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 See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 20, 1994

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RULE PROPOSALS

ENVIRONMENTAL PROTECTION

(a)

NEW JERSEY HISTORIC TRUST Historic Preservation Grant Program Proposed Readoption: N.J.A.C. 7:4A

Authority: N.J.S.A. 13:1B-15.111.
DEP Docket Number: 32-94-06/128.
Proposal Number: PRN 1994-437.

Submit written comments by August 31, 1994 to:

Janis E. Hoagland
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
4th Floor
CN 401
Trenton, New Jersey 08625;
and
Harriette Hawkins
Executive Director
New Jersey Historic Trust
CN 404
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:4A is scheduled to expire on September 18, 1994. The New Jersey Historic Trust (hereafter "the Trust") has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Trust, therefore, proposes to readopt these rules.

The following is a summary of each subchapter in N.J.A.C. 7:4A:

Subchapter 1 pertains to the operations of the grant program operated by the Trust pursuant to the Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987, P.L. 1987, c.265. No changes are being proposed to this subchapter at this time.

N.J.A.C. 7:4A-1.1 sets forth the scope of the subchapter by identifying the Trust's reimbursement grant program and the bond act funds to which it applies. N.J.A.C. 7:4A-1.2 provides that if any individual provision is held invalid, such invalidity will not affect other provisions of the chapter. N.J.A.C. 7:4A-1.3 provides definitions terms used throughout the chapter.

Subchapter 2 entitled Application Procedure and Eligibility for Historic Preservation Grants, pertains to the applicants, properties and activities eligible for funding under this program.

N.J.A.C. 7:4A-2.1 lists the types of applicants eligible for grants. N.J.A.C. 7:4A-2.2 lists the requirements a property must meet to be eligible for a grant. N.J.A.C. 7:4A-2.3 lists activities eligible for funding under a grant. N.J.A.C. 7:4A-2.4 sets forth the procedures governing the award of grants through competitive grant rounds. N.J.A.C. 7:4A-2.5 sets forth the requirements for matching funds as part of the determination of eligibility for a grant.

Subchapter 3 pertains to the allocation of grant funds based upon geographical distribution as well as the ranking system for review of grant applications.

N.J.A.C. 7:4A-3.1 provides that funding shall be based upon ranking and subject to the availability and appropriation of funds under the act. Further the Trust reserves the right to limit funding to less than the amount requested. N.J.A.C. 7:4A-3.2 sets forth the criteria for review and ranking of applications for each competitive grant round. N.J.A.C. 7:4A-3.3 sets forth the method by which payments will be disbursed under the grant, including the need to execute a project agreement and submit detailed requests for reimbursement. N.J.A.C. 7:4A-3.4 sets forth the minimum and maximum amount for any grant made under this program.

Subchapter 4 pertains to the need to ensure that the public has access to properties restored or rehabilitated with public funds. N.J.A.C.

7:4A-4.1 sets forth the minimum requirements for public access to the historic property based upon its specific characteristics and the type of work funded in the grant.

Subchapter 5 pertains to the Trust's obligation to ensure that a public benefit continues to accrue from this expenditure of public funds. N.J.A.C. 7:4A-5.1 sets forth the requirements for an easement to be placed on each property funded under the grant, with terms to vary based upon the amount of public funds invested in the property.

Subchapter 6 pertains to the requirement that each project funded under the program display a sign acknowledging that it is being funded with grant assistance from the Trust. N.J.A.C. 7:4A-6.1 sets forth the information which must be contained in the project sign and that the costs of fabricating and erecting the sign are eligible for funding.

Social Impact

The readoption of these rules will continue to provide the procedure and criteria for making grants available will continue to for the improvement, restoration, stabilization or rehabilitation of historic properties owned by the State, county and municipal governments and by tax exempt nonprofit organizations. The preservation of these historic properties will preserve an important element of the State's historic heritage which would otherwise be lost.

Economic Impact

The readoption of these rules will continue to facilitate the distribution of funds for historic preservation projects. Applicants for funds will incur the administrative costs of the application process. It is believed that the preservation and restoration of historic properties with funds provided under the Historic Preservation Grant Program has played an important part in local revitalization efforts.

Environmental Impact

The readoption of these rules will continue to have a positive environmental effect because they help provide funds for the improvement, restoration, stabilization or rehabilitation of historic properties within the State of New Jersey.

