to accept immediately before the beginning of the delay period.
...
"Early bird wagering" means wagering that occurs on races in advance of the normal time racetracks open mutuel machines for their live racing program.

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Cash-Sell System

Adopted Amendment: N.J.A.C. 13:70-29.55

Proposed: August 5, 1991 at 23 N.J.R. 2266(b).
Adopted: September 26, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 7, 1991 as R.1991 d.547, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 4, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-29.55 Cash-sell system
Recodify 3. and 4. as (a) and (b) (No change in text.)

(c)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Cancellations

Adopted New Rule: N.J.A.C. 13:70-29.59

Proposed: August 5, 1991 at 23 N.J.R. 2267(a).
Adopted: September 26, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 7, 1991 as R.1991 d.542, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 4, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-29.59 Cancellations
(a) Cancellations of mutuel tickets are prohibited on wagers purchased on the current race once the patron has left the window on all types of wagers where odds or probable payouts are displayed to the public.
(b) Mutuel clerks shall be permitted to cancel current race mutuel tickets during the delay period provided it is the last transaction before the bell sounds signaling the end of wagering. If it is de-

termined by the Executive Director of the Racing Commission or his or her designee that mutuel clerks are abusing this cancellation privilege, they will be subject to fine and/or suspension.

(c) No cancellation of mutuel tickets is permitted after the delay period.

(d) Cancellation of all advance wagers is permitted up until the race immediately preceding the advance wager becomes official.

(e) Mutuel clerks are permitted to cancel mutuel tickets purchased at self-service terminals provided they are advance wagers or wagers where odds or probable payouts are not displayed to the public.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Expiration of Mutuel Tickets and Vouchers

Adopted New Rule: N.J.A.C. 13:70-29.60

Proposed: August 5, 1991 at 23 N.J.R. 2267(b).
Adopted: September 26, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 7, 1991 as R.1991 d.543, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 4, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-29.60 Expiration of mutuel tickets and vouchers

All mutuel tickets and vouchers shall expire six months and one day from the date of issue (that is, tickets and vouchers purchased on January 1 will expire at the close of business on July 1).

(b)

NEW JERSEY RACING COMMISSION

Harness Rules

Definitions

Adopted Amendment: N.J.A.C. 13:71-4.1

Proposed: August 5, 1991 at 23 N.J.R. 2267(c).
Adopted: September 26, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 7, 1991 as R.1991 d.545, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 4, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-4.1 Definitions

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

...

"Advance wagers" means any wager placed at least one race in advance of the current race.

...

"Delay period" means the set period of time between the sounding of the bell to signal the end of wagering in each race and the time mutuel machines will not accept cancellations and are completely deactivated for the current race. This delay period can be adjusted at the discretion of the Commission from zero to 20 seconds and is available only for the protection of the mutuel clerks by permitting them to cancel wagers that patrons place and refuse to accept immediately before the beginning of the delay period.

...

"Early bird wagering" means wagering that occurs on races in advance of the normal time racetracks open mutuel machines for their live racing program.

(c)

NEW JERSEY RACING COMMISSION

Harness Rules

Expiration of Mutuel Tickets and Vouchers

Adopted New Rule: N.J.A.C. 13:71-27.58

Proposed: August 5, 1991 at 23 N.J.R. 2269(a).
Adopted: September 26, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 7, 1991 as R.1991 d.544, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 4, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-27.58 Expiration of mutuel tickets and vouchers

All mutuel tickets and vouchers shall expire six months and one day from the date of issue (that is, tickets and vouchers purchased on January 1 will expire at the close of business on July 1).

(d)

NEW JERSEY RACING COMMISSION

Harness Rules

Cash-Sell System

Adopted Amendment: N.J.A.C. 13:71-27.52

Proposed: August 5, 1991 at 23 N.J.R. 2268(a).
Adopted: September 26, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 7, 1991 as R.1991 d.540, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 4, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-27.52 Cash-sell system

Recodify 3. and 4. as (a) and (b) (No change in text.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Cancellations

Adopted New Rule: N.J.A.C. 13:71-27.57

Proposed: August 5, 1991 at 23 N.J.R. 2268(b).
Adopted: September 26, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 7, 1991 as R.1991 d.541, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 4, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-27.57 Cancellations

(a) Cancellations of mutuel tickets are prohibited on wagers purchased on the current race once the patron has left the window on all types of wagers where odds or probable payouts are displayed to the public.

(b) Mutuel clerks shall be permitted to cancel current race mutuel tickets during the delay period provided it is the last transaction before the bell sounds signaling the end of wagering. If it is determined by the Executive Director of the Racing Commission or his or her designee that mutuel clerks are abusing this cancellation privilege, they will be subject to fine and/or suspension.

(c) No cancellation of mutuel tickets is permitted after the delay period.

(d) Cancellation of all advance wagers is permitted up until the race immediately preceding the advance wager becomes official.

(e) Mutuel clerks are permitted to cancel mutuel tickets purchased at self-service terminals provided they are advance wagers or wagers where odds or probable payouts are not displayed to the public.

TRANSPORTATION

(b)

DIVISION OF TRANSPORTATION ASSISTANCE BUREAU OF FREIGHT SERVICES

Trucks

102-Inch Standard Trucks; 53-Foot Semitrailers

Adopted Amendments: N.J.A.C. 16:32-3.1 and 3.6

Proposed: August 19, 1991 at 23 N.J.R. 2485(a).
Adopted: September 19, 1991 by Kenneth C. Afferton, Assistant Commissioner (State Transportation Engineer), Department of Transportation, with the concurrence of Superintendent, New Jersey State Police and the Director, Division of Motor Vehicles.
Filed: October 7, 1991 as R.1991 d.548, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:3-84 and P.L. 1991 c.115 (effective April 19, 1991).

Effective Date: November 4, 1991.
Expiration Date: February 8, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from Mr. Thomas E. Vandenberg, General Counsel, Schneider National, Green Bay, Wisconsin; Mr. Bernard A. Brown, Chairman of the Board, National Freight, Inc., Vineland, New Jersey; and Mr. James C. Hardman, Vice President of Administration and General Counsel, Dart Transit Company, Eagan, Minnesota, in support of the proposed rule amendments. The Department thanked Messrs. Vandenberg, Brown, and Hardman for their support.

Full text of the adoption follows:

16:32-3.1 Definitions

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

. . .

"102-inch standard truck" means a truck greater than 96 inches but not greater than 102 inches in width, exclusive of mirrors and other safety devices, and which meets the equipment length requirements as set forth in N.J.S.A. 39:3-84(3) and (4), as amended.

16:32-3.6 Maps

(a) The Department may from time to time, prepare and distribute maps and graphic depictions of the designated through truck network. Any map or graphic depiction so prepared shall not be considered a regulatory description of the designated through truck network superseding or in lieu of the textual descriptions adopted in this chapter.

(b) (No change.)

TREASURY-TAXATION

(c)

DIVISION OF TAXATION

Abatement of Penalty and Interest

Adopted Amendment: N.J.A.C. 18:2-2.7

Proposed: June 17, 1991 at 23 N.J.R. 1899(a).
Adopted: September 28, 1991 by Leslie A. Thompson, Director, Division of Taxation.
Filed: September 30, 1991 as R.1991 d.528, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:50-1.

Effective Date: November 4, 1991.
Expiration Date: September 6, 1993.

Summary of Public Comments and Agency Responses:

Susan A. Feeney, Esq., of McCarter and English, writing for the Taxation Section of the New Jersey State Bar Association, submitted the following comments:

COMMENT: The first sentence in N.J.A.C. 18:2-2.7(b) should be changed to state that an abatement will be "granted" rather than "considered" if the taxpayer establishes reasonable cause.

RESPONSE: The purpose of the proposed amendment is to adopt a reasonable cause standard for the granting of abatements. The Division therefore agrees with the suggestion and the first sentence of N.J.A.C. 18:2-2.7(b) will be changed accordingly.

COMMENT: Subsection (b) should contain a statement that the standard to be adopted in determining whether reasonable cause existed should be whether a taxpayer exercised ordinary business care and prudence but was nevertheless unable to perform the act required of him.

RESPONSE: The Division believes that the general standard of "ordinary prudence and intelligence" accurately states the intent of the regulations and is beneficial to taxpayers. By stating in paragraph (c)5 that "any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay . . . may be determined to be reasonable cause," the proposal amendment makes clear that the prior examples are not exclusive as to the determination of reasonable cause.

COMMENT: The rule should state that the taxpayer's previous compliance record will be considered only in regard to a penalty assessed for late filing and/or payment and not in cases of a penalty assessed for a deficiency assessment, and that a poor compliance record should not be the sole reason to deny penalty abatement in a late filing and/or payment situation.

RESPONSE: The Division believes that the taxpayer's previous compliance record may be relevant with respect to both penalties imposed in regard to late filing/payment and those imposed for a deficiency

assessment. The Division believes that the amended rule makes clear that the previous compliance record would never be the sole reason to deny penalty abatement but would only be taken into account, since the amendment adopts a reasonable cause standard.

COMMENT: N.J.A.C. 18:2-2.7(c)4 should state that a taxpayer does not have to prevail at an administrative hearing or pending judicial determination in order for reasonable cause to be found to exist. Subparagraph (c)4i should state that the action or proceeding must involve a question or issue affecting whether or not the individual or entity is required to file a return or pay tax, rather than and pay tax since some hearings may involve payment of additional tax where a return has been filed.

RESPONSE: The Division believes it would be redundant to state that the taxpayer need not prevail at an administrative or judicial hearing since the rule states that the pending action or proceeding constitutes reasonable cause until the time in which the taxpayer has exhausted its administrative or judicial remedies. The Division agrees that hearings may involve either the payment of additional tax or the filing of returns. The word "and" in subparagraph (c)4i will be changed to "and/or."

COMMENT: Proposed N.J.A.C. 18:2-2.7(c)5 should be revised to provide for abatement of penalty in cases where tax forms were not furnished in sufficient time to taxpayers who requested them and where taxpayers visited the Division of Taxation to secure information but were unable to meet with a Division representative.

RESPONSE: The Division believes that the suggested difficulties in obtaining forms or meeting with taxpayer representatives would not generally constitute reasonable cause for an abatement, and that there is not at present a problem in obtaining forms or meeting with Division representatives.

COMMENT: Proposed N.J.A.C. 18:2-2.7(d) should state that the penalty will be abated if the taxpayer can establish that his counsel or advisor was competent in tax matters and that he informed his counsel or advisors of all relevant facts.

RESPONSE: The Division believes that this point is addressed in proposed subparagraph (d)1iii which provides that reliance on professional advice would be a circumstance indicating reasonable cause.

COMMENT: The rule should state that reliance on erroneous written advice furnished by an officer or employee of the Division is grounds for abatement.

RESPONSE: The Division agrees that the reliance on a written opinion from the Division would be reasonable cause for failure to pay tax and would show good faith on the part of the taxpayer. N.J.A.C. 18:2-2.7(d)1iii states that reliance on "written information" would be a factor in determining whether reasonable cause exists. This section will be modified to state that reliance on a written opinion from a representative of the Division would constitute reasonable cause.

COMMENT: The standard for penalty and interest abatement under the Corporation Business Tax Act, N.J.S.A. 54:10A-19.1, and the Corporation Income Tax Act, N.J.S.A. 54:10E-19, is different from the standard under the State Tax Uniform Procedure Law, N.J.S.A. 54:49-11, and it should be stated that because the standards are expressed differently the language of the corporate tax statutes governs.

RESPONSE: The Division understands that the standards are stated differently in the various tax statutes, including the Corporation Business Tax and Corporation Income Tax statutes. Relying on advice from the Attorney General, the Division intends the proposed rules to apply to all of the tax statutes on the premise that the disparities in the statutory standards can be accommodated using a reasonable explanation test.

Patrick J. Deo, CPA, writing for the State Tax Committee of the New Jersey Society of Certified Public Accountants, submitted the following comments:

COMMENT 1: If a taxpayer has incurred several penalties for one type of noncompliance, that series of penalties should be treated as one offense and not several if the taxpayer subsequently corrected the noncompliance after it was brought to his attention.

RESPONSE: The Division believes that the general statement that a taxpayer's previous record of compliance will be considered would include the subsequent correction of noncompliance by the taxpayer. The Division recognizes that the previous compliance record may not be the sole standard for abating penalties and interest.

COMMENT 2: The examples for grounds for reasonable cause listed in N.J.A.C. 18:2-2.7(c) should be expanded to include the taking of a position by the taxpayer which the taxpayer feels has merit based on substantial authority, regardless of whether or not, as indicated in N.J.A.C. 18:2-2.7(c)(4), there is a pending conference with the Division of Taxation on that issue.

RESPONSE: The Division believes the suggested standard would be too broad for failure to file returns and that ignorance of the law should not be considered reasonable cause. Proposed paragraph (c)5, however, states that any other cause which would appear to a person of ordinary prudence and intelligence as a reasonable cause may be considered to be reasonable cause.

COMMENT 3: Under N.J.A.C. 18:2-2.7(d) the circumstances that may indicate reasonable cause should include the taking of a position by the taxpayer for which taxpayer feels there is merit based on substantial authority.

RESPONSE: The Division has included at subparagraph (d)1i a statement that an honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer may indicate reasonable cause. Subsection (d) will be modified to include reliance on a written opinion from a representative of the Division as a factor indicating reasonable cause.

COMMENT 4: No specific reference is made to the use tax. The committee believes that if the taxpayer demonstrates a good faith effort to self assess the use tax, a later discovered noncompliance, discovered either by the taxpayer or upon audit, should not be subject to penalty or interest in excess of three percentage points above the prime rate.

RESPONSE: The Division intends the proposed rules to apply to all of the tax statutes, including the use tax, on the premise that the disparities in the statutory standards for abatement can be accommodated using a reasonable explanation test. The Division has determined that a specific reference to the use tax need not be added on adoption.

Summary of Changes Between Proposal and Adoption:

The first sentence in N.J.A.C. 18:2-2.7(b) was changed to state that an abatement will be "granted" rather than "considered" if the taxpayer establishes reasonable cause. The word "and" in N.J.A.C. 18:2-2.7(c)4i was changed to "and/or." N.J.A.C. 18:2-2.7(d)1iii was modified to state that reliance on written advice provided by an officer or employee of the Division of Taxation would constitute a factor indicating reasonable cause.

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

18:2-2.7 Abatement of penalty and interest

(a) If the failure to pay any tax when due or the failure to file any return is explained to the satisfaction of the Director, he may abate the payment of the whole or any part of any penalty and may abate the payment of any interest charge in excess of the rate of one-half of one percent per month from the due date to October 1, 1975, and three-quarters of one percent per month from October 1, 1975, to the date of payment (N.J.S.A. 54:49-11) or December 8, 1987, whichever is earlier. On and after December 9, 1987 the Director may abate the payment of any interest charge in excess of the rate of three percentage points above the prime rate compounded daily to the date of payment on the entire existing liability including any tax, penalty, and/or accumulated interest charges.

(b) An abatement will be *[considered]* ***granted*** if the taxpayer can show reasonable cause for failure to file any return or pay any tax when due and makes full payment of the taxes due. All of the facts alleged as a basis for reasonable cause for failure to timely file a return or for failure to timely pay or pay over any tax due must be affirmatively shown in a written statement, containing a declaration that it is made under penalties of perjury, made by the taxpayer or other person against whom the penalty or penalties have been assessed or are assessable. Where the taxpayer or other person is unable to provide such statement or does not have a personal knowledge of such facts, a showing of reasonable cause may be made on behalf of the taxpayer or other person by an individual with a personal knowledge of such facts. In determining whether reasonable cause exists, in addition to an evaluation of such facts, the taxpayer's previous compliance record with respect to all of the taxes imposed may be taken into account.

(c) The following exemplify grounds for reasonable cause, where clearly established by or on behalf of the taxpayer or other person.

1. The death or serious illness of the taxpayer or a partner, officer, director, shareholder, employee or other representative of the taxpayer or such individual's unavoidable absence from the usual place of business, which precluded timely compliance, may constitute reasonable cause provided that:

i. In the case of the failure to file any return, the applicable return is filed; or

ii. In the case of the failure to pay or pay over any tax, such amount is paid or paid over, within a justifiable period of time after the death, illness or absence. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer or such other person liable for penalty, as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case. Substantiation may be required by the submission of third-party verification in the form of, for example, doctor's reports and hospital insurance carrier reports.

Example: It was established that illness incapacitated the owner of a small business concern during the period of delinquency. The taxpayer further established that no other person had access to sufficient information which would enable such person to timely file the delinquent return and pay over the tax due. The return was filed and the tax due was paid over within a justifiable period of time after the owner returned to work. This constitutes reasonable cause for failure to file the return and for failure to pay the tax due.

2. The destruction of the taxpayer's or the taxpayer's representative's place of business or business records by a fire or other documented casualty, which precluded timely compliance, may constitute reasonable cause provided that:

i. In the case of the failure to file any return, the return is filed; or

ii. In the case of the failure to pay or pay over any tax, such amount is paid or paid over, within a justifiable period of time after the casualty has taken place. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer or such other person liable for penalty, as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case. Substantiation may be required by the submission of third-party verification in the form of, for example, police accident reports and insurance claims and settlements.

Example: The place of business, together with the business records and the tax return, of a corporate taxpayer were destroyed by a documented casualty immediately prior to the date prescribed for filing the return and paying over the tax due. Within a justifiable period of time after the casualty took place the records of the taxpayer were reconstructed, a return was filed and the tax due was paid over. This constitutes reasonable cause for failure to file the return and for failure to pay the tax due.

3. The inability, for reasons beyond the taxpayer's control, to timely obtain and assemble essential information required for the preparation of a complete return, despite the exercise of reasonable efforts, may constitute reasonable cause provided a return is timely filed and the tax is timely paid or paid over on that portion of the tax liability which can be ascertained. The relevant facts affecting that portion of the tax liability which cannot be ascertained must be fully disclosed with the timely filed return and when such liability is ascertained, and where applicable collected, an amended return must be immediately filed together with any additional tax due.

Example: Due to an inability to obtain certain records, a taxpayer was unable for reasons beyond its control to determine its proper tax liability prior to the prescribed date for paying its tax. The taxpayer timely filed a return and paid the tax due on that portion of the tax liability which was ascertainable. Attached to the return was a rider which explained in detail why the proper tax liability could not be determined prior to the due date. When the records in question were obtained and assembled, an amended return was immediately filed and the additional tax due was paid. This constitutes reasonable cause for failure to pay the tax due.

4. A pending conference with the Division of Taxation, or a pending action or proceeding for judicial determination may constitute reasonable cause, until the time in which the taxpayer has exhausted its administrative or judicial remedies, as applicable, for a taxable period or periods the return or returns for which are due subsequent to the commencement of the conference proceeding, or the commencement of the judicial action or proceeding provided that:

i. The action or proceeding involves a question or issue affecting whether or not the individual or entity is required to file a return *[and]* ***and/or*** pay tax;

ii. The action or proceeding is not based on a position which is frivolous; and

iii. The facts and circumstances for such taxable period or periods are identical or virtually identical to those of the taxable period or periods covered by the action or proceeding.

Example: An individual is awaiting a determination, after a hearing, of the Tax Court of New Jersey regarding whether or not such individual was required to file a return and collect and remit tax in a prior taxable period. The petition on the matter to the Tax Court was filed prior to the due date for the return for the current taxable period. The facts and circumstances for the current taxable period are identical to those of the period covered by the petition. The individual's position is arguable and has merit based on case law or other recognized legal authority. This constitutes reasonable cause for failure to file a return and for failure to pay the tax due for the current period.

5. Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. Ignorance of the law, however, will not be considered as a basis for reasonable cause.

Example 1: A manufacturer with production facilities throughout New Jersey has established an accrual accounting system to record purchases subject to use tax. The manufacturer, as the result of his first sales and use tax audit, owes additional use tax because of occasional misclassification of office supplies and equipment. After a review of a written statement, submitted by the taxpayer, containing all of the facts alleged as a basis for reasonable cause, it was determined that the taxpayer had made reasonable efforts to account for its use tax liabilities, that the understatement of tax was unintentional and that the manufacturer had otherwise substantially complied with the law. The audit findings established that willful neglect did not occur and reasonable cause existed. Therefore, penalty and interest in excess of the statutory minimum will be waived.

Example 2: A vendor who operates a large restaurant business has an accounting system which is devised in such a way that the tax to be remitted each quarter is based on the accumulated taxable sales. An overcollection test was performed on the guest checks which disclosed occasional miscalculation of tax by vendor's staff which resulted in an understatement of the tax due and paid. The taxpayer submitted a written statement containing all of the facts alleged as a basis for reasonable cause. The understatement of the tax due was not considered substantial, taking into account the size of the operation, volume of sales and an otherwise sound accounting system. The audit findings established that willful neglect did not occur and that reasonable cause existed. Therefore, the penalty and interest in excess of the statutory minimum would be waived.

(d) A failure to pay will be considered to be due to reasonable cause, to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if he paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of his tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of income (or other amounts) he could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, for example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of his assets and anticipated income will be insufficient to pay his tax, has not exercised ordinary business care and prudence in providing for the payment of his tax liability.

Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of his tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay his tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if he made reasonable efforts to conserve sufficient assets in marketable form to satisfy his tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

1. In determining whether reasonable cause and good faith exist, the most important factor to be considered is the extent of the taxpayer's effort to ascertain the proper tax liability. In addition to any relevant grounds for reasonable cause as exemplified in (c) above, circumstances that indicate reasonable cause and good faith with respect to the substantial understatement or omission of tax, where clearly established by or on behalf of the taxpayer, may include the following:

i. An honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer;

ii. A computational or transcriptional error;

iii. The reliance by the taxpayer on ***written advice provided by an officer or employee of the Division of Taxation,*** any written information, professional advice or other facts provided such reliance was reasonable and the taxpayer had no knowledge of circumstances which should have put the taxpayer upon inquiry as to whether such facts were erroneous; or

iv. The filing of an amended return which shows an additional amount of taxes due or which adequately discloses the tax treatment of an item which should have been adequately disclosed with the original return, provided the amended return is filed prior to the time the taxpayer is first contacted by the Division of Taxation concerning an audit or an examination of the return.

2. In determining if the taxpayer exercised ordinary business care and prudence in providing for the payment of his tax liability, consideration will be given to the nature of the tax which the taxpayer has failed to pay. Thus, for example, facts and circumstances which, because of the taxpayer's efforts to conserve assets in marketable form, may constitute reasonable cause for nonpayment of income taxes may not constitute reasonable cause for failure to pay over trust fund taxes such as sales and gross income withholding taxes.

(e) The provisions of this section shall apply to the extent pertinent where any taxpayer substantially understates the amount of taxes required to be shown on the return and such understatement or omission was due to reasonable cause and not due to willful neglect. Reasonable cause and the absence of willful neglect may be determined to exist only where the taxpayer has acted in good faith.

(a)

DIVISION OF TAXATION

Local Property Tax

Homestead Property Tax Rebate; Extension of Filing Date

Adopted Concurrent New Rule: N.J.A.C. 18:12-7.15

Proposed: May 6, 1991 at 23 N.J.R. 1464(a).

Adopted: September 28, 1991 by Leslie A. Thompson, Director, Division of Taxation.

Filed: September 30, 1991 as R.1991 d.527, **without change.**

Authority: N.J.S.A. 54:4-8.62b and 54:50-1.

Effective Date: November 4, 1991.

Expiration Date: July 29, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

18:12-7.15 Extension of filing date for the homestead property tax rebate

(a) The time for homeowners and tenants to file their applications for the homestead property tax rebate pursuant to N.J.S.A. 54:4-8.57 et seq. (P.L. 1990, c.61), including applications by shareholders in cooperative associations, condominiums, and certain mutual housing corporations, is extended to August 15, 1991, provided such claimants have New Jersey gross income of less than $3,000.

(b) New Jersey gross income means all gross income required to be reported pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., other than income excludible from the gross income tax return, but before reduction thereof by any applicable exemptions, deductions, and credits received during the taxable year by the claimant.

(b)

DIVISION OF TAXATION

Sales and Use Tax

Coin-Operated Vending Machines

Adopted Amendments: N.J.A.C. 18:24-16.6, 16.7, 16.9 and 17.1 through 17.4

Proposed: February 19, 1991 at 23 N.J.R. 396(a).

Adopted: October 10, 1991 by Leslie A. Thompson, Director, Division of Taxation.

Filed: October 11, 1991 as R.1991 d.557, **without change.**

Authority: N.J.S.A. 54:32B-24.

Effective Date: November 4, 1991.

Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

18:24-16.6 Tax on gross receipts

(a) Vendors operating vending machines which dispense tangible personal property, other than food and drink, must report and pay to the State the tax upon the gross receipts from all sales of such items made through such machines, subject to the exemptions set forth in the Sales and Use Tax Act such as items sold through vending machines for $0.10 or less (exempt under N.J.S.A. 54:32B-8.9 and N.J.A.C. 18:24-17).

(b) Effective January 3, 1980 (P.L. 1979, c.274; N.J.S.A. 54:32B-3(c)(4)), vendors operating vending machines which dispense food and beverage must report and pay to the State the tax upon vending machine sales as defined in (c) below from all sales of such items made through such machines subject to the exemptions set forth in N.J.A.C. 18:24-16.7(b) and (c).

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

(e) Example:

Receipts from sales of taxable tangible personal property	$1,000	
Receipts from sales of milk	1,000	
Receipts from sales of food and beverages (other than milk)	8,000	
Total receipts from all vending machine sales		$10,000
Less deductions:		
Milk	$1,000	
30 percent of receipts from food and beverage sales (30 percent × $8,000)	2,400	
Total deductions		3,400
Receipts subject to tax		$6,600
Tax due (at 7 percent)		$ 462

18:24-16.7 Tax exemptions

(a) Receipts from sales of food or drink exempted from the tax by subsection 8.2 of the Sales and Use Tax Act, are not allowable deductions from gross receipts derived from sales through vending machines.

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

18:24-16.9 Responsibility for tax payment

(a) (No change.)

(b) The tax to be remitted to the State of New Jersey by the vendor is the amount of the actual tax collected from all taxable sales, or seven percent of the taxable sales, whichever amount is greater.

18:24-17.1 Statutory basis

N.J.S.A. 54:32B-8.9 provides that the following receipts shall be exempt from the sales tax:

"Tangible personal property sold through coin-operated vending machines at $0.10 or less, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the Director".

18:24-17.2 Definition

The phrase "primarily engaged in making such sales", as used in N.J.S.A. 54:32B-8.9, refers to vendors engaged in making sales through coin-operated vending machines, and for this subsection to be applicable the vendor must show that more than half of the total receipts from his business are derived from sales through coin-operated vending machines.

18:24-17.3 Reports qualifying exemption; contents

(a) In addition to the filing of Form ST-50 (Quarterly Return) and/or Form ST-51 (monthly remittance statement), a vendor who seeks to exempt a portion of his gross receipts pursuant to N.J.S.A. 54:32B-8.9 shall report quarterly to the Division of Taxation on Form ST-3229 the following information:

1.-2. (No change.)

3. The total receipts from exempt sales, including:

i. Receipts from sales of milk;

ii.-iii. (No change.)

4. The total taxable receipts, calculated by subtracting the exempt sales from total receipts of the vending machine company.

18:24-17.4 Tax amount payable

The amount of New Jersey Sales Tax payable is the net taxable receipts multiplied by .07 to effectuate application of the seven percent tax rate, or the actual tax collected, whichever is the greater.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations
Petitions for Rulemaking
Adopted Amendment: N.J.A.C. 19:4-6.27
Adopted New Rules: N.J.A.C. 19:3A-1.3 and 19:4-6.29 and 6.30

Proposed: June 17, 1991 at 23 N.J.R. 1917(a).

Adopted: October 8, 1991 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

Filed: October 10, 1991 as R.1991 d.553, **without change.**

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: November 4, 1991.

Expiration Date: November 4, 1996, N.J.A.C. 19:3A;
May 26, 1993, N.J.A.C. 19:4.

Summary of Hearing Officer's Recommendations and Agency Response:

A public hearing was held on July 8, 1991 at the Commission's Offices in Lyndhurst, chaired by HMDC's Director of Solid Waste and Engineering, Thomas Marturano, and Ileana Kafrouni, Acting Deputy Chief Engineer. No members of the public attended the hearing. Therefore, a statement explaining the proposed amendments and new rules was read into the record and the hearing was adjourned. A copy of the transcript of the public hearing may be reviewed or obtained from the HMDC, One DeKorte Park Plaza, Lyndhurst, New Jersey 07071. The hearing officer made no recommendations.

Summary of Public Comments and Agency Responses:

The following is a list of people who telephoned the Office of the Chief Engineer regarding the amendments, their comments, and the agency response:

COMMENT: David Pegel (Cascino Engineering), Andrew Marshall (Harmon Cove Association) and Diana Fainberg (Bellemead Corporation) called for an explanation of the rules being proposed.

RESPONSE: The new rules and amendments to the HMDC District Zoning Regulations establish a procedure that will allow anyone outside of the Agency to petition the Commission for a change to the Official Zoning Map (rezoning), or for an amendment and repeal of existing rules, or to establish a new rule.

COMMENT: Maryann Bucci (City of New Jersey) called to ask whether public hearings would be mandatory for all rezoning and regulatory changes.

RESPONSE: While it is the policy of this agency to hold public hearings for all rezonings and regulatory changes, hearings are not mandatory.

COMMENT: Margaret Utzinger (Hackensack River Coalition), Sal Manente (Secaucus, N.J.) and Andrew Marshall (Harmon Cove Association) called to request a copy of the proposal.

RESPONSE: Copies of the proposal were forwarded.

Full text of the adoption follows:

19:3A-1.3 Petitions for rulemaking

(a) Unless otherwise provided in the rules of the Hackensack Meadowlands Development Commission, this section shall constitute the Commission's requirements for the disposition of all requests for rulemaking pursuant to N.J.S.A. 52:14B-4(f).

1. For additional requirements relating to petitions for a zoning amendment to the Official Zoning Map, also known as a rezoning, see N.J.A.C. 19:4-6.29.

2. For additional requirements relating to petitions for an amendment to the District Zoning Regulations, N.J.A.C. 19:4, see N.J.A.C. 19:4-6.30.

(b) Any interested person may petition the Hackensack Meadowlands Development Commission to promulgate new rules, or to amend or repeal any of its existing rules. Such petition shall be filed with the Office of the Chief Engineer, in writing, and signed by the petitioner. The petition shall state clearly and concisely:

1. The substance or nature of the rulemaking which is requested;

2. The reasons for the request and the petitioner's interest in the request;

3. The statutory authority under which the Hackensack Meadlowlands Development Commission may take the requested action; and

4. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

(c) Petitions for the promulgation, amendment or repeal of a rule by the Hackensack Meadowlands Development Commission shall be sent by certified mail and shall be addressed to:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071
Attention: Office of the Chief Engineer

(d) Any document submitted to the Hackensack Meadlowlands Development Commission that is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further agency action. The document shall be returned to sender with a deficiency explanation.

(e) Upon receipt of a petition for rulemaking, the following shall occur:

1. The petition shall be dated, stamped and logged;

2. A notice of petition shall be prepared and filed within 15 days of receipt with the Office of Administrative Law in compliance with N.J.A.C. 1:30-3.6(a).

(f) Prior to any action taken by the Hackensack Meadowlands Development Commission pursuant to this Section, the Office of the Chief Engineer shall review the petition and prepare a preliminary analysis with recommendations thereon which shall be submitted to the Executive Director and the Commissioners.

(g) Within 30 days following receipt of a petition, the Office of the Chief Engineer shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b).

(h) In accordance with N.J.A.C. 1:30-3.6(c), the Commission's action on a petition may include:

1. Denial of the petition;

2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or

3. Referral of the matter for further deliberations, the nature of which shall be specified and which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

19:4-6.27 Amendments

(a) These regulations, including the official zoning map forming a part hereof, may be amended, in whole or in part, from time to time, pursuant to such procedures and requirements as are imposed by law and the general rules of the Commission.

(b) Upon approval by the Commission for filing of a pre-proposal or proposal, or approval as a result of a referral for further deliberation to file a pre-proposal or proposal the Commission must submit a notice to the New Jersey Register. A minimum period of 30 days is required from the date of publication in the New Jersey Register to receive public comment. The Commission may require a public hearing for which a minimum of 15 days notice must be provided from the time the notice appears in the New Jersey Register.

(c) Upon conclusion of the public comment period, the Hackensack Meadowlands Municipal Committee will be granted a maximum 45 day period within which to submit comments to the Commission.

(d) Upon review of the comments and recommendation by the Office of the Chief Engineer, the Commission shall render a decision which must be filed with the Office of Administrative Law for inclusion in the New Jersey Register. The adoption of any zoning amendment is not valid until published in the New Jersey Register.

19:4-6.29 Petitions for zoning amendment to Official Zoning Map (rezoning)

(a) In addition to the requirements of N.J.A.C. 19:3A-1.3, all petitions for a zoning amendment to the Official Zoning Map, also known as rezoning, shall include:

1. A project location map, in triplicate, of the lots, drawn to scale and showing the actual dimensions of the lots. The map shall include:

i. The existing zoning and land use of the adjacent properties;

ii. Location of public right-of-ways, water courses, traffic circulation, points of ingress and egress, including access streets;

iii. Existing structures and land uses on-site; and

iv. Other such information as may be reasonably required;

2. A description of the rezoning being requested including the location of the property (block, lot and municipality), existing zoning, and proposed zoning;

3. The basis for the rezoning request including, but not limited to, a statement as to why the site cannot be developed in accordance with the existing zoning of the Hackensack Meadowlands Development Commission;

4. The full name and address of the petitioner;

5. The petitioner's interest in the request, including any relevant organization affiliation or economic interest; and

6. Other such information as may be deemed necessary by the Office of the Chief Engineer.

(b) All petitions for rezonings are subject to a filing fee as indicated at N.J.A.C. 19:3-1.2(a)8. This fee, or portion thereof, may be waived pursuant to N.J.A.C. 19:3-1.6.

19:4-6.30 Petitions for amendment to District Zoning Regulations

(a) In addition to the requirements of N.J.A.C. 19:3A-1.3, all petitions for an amendment to the District Zoning Regulations, N.J.A.C. 19:4, shall include:

1. The existing text proposed to be amended;

2. The proposed amendment to the District Zoning Regulations;

3. The reasons for the request, including a report indicating why the existing text is no longer appropriate and the proposed amendment is necessary. The report must be signed and sealed by a licensed Professional Engineer, Professional Planner or Registered Architect, depending on the nature of the request;

4. The full name and address of the petitioner;

5. The petitioner's interest in the request, including any relevant organization affiliation or economic interest; and

6. Other such information as may be deemed necessary by the Office of the Chief Engineer.

(a)

CASINO CONTROL COMMISSION

Applications
Vendor Registration Form
Adopted Amendment: N.J.A.C. 19:41-11.1

Proposed: August 19, 1991 at 23 N.J.R. 2486(b).

Adopted: October 2, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: October 4, 1991 as R.1991 d.531, **without change.**

Authority: N.J.S.A. 5:12-69 and 104b.

Effective Date: November 4, 1991.

Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division), Bally's Park Place Casino Hotel (Bally's Park Place), Caesar's Atlantic City (Caesar's), Harrah's Casino Hotel (Harrah's), Trump Taj Mahal Casino Resort (Taj Mahal), and TropWorld Casino and Entertainment Resort (TropWorld).

COMMENT: The Division and TropWorld stated their support of the proposed amendments.

RESPONSE: The Commission agrees, as evidenced by the adoption herein.

COMMENT: Caesar's requested that the Commission promulgate a rule which would require that the Vendor Registration Form (VRF) be filed with the Commission "prior to payment" for the goods and services in the first transaction with a vendor. Bally's Park Place, Harrah's and Taj Mahal urged the Commission to adopt the rule submitted by Caesar's. In the alternative, Harrah's and Taj Mahal would support the Commission's proposed amendment.

RESPONSE: This comment is not responsive to the published proposal, which was intended solely to consider extending the number of days permitted for the filing of a VRF. The Commission's proposal does not contemplate reexamination of the "formal offer and acceptance of an agreement" as the triggering event for the VRF process. Nonetheless, the Commission would note that it finds the suggested use of time of payment to be an unacceptable alternative due to the uncertainty it would create as to when the regulatory agencies would first learn of the existence of an agreement.

Full text of the adoption follows.

19:41-11.1 Presentation of the agreement

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

(c) Each such casino licensee or applicant for a casino license shall file with the Commission no later than 20 calendar days following the formal offer and acceptance of an agreement a completed vendor registration form in a form as specified by the Commission for any

enterprise which has not already had such form filed with the Commission on its behalf by any casino licensee or applicant for a casino license. Notwithstanding the foregoing, an incomplete vendor registration form shall be considered timely filed by the licensee or applicant in accordance with this section if:

1. The incomplete vendor registration form is substantially complete except for minor errors or omissions and is filed within 20 days following the formal offer and acceptance of the agreement; and

2. A revised vendor registration form, completed in accordance with a deficiency notice provided by the Commission, is filed within 10 days of service of notice or by the end of the 20 day period, whichever is later.

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

(a)

CASINO CONTROL COMMISSION

Rules of the Games; Gaming Equipment; Accounting and Internal Controls

Red Dog; Red Dog Table; Personnel Assigned to the Conduct of Gaming

Adopted New Rule: N.J.A.C. 19:47-6

Adopted Amendments: N.J.A.C. 19:45-1.11 and 1.12; 19:46-1.17 and 1.19; and 19:47-8.2

Adopted Repeal and New Rule: N.J.A.C. 19:46-1.14

Proposed: August 5, 1991 at 23 N.J.R. 2231(a).