Regulatory Flexibility Analysis

The purpose of these rules is to provide a procedure by which grants are given to State, county and municipal governments and tax-exempt nonprofit organizations for historic preservation projects. Some tax-exempt nonprofit organizations may qualify as small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In voluntarily applying for the funding provided under these rules, all applicants are required to comply with the application procedures and assistance approval conditions of the rules. The administrative costs for applying for, and complying with, the conditions of the grant are minimized by the availability of technical assistance in completing the application process by the Trust staff. Also, much of the documentation required is a routine component of budgeting and managing capital improvement activities. This, together with workshops where all requirements are clearly explained prior to the commencement of the project, will reduce unnecessary costs. Total administrative costs, including the purchase of professional services outside an applicant's expertise, will vary with the size and scope of the project. The Trust has determined that to impose lesser requirements on small businesses would be contrary to the preservation purpose of the grant program, as the historic significance of properties is not necessarily related to the form or size of the owning entity.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:4A.

(a)

OFFICE OF LAND AND WATER PLANNING**Statewide Water Quality Management Planning****Proposed Readoption: N.J.A.C. 7:15**

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

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq. and 58:11A-1 et seq.

DEP Docket Number: 34-94-06/469.

Proposal Number: PRN 1994-443.

Submit written comments, identified by the DEP Docket Number given above, by August 31, 1994 to:

Janis E. Hoagland, Esq.

Administrative Practice Officer

Department of Environmental Protection

CN 402

Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) administers the Statewide Water Quality Management Planning (WQMP) rules, N.J.A.C. 7:15, in conjunction with the Statewide Water Quality Management Plan, which constitutes the Continuing Planning Process conducted pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 13:1D-1 et seq. The rules serve two basic functions. Subchapters 1 through 3 serve the first of these functions, which is to set forth the Department's general regulatory framework for Water Quality Management Planning activities. Subchapters 4 and 5 supplement other Department rules pertaining to wastewater management, including, but not limited to, New Jersey Pollutant Discharge Elimination System rules (N.J.A.C. 7:14A), Standards for Individual Subsurface Sewage Disposal Systems (N.J.A.C. 7:9A), wastewater discharge requirements (N.J.A.C. 7:9-5), Surface Water Quality Standards (N.J.A.C. 7:9B), Ground Water Quality Standards (N.J.A.C. 7:9-6) and rules concerning financial assistance for wastewater treatment facilities (N.J.A.C. 7:22).

In accordance with the requirements of Executive Order 66(1978), N.J.A.C. 7:15 is scheduled to expire on October 2, 1994. The Department has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. However, the Department also recognizes that there are components of the rules that could be improved through substantive revisions. Therefore, the Department has initiated two processes by which such changes will take place. First, as a component of its efforts to revise the NJPDES rules at N.J.A.C. 7:14A, sections will be moved from the NJPDES rules (the environmental assessment requirements of the Discharge Allocation Certificate program) or added (more detailed rules regarding the development and adoption of Total Maximum Daily Loads, or TMDLs) to the WQMP rules. Additional information on these issues was published in the New Jersey Register at 25 N.J.R. 411(a) (Notice of Interested Party Review regarding NJPDES rules).

Second, the Department initiated an effort to solicit public comments through a Notice of Opportunity for Interested Party Review in the New Jersey Register on possible changes to the WQMP rules which would provide for administrative simplification, program delegation to regional and local planning agencies, and improved environmental impacts (see 26 N.J.R. 792(a)). The Department held two public roundtables on February 24 and 28, 1994 and received extensive oral and written comments on the Interested Party Review document. Based on this input and further Department consideration of the rules, the Department will be preparing a proposal which will substantively improve the existing WQMP rules. The Department anticipates that these changes will be proposed in the Fall of 1994. The anticipated schedule for the rule proposal slipped in part due to an administrative decision to focus available staff time on reducing existing backlogs of Water Quality Management Plan amendments submitted by regional and local planning agencies and by private sector interests. The Department decided that a delay in the proposal of rule changes was less critical to environmental protection and the State's economy than reduction of the backlogs.

The primary issues identified by commenters to the WQMP Interested Party Review document include the following:

(1) Need for reduced administrative complexity for minor projects and projects with minimal environmental impact. Commenters generally agreed with the Department's concept of minimizing information and procedural requirements for such projects. One specific method identified by the Department—delegation of reviews to local planning agencies—was both supported and opposed, in part because some of the planning agencies are utility authorities rather than county, regional or municipal planning boards. Representatives of utility authorities were concerned about adding roles unrelated to their primary function.