Adopted: October 2, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: October 4, 1991 as R.1991 d.532, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69a, 70f, j, 99 and 100e.

Effective Date: November 4, 1991.

Expiration Date: March 24, 1993 N.J.A.C. 19:45, April 28, 1993 N.J.A.C. 19:46, April 28, 1993 N.J.A.C. 19:47.

Summary of Public Comment and Agency Responses:

COMMENT: The Sands Hotel and Casino supports the proposed new rules and amendments.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement has no objection to the proposed new rules and amendments.

RESPONSE: Accepted.

Summary of Agency-Initiated Changes:

A minor substantive change was made by adding N.J.A.C. 19:47-6.5(i)3, which further clarifies the language contained in N.J.A.C. 19:47-6.5(i)2 and conforms the language with that found in the rules of the games for craps, roulette, big six, the "tie bet" in baccarat and minibaccarat and the proposed sic bo rules. Additionally, N.J.A.C. 19:47-6.5(i)3 requires one-half hour notice prior to any decrease in the payout odds being offered by a casino licensee. However, in no event may a casino licensee offer payout odds less than those listed in N.J.A.C. 19:47-6.5(i)2. A related minor substantive change was also made to N.J.A.C. 19:46-1.14(f) to clarify the payout odds that must be inscribed on the layout. The Commission adopted these minor changes after reviewing the results of the Red Dog rulemaking experiment and determining that such changes may make the game more popular with gaming patrons. Additionally, these changes further clarify the odds that may be offered and paid by casino licensees.

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

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of the casino manager. The table games department shall be responsible for the operation and conduct of the following games:

i. Craps;
ii. Blackjack;
iii. Baccarat;
iv. Roulette;
v. Bix six;
vi. Minibaccarat; and
vii. Red dog.

5.-9. (No change.)

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, and big six table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be:

i. (No change.)

ii. The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than a total of four blackjack, roulette, red dog, or big six tables or a combination thereof;

iii. (No change.)

iv. The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than two minibaccarat tables or a combination of one minibaccarat table and a blackjack, roulette, red dog or big six table.

6. Pit boss shall be:

i. The third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of craps games at no more than eight craps tables. Nothing in this subsection shall preclude a pit boss from supervising a combination of table games including craps, blackjack, roulette, minibaccarat, bix six, red dog, or baccarat, provided, however, the number of supervised tables complies with the following limitations:

Craps Games	All Other Table Games
1	9
2	8
3	6
4	4
5	3
6	2
7	1

ii. The second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of table games at not more than a total of 12 black jack, roulette, minibaccarat, big six, red dog, or baccarat tables or a combination thereof.

7.-9. (No change.)

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

19:46-1.14 Red dog table; physical characteristics

(a) Red dog shall be played at a table having on one side places for the players and on the opposite side a place for the dealer.

(b) The cloth covering the red dog table shall have imprinted thereon the name of the casino.

(c) Each red dog layout shall have two separate designated betting areas for each player, clearly marked to distinguish between the original wager and the raise wager in a manner approved by the

Commission, and situated so that the betting area for the raise wager is closer to the player than the betting area for the original wager. Such betting areas shall not exceed seven in number.

(d) Each red dog layout shall have an area designated for the placement of the first, second and third card.

(e) Each red dog layout shall have a drop box and a tip box attached to it with the location of said boxes on the same side of the gaming table but on opposite sides of the dealer, as approved by the Commission.

(f) Each red dog layout shall have inscribed thereon the payout odds *[required by]* ***currently being offered in accordance with*** N.J.A.C. 19:47-6.5.

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat, minibaccarat and red dog shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck.

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

19:46-1.19 Dealing shoes

(a) (No change.)

(b) Cards used to game at blackjack, minibaccarat and red dog shall be dealt from a dealing shoe which shall be securely chained to the gaming table during gaming hours and secured in a locked compartment during non-gaming hours. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment during non-gaming hours.

(c) A device which automatically shuffles cards may be utilized at the game of blackjack, minibaccarat and red dog in addition to or in place of a dealing shoe, provided that such device is submitted to and approved by the Commission.

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

SUBCHAPTER 6. RED DOG

19:47-6.1 Cards; number of decks; value of cards; dealing shoe

(a) Red dog shall be played with at least one deck of cards with backs of the same color and design and two additional solid yellow or green cutting cards.

(b) The "value" of the cards in each deck shall be as follows:

1. Any card from 2 to 10 shall have its face value;
2. Any jack shall have a value of 11;
3. Any queen shall have a value of 12;
4. Any king shall have a value of 13; and
5. Any ace shall have a value of 14.

(c) All cards used to game at red dog shall be dealt from a dealing shoe specifically designed for such purpose and located on the table to the left of the dealer.

19:47-6.2 Opening of the table for gaming

(a) After receiving the one or more decks of cards at the table, the dealer shall sort and inspect the cards and the floorperson assigned to the table shall verify the inspection in accordance with N.J.A.C. 19:46-1.18(f).

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread out by deck according to suit and in sequence. The cards in each suit shall be laid out in sequence within the suit.

(c) After the player is afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked.

19:47-6.3 Shuffle and cut of the cards

(a) Immediately prior to commencement of play and after each shoe of cards is dealt, the dealer shall shuffle the cards so that they are randomly intermixed. A casino licensee may also shuffle the cards at the completion of any round of play.

(b) After the cards have been shuffled, the dealer shall offer the stack of cards to be cut, with the backs facing away from the dealer, to the player at the farthest point to the right of the dealer; provided, however, if the game is just beginning, the cards shall be offered to the first player at the table. If the first player offered the cards refuses the cut, the cards shall be offered to each other player moving clockwise around the table until a player accepts the cut. If no player accepts cut, the dealer shall cut the cards.

(c) The person making the cut shall place the cutting card in the stack at least 10 cards from either end. Once the cutting card has been inserted, the dealer shall take all the cards in front of the cutting card and place them on the back of the stack. The dealer shall then insert the cutting card in a position approximately one-quarter of the way from the back of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play.

19:47-6.4 Procedures for dealing cards

(a) After each full set of cards is placed in the shoe, the dealer shall remove the first card therefrom face down and place it in the discard rack which shall be located on the table immediately in front of or to the right of the dealer. Each new dealer who comes to the table shall also discard ("burn") one card as described herein before the new dealer deals any card in a round of play. The burn card shall be disclosed if requested by a player.

(b) The dealer shall remove a card from the shoe with his or her left hand, turn it face up, and then place it on the appropriate area of the layout with his or her right hand.

19:47-6.5 Procedures for each round of play; wagers; payouts

(a) Except as otherwise provided in this section, all wagers shall be made prior to the first card being dealt for each round of play.

(b) All wagers at red dog shall be made by placing gaming chips or plaques on the appropriate area of the red dog layout except that ***a*** verbal *[wagers]* ***wager*** accompanied by cash may be accepted provided *[they are]* ***that it is*** confirmed by the dealer and casino supervisor at the table ***prior to the first card being dealt*** and such cash is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(c) To begin each round of play, the dealer shall place the first card, face up, on the box farthest to the dealer's left. The dealer shall then place the second card, face up, on the box farthest to the dealer's right.

(d) Once the first card of each round has been removed from the shoe by the dealer, no participant in the game shall handle, remove or alter any wager until a decision has been rendered and implemented with respect to that wager.

(e) If the initial two cards dealt have values that are consecutive, the dealer shall announce "The cards are consecutive—tie hand," all wagers shall be void and the round of play shall be concluded.

(f) If the initial two cards dealt are of identical value, the dealer shall announce "We have a pair" and shall immediately draw a third card and place it face up in the middle box.

1. If the third card dealt is identical in value to the initial two cards, the dealer shall announce "Three of a kind," the players shall win and all wagers shall be paid at odds of 11 to one.

2. If the third card dealt is not identical in value to the initial two cards, the dealer shall announce "No three of a kind—tie hand," all wagers shall be void and the round of play shall be concluded.

(g) If the initial two cards dealt are neither consecutive nor a pair, the dealer shall announce the "spread" and place a marker on the corresponding spread on the layout. The spread for each round of play shall be a number from one to 11 inclusive and shall be determined by the number of cards whose value can fall between the values of the initial two cards dealt. Examples of this rule are as follows:

1. If the initial two cards dealt are a 4 and a 7, then the spread shall be two (that is, two cards, the 5 and 6, have a value that falls between 4 and 7);

2. If the initial two cards dealt are a 9 and a king, then the spread shall be three (that is, three cards, the 10, jack and queen, have a value that falls between the 9 and king).

(h) If there is a spread after the initial two cards are dealt, a player shall have the option to make a raise wager in support of the player's original wager by placing on the designated raise area of the layout an amount not in excess of the player's original wager.

All raise wagers shall be made immediately after the initial two cards have been dealt and prior to the third card being dealt.

(i) After all raise wagers have been made and prior to dealing the third card, the dealer shall announce "Raises closed." The dealer shall then draw a third card, place it face up on the box between the initial two cards and announce the value of the third card. The dealer shall then collect all losing wagers and pay all winning wagers as follows:

1. The player shall win if the value of the third card dealt is between the value of the initial two cards dealt (a third card which has the same value as the first or second card dealt is not deemed to be between the values of the initial two cards);

2. All winning wagers and raise wagers shall be paid at payout odds determined by the spread for that round of play, as listed below:

Spread	Payout Odds
1	5 to 1
2	4 to 1
3	2 to 1
4 through 11	1 to 1

3. A casino licensee may, in its discretion, offer to all patrons at a red dog table higher payout odds than those listed in (i)2 above, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3 prior to any decrease in the payout odds. In no event may a casino licensee decrease the payout odds below those required by (i)2 above.

(j) At the conclusion of each round of play, all cards on the layout shall be picked up by the dealer and placed in the discard rack in order and in such a way that they can be readily arranged to reconstruct the hand in case of a question or dispute.

(k) Whenever the cutting card is reached in the deal of the cards, the dealer shall continue dealing the cards until that round of play is completed. The dealer shall then reshuffle the cards in accordance with N.J.A.C. 19:47-6.3.

17:47-6.6 Minimum wagers

(a) Each casino licensee shall submit to the Commission for review and approval, in accordance with N.J.A.C. 19:47-8.2, the minimum wagers permitted at each red dog table.

(b) Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each red dog table

19:47-6.7 Irregularities

(a) A card found face up in the shoe shall not be used in the game and shall be placed in the discard rack.

(b) A card drawn in error without its face being exposed shall be used as though it were the next card from the shoe.

(c) If a third card is drawn and exposed to the players prior to the dealer announcing "Raises closed," the card shall be discarded and each player shall be given the option of playing out the round or voiding the round of play. Prior to dealing another third card, the dealer shall return the original wager and any raise wager to each player who has chosen to void the round of play.

19:47-6.8 A player wagering on more than one betting area

A casino licensee may permit a player to wager on more than one betting area at a red dog table.

19:47-6.9 Continuous shuffling shoe or device

In lieu of the dealing and shuffling requirements set forth in N.J.A.C. 19:47-6.3 and 6.4, a casino licensee may utilize a dealing shoe or other device designed to automatically reshuffle the cards, provided that such shoe or device and the procedures for dealing and shuffling the cards through the use of this device are approved by the Commission.

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-6. (No change.)

7. Red dog:

i. If the minimum wager at a table is $5.00 or less, the maximum wager shall be at least $100.00.

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Wagers
Adopted Amendments: N.J.A.C. 19:47-1.3, 1.6, 2.3, 3.2, 4.2, 5.1, 5.6 and 7.2

Proposed: June 3, 1991 at 23 N.J.R. 1784(b).

Adopted: October 9, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: October 9, 1991 as R.1991 d.551, **without change as to those portions adopted, but with proposed new rule N.J.A.C. 19:47-8.3 and proposed amendments to N.J.A.C. 19:45-8.2 separately adopted as reproposed on September 3, 1991 at 23 N.J.R. 2613(a).**

Authority: N.J.S.A. 5:12-69, 70(f) and 100(e).

Effective Date: November 4, 1991.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

These adopted amendments to the wager rules in each table game add a cross-reference to the Commission's new uniform notice requirements, at N.J.A.C. 19:47-8.3. Comments received with regard to both adoptions are therefore summarized in the notice of adoption for new rule N.J.A.C. 19:47-8.3 and the amended N.J.A.C. 19:47-8.2, published elsewhere in this issue of the New Jersey Register. A public hearing on this and other proposals was held on June 20, 1991 before the Commission.

Full text of the adoption follows.

19:47-1.3 Making and removal of wagers; approval of minimum wagers

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

(f) Each casino licensee shall submit to the Commission for its review and approval in accordance with N.J.A.C. 19:47-8.2 the proposed minimum wagers to be permitted at each craps table in the casino. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each craps table.

19:47-1.6 Supplemental wagers made after the come out roll in support of pass, don't pass, come and don't come bets (making and laying odds)

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

(f) Any casino offering additional wagers greater than the additional wagers authorized under (a) through (d) above shall advise patrons of the maximum additional wager being offered by complying with the notice requirements set forth in N.J.A.C. 19:47-8.3.

19:47-2.3 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval in accordance with N.J.A.C. 19:47-8.2 the minimum wagers permitted at each blackjack table in the casino. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each blackjack table.

(f)-(l) (No change.)

19:47-3.2 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval in accordance with N.J.A.C. 19:47-8.2 the minimum wagers permitted at each Baccarat-Punto Banco table. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each Baccarat-Punto Banco table.

19:47-4.2 Minimum and maximum wagers

Each casino licensee shall submit to the Commission for review and approval in accordance with N.J.A.C. 19:47-8.2 the minimum wagers permitted at each Baccarat-Chemin de Fer table. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers at each Baccarat-Chemin de Fer table.

19:47-5.1 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval in accordance with N.J.A.C. 19:47-8.2 the minimum wagers permitted at each roulette table in the casino. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each roulette table.

19:47-5.6 Big Six Wheel; wagers and rotation of the wheel

(a) Each casino licensee shall submit to the Commission for review and approval in accordance with N.J.A.C. 19:47-8.2 the minimum wagers permitted at each Big Six wheel in the casino. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each Big Six table.

(b)-(f) (No change.)

19:47-7.2 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval in accordance with N.J.A.C. 19:47-8.2 the minimum wagers permitted at each minibaccarat table. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each minibaccarat table.

(f) (No change.)

19:47-8.2 Minimum and maximum wagers

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

(c) A casino licensee shall not change the permissible minimum wager at a table game unless the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3.

19:47-8.3 Rules of the games; notice

(a) Whenever a casino licensee is required by rule to provide notice of the rules pursuant to which a particular table game will be operated, the casino licensee shall post a sign at the gaming table advising patrons of the rules in effect at that table.

(b) No casino licensee shall change the rules pursuant to which a particular table game is being operated unless, at least one-half hour in advance of such change, the casino licensee:

1. Posts a sign at the gaming table advising patrons of the rule change and the time that it will go into effect;

2. Announces the rule change to patrons who are at the table; and

3. Notifies the Commission of the rule change, the gaming table where it will be implemented and the time that it will go into effect.

(c) The location, size and language of each sign required by this section shall be submitted to and approved by the Commission prior to its use.

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack; Wagers
Adopted Amendment: N.J.A.C. 19:47-2.3

Proposed: June 3, 1991 at 23 N.J.R. 1781(a).
Adopted: October 2, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: October 4, 1991 as R.1991 d.534, **without change.**

Authority: N.J.S.A. 5:12-69, 70f, and 100e.

Effective Date: November 4, 1991.
Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

On June 3, 1991, the Casino Control Commission published five proposed amendments which would permit casino licensees, at their option, to offer certain variations in the rules of blackjack. These proposals would amend the following provisions: N.J.A.C. 19:47-2.3 (Higher payout odds on certain winning card combinations), 23 N.J.R. 1781(a); N.J.A.C. 19:47-2.3 and 2.7 (Higher payout odds for winning hands consisting of a blackjack), 23 N.J.R. 1781(b); N.J.A.C. 19:47-2.6 ("Double exposure" blackjack), 23 N.J.R. 1782(a); N.J.A.C. 19:47-2.8 (Surrender at selected tables), 23 N.J.R. 1783(a); and N.J.A.C. 19:47-2.11 (Resplitting of pairs), 23 N.J.R. 1783(b).

A public hearing concerning all of these proposals was held before the full Commission on June 20, 1991, and continued on July 10, 1991, at the Commission's Atlantic City offices. The comments received, and the Commission's determinations regarding the issues raised at the hearing, are summarized below. Interested persons may obtain a transcript of the hearing by directing such request, in writing, to the Casino Control Commission, Arcade Building, Tennessee and Boardwalk, Atlantic City, New Jersey 08401.

Resorts International Hotel, Inc. (Resorts) presented testimony at the public hearing in favor of the proposed amendments, on behalf of Resorts, TropWorld, Trump Plaza, Trump's Castle, Trump Taj Mahal and the Claridge, as follows:

COMMENT: Dr. William Eadington, of the University of Nevada Department of Economics, testified on behalf of Resorts. He estimated that although, in theory, house advantage would be reduced with "double exposure" blackjack (see adopted amendments to N.J.A.C. 19:47-2.6), the variation should have the practical effect of increasing house advantage, since most players are unfamiliar with optimum strategy for this variation.

RESPONSE: In light of the comments received, the Commission has decided to adopt the proposed amendments to N.J.A.C. 19:47-2.6 to permit casino licensees to offer "double exposure" blackjack.

COMMENT: Eadington pointed out that the option of offering 2 to 1 or 3 to 1 odds for a blackjack would substantially reduce house advantage. He commented that such option should only be used as a "loss leader" to generate other, compensating business.

RESPONSE: The Commission has not adopted these proposed amendments to N.J.A.C. 19:47-2.3 and 2.7 (see 23 N.J.R. 1781(b)). The testimony at the public hearing was unanimous in predicting that implementation of these increased payouts would substantially reduce house advantage. Dr. Eadington indicated that, while a "basic strategy" player is at a disadvantage of about negative 0.5 percent, a typical player is at a disadvantage of about two percent. He estimated that with a 2 to 1 blackjack payout, the player improves about 2.25 percent and on a 3 to 1 payout, improves about 6.8 percent. The Commission is not convinced that the use of this variation as a marketing tool can generate business sufficient to compensate for such a significant decrease in house advantage. By contrast, the adopted amendments to N.J.A.C. 19:47-2.3 permit optional payouts which are limited to certain winning card combinations. As noted below, the commenters agree that such option will have minimal impact on house advantage.

COMMENT: Eadington commented that the proposed higher payout odds for certain winning card combinations would have a negligible effect on house advantage. He testified that win would remain relatively unchanged, and might increase if the added variation attracted players to the game.

RESPONSE: The Commission agrees, and has adopted the amendments to N.J.A.C. 19:47-2.3 to permit casino licensees to offer 2 to 1 odds on winning card combinations consisting of a 6, 7 and 8 of the same suit, 3 to 2 odds for three 7's of any suit, and 2 to 1 odds for a blackjack consisting of a designated ace and face card combination.

COMMENT: Eadington stated his opinion that player confusion regarding the optional variations would be mimimal with appropriate signage and adequate announcement.

RESPONSE: The Commission has adopted a new rule, N.J.A.C. 19:47-8.3 (published elsewhere in this issue of the New Jersey Register), which will ensure that casino licensees utilizing any authorized variations to the rules of the games will provide adequate notice to gaming patrons.

COMMENT: Eadington commented that allowing surrender at selected tables will enable casino licensees to "fine tune" their mix of games to their customer base. He noted that some blackjack players dislike the confusion of additional decisions or rules.

RESPONSE: The Commission agrees and has adopted the proposed amendments to N.J.A.C. 19:47-2.8.

COMMENT: Eadington testified that he did not believe that every casino would be compelled to utilize the authorized variations, but rather, that each would apply different marketing strategies to appeal to different markets. He commented that casino licensees might increase the size of the table games market by offering variations of the basic games. Dr. Jeffrey Lowenhar, a gaming industry marketing consultant, appeared for Resorts. He likewise presented survey research data to show that blackjack players might increase their casino visits if offered more variety and betting options. Eadington pointed out that the proposed variations might be utilized to fill undercapacity time periods. Similarly, Daniel Lee, a securities analyst for First Boston Corporation, appearing for Resorts, argued that Atlantic City needs a more diverse product, and that the variations would be an inexpensive means of creating greater interest in the table games. Both Eadington and Lee testified that, despite a slight improvement in the player's odds, the introduction of variations might induce players to remain at the table longer and thus increase hold percentage. Robert Renneisen, President and Chief Operating Officer, Claridge Hotel and Casino, further noted that if play is increased, casinos might be able to reduce other costs of bringing customers in, with a positive effect on the bottom line.

RESPONSE: The Commission agrees that casino management should be allowed the flexibility to offer some variety and different betting options to their table games patrons, and that the availability to do so will serve as a useful marketing tool which will potentially benefit the casino industry as a whole.

COMMENT: Robert Renneisen, Michael Rumbolz, Executive Vice President, Trump's Castle, and John Galloway, President and General Manager, TropWorld, testified in support of the proposed amendments. Each noted that casinos compete in numerous other areas, such as entertainment, food and complimentaries, and that, similarly, the ability to offer variations in the table games would not result in destructive competition. They commented that each casino management's use of the authorized variations would depend upon customer preferences and other marketing variables.

RESPONSE: As stated above, the Commission has determined that the adopted amendments will allow a necessary degree of flexibility without compromising the integrity of the games. The Commission believes that the decision to implement any of these approved variations should be within the discretion of casino management.

COMMENT: Eadington commented that added variation in the table games might slow down the shift of market share from table games to slot machines. In this regard, Galloway commented that a "different atmosphere" is fostered in the table games due to the "one-to-one" relationship between dealer and customer as contrasted with the "mechanical" playing of slot machines.

RESPONSE: Again, the adoption of these amendments reflects that Commission's position that such use of the variations to the table games is a business decision within the discretion of casino management.

The Sands Hotel, Casino & Country Club (the Sands) presented testimony at the public hearing, in opposition to the proposed amendments, on behalf of the Sands, Bally's Park Place, Bally's Grand and Caesar's Atlantic City.

COMMENT: Joel Greenberg, President, Princeton Synergetics, Inc., appearing for the Sands, testified that the option of 2 to 1 or 3 to 1 odds for a blackjack would have a major negative impact on house advantage.

RESPONSE: In view of the comments received, the Commission has not adopted these proposed amendments to N.J.A.C. 19:47-2.3 and 2.7 (see 23 N.J.R. 1781(b)).

COMMENT: Greenberg stated that the increased payout odds for certain winning card combinations would result in relatively small overall reductions in win and house advantage. He noted, however, that while the odds would increase in favor of the "basic strategy" player, this option would actually increase casino advantage with respect to the "general public."

RESPONSE: The comments received by the Commission support the conclusion that the offer of increased payouts on the specified winning card combinations will have minimal impact on house advantage. Much of the testimony presented noted the potential benefits of offering patrons some variety in the rules of the games. The Commission is, of course, concerned with ensuring that the rules of the games are fair to both the house and the player. However, the Commission cannot conclude that the projected casino advantage relative to the typical blackjack player is so unfair as a matter of law as to justify denying casino licensees this degree of flexibility. If, as the commenter suggests, the gaming public perceives any variation to be to its disadvantage, this will be reflected in decreased play at such tables. The Commission has decided to adopt the proposed amendments to N.J.A.C. 19:47-2.3.

COMMENT: Greenberg stated his opinion that all the amendments work to the advantage of "basic strategy" players and card counters, while their potential for drawing players to Atlantic City is unknown. He therefore predicted that use of the variations would ultimately result in decreased profitability for the industry. Greenberg commented that the Commission should not act upon these amendments without determining if implementation of the variations will increase the total table games market, and if so, whether such increase will offset decreases in win; whether there will be an acceptable market share change; and whether the impact on the general public will be "tolerable."

RESPONSE: It is not possible to conclusively determine the effect of these amendments on the market, until such time as they are actually implemented. Based upon an analysis of all comments received, the Commission has determined, with the one exception noted above, to give casinos the discretion to use these rules on an optional basis to attract additional patrons. If a licensee perceives that a particular variation adversely affects its operations or profitability, the use of that variation will be terminated. The Commission will monitor the overall impact on the industry, and if an adverse impact is noted, will adjust the rules accordingly.

COMMENT: John Groom, Senior Vice President, Casino Operations, Caesar's Atlantic City, testified for the Sands. He commented that no casino can survive in the long run dealing blackjack with the proposed variations. He contended that these variations are not viable, even as a "loss leader," since the "professional player" will take full advantage of the rules by maximizing his or her bets.

RESPONSE: Each of the authorized rules variations is entirely optional. The Commission believes that prudent use of the rules variations will enable casino licensees to offer greater variety and stimulate interest in the table games while maintaining profitability. Nonetheless, individual casino management may exercise its discretion in choosing not to implement some or all of the optional variations. The Commission would note that, although casino licensees may not exclude a card counter or other so-called "professional player," see *Uston v. Resorts International Hotel, Inc.*, 89 N.J. 163(1982), the rules do provide other methods of dealing with such players. For example, the casino licensee may reshuffle after any round of play, N.J.A.C. 19:47-2.5(g), and may prevent any player from entering a game in the middle of a shoe, N.J.A.C. 19:47-2.3.

COMMENT: Groom stated his opinion that the variations would not serve to expand the table games market.

RESPONSE: All of the commenters concur that the ultimate impact of the variations in attracting an expanded market is uncertain, and depends upon a number of variables which are difficult to project prior to actual implementation. However, the Commission has concluded that casino licensees should be allowed the discretion to test the usefulness of these options as a marketing tool, and that the adopted rules variations may be implemented without any substantially deleterious impact on casino revenue.

COMMENT: Groom noted that "double exposure" blackjack has not survived in Nevada, since players there have realized that the variation results in a high statistical advantage for the house.

RESPONSE: Should Atlantic City patrons likewise reject "double exposure" blackjack, this will become evident in decreased play at tables offering this variation. Nonetheless, as noted above, the Commission believes that casino management should have the opportunity to test the marketing value of this and each of the other authorized variations.

COMMENT: Leonard DeAngelo, Vice President, Casino Operations, the Sands, commented that blackjack is already a "loss leader," and that any additional reduction in house advantage will require that the basic costs of the game be offset in other ways, for example, reduction of services.

RESPONSE: The Commission believes that these are the types of marketing decisions which are appropriately within the discretion of casino management.

COMMENT: The Sands argued that the variations would cause patron confusion, and that the practical implementation of the variations may cause the gaming public to question the integrity of the games.

RESPONSE: New rule N.J.A.C. 19:47-8.3 requires that casinos offering any of the authorized options post notice of such variations at each affected table, as well as announce such change at that table at least

one-half hour in advance. The Commission believes that this provision will minimize any potential patron confusion, and will assure continued public trust and confidence in the integrity of casino gaming.

Written comments were received from the Division of Gaming Enforcement (Division); TropWorld Casino and Entertainment Resort (TropWorld); the Sands Hotel, Casino & Country Club (the Sands); and Eric H. Silverman, Esq.

COMMENT: The Division noted that the proposed variations may generate greater interest and participation in blackjack, but that such benefit may be negated by reductions in house advantage and a corresponding decrease in gaming revenue. However, the Division further commented that the function of the regulatory agencies is to ensure that gaming is conducted fairly and that the industry produces revenues that benefit the State Treasury. The Division concluded that there is "no overriding regulatory justification for disallowing competent casino management the option of utilizing limited marketing tools."

RESPONSE: The Commission agrees that casino management can and should be accorded a certain degree of flexibility in the Rules of the Games, and that the adopted amendments achieve this end without jeopardizing the integrity of the games.

COMMENT: TropWorld stated its support of the proposed amendments to N.J.A.C. 19:47-2.8, which will permit casino licensees to offer surrender at selected blackjack tables.

RESPONSE: The Commission agrees, as evidenced by its adoption of the proposed amendments.

COMMENT: Eric Silverman, Esq., stated his support of the amendments to N.J.A.C. 19:47-2.11, which authorize the casino licensee to permit players to split pairs three times, on a table with six or less player boxes, and twice, on a table with seven player boxes. He stated that the "no resplit" rule increases casino advantage only minimally, while resplitting is a "frustration reducer" for a blackjack player.

RESPONSE: The Commission agrees that, while resplitting may enable a skilled player to reduce the casino's advantage, casino licensees should have the option of offering this proposed variation in the rules of blackjack.

COMMENT: Silverman commented that the proposed amendments to N.J.A.C. 19:47-2.3, increased payouts for certain winning card combinations, will attract players by offering the possibility of large payouts for relatively small bets.

RESPONSE: The Commission has determined that this option should be permitted, and has adopted the proposed amendments to N.J.A.C. 19:47-2.3.

COMMENT: Silverman stated that many players are not familiar with the basic strategy for "double exposure," which includes plays that some players may be reluctant to make. He concluded that this option "will not survive" in view of the large increase in house advantage. He suggested that the Commission promulgate rules for "double exposure" blackjack which produce a casino advantage commensurate with regular blackjack by allowing players to double down on any original two card hand.

RESPONSE: Although the "double exposure" variation is expected to increase house advantage, the Commission cannot conclude that the adopted rules result in a game which is so unfair to the player as to preclude their use as a marketing device. If, as the commenter suggests, the gaming public perceives these rules as unduly favorable to the house, this will be reflected in decreased play at such tables. On the other hand, some commenters predicted that increased variety in the rules of blackjack may in itself generate interest and increase play. The Commission has therefore decided to authorize the use of the "double exposure" option, and has adopted the proposed amendments to N.J.A.C. 19:47-2.6, which adoption is published elsewhere in this issue of the New Jersey Register.

COMMENT: Silverman commented that the Commission should not allow licensees to offer the optional variations at selected tables. He stated his opinion that casino licensees would likely utilize these options at high minimum wager tables, which, he argued, would increase the disparity in house advantage to the disadvantage of lower stakes players.

RESPONSE: The Commission has determined that casino licensees will be permitted to offer the adopted rules variations at designated tables throughout the casino. As noted above, casino licensees will have the flexibility to utilize the authorized variations in response to its customer base. In addition, the Commission has promulgated a new rule, N.J.A.C. 19:47-8.3, which will ensure that gaming patrons at each of the designated tables will be given at least one-half hour prior notice of any such optional variation, by announcement at the table and by the posting of signage at the table.

COMMENT: Silverman suggested that the Commission promulgate rules to require non-smoking sections equal to 50 percent of casino floorspace, and also to require a set percentage of $2.00 and $5.00 minimum tables.

RESPONSE: These comments are not responsive to the proposals. The commenter is invited to submit a petition for rulemaking pursuant to N.J.A.C. 19:40-3.6.

Full text of the adopted amendments follows:

19:47-2.3 Wagers

(a) (No change.)

(b) Except as provided in (a)3 above, a wager made in accordance with this section shall be void when the score of the player is the same as the dealer, provided, however, that a player's wager shall be lost when the dealer has a blackjack and the player has a simple 21 which is not a blackjack.

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

(f) All winning wagers made in accordance with (a) above shall be paid at odds of 1 to 1, with the exception of standard blackjack, which shall be paid at odds of 3 to 2. Notwithstanding any other provision of this subsection, a casino licensee may, in its discretion, offer one or more of the following payout odds for winning wagers made in accordance with (a) above, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3:

1. Three cards consisting of the 6, 7 and 8 of the same suit shall be paid at odds of 2 to 1;

2. Three cards consisting of three 7's of any suit shall be paid at odds of 3 to 2; and/or

3. A single blackjack combination consisting of a specific ace and face card designated by the casino licensee in accordance with N.J.A.C. 19:47-8.3 shall be paid at odds of 2 to 1.

(g)-(l) (No change in text.)

(a)

CASINO CONTROL COMMISSION

Rules of the Games

Procedures for Dealing Cards in Blackjack

Adopted Amendment: N.J.A.C. 19:47-2.6

Proposed: June 3, 1991 at 23 N.J.R. 1782(a).

Adopted: October 2, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: October 4, 1991 as R.1991 d.536, **without change.**

Authority: N.J.S.A. 5:12-69, 70f and 100e.

Effective Date: November 4, 1991.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

A public hearing on this proposal, and a number of other proposed optional variations to the rules of blackjack, was held on June 20, 1991 and continued on July 10, 1991. The comments received, as well as the written comments received regarding the proposed variations, are summarized in the preceding notice of adoption of amendments to N.J.A.C. 19:47-2.3 proposed at 23 N.J.R. 1781(a), and published elsewhere in this issue of the New Jersey Register.

Full text of the adoption follows.

19:47-2.6 Procedure for dealing cards

(a)-(g) (No change.)

(h) After the decisions of each player have been implemented and all additional cards have been dealt, the dealer shall deal a second card face upward to himself provided, however, that such card shall not be removed from the dealing shoe until the dealer has first announced "Dealer's Card" which shall be stated by the dealer in a tone of voice calculated to be heard by each person at the table. Any additional cards authorized to be dealt to the hand of the dealer by N.J.A.C. 19:47-2.12(b) shall be dealt face upwards at this time after which the dealer shall announce his total point count. In lieu of the requirements of this paragraph, the procedures set forth in (j) or (k) below may be implemented.

(i)-(j) (No change.)

(k) In lieu of the procedure set forth in (h) above, a casino licensee may permit a blackjack dealer to deal his or her hole card face upward after a second card and before additional cards are dealt to the players, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3. Notwithstanding any other provisions of this subchapter, the following rules shall apply whenever cards used to game at blackjack are dealt in accordance with this subsection:

1. Winning wagers shall be determined in accordance with N.J.A.C. 19:47-2.3(a) and (b), provided, however, that a player's wager shall be lost if the score of the player is the same as the dealer, except that a player's wager shall win if both the player and dealer have blackjack;

2. Winning wagers shall be paid in accordance with N.J.A.C. 19:47-2.3(f), except that standard blackjack shall be paid at odds of 1 to 1;

3. Surrender, pursuant to N.J.A.C. 19:47-2.8, and insurance wagers, pursuant to N.J.A.C. 19:47-2.9, shall not be available;

4. A player may double down, pursuant to N.J.A.C. 19:47-2.10, only on a point count of 9, 10 or 11; and

5. Any player who elects to split cards of identical value, pursuant to N.J.A.C. 19:47-2.11, may not split pairs again if the second card so dealt is identical in value to a card of the split pair.

Recodify existing (k)-(n) as (l)-(o) (No change in text.)

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Surrender Option in Blackjack
Adopted Amendment: N.J.A.C. 19:47-2.8

Proposed: June 3, 1991 at 23 N.J.R. 1783(a).
Adopted: October 2, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: October 4, 1991 as R.1991 d.535, **without change**.

Authority: N.J.S.A. 5:12-69, 70f and 100e.

Effective Date: November 4, 1991.
Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

A public hearing on this proposal, and a number of other proposed optional variations to the rules of blackjack, was held on June 20, 1991 and continued on July 10, 1991. The comments received, as well as the written comments received regarding the proposed variations, are summarized in the preceding notice of adoption of amendments to N.J.A.C. 19:47-2.3 proposed at 23 N.J.R. 1781(a), and published elsewhere in this issue of the New Jersey Register.

Full text of the adoption follows.

19:47-2.8 Surrender

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

(c) Each casino licensee may at its discretion, offer its patrons the surrender option authorized in this section. A casino licensee shall not initiate or terminate the use of the surrender option at a table unless the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3.

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack; Splitting Pairs
Adopted Amendment: N.J.A.C. 19:47-2.11

Proposed: June 3, 1991 at 23 N.J.R. 1783(b).
Adopted: October 2, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: October 4, 1991 as R.1991 d.537, **without change**.

Authority: N.J.S.A. 5:12-69, 70f and 100e.

Effective Date: November 4, 1991.
Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

A public hearing on this proposal, and a number of other proposed optional variations to the rules of blackjack, was held on June 20, 1991 and continued on July 10, 1991. The comments received, as well as the written comments received regarding the proposed variations, are summarized in the preceding notice of adoption of amendments to N.J.A.C. 19:47-2.3 proposed at 23 N.J.R. 1781(a), and published elsewhere in this issue of the New Jersey Register.

Full text of the adoption follows.

19:47-2.11 Splitting pairs

(a) (No change.)

(b) When a player splits pairs, the dealer shall deal a card to and complete the player's decisions with respect to the first incomplete hand on the dealer's left before proceeding to deal any cards to any other hand.

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

(e) Notwithstanding the provisions of (c)1 above, a casino licensee may, at its discretion, permit a player to split pairs up to three times (a total of four hands) at a blackjack table with up to six player boxes or twice (a total of three hands) at a blackjack table with seven player boxes if notice of the option is provided as set forth in N.J.A.C. 19:47-8.3. All other requirements of this section shall apply to each hand which is formed as a result of splitting pairs more than once.

(c)

CASINO CONTROL COMMISSION

Rules of the Games; Notice
Minimum and Maximum Wagers
Adopted New Rule: N.J.A.C. 19:47-8.3
Adopted Amendment: N.J.A.C. 19:47-8.2

Proposed: September 3, 1991 at 23 N.J.R. 2613(a).
Adopted: October 9, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: October 9, 1991 as R.1991 d.552, **without change**.

Authority: N.J.S.A. 5:12-69, 70f and 100e.

Effective Date: November 4, 1991.
Expiration Date: April 28, 1993.

Agency Note: Proposed amendments to N.J.A.C. 19:47-8.2, and proposed new rule N.J.A.C. 19:47-8.3, were initially published on June 3, 1991 (23 N.J.R. 1784(b)), but were reproposed for purposes of clarification on September 3, 1991 (23 N.J.R. 2613(a)). While a public hearing on the original proposal was held before the Commission on June 20, 1991, comments relevant to notice were not made. The latter proposal is adopted herein.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division), the Sands Hotel, Casino & Country Club (the Sands) and from Dave Wasserbach.

COMMENT: The Division stated its support of the proposal.

RESPONSE: The Commission agrees, as evidenced by this adoption.

COMMENT: The Sands contends that, since the proposed amendments to N.J.A.C. 19:47-1.3, 1.6, 2.3, 3.2, 4.2, 5.1, 5.6, 7.2 (Proposed at 23 N.J.R. 1784(b); adopted elsewhere in this issue of the New Jersey Register) and 8.2 each deal only with wagers, proposed new N.J.A.C. 19:47-8.3 "appears to establish a uniform method of changing the minimum and maximum wagers at each of the table games," while it actually has a much broader application to any changes in the rules of the games.

RESPONSE: Both notices of proposal clearly state that N.J.A.C. 19:47-8.3 establishes uniform notice requirements for casino licensees which intend to offer any authorized variation in the rules of the table games (see 23 N.J.R. 1784(b) and 23 N.J.R. 2613(a)). Moreover, the language of the rule itself expressly provides that "no casino licensee shall change the rules pursuant to which a particular table game is being

operated" without providing the requisite notice. It appears equally obvious from the Summary statement that the proposed amendments to the wager provisions are merely intended to "substitute a cross-reference to the general notice standards." 23 N.J.R. 1784(b).

COMMENT: The Sands argues that proposed new rule N.J.A.C. 19:47-8.3 will permit casino licensees "to play fast and loose" with the rules of the games, utilizing these changes to attract patrons during off-peak times and then changing the rules back to where they are more advantageous to the house. The Sands submits that this will lead the public to question the integrity of the casino industry.

RESPONSE: The procedures established by the proposed new rule ensure that both the Commission and gaming patrons will be given appropriate notice of the implementation of any optional variation in the rules of the games. At least one-half hour in advance of implementation, the licensee will announce the rule change to patrons at the table, and will also post a sign at the table, noting the rule change and the time that it will go into effect. The location, size and language of this sign is subject to the prior review and approval of the Commission. The Commission will also be notified at least one-half hour in advance of the rule change. Moreover, such variations in the rules of the games are limited to options which have otherwise been approved by the Commission. The substance and impact of each optional variation is thoroughly examined by the Commission prior to authorization. This detailed review process should more than reassure the gaming public of the fairness and integrity of the rules of the games.

COMMENT: Dave Wasserbach, a gaming patron, commented that, in his experience, casino licensees will sometimes lower the permissible maximum wager posted at a table, but then permit all but one particular player at the table to exceed the lower posted maximum.

RESPONSE: The Casino Control Act provides that a valid wager is any wager actually made by the patron and "not rejected" by a casino licensee. N.J.S.A. 5:12-100(g). By statute, then, a casino licensee has the discretion to reject a wager, with the exception that the licensee may not require a wager greater than the stated minimum or less than the stated maximum.

COMMENT: Mr. Wasserbach suggested that the requisite one-half hour notice in N.J.A.C. 19:47-8.3 should apply to changes in the maximum wager.

RESPONSE: Decreases in the minimum wager and any changes in the maximum wager at a table game have never been subject to the one-half hour prior notice requirement. Consistent with this practice, adopted new rule N.J.A.C. 19:47-8.3 requires one-half hour prior notice of increases in the minimum wager only. However, subsection (c) does require that the casino licensee post a sign at the gaming table advising patrons of the lowered minimum or changed maximum, and also announce such change at the table.

Full text of the adoption follows:

19:47-8.2 Minimum and maximum wagers

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

(c) A casino licensee shall provide notice of changes in the permissible minimum and maximum wagers at table games in accordance with N.J.A.C. 19:47-8.3.

19:47-8.3 Rules of the games; notice

(a) Whenever a casino licensee is required by rule to provide notice of the rules pursuant to which a particular table game will be operated, the casino licensee shall post a sign at the gaming table advising patrons of the rules in effect at that table.

(b) Except as provided in (c) below, no casino licensee shall change the rules pursuant to which a particular table game is being operated unless, at least one-half hour in advance of such change, the casino licensee:

1. Posts a sign at the gaming table advising patrons of the rule change and the time that it will go into effect;

2. Announces the rule change to patrons who are at the table; and

3. Notifies the Commission of the rule change, the gaming table where it will be implemented and the time that it will become effective.

(c) Notwithstanding (b) above, a casino licensee may at any time lower the permissible minimum wager or change the permissible maximum wager at a table game upon posting a sign at the gaming table advising patrons of the change in the permissible minimum or maximum wager and announcing the change to patrons who are at the table.

(d) The location, size and language of each sign required by this section shall be submitted to and approved by the Commission prior to its use.

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack
Wagers
Five Cards Totalling 21 Rule
Adopted Amendment: N.J.A.C. 19:47-2.3
Adopted New Rule: N.J.A.C. 19:47-2.16

Proposed: January 7, 1991 at 23 N.J.R. 28(b).

Adopted: October 2, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: October 4, 1991 as R.1991 d.533, **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. 5:12-63(c), 69(e), 70(f) and 100(e).

Effective Date: November 4, 1991.

Expiration Date: April 28, 1993.

Summary of Public Comments:

COMMENTS: Both TropWorld Casino and Entertainment Resort and Claridge at Park Place, Inc. support the five card totalling 21 option, but object to the requirement that the option be offered uniformly on all Blackjack tables.

RESPONSE: The Commission agrees that the casinos should be permitted to offer the five cards totalling 21 option on a table-by-table basis instead of at all Blackjack tables. When this proposal was published there was no standard method for notice of gaming rule changes or making rules optional on a table-by-table basis. The Commission has subsequently adopted a notice provision, N.J.A.C. 19:47-8.3. The adopted changes to N.J.A.C. 19:47-2.16 merely reflect the procedures that must be followed to offer this rule option on a table-by-table basis and to provide a half-hour notice if a casino licensee wishes to withdraw the option.

COMMENT: Trump Taj Mahal Associates supports the proposal, as published.

RESPONSE: Accepted.

COMMENT: Sands Hotel and Casino objects to the proposal based upon the adverse economic effect such proposal would have on the casinos.

RESPONSE: Rejected. The Commission thinks that this option should have a minimal impact on a casino's house advantage for the game of Blackjack, because the benefit of this option as a marketing tool should offset any decrease in house advantage.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*.

19:47-2.3 Wagers

(a) Prior to the first card being dealt for each round of play, each player at the game of Blackjack shall make a wager against the dealer which shall win if:

1. (No change.)

2. The score of the player exceeds that of the dealer without either exceeding 21;

3. The player has achieved a score of 21 in two cards and the dealer has achieved a score of 21 in more than two cards; or

4. The player has achieved a score of 21 in five cards and the dealer has not achieved a blackjack or a score of 21, provided the casino licensee elects such option pursuant to N.J.A.C. 19:47-2.16.

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

AGENCY NOTE: The following text of N.J.A.C. 19:47-2.3(f) reflects that subsection as adopted elsewhere in this issue of the New Jersey Register. Regarding the instant proposed amendments

adopted herein, proposed paragraph (f)1 is incorporated into paragraph (f), and proposed paragraph (f)2 is recodified as (f)4.

(f) All winning wagers made in accordance with (a) above shall be paid at odds of 1 to 1, with the exception of standard blackjack, which shall be paid at odds of 3 to 2. Notwithstanding any other provisions of this subsection, a casino licensee may, in its discretion, offer one or more of the following payout odds for winning wagers made in accordance with (a) above, provided that the licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3:

[1. Blackjack shall be paid at odds of 3 to 2; and]

1. Three cards consisting of the 6, 7 and 8 of the same suit shall be paid at odds of 2 to 1;

2. Three cards consisting of three 7's of any suit shall be paid at odds of 3 to 2; *[and/or]*

3. A single blackjack combination consisting of a specific ace and face card designated by the casino licensee in accordance with N.J.A.C. 19:47-8.3 shall be paid at odds of 2 to 1*[.]***; and/or***[2]***4.***. Five Cards Totalling 21 shall be paid at odds of 2 to 1.

(g)-(l) (No change.)

19:47-2.16 Five cards totalling 21 rule

(a) Whenever a player has achieved a score of 21 in five cards and the dealer has not achieved a blackjack or a score of 21, the winning hand shall be paid at odds of 2 to 1.

(b) If the player has achieved a score of 21 in five cards and the dealer has blackjack, the player's wager shall be settled in accordance with N.J.A.C. 19:47-2.3(b). If the player has achieved a score of 21 in five cards and the dealer has achieved a score of 21 in three or more cards, the player's wager shall be considered void and said wager shall be returned to the player.

(c) *[Each]* ***A*** casino licensee may, *[at]* ***in*** its discretion, offer *[its]* ***to all*** patrons ***at a blackjack table*** the five cards totalling 21 option authorized in this section*[. If a casino licensee elects to offer the five cards totalling 21 option, it shall be made available to all players at all Blackjack tables. A casino licensee may, upon prior written notice to the Commission and the Division, initiate the use of the five cards totalling 21 option at the start of any gaming day or terminate its use at the end of any gaming day. Any casino licensee offering the five cards totalling 21 option shall post a sign, as approved by the Commission, on each blackjack table in its casino.]* ***, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3 prior to withdrawing the offer of this option.***

HUMAN SERVICES

(a)

CONTRACT POLICY AND MANAGEMENT UNIT

Contract Administration
Request for Proposal

Adopted New Rules: N.J.A.C. 10:3-3

Proposed: April 1, 1991 at 23 N.J.R. 957(a).
Adopted: October 10, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: October 11, 1991 as R.1991 d.554, **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. 30:1-12.

Effective Date: November 4, 1991.
Expiration Date: November 21, 1993.

Summary of Public Comments and Agency Responses:

The following is a list of commenters:

Fontaine H. Fulghum, Community Planning and Advocacy Council, Camden County

John F. Conley, Jr., Mercer County Human Services Advisory Council

Mary Ellen Procaccini, Mercer County Human Services Advisory Council

William R. Testa, Association for Retarded Citizens Morris County Chapter New Jersey

Leon S. Socha, County of Hudson, Department of Human Services

Dr. Deborah Davies, Atlantic County, Department of Regional Planning & Development

Nicholas Scalera, Director, Division of Youth and Family Services

Dennis C. Rizzo, Developmental Disabilities Council

Written comments and the Department's responses follow:

COMMENT: One commenter expressed the opinion that other Departments should be included in this standardized process, such as the Departments of Corrections, Community Affairs, Labor & Industry, and Health.

RESPONSE: While the Department of Human Services (the Department) takes note of the view expressed, the proposed new rules specifically pertain to the Department of Human Services.

COMMENT: One commenter questioned the effect of this rule on the compliance with the New Jersey Public Contracts Law as promulgated by the Department of Community Affairs.

RESPONSE: The Department contacted the Department of Community Affairs to discuss this comment. If the contract is funded by Department of Human Services dollars, the Department's requirements must be followed (unless otherwise specified in the contract). If the funds are sub-contracted, the county would follow its own administrative requirements.

COMMENT: One commenter felt the term "services" should be changed to the term "activities" because activities are what are actually done and are easier to measure.

RESPONSE: The Department feels that the term services is more commonly used and understood within the Department's system. The services can be broken down into activities for measurability as needed.

COMMENT: One commenter suggested a six-month to one-year sunset rule for reevaluation of the use of the RFP rule.

RESPONSE: The State has a built-in sunset rule which requires review of all rules after five years; therefore, a special ruling for this rule is unnecessary. In addition, the Department has the option to amend the rule at a later date if necessary.

COMMENT: One commenter felt that because of his comments, the rule should not be published.

RESPONSE: The Department has taken note of the comments made by this commenter and all commenters, making changes where deemed necessary. Therefore, the Department will adopt this rule.

COMMENT: One commenter opposed the statement that clients have no direct involvement in the RFP process in the Social Impact statement of the proposed rule.

RESPONSE: The Social Impact statement is not reprinted upon adoption so no change can be made. The Department was unaware that in some instances clients and their relatives were involved with the RFP process.

COMMENT: N.J.A.C. 10:3-3.1—Three commenters felt the role of the County Human Services Advisory Councils (CHSACs) is unclear and that the CHSACs should be involved at all times. In addition, one of those commenters felt it was unclear if the CHSACs would be utilized when expansion funds are RFPed.

RESPONSE: The Department feels that the CHSACs are not precluded by implementation of these rules; therefore, when the CHSACs RFP Department funds, they will be required to utilize this procedure. The Department has added language at N.J.A.C. 10:3-3.1 to clarify the RFPing of expansion funds.

COMMENT: N.J.A.C. 10:3-3.3—One commenter felt that a statement should be added requiring that all equipment purchased through this proposal be subject to the procurement standards of the county receiving the money.

RESPONSE: The Department disagrees. All agencies contracting with the Department must comply with Department procurement standards referenced in the standard language document, as required of State agencies under State OMB Policy Circular Letter 89-19. In addition, public agencies must follow the State's standards of procurement—the Public Contracts Law, N.J.S.A. 40A-11.

COMMENT: N.J.A.C. 10:3-3.3(a)—Two commenters felt the word "may" was unclear regarding additional publication of public announcements of the availability of funds for the purchase of services.

RESPONSE: The Department does not agree with the suggested language change. In addition to the requirement of notification in the New Jersey Register, the Departmental component has the discretion

to publish the announcement in other publications, as indicated by the word "may."

COMMENT: N.J.A.C. 10:3-3.3(b)—One commenter felt that it should be required that a list of those receiving a copy of the RFP be included in the RFP.

RESPONSE: For the Department to develop an accurate list prior to the distribution of the RFP would be impractical, difficult to implement and to maintain accurately for all of the provider agencies involved in the process.

COMMENT: N.J.A.C. 10:3-3.3(b)—One commenter did not understand the meaning of "if appropriate" when requiring the notification to the CHSACs of an RFP.

RESPONSE: There are cases when the CHSACs are not involved in the RFP process; therefore, notification of CHSACs is not necessary. However, the Departmental component may choose to notify the CHSAC of the RFP.

COMMENT: N.J.A.C. 10:3-3.3(c)—One commenter felt that the start of the RFP process was unclear, relative to the time frames indicated in the rule.

RESPONSE: The RFP process begins with the date of publication of the RFP in the New Jersey Register and all time frames are based on that date.

COMMENT: N.J.A.C. 10:3-3.3(d), 10:3-3.5, 10:3-3.6(a)1 and 10:3-3.6(a)21—One commenter wishes to continue to use their own forms and mailing process; and another questioned when to use their own procedures rather than the State's.

RESPONSE: Over the last three years, the Department has been working to standardize the RFP process, partially because of a request from the CHSACs. Therefore, the Department feels that all persons included in the scope of these rules must utilize the forms and procedures as delineated when RFPing State funds.

COMMENT: N.J.A.C. 10:3-3.3(d) and N.J.A.C. 10:3-3.5(c)4—Two commenters questioned whether the RFP packages had to be mailed. Why not pick them up or FAX them?

RESPONSE: The Department has clarified the wording to allow the package to be picked up. The departmental component may choose to FAX the package to the requesting Provider Agency, but it could prove to be very costly. New text allowing for the FAX option has been added at N.J.A.C. 10:3-3.5(d).

COMMENT: N.J.A.C. 10:3-3.3(d)9—The Department has been required by affirmative action to add the statement: If awarded a contract, your agency will be required to comply with the affirmative action requirements of P.L.1975 c.127. (N.J.A.C. 17:27).

RESPONSE: The Department has added this language as N.J.A.C. 10:3-3.3(d)9.

COMMENT: N.J.A.C. 10:3-3.4—One commenter felt that it should be specified in whose file the sole source document should be maintained.

RESPONSE: Language was added at N.J.A.C. 10:3-3.4 to specify that it is the Department's (DHS) file.

COMMENT: N.J.A.C. 10:3-3.4—One commenter felt that the phrase "... all efforts to obtain multiple responses ..." was unclear.

RESPONSE: The Department believes the statement is clear as it is stated. The departmental component must document all efforts to obtain interest in responding to the RFP.

COMMENT: N.J.A.C. 10:3-3.5(b)—One commenter felt there should be clarification of the phrase "personnel involved in the review and selection process."

RESPONSE: The Department has reworded the sentence to clarify the intent.

COMMENT: N.J.A.C. 10:3-3.5(c)—One commenter suggested that a step be added between numbers 6 and 7 requiring that the decision of the review panel be logged in.

RESPONSE: The Department has added such a statement. The Department believes that the suggestion is valid and the decision of the review panel should be documented.

COMMENT: N.J.A.C. 10:3-3.6—One commenter felt that this section is too cumbersome and requires documentation which need not be part of the RFP.

RESPONSE: The Department feels that a well-rounded overview of the agency and how it perceives the problem and remedy is very important in the RFP process. The section remains as proposed.

COMMENT: N.J.A.C. 10:3-3.6(a)8—One commenter wished the wording to be change to "... clients accepted meet the eligibility requirements for admission.", adding the word accepted.

RESPONSE: The Department has made the wording change.

COMMENT: N.J.A.C. 10:3-3.6(a)12—One commenter felt that the provider agency should be required to address utilization of existing generic community capacities to meet defined needs prior to offering specialized services to meet the needs.

RESPONSE: The Department feels that this commenter's concern has been addressed in N.J.A.C. 10:3-3.6(a)12, which it believes clearly delineates the requirement for information regarding community services.

COMMENT: N.J.A.C. 10:3-3.6(a)14, 15, 16, 17 and 19—One commenter felt the information required in these sections is too cumbersome and would preclude some agencies from responding to the RFP.

RESPONSE: The Department feels that it is necessary to review the items listed in order to properly evaluate the provider agency. N.J.A.C. 10:3-3.6(a)19 is required by law and therefore should always be current and on file. In addition, the Department felt it necessary to add to the list a copy of the certificate of incorporation to the requirements.

COMMENT: One commenter requested that a list of persons responsible and authorized within the agency to approve and certify binding documents, reports and financial information be added to the requirements of the responding agency.

RESPONSE: The Department agrees. The conclusion of this list provides needed information for the signing of the contract and all future reports. The Department has added the requirement at N.J.A.C. 10:3-3.6(a)24.

COMMENT: N.J.A.C. 10:3-3.7—One commenter wanted to continue using their established review panel, and another was unclear as to who was to be on the review panel.

RESPONSE: The composition of the review panel is at the discretion of the unit requesting the proposal. The information given is just a suggestion for the panel composition. An established panel may continue to be used as long as it is composed of three or more persons.

COMMENT: N.J.A.C. 10:3-3.7(a)—Two commenters felt that the word "various" as it pertains to suggested panel members needed to be defined.

RESPONSE: The Department feels that to be more specific in making suggestions may limit the choices, especially if the unit reviewing the proposal chooses to use the suggestions as listed. To define a regional office representative to mean a professional staff member of a certain level is not justified. The person most qualified and knowledgeable may not be a professional person as such.

COMMENT: N.J.A.C. 10:3-3.7(a)—One commenter felt that not enough attention was given to a conflict of interest regarding the review panel.

RESPONSE: The Department has recodified N.J.A.C. 10:3-3.7(c) to N.J.A.C. 10:3-3.7(b), which will emphasize the importance of conflict of interest.

COMMENT: N.J.A.C. 10:3-3.7(a)11—One commenter felt that allowance should be made for use of a qualified outside, neutral expert on the review panel.

RESPONSE: The Department does not agree. Outside experts are not precluded but could be very costly and are not necessary to a responsible review panel.

COMMENT: N.J.A.C. 10:3-3.7(b)—One commenter felt that the rating system should be issued at the time of the RFP and that the criteria for rating the proposal should be known at the time of the RFP issuance.

RESPONSE: The Department maintains that this information is clearly set forth in the rules. Regarding the commenter's first concern about the ratings system, it is delineated at N.J.A.C. 10:3-3.7(b). As to the commenter's second concern, the criteria for evaluation of the proposal and evaluation of the applicant are set forth at N.J.A.C. 10:3-3.8 and 3.9.

COMMENT: N.J.A.C. 10:3-3.7(c)—One commenter wanted to know if the Department was going to issue copies of N.J.S.A. 52:13D-12, the Conflict of Interest Law.

RESPONSE: It is not the intent of these rules that the Department provide copies of laws specified in this document. However, if an agency is awarded a contract, the Department's standard language document provides that, upon request, referenced material will be made available.

COMMENT: N.J.A.C. 10:3-3.8(c)8—One commenter felt that local endorsements should not be included in the RFP and should only be requested if germane to the specific project or there is a clear tie between potential contractors.

RESPONSE: The Department disagrees and feels that this will help in presenting a clear overview of the provider agency.

COMMENT: N.J.A.C. 10:3-3.8(d)—One commenter felt that the evaluation process should follow the outline for the proposal package in a clear and logical manner.

RESPONSE: The Department feels that the process does follow the outline presented. N.J.A.C. 10:3-3.8(d) lists the same criteria, without the detail included, as does N.J.A.C. 10:3-3.6.

COMMENT: N.J.A.C. 10:3-3.8(d)1xiii, 6, 9, and 10—One commenter felt that these provisions were really an evaluation of the applicant and should be moved to N.J.A.C. 10:3-3.9.

RESPONSE: The Department agrees and and believes this charge to be clarification of the process and has recodified the criteria to N.J.A.C. 10:3-3.9.

COMMENT: N.J.A.C. 10:3-3.9(a)—One commenter requested clarification of the responsibilities of the CHSAC and the Departmental component.

RESPONSE: The Department has changed the last sentence to indicate the Departmental component's specific responsibilities and to define the term factors.

COMMENT: N.J.A.C. 10:3-3.10(c)2—One commenter would like clarification of the term standard language document by inserting "Department's" in front of it.

RESPONSE: The Department agrees and has done so.

COMMENT: N.J.A.C. 10:3-3.11—One commenter would like the last sentence clarified to mean the approved and funded proposal.

RESPONSE: The Department agrees; the change has been made.

COMMENT: N.J.A.C. 10:3-3.12—One commenter wished clarification on the use of the proposal for the contract Annex A.

RESPONSE: The Department agrees and has changed the wording.

COMMENT: N.J.A.C. 10:3-3.13—Two commenters requested clarification of the appeals procedures; one wanted the State's procedure clarified and the other the CHSAC's.

RESPONSE: The Department believes it has developed the RFP process so that the appeals procedures for both the State and the CHSAC's can fall within the 105-day time frame of the RFP process (see N.J.A.C. 10:3-3.3(d)14.) The individual specific appeals procedures for each entity are independently administered by the State and the CHSAC, respectively.

Summary of Changes Between Proposal and Adoption:

The Department made several changes upon adoption. References to the Department's Contract Reimbursement Manual and Contract Policy and Information Manual in N.J.A.C. 10:3-3.9(a)1 and 3.12 have been deleted. The Department is still in the process of codifying and preparing for proposal as new rules the regulatory material in these Manuals. At N.J.A.C. 10:3-3.3(d)9, the Department is adding language regarding affirmative action, as required by P.L.1975, c.127 and N.J.A.C. 17:27, to the rule text. The added language reads: "If awarded a contract, your agency will be required to comply with the affirmative action requirements of P.L.1975, c.127 (N.J.A.C. 17:27)." Also, at N.J.A.C. 10:3-3.5(a), language referring to the CHSAC was added in order to clarify documentation procedures.

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 3. REQUEST FOR PROPOSAL

10:3-3.1 Purpose and scope

This rule applies to all departmental components and the County Human Services Advisory Councils (CHSACs) when departmental components choose to issue an RFP, and to all groups or entities responding to RFPs for contracts for the provision of third-party social services or training. The RFP process, *[however,]* ***except when the Departmental Component chooses to RFP,*** shall not *[apply to]* ***be required for*** renewal or expansion of Department purchase of service contracts for programs in effect as of *[the date of rule adoption]* ***November 4, 1991***. In addition, the RFP process shall not apply to renewal of contracts for which an RFP was utilized in selection of the current grant recipients.

10:3-3.2 Definitions

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

"Applicant" means the person, agency or entity responding to an RFP.

"County Human Service Advisory Councils (***C***HSACs)" means councils appointed by the government of each county to review county-level human service activities and to serve as the primary vehicle for local public input into New Jersey Department of Human Services' decision making. The activities of the County Human Services Advisory Councils include, but are not limited to, review and comment on human service proposals; preparation of allocation plans; review of existing purchase of service contracts; and coordination and consolidation of the local human services delivery systems.

"Days" means calendar days.

"Department" means the New Jersey Department of Human Services. As used throughout the subchapter, it also means, where appropriate from the context, the division, commission, bureau, office, unit or other designated component of the Department of Human Services responsible for the administration of particular contract programs.

"Departmental component" means the division, commission, bureau, office or other unit within the Department responsible for the negotiation, administration, review, approval, and monitoring of certain social service or training contracts.

10:3-3.3 Request for proposal

(a) The departmental component or the ***C***HSAC shall issue a public announcement of the availability of funds for the purchase of services in accordance with N.J.S.A. 52:14-34.4, 34.5 and 34.6. The announcement shall be made in a manner to permit reasonable competition among eligible provider agencies. The departmental component shall publish the announcement in the New Jersey Register. In addition, the announcement may be mailed to identified prospective provider agencies, advertised in at least three newspapers of general circulation, and/or distributed at bidders' conferences by the departmental component or ***C***HSAC.

(b) The ***C***HSACs, at minimum, shall use the standards set forth in this subchapter when they are delegated the responsibility to solicit proposals on behalf of the Department. In all other instances, the departmental component shall notify the ***C***HSACs of the RFP, if appropriate.

(c) The proposal process shall be completed within 105 days of publication, inclusive of all appeals processes. See N.J.A.C. 10:3-3.13 for exceptions.

(d) The departmental component or the ***C***HSAC shall forward a proposal package to ***or it may be picked up by*** those prospective applicants responding to the public announcement. In addition, when the ***C***HSACs have been delegated the responsibility to solicit proposals on behalf of the Department, all appropriate Department procedures, as set forth in this subchapter, and county procedures must be followed. The proposal package shall contain, at minimum, the following information and requirements:

1. The amount of funds available, the soure of funds, the purpose, scope, and goals of the programs and services solicited, and any specific conditions, requirements, and/or constraints such as spending caps or match requirements;
2. A list of requirements which must be fulfilled for the proposal to be evaluated;
3. The type of provider agencies eligible to submit a proposal for consideration;
4. A request for a list of the board of directors and officers of the applicant agency and for a statement that the application to provide services is devoid of any conflict of interest;
5. The address to which the completed proposal must be sent, the submission deadline (time and date) after which no applications will be accepted, time frames for review of the proposal and awarding of contracts, and the target date for implementation;
6. The name and address of a contact person who can provide technical assistance;
7. Funding proposal evaluation criteria (see N.J.A.C. 10:3-3.8);
8. A disclaimer stating the following: "The Department reserves the right to reject any and all proposals when circumstances indicate that it is in its best interest to do so." The Department's best interests in this context, include, but are not limited to: loss of funding, inability of the applicant to provide adequate services, indication of

misrepresentation of information and/or non-compliance with State or Federal laws and regulations, any existing Department contracts, and procedures set forth in this subchapter;

9. A statement as follows: If awarded a contract, your agency will be required to comply with the affirmative action requirements of P.L. 1975 c. 127. (N.J.A.C. 17:27).

*[9.]***10.*** The appropriate information, forms and a list of required supporting documents as set forth in N.J.A.C. 10:3-3.6;

*[10.]***11.*** Notification of Executive Order No. 189 (1988), regarding conflict of interest;

*[11.]***12.*** A list of depository libraries where the Contract Reimbursement Manual and Contract Policy and Information Manual may be reviewed prior to proposal;

*[12.]***13.*** The terms and conditions which must be met to comply with specific funding requirements and Departmental contracting rules; and

*[13.]***14.*** A statement explaining the appeals process and that appeals to the departmental component must be completed within the time frame specified in the RFP or within 15 days after receipt of the HSAC recommendation, and that appeals to the HSAC must be completed within the 90 day HSAC process time period and prior to the recommendations being sent to the departmental component.

10:3-3.4 Sole source services

Where there is none or only one response to the RFP, after specifications of the RFP have been cited and all criteria of this subchapter have been met, documentation *[that every effort was made]* of ***any and all efforts*** to obtain multiple responses shall be kept ***in the Department*** RFP file. Documentation shall also be retained of every contact made by the departmental component or ***C***HSAC to find a provider agency to fulfill the required services.

10:3-3.5 Internal controls for proposals

(a) The departmental component or ***C***HSAC shall record all correspondence to and from the departmental component ***or CHSAC, whichever applicable,*** in a log retained in the individual program RFP file.

(b) Correspondence shall be recorded in the log by a staff person different from the staff personnel *[involved in the review and]* ***who are on the review panel and participated in*** the selection process.

(c) The log shall indicate, at a minimum, the following information:

1. The name of the program;
2. The submission deadline date;
3. The name of the applicant, the date the applicant requested the proposal package, and how requested (telephone, letter, etc.);
4. The date the proposal package was sent to ***or picked up by*** the applicant;
5. The date the completed proposal was received from the applicant;
6. The name of the Department or ***C***HSAC staff person receiving the proposal for review and selection; *[and]*

7. The decision of the review panel in awarding the contract; and

*[7.]***8.*** The date the decision letter notifying the applicant of acceptance or rejection was sent.

(d) All proposal packages are to be sent to applicants via first class mail to ensure timely receipt ***or may be FAXed as appropriate*.**

(e) Proposal packages from applicants are to be date and time stamped upon receipt.

(f) All decision letters concerning acceptance and rejection shall have the same date and shall be mailed on that day.

(g) When the ***C***HSACs are handling the RFP process, the final selection(s) shall be forwarded to the departmental component responsible for *[signing]* ***finalizing*** the contract for final approval and retention. All other documentation regarding the selection process shall be made available at the ***C***HSAC office for review by the departmental component.

(h) The departmental component shall communicate to the ***C***HSAC the outcome of any departmental component appeal on an ***C***HSAC RFP and forward a copy of the final award letter.

10:3-3.6 Funding proposal program summary and evaluation data; list of required information

(a) The funding proposal requirements shall apply to all proposals submitted to a departmental component or ***C***HSAC. Each proposal submitted to a departmental component or ***C***HSAC shall contain the following:

1. The funding proposal cover sheet, "Appendix A," which is incorporated herein by reference;
2. The applicant's mission and goals, being a brief description of the applicant's history, purpose, goals, and objectives;
3. A need justification, being a description of the basis for concluding that each of the proposed services is needed in the community and the factors that make the applicant the most capable to provide the service(s), including the following:
   i. The nature of the problem;
   ii. Existing services;
   iii. Statistics;
   iv. Relevant discussions of studies within the community;
   v. The applicant's capability to provide the same or similar services as those existing in the community and/or the applicant's capability to provide a new type of service not currently available in the community;
   vi. The target population and characteristics; and
   vii. The geographic areas to be serviced;
4. Service goals and objectives including specification of the service goals and objectives, the impact on the target populations to be served and how the services will affect the cause of the problem;
5. An indication of those services that will require a subcontract for provision of the services requested, including a list the subcontracts, if known;
6. A program approach, including the following:
   i. Based on the parameters set forth in the RFP, a description of how the services will be implemented and the time frames involved. The narrative shall address client population and geographic areas served;
   ii. An overview of the total service package. For each component of the program package, the following information shall be provided:
   (1) A definition of each service to be provided, including the purpose and goal of each;
   (2) A description of the service activities or methods that staff will employ to achieve the service objective;
   (3) An indication of the number, qualifications, and skills of the staff that will perform the above service activities, as well as the use of any volunteers. A table of organization for administration and personnel and job descriptions for each position shall be included;
   (4) A description of the management and supervision methods that will be utilized in the operation and the monitoring of the effective performance of the service activities;
   (5) The methods to be used to measure and evaluate the quality of service;
   (6) A description of fees for service (if any), sliding fee schedules and waivers of fees; and
   (7) A description of client data to be recorded, the use of this data by the applicant, the means of maintaining confidentiality of client records and data, and the retention schedule of client records and schedule for destruction;
7. Information on accessibility of services, including the following:
   i. The hours and days that each service will be available to clients, including how emergencies are handled; for example, closings, client crisis, after-hours contacts;
   ii. A list and description of the location(s) where each service will be provided to clients (including in-home provision, if that is an option);
   iii. A description of transportation options for clients in obtaining each service; and

iv. A description of handicapped accessibility accommodations, if applicable;

8. Eligibility requirements and referral processes, including:

i. A description of the priorities for accepting clients into the program and the procedures to be followed to ensure that all clients ***accepted*** meet the eligibility requirements for admission;

ii. An explanation of intake procedures; and

iii. An explanation of referral mechanisms and processes (formal and informal) and community outreach procedures;

9. Termination procedures, including a description of termination procedures (client-and program-initiated), the appeals process, and follow-up services, as appropriate. A list of the various reasons for termination shall be included;

10. Information on level of service including the following:

i. An indication of the level of service anticipated throughout the contract period; for example, number of clients to be served, number of meals served, round trips for transportation, hours; and

ii. A definition of each unit of service;

11. Information on service coordination, including the following:

i. A description of the relevant services and ancillary agencies that will be frequently utilized in combination with the service being proposed for funding, including any already existing relationships and agencies which will be referral sources for these services; and

ii. A description of how formal coordination and referral agreements with other community agencies will be accomplished, and where appropriate, specification of these agencies;

12. Information on community participation, including a description of how community members and clients will participate in the functioning of the applicant's organization including the delivery of services, planning for service provisions, and the evaluation of services;

13. A description of activities and timetable for implementation of services, including a description of the timetable for the implementation of activities and schedule of deliverables;

14. Information on current programs managed by the applicant and the funding sources, identification of current programs managed and the funding sources utilized;

15. A copy of the applicant's organizational chart;

16. A copy of the most recent organization-wide audit report;

17. A copy of the applicant's code of ethics and/or conflict of interest policy;

18. A list of the board of directors, officers and their terms of office;

19. Documentation of the applicant's charitable registration status;

20. A copy of the certification of incorporation of the applicant;

*[20.]***21.*** *[An original and/or copy]* ***Originals and/or copies*** of letters of support from the community;

*[21.]***22.*** A completed budget proposal, "Appendix B," which is incorporated herein by reference, with a separate column for each service to be provided and with the same program and service names used consistently throughout the proposal;

*[22.]***23.*** A list of the name(s) and address(es) of those entities providing support and/or money to help fund the program for which the proposal is being made; *[and]*

24. A list of those persons responsible and authorized within the agency to approve and certify binding documents, reports and financial information; and

*[23.]***25.*** A statement of assurance that all Federal and State laws and regulations are *[adhered to]* ***being followed***.

10:3-3.7 Composition of review panel

(a) The unit responsible for RFP coordination shall convene a review panel of at least three persons to assess, rate, and rank proposals to recommend an applicant for funding. The responsible unit shall present an objective process to the panel for the purpose of rating the proposals. *[The panel may consist of an allocations review panel under the auspices of the HSAC or the following:]*

(b) A panel member must disqualify himself or herself from the panel when he or she has any interest, financial or otherwise, direct or indirect, in the results of the panel's evaluations (see Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq.)*

(c) The panel may consist of an allocations review panel under the auspices of the CHSAC or the following:

1. A chairperson appropriate to the RFP-originating office;

2. A departmental component unit contract supervisor or designee;

3. A contract administrator;

4. A county social service specialist or office program specialist;

5. A department representative from the appropriate county;

6. A staff person with recognized fiscal expertise;

7. An individual with recognized program/service expertise;

8. An individual from appropriate advisory board or council, for example, the ***C***HSAC or community mental health board;

9. A regional office representative;

10. Representatives from a service coalition or community group, if applicable; and

11. A client or prospective client.

*[(b)]*** (d)*** Composition of the panel members may vary depending upon the unit responsible for coordinating the RFPs and the nature of the funds to be awarded and services solicited. The rating system to be used in evaluating criteria, ***such as*** numeric, *[written assessment, etc.]* will generally be determined by the responsible unit *[or it may be determined by the panel]*. Recommendations of the panel are regarded as confidential until final approvals and awards are announced.

[(c) A panel member must disqualify himself or herself from the panel when he or she has any interest, financial or otherwise, direct or indirect, in the results of the panel's evaluations (see Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq.).]

10:3-3.8 Evaluation of the proposal

(a) All meetings of the review panel shall have written minutes.

(b) The evaluation of the applicants' proposals shall be in writing with an explanation of the rating system used for the evaluation process.

(c) Proposals shall be evaluated by a review panel using, at a minimum, the following general criteria (see N.J.A.C. 10:3-3.9):

1. Satisfactory documentation of need for services;

2. Compatibility of applicant's goals and objectives with goals of the program and services solicited;

3. Clarity and attainability of the objectives and the implementation plan;

4. Logic and consistency of the proposal;

5. Clarity of the planned integration of the services with the generic agencies in the community;

6. Reasonableness of the proposed budget as related to the anticipated results;

7. Availability and accuracy of supporting documentation; and

8. Local endorsements, for example, county mental health boards.

(d) The specific evaluation criteria (see N.J.A.C. 10:3-3.6) to be used when assessing proposals shall include:

1. Completeness of the application and clarity of statements concerning:

i. The applicant's mission and goals;

ii. Need justification;

iii. Service goals and objectives;

iv. The program approach, including:

(1) Service definitions;

(2) Activities/methods to achieve objectives;

(3) Staff qualifications and job descriptions;

(4) Monitoring plan; and

(5) Evaluation of quality of services.

v. Accessibility of services;

vi. Eligibility requirements and referral processes;

vii. The termination procedure;

viii. The level of service;

ix. Service coordination;

x. The community participation description;

xi. The timeable to implement services;

xii. Identification of current programs managed and the funding sources;

[xiii. Required documents;]

*[xiv.]***xiii.*** The budget proposal; and

*[xv.]***xiv.*** Identification of other sources of support and match, as appropriate;

2. Reasonableness of proposed budget in consideration of anticipated results;

3. Compatibility of the applicant's goals and objectives with goals of the program;

4. Availability and accuracy of supporting documentation;

5. Compliance with all terms and conditions of previous contracts with the Department and the standard language document;

[6. A record of the ability to manage the fiscal aspects of previous contracts;]

*[7.]***6.*** The extent to which new and innovative strategies are proposed to assist the target population; ***and***

*[8.]***7.*** The adequacy and specificity of the outcome statements;

*[9. Evidence of ability (including satisfactory past performance and evaluation) to provide the proposed services to the target population; and

10. Evidence of the existence of adequate resources, facilities, and equipment to operate the proposed program.]*

10:3-3.9 Evaluation of applicant

(a) The applicant shall be evaluated to determine the following (an on-site evaluation may be conducted by the departmental component or ***C*HSAC if deemed necessary). ***C*HSACs shall evaluate the applicant on only those factors with which they are familiar or about which they have accurate information. The *[Department]* ***Departmental component*** is responsible for evaluation of all *[the factors]* ***information presented by the applicant in the RFP***.