(2) Responsibilities for wastewater management planning. Some utility authorities and associations opposed the reliance of the current rules on utility authorities as local planning agencies, feeling that planning boards were more appropriate vehicles. The decision in 1987 to impose this requirement was based upon legal advice at that time. The Department promised to seek additional legal advice as to whether the full planning mandates could be moved from utility authorities in some or all cases, or whether some aspects of the planning process could be assigned to agencies other than the authorities.

(3) Environmental assessment requirements. Commenters generally agreed with the Department's proposal to combine environmental assessment requirements of the WQMP and NJPDES rules. However, concerns were raised about the most appropriate scope and detail of assessment requirements at different levels of planning (for example, Areawide Water Quality Management Plan, wastewater management plan, sewerage facility expansion or creation). The general consensus was that the level of detail should increase as proposed actions move from the regional scale to the site-specific scale.

(4) Incorporation of environmental objectives. Most commenters from all sectors agreed that a major concern with the existing regulations is that the policies either are unclear or unstated; that applicants and respondents have difficulty determining what standards of review the Department will use. They supported the Department's proposal to codify its policies and standards for review.

Due to the complexity and scope of the proposed changes which were released for public comment in the WQMP Interested Party Review document, the extensive public comments that are being considered at this time by the Department, and the priority for reducing the current backlog of WQMP amendments, the Department will not be able to revise the chapter before the October 2, 1994 expiration date. Expiration of the chapter would have very negative economic impacts, due to statutory mandates that the Department may not approve a permit for any action that is inconsistent with Water Quality Management Plans (all such plans were adopted by the Governor of New Jersey). Without the WQMP rules, the Department will have no regulatory mechanism in place to allow amendments of the plans. Therefore, to continue the rules N.J.A.C. 7:15 in effect until the necessary revisions can be adopted, the Department is proposing herein to readopt the chapter without change.

In light of the limited effect of this proposed readoption, the Department suggests that interested persons direct their comments concerning N.J.A.C. 7:15 to the proposal expected to be issued in the Fall of 1994, which will include significant amendments to the existing rules. Persons interested in receiving notice of the proposal and information about public involvement in the rulemaking process should contact the Office of Land and Water Planning at CN 423, Trenton, NJ 08625, or call (609) 633-1179.

The following is a summary of each subchapter in N.J.A.C. 7:15:

Subchapter 1. General Provisions

N.J.A.C. 7:15-1.1 identifies the chapter's general subject matter. The construction section at N.J.A.C. 7:15-1.2 promotes implementation of the Water Quality Planning Act, Water Pollution Control Act, and N.J.S.A. 13:1D-9; the purpose section at N.J.A.C. 7:15-1.3 emphasizes basic provisions of those statutes. The severability section is located at N.J.A.C. 7:15-1.4. N.J.A.C. 7:15-1.5 defines terms used in the regulations, some of which are taken from the Statewide Water Quality Management Plan (Plan).

Subchapter 2. Planning Requirements

N.J.A.C. 7:15-2.1 and 2.2 identify the Statewide WQM Plan and this chapter as the written provisions of the Continuing Planning Process (CPP). N.J.A.C. 7:15-2.1 describes the CPP components required by the Water Quality Planning Act, the Clean Water Act (33 U.S.C. 1251 et seq.), or the Federal regulations at 40 CFR 130.5. As one means of addressing the Department's statutory supervision, integration, and related responsibilities (N.J.S.A. 58:11A-2, 58:11A-7), N.J.A.C. 7:15-2.2

prohibits areawide WQM Plans from conflicting with specified components of the Statewide WQM Plan and the other provisions of the rules. N.J.A.C. 7:15-2.3 and 2.4 identify WQM planning responsibilities of the Department and designated planning agencies.

Subchapter 3. Plan Assessment, Amendment and Adoption

N.J.A.C. 7:15-3.1 requires that projects, activities, and Department permits be consistent with WQM Plans and this chapter, identifies projects and activities requiring detailed "consistency determination review," and identifies Statewide WQM Plan components used in consistency reviews. N.J.A.C. 7:15-3.2 sets forth the procedures for consistency determination reviews. N.J.A.C. 7:15-3.2(c)4 allows the Department to issue permits in some cases without issuing separate consistency determinations. N.J.A.C. 7:15-3.4 establishes procedures for amending Statewide and areawide WQM Plans. Only the Department can process amendments that address effluent limitations, total maximum daily loads, State or Federal programs, or actions regulated by the Solid Waste Management Act. There is a 60 day period for statements of consent. A special expedited amendment procedure is available for public schools, health and correctional facilities, and for treatment works on margins of depicted sewer service areas. N.J.A.C. 7:15-3.5 requires periodic review of plans, allows limited changes to plans to be adopted as "revisions" (without advance notice) rather than as "amendments," and provides for certification of areawide plans by the Governor or his designee. Provisions at N.J.A.C. 7:15-3.6 and 3.7 set forth policies concerning coordination of WQM planning with programs for the New Jersey Coastal Zone (including the Hackensack Meadowlands District) and Pinelands. Provisions at N.J.A.C. 7:15-3.8 and 3.9 establish a one year time limit for procedural challenges to WQM Plan amendments, and appeal procedures for Departmental decisions made pursuant to this chapter.