1. Ability to comply with all terms and conditions of the standard language document and its associated annexes and *[the Department's Contract Reimbursement Manual and Contract Policy and Information Manual]* ***attachments***;

2. Prior history in the delivery of the same or similar services;

3. Qualifications of staff;

4. Adequacy of facilities;

5. Ability to manage the fiscal aspects of the contract ***including a satisfactory past history*** (a pre-award survey may be necessary prior to the signing of the contract); *[and]*

6. Accountability of the program and management initiatives to ensure accountability of the staff, for example, supervision and training of staff, planned levels of service, and contingency plans to ensure attainment of objectives*[.]***;***

7. Evidence of ability (including satisfactory past performance and evaluation) to provide the proposed services to the target population;

8. Evidence of the existence of adequate resources, facilities, and equipment to operate the proposed program; and

9. Review of required documents.*

10:3-3.10 Notification of decision

(a) Upon determining which proposals are most responsive and advantageous to the needs of the clients to be served, and costs and other factors are considered, the departmental component shall notify all applicants in writing of its decision within the time frames specified in the request for proposal, not to exceed 90 days. The appeals process must be completed within 15 days thereafter.

(b) An appeal based on the determination may be filed according to the procedures established by the departmental component or ***C*HSAC which shall be referenced in the notice of decision to the applicant.

(c) Acceptance letters shall indicate that:

1. The award is contingent on contract negotiation and that if, anytime before or during the contract negotiations, it is found that the agency awarded the contract is incapable of providing the necessary services or has misrepresented any material fact or its ability to handle the funding or provide the solicited services, the award may be rescinded. The rescission shall be made in writing, specifying why the award has been withdrawn.

2. The contract is not binding until funding has been verified and the ***Department's*** standard language document and the contract confirmation letter are signed by both parties.

10:3-3.11 Document retention

All documentation used to evaluate the responding applicant proposals, as well as any information collected to evaluate the applicant itself, shall be retained by the departmental component or ***C*HSAC for a minimum of 50 days after the date of the notification of decision letter. This includes the RFP, the applicant proposals, all evaluation sheets, and any other documentation which details why the agency was selected or not selected. If the final decision is not appealed within the specified time frames, the documentation may be destroyed after 50 days. *[The awarded]* ***A copy of the approved and funded*** proposal shall be retained by the departmental component in the contract file.

10:3-3.12 Contract negotiations

At the time an award is made to the applicant, negotiations shall proceed with the process of preparing and submitting a formal contract proposal package to the Department. The initial proposal as modified and agreed to by both parties may *[replace the initial]* ***serve as the*** Annex A program description *[(see Contract Reimbursement Manual and Contract Policy and Information Manual)]* for the contract.

10:3-3.13 Exceptions to procedures

(a) When the announcement of the availability of funds limits the Department to less than 90 days for allocation, obligation, and/or expenditure of funds, or requires an extension, the time frames for the RFP process may be adjusted by the Department accordingly.

(b) When there is an emergent danger and/or a risk to the health and welfare of clients as a result of strict adherence to N.J.A.C. 10:3-3, an exemption from the full RFP process may be granted and signed by the person in charge of the departmental component.

Date received _____

Dept/Component _____

Appendix A

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

Funding Proposal
Cover Sheet

Proposal Summary Information

Incorporated Name of Applicant: _____

Type: Public _____ Profit _____ Non-Profit _____, or Hospital Based _____

Federal ID Number: _____ Charities Reg. Number: _____

Address of Applicant: _____

_____

Address of Service(s): _____
(Attach list if necessary.)

_____

Contact person: _____ Phone No.: _____

Total dollar amount requested: _____ Fiscal Year End: _____

Total Match required: _____ Match Secured: Yes _____ No _____

Funding period: From _____ to _____

Services: _____
(For which funding is requested)

Total number of unduplicated clients to be served: _____

Brief description of services by program name and level of service to be provided*: _____

_____

Authorization:

Chief Executive Officer (Print) _____

Signature _____ Date _____

*NOTE: If funding request is for more than one service, complete a separate description for each service. Identify the number of units to be provided for each service as well as the unit description (hours, days, etc.). If the Contract will be based on a rate, please describe how the rate was established.

Appendix B

State of New Jersey
Department of Human Services
Request for Proposal (RFP): Budget Information Summary

Date _____ Page ___ of ___

RFP Project Name _____ Agency Federal ID # _____

Agency Name _____ Charities Registration # _____

Address _____ Agency: Non-Profit _____ Profit _____

_____ Public _____ Hosp. Based _____

Telephone Number _____ Budget Period _____ to _____

Chief Exec. Officer _____ Agency Fiscal Year End _____

Contract Information Summary
(List all Department of Human Services contracts)

Contracting Division	Contract Number	Program Name	Type of Service	Current Reimbursable Ceiling

State of New Jersey
Department of Human Services
Request for Proposal (RFP): Budget Information Summary

Date _____ Page ___ of ___

RFP Project Name _____ Agency Federal ID # _____

Agency Name _____

Funding Request—Program Name(s) _____

Service(s) _____

RFP Budget Expense Summary

Budget Categories	Total Costs	Indicate Programs to be Funded			Unallowable Costs	Gen. & Adm. Costs
A. Personnel (including fringe benefits)						
B. Consultants & Professional Fees						
C. Materials and Supplies						
D. Facility Costs						
E. Specific Assistant to Clients						
F. Other						
G. Gen. & Adm. Cost Allocation	>>>>>>					( )
H. Total Operating Costs						
I. Equipment						
J. Total Cost						
K. Revenue (deduct)	( )	( )	( )	( )		
L. Funding Request	$	$	$	$		
Total Units of Service						
Unit Description						

The budget request shall indicate the Agency's total proposed budget for delivery of the service(s) reduced by the other sources of funding (line K). Indicate the sources of funding and the dollar amounts for each:

Total Other Sources of Funding	$	$	$	$

State of New Jersey
Department of Human Services
Request for Proposal (RFP): Budget Information Summary

Date _____ Page ___ of ___

RFP Project Name _____ Agency Federal ID # _____

Agency Name _____

RFP—Personnel Detail

Position Title/ Name of Employee	Total Cost	Hrs/ Week	% of Time	Indicate Programs to be Funded			Unallowable Costs	Gen. & Adm. Costs

State of New Jersey
Department of Human Services
Date _____ Request for Proposal (RFP): Budget Information Summary Page ___of ___

RFP Project Name _____ Agency Federal ID # _____

Agency Name _____

RFP—Budget Category Detail

Budget Category	Basis of Allocation	Total Cost	Indicate Programs to be Funded			Unallowable Costs	Gen. & Adm. Costs

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Payment Methods of Child Care for Employed REACH AFDC-C and -F Participants

Adopted Amendments: N.J.A.C. 10:81-14.12 and 14.18

Proposed: August 5, 1991 at 23 N.J.R. 2214(a).
Adopted: October 10, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: October 11, 1991 as R.1991 d.555, **without change.**

Authority: N.J.S.A. 44:10-1 et seq.; Title II of the Family Support Act of 1988 (FSA), P.L. 100-485; 45 CFR 233.20(a)(11)(i); 45 CFR 255.3; and Section 402(a)8(A)iii of the Social Security Act.

Effective Date: November 4, 1991.
Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:81-14.12 REACH Community Work Experience Program
(a)-(b) (No change.)
(c) Participation services and reimbursement: The services of child care and transportation that are necessary to CWEP participation will be provided as part of the REACH Agreement. In cases where the county selected entity is unable to provide these necessary services, the county selected entity must provide reimbursement for necessary transportation and child care costs that are incurred by the recipient and directly related to participation in CWEP.
1. (No change.)
2. Child care costs: Participants shall be reimbursed for child care costs in such amounts as are determined by the CWA to be reasonable, necessary, and cost-effective, or by direct payment to the child care provider. Child care payments shall be made in accordance with N.J.A.C. 10:81-14.18 and N.J.A.C. 10:82-5.3.
3.-4. (No change.)
(d)-(h) (No change.)

10:81-14.18 REACH/JOBS support services: child care
(a)-(b) (No change.)
(c) Types of care and payments: REACH/JOBS child care payments are available for care in an infant, toddler, preschool child, school-age child or child with special needs in various types of arrangements, including full and part-time day care and care before and after school. The Statewide rates for REACH/JOBS child care payments are set forth at N.J.A.C. 10:82-5.3(g) and are also available from the Department of Human Services, CN 700, Trenton, NJ 08625, or the local Division of Youth and Family Services District Office or the county welfare agency.
1.-2. (No change.)
3. Costs of transportation: Payment in addition to the REACH/JOBS training-related expenses allotment may be made for the cost of transportation of a child to and from a day care center in accordance with N.J.A.C. 10:82-5.3(c)3.
(d) Duration of payment: REACH/JOBS child care benefits are routinely available to participants for participation in a REACH/JOBS employment-directed activity; for a limited time to bridge the period between participation in REACH employment-directed activities or between a REACH/JOBS employment-directed activity and employment; for the post-employment period after commencement of employment that does not result in ineligibility for AFDC, that is, while a participant is employed and receiving AFDC, as a direct payment or to supplement as necessary, child care paid by the participant as required by the Social Security Act (see (g)4 below); and, after the commencement of employment that results in ineligibility for AFDC, one year post-AFDC child care, subject to payment of a post-AFDC child care fee.
1. Post-employment child care: The post-employment period shall start with the first week in which a participant is employed and receiving AFDC and shall expire when the participant is either ineligible for AFDC for reason other than sanction or penalty or is no longer employed. State REACH funds shall be used for child care costs of REACH/JOBS employed individuals. Such payments may be made as direct payment of child care costs or, as supplemental payments for families using the disregard process if the costs of

child care exceed the Federal child care disregard limits set forth at N.J.A.C. 10:82-2.8(a). Payment is made only when the care is provided through a REACH/JOBS authorized child care arrangement (see (f) below).

i. (No change.)

2.-4. (No change.)

(e)-(f) (No change.)

(g) Payment procedures: REACH/JOBS funds are expended for child care as direct vendor payments to providers or as direct payments to participants.

1.-3. (No change.)

4. Employed REACH/JOBS participants receiving AFDC-C or -F: The preferred method of payment of REACH/JOBS child care benefits for employed AFDC-C or -F REACH/JOBS participants shall be by direct vendor payment to authorized providers of service that meet those requirements set forth in (f) above.

i. When the REACH/JOBS participant reports the start of employment, the income maintenance worker shall determine eligibility for AFDC prospectively by deducting the work expense disregard and the applicable $30.00 and one-third disregard as set forth at N.J.A.C. 10:82-2.8 and 4.4. Additionally, actual expenditures made by the REACH/JOBS family for care of an incapacitated adult living in the AFDC-C or -F household shall be disregarded in the eligibility determination and benefit calculation up to a maximum of $175.00 per month per incapacitated adult during full-time employment of the REACH/JOBS participant, or up to $135.00 per month for part-time employment (see N.J.A.C. 10:82-2.8). Cost of care of the incapacitated adult remains the responsibility of the REACH/JOBS family; no supplemental monies for incapacitated adult care are provided through REACH/JOBS in excess of the disregard limits. Such adult care costs if incurred by the family shall always be disregarded regardless of the method of payment of REACH/JOBS child care costs. No disregard shall be applied in the prospective eligibility determination for REACH/JOBS child care purposes (except as delineated in (g)5 below) as those costs are made by direct vendor payment by the agency.

ii. If the employed REACH/JOBS family remains prospectively eligible for AFDC, the costs of REACH/JOBS child care shall not be disregarded in the computation of the family's AFDC assistance benefit except in situations as delineated in (g)5 below. The income maintenance worker shall explain to the participant that actual REACH/JOBS child care costs shall be paid directly to the child care provider.

Recodify ii.-v. as iii.-vi. (No change in text.)

5. Exceptions to direct payment of REACH/JOBS child care for employed REACH/JOBS AFDC-C and -F participants: The earned income disregard procedure for expenditures made for care of a child (see N.J.A.C. 10:82-2.8 for disregard limits) shall remain available to eligible families participating in REACH/JOBS in the situations delineated in (g)5i through iv below:

i. The REACH/JOBS child care payment is made to a child care provider selected by the AFDC-C or -F family participating in REACH/JOBS and that provider does not meet the criteria set forth in (f) above as an authorized child care arrangement for direct payment through REACH/JOBS funds. In addition, no supplemental monies over the disregard limits are provided through REACH/JOBS for such unauthorized arrangements.

ii. Any AFDC-C or -F REACH/JOBS family who has an employed family member who has been participating in REACH/JOBS prior to April 1, 1991 and who has been utilizing the disregard method on or before April 1, 1991, for payment of child care costs (see (g)5iii(1), (2) and (3) below for applicable procedures).

iii. Any employed AFDC-C or -F family who has been continuously eligible for and was receiving AFDC-C or -F benefits on October 13, 1988 and had earnings on that date whereby the child care disregard was the method of payment for child care costs, and who would be financially disadvantaged due to the loss of AFDC eligibility as a result of the direct payment of child care costs rather than the use of the disregard when employed and participating in REACH/JOBS.

(1) The employed REACH/JOBS AFDC-C or -F participant shall pay actual child care costs up to the Federal disregard limits directly to the provider of care. The child care disregard shall be applied to that first budget month in which the REACH/JOBS employed participant begins payment for child care costs. Cost of care in excess of the Federal disregard limits may be supplemented by the REACH/JOBS program as a REACH/JOBS post-employment child care payment up to the maximum rates authorized by DHS (see N.J.A.C. 10:82-5.3(g)). Supplemental REACH/JOBS payments are issued as vendor payments to the child care provider when the child(ren) is in an authorized child care arrangement (see (f) above). Such REACH/JOBS supplemental payments shall not be counted as income or resources in any month received.

(2) Direct vendor payment by the agency is available as a bridge payment (see (d)3 above) for families using the disregard payment procedure, to assist the REACH/JOBS family in transition to work. That bridge payment through REACH/JOBS may be paid by the agency as a direct payment to the provider for care in authorized arrangements up to the receipt of the first pay check or for a period not to exceed one month. Child care costs paid through a bridge payment shall not be disregarded in the calculation of the REACH/JOBS family's assistance payment.

(3) REACH/JOBS families may voluntarily request direct payment of child care costs rather than the use of the disregard process. Upon request, a prospective AFDC elgibility determination shall be made to determine if continued eligibility exists if the child care disregard is not applied. The participant shall be informed of the result of the determination and of the consequences. If eligibility continues to exist and the client decides to have direct payment rather than the disregard, the case record shall be documented as to the request and appropriate action taken.

iv. Any AFDC-C or -F applicant family which has an employed family member who is defined as a REACH/JOBS mandatory participant (that is, not exempt from REACH/JOBS participation) shall utilize the disregard procedure for costs of child care due to employment during the interim time period covering referral of that mandatory individual to REACH/JOBS case management; and, until such time (subject to timely and adequate notice provisions at N.J.A.C. 10:81-7.1 and 14.7) that income maintenance is subsequently advised by case management of the direct payment of child care costs through REACH/JOBS.

6. (No change in text.)

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

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook

AFDC-C and F: Child Care/Incapacitated Adult Care Disregard; Direct Payment of Child Care for Employed REACH Participants

Adopted Amendments: N.J.A.C. 10:82-2.8, 4.4, and 5.3

Proposed: August 5, 1991 at 23 N.J.R. 2217(a).

Adopted: October 10, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: October 11, 1991 as R.1991 d.556, **without change.**

Authority: N.J.S.A. 44:7-6, and 44:10-3; Title II of the Family Support Act of 1988 (FSA), P.L. 100-485; 45 CFR 233.20(a)(11)(i); 45 CFR 255.3; and Section 402(a)8(A)iii of the Social Security Act.

Effective Date: November 4, 1991.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows:

10:82-2.8 Determination of calculated earned income; AFDC-C and -F procedures

(a) From the total gross earnings of each employed person in the AFDC-C and -F segments, deduct the cost of producing income if self-employed (see N.J.A.C. 10:82-4.3), and proceed as follows:

1. From gross earnings deduct the first $90.00 of such earnings for each employed individual in the eligible family to cover work-related expenses including, but not limited to, transportation and mandatory payroll deductions.

2.-3. (No change.)

4. Deduct an amount equal to the actual expenditures for child care or for care of an incapacitated adult living in the same home as the AFDC-C or -F eligible family when any of the circumstances in (b) below apply to the eligible family. In no event shall this deduction exceed the limits as follows:

i.-ii. (No change.)

iii. $135.00 per month, per child age two or older, or incapacitated adult, for part-time employment (for example, employment of less than 120 hours per month);

iv. $150.00 per month, per child under age two, for part-time employment (for example, employment of less than 120 hours per month).

(b) The deduction described in (a)4 above shall be made for actual expenditures for child care or for care of an incapacitated adult living in the same home as the AFDC-C or -F eligible family when any of the following circumstances apply to the eligible family:

1. That employed AFDC-C or -F family who had been continuously eligible for and was receiving AFDC-C or -F benefits on October 13, 1988, and had earnings on that date whereby the child care disregard was the method of payment for child care costs, and who would be financially disadvantaged due to loss of AFDC eligibility as a result of the direct payment of child care costs rather than use of the child care disregard when employed and participating in REACH/JOBS;

2. The family pays expenditures for care of an incapacitated adult living in the AFDC-C or -F household to enable the AFDC-C or -F employed individual to remain employed. This disregard process shall be used in determining the calculated earned income to an AFDC-C or -F family to meet the costs of care of an incapacitated adult in the household if the family incurs such expenses, regardless of the fact that direct payment for child care costs may be paid by the agency (see N.J.A.C. 10:82-5.3(b) and 10:81-14.18(d)1);

3. An AFDC-C or -F applicant family which has an employed family member who is defined as a REACH/JOBS mandatory participant (that is, not exempt from REACH/JOBS participation) shall use the disregard method for costs of child care due to employment during the interim time period covering referral of the mandatory individual to REACH/JOBS case management; and until such time (subject to timely and adequate notice provisions at N.J.A.C. 10:81-7.1 and 14.7) that income maintenance is subsequently advised by case management of the direct payment of child care costs through REACH/JOBS;

4. The employed individual who works 30 or more hours per week, is exempt from REACH/JOBS, and does not volunteer as a participant in the REACH/JOBS program (see N.J.A.C. 10:81-14.3(c) and 14.3A(a)14);

5. The REACH/JOBS child care payment is made to a child care provider selected by the AFDC-C or -F family participating in REACH/JOBS, and that provider does not meet the criteria at N.J.A.C. 10:82-5.3(c) through (f) and N.J.A.C. 10:81-14.18(f) as an authorized child care arrangement for direct payment through REACH/JOBS; or

6. The AFDC-C or -F REACH/JOBS family who has an employed family member who has been participating in REACH/JOBS prior to April 1, 1991, and who has been utilizing the disregard process on or before April 1, 1991, to meet child care costs for that active REACH/JOBS member who was employed.

10:82-4.4 Disregard of earned income in AFDC-C and -F segments

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

(d) The CWA shall disregard from the remaining earned income, the actual costs paid for child care or for care of an incapacitated individual in the same home as the AFDC-C or -F eligible family when the circumstances described at N.J.A.C. 10:82-2.8(b) exist. The amount of the disregard shall not exceed the limits as follows:

1.-4. (No change.)

(e) (No change.)

10:82-5.3 Payment for child care through Title IV-A funds

(a) "Child care" for the purposes of this section means payment for care of a child in both REACH/JOBS and non-REACH/JOBS situations through Title IV-A funding. For individuals participating in the REACH/JOBS program, including individuals eligible for post-AFDC REACH/JOBS benefits, the provisions of N.J.A.C. 10:81-14.18 shall apply. With the exception of (h) below concerning care in approved maternity homes, no child care payment shall be authorized which exceeds the maximum rates established by the Department of Human Services (see (g) below). Actual costs per child per week shall be reasonably related to the hours of child care needed, and to accommodate any special circumstance situation as defined in N.J.A.C. 10:82-5.2(c) on a case-by-case basis. If a child is placed in the care of more than one child care provider in any single week, the total cost of care distributed among providers shall be based on the child care arrangements, the age or special circumstance situation of the child and the hours of care provided.

(b) Further provisions related to child care expenses are:

1. Child care may be provided for participation in a non-REACH/JOBS vocational rehabilitation programs, when such expenses are not available through those programs or sponsoring agencies. Child care payments for vocational rehabilitation purposes can be made directly to the individual or as a vendor payment to the child care provider.

2. Child care expenses for employed AFDC-C and -F segment families (non-REACH/JOBS participants) shall be met by the eligible family through the child care disregard process set forth at N.J.A.C. 10:82-2.8(a)4 and (b) and 4.4(d).

3. Expenses of child care incident to employment of an AFDC-N segment REACH/JOBS individual shall be provided, when necessary, as a direct payment of actual costs of care (not to exceed the maximum rates in (g) below) to the provider of child care and in accordance with N.J.A.C. 10:81-14.18.

4. Expenses of child care incident to employment of an AFDC-C or -F segment REACH/JOBS parent, parent-person or parent-minor shall be provided, when necessary, as a direct payment of actual costs of child care when appropriate (see N.J.A.C. 10:82-2.8(a)4 and (b) and 4.4(d)). The direct payment to the provider of child care costs for employed REACH/JOBS families shall not exceed the maximum child care rates (see (g) below) established by the Department of Human Services for an authorized child care arrangement as described in (c) through (f) below.

5. Expenses of child care during the period of time between REACH/JOBS activities or between an employment-directed activity and the start of employment for an AFDC-C, -F, or -N REACH/JOBS participant. Such payments are termed "bridge" payments and shall not be disregarded in the calculation of the family's assistance payment. Child care may be paid by the agency as a bridge payment through REACH/JOBS up to the receipt of the first pay check or for a period not to exceed one month (see N.J.A.C. 10:81-14.18(d)3).

6. If the family circumstances satisfy any one of the situational criteria at N.J.A.C. 10:82-2.8(b), requiring use of the child care disregard method to meet child care/incapacitated adult care expenses caused by the employment of a REACH/JOBS individual, then REACH/JOBS funds may be used to supplement the cost of child care in any month in which the costs of such child care exceed the Federal child care disregard limits up to the maximum rates established by the Department of Human Services (see (g) below). The supplement is provided by direct payment to the provider only for authorized child care arrangements (see (c) through (f) below).

i. If the REACH/JOBS participant meets the criteria at N.J.A.C. 10:82-2.8(b) for payment of child care through the disregard method, then the child care disregard is applied to that budget month in which the participant begins payment for child care costs.

7. Authorization of payment of child care costs through REACH/JOBS funds are limited to providers of child care who satisfy the criteria delineated in (c) through (f) below.

8. No payments are authorized for child care expenses incident to the employment of a non-needy caretaker relative.

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

(e) In-home care rules are:

1. "In-home care" means care for a child in the child's usual home and may be used when this is the child care arrangement preferred by the participant.

2. The authorized rate for in-home care shall be provided for all services and supervision pertaining to the care of the children and is not for the performance of household tasks unrelated to child care. Payment shall not be authorized for services provided by a non-needy caretaker relative who resides in the same home as the child when that relative is legally responsible (for example, parent, adoptive parent or legal guardian) for any member of the eligible family; or an individual who is a member of the AFDC assistance unit.

i. The "REACH Home Approval Checklist" (see N.J.A.C. 10:81, Appendix A) shall be used to evaluate in-home care.

3. (No change in text.)

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

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Demand Side Management Resource Plan

Adopted New Rules: N.J.A.C. 14:12

Proposed: May 6, 1991 at 23 N.J.R. 1283(a).
Adopted: October 9, 1991.
Filed: October 9, 1991, as R.1991 d.549, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman and Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:2-12, 13, 52:27F-1(g) and (q) and 52:27F-18.

BPU Docket Number: EX90040304

Effective Date: November 4, 1991.
Expiration Date: November 4, 1996.

Summary of rulemaking history:

A pre-proposal entitled "Limiting Barriers to Effective Conservation Progress and Implementing Conservation Ratemaking Incentives", Docket No. EX90040304, was published in the June 4, 1990, New Jersey Register at 22 N.J.R. 1692(a). This pre-proposal identified the existence of certain barriers to more extensive investment in energy conservation by consumers and utilities in the State. It also outlined possible utility ratemaking incentive mechanisms to remove some of the existing barriers and to encourage energy conservation investments.

A public hearing was held by the Board of Public Utilities (Board) at its offices in Newark, New Jersey on June 25, 1990. A certified court reporter was present at the hearing and a complete transcript was produced and was made a part of the record of this proceeding. The record remained open for written comments until July 9, 1990.

The Board proposed new rules, N.J.A.C. 14:12, entitled "Demand Side Management Resource Plan" in BPU Docket No. EX90040304. Said proposal was published in the December 17, 1990 New Jersey Register at 22 N.J.R. 3699(a). The proposed rules provided utilities with the opportunity to recover program costs and lost revenues, and to earn returns on investments in energy efficiency measures based upon a sharing of program savings between utilities and ratepayers. A public hearing concerning the proposed rules was held on December 20, 1990, and written comments were received through January 16, 1991. In response to concerns expressed, certain modifications to the proposed rules were made.

The rules were reproposed on May 6, 1991 at 23 N.J.R. 1283(a) and represent a more current and comprehensive regulatory model concerning the implementation of conservation programs by utilities in the State than the existing conservation rules in N.J.A.C. 14A:20 which had been promulgated by the former Department of Energy. Because the proposed new rules would render the continued application of N.J.A.C. 14A:20 duplicative, N.J.A.C. 14A:20 was initially proposed for repeal and subsequently expired on February 3, 1991.

An open public meeting was conducted by the Commissioners on May 23, 1991 and comments on the proposed rules were received until June 6, 1991. No recommendations were made by the Commissioners. The proposed rule was adopted by the Board at its open public hearing held on September 25, 1991. A copy of the record of the public meeting may be reviewed or obtained by contacting:

Edward P. Beslow
Legal Specialist
Board of Regulatory Commissioners
Two Gateway Center
Newark, N.J. 07102

Summary of Public Comments and Agency Responses:

Written comments on the reproposed new rules were submitted by Nancy J. Zausner of Alternate Power Producers of New Jersey, W. Kenneth Cavender of Atlantic Electric Company, R. William Potter of Cogen Technologies, Frank T. Bahniuk of Elizabethtown Gas Company, James T.B. Tripp of Environmental Defense Fund, Curt Macysyn of Fuel Merchants Association of New Jersey, Dennis Baldassari of Jersey Central Power and Light Company, Michael A. Walker of Kraft & McManimon (representing a group of Energy Service Companies), Ernest H. Manual of Mathtech, Inc., Harry A. Bosshard of New Jersey State Council of Electrical Contractors Association, Nina Mitchell Wells of New Jersey N.J.A.C. Department of the Public Advocate, Division of Rate Counsel, William R. Watkins of New Jersey Industrial Energy Users, Lindabury, McCormick and Estabrook, Thomas J. Kononowitz of New Jersey Natural Gas Company, Jane F. Kelly of New Jersey Utilities Association, Shawn P. Leyden of Public Service Electric and Gas Company, Harry L. Kociencki of Roche Pharmaceuticals, John J. Carley of Rockland Electric Company, Richard M. Esteves of SESCO, Inc., David A. Kindlick of South Jersey Gas Company, S. Lynn Sutcliffe of Sycom Enterprises and J. Mark Fox of Vision Impact Corporation. Oral testimony on the proposed new rule was submitted by Renee Gast of New Jersey Association of Plumbing, Heating and Cooling Contractors, Pat Chambers of Rockland Electric Company, Norman Adelman of Coalition Against Unfair Utility Practices, Marvin Raber of General Public Utilities Service Corporation, Frank Brill of North Jersey Chapter of the Air Conditioning Contractors of America, Michael Walker of Kraft & McManimon, William Tedesco of Bergen County Plumbing, Heating and Cooling Contractors Association, Debra Di Lorenzo of New Jersey Business and Industry Association, Ken McKim of Wallington Plumbing Supplies, James J. Lees of Atlantic Electric Company, Ted Farinella of C.T. Farinella, Robert McCarton of Bergen County Plumbing and Heating Contractors, John Jensen of Kenetech Energy Management, Richard Basta of Associated Builders and Contractors, Jack Dalton of Hoffman-La Roche, Joseph Bowring of the New Jersey Department of the Public Advocate, Division of Rate Counsel, Fritz Lark of Public Service Electric and Gas Company, Laura Giannotta of National Federation of Independent Business, Art Lennon of EUA Cogenex Corporation, Daniel Chinitz of New Jersey Plumbing Supply, Al Kania of Katzenberg Heating and Air Conditioning Company and The Air Conditioning Contractors Association of North Jersey and also the Coalition Against Unfair Utility Practices, Clint Crane of Reel-Strong Fuel Company, and Donald Van Natta of Van Natta Mechanical Contractors.

1. COMMENT: A majority of the commenters believe that the provision of some form of financial incentives to utilities will increase the penetration of installed conservation, loan management and energy efficiency in the State. It was generally agreed that given the existing barriers to the full development of cost effective energy efficiency technologies, including lack of information, lack of available capital and insufficient payback periods for many customers, utilities can play an important role in expanding the penetration of Demand Side Management (DSM) in the State.

RESPONSE: The Board concurs. The majority of the comments which follow concern ways to fine tune or improve the proposed rules. However, the Board believes the basic concepts embodied in the rules are sound and that the time is ripe for adoption. The Board believes adoption of these rules will result in an increase in the implementation of cost effective conservation and load management measures.

2. COMMENT: Adopting the Total Resource Cost Test (TRC) and incorporating environmental externalities as proposed in the rules has created a mechanism for more appropriately comparing supply-side resources and demand-side resources.

RESPONSE: The Board concurs.

3. COMMENT: The proposed rules are ambiguous and confusing.

RESPONSE: A large number of modifications have been made to the proposed rules to clarify them without changing their substance or intent.

4. COMMENT: The proposed rules are workable and sufficiently flexible.

RESPONSE: The Board concurs.

5. COMMENT: The Board is required pursuant to N.J.S.A. 52:14B-16 to prepare and issue a regulatory flexibility analysis regarding the proposed rules since it will not only impose compliance requirements on small businesses, but also define the role of energy services companies (ESCOs) and contractors in the State's future energy conservation industry.

RESPONSE: The Board disagrees. The rules impose no compliance requirements on small businesses or ESCOs. Participation in any program implemented as a result of these rules is strictly voluntary for non-utility businesses. Nonetheless, the rules specifically require utilities to provide an analysis of the impact of proposed programs on ESCOs and contractors, and requires that the Board consider same in its review.

6. COMMENT: The most effective DSM incentive is to have utilities act as energy service providers in the same manner they required of others. For profit subsidiaries should be set up to compete on an equal footing. The next best thing would be to set up within the utility but with regulatory oversight.

RESPONSE: The Board fully intends to provide regulatory oversight to utility DSM plans to insure that no subsidization takes place. The rules neither require nor prevent utilities from establishing subsidiaries to act as energy service providers.

7. COMMENT: The new rules have gone a long way to correct deficiencies previously noted by commenters.

RESPONSE: The Board concurs.

8. COMMENT: A utility should only implement DSM programs consistent with the minimization of long-term revenue requirements for adequate, reliable and efficient electric supply.

RESPONSE: The Board believes the rules will minimize long term revenue requirements by offering payments to utilities at or below the avoided cost of alternative supply options.

9. COMMENT: Information programs should be directed at market barriers that discourage end-use efficiency.

RESPONSE: The Board concurs. The Board fully anticipates that information programs will be directed at market barriers.

10. COMMENT: The acquisition of DSM resources should start with an overall resource plan.

RESPONSE: DSM plans will be reviewed in the context of overall resource plans and will be considered in the review of other non-DSM resource acquisition proceedings, consistent with the provisions of N.J.A.C. 14:12-2.2(a)1 and 2.

11. COMMENT: Regulatory Commissions must not require mandatory DSM programs. All investments, including DSM, should be subject to prudence and used-and-useful reviews.

RESPONSE: A DSM program will be mandatory only in instances where it is beneficial from a societal perspective, but due to the difficulty of quantifying benefits a utility would not choose to implement as an incentive based program. These programs have been designated as "core programs" as defined in N.J.A.C. 14:12-1.2 and set forth in N.J.A.C. 14:12-2.2(a)4.

12. COMMENT: Utilities should set rates based on cost-of-service before implementing DSM. Rates should be established for a full range of services including time of use (TOU), curtailable and interruptible customers.

RESPONSE: It has long been the Board's regulatory practice to set rates guided by cost-of-service principles. TOU, curtailable and interruptible rates have been approved by the Board and have been in effect for several years.

13. COMMENT: There is opposition to the practice of utilities steering potential customers to particular heating contractors through the use of Approved Contractor Lists. These lists tend to distort free and open competition between suppliers and installers of home heating equipment. Primarily, customers choose the lowest priced proposal because they believe the utility has provided a listing of contractors who are all of equal skill. In fact, the listing is only a screening for financial responsibility.

RESPONSE: Approved Contractor Lists are not under consideration within the context of these rules. Further, Approved Contractor Lists which are distributed by utilities pursuant to N.J.A.C. 14:38 include numerous disclaimers which insure that the purpose of and the requirements to be included on the list, including ensuring adequate insurance coverage and absence of a substantial record of poor business practice, are clear. In addition, the HESP literature includes pamphlets for customers concerning how to choose a contractor from the list, which emphasize the importance of quality and skill in making a selection. Finally, any contractor that meets the minimal requirements of N.J.A.C. 14:38 can be included on the list if it so chooses.

14. COMMENT: Utility service contracts are priced below market value and are cross-subsidized by rate base dollars.

RESPONSE: The service contracts are not a subject of these rules. Nonetheless, this issue has been extensively litigated in other forums. Results of such litigation have determined that there has been no cross subsidization of service contracts by rate base dollars. Further, the Board continually monitors utility accounting procedures to insure that cross subsidization does not occur, and will be revisiting this issue in other forums with regard to its public policy implications.

15. COMMENT: Rockland Electric Company (RECO) withdraws its support of the rules because the Board, through the proposed rules, has lost sight of its primary objective to remove barriers to DSM.

RESPONSE: The Board believes that the modified rules provide sufficient incentives for the development of measured cost effective energy savings.

16. COMMENT: Although there are critical issues to successful implementation embodied in the details of the DSM rules as proposed, many commenters strongly endorse the stated intent of the rules.

RESPONSE: The Board has attempted to address many of the critical issues identified in the comments.

17. COMMENT: The Purpose and Scope section should include the following: 1) allowance of each party to participate only when the party perceives such participation as beneficial; 2) establish mechanisms that reduce the marginal cost of conservation and encourage increased value of service to customers; and 3) evolution of incentives towards increased self-enforcement and self-correction.

RESPONSE: 1) Participation in incentive based programs is encouraged by the incentives, not mandated—a utility which can demonstrate that no cost-effective DSM opportunities exist will not be required to provide incentive-based programs; 2) sufficient mechanisms exist in the proposed rule to reduce the marginal cost of conservation if appropriate; and 3) the Board believes continued regulatory oversight is appropriate to insure the market remains competitive.

18. COMMENT: To promote fairness and competition between the private and regulated energy conservation entities, the rules should be clarified to indicate that the goal of the rules is to encourage cost effective demand side management not just provide incentives to utilities.

RESPONSE: The Board concurs as this has always been the Board's intent. N.J.A.C. 14:12-1.1 has been clarified accordingly.

19. COMMENT: DSM activity has increased dramatically in states where utility incentive programs have been implemented.

RESPONSE: The Board is aware of this, and believes it to be one of many reasons why it is appropriate to adopt these rules at this time.

20. COMMENT: Utilites should not and need not be given financial incentives to implement DSM.

RESPONSE: The Board disagrees. While experience is limited, states that have provided utilities with financial incentives to implement DSM have experienced an increase in the implementation of cost effective DSM measures. Further, the Board believes it is appropriate for a utility to earn a return on DSM investments much as current law provides opportunities for earning fair returns on investments in new generating, transmission and distribution facilities.

21. COMMENT: DSM incentives must provide a powerful stimulus for utilities to implement DSM. They should be performance-based and attainable.

RESPONSE: The Board concurs and believes the rules provide such a stimulus.

22. COMMENT: Demand side conservation should not be promoted through means which short circuit supply side conservation.

RESPONSE: The rules provide an opportunity, through N.J.A.C. 14:12-2.2(a)3, for the development of conservation measures which improve the efficiency of utilities energy delivery systems.

23. COMMENT: The Board should adopt an "all source" competitive procurement process that would allow all forms of DSM and supply side options to compete on a level playing field.

RESPONSE: The Board believes that while it warrants further investigation, the concept raises many issues that are beyond the scope of these proposed rules. The Board anticipates a generic review of utility procurement processes in the near future.

24. COMMENT: The purpose of the conservation rules is to save energy. A simpler way would be to make it mandatory that all energy consuming appliances sold in New Jersey be of an energy efficient design. This could be done by utilizing the existing network of suppliers and contractors, without encouraging utilities to sell and install energy saving heating and cooling equipment.

RESPONSE: While the Board concurs that appliance efficiency standards are appropriate, the Board does not have the authority to mandate that all energy consuming appliances sold in New Jersey be of an energy efficient design. Absent standards, the Board believes incentives are appropriate. It should also be made clear that the proposed rules are not designed to encourage direct sale and installation of appliances by utilities. Methods such as rebates exist for utilities to promote the sale of efficient appliances without directly selling them.

25. COMMENT: The definition of "fixed cost revenue erosion" does not conform to the standard use of this term and should be modified.

RESPONSE: Fixed cost revenue erosion as intended for these rules is clearly defined and the Board sees no need for any modification, except as noted immediately below.

26. COMMENT: Clarify the definition of fixed cost revenue erosion to make reference to test year sales base for comparison and provide for exclusion of othe identified variable costs, other than just fuel and gross receipt and franchise taxes from the test year sales in calculating the fixed cost erosion. This accounts for other costs which the utility will clearly avoid in the case of a reduced unit of sales and is distinct from what the utility may otherwise propose to recover in its Cost Recovery Proposal.

RESPONSE: The definition of "fixed cost revenue erosion" in N.J.A.C. 14:12-1.2 has been clarified to include an adjustment for other variable costs which may be approved by the Board.

27. COMMENT: The Board should eliminate the fixed cost erosion calculation where the DSM investment satisfies incremental not embedded capacity and energy needs by making the definition applicable only to reductions in existing energy use. The fixed cost erosion fails to consider absorption of these costs by market growth. If New Jersey utilities were in a no growth situation, it would be understandable, but this is not the case.

RESPONSE: As fixed cost revenue erosion occurs where DSM investment meets both incremental and embedded capacity and energy needs even if a utility is incurring sales growth; it is therefore appropriate to consider all DSM induced lost sales. In situations where sales growth has resulted in over earnings, however, there may not be a need for a lost revenue adjustment. This issue will be examined by the Board in its review of proposed revenue adjustment mechanisms.

28. COMMENT: The Board should clarify that the rules apply to institutional, industrial and governmental facilities not just residential and commercial facilities.

RESPONSE: The definition of demand side management in N.J.A.C. 14:12-1.2 has been modified to clarify that the rule also applies to institutional, industrial and governmental facilities. The original use of the word "businesses" was intended to cover all facilities other than residential.

29. COMMENT: Takeback is the practice of reducing the achieved energy savings in order to increase the comfort level. The Board should add a definition of "takeback."

RESPONSE: The Board does not believe it is necessary to add a definition of takeback as such effects are not applicable for measured savings. If engineering estimates are accepted as an alternative to measured savings, they may include adjustments for takeback effects, subject to Board approval.

30. COMMENT: It is not fair to count all societal cost savings as benefits, but limit costs to utility/ratepayer costs. To do this undermines cost-effectiveness tests, promotes cream skimming, discourages residential and low income programs, encourages less cost-effective projects with utilities earning more profit and penalizes more efficient programs.

RESPONSE: The Total Resource Cost (TRC) test, which is the test all DSM programs implemented as a result of these rules must pass, includes utility costs and participant costs and as benefits includes avoided supply costs and incidental bill reductions. Incentive payments do not appear in the formula because they are considered transfer payments from the utility (all ratepayers) to the participant. Similarly utility revenue losses and participant bill reductions do not apeaer as they are also transfer payments. Benefits and costs to other utilities, governmental bodies and the rest of society are excluded. The Board believes that the TRC test is appropriate and will ensure that only cost effective DSM measures will be implemented.

31. COMMENT: The Board should take a more straightforward approach to balancing DSM savings and upward rate pressure by adopting the standard California TRC test to determine the cost effectiveness of DSM and the cap on utility expenditures. The standard TRC test does not include the effects of externalities.

RESPONSE: The Board believes the TRC test as proposed is appropriate. The Board also believes that it is appropriate to include environmental externalities as a benefit, and that some recognition of ratepayer impact is necessary.

32. COMMENT: The TRC test proposed should not include fixed cost erosion as a cost since it is an inappropriate adjustment to the TRC test. It discourages investment in energy efficiency that benefits society and program participants in the short-run and society and all ratepayers in the long-run, as DSM plans based on integrated resource planning are the plans that minimize customer bills.

RESPONSE: The TRC test does not include fixed cost revenue erosion as a cost. The fixed cost revenue erosion factor, however, is considered in the determination of the net benefits. The Board believes that the inclusion of the fixed cost revenue erosion factor in the net benefits calculation is an appropriate method for addressing a DSM program's impact on rates.

33. COMMENT: The proposed rules should be clear on the exact formula for the TRC test to which they are referring and the formula adopted cannot be interpreted as a benefit-cost indicator from either society or ratepayer perspectives since to do both within one equation is an ad hoc combination of the two benefit-cost analyses.

RESPONSE: The rules clearly define the TRC test and its applicability. Similarly, the net benefits calculation and its applicability is clearly defined, and is designed to strike a balance between societal benefits and ratepayer impacts.

34. COMMENT: The definition of TRC should be modified to make it explicit that participant costs are net costs.

RESPONSE: As these costs are in fact net costs, the definition of the Total Resource Cost test in N.J.A.C. 14:12-1.2 has been clarified accordingly.

35. COMMENT: The definition of "avoided cost savings" should include both energy and demand savings.

RESPONSE: The definition of avoided cost savings, as proposed, includes both energy and demand savings.

36. COMMENT: The Board should provide a definition and formula for the Total Resource Cost Test to ensure uniformity.

RESPONSE: The Board believes the definition of Total Resource Cost Test is sufficiently clear so that no equation is required.

37. COMMENT: Successive filings should be due a minimum of two years after the approval of the previous filing.

RESPONSE: N.J.A.C. 14:12-2.1 has been modified to require the second filing to be due by March 1, 1994, and every two years thereafter.

38. COMMENT: Utilities should implement the plans 90 days after submission to the Board unless explicitly stayed by the Board, and should be allowed to increase or reduce the program targets and budgets of an approved plan, modify programs and eliminate approved programs without further Board approval.

RESPONSE: The Board will undertake to review plans in an expeditious manner. However, the Board does not believe programs should be implemented until specifically approved by the Board, after an opportunity for comment from interested parties and due consideration of said comments by the Board. The Board believes changes to DSM plans, subsequent to Board approval, should also require Board approval. Review of changes can occur quickly since they would not entail revisiting

issues previously approved. The rules do not prohibit utilities from proposing ranges for program targets and budgets for consideration.

39. COMMENT: 90 days is an insufficient time-frame in which to file a comprehensive plan.

RESPONSE: Considering the fact that this proceeding was initiated in April 1990, and has been the subject of three separate rounds of publication and hearing, the Board believes the issues are well known and that 90 days is an adequate time-frame for the filing of a comprehensive plan.

40. COMMENT: Rather than the proposed two year filing requirement, ongoing innovation in development of DSM Plan filings should be encouraged.

RESPONSE: The two year filing requirement does not inhibit or preclude ongoing innovation or interim changes to approved DSM plans.

41. COMMENT: The Board should require separate conservation filings by each utility in order to consider individual needs and customer base characteristics.

RESPONSE: Each utility is required to file its own DSM plan. The Board will consider the individual characteristics of each utility when reviewing said plans.

42. COMMENT: Some areas of the proposed Plan Elements should leave room for flexibility for utilities to use innovative program designs and marketing methods.

RESPONSE: The proposed Plan Elements does not include any specific requirements related to program design or marketing.

43. COMMENT: The most cost effective level of energy conservation investment is best achieved through a competitive market. The proposed rules leave too much discretion to the utilities and Board staff will not be able to ensure that all utility costs are properly accounted for.

RESPONSE: The Board concurs that the most cost effective level of energy conservation investment is best achieved through a competitive market. The Board believes that with the assistance of staff it is capable of reviewing program reports and insuring that all utility costs are properly accounted for.

44. COMMENT: The rules do not address the creation of a competitive market although this point has been repeatedly raised.

RESPONSE: The Board believes that the proposed rules provide sufficient safeguards to insure the development of a competitive market. These include not only the continuation of integrated bidding should a utility choose the shared savings option, but also the requirement that a utility that chooses the standard offer option make standard offers available to non-utility ESCOs, contractors and customers.

Further, as part of its plan, a utility is required to file information related to the role of the utility, ESCO's and contractors in implementing a DSM program and an analysis of the impact of the plan on the competitive aspects of existing market infrastructures. The filings will be available for public comment and will be reviewed by the Board. The Board will include an assessment of impacts of the DSM plan on existing markets in consideration of the plan.

45. COMMENT: DSM programs must be sufficiently flexible to offer all customers funding the programs a meaningful opportunity to participate in such programs. This requires standard pricing offers for innovative DSM measures. Without such an opportunity to participate, utilites should only offer programs that yield no change in rates.

RESPONSE: The rules require standard offers for innovative DSM measures under both the standard offer and shared savings option. Further, N.J.A.C. 14:12-2(a)7 requires utilities to demonstrate an effort to offer DSM program opportunities to all sectors of its customer base.

46. COMMENT: If utilities do not make a good faith effort to include all sectors of the customer base, cost disallowances should occur.

RESPONSE: Plans that do not demonstrate an effort to include programs for all sectors of customer base, as required in N.J.A.C. 14:12-2(a)7, will not be approved.

47. COMMENT: Utilities should be allowed to propose incentive mechanisms pertaining to core programs in order to ensure that the programs are well done. Conceptually, there is no reason that all programs could not be performance-based.

RESPONSE: The rules clearly provide utilities with the option to propose "core programs" as Incentive Based Programs.

48. COMMENT: The proposed rules should require that core programs be available for implementation by ESCOs and/or contractors through a uniform price offer which is approved by the Board and is equal to the cost of the utility's implementation of core program measures.

RESPONSE: The Board does not believe it is appropriate for core programs to be offered directly by non-utilities. Core programs are primarily information programs, educational programs or programs for which it is difficult to quantify benefits. Nonetheless, it is anticipated that many of the core programs which now exist, will continue to be implemented by non-utility vendors, contractors and ESCOs contracted by the utilities.

49. COMMENT: Utilities should be encouraged to conduct benefit/cost analyses for core programs in order that the Board may monitor the economic efficiency of said programs.

RESPONSE: The Board concurs. It should be noted that a recent cost/benefit analysis was performed by the New Jersey Conservation Analysis Team (NJCAT) consisting of Board Staff, Rate Counsel and the regulated gas and electric utilities.

50. COMMENT: The proposed rules should clearly state that a listing and description of performance-based programs is unnecessary under a standard offer approach.

RESPONSE: The Board believes that it is appropriate for utilities to provide a listing of performance based programs under the standard offer approach. This will enable the Board to monitor whether or not all sectors of customers are being offered programs and if all cost effective technologies are being implemented.

51. COMMENT: The proposed rules should require the DSM plan to identify the role of ESCOs and contractors and the availability of a standard offer and competitive bidding.

RESPONSE: N.J.A.C. 14:12-2.2(a)5i(2) requires an implementation plan that includes the specific role of the utility, ESCOs and contractors.

52. COMMENT: The proposed rules should require that utilities do a 10 year forecast of energy and capacity savings related to the DSM Plan and the relationship between projected savings and the State Energy Master Plan.

RESPONSE: Electric utilities, pursuant to the July 1, 1988 Stipulation of Settlement in Docket No. 8010-687B, are currently required to perform a 25 year forecast of energy and capacity savings. The Board, however, recognizes the inherent differences between the gas and electric utilities. Therefore, the utilities should propose a specific time period for the energy and capacity savings forecast in the Plan review process. The specific time period proposed should be at least equal to the life of the measure with the longest lifetime and will be a subject of the Board's review. The Board's review of information provided pursuant to N.J.A.C. 14:12-2.2(a)1 and 2 inherently addresses the relationship of projected savings to the State's Energy Master Plan.

53. COMMENT: Utilities should be required to guarantee the energy and capacity savings commitment in their DSM plan.

RESPONSE: Utilities, ESCOs and contractors will be paid only for delivered energy savings that are measured and verified in accordance with pre-approved measurement and verification plans. Therefore, it is unnecessary to require utilities to guarantee savings.

54. COMMENT: The rules are anti-competitive because a utility's obligation to purchase cogenerated power from independent power producers (IPPs) can be circumvented by zeroing out its projected needs through the DSM Plans.

RESPONSE: The rules do not modify the status quo with regard to the role of DSM in utility planning. The Board concurs that "all source" bidding is worthy of consideration. However, all source bidding is beyond the scope of these rules. Absent all source bidding, the Board believes that it is appropriate to consider incentives for cost effective DSM as an alternative to supply side options.

55. COMMENT: The inclusion of core conservation programs is not cost effective. The result of the NJCAT study indicated that these programs do not pay for themselves.

RESPONSE: Core programs provide societal benefits which transcend strict cost/benefit analysis and are difficult to quantify. The Board believes the core programs required are beneficial to society. Moreover, not all programs analyzed in the NJCAT study are required to be performed.

56. COMMENT: The Board is urged to eliminate those elements of the core programs which were found to lack cost effectiveness in the analysis provided by the NJCAT Study.

RESPONSE: See previous response.

57. COMMENT: Regarding the core program for energy efficient design of new construction, there is no objection if the utility is limited to informational and market stimulating media programs. There is objection, however, to an interpretation that utilities may develop energy efficient construction standards.

RESPONSE: N.J.A.C. 14:12-2.2, regarding the design of new construction, does not require utilities to develop energy efficient construction standards. However, the programs envisioned in the rules would have the utilities offer incentives or other direct measures to encourage better design if proven to be cost-effective.

58. COMMENT: There is objection to the requirement that each utility must offer DSM programs to all sectors of its customer base, or demonstrate why it is not achievable. If large, cost effective savings can be achieved by targeting large-sector users, the utility should not be required to prove why less cost effective programs were not included in its DSM plan.

RESPONSE: DSM programs must be offered to all sectors of a utility's customer base in order to provide all ratepayers with the opportunity to participate in the conservation programs which are being funded through rates, as long as said programs pass benefit/cost tests provided for in the proposed rules.

59. COMMENT: Providing utilities with two alternative approaches gives them needed flexibility.

RESPONSE: The Board concurs.

60. COMMENT: Utilities have powerful incentives to expand sales regardless of new incentives for conservation.

RESPONSE: The Board concurs and believes further investigation into decoupling profits from sales is warranted. However, the Board further believes that the incentives included in the proposed rules, coupled with the removal of certain disincentives, are appropriate at this time. Moreover, the impact of sales expansion on overall earnings or the need for a revenue adjustment mechanism will be examined in the Board's plan review process.

61. COMMENT: Utilities should be allowed to earn profits on power purchased from IPP's.

RESPONSE: This issue is beyond the scope of the proposed rules.

62. COMMENT: The Board should eliminate or reduce the 0.8 Fixed Cost Revenue Erosion factor in the proposal or make it optional dependent on the type of program or end use being funded.

RESPONSE: While the proposed rules already provide the Board with the flexibility to modify the 0.8 factor as deemed appropriate, the Fixed Cost Revenue Erosion factor has nonetheless been slightly reduced to 0.5. This change is based on numerous comments received that the 0.8 factor was not sufficient incentive. The factor applies only to programs which reduce energy sales. While it will somewhat effect the magnitude of payments, it is only one of many factors used to calculate the net benefits. This change does not alter the scope or intent of the rules.

63. COMMENT: Any portion of planned capacity that will not be replaced by DSM represents an increment of absorption for fixed cost revenue erosion, and this factor should be evaluated and factored into the formula for calculating the value of incentives.

RESPONSE: The Board does not agree. Revenue erosion occurs when compared to what would have occurred once base rates are set were it not for the implementation of the DSM program whether or not sales are increasing.

64. COMMENT: Referring to the Energy Master Plan, the policy and planning initiatives of economic growth and energy efficiency must be integrated. If a utility induced a company to move to the area through high efficiency lighting and cooling rebates, would that cause the utility to lose money on the incentives because it resulted in more usage to the region?

RESPONSE: The utility would not lose money on incentives in the above referenced situation because it results in an efficiency gain relative to a new customer of less efficient equipment.

65. COMMENT: The Board should ban the continued installation of heat pumps and resistance heating where they are found to be less efficient than available alternatives.

RESPONSE: While this is beyond the direct scope of the proposal, a part of the Board's review process will include the consistency of programs with efficiency goals.

66. COMMENT: The proposed rules hold no real opportunities for utilities to profit from DSM. To create a real incentive the following issues must be considered (1) including rate impacts on non-participating customers in the incentive formula removes any possibilities for profit; and (2) a least cost/integrated resource plan minimizes bills not rates for all customers; therefore, a DSM plan founded on an integrated resource planning process has already considered customer bill impacts and needs no change to the incentive mechanism.

RESPONSE: The Board believes the rules, as amended, strike a proper balance, provide sufficient possibilities for profit while taking the rate impacts into account. The rules also attempt to strike a balance between an emphasis on customer rates and overall level of customer bills.

67. COMMENT: Utilities should earn the same incentive no matter how conservation is obtained so they are economically neutral whether a unit of energy is produced or saved.

RESPONSE: The Board does not believe it is appropriate that a utility should necessarily earn an incentive on a DSM program implemented by a third party where the third party is absorbing all of the risks of the program, as in the standard offer approach in N.J.A.C. 14:12-3.5. Rewards must be related, at least in part, to risks.

68. COMMENT: The inclusion of a base level return and fixed cost revenue erosion in the calculation of net benefits as costs reduces the amount utilities can spend to implement DSM. Therefore, a utility can spend less and produce less DSM or it can require participants to contribute nearly all their savings. The second choice will also reduce achievement. Since the benefits of DSM accrue to all customers, the shift of cost to participant ratepayers reduces the proability that customers will become participants. The rules, as currently drafted, discourage DSM.

RESPONSE: The Board believes the rules as proposed reasonably balance the conflicting goals of adequate incentives versus rate impacts. That is, the Board believes the rules provide sufficient incentives for increases in DSM investment while balancing the potential impacts on rates.

69. COMMENT: The net benefit formula in the proposed rules is arbitraty and has no economic basis.

RESPONSE: The Board believes that the net benefit formula results in a sufficient incentive while balancing the impact on rates and merely represents a consideration of several important benefit/cost perspectives.

70. COMMENT: The practical result of the proposed net benefit formula will be to require substantial contributions from participating customers. But the "barriers to full development of cost-effective energy-efficiency technologies due to lack of capital and insufficient payback periods of many customers" have been cited repeatedly by the Board as a major motivation for these proposed rules. Had this formula been in effect for the 1989 Solicitation, the DSM project scores would have been significantly depressed or would have required a 20% increase in the host customer's costs.

RESPONSE: The Board believes that it is not inappropriate for participating customers to contribute some portion of their savings. This can somewhat reduce the contribution required from non-participating customers—but the overall incentive levels provide for substantial infusion of utility capital into the marketplace.

71. COMMENT: The (NPV) formula is faulty in that it needs a summation sign, parentheses around major terms and rearrangement of the divisors for clarity.

RESPONSE: The NPV formula set forth in N.J.A.C. 14:12-3.2(b) and published in the New Jersey Register, May 6, 1991 formula has been clarified as to form.

72. COMMENT: The discount rate should be specified in the NPV calculation and set at the utility's long-run marginal cost of capital.

RESPONSE: The discount rate will be proposed by the utility subject to Board approval. Comments on the appropriate discount rate will be considered during the review of the proposed DSM plans.

73. COMMENT: Program costs in the NPV definition need to be precisely specified. The California definition should be adopted.

RESPONSE: The NPV definition in N.J.A.C. 14:12-3.2(b) has been clarified to indicate that program costs do not include incentive payments.

74. COMMENT: The Net Benefit Calculation needs to be modified to exclude fixed cost erosion for investments in energy delivery systems, since not applicable.

RESPONSE: No modification is required. The revenue erosion factor is applicable only to programs that reduce sales.

75. COMMENT: In the definition of NPVC, it is double counting to include program costs and a base level of return of those costs. Therefore, the base level of return should be deleted.

RESPONSE: Ratepayer payments towards a base return are a legitimate program cost which should remain included in the calculation. Otherwise the calculation of net benefits will reflect a double payment to the utility.

76. COMMENT: Incidental savings and the associated environmental benefit resulting from an energy efficiency measure should be included as a benefit.

RESPONSE: The Board concurs. N.J.A.C. 14:12-3.3 provides for inclusion of incidental savings subject to Board approval.

77. COMMENT: The proposed rules require ratepayers to pay utilities for environmental costs which are never incurred by the utility or society. Utilities earn ongoing windfall profits for this phantom expense. It represents a radical depature from cost-based utility regulation to pay utilities for the costs of inferior alternatives which are not incurred in addition to paying for costs which are incurred. Full avoided cost should be used as a ceiling not a guarantee of a price. In the absence of evidence that the price including externalities is necessary to induce DSM bidding, it is preferable to exclude externalities from the ceiling price.

RESPONSE: Environmental externalities are costs that would ultimately be borne by society, including utility ratepayers, if a utility exercised a supply option instead of a DSM option. The Board believes that the proposed rules provide sufficient latitude to modify the incentive payments to insure that "windfalls" or overpayments do not occur. Moreover, under shared savings, the ratepayers would realize a large portion of the net benefits while utilities would retain only a percentage.

78. COMMENT: Rather than add externalities and subtract fixed costs, conservation costs should be capped at avoided generation costs.

RESPONSE: Externalities are legitimate benefits and revenue erosion is a legitimate cost and are therefore appropriately included.

79. COMMENT: The language in the proposed rules is too dependent on the operation of an electric system regarding the development of avoided costs. Gas utility avoided costs must be developed with certain gas supply issues in mind.

RESPONSE: The proposed rules fully recognize the legitimate differences in developing electric versus gas avoided costs, and provide the latitude to incorporate those differences.

80. COMMENT: The Board should clarify the elements in the calculation of the utility's avoided cost and require that it be calculated for 25 years from the year of filing.

RESPONSE: N.J.A.C. 14:12-3.2(c)1 requires a forecast of avoided cost for electric utilities and for gas utilities commencing the year of the effective date of the DSM plan. Electric utilities, pursuant to the July 1, 1988 Stipulation of Settlement in Docket No. 8010-687B, are currently required to perform a 25 year forecast of energy and capacity savings. The Board, however, recognizes the inherent differences between the gas and electric utilities. Therefore, the utilities should propose a specific time period for the energy and capacity savings forecast in the Plan review process. The specific time period proposed should be at least equal to the life of the measure with the longest lifetime and will be a subject of the Board's review.

81. COMMENT: The proposed rules should specifically set forth that the differential cost of the system improvement over a standard improvement would be excluded from traditional rate-base and included as a standard offer payment. System efficiency improvements should not participate in the block subscription.

RESPONSE: System improvement programs raise various issues that are not applicable to customer based programs. These issues include the applicable costs and the lack of rate impacts and should be addressed in the utilities' proposal and will be reviewed by the Board on an individual basis.

82. COMMENT: Effective deregulation of a utilities' investment in transmission and distribution (T&D) is out of context in rules regarding conservation. Even advocates of deregulation do not feel that this is the way deregulation should proceed. This should be deleted from the proposed rules.

RESPONSE: The rules do not deregulate investment in T&D. They appropriately recognize that an incentive may reduce the payback to the utility of the additional costs associated with the efficiency investment. This could result in the utility making investments in efficiency it otherwise would not make. Further, the Board is not relinquishing its authority to monitor the impact of incentives on the overall return of the utility.

83. COMMENT: For utility implemented programs, the price for performance based programs must be fairly calculated and clearly defined to reflect savings and risks to ratepayers and benefits to society.

RESPONSE: The Board concurs and believes that the proposed rules do so.

84. COMMENT: N.J.A.C. 14:12-3.2(c), regarding an avoided cost study, refers to both electric and gas utilities. Since gas supply differs significantly from electricity generation, this paragraph should not be applicable to gas utilities.

RESPONSE: Although gas supply does differ significantly from electric supply, an avoided cost study is necessary for both utility types and the language in N.J.A.C. 14:12-3.2(c) is equally applicable to both gas and electric utilities, while providing necessary flexibility to recognize said differences.

85. COMMENT: The net present value of the program cost (NPVc) should be equal to the total cost in the foundation year and should not be based on the recovery schedule from ratepayers.

RESPONSE: The definition NPVc in N.J.A.C. 14:12-3.2(b) has been modified by deletion of "as" to clarify the Board's intent that the net present value of total cost be included in the year in which they were incurred.

86. COMMENT: It is questioned whether DSM can provide capacity savings for a local distribution company (LDC) as measurement must be based on actual savings and costs and not on theoretical estimates.

RESPONSE: Capacity payments should be made only for measured and verified capacity savings and not on theoretical estimates. Nonetheless, proven reductions in peak throughput and demand can reduce capacity costs.

87. COMMENT: What is "Reserve Margin Savings" and how does it relate to a gas utility?

RESPONSE: Reserve margin is the amount of electric capacity required over and above the forecasted load. It is not applicable to a gas utility as clarified in N.J.A.C. 14:12-3.2(b).

88. COMMENT: Any incidental savings calculations filed with and approved by the Board should also be reflected in any contract payment to ESCOs.

RESPONSE: Incidental savings approved by the Board will be equally reflected in payments to utilities, ESCOs contractors and customers.

89. COMMENT: It is not certain as to how incidental savings relate to the natural gas industry, nor how such savings are to be measured.

RESPONSE: Incidental savings in the gas industry, while probably limited in potential, would occur if implementation of a DSM measure also resulted in non-gas or electric energy savings such as oil savings. Inclusion of incidental savings is optional; savings would be measured under an approved measurement plan.

90. COMMENT: Setting the base rate of return on utility programs five percentage points below the allowed rate of return removes any financial opportunities. The base rate of return should be at a minimum equal to the utility's cost of capital or the shared savings split will have to be large enough so that the utility has a chance to earn at least its allowed rate of return. The incentive for DSM investment is the chance of earning rates of return that are competitive with the rates of return earned on supply-side investments.

RESPONSE: The rules have been modified to clarify that the base level of return is at the option of the utility. Therefore, if a utility does not believe the base level of return, by itself, or combined with some level of shared savings, is sufficient, it is not required to include a base level of return. Further, the requirement to set the base rate of return on utility programs at five percentage points below the allowed rate of return has been eliminated. The rules as modified allow utilities to propose a base level of return subject to Board approval.

91. COMMENT: The proposed rules should allow utilities to earn an incentive on conservation achieved through contracts with third parties. DSM is not a return for taking a risk but a reward for accomplishing a public good.

RESPONSE: N.J.A.C. 14:12-3.4(h) has been added to clarify that a utility using the shared savings option may earn an incentive on conservation achieved through third parties. The Board does not believe it is necessarily appropriate at this time for a utility utilizing the standard offer approach to receive an incentive for DSM impacted by third parties, although specific proposals will be reviewed upon the filing of DSM plans.

92. COMMENT: The Board should require that utilities be held to the same performance standards as are ESCOs and contractors with respect to utility self-implemented performance-based programs.

RESPONSE: The proposed rules require that utilities be held to the same standards as third parties where appropriate.

93. COMMENT: Utility incentives under the shared savings approach should be based on the difference between the avoided cost of electricity supply and the utility's share of program costs.

RESPONSE: Basing incentives on the above would ignore environmental externalities and rate impacts.

94. COMMENT: The shared savings approach, while an effective, workable concept, is unworkable as proposed because of the attempt to ensure competition. The shared savings approach should be similar to those adopted in other states.

RESPONSE: The Board does not concur that efforts to insure competition make the proposed rules unworkable. The Board believes its approach to be sound.

95. COMMENT: The cross-reference in N.J.A.C. 14:12-3.4(c) to the section on approved measurement and verification are incorrect.

RESPONSE: N.J.A.C. 14:12-3.4(c) has been modified to reflect the correct citation.

96. COMMENT: N.J.A.C. 14:12-3.4(c) is vague regarding actual program cost allocation. JCP&L supports the allocation of common DSM costs that directly benefit DSM programs. Industry-standard cost-effectiveness analysis methods consider only direct DSM costs.

RESPONSE: N.J.A.C. 14:12-3.4(c) is intended to insure that all utility costs that directly support DSM programs are allocated to those programs. Specific cost allocations should be proposed by utilities in their proposed plans and will be subject to Board review.

97. COMMENT: In N.J.A.C. 14:12-3.4(e), the benefit/cost ratio of less than zero should be revised to a benefit-cost ratio of less than one.

RESPONSE: The relevant language has been changed in N.J.A.C. 14:12-3.4(d) and (e) for clarification.

98. COMMENT: Regarding shared savings, the proposed rules do not address either direct customer contributions or the application of a portion of bill savings to the utility. If this is the Board's intent, the NPV definition should include a reference to customer contribution.

RESPONSE: N.J.A.C. 14:12-3.4(c) has been modified to clarify that program costs for shared savings programs shall include a deduction from utility incurred costs for participant contributions.

99. COMMENT: The notion of a standard offer running concurrently with any utility self-implemented or sponsored programs is intriguing.

RESPONSE: The Board believes that such an approach will lead to a competitive market for the delivery of DSM services.

100: COMMENT: The utility should not be allowed to restrict a standard price offer to a particular program.

RESPONSE: N.J.A.C. 14:12-3.5(a)4 has been added to clarify that the standard offer payment is available for the delivery of all measured and verified energy and capacity savings delivered to a utility.

101. COMMENT: The requirement that utilities offer a standard offer to encompass items not otherwise covered should be eliminated. It is contradictory to make a standard offer approach optional and provide third-parties with an opportunity to submit minor variations on programs and warrant standard offer treatment.

RESPONSE: N.J.A.C. 14:12-3.4(g) removes the requirement that a utility which chooses the shared savings approach have available a standard offer and replacing it with a requirement that the utility have available a program for the purchase of electric and/or gas capacity and energy savings delivered by non-utility entities from DSM programs and not specifically covered by and sufficiently different than utility sponsored Core or Performance Based Programs.

102. COMMENT: The term "third parties" is undefined and vague.

RESPONSE: N.J.A.C. 14:12-3.5(a)1 (proposed as N.J.A.C. 14:12-1.3(a)1) has been modified to eliminate the term "third parties" and replace it with terms more descriptive of what the Board intended by third parties.

103. COMMENT: Can a utility establish the standard offer block size and how should bids be prioritized if that block size is exceeded?

RESPONSE: N.J.A.C. 14:12-2.2(a)8 has been added to clarify this by requiring that a utility propose a block size and a methodology for filling the block.

104. COMMENT: Can a utility establish the standard offer price under the maximum allowed by the net benefits formula?

RESPONSE: The standard offer price shall be set in accordance with the calculation in the proposed rules unless otherwise approved by the Board. The proposed rules provide flexibility so that utilities are free to propose a standard price offer less than the maximum allowed by the rules.

105. COMMENT: Should free-ridership adjustments be applied to contractors savings under a standard offer or bid?

RESPONSE: N.J.A.C. 14:12-3.6(d) requires that savings expressly reflect deductions for free riders. Free-ridership adjustments apply equally to utility, contractor, ESCO and customer DSM Programs.

106. COMMENT: N.J.A.C. 14:12-3.5(a)3 should read "are cost-effective."

RESPONSE: N.J.A.C. 14:12-3.5(a)3 which was recodified upon adoption from N.J.A.C. 14:12-4.3(a)3 was published, in proposal form with the phrase "are cost effective."

107. COMMENT: The Board should require a verification contractor for Standard Offers.

RESPONSE: The requirement that a utility fund the procurement of a contractor to verify installation of measures and delivery of savings (N.J.A.C. 14:12-3.6(g)) applies equally to programs implemented under both the shared savings and standard offer option.

108. COMMENT: A standard offer should specify the terms of trade, and the utility should establish the block size. The rule should state that marketing plans are insufficient as a threshold criteria and test firm agreements should be required. The block should be on a first come basis.

RESPONSE: N.J.A.C. 14:12-2.2(a)8 has been added to clarify the requirements for the utilities which choose the standard offer option to include in their filings the proposed block size, the method for filling the block, the standard contract terms and conditions and the minimum requirements for participation in the standard offer. This had been the intent of rule, but it is now more clearly delineated.

109. COMMENT: How the standard offer option fits with the incentive mechanism is unclear.

RESPONSE: As provided in the proposed rule N.J.A.C. 14:12-3.5, utilities would recover the standard offer payment and retain as an incentive, the difference between the standard offer payments for measured and verified savings and its incurred program costs.

110. COMMENT: The Board should require that a standard offer price applicable to the purchase of DSM savings, be made generally available to ESCOs and be calculated and applied uniformly to all DSM technologies.

RESPONSE: N.J.A.C. 14:12-3.5(a)4 has been added to clarify that standard offer payments are available for any measured and verified savings and apply uniformly to all technologies, as this had always been the Board's intent.

111. COMMENT: The standard offer provides no competitive mechanism by which to select among the respondents and no provision by which to establish a block size.

RESPONSE: To clarify the Board's original intent, N.J.A.C. 14:12-2.2(a)8 has been added as a requirement for the utilities that choose the standard offer option to propose a block size and a methodology for filling the block.

112. COMMENT: As a result of the establishment of competitive bidding, there is no reason to pay all respondents 100 percent of the standard offer.

RESPONSE: The standard offer option provides a unique opportunity to experiment with an alternative approach for the provision of DSM measures. Sufficient latitude exists for the Board to modify standard offer payments if it is determined that the payment is excessive.

113. COMMENT: Could net benefits and incentives to utilities be calculated from pre-approved per-measure savings impacts included in the measurement plan?

RESPONSE: The proposed rules allow utilities to propose such an approach.

114. COMMENT: Energy and capacity savings should reflect deductions for both free rider effects and takeback effects.

RESPONSE: Payments are made only for measured and verified savings including deductions for free riders. Takeback effects are not applicable where savings are measured.

115. COMMENT: Ex post measurements should be used only to revise for future installations.

RESPONSE: N.J.A.C. 14:12-3.6(e) (proposed as N.J.A.C. 14:12-3.5(e)) has been modified to clarify that revised measurement criteria apply only to prospective installations, as this had always been the Board's intent.

116. COMMENT: The Board's contractor should serve only as an auditor of methods and results, while the responsibility for adequacy and cost should be allocated between the utility and third-party suppliers of DSM relative to their roles.

RESPONSE: N.J.A.C. 14:12-3.6(g) (proposed as N.J.A.C. 14:12-3.5(g)) has been modified to clarify the intent of the Board that the purpose of the contractor is to verify installations of measures and delivery of savings.

117. COMMENT: Any free-ridership discount should be agreed to before program implementation.

RESPONSE: N.J.A.C. 14:12-3.6(d) (proposed as N.J.A.C. 14:12-3.5(d)) has been modified to clarify the Board's intent that free rider effects shall be determined prior to program implementation and subsequent changes will apply only to prospective installations.

118. COMMENT: The provision that the Board or an interested party may request reconsideration of approved measurement plans in less than two years should be eliminated.

RESPONSE: The flexibility to adopt to changing technologies and experience is essential. However, N.J.A.C. 14:12-3.6(e) (proposed as N.J.A.C. 14:12-3.5(e)) has been modified to clarify that changes to measurement plans would apply only to prospective installations.

119. COMMENT: Will the costs of the verification contractors be allocated to the programs and used in the benefit/cost tests?

RESPONSE: Yes.

120. COMMENT: A program could fail a benefit-cost test because of the measurement method chosen. A high level of flexibility in the choice of estimation methods would encourage a greater diffusion of DSM measures.

RESPONSE: The proposed rules allow a high level of flexibility in the choice of methods for measurement and verification subject to Board approval.

121. COMMENT: The definition and identification of free-ridership is arbitrary. As free-ridership requires extensive research and analysis of DSM programs that yields highly debatable conclusions, it is recommended that free-ridership not be considered in the estimation plans.

RESPONSE: The Board concurs that it is difficult to quantify free rider effects. However, the Board believes it is important to adjust for this effect where it is known to exist and can be quantified, rather than to ignore the effects of free riders.

122. COMMENT: The Board should clarify that utility performance will be measured on a project by project basis.

RESPONSE: N.J.A.C. 14:12-3.6(a) (proposed as N.J.A.C. 14:12-3.5(a)) clearly states that a measurement plan is required for each DSM Program.

123. COMMENT: The funding of third party consultants through utility dollars in order for the Board to verify savings has been opposed. Instead, Board staff should be trained to perform this function.

RESPONSE: The costs associated with the verification of savings are legitimate costs that should be reflected in program costs.

124. COMMENT: The requirement in N.J.A.C. 14:12-3.6(g) that each utility shall fund the procurement of a verifying contractor is duplicative, because each DSM plan is required to set forth a measurement plan which will be pre-approved by the Board.

RESPONSE: While a pre-approved measurement plan is required, it is still necessary to verify that DSM measures have actually been installed and that the DSM program is delivering savings.

125. COMMENT: While any savings measure should be based upon actual savings rather than estimates, in situations where industry standards (that is, a furnace replacement) must be used, estimates might be useless if access to the type or condition of equipment being changed out is not available. Even if actual (metered) data is available, it can be degraded by the influence of free rider effects, which cannot be quantified.

RESPONSE: The Board prefers measured savings. However, for certain DSM measures, engineering estimates will be satisfactory. Utilities must require pre-installation audits to verify the type and condition of equipment being replaced.

126. COMMENT: The measurement plan as proposed gives preference to metering over engineering estimates. Engineering estimates should be equally acceptable because of the complexities (such as weather normalization) associated with metering.

RESPONSE: As this had always been the Board's intent, N.J.A.C. 14:12-3.6(c) (proposed as N.J.A.C. 14:12-3.5(c)) has been modified to clarify that if metering is impractical, engineering estimates are acceptable in conjunction with or as an alternative to metering.

127. COMMENT: There is objection to the requirement for independent contractor verification of utility performance based programs because such a requirement could be interpreted as 100 percent verification, which would be a duplication of effort. Furthermore, the level of utility funding is open-ended. If retained, the cost should be limited and the level of contractor activity more clearly defined.

RESPONSE: N.J.A.C. 14:12-3.6(g) (proposed as N.J.A.C. 14:12-3.5(g)) has been modified to clarify the role of the verification contractor. The level of verification and funding will be proposed by the utility subject to Board approval.

128. COMMENT: The inclusion as a benefit of two cents per kwh in connection with DSM programs for environmental externalities stacks the deck against non-participating ratepayers.

RESPONSE: The values included for environmental externalities reflect legitimate benefits that accrue to all ratepayers. Moreover, the formula of net benefits includes recognition of rate impacts.

129. COMMENT: The standard offer coupled with bill savings defines the total value of cost effective conservation. If appropriately set, no other cost effectiveness test is needed; therefore, the TRC test for the standard offer approach is unnecessary. Participants are protected by competition and freedom of choice and non-participants are not affected by participant costs and therefore don't need the TRC test.

RESPONSE: The Board believes that the TRC test is necessary for standard offer programs to insure that only cost effective DSM measures are installed.

130. COMMENT: Fuel switching should be addressed in the proposed rules.

From a Statewide view, technologies such as a desiccant air conditioner which conserves significant electricity and uses small amounts of gas are very beneficial. It conserves resources, reduces pollution and saves money for users. Also, this air conditioner replaces peak period electricity with off-peak gas.

Innovative efficiency proposals that involve redirection of electric utility primary fuel from electric utility boilers to end user sites should not be automatically dismissed as "fuel switching," as no primary fuel is actually switched. The long run marginal impact of electric consumption is the amount of new gas fired generation capacity needed and the level of natural gas consumption by electric utilities as primary generation fuel. There are significant losses in this conversion. The direct utilization by the end user is more efficient and provides increased environmental benefits especially with the phase out of electrically driven chillers which use chlorofluorocarbons. Gas fired chillers use no chlorofluorocarbons. Also, these result in long run benefits to gas deliverability in New Jersey.

RESPONSE: Fuel switching raises various issues that are beyond the scope of this proposal. Specific energy efficiency programs will be examined in the DSM plan review process.

131. COMMENT: An electric utility can use rebate money to promote all electric technologies at the expense of gas technologies. This can frustrate the goals of the State's program. Programs should be fuel blind and all technologies should be competing on an equal playing field.

RESPONSE: The Board concurs that DSM programs must be designed in a manner that promotes the installation of efficient appliances and that does not promote any one fuel over another. This will be an important component of the Board's plan review process.

132. COMMENT: Does the use of the Total Resource Test as the criteria to measure the benefit cost ratio mean that the Ratepayer Impact Test will no longer be necessary?

RESPONSE: The Ratepayer Impact Test is no longer specifically required. Ratepayer impact is addressed through application of the Fixed Cost Revenue Erosion Factor.

133. COMMENT: New Jersey Industrial Energy Users (NJIEU) objects to the Total Resource Cost test because it tilts the scales unreasonably in favor of DSM programs.

RESPONSE: The Total Resource Test insures that only cost effective DSM programs are implemented. The Net Benefits calculation determines the maximum payment to utilities and third parties from ratepayers. It is set equal to or less than a utility's supply alternative. The proposed rules include the provision of a "market factor" which enables the Board to reduce payments for DSM if deemed appropriate.

134. COMMENT: The estimate of environmental benefits should be used conservatively and not escalated over time.

Environmental externalities cannot be considered in isolation from other resource decisions and should be considered in a separate proceeding. Including environmental externalities in the net benefits formula and TRC definition is a major new policy in the rules as proposed and has therefore not received adequate public discussion.

The proposed rules should move forward without including environmental externalities. The Board should convene a separate, broad-based investigation into the applicability of environmental externalities in energy planning for New Jersey, including non-utility generation.

Time differentiated environmental externalities are not necessary because of the highly subjective and uncertain nature of environmental externalities valuation.

The rules should establish $.02/kwh for environmental externalities as the floor and, upon a party's recommendation or upon its own motion, the Board should be allowed to adjust this figure upward.

Several parties commended the Board on the inclusion of environmental externalities although the rules are unclear whether environmental externalities are in today's present value dollars or not.

Among the reasons to pursue energy efficiency and renewables, the lengthy, populated New Jersey coastline will suffer egregiously from sea level rise (greenhouse effect). New Jersey's contribution to the level of CO_2 (carbon dioxide) is small, but because New Jersey imports more than 60 percent of its electricity, which is mostly generated by high sulfur, coal-fired plants, SO_2 (sulfur dioxide) yields acid rain which has effects both in and out of State. Conservation initiatives can help mitigate these problems.

The environmental externalities method used is a reasonable interim method, although the Pace report on environmental externalities used as support in the rules is based on highly speculative methods.

Resources should be compared using actual costs including costs to comply with environmental laws and regulations.

The Board must conduct a full adjudicatory hearing on the subject of externalities and quantification should be attempted only when all interests are represented in the body grappling with this issue.

The monetization values of environmental externalities must be refined before being adopted by any government agency.

Externalities must be analyzed in the context of supply, demand and dispatch.

The Board should address during the new proceeding the utilization of full fuel cycle costs to help level the playing field among fuel sources, by considering, for example, the costs associated with the disposal of the by-products of nuclear generation or with the health impacts of coal mining and cleaning.

The Board should also consider the addition of environmental dispatch to economic dispatch.

Environmental costs should be internalized for all sources, particularly existing utility plants. The proposed rules bias the procurement process by valuing environmental costs only for DSM sources not environmentally beneficial IPP sources. A system of environmental dispatch instead of economic dispatch of utility plants should be considered.

Regarding Environmental Externalities, the use of $.95 per MMBtu for gas utility DSM programs has been questioned as being too high and not adequately accounting for such factors as the market segment consuming the gas and the geographic region in which it is consumed.

There has also been objection to the proposed $.95 per MMBtu estimate for environmental externality savings alleging that the assumption from the 1990 Pace Report is inappropriate because DSM plans will not relate the fuel savings for electricity generation.

The value of $.95 per MMBtu for environmental externality savings is the best estimate available at this time.

It has been also argued that the Environmental Externalities section omits a value for the avoided cost of fuel oil. Furthermore, the use of the Pace Study results which pertain to electricity generation, for natural gas and user applications, is not fully developed.

RESPONSE: The quantification of environmental costs associated with electric generation and natural gas combustion is an evolving endeavor. At least three states, New York, Massachusetts and Nevada, have adopted specific values for environmental externalities for inclusion in least cost planning processes of utilities. The Board referenced a 1990 Report prepared by the Pace University Center for Environmental Legal Studies for the New York State Energy and Developmental Authority and United States Department of Energy, which studied the existing literature valuing environmental costs of electric utility operation. Driven primarily by air pollution costs related to SO_2, NO_x, particulates and CO_2, the report develops environmental costs for coal-fired, natural gas fired and oil-fired generating facilities, among others. It should be noted that the environmental externality values adopted in Nevada and Massachusetts are similar to the figures established in the Pace Reports.

Making the conservative assumption that all coal-fired units from which New Jersey utilities purchase electricity meet the New Source Performance Standards (NSPS) established by the N.J. Department of Environmental Protection and Energy, (which will not be the case for a number of years), and employing a weighted average of New Jersey electric fuel mix (including purchases) of 50 percent coal, 10 percent gas and 10 percent oil, electric generation produces an average air pollution environmental cost of 2.65 cents per kwh. This assumes no environmental cost for nuclear generation. The predominant marginal generating unit technologies appearing in the New Jersey utilities' capacity plans are natural gas-fired combustion turbines or combined cycle units. The Pace Report estimates that the environmental cost of generation from the avoided production plant is more on the order of 1.0 cent per kwh. However, the avoided gas-fired combustion turbine or combined cycle facility would be expected to run from several hundred to several thousand hours per year predominantly during peak and shoulder periods. As a result, baseload energy efficiency DSM measures can be expected to avoid generation from existing plant, likely coal-fired facilities, during off-peak hours.

In consideration of the factors noted, the proposed rules establish an average value for electric environmental externalities of 2.0 cents per kwh. The provision for time differentiation of environmental costs to take into account the previously stated factors is appropriate, in order to recognize the difference in sources of power and related emissions depending on time of day.

For natural gas, the value for environmental externalities is established in the rule at $.95/MMBtu (one million British thermal units), which approximates the environmental costs established in the Pace Report for natural gas combustion at an electric generating facility. As with the electric figures, this value is considered conservative since the gas-fired electric generating unit is assumed to have various emission controls not present at natural gas end user premises.

The Board agrees with the comments in recognizing that the environmental values established in the proposed rules represent merely an approximation, and will likely be the subject of further study and refinement. However, the Board maintains that a starting point should be established for purposes of assessing the benefits of DSM programs. The proposed rules provide for modification of these values, either up or down, in future DSM plan filings as the base of information in this field evolves.

While the Board recognizes that the environmental externality values are imprecise at this time, the Board believes it is appropriate to include some reasonable value rather than to ignore its value as some commenters have suggested.

Finally, N.J.A.C. 14:12-3.8(a)1iii has been added to clarify the Board's original intent that the environmental externalities values are in 1991 dollars and are to be escalated annually at a rate equal to the GNP deflator index.

135. COMMENT: What is timely recovery of program expenses?

RESPONSE: Pursuant to the proposed rules, utilities are free to propose the timing of recovery of program expenses subject to Board approval. The Board anticipates a relationship between the amortization of program costs and program benefits. That is, a program with a short payback and low up-front costs would have a shorter amortization period for program expenses than a program with a longer payback and higher up-front cost.

136. COMMENT: Program cost recovery should be reconciled in the annual levelized energy adjustment clause filing.

RESPONSE: The proposed rules provide utilities with the flexibility to propose program cost recovery concurrent with the levelized energy adjustment clause subject to Board approval.

137. COMMENT: The Board should clarify that no program expenses other than core program expenses are allowed to be recovered in rates.

RESPONSE: N.J.A.C. 14:12-4.1(d) has been added to clarify the expenses that a utility is entitled to recover in rates.

138. COMMENT: The proposed rules should plainly state the Board's policy DSM earnings through shared savings or a standard offer will in no way contribute to the determination of the authorized rate of return on rate base. Excessive profits would be earned under the proposed rules well in excess of reasonable return normally allowed by the Board. The rules must provide for an excessive earnings cap.

Utilities' overall rate of return should reflect the aggregate risk of all supply and demand side investments.

RESPONSE: The Board concurs that DSM earnings should not directly contribute to the determination of the authorized rate of return. Rather, the realized returns on these investments should relate to the risks incurred. However, the Board believes that the provision of incentives, as well as revenue erosion adjustments, should be monitored within the context of overall earnings and possibly be subjected to an excessive earnings cap.

The addition of an earnings cap would be considered a significant modification to the proposed rules. Due to the Board's desire to implement the rules and facilitate the commencement of program design and regulatory review, a specific earnings cap will not be added at this time.

However, the Board will expeditiously promulgate a proposed rule to address this issue. The Board anticipates that adoption of such a rule will precede final approval of DSM Plans filed pursuant to these proposed rules. The Board has instructed its staff to convene informal meetings among interested parties in an attempt to develop an appropriate earnings rule. The rule is anticipated to apply only to earnings and lost revenues resulting from the implementation of these rules, and will not be broader in scope. The Board will provide an opportunity for the utilities to supplement their filed plans upon adoption of a final earnings rule.

139. COMMENT: The proposed DSM Cost Recovery Mechanism should encompass not only program expenses, but also DSM-related lost revenues and incentives.

RESPONSE: N.J.A.C. 14:12-4.1(a) clearly states that the DSM cost recovery mechanism includes recovery of incentives, and the rule provides utilities the flexibility to propose a revenue adjustment mechanism.

140. COMMENT: The rules should state the Board's intent to allow full cost recovery of all Board-approved programs, even if they are later found not to be cost-effective, unless they are grossly mismanaged.

RESPONSE: The rules reflect the Board's intent that utilities only recover applicable payments for measured, verified savings, while at the same time not subjecting the programs to inappropriate hindsight adjustments in areas such as measurement, or other areas out of the utilities' control.

141. COMMENT: The utility should not recover any expenses associated with self-implemented DSM projects through rates and strict cost accounting should be maintained to avoid cross-subsidization.

RESPONSE: N.J.A.C. 14:12-4.1(d)4 has been added to clarify the provision for the above.

142. COMMENT: The rules are unclear on whether the cost recovery mechanism applies to shared savings and the standard price offer. It should not apply to standard offer.

RESPONSE: The cost recovery mechanism is equally applicable as the method for utilities to collect standard offer payments due for measured, verified savings.

143. COMMENT: Recovery should not be allowed through fuel clauses.

RESPONSE: While not necessarily directly recoverable through the fuel clause, the Board believes that a periodic adjustment mechanism similar to the fuel clause is an appropriate vehicle for recovery of DSM costs and incentives. In this manner timely recovery can be achieved.

144. COMMENT: Utility ratepayers should not subsidize the cost of utility implemented programs.

RESPONSE: The Board concurs. N.J.A.C. 14:12-4.1(d) has been added to clarify this and insure no subsidization occurs.

145. COMMENT: Regarding the Cost Recovery Mechanism, are the costs of measurement and verification to be included with implementation costs and recovered through rates and how are they to be allocated to customer classes?

RESPONSE: Measurement and verification costs are legitimate program costs recoverable through rates. Utilities are provided the opportunity to propose cost recovery mechanisms including allocation of costs to customer classes subject to Board approval.

146. COMMENT: The Cost Recovery Mechanism must be properly structured to avoid financial harm to the utilities. Since this mechanism will eventually be standardized by the Board, there is no reason to deal with them on a utility-by-utility basis.

RESPONSE: Since conditions and programs may vary from utility to utility, each utility should have the flexibility to propose a Cost Recovery Mechanism. Nothing in the proposed rules suggests that the cost recovery mechanism will eventually be standardized.

147. COMMENT: The rules should require the specific assessment of the impact of implementation of DSM program efforts on existing ESCO agreements.

RESPONSE: N.J.A.C. 14:12-4.2 has been clarified to ensure an assessment of impacts on existing ESCO agreements is included in the program transition.

148. COMMENT: The Stipulation must be reconciled with the final form of the rules.

RESPONSE: Adoption of these rules does not require any specific changes to the Stipulation of Settlement, dated July 1, 1988 in Docket No. 8010-687B. These rules provide reconciliation by exempting utilities from implementing an integrated bid if they choose the standard offer option, and by requiring that bidding ceiling prices be consistent with incentives and standard offer payments formulae provided.

149. COMMENT: It was inferred that utilities which sell and install heating equipment cross subsidize those operations with money earned on the regulated side of their business.

RESPONSE: This issue is beyond the scope of these rules. However, the Board monitors utility accounting to prevent such cross-subsidization and, as stated above, extensive litigation has resulted in no finding to date of cross subsidization by utilities.

150. COMMENT: The mandate that a utility's transition strategy include a finding of non cost-effectiveness is wasteful, unnecessary and should be eliminated.

RESPONSE: Existing conservation programs which are cost-effective should be continued as performance based programs. Only programs specified as core programs should be continued if shown not to be cost effective and only for reasons that extend beyond strict cost effectiveness.

151. COMMENT: There should be no need to defend a decision to drop any program not earmarked as a core program. Since the NJCAT study evaluated all utility conservation programs, any additional cost-benefit analyses would be both redundant and an imprudent use of resources.

RESPONSE: The NJCAT study evaluated specific programs, not all utility conservation programs. A utility that decides to eliminate a non-core program is required to specify that the program is not cost-effective. The basis of such a finding could be the NJCAT Study or any other appropriate rationale.

152. COMMENT: A clear statement that a utility should be allowed to collect DSM-induced lost revenues should be included in N.J.A.C. 14:12-4.4 or in N.J.A.C. 14:12-4.1. The language regarding the revenue adjustment mechanism for lost sales needs to be updated to reflect the changes to the rule which ignore the impact of increased sales and now only looks at DSM induced lost sales. The rule should state that lost revenue is calculated based on the reduced kwh or therm usage.

RESPONSE: N.J.A.C. 14:12-4.3(a)1 (proposed as N.J.A.C. 14:12-4.4(a)1) has been revised to clarify that utilities are permitted to propose a mechanism to collect DSM induced lost contributions to fixed costs.

153. COMMENT: Any fixed cost revenue erosion should be reconciled as part of the normal ratemaking process. This would insure revenue erosion was offset by any revenue growth and delay the upward pressure on rates until a base rate case was filed.

RESPONSE: Revenue erosion occurs relative to what would have occurred were it not for the DSM program even if revenue growth is taking place. Moreover, a lost sales adjustment merely provides a bridge to a succeeding rate case, when such sales losses would be reflected in rates. Therefore, an opportunity for recovery of revenue erosion is appropriate as proposed. However, the revenue adjustment is optional—and may be subject to some type of earnings cap which takes into account the current level of overall earnings.

154. COMMENT: It is inappropriate for the proposed rules to address fixed cost revenue erosion as that action should be addressed in utility specific rate proceeding.

RESPONSE: The "fixed cost revenue erosion" adjustment is a mechanism for mitigating the rate impacts of DSM programs. That is, the greater the factor the lower the maximum rate impact and conversely, the smaller the factor the greater potential rate impact. The Board believes it is appropriate to take into account the impact on rates of DSM programs. However, the factor is set below 1.0 to balance the somewhat conflicting considerations of minimizing rates versus minimization of bills.

155. COMMENT: The rules are unclear on what constitutes erosion. They do not address the incentive to expand sales. The Board should adopt a symmetric revenue adjustment mechanism which removes the incentive to expand sales.

RESPONSE: The Board believes that it is appropriate to explore a mechanism to decouple profits from sales. However, this concept raises many additional issues which are beyond the scope of these rules and require study.

156. COMMENT: The Board should include a policy statement that reasonable upward rate impacts of DSM are acceptable due to larger social welfare and require rate impact assessments be filed with the DSM plans and make necessary changes on a case by case basis.

RESPONSE: The Board believes that the fixed cost revenue erosion factor is an appropriate vehicle for addressing and controlling rate impacts.

157. COMMENT: The Board should establish for gas utilities an initial block size of 25 percent of the amount of conservation available as defined by NJCAT.

RESPONSE: The level of conservation proposed by a gas utility in its plan will be subject to Board approval upon consideration of comments received.

158. COMMENT: Gas utility bidding is a positive step, but there is no requirement that they must file. Gas utilities can avoid bidding by implementing a standard offer, which has no bidding requirement or ranking method for proposals.

RESPONSE: The Board believes that a standard offer is a viable alternative to bidding and will result in similar stimulation of the market for the delivery of innovative DSM measures.

159. COMMENT: The Board should clarify the proposed mechanism it has in mind with respect to the Revenue Adjustment Mechanism.

RESPONSE: N.J.A.C. 14:12-4.3 (proposed as N.J.A.C. 14:12-4.4) has been modified to clarify the intent of the Revenue Adjustment Mechanism. This will enable utilities to collect from ratepayers the reduction in contribution towards a utility's fixed costs between rate cases resulting from a reduction in energy usage from a DSM program. Refer to the revised definition of "fixed cost revenue erosion."

160. COMMENT: NJIEU is concerned that the conservation rule, which will benefit ESCOs and some participating ratepayers, will result in the costs being inequitably borne by non-participating ratepayers. Zero cost options, such as customer wheeling, should be considered first.

RESPONSE: The fixed cost revenue erosion factor, if properly set, mitigates impacts on non-participating customers and the equitable interclass allocation of the revenue adjustment can be an issue during review of the DSM Plans. Moreover the requirement for broad-based programs to reach all customers will allow industrial customers an opportunity to reduce bills. Customer wheeling is beyond the scope of these rules.

161. COMMENT: The waiver from integrated bidding should be extended from standard offers to shared savings options.

Integrated supply and demand bidding is not an effective method of procuring DSM.

Neither of the Board's concerns regarding integrated bidding are valid. The utilities will not monopolize the energy services market and integrated bidding is not necessary to determine the most cost-effective mix of supply-side and demand-side options. The processes already in place can address this issue without integrated bidding.

If bidding is required, utilities should be allowed to establish separate block sizes, minimum requirements, scoring criteria, and contract terms for DSM. An integrated resource plan submitted to the Board would be used to determine the block and its division between supply and DSM. Utilities should be allowed to earn incentives on bidding and count those achievements toward any overall savings target.

All-source bidding should be maintained in the current form. Utilities have consistently tried to subvert the intent of bidding. Public Service Electric and Gas Company has done this by limiting conservation contracts to ten years, which meant that these projects had to be about twice as cost effective as generation. One change recommended, however, is to allow utilities to bid in their own RFP's with safeguard against self-dealing.

The current bidding is abrogated and no substitute has been proposed.

Excluding DSM measures from the competitive bid solicitation creates a bias in favor of supply side options.

The proposed rules do not specifically state that incentives would not be available for bid programs. Denying incentives for these programs would create implicit penalties for utilities promoting energy service companies awarded contracts through all-source bidding. This would result in utilities competing rather than cooperating with energy service companies. Experience has shown that the highest levels of achievement are attained when the utility and energy service company work together in a stable market environment.

Competitive bid solicitations may be used to acquire quantifiable DSM resources.

The proposed rules seem to exempt a utility from competitive bidding even under the shared savings approach as long as the utility had a standard offer for additional programs.

RESPONSE: Current Board policies require utilities to implement an integrated (supply and demand side) bid for incremental capacity needs. These rules exempt utilities from implementing an integrated bid by allowing utilities to implement a supply only bid provided they implement a DSM standard offer pursuant to N.J.A.C. 14:12-3.5. Utilities that choose the Shared Savings Approach are not exempt from integrated bidding.

The rules require that the basis for establishing the ceiling price for DSM bids as well as evaluation criteria be consistent with the formulae and guidelines established within. This is to insure that all DSM initiates are offered consistent price signals.

The standard offer approach provides that utilities and third parties are free to implement any feasible and verifiable DSM measures they choose and will be paid the standard price for each unit of energy and capacity saved. Since the ceiling for the standard offer will be set using the same formula as the bidding ceiling price, all entities will have been offered the price signals they could receive through bidding. Therefore, nothing is gained by implementing an integrated bidding and the marketplace will determine appropriate levels of DSM. Finally, the rules provide utilities the option to propose and the Board with the ability to adjust the standard offer price up or down if circumstances warrant.

The shared savings approach provides utilities with the ability to choose what programs it will implement and the level of investment in those programs. A utility may miss market opportunities or fail to fully exploit the potential of certain markets. Integrated bidding is required to insure that the market potential for DSM is fully exploited.

Based on past experience with integrated bidding, the Board recognizes the need to differentiate between supply side and demand side RFPs, particularly with regard to ranking criteria, recognition of rate and environmental impacts, contract length and minimum criteria. The Board believes the Stipulation provides sufficient flexibility and encourages utilities to proposed innovative solutions to the concerns raised.

The rules do not provide incentives for bid DSM program. Incentives for bid programs raises various issues that are beyond the scope of these rules.

Overall, the Board believes these rules, combined with the competitive bidding stipulation, provides a framework that will allow for the development of a competitive market for the delivery of DSM measures.

162. COMMENT: Utilities do research on cutting edge electricity using equipment and should be free to sell state-of-the-art energy efficient appliances and DSM equipment that would otherwise not be on the market.

RESPONSE: While the Board is generally of the view that utilities need not directly sell or install appliances when existing market infrastructures exist, there may be certain innovative technologies which can be introduced into the market directly by utilities to the benefit of society.

163. COMMENT: A letter from Governor Florio was received stating that the private sector role should be producing, marketing and installing appliances and devices and utilities should deliver energy services.

The public focus of these proposals may have become estranged from their initial objectives. This forum should not have become focused on a single interest group.

The Board should urge much greater reliance on the existing competitive marketplace. There is a concern that utilities will reduce their commitment to cost-effective conservation as a major supply source and monopolize development of conservation potential.

Utilities have a disproportionate marketing advantage and this rule will further legitimize this unfair competition.

The need to delimit the utilities' market share in the new rule is ignored. The rule should either not permit direct utility involvement in providing conservation investments or limit the utility market share to 25 percent maximum.

The rules as proposed exclude third parties from the shared savings option and does not assure competition in the standard offer.

Active participation by third parties is essential to successful implementation of DSM.

RESPONSE: The Board concurs that the DSM marketplace is best served by the development of a competitive market for the sale, installation and servicing of DSM measures. As stated previously, the Office of Attorney General has advised that the Board does not at present have the authority to ban the sale, installation or servicing of DSM measures. Absent the authority to ban such sales, the Board believes that the rules provide sufficient protections to insure the proliferation of a competitive market for the delivery of DSM services.

Contrary to the allegations of the contractors, the Board believes these rules will create significant job opportunities for non-utility businesses for the sale, installation and servicing of DSM measures. Utilities have stated, on various occasions, that they intend to continue and expand the use third parties for the sales, installation and servicing of the

majority of the DSM measures offered. Existing utility DSM programs have generated a significant volume of business for non-utility firms that perform audits, install seal up and weatherization measures, sell, install and service efficient appliances, sell, install and service solar systems and various other DSM measures. The Board believes these rules will significantly increase business opportunity for non-utility entities to participate in the DSM market.

The rules require a utility to include in its plan a description of the role of the utility ESCOs and contractors in implementing a DSM program and a description of the process to be employed in selecting third parties to perform DSM activities. DSM Plans are subject to Board approval and are available to the public for comment prior to consideration by the Board. The Board is required by the rules to consider the impacts of a proposed DSM plan on the competitiveness of the DSM market place.

164. COMMENT: The National Energy Conservation Policy Act, Title 42, Section 8217, does not permit utilities to install residential energy conservation measures.

RESPONSE: The applicable portions of the National Energy Conservation Policy Act, Title 42, have previously been incorporated into N.J.A.C. 14:38 (Home Energy Savings Program or HESP) which prohibits utilities from supplying or installing any program measure. The Board's authority to prohibit the supply and installation of HESP measures is specifically provided for in the Act, but does not extend beyond the measures specified in the HESP rules.

165. COMMENT: The importance of maintaining the highest level of fair competition to insure that the most efficient techniques and technology are utilized in furnishing heating and cooling equipment was expressed.

RESPONSE: The Board will strive to achieve utilization of the most efficient techniques and technologies that can be justified economically.

166. COMMENT: Legislation recently introduced in the New Jersey Assembly would prohibit utilities from selling, installing and servicing heating and cooling equipment. The support of the Board was requested regarding passage of this bill.

RESPONSE: As stated previously, the Board is committed to a reliance on a competitive market for the provision of DSM services and has included in the rules provisions to ensure the implementation of this policy. However, while a very important policy issue, the Board is of the opinion that the appliance sales and service contracts do not bear directly on these rules. Nonetheless, the Board is currently reviewing the policy implications of these programs and has initiated a proceeding to specifically review this issue in response to a Motion filed on behalf of the Plumbing, Heating, Cooling Contractors (PHCC) in the context of the Board's review of the request by New Jersey Natural Gas Company for an increase in its contract charges. It is anticipated that the Board's findings as a result of that proceeding will greatly influence its position with respect to the proposed legislation.

167. COMMENT: The Board should make utilities set up a fully separate subsidiary if they want to participate in the business of selling, installing or servicing heating and cooling equipment.

RESPONSE: See response to comment 166. Also, the Board monitors utility accounting to prevent cross-subsidization.

168. COMMENT: The gas furnaces installed in 1990 were much less efficient than oil furnaces installed that year. Therefore, the Board should prohibit utility promotion efforts to convert existing oil heat costomers to natural gas.

RESPONSE: Utilities are prohibited from passing through to ratepayers the costs associated with their promotional advertising efforts to expand sales. Moreover, rebates are only provided on higher efficiency models. The issue of utility sales of furnances is currently being reviewed by the Board.

169. COMMENT: Referring to the opinion by the Deputy Attorney General that the Board does not have the authority to prohibit utilities from selling and installing appliances, the contractors questioned why they could not receive a copy of that opinion.

RESPONSE: The contractors, as well as all other parties to the proceeding, have been furnished with a copy of that DAG opinion.

170. COMMENT: The Board was urged to ban utilities from selling and installing appliances and to ban them from repairing equipment except on an emergency basis. Should such a decision be appealed by any party, then it could be resolved in the judicial system.

RESPONSE: See response to comment No. 166.

171. COMMENT: A recent order by the Louisiana Public Service Commission was referred to which prohibits utility sales, installation and servicing of appliances. The conservation rulemaking should be amended to require that independent contractors be utilized for the sale and installation of conservation measures.

RESPONSE: Louisiana law provides its Commission with the authority to implement such a ban while New Jersey law, at present, does not.

172. COMMENT: The analysis of the DSM program impact on competitive aspects of existing market infrastructure required in N.J.A.C. 14:12-5.1 is unnecessary because similar information must be included in the program implementation plan in N.J.A.C. 14:12-2.(a)5i(1), (2) and (3).

RESPONSE: The program implementation plan lists the information utilities are required to submit. N.J.A.C. 14:12-5.1 provides the Board's standard for review with regard to the information submitted.

173. COMMENT: Integrated bidding forces the demand side project price up because it must assume the characteristics of supply side in order to be evaluated. All DSM projects should be held to similar standards of pricing, quality assurance, measurement plans, and savings verification plans unless procured through integrated bidding.

RESPONSE: Integrated bidding can potentially force the DSM price up only if the block size is significantly larger than the potential DSM market. However, where a competitive market exists, bidding can achieve lower prices.

174. COMMENT: Demand side resources should be measured with the same standard for accuracy as supply side.

RESPONSE: The Board concurs, to the extent practicable.

175. COMMENT: For utility implemented programs utilities should be held to the same performance standards and risks as ESCOs.

RESPONSE: The Board concurs and, as provided in the rules, fully intends to develop procedures to insure that utilities and third parties are held to the same standards where applicable.

176. COMMENT: The public notice and hearing process established in the rules for plan review should be supported. Full public participation should be provided for in the review of the DSM plan.

RESPONSE: The rules provide for full public participation.

177. COMMENT: As the rules have inadequate provisions for formal review of plans, evidentiary hearings are needed.

RESPONSE: Evidentiary hearings are not essential and can be burdensome and result in delays which could hinder the development of cost effective DSM programs. Moreover, these rules, which have resulted from an extensive publication and hearing process, establish the methodology for determining payments to utilities, cost recovery, benefits, savings measurement and verification, incentives and plan elements. The review process is to insure that the DSM plans are consistent with these rules. Moreover, the rules provide full opportunity for comment by interested parties and the public with respect to filed plans.

178. COMMENT: Although N.J.A.C. 14:12-5.3 requires the Board to hold public hearings within 45 days of receipt of a utility's DSM plan, there is no requirement that the Board issue final approval in any specified time frame. It is recommended that the Board be required to issue final approval within 180 days of the close of the DSM plan public hearing.

RESPONSE: The Board will use its best efforts to review and act on DSM plans as quickly as possible. However, the Board does not believe it is advantageous to impose arbitrary deadlines for approval, given the potentially complex issues involved and the need to carefully consider all public comments.

Summary of Agency-Initiated Changes Upon Adoption:

At N.J.A.C. 14:12-2.2(a)4i(1), language which unnecessarily explains the purpose of pre-screening and is not relevant to the rule, has been deleted.

N.J.A.C. 14:12-4.3, Standard pricing offers, was recodified upon adoption to N.J.A.C. 14:12-3.5 and some changes in text were made in response to comments (see: Comments and Responses). The recodification was done for more coherent organization of subject matter.

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

CHAPTER 12
DEMAND SIDE MANAGEMENT

SUBCHAPTER 1. PUBLIC UTILITY PROGRAMS

14:12-1.1 Purpose and scope

The rules in this chapter are designed to *[provide financial incentives to electric and gas utilities for]* ***encourage and promote cost-effective*** investment in demand side management initiatives. These *[incentives]* ***rules*** are intended to foster the increased penetration ***and use*** of *[end-use]* energy efficiency technologies *[into the homes and businesses of]* ***applicable to the use and supply of electric and gas energy in*** the State. ***One mechanism to encourage cost-effective investment in such demand side initiatives is the provision of financial incentives to electric and gas utilities with respect to investment aimed at fostering the increased use of energy efficiency technologies.*** Increased energy efficiency is regarded as a viable alternative to the construction or procurement of new electric and gas supply sources. These rules are designed to put in place mechanisms which permit utilities to earn financial returns equivalent to or, in recognition of the potential positive impact on society, greater than, the returns provided on ***utility owned*** supply side projects. *[It is further the intent of the]* ***The*** rules ***are also designed*** to create an environment for utilities to utilize their resources and unique position as major energy providers in the State to foster increased energy efficiency *[while stimulating the further development and opportunities for independent energy service companies, contractors and suppliers to fairly compete for Demand Side Management (DSM) business opportunities]*. ***Finally, the rules are intended to provide significant increased opportunities for the delivery of energy efficiency services and measures by independent non-utility energy service companies, contractors and suppliers.***

14:12-1.2 Definitions

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

"Avoided cost savings" means the level of fuel, operation and maintenance, labor costs, capital costs, taxes and any other costs which the utility avoids having to incur as a result of displacement of customer demands through demand side management efforts.

"Board" means the New Jersey Board of *[Public Utilities]* ***Regulatory Commissioners***.

"Core Programs" means a set of conservation programs required to be performed by the utilities and which are not subject to the incentive *[ratemaking formulae]* ***provisions*** established in N.J.A.C. 14:12-3.***1(a)***. The Core Programs shall constitute activities undertaken by the utility in order to foster the dissemination of energy efficiency information to the public as well as to accomplish certain socially desirable or other public benefit goals.

"Demand side management (DSM)" means the *[control]* ***management*** of a public utility's ***existing and/or future capacity and/or*** energy needs through the *[development]* ***implementation*** of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures in the *[homes and businesses of]* ***residential, commercial, industrial, institutional and governmental premises and facilities in*** the State.

"Demand Side Management Program (DSM Program)" means the provision of program measures by a utility, directly or indirectly, pursuant to a DSM Plan at a utility's delivery system and/or one or more participants' premises and/or facilities.

"Demand Side Management Resource Plan (DSM Plan)" means a comprehensive presentation of a utility's demand side management activities over a specified period as well as mechanisms for DSM program cost and revenue erosion recovery and incentive mechanisms to encourage DSM activities as specified in N.J.A.C. 14:12-2, 3 and 4.

"Energy service company ***(ESCO)***" means a company which provides energy efficiency and load management equipment and***/or*** services to end user customers.

"Fixed cost revenue erosion" means the reduction in contribution towards a utility's fixed costs resulting from a reduction in energy usage from a DSM *[program]* ***Program***. This figure is determined on a per unit basis by dividing total ***test year*** retail revenues minus the sum of ***test year:***

1. *[gross]* ***Gross*** receipts and franchise taxes *[and]***;***

2. *[fuel]* ***Fuel*** costs***; and***

3. Any other variable costs which may be approved by the Board

by total ***test year*** retail sales.

"Free rider effects" means energy and capacity savings resulting from measures which would have been implemented even in the absence of the utility program.

"Fuel Adjustment Clause" means *[a mechanism through which a utility may recover its fuel costs on an annual basis. When used in this chapter, the term means specifically]* an electric utility's Levelized Energy Adjustment Clause (LEAC) or a gas utility's Raw Materials Adjustment (RMA) or Levelized Purchased Gas Adjustment (LPGA) ***or Levelized Gas Adjustment Clause (LGAC)***.

"Measurement plan" shall have the meaning set forth in N.J.A.C. 14:12-3.6.

"Participant" means the end user at whose site *[the]* ***a*** DSM *[measure or service will be]* ***Program measure has been*** installed or rendered.

"Penetration levels" means the *[amount]* ***number*** of *[customer participation]* ***participants*** in a particular program relative to *[the]* ***total*** eligible *[universe of]* customers for that program.

"Program measure" means the particular *[end use]* device, technology *[or]* service, ***or system, or combination thereof,*** being offered *[within a particular program]* ***pursuant to a DSM Plan,*** to be installed or rendered in *[the targeted customers']* ***a participant's*** premises ***and/or facilities*** or in the ***utility's*** energy delivery system.

"Public utility" or "utility" means all electric and *[natural]* gas *[public]* utilities as defined by N.J.S.A. 48:2-13, ***excluding*** *[but does not mean]* municipally owned electric or *[natural]* gas *[public]* utilities. ***A "public utility" or "utility" shall not be deemed to include a subsidiary or affiliate of a public utility or utility.***

"Test year sales" means the level of sales utilized by the Board to set rates in the utility's most recent base rate proceeding.

"Total Resource ***Cost*** Test" means a comparison of the avoided cost savings (including line loss factors and reserve margin savings), incidental savings and environmental externalities *[as benefits]* to the utility program ***costs plus*** *[and]* ***net*** participant costs. ***Incentive payments to customers are not included in this test because they are considered to be a transfer payment.***

"Unit" means a unit of measure of energy expressed as one kilowatt-hour (kwh) in the case of electricity, and one therm in the case of gas.

SUBCHAPTER 2. DEMAND SIDE MANAGEMENT RESOURCE PLAN

14:12-2.1 Filing

Every *[New Jersey electric and gas public]* utility *[subject to the jurisdiction of the Board]* shall file no later than *[90 days from the effective date of this rule]* ***February 2, 1992*** and ***commencing with*** *[by]* March 1, *[1993]* ***1994*** and every two years thereafter, a *["Demand Side Management Resource Plan" ()*DSM Plan*()]* for review and approval by the Board.

14:12-2.2 Plan elements

(a) The DSM Plan shall consist of the following elements, each of which shall be accompanied by technical support sufficient to provide the Board with a basis to evaluate the DSM Plan:

1. A ***forecast of overall energy and capacity savings including a*** target which establishes and specifies an overall energy and capacity savings goal in terms of kilowatt-hours (kwh) and kilowatts (kw) for electric utilities and therms for gas utilities to be achieved by virtue of the DSM Plan, as well as a *[specified time frame]* ***milestone schedule*** for attaining the goal;

2. *[An assessment]* ***A forecast*** of the effect of the ***DSM*** Plan on the ***utility's*** overall peak load and energy demand *[forecasts]*, construction plans, fuel purchase plans, capacity expansion plans***, bulk power purchase plans*** and *[the]* future capital additions *[of the utility]*;

3. A list and description of "Performance-Based DSM Programs" which shall present the DSM efforts which the utility intends to implement ***through its own efforts and/or through the use of ESCOs or contractors*** over the succeeding two years and for which performance-based incentives will be sought pursuant to N.J.A.C. 14:12-3. DSM efforts proposed by the utility may include investments in increased energy delivery system efficiency in addition to end use efficiency;

4. A list ***of Core Programs which will be offered by the utility accompanied by a*** *[, description and]* proposed budget***, and program description including a goal and target market*** for *[Core Programs which will be offered by the]* ***each*** utility. As the benefits to be achieved from Core Programs may transcend a strict economic benefit/cost analysis or be difficult to accurately quantify, the Core Programs shall not be subject to the mechanisms applied to the Performance-Based DSM Programs as set forth in N.J.A.C. 14:12-3. Instead, the utilities will be permitted to expense the costs related to operation of the Core Programs on a timely basis through the DSM Cost Recovery Mechanism, as set forth in N.J.A.C. 14:12-4.1.

i. Unless otherwise directed by the Board, a utility's Core Programs menu must include the following:

(1) The Home Energy Savings Program (HESP) as described in N.J.A.C. 14:38. However, in order to increase the overall cost effectiveness of *[the Program]* ***HESP***, the utility may incorporate features such as target marketing, and prescreening of applicants *[to ensure that an otherwise eligible applicant has not had a prior utility-sponsored energy audit within a specified number of years at his or her present location, or does not reside in a residence that was constructed after a specified date]*;

(2) A Low Income Direct Grant and/or Seal-Up Program;

(3) A Commercial and Apartment Conservation Service (CACS) energy audit program; features similar to those described in (a)4i(1) above which enhance program cost effectiveness may be incorporated by the utility;

(4) A program encouraging the energy efficient design of new construction;

(5) Informational programs designed to foster conservation awareness;

(6) Educational programs designed to enhance the understanding of energy efficiency in the school systems; ***and***

[(7) A program or package of programs offered by each electric utility directed at those residential customers within its service territory who utilize energy sources other than natural gas for space heating purposes; and]

*[(8)]***(7)*** Other programs as proposed by the utility *[or]***, any*** interested *[party and as deemed appropriate]* ***person, or by the Board upon its own motion which are ultimately approved*** by the Board.

ii. Electric utilities shall offer the Core Programs identified in N.J.A.C. 14:12-2.2(a)4i(1),(2) and (3) above to non-gas heated customers.

*[ii.]***iii.*** In filing its DSM Plan, each utility shall have the opportunity to propose one or more Core Programs as a performance based *[program]* ***DSM Program***, it being the intent of this section not to preclude the opportunity to earn incentives if an adequate measurement plan is provided by the utility.

5. For each Performance-Based DSM Program and Core Program, the DSM Plan shall include the following:

i. A program implementation plan, which shall include:

(1) The anticipated manner of the marketing and installation of program measures;

(2) *[Indications as to whether or not utility personnel or third parties are anticipated to actually perform the]* ***The specific role of the utility, ESCOs and contractors in implementing a DSM Program or in*** marketing, *[supply, installation or maintenance of program measures]* ***supplying, installing or maintaining program measures***;

(3) *[In the event that third parties will be utilized, a]* ***A*** description of the selection process to be employed, ***with respect to the use of ESCOs and/or contractors*** and the standards to which the *[third parties]* ***ESCOs and/or contractors*** will be held in performing work; and

(4) An analysis of the impact of the program on the competitive aspects of existing market infrastructures involved in the sales and installation or other provision of similar measures and/or services.

ii. *[The]* ***A detailed description of the*** customer base which the program will target;

iii. The DSM *[program]* ***Program*** measures to be offered;

iv. The commitments or contributions which will be expected of customers; and

v. The penetration levels and overall energy and capacity savings expected to be achieved by each program.

6. Each utility must prepare an Executive Summary of its DSM Plan filing which provides a brief overview of the ***DSM*** Plan including:

i. An overall target ***of energy and capacity*** savings;

ii. A brief description of the *[program]* ***DSM Programs and Core Programs*** offered, including the manner of implementation, the projected savings and a measurement plan;

iii. An incentive mechanism and/or standard price offer description;

iv. *[A]* ***The*** basis for the incentives or standard offer, including a summary of avoided costs;

v. A cost recovery mechanism ***as provided for under N.J.A.C. 14:12-4.1***; and

vi. A revenue adjustment mechanism ***as may be proposed as provided for under N.J.A.C. 14:12-4.3***.

7. Each utility must demonstrate an effort to offer DSM *[program]* ***Program*** opportunities to all sectors of its customer base, or demonstrate why such a broad spectrum is not achievable.

8. A utility that opts for the standard offer approach pursuant to N.J.A.C. 14:12-3.5 shall include in its plan a proposed block size, methodology for accepting proposals and filling the block, standard contract terms and conditions, and minimum requirements for participation.

SUBCHAPTER 3. INCENTIVES

14:12-3.1 Basis for incentives

(a) Unless otherwise approved or directed by the Board, the basis for the opportunity to earn an incentive shall take one of the following formats:

1. *[A base percentage return on investment]* ***A shared savings approach*** as set forth in N.J.A.C. 14:12-3.4*[(e) for each Performance-Based Program. To the base return shall be added incentives based upon a shared savings of the achieved net benefits associated with the individual programs set forth in its plan]*; or

2. A *[DSM]* standard price offer *[for general application or for particular DSM measures, which establishes a per unit price for energy and capacity savings which a utility will pay to third parties and/or receive through rates for DSM projects which meet minimum viability, technological, measurement and verification criteria. Such a standard offer energy and capacity price will be established based upon the criteria]* ***as*** set forth in N.J.A.C. 14:12-*[4.3]***3.5***.

14:12-3.2 Net benefits

(a) Net benefits of the program shall be defined as the difference between the net present value of benefits associated with the program and the net present value of program costs.

(b) The net benefits calculation can be expressed utilizing the following formula:

$NB = NPV_B - NPV_C$, where

NB = net benefits

NPV_B = net present value benefits of the energy and capacity savings, calculated using the following formula:

$$\sum_{t=1}^{L} \frac{(E \times AEC)}{(1 + DR)^{t-1}} + \frac{(C \times ACC)}{(1 + DR)^{*t-1*}} \; *[^{t-1}]*$$

where t = years
L = ***for shared savings, the*** duration of ***the*** *[program]* ***Program*** measure***; for the standard offer, the term of the contract with the utility***
E = kilowatt-hours (electric utilities) or therms (gas utilities) of energy avoided in year t by virtue of the DSM ***Program*** measures
C = kilowatts (electric utilities) or peak therms (gas utilities) of demand avoided in year t by virtue of the DSM ***Program*** measures
AEC = avoided energy cost *[(cents per kwh or cents per therm)]* ***per unit in year t*** as approved by the Board ***under paragraph (c)(3) below***. In addition to energy costs AEC must include an adjustment for transmission and/or distribution line losses and a specific incorporation of environmental externalities as provided in N.J.A.C. 14:12-*[3.7]***3.8***.
ACC = avoided capacity cost ***in year t*** including appropriate reserve margin savings ***for electric utilities***, as approved by the Board ***under paragraph (c)3. below.***
DR = ***the appropriate*** discount rate ***as approved by the Board in its review of the utility DSM Plan.***
NPV_C = net present value of total costs *[as]* recovered from ratepayers, including program costs, base level of return and a factor initially set at *[0.8]* ***0.5*** times the fixed cost revenue erosion as adjusted by the Board from time to time.

(c) Each electric and gas utility shall, at the time it submits its DSM Plan, file an avoided cost ***savings*** study which demonstrates the energy and capacity cost avoided by the utility by virtue of the existence of reductions in load from conservation and load management. Except for matters related to the timeliness of data, the avoided cost ***savings*** which forms the basis for utility incentives shall be consistent with that used as the cap for price offers available for non-utility supply project developers or third party energy service companies through utility bid solicitation or other supply and demand side procurement procedures, as reviewed and approved by the Board.

1. In preparing the avoided cost ***savings*** study *[filings]*, utilities shall ***calculate the fuel, operation and maintenance, labor, capital and other costs and taxes which the utility avoids having to incur, including line loss factors, transmission and distribution capacity costs, maintenance costs, and reserve margin savings, as a result of displacement of customer demands through DSM efforts. The utilities' calculation of avoided costs shall be exclusive of fixed cost revenue erosion, and shall*** reflect the capacity as well as commodity ***or energy*** costs avoided by virtue of displaced supply purchases and/or facilities.

2. Valuation of avoided energy and capacity shall be time-differentiated in order to permit a more accurate valuation of those DSM ***Program*** measures which are designed to shift and reduce customer usage during certain times of day, days of week or seasons of the year.

3. Avoided costs savings filings that are made pursuant to this section shall be subject to review and approval by the Board as part of its review of the utility's DSM Plan, as provided for in N.J.A.C. 14:12-2.1.*

14:12-3.3 Incidental savings

(a) Subject to the express approval of the Board, a utility may request to receive additional incentives in excess of those established in N.J.A.C. 14:12-3.1 and 3.2 conditioned upon a demonstration of incidental savings related to a particular ***DSM*** *[program]* ***Program***. For purposes of this mechanism, incidental savings are defined as savings of non utility-provided energy sources (for example, heating oil savings related to an electric utility program).

1. In the event that an electric utility requests additional incentives for particular programs related to incidental savings, the utility may propose a modification to the net benefits formula specified in N.J.A.C. 14:12-3.2(a) which reflects those savings.

(b) A measurement and verification plan for the incidental savings shall *[accompany]* ***be submitted to the Board for review and approval with respect to*** all proposals for receipt of additional incentives.

14:12-3.4 Shared savings

(a) Incentives to be provided to *[the utilities]* ***a utility*** pursuant to N.J.A.C. 14:12-3.1(a) shall be based upon a shared savings ***between the utility shareholders and its ratepayers*** of the net benefits as determined in N.J.A.C. 14:12-3.2.

(b) The incentives shall be calculated as a retention by the utility of a percentage of the net benefits achieved by virtue of each *[program]* ***DSM Program***.

(c) *[Actual net benfits which are realized by virtue of]* ***Net benefits shall be calculated for*** each *[program will be tallied]* ***DSM Program*** after the completion of ***Program*** measure installation and ***DSM Program*** measurement ***and*** verification. The level of energy and capacity savings *[assumed]* ***utilized*** in these calculations shall be based upon the most recent measurement plan approved for that ***DSM*** *[program]* ***Program*** by the Board pursuant to N.J.A.C. 14:12-3.6, and subject to the approved verification plan also filed pursuant to N.J.A.C. 14:12-3.6***(g)***. *[Modifications to the measurement plan shall be applied prospectively. As a result, the]* ***The*** critical variables in the actual net benefit calculation *[will]* ***shall*** be the *[program penetration levels,]* verified ***post installation energy and equivalent capacity savings, DSM Program measure*** performance, and the level of actual ***DSM*** *[program]* ***Program*** costs. Actual ***DSM*** *[program]* ***Program*** costs ***shall include a deduction from utility incurred costs for participant contributions and*** shall include an appropriate allocation of program support from general utility operations ***as determined and approved by the Board***.

(d) In the event that *[achieved]* net benefits of *[individual programs]* ***a DSM Program*** are less than *[zero]* ***one***, negative incentives ***to utility shareholders*** shall result. These negative incentives*[,]* ***shall be*** determined *[as a percentage of negative net benefits,]* ***based upon the same percentages that the utility proposes to use to determine positive incentives as provided in (f) below. Negative incentives*** shall be based upon poor performance resulting from such factors as poor penetration levels, program cost overruns ***in DSM Program costs*** and substandard actual performance of ***Program*** measures, and not upon retroactively applied changes in the measurement criteria.

(e) A base level of return *[shall be established]* ***may be proposed by the utility*** and provided for ***utility shareholder*** investments in *[each of the programs.]* ***DSM Programs implemented in accordance with this section. A base level of return is optional and is intended to provide a base level of incentive for high risk DSM Programs that the utility would not implement on a pure shared savings basis as defined in N.J.A.C. 14:12-3.4(f).*** The base level of return *[shall]* ***may*** represent the percentage return on ***utility shareholder*** program investment to be provided the utility. Incentives (or negative incentives) achieved for *[realized program net benefits greater than zero (or achieved benefit/cost ratio of less than zero)]* ***each DSM Program*** as established in (b) through (d) above shall be added to (subtracted from) the base return. *[In order to mitigate against an undue emphasis on expenditure levels rather than achieved savings, the allowed base return shall be capped at 500 basis points below the authorized overall rate of return of the utility.]*

(f) Proposals for specific shared savings percentages, *[to be added to (subtracted from) the base return, as well as proposed]* base returns, ***or a combination thereof,*** shall be included in the filed DSM Plans. Such proposals shall provide an adequate balance between risks and incentives for DSM initiatives as determined by

the Board. Unless otherwise permitted by the Board, allowed shared savings percentages will be inversely related to the base level of return.

***(g) The utilities' DSM Plan shall be designed in a manner such that ESCOs, contractors, and customers are provided with a reasonable opportunity to participate in the provision of DSM services at customer premises and to propose innovative DSM applications. To that end, each utility that opts for the shared savings approach must also make available, as part of its DSM Plan, a program for the purchase of electric and/or gas energy and capacity savings delivered by non-utility entities from DSM Programs not specifically covered and sufficiently different from utility-sponsored core or performance-based programs.**

(h) Utilities that opt for the shared savings approach described in N.J.A.C. 14:12-3.4 are eligible to receive incentive payments for DSM measures implemented by ESCOs, contractors or customers.*

***14:12-3.5 Standard pricing offers**

(a) In the event that a utility opts to make available, pursuant to N.J.A.C. 14:12-3.1(a)2, a standard price offer in lieu of shared savings programs pursuant to N.J.A.C. 14:12-3.1(a)1, the standard price offer shall contain the following:

1. A price for which the utility will pay ESCOs, contractors or customers who meet minimum threshold requirements for delivery of verifiable energy and capacity savings from DSM measures. The utility may also propose to deliver verifiable DSM savings through various programs and be permitted to receive revenues equivalent to the standard price offer for delivery of such savings; and

2. The price of the standard offer shall be determined by the following formula:

i. Avoided Energy Costs plus Avoided Capacity Costs as defined in N.J.A.C. 14:12-3.2(b) minus Fixed Cost Revenue Erosion times 0.5;

ii. An appropriate discount below the formula may be applied to reflect the anticipated benefits which would result from a competitive bid; and

3. A demonstration that measures or programs procured via a standard price offer are cost-effective pursuant to the requirements of N.J.A.C. 14:12-3.7.

4. Standard offer payments shall apply uniformly to all verifiable DSM technologies meeting minimum threshold criteria and shall be made available for any energy and capacity savings delivered to the utility provided savings have not exceeded the approved block size.

(b) Utilities' DSM programs implemented pursuant to this subsection shall be held to the same standards as non-utility entities participating in the standard offer with regard to security for the delivery of savings, performance standards and penalties/rewards, measurement and verification of savings, pricing, and other applicable contract terms.*

14:12-*[3.5]***3.6*** Measurement plan

(a) A measurement plan for each DSM Performance-Based Program shall be filed as part of the Plan.

(b) The measurement plan *[for each program]* shall set forth ***for each DSM Program*** the basis for ***annual and life-cycle*** energy and capacity savings estimates for each program, as well as the specific mechanism to be employed for verifying the actual savings produced.

(c) Where practicable, the preferred measurement methodology shall be implemented through a metering arrangement, with appropriate adjustments for weather normalization and/or other factors influencing usage levels. *[In the alternative]* ***If metering alone is impractical***, engineering estimates or other appropriate methods may be utilized ***in conjunction with or as an alternative to metering,*** if demonstrated to be accurate and reliable.

(d) Estimates of energy and capacity savings shall expressly reflect deductions for any free rider effects. ***Free rider effects shall be determined prior to program implementation and subsequent changes will apply only to prospective installations.***

(e) Program net benefits *[established in]* ***calculated pursuant to*** N.J.A.C. 14:12-3.2 shall be periodically reviewed to ensure that they reflect implementation experience as well as advances in measurement techniques. Said review shall be undertaken at least every two years concurrent with the filing and review process related to succeeding DSM Plans filed pursuant to N.J.A.C. 14:12-2, at which time the utility must demonstrate that the existing measurement plan remains the most appropriate. In the event of the development of new technologies the Board, on its own motion or at the request of an interested party may review an existing DSM Plan in less than two years to reconsider measurement techniques. Once a *[program savings]* ***DSM Program measurement plan*** is approved by the Board, it shall remain the basis for evaluation ***of a DSM Program*** until a revision is approved. Revised measurement criteria shall only apply *[prospectively]* ***to prospective installations***.

(f) In order to ensure a competitive DSM marketplace, ***where appropriate,*** measurement criteria for utility Performance-Based ***DSM*** Programs must be consistent with measurement requirements imposed by the utility on third parties pursuant to competitive bid solicitations or standard price offers.

(g) Each utility shall fund the procurement of a contractor *[in order to provide for independent verification of utility Performance-Based Program measure installation, maintenance and consistency with the measurement plan]* ***to verify installation of measures and delivery of savings***. Said contractor shall be selected by and report directly to the Board.

14:12-*[3.6]***3.7*** Benefit-Cost Test

In order to receive Board approval and be eligible for incentives, each Performance-Based ***DSM*** Program must be demonstrated to result in a benefit/cost ratio of at least 1.0 as defined by the Total Resource Cost *[test]* ***Test***.

14:12-*[3.7]***3.8*** Environmental externalities

(a) The avoided societal cost of environmental impacts related to construction and operation of electric and natural gas supply projects and electric and natural gas consumption, *[otherwise]* ***hereinafter*** referred to as environmental externalities, shall be explicitly reflected in net benefits calculations, ***avoided cost savings studies,*** standard ***offer*** pricing***,*** *[offers as a benefit of DSM projects]* ***competitive offer pricing and the TRC Test***.

1. For the initial DSM Plan filing and until otherwise modified by the Board, the following environmental externality values *[will]* ***shall*** apply:

i. For electric utility DSM *[programs]* ***Programs***, the environmental externality value shall be $.02 per kilowatt-hour (kwh). The electric environmental externalities shall be time-differentiated consistent with time differentiation of avoided cost schedules in order to reflect the changing mix of generation sources during different time periods. Nonetheless, the average value shall be $.02 per kwh.

ii. For gas utility DSM *[programs]* ***Programs***, the environmental externality value shall be $.95 per one million British thermal units (MMBtu).

iii. The environmental externalities provided for herein are in 1991 dollars. These values shall be adjusted annually at a rate equal to the GNP deflator index.

SUBCHAPTER 4. ADDITIONAL ELEMENTS OF THE DSM PLAN

14:12-4.1 Cost Recovery Mechanism

(a) A Demand Side Management Cost Recovery Mechanism proposal shall be filed, as part of the DSM Plan, by each electric and gas utility to permit the timely recovery of ***actual*** program *[expenses]* ***costs plus incentives or disincentives or standard offer payments***.

(b) The DSM Cost Recovery Mechanism shall be a deferred accounting mechanism which shall be adjusted on an annual basis or some other period concurrent with implementation of each utility's fuel adjustment clause to reconcile the difference between actual program *[expenditures]* ***costs plus incentives or disincentives or standard offer payments*** and the level of expenditures recovered in rates for the most recent annual period.

(c) *[The expenditures subject to the adjustment mechanism]* ***The Cost Recovery Mechanism*** shall be limited to ***actual program*** costs ***plus incentives or disincentives or standard offer payments*** incurred *[for implementing programs]* ***in the implementation of DSM Programs*** which have been previously approved by the Board pursuant to these rules.

(d) Each utility shall implement procedures and accounting standards sufficient to ensure that all expenses associated with the utility's DSM Plan are accurately accounted for and that strict cost accounting standards are followed in determining both the nature and amount of expenses attributable to any self implemented utility DSM Program whether through a standard price offer, competitive bidding or shared savings program.

14:12-4.2 Program Transition Strategy

As part of the initial DSM Plan filed pursuant to this chapter, each utility shall file a DSM Program Transition Strategy which describes the utility's proposed plan to merge its existing DSM *[program]* ***Program*** efforts into the DSM Plan. Such strategy shall address the proposed future status of each of the utility's existing programs, that is, whether an existing program is proposed to be rolled into the Performance-Based Programs or the Core Program established in N.J.A.C. 14:12-2, or whether it is proposed to be eliminated based upon a finding of non cost-effectiveness and insufficient public benefits. A supporting rationale shall be included which underlies the proposed status of each program. ***Further, the DSM Program Transition Strategy must address the impact, if any, of utility programs implemented as a result of these regulations, on existing DSM contracts that resulted from previous competitive bid solicitations.***

*[14:12-4.3 Standard pricing offers

(a) In the event that a utility opts to make available, pursuant to N.J.A.C. 14:12-3.1(a)2, a standard price offer in lieu of Performance-Based Programs, the standard price offer shall contain the following:

1. A price for which the utility will pay third-parties who meet minimum threshold requirements for delivery of verifiable energy and capacity savings from DSM measures. The utility may also propose to deliver verifiable DSM savings through various programs and be permitted to receive revenues equivalent to the standard price offer for delivery of such savings; and

2. The maximum price at which the standard offer may be set as determined by the following formula:

i. Avoided Energy Costs (plus line losses) plus Avoided Capacity Costs (plus reserve margin savings) plus Environmental Externalities minus Fixed Cost Revenue Erosion times 0.8;

ii. An appropriate discount below the formula may be applied to reflect the anticipated benefits which would result from a competitive bid; and

3. A demonstration that measures or programs, procured via a standard price offer, are cost-effective pursuant to the requirements of N.J.A.C. 14:12-3.6.

(b) The utilities' DSM Plan shall be designed in a manner so that third party energy service companies and other independent contractors, suppliers and end users are provided with an opportunity to participate in the provision of DSM services at customer premises and the opportunity to propose innovative DSM applications. To that end, in addition to other provisions of this chapter, each utility that opts for the shared savings approach must make available, as part of its DSM Plan, a standard pricing offer for electric and/or gas energy and capacity savings delivered by non-utility entities via DSM measures or applications not specifically covered by utility-sponsored Core or Performance-Based Programs.]*

14:12-*[4.4]***4.3*** Revenue adjustment mechanism

(a) Along with the filing of its DSM Plan, each utility may propose for consideration by the Board a mechanism for addressing the impact of DSM initiatives on the overall level of revenues collected by the utility. Such proposals shall address:

1. The erosion of fixed cost contributions *[resulting from lower than test year sales to customers participating in DSM programs]* ***from ratepayers and resultant earnings erosion from the reduction in sales caused by customer participation in DSM Programs. DSM impacts previously accounted for in the development of current base rates forecasts shall not be incorporated into the calculation of erosion of fixed cost contributions***; and

2. The recovery between base rate changes of fixed cost contribution losses as specified in (a)1 above.

14:12-*[4.5]***4.4*** DSM bidding for gas utilities

(a) As part of its initial DSM Plan filing, each gas utility shall file a proposed pilot DSM competitive bidding or standard pricing offer procedure.

(b) For competitive bidding, the proposed procedure shall include proposed weighting criteria for economic factors, most notably price, as well as additional factors such as project viability, environmental, measurement plan, marketing plan and site control.

(c) The proposed ***competitive bidding*** procedure shall also include proposed minimum criteria for acceptance of bids as well as a proposed avoided cost ceiling price.

(d) The procedure may address a particular DSM measure or be more broad in scope.

(e) The filing shall also identify a specific block size to be targeted.

(f) Review by the Board of bidding and standard offer procedures in subsequent DSM Plan filings shall be based upon the experience with the pilot bidding procedure.

14:12-*[4.6]***4.5*** DSM bidding for electric utilities

(a) To the extent that, notwithstanding DSM initiatives undertaken pursuant to this chapter, an electric utility projects a need for additional generating capacity to be procured via a competitive bid procedure, said competitive bid procedure *[must continue to be integrated to include solicitation of bids from DSM projects,]* ***is*** subject to the following:

1. The basis for establishing the ceiling price for DSM bids as well as evaluation criteria must be consistent with the formulae and guidelines for utility DSM incentives and standard price offers as established in this chapter; and

2. A utility which implements*[, pursuant to this chapter,]* a DSM standard pricing offer *[which remains open to third-party DSM project]* ***pursuant to N.J.A.C. 14:12-3.5*** concurrent with the bid solicitation process will be exempt from including DSM in the bidding procedure.

SUBCHAPTER 5. AGENCY REVIEW

14:12-5.1 Impact on non-utility markets

(a) In reviewing each proposed ***DSM Plan and*** DSM *[program]* ***Program***, the Board will assess the impact on existing non-utility market infrastructures involved in the sales and installation or other provision of DSM measures and/or services.

1. The Board's review of proposed ***DSM Plan and*** DSM *[programs]* ***Programs*** will take into account the Board's policy to encourage the development of non-utility market infrastructures.

2. The existence or absence***, as well as the size,*** of *[an]* ***a non-utility market*** infrastructure for the distribution, *[sales]* ***sale*** or installation***, operation, or maintenance*** of a particular DSM measure or service will bear on the Board's assessment with respect to paragraph (a) above.

14:12-5.2 Consistency with competitive bid programs

Review by the Board of each proposed ***DSM Plan and*** DSM *[program]* ***Program*** will include an assessment of pricing, quality assurance mechanisms, measurement plans and savings verification plans. This review is to ensure that utility-sponsored *[programs]* ***DSM programs*** are held to similar standards as comparable projects designed and implemented by non-utility interests pursuant to a ***utility-sponsored*** DSM competitive bid solicitation process or standard pricing offer *[implemented by the utility]*.

14:12-5.3 Public notice and hearing

(a) Prior to filing its DSM Plan, each utility must contact the Board and its staff to arrange for a pre-filing conference at which a date for public hearing on the DSM Plan shall be established.

(b) Concurrent with its DSM Plan filing, each utility shall provide appropriate public notice of its filing, the date, time and location of the public hearing, and a contact for obtaining a copy of the Executive Summary prepared pursuant to N.J.A.C. 14:12-*[2.2(e)]* ***2.2(a)6 or the complete DSM Plan***.

(c) Within 45 days of receipt of a utility's DSM Plan filing pursuant to this chapter, the Board shall conduct a public hearing to solicit comments on the proposed Plan. Provision *[will]* ***shall*** also be made for written comments to be submitted to the Board.

14:12-5.4 Board approval

The DSM Plan shall be implemented as soon as practicable following Board approval.

PUBLIC NOTICES

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Notice of Petition for Rulemaking
Diseases of Bees
N.J.A.C. 2:24

Take notice that the Department of Agriculture (the Department) received a petition from Mr. Thomas Park Thatcher, on September 26, 1991, for rulemaking concerning N.J.A.C. 2:24, the Department's rules on diseases of bees.

The petitioner requested, that due to State budget cutbacks which resulted in significant reductions in the Department's bee inspection program, the Department promulgate a new rule at N.J.A.C. 2:24-4 for implementation, on a two year trial basis, of a Department sanctioned and supervised Volunteer Inspection Program (VIP). The VIP is a proposal to have the Department train and supervise volunteers to supplement existing State bee inspectors' activities. Volunteer inspectors would conduct inspections at noncommercial and hobbyist apiaries at the request of the apiarist.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department shall subsequent mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF PARKS AND FORESTRY

Notice of Withdrawal of Notice of Public Hearing
Proposed Easement of Lands
Comprising Part of Delaware and Raritan Canal State Park

Take notice that the notice of public hearing, providing information and inviting public oral and written comment on a proposed easement of lands comprising part of Delaware and Raritan Canal State Park, published in the October 7, 1991 New Jersey Register at 23 N.J.R. 3044(a), was withdrawn from publication on September 23, 1991 through communication by the Department of Environmental Protection and Energy to the Office of Administrative Law; however, the notice was inadvertently published in the New Jersey Register.

By this notice of withdrawal, the public is advised that the public hearing scheduled for November 13, 1991 will not be held, and that written comments need not be submitted.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Mercer County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Mercer County Water Quality Management (WQM) Plan. This amendment would adopt a Wastewater Management Plan (WMP) for the Borough of Pennington, Mercer County. The WMP, which is proposed by the Stony Brook Regional Sewerage Authority, updates population and wastewater flow information.

This notice is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Mercer County Planning Division, McDade Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEPE, Office of Regulatory Policy, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, 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 either the Bureau of Water Quality Planning at (609) 633-7026 or the Mercer County Planning Division at (609) 989-6545.

The Mercer County Planning Board will hold **a public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, December 11, 1991, at 8:30 A.M. in Room 211 of the McDade Administration Building.

Interested persons may submit written comments on the proposed amendment to the Secretary, Mercer County Planning Board at the address cited above; and to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEPE address cited above. All comments must be submitted within 30 days following this public notice publication date or until 15 days following the public hearing(s), whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEPE during its review. Mercer County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Mercer County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Mercer County Water Quality Management (WQM) Plan. This amendment would adopt a Wastewater Management Plan (WMP) for the Borough of Hopewell, Mercer County. The WMP, which is proposed by the Stony Brook Regional Sewerage Authority, updates population and wastewater flow information.

This notice is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Mercer County Planning Division, McDade Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEPE, Office of Regulatory Policy, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, 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 either the Bureau of Water Quality Planning at (609) 633-7026 or the Mercer County Planning Division at (609) 989-6545.

The Mercer County Planning Board will hold **a public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, December 11, 1991, at 8:30 A.M. in Room 211 of the McDade Administration Building.

Interested persons may submit written comments on the proposed amendment to the Secretary, Mercer County Planning Board at the address cited above; and to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEPE address cited above. All comments must be submitted within 30 days following this public notice publication date or until 15 days following the public hearing(s), whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEPE during its review. Mercer County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Raritan Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Upper Raritan Water Quality Management (WQM) Plan. The amendment, which was submitted by Duke Farms, proposes to expand the sewer service area of the Somerset-Raritan Valley Sewerage Authority to include approximately 54 acres of Lot 1, Block 49 of Hillsborough Township. Service will be provided to the Duke Farms' main residence and four existing cottages.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Raritan WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 either the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. James Housten, Jr., P.O. Box 830, 314 Winsor Street, Bound Brook, New Jersey 08805. All comments must be submitted within 30 days of the date of this notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE 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 and must be submitted within 30 days of the date of this notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Delaware and Upper Raritan Water Quality Management Plans
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on an amendment to the Upper Delaware and Upper Raritan Water Quality Management (WQM) Plans. This amendment would adopt a Wastewater Management Plan (WMP) for West Amwell Township, Hunterdon County. The WMP, which was proposed by West Amwell Township, identifies expansion of the Lambertville Sewerage Authority sewer service area to include a portion of West Amwell Township. The remainder of the Township will continue to be served by individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Delaware and Upper Raritan WQM Plans. All information dealing with the two WQM Plans and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEPE address cited above. All comments must be submitted within 30 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 NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE 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 30 days of this public notice to Mr. Frankel at the NJDEPE 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.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan
Public Notice

Take notice that on September 25, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment was submitted by the Sussex County Board of Chosen Freeholders. The amendment adopts a Wastewater Management Plan (WMP) for Sussex Borough dated February 1991. The WMP proposes the expansion of the Sussex Borough sewage treatment plant to treat a 20 year projected wastewater flow of 0.9 million gallons per day. The WMP delineates the sewer service area for this expanded facility.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan
Public Notice

Take notice that on September 25, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management (WQM) Plan was adopted by the Department. The amendment was proposed by the U.S. Army Corps of Engineers for Fort Dix and McGuire Air Force Base. This amendment identifies a new 4.6 million gallons per day tertiary wastewater treatment facility to replace the two existing wastewater treatment facilities currently servicing Fort Dix and McGuire Air Force Base. A proposed land application site for this new facility contains wetlands; however, wetlands issues will be addressed during the Pinelands Commission approval process.

(e)

OFFICE OF REGULATORY POLICY

Amendment to the Ocean County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Ocean County Water Quality Management (WQM) Plan. This amendment, which was proposed by Karl Held, would change the designation in the Stafford Township Wastewater Management Plan of the site of Cedar Grove Estates, Lot 26, Block 133 from "Sewer Service Area to Existing Development Only" to "Sewer Service Area." The wastewater will be treated at the Ocean County Utility Authority's Southern Water Pollution Control Facility. The proposed use of the site is 18 single family dwellings.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEPE, Office of Regulatory Policy, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, 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 Bureau of Water Quality Planning at (609) 633-7026.

Interested persons should submit written comments on the proposed amendment to Mr. Alan Avery, Ocean County Planning Board, at the address cited above. A copy of the comments should be sent to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEPE address cited above. All comments must be submitted within 30 days of the date of this notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE 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 30 days of this notice to Mr. Frankel at the NJDEPE 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.

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Funds Personal Attendant Services Program

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:

A. Name of grant program: Personal Attendant Services Program.

B. Purpose for which the grant program funds shall be used: To provide funds in order to develop and coordinate the provision of a Statewide training program for attendants and consumers under the Personal Attendant Services Program.

C. Amount of money in the grant program: Funding up to the amount of $400,000 is available for the development and coordination of a Statewide attendant and consumer training program. Funds will be awarded to a single lead agency through a proposal review committee established in accordance with the Department of Human Services policy.

D. Groups or entities which may apply for the grant program: Private, non-profit agencies throughout the State of New Jersey that have extensive experience in working with and on behalf of persons with disabilities.

E. Qualifications needed by an applicant to be considered for the grant program: An applicant must be a private, nonprofit agency, with the ability to demonstrate a commitment to the philosophy of independent living for persons with disabilities, and capable of developing and coordinating a comprehensive Statewide training program for attendants and consumers.

F. Procedure for eligible entities to apply for grant funds: Agencies interested in applying for these funds should contact the Division of Youth and Family Services, Office of Adult and County Social Services as soon as possible for a request for proposal (RFP).

G. Address of division, office or official receiving the application: The completed RFP is to be returned to Michael Nuskey, Program Coordinator, Personal Attendant Services Program, Office of Adult and County Social Services, Division of Youth and Family Services, CN 717, 50 East State Street, Trenton, New Jersey 08625.

H. Deadline by which applications must be submitted to the Division of Youth and Family Services: The completed application and all required supporting materials and copies must be postmarked by December 18, 1991, or, if hand-delivered or transmitted by facsimile (fax number—609-633-6931), must be received in the Office of Adult and County Social Services by 5:00 P.M. on December 18, 1991.

I. Date by which applicants shall be notified whether they will receive funds under the grant program: Within 45 days of receipt of a completed application package by the Division of Youth and Family Services.

PUBLIC UTILITIES

(b)

BOARD OF REGULATORY COMMISSIONERS

Notice of Board Action Pertaining to Private Domestic Treatment Work Facilities

Take notice that by Order dated September 12, 1991, in Docket Number W091091480, the Board of Regulatory Commissioners determined that it had the authority and responsibility to assert prospective jurisdiction over certain private domestic treatment work facilities that are not operated incidental to a dominant landlord-tenant relationship. The Board further directed its Staff to prepare proposed rules regarding this subject.

The **full text** of the Board's Order of September 12, 1991 follows:

AGENDA DATE: 9/11/91

ORDER

IN THE MATTER OF THE BOARD OF REGULATORY COMMISSIONERS' JURISDICTION OVER CERTAIN) DOMESTIC TREATMENT WORKS (DTW) FACILITIES — DOCKET NO. W091091480

BY THE BOARD:

The Department of Environmental Protection and Energy (DEPE) has requested that the Board of Regulatory Commissioners (Board or BRC) consider the issue of whether the Board can require certain sewer projects to provide financial assurances prior to being permitted to operate. The issue has become critical because a recent Appellate Division decision has invalidated certain DEP regulations which required governmental entities or sewerage agencies to be co-permittees with all new or expanded private domestic treatment work facilities (DTW's). *New Jersey Builder's Association v. Fenske*, 249 *N.J. Super.* 60(1991). The effective date of that decision was stayed until September 15, 1991, in anticipation of adoption of legislation which would establish the New Jersey Wastewater Corporation, which would have the authority to issue bonds to ensure future maintenance of these facilities (A-3560). To date, that legislation has not been enacted.

Legal advice on this issue was sought from the Attorney General's office. By memo dated September 6, 1991, the Attorney General's office advised the Board that the Board does not appear to have jurisdiction over those facilities which are operated incidental to a dominant landlord-tenant relationship, but that the Board could likely exert jurisdiction over those sewer systems operated by associations which meet the definition of "for public use" under *N.J.S.A.* 48:2-13. The Attorney General's office also advised the Board that if the Board were to assert jurisdiction over these systems, they would, by definition, be considered to be public utilities and would be subject to all the provisions of Title 48.

Based on its consideration of this matter, and because of the critical public interest need to ensure the financial responsibility of such systems, the Board believes that it has the authority and the responsibility to assume jurisdiction over systems of this type. The Board HEREBY DIRECTS its Staff to draft proposed regulations giving notice to the Board's intention to exert prospective jurisdiction over systems of this type, and setting forth proposed requirements as to what type of assurances of financial responsibility will be required of all such entities. The Board also believes that full, traditional utility regulation of these entities may not be appropriate, given the size and nature of these entities and given the limited resources of these entities and of Board Staff. The Board therefore also DIRECTS its Staff to prepare a draft proposal for legislation which, if enacted, would limit the scope of Board regulatory responsibility of these systems. Because of the urgency of this matter, the Board DIRECTS its Staff to give this matter utmost priority, and requests that the matter be returned to the Board's agenda for consideration of proposed regulations as expeditiously as possible. The Board wishes to emphasize that it will do all it can to expedite the rulemaking process, but that realistically, because of procedural requirements, any rulemaking procedures will likely require a minimum of six months.

DATED: September 12, 1991

BOARD OF REGULATORY COMMISSIONERS BY:
/s/ DR. EDWARD H. SALMON
CHAIRMAN
/s/ JEREMIAH F. O'CONNOR
COMMISSIONER
/s/ CARMEN J. ARMENTI
COMMISSIONER

ASSTEST:
/s/ CHRYS WILSON
SECRETARY

TREASURY-GENERAL

(a)

CHARITIES REGISTRATION

Notice of Acceptance of Application for the Public Employee Charitable Fund-Raising Campaign

Take notice that Douglas C. Berman, Treasurer, State of New Jersey, pursuant to the Public Employee Charitable Fund-Raising Act, P.L. 1985, c.140 (N.J.S.A. 52:14-15.9c1 et seq.) and State Employee Charitable Fund-Raising Campaign Rules (N.J.A.C. 17:28-3.2(b)1), announces that the Department of the Treasury will be accepting applications via the Division of Consumer Affairs (see below) until December 31, 1991 from the charitable fund-raising agencies for participation in the State Employee's Charitable Fund-Raising Campaign for Fall of 1992.

For the purposes of this notice, "charitable fund-raising agency" shall mean a voluntary not-for-profit organization which provides health, welfare, or human care services to individuals. A charitable fund-raising agency shall be eligible to participate in the 1992 Campaign if it meets the following requirements:

a. The agency is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;

b. The agency qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;

c. The agency is not a private foundation as described in Section 509 of the Internal Revenue Code;

d. The agency is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971," P.L. 1971, c.469 (N.J.S.A. 45:17A-1 et seq.);

e. The agency demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State; and

f. The agency shall have raised at least $15,000 from individual citizens of New Jersey in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the application may be obtained from the Division of Consumer Affairs, Charities Registration, and then submitted to same along with a cover letter. Requests for application forms should be addressed to:

Anne Mallett
Charities Registration
Division of Consumer Affairs
P.O. Box 254
Newark, NJ 07101

Applications can also be requested by calling (201) 648-4704.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 3, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT AUGUST 19, 1991

NEXT UPDATE: SUPPLEMENT SEPTEMBER 16, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 3275 and 3420	November 5, 1990	23 N.J.R. 1483 and 1722	May 20, 1991
22 N.J.R. 3421 and 3606	November 19, 1990	23 N.J.R. 1723 and 1854	June 3, 1991
22 N.J.R. 3607 and 3666	December 3, 1990	23 N.J.R. 1855 and 1980	June 17, 1991
22 N.J.R. 3667 and 3896	December 17, 1990	23 N.J.R. 1981 and 2071	July 1, 1991
23 N.J.R. 1 and 144	January 7, 1991	23 N.J.R. 2079 and 2204	July 15, 1991
23 N.J.R. 145 and 248	January 22, 1991	23 N.J.R. 2205 and 2446	August 5, 1991
23 N.J.R. 249 and 332	February 4, 1991	23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 333 and 636	February 19, 1991	23 N.J.R. 2561 and 2806	September 3, 1991
23 N.J.R. 637 and 798	March 4, 1991	23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 799 and 924	March 18, 1991	23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 925 and 1048	April 1, 1991	23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 1049 and 1226	April 15, 1991	23 N.J.R. 3193 and 3402	November 4, 1991
23 N.J.R. 1227 and 1482	May 6, 1991		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3	Return of contested cases: failure of party to appear at hearing	23 N.J.R. 1728(a)	R.1991 d.513	23 N.J.R. 3133(a)
1:5	Council on Affordable Housing hearings	23 N.J.R. 2082(a)	R.1991 d.499	23 N.J.R. 2998(a)
1:5	Council on Affordable Housing hearings: extension of comment period	23 N.J.R. 2497(a)		
1:10B	Medical Assistance and Health Services hearings	23 N.J.R. 2083(b)	R.1991 d.500	23 N.J.R. 2998(b)
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 2208(a)		
1:14-14.1, 14.4	Board of Public Utility hearings: prefiled testimony; interlocutory review	23 N.J.R. 2083(c)	R.1991 d.501	23 N.J.R. 2998(c)
1:31-3	Discipline of administrative law judges	23 N.J.R. 2901(a)		
1:31-3	Discipline of administrative law judges: extension of comment period	23 N.J.R. 3179(a)		
Most recent update to Title 1: TRANSMITTAL 1991-4 (supplement July 15, 1991)				
AGRICULTURE—TITLE 2				
Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)				
BANKING—TITLE 3				
3:1-2.17	Closing of branch offices	23 N.J.R. 2208(b)	R.1991 d.523	23 N.J.R. 3133(b)
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)		
3:1-19	Consumer checking accounts: preproposed new rules	23 N.J.R. 2617(a)		
3:3-2.1	Department records designated nonpublic	23 N.J.R. 1858(a)	R.1991 d.525	23 N.J.R. 3133(c)
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2903(a)		
3:13	Bank holding companies and interstate acquisitions	23 N.J.R. 2904(a)		
3:18-10.3	Licensure of secondary mortgage lenders	23 N.J.R. 2210(a)	R.1991 d.524	23 N.J.R. 3134(a)
3:21-1	Low-income credit unions	23 N.J.R. 2905(a)		
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2903(a)		
3:38-1.2, 1.4, 1.9, 2.1	Mortgage banker and broker net worth standards	23 N.J.R. 2450(a)		
3:38-1.3	Licensure of mortgage lenders	23 N.J.R. 2210(a)	R.1991 d.524	23 N.J.R. 3134(a)
Most recent update to Title 3: TRANSMITTAL 1991-7 (supplement August 19, 1991)				
CIVIL SERVICE—TITLE 4				
Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)				
PERSONNEL—TITLE 4A				
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-2.11	Enforcement of residency requirements	23 N.J.R. 1984(a)	R.1991 d.498	23 N.J.R. 2999(a)
4A:4-2.16	Inspection of examination scoring keys	23 N.J.R. 2906(b)		
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
4A:6-1.6	Sick Leave Injury (SLI): State service	23 N.J.R. 2907(b)		
4A:6-1.6	Sick Leave Injury (SLI): withdrawal of proposal	23 N.J.R. 3093(a)		
Most recent update to Title 4A: TRANSMITTAL 1991-2 (supplement August 19, 1991)				

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-1.4	Uniform Fire Code: applicability of requirements	23 N.J.R. 2813(a)		
5:18-2.4A, 2.4B, 2.4C, 2.4D, 2.7, 2.8	Uniform Fire Code: life hazard uses and permit fees	23 N.J.R. 2234(a)	R.1991 d.504	23 N.J.R. 2999(b)
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-2.8	Uniform Fire Code life hazard uses and permit fees: administrative correction and extension of comment period	23 N.J.R. 2453(a)		
5:18-2.8	Uniform Fire Code: registration and permit fees	23 N.J.R. 2999(a)	R.1991 d.530	23 N.J.R. 3325(a)
5:18-2.8, 2.20, 3.2, 4.3, 4.19	Uniform Fire Code: smoke detector compliance in one and two-family dwellings	23 N.J.R. 3064(a)		
5:18-2.19	Uniform Fire Code: identifying emblems for structures with truss construction	23 N.J.R. 2618(a)		
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)	R.1991 d.480	23 N.J.R. 2861(a)
5:18A-2.6	Fire Code enforcement: life hazard uses and permit fees	23 N.J.R. 2234(a)	R.1991 d.504	23 N.J.R. 2999(b)
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:20-1	Meetings of governing board of a condominium association	23 N.J.R. 1901(a)	R.1991 d.455	23 N.J.R. 2633(a)
5:23-2.8, 2.17A, 2.24, 2.32	Uniform Construction Code: approval of completed work	23 N.J.R. 2236(a)	R.1991 d.509	23 N.J.R. 3001(a)
5:23-3.15, 3.21	Uniform Construction Code: plumbing; one and two family dwelling subcodes	23 N.J.R. 2619(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: preproposal regarding private enforcing agencies	23 N.J.R. 2908(a)		
5:23-7.3, 7.11	Barrier Free Subcode: exemptions and Use Group R-2 and R-3	23 N.J.R. 1902(a)	R.1991 d.479	23 N.J.R. 2861(b)
5:23-7.6A	Barrier-Free Subcode enforcement	23 N.J.R. 2620(a)		
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:33-3	Tenants' Property Tax Rebate Program	23 N.J.R. 2183(a)	R.1991 d.484	23 N.J.R. 3002(a)
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)		
5:91-15	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)		
5:91-15	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92-1.6	Council on Affordable Housing: extension of certification period/judgment of repose	23 N.J.R. 2084(b)		
	Most recent update to Title 5: TRANSMITTAL 1991-8 (supplement August 19, 1991)			
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		
	Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)			
EDUCATION—TITLE 6				
6:8	Thorough and efficient system of schools	23 N.J.R. 2908(b)		
6:8-1.1, 6.1, 6.2, 6.3	Preventive and remedial programs in reading, writing and mathematics	23 N.J.R. 2085(a)		
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-2.12, 2.13, 2.14, 2A.10, 2A.11, 2A.12, 4.1, 5.3, 5.6, 8.3	Financial management in local districts	23 N.J.R. 1733(a)	R.1991 d.459	23 N.J.R. 2634(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
6:20-2.13, 2A.11, 3.1, 3.3, 3.4, 5.8	Free balance and restricted appropriations; tuition rates for regular public and county schools; excess surplus calculation	23 N.J.R. 2818(a)		
6:21-7, 19	Pupil transportation aid	23 N.J.R. 1737(a)	R.1991 d.460	23 N.J.R. 2636(a)

Most recent update to Title 6: TRANSMITTAL 1991-7 (supplement August 19, 1991)

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:1 et al.	Centralized filing of requests for adjudicatory hearings: administrative changes	————	————	23 N.J.R. 3325(b)
7:1E	Discharges of petroleum and other hazardous substances	23 N.J.R. 1335(a)	R.1991 d.465	23 N.J.R. 2656(a)
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)		
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)	R.1991 d.487	23 N.J.R. 3005(a)
7:2-11.3–11.9, 11.12–11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Stormwater management: Water Pollution Control Act compliance	23 N.J.R. 1926(a)	R.1991 d.510	23 N.J.R. 3134(b)
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 7.1, 9.8, 9.10	Shellfish growing water classification	23 N.J.R. 2993(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)		
7:25-6	1992-93 Fish Code	23 N.J.R. 2115(a)		
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.1, 18.12, 18.13	Weakfish management program	23 N.J.R. 1989(b)		
7:26-1.2, 1.4, 8.2, 8.13, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9, 17.4	Hazardous waste management	23 N.J.R. 2453(b)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions to N.J.A.C. 7:26-2.4	23 N.J.R. 2458(a)		
7:26-3A.17, 5.4	Medical waste exemptions; penalties for violations of Solid Waste Management Act: administrative corrections	————	————	23 N.J.R. 3138(a)
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-7.7, 8.2, 8.3, 8.4, 8.20, 9.1	PCB hazardous waste	23 N.J.R. 2855(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:26-8.12	Hazardous waste management: administrative correction	———	———	23 N.J.R. 2880(a)
7:26-8.15, 8.16	Hazardous waste criteria, identification, and listing	23 N.J.R. 1114(a)	R.1991 d.472	23 N.J.R. 2874(a)
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3–17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)	R.1991 d.462	23 N.J.R. 2778(a)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		
7:27B-3.1, 3.2, 3.4–3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic comounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:31-2.16	Toxic Catastrophe Prevention Act Program: annual registration fees	23 N.J.R. 818(a)	R.1991 d.463	23 N.J.R. 2780(a)
7:50-2.11, 4.61–4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

Most recent update to Title 7: TRANSMITTAL 1991-8 (supplement August 19, 1991)

HEALTH—TITLE 8				
8:18-1.2, 1.4, 1.5, 1.7, 1.10, 1.11, 1.13–1.17	Catastrophic Illness in Children Relief Fund Program	23 N.J.R. 2564(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)	Expired	
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:24-13.9, 13.11	Sanitation in community residences and bed and breakfast establishments	23 N.J.R. 2088(a)	R.1991 d.507	23 N.J.R. 3026(a)
8:31A-1.1, 2.6, 7.4, 7.5, App. A, D	SHARE Manual: patient day add-on; EDR and OPPM cost centers	23 N.J.R. 2242(a)		
8:31B	Hospital rate setting	23 N.J.R. 3097(a)		
8:31B-3.65, 3.71	Hospital reimbursement: Schedule of Rates adjustments and reconciliation	Emergency (expires 11-15-91)	R.1991 d.506	23 N.J.R. 3042(a)
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups	23 N.J.R. 3114(a)		
8:31C-1.21, App. A	Residential alcoholism treatment facilities: patient day add-on	23 N.J.R. 2243(a)		
8:33-5.1	Certificate of Need moratorium	Emergency (expires 10-21-91)	R.1991 d.474	23 N.J.R. 2881(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:40	Licensure of invalid coach and ambulance services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 2245(a)		
8:40	Invalid coach and ambulance services	23 N.J.R. 2566(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:43E-3.10, 3.15	Adult closed acute psychiatric beds: liaison participation and discharge planning	23 N.J.R. 3128(a)		
8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.16, 7.22, 7.23,	Hospital licensing standards	23 N.J.R. 2590(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7.24, 7.26, 7.28, 7.32, 7.33, 7.34, 7.37, 7.40, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.4–18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18, 19.22, 19.23, 19.33, 20.1, 20.2, 22.2, 22.3, 22.12, 22.17, 22.20, 23.1, 23.2, 23.6, 24.9, 24.13, 25.1, 26.2, 26.3, 26.9, 28.1, 28.8, 28.10, 29.13, 29.17, 30.1, 30.2, 30.3, 30.5, 30.6, 30.8, 30.11, 32.3, 32.5, 32.9, 32.12, 33.6, 35.2				
8:52	Local boards of health: activities and standards	23 N.J.R. 2825(a)		
8:57-2.2, 2.4, 2.6, 2.7	Reporting of HIV infection with identifiers	23 N.J.R. 2089(a)	R.1991 d.516	23 N.J.R. 3138(b)
8:61	AIDS prevention and control	23 N.J.R. 2245(b)	R.1991 d.538	23 N.J.R. 3332(a)
8:61	AIDS prevention and control: extension of comment period	23 N.J.R. 2882(e)		
8:61-2.1, 2.2, 2.3, 2.6	Participation in AIDS Drug Distribution Program	23 N.J.R. 2247(a)	R.1991 d.539	23 N.J.R. 3334(a)
8:61-2	Participation in AIDS Drug Distribution Program: extension of comment period	23 N.J.R. 2883(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 23 N.J.R. 1670(a), 2136(a), 2783(a))	23 N.J.R. 178(a)	R.1991 d.560	23 N.J.R. 3337(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)	R.1991 d.559	23 N.J.R. 3336(a)
8:71	Interchangeable drug products	23 N.J.R. 2610(a)	R.1991 d.558	23 N.J.R. 3334(b)
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9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:7-4.2	Garden State Scholarships: academic requirements	23 N.J.R. 2211(a)		
9:9-7	New Jersey College Loans to Assist State Students (NJCLASS): loan interest rates	———	———	23 N.J.R. 3180(c)
9:9-7.7	New Jersey College Loans to Assist State Students (NJCLASS) Program: repayment of loan	23 N.J.R. 2212(a)	R.1991 d.515	23 N.J.R. 3143(b)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		
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10:7	Role of county adjuster	23 N.J.R. 2953(a)		
10:12-3	Referral of handicapped students for adult educational services	23 N.J.R. 2959(a)		
10:15, 15A, 15B, 15C	Child Care Services: provision, eligibility for programs, co-payments and procedures	23 N.J.R. 2960(a)		
10:36	Patient supervision at State psychiatric hospitals	23 N.J.R. 1652(a)	R.1991 d.453	23 N.J.R. 2637(a)
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:51-5.6	PAAD: income eligibility limits	23 N.J.R. 2623(a)		
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56	Dental Services Manual	23 N.J.R. 1992(a)	R.1991 d.473	23 N.J.R. 2862(a)

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10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:60-4.3	Home Care Expansion Program: cost sharing by beneficiaries	23 N.J.R. 2826(a)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.6, 3	Independent Clinic Services: partial care	23 N.J.R. 2213(a)	R.1991 d.508	23 N.J.R. 3027(a)
10:66-3	Medicaid program: personal care assistant services at independent clinics	23 N.J.R. 2091(a)	R.1991 d.481	23 N.J.R. 2862(b)
10:69-5.1	HAAAD: income eligibility limits	23 N.J.R. 2623(a)		
10:69A-1.2, 5.3, 5.6, 6.2, 6.10	PAAD: income eligibility limits	23 N.J.R. 2623(a)		
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)	R.1991 d.454	23 N.J.R. 2637(b)
10:69B-4.2	Lifeline Credit Program: income eligibility limits	23 N.J.R. 2623(a)		
10:72-1.1, 4.1	Medicaid eligibility: pregnant women and children	23 N.J.R. 2543(a)	R.1991 d.526	23 N.J.R. 3144(a)
10:72-2.5, 3.4	Extended Medicaid eligibility for newborns	23 N.J.R. 1889(a)	R.1991 d.483	23 N.J.R. 3028(a)
10:72-6.1–6.5	New Jersey Care: presumptive eligibility process for pregnant women	23 N.J.R. 2827(a)		
10:81-3.19, 8.22, 14.8, 14.20	REACH/JOBS Program: Medicaid eligibility	23 N.J.R. 2988(a)		
10:81-14.12, 14.18	Public Assistance Manual: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2214(a)	R.1991 d.555	23 N.J.R. 3365(a)
10:81-14.18, 14.18A, 14.18B	REACH child care co-payment	23 N.J.R. 2981(a)		
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:81-App. C	Public Assistance Manual forms: administrative correction	———	———	23 N.J.R. 3029(a)
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-2.8, 4.4, 5.3	Assistance Standards Handbook: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2217(a)	R.1991 d.556	23 N.J.R. 3366(a)
10:82-3.1	Assistance Standards Handbook: bank account resources	23 N.J.R. 2625(a)		
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 2220(a)		
10:82-5.3	REACH child care voucher rates	23 N.J.R. 2989(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)	R.1991 d.522	23 N.J.R. 3144(b)
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-1.1, 1.2, 1.3, 2.1, 2.2, 2.5, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1–6.9, 7.2, 9.4, 12.1, 12.2	General Assistance Program	23 N.J.R. 1741(a)	R.1991 d.521	23 N.J.R. 3155(a)
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:87-12	Food Stamp Program: income eligibility, deductions, coupon allotments	———	———	23 N.J.R. 3030(a)
10:97-1.3, 1.4, 2.1–2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.6, 4.7, 4.8, 4.14, 4.15, 5.1, 5.3, 5.4, 6.1, 6.3, 6.4, 6.5, 7.1–7.4, 8.1, 8.2, 8.3, 9.1	Commission for Blind and Visually Impaired: Business Enterprise Program	23 N.J.R. 1749(a)	R.1991 d.512	23 N.J.R. 3161(a)
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:132	Youth and Family Services: court actions and procedures	23 N.J.R. 2099(a)		

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10A:2-2	Inmate accounts	23 N.J.R. 1992(b)	R.1991 d.494	23 N.J.R. 3031(a)
10A:3	Security and control	23 N.J.R. 1259(a)	R.1991 d.503	23 N.J.R. 3031(b)
10A:10-3	Interstate Corrections Compact	23 N.J.R. 2221(a)		
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)		
10A:17	Inmate social services	23 N.J.R. 3065(a)		
10A:18-2.9	Identification of inmate outgoing correspondence	23 N.J.R. 2468(a)		

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11:1-1.1	Organization of the Department	Exempt	R.1991 d.476	23 N.J.R. 2862(c)
11:1-6	New Jersey Property-Liability Insurance Guaranty Association: assessment premium surcharge	23 N.J.R. 823(b)	R.1991 d.461	23 N.J.R. 2638(a)
11:2-17.7	Automobile insurance: payment of PIP claims	23 N.J.R. 2830(a)		
11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)	R.1991 d.519	23 N.J.R. 3166(a)
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-36.2, 36.4, 36.5, 36.6, 36.7, 36.11	Automobile physical damage coverage inspection procedures	23 N.J.R. 1262(a)		
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC Health Care Coverage	23 N.J.R. 3066(a)		
11:12	Legal services insurance	23 N.J.R. 2304(a)	R.1991 d.520	23 N.J.R. 3170(a)
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)	R.1991 d.411	23 N.J.R. 2340(a)
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.3	Licensure of insurance producers and limited insurance representatives	23 N.J.R. 1912(a)		
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12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:51	Vocational Rehabilitation Services	23 N.J.R. 2927(a)		
12:55	Wage payments	23 N.J.R. 2939(a)		
12:55-1.4	Voluntary wage deductions for repayment of debts to State: administrative correction	———	———	23 N.J.R. 2864(a)
12:56-1.2–1.6	Wage and hour violations, administrative penalties and fees, hearings, and employer offenses	23 N.J.R. 2942(a)		
12:58-5	Child labor violations and administrative penalties	23 N.J.R. 2944(a)		
12:60-2.1, 6.1	Public works employers: inspection of payroll records	23 N.J.R. 2945(a)		
12:60-9	Prevailing wages for public works: violations, penalties, and fees	23 N.J.R. 2945(b)		
12:61-1	Wage collection	23 N.J.R. 2947(a)		
12:90-4.12, 4.13, 5.9, 5.14, 7.2	Boilers, pressure vessels, and refrigeration units: inspection and license fees	23 N.J.R. 2948(a)		
12:190-3.14	Explosives: annual fees for permits to manufacture, sell, store or use	23 N.J.R. 2949(a)		
12:195-1.9	Carnival-amusement rides: annual inspection fees	23 N.J.R. 2950(a)		
12:210-1	Apparel industry registration	23 N.J.R. 2951(a)		
12:235	Workers' Compensation system	23 N.J.R. 1759(a)	R.1991 d.466	23 N.J.R. 2642(a)
12:235-1.6	Workers' Compensation: 1992 maximum rates	23 N.J.R. 2612(a)		
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12A:12-3.4	Tourism Matching Grants: application deadline	———	———	23 N.J.R. 3032(a)
12A:31-1, 3	Direct Loan Program for small, minority, and women's businesses	23 N.J.R. 2626(a)		
12A:31-2.3, 2.7	Loan Guarantee Program for small, minority, and women's businesses: financial statements	23 N.J.R. 2627(a)		
12A:121-1.2, 2	Urban Enterprise Zone program: extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 1893(b)		
12A:121-1.2, 2	Urban Enterprise Zone program: public hearing and reopening of comment period regarding extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 2885(a)		
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13:14-1	Family Leave Act rules	23 N.J.R. 1993(a)	R.1991 d.475	23 N.J.R. 2864(b)
13:18-11.3, 11.4, 11.5	Access to Division of Motor Vehicles records	23 N.J.R. 2857(a)		
13:20-41	Persian Gulf War commemorative license plates	23 N.J.R. 2916(a)		

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13:31-1	Board of Examiners of Electrical Contractors: administration and procedure	23 N.J.R. 2917(a)		
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.3	Master plumbers licensing examination	23 N.J.R. 288(a)	R.1991 d.482	23 N.J.R. 3032(b)
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.7	Practice of medicine: prescribing of amphetamines and sympathomimetic amine drugs	23 N.J.R. 2248(a)		
13:35-8.9, 8.17	Hearing Aid Dispensers Examining Committee: fee schedules; licensure reinstatement fee	23 N.J.R. 1895(a)	R.1991 d.458	23 N.J.R. 2651(a)
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)		
13:40-7.2–7.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)	R.1991 d.550	23 N.J.R. 3337(b)
13:40A	Board of Real Estate Appraisers rules	23 N.J.R. 2628(a)		
13:41-4.2–4.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)	R.1991 d.550	23 N.J.R. 3337(b)
13:44E-1.1	Scope of chiropractic practice	23 N.J.R. 2100(a)		
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:51	Chemical breath testing	23 N.J.R. 2248(b)	R.1991 d.505	23 N.J.R. 3032(c)
13:54	Regulation of firearms	23 N.J.R. 2250(a)		
13:54	Regulation of firearms: extension of comment period	23 N.J.R. 2919(b)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-2.1	Thoroughbred racing: "advance wagers", "delay period", "early bird wagering"	23 N.J.R. 2266(a)	R.1991 d.546	23 N.J.R. 3340(a)
13:70-14A.9	Thoroughbred racing: first-time respiratory bleeders	23 N.J.R. 2919(c)		
13:70-29.48	Thoroughbred racing: daily double	23 N.J.R. 2003(a)	R.1991 d.491	23 N.J.R. 3033(a)
13:70-29.55	Thoroughbred racing: cash-sell wagering system	23 N.J.R. 2266(b)	R.1991 d.547	23 N.J.R. 3340(b)
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:70-29.59	Thoroughbred racing: cancellation of certain wagers	23 N.J.R. 2267(a)	R.1991 d.542	23 N.J.R. 3340(c)
13:70-29.60	Thoroughbred racing: expiration of mutuel tickets and vouchers	23 N.J.R. 2267(b)	R.1991 d.543	23 N.J.R. 3341(a)
13:71-4.1	Harness racing: "advance wagers", "delay period", "early-bird wagering"	23 N.J.R. 2267(c)	R.1991 d.545	23 N.J.R. 3341(b)
13:71-23.8	Harness racing: first-time respiratory bleeders	23 N.J.R. 2919(d)		
13:71-27.47	Harness racing: daily double	23 N.J.R. 2004(a)	R.1991 d.490	23 N.J.R. 3034(a)
13:71-27.52	Harness racing: cash-sell wagering system	23 N.J.R. 2268(a)	R.1991 d.540	23 N.J.R. 3341(d)
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:71-27.57	Harness racing: cancellation of certain wagers	23 N.J.R. 2268(b)	R.1991 d.541	23 N.J.R. 3342(a)
13:71-27.58	Harness racing: expiration of mutuel tickets and vouchers	23 N.J.R. 2269(a)	R.1991 d.544	23 N.J.R. 3341(c)
13:75-1.7, 1.23, 1.27	Violent Crimes Compensation Board: victim compensation	23 N.J.R. 2269(b)	R.1991 d.492	23 N.J.R. 3034(b)
13:75-1.24	Violent crimes compensation: transportation costs	23 N.J.R. 2482(a)	R.1991 d.514	23 N.J.R. 3170(b)

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14:1	Rules of practice of Board of Public Utilities: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 24(b)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)		
14:5	Electric service	23 N.J.R. 1519(a)		
14:5A	Nuclear generating plant decommissioning: preproposed new rules regarding periodic cost review	23 N.J.R. 942(a)		
14:6	Gas service	23 N.J.R. 944(a)	R.1991 d.456	23 N.J.R. 2652(a)
14:10	Telephone utilities	23 N.J.R. 2270(a)	R.1991 d.489	23 N.J.R. 3035(a)
14:10-6	Alternate operator service: preproposed amendments	23 N.J.R. 676(b)		

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14:10-6, 7, 8	Alternate operator service; resale of telecommunications services; customer provided pay telephone service: public hearings on preproposal rules	23 N.J.R. 946(a)		
14:10-7	Resale of telecommunications services: preproposed new rules	23 N.J.R. 679(a)		
14:10-8	Customer provided pay telephone service: preproposed new rules	23 N.J.R. 680(a)		
14:10-8, 9	Purchased water and sewerage treatment adjustment clauses	23 N.J.R. 946(b)	R.1991 d.488	23 N.J.R. 3171(a)
14:12	Demand side management	23 N.J.R. 1283(a)	R.1991 d.549	23 N.J.R. 3368(a)
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:18-7.7	Cable television: telephone system performance	23 N.J.R. 2273(a)		
14:38-1.2, 2.1–2.3, 3.1–3.3, 4.1, 5.6, 6.2, 7.1, 7.3, 7.6, 8.1–8.4, 9.1, 9.2	Home Energy Savings Program	23 N.J.R. 1069(b)		

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14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		

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15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)		

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TRANSPORTATION—TITLE 16

16:4-1	Construction subcontracting: disadvantaged and female-owned businesses	22 N.J.R. 2898(a)	R.1991 d.477	23 N.J.R. 2872(a)
16:28-1.38	Speed limit zone along Route 57 in Hackettstown	23 N.J.R. 3128(a)		
16:28-1.41	Middle Township Elementary School zone along U.S. 9, Cape May County	23 N.J.R. 2831(a)		
16:28A-1.6, 1.50, 1.57	Bus stop zones along Route 7 in Nutley, Route 166 in Dover Township, and U.S. 206 in Bordentown	23 N.J.R. 3129(a)		
16:28A-1.28	No stopping or standing zone along U.S. 40 in Hamilton Township, Atlantic County	23 N.J.R. 2101(a)	R.1991 d.496	23 N.J.R. 3037(a)
16:28A-1.31, 1.55	Time limit parking zones along Route 45 in Harrison Township, and no stopping or standing zones along U.S. 202 in Morris Plains	23 N.J.R. 2484(a)	R.1991 d.518	23 N.J.R. 3176(a)
16:28A-1.41	No stopping or standing zones along Route 77 in Bridgeton	23 N.J.R. 2101(b)	R.1991 d.497	23 N.J.R. 3037(b)
16:29-1.70, 1.71, 1.72	No passing zones along Route 50 in Atlantic County, Route 41 in Gloucester County, and Route 143 in Camden County	23 N.J.R. 3130(a)		
16:30-9.10	Prohibited pedestrian use of Barnegat Bay bridges in Dover Township	23 N.J.R. 3131(a)		
16:32-3.1, 3.6	Operation of 53-foot semitrailers in State	23 N.J.R. 2485(a)	R.1991 d.548	23 N.J.R. 3342(b)
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47-App. B, E, E1, J	State Highway Access Management Code	23 N.J.R. 2831(b)		
16:49-App.	Transportation of hazardous materials: physical qualifications of drivers	23 N.J.R. 2102(a)	R.1991 d.485	23 N.J.R. 3037(c)
16:53D-1.1	Zone of Rate Freedom for regular route autobus carriers: 1992 percentage maximums	23 N.J.R. 2004(b)	R.1991 d.486	23 N.J.R. 3038(a)
16:74	NJ TRANSIT: destructive competition claims procedure for private route bus carriers	23 N.J.R. 1773(a)		
16:79	NJ TRANSIT: background checks of prospective employees	23 N.J.R. 1775(a)	R.1991 d.495	23 N.J.R. 3038(b)

Most recent update to Title 16: TRANSMITTAL 1991-8 (supplement August 19, 1991)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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17:1-12.9	County and municipality early retirement incentive program: deadline for filing participation resolutions	23 N.J.R. 2847(a)		
17:5-4.3	State Police Retirement System: purchases of service credit	23 N.J.R. 1896(b)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)		
17:12-2.11	Preference laws and out-of-State vendors	23 N.J.R. 2225(a)	R.1991 d.502	23 N.J.R. 3038(c)
17:14-1.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
17:16-63.6	Common Pension Fund B: date of valuation	23 N.J.R. 2103(a)	R.1991 d.478	23 N.J.R. 2868(a)
17:25-1.1, 1.2, 1.3, 1.5, 1.11, 1.12	Collection of debts owed NJHEAA by employees in certain State, county, and municipal jurisdictions	23 N.J.R. 2226(a)		
17:29-1.5, 2.3, 2.4, 2.6, 2.7, 3.2, 3.4, 4.6	Local Public Employee Charitable Fund-Raising Campaign	23 N.J.R. 2228(a)	R.1991 d.493	23 N.J.R. 3040(a)
17:32-4.7, 5	State Development and Redevelopment Plan: negotiation and issue resolution phases of cross-acceptance	23 N.J.R. 1778(b)	R.1991 d.457	23 N.J.R. 2654(a)
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18:12-5.1	Property tax appeals: extension of time to file due to late tax bills	23 N.J.R. 2230(a)	R.1991 d.511	23 N.J.R. 3177(a)
18:12-7.15	Homestead rebate: extension of filing date	23 N.J.R. 1464(a)	R.1991 d.527	23 N.J.R. 3345(a)
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	Most recent update to Title 18: TRANSMITTAL 1991-6 (supplement August 19, 1991)			
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19:4-6.27, 6.29, 6.30	Hackensack Meadowlands Development Commission: District zoning and rule changes	23 N.J.R. 1917(a)	R.1991 d.553	23 N.J.R. 3346(a)
19:16	Labor disputes in public fire and police departments: preproposal regarding compulsory interest arbitration	23 N.J.R. 2486(a)		
19:25-11.12	ELEC: fundraising through use of 900 line telephone service	23 N.J.R. 956(a)		
19:25-20	ELEC: lobbyists and legislative agents	23 N.J.R. 3077(a)		
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19:41-11.1	Vendor registration form	23 N.J.R. 2486(b)	R.1991 d.531	23 N.J.R. 3347(a)
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19:45-1.11	Casino licensee's organization	23 N.J.R. 2323(a)		
19:45-1.11, 1.12	Implementation of red dog	23 N.J.R. 2231(a)	R.1991 d.532	23 N.J.R. 3348(a)
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19:45-1.25	Casino checks issued to patrons	23 N.J.R. 3087(a)		
19:45-1.37, 1.39, 1.40A	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)		
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19:45-1.41	Slot machine hopper fill procedure	23 N.J.R. 2921(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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19:47-2.3	Payout odds for blackjack	23 N.J.R. 1781(a)	R.1991 d.534	23 N.J.R. 3351(a)
19:47-2.3, 2.7	Payout odds and payment of blackjack	23 N.J.R. 1781(b)		
19:47-2.3, 2.16	Blackjack: five cards totalling 21 rule	23 N.J.R. 28(b)	R.1991 d.533	23 N.J.R. 3355(a)
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19:47-8.2, 8.3	Rules of the games: notice of changes	23 N.J.R. 2613(a)	R.1991 d.552	23 N.J.R. 3354(c)
19:47-8.2, 9.1–9.6	Implementation of sic bo	23 N.J.R. 2922(a)		
19:50	Casino hotel alcoholic beverage control	23 N.J.R. 3087(b)		
19:50-3.5	Casino hotel alcoholic beverage control: Type V locations	23 N.J.R. 2006(b)	R.1991 d.469	23 N.J.R. 2869(c)
19:51-1	Advertising by casino licensees	23 N.J.R. 2007(a)	R.1991 d.467	23 N.J.R. 2870(a)
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Most recent update to Title 19K: TRANSMITTAL 1991-7 (supplement August 19, 1991)

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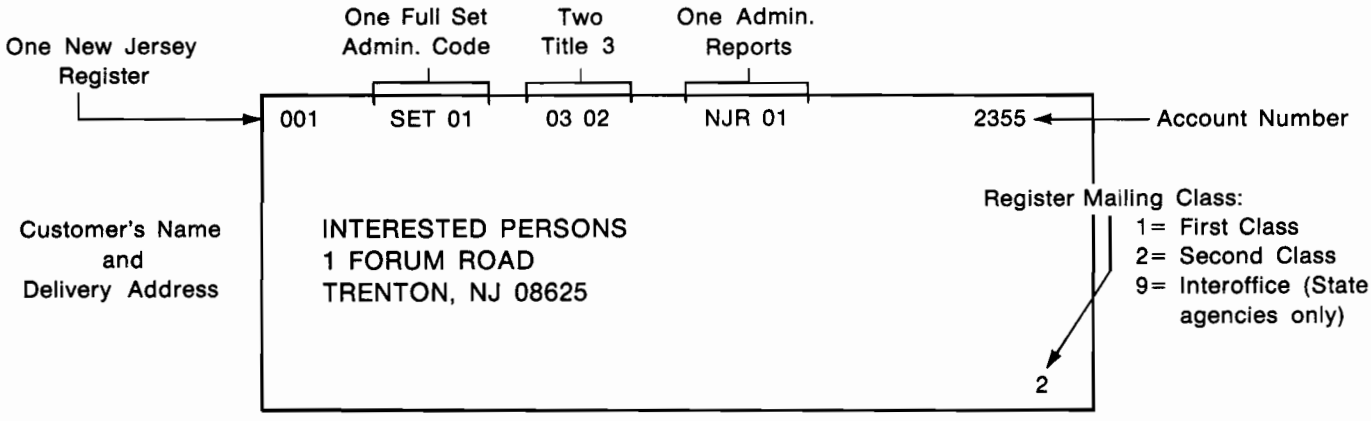
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