Subchapter 4. Water Quality and Wastewater Management Policies and Procedures

N.J.A.C. 7:15-4.2 identifies projects and activities deemed to be consistent with WQM plans and this chapter, including upgrades of treatment works to improve effluent quality; treatment works whose sole purpose is to abate existing pollution problems; "interim" treatment works to be abandoned or incorporated at a definite time into other treatment works; and emergency activities. N.J.A.C. 7:15-4.3 identifies treatment works that require amendments to areawide WQM Plans to be eligible for Department permits, or for financial assistance under the Clean Water Act or N.J.A.C. 7:22. This section also requires that WQM Plan amendments use existing regional domestic treatment works where appropriate, and avoid unsound sewer service area modifications to evade sewer connection bans. N.J.A.C. 7:15-4.4 allows construction in depicted future sewer service areas of individual residential septic systems if future connection is guaranteed, and on the same basis, certain other small domestic treatment works (individual wastewater management plans may impose additional requirements: see N.J.A.C. 7:15-5.19). N.J.A.C. 7:15-4.5 limits financial assistance for domestic treatment works under the Clean Water Act or N.J.A.C. 7:22 to Wastewater Management Agencies identified in WQM Plans.

Subchapter 5. Wastewater Management Planning Requirements

Subchapter 5 concerns "wastewater management plans" which are short, concise documents, adopted as amendments to areawide WQM Plans, that describe present and future wastewater management at a municipal or regional level. N.J.A.C. 7:15-5.1 identifies WQM Plan amendments requiring preparation or amendment of such wastewater management plans. N.J.A.C. 7:15-5.2 provides that existing wastewater management plans remain in effect and establishes a transition period from the pre-existing rules to the current rules for plans under review at the time of adoption. N.J.A.C. 7:15-5.3 contains general rules about "wastewater management plan responsibility," which is mainly the duty to submit and periodically update a wastewater management plan for a specific "wastewater management plan area." N.J.A.C. 7:15-5.4 provides that designated planning agencies may request such responsibility for their planning areas. Where such responsibility is not so requested, N.J.A.C. 7:15-5.5 through 5.8 assign such responsibility to governmental units in this order: Passaic Valley Sewerage Commissioners (for its statutory district); sewerage and municipal authorities (for their statutory districts); joint meetings (for service areas in member municipalities); and municipalities (within their boundaries). Municipalities and municipal authorities that do not perform "sewerage-related functions" are exempt.

Criteria in N.J.A.C. 7:15-5.6 assign wastewater management plan responsibility for locations within two or more authority districts (giving priority to county utilities authorities and regional sewerage authorities). N.J.A.C. 7:15-5.9 provides that alternative assignments of wastewater management plan responsibility, differing from N.J.A.C. 7:15-5.4 through 5.8, shall be made only by amendments or revisions to areawide WQM Plans, and contains the general rules for such assignments. N.J.A.C. 7:15-5.10 through 5.13 identify some possible alternatives for assignment of plan responsibility: linkages to financial assistance for sewerage facilities or to complete sewer service areas, assignments of joint wastewater management plan responsibility to two or more governmental units, and voluntary assignment of responsibility. N.J.A.C. 7:15-5.11 requires automatic expansion of wastewater management plan areas to include complete sewer service areas. To assist identification of wastewater management plan responsibility, N.J.A.C. 7:15-5.14 requires the Passaic Valley Sewerage Commissioners (PVSC), sewerage and municipal authorities, and joint meetings to submit information about district boundaries and member municipalities.

N.J.A.C. 7:15-5.15 identifies the required contents of wastewater management plans in general terms; N.J.A.C. 7:15-5.16 through 5.20 contain specific requirements. N.J.A.C. 7:15-5.16 and 5.17 require descriptions and maps of existing jurisdictions, wastewater service areas, and specific domestic treatment works and environmental features. N.J.A.C. 7:15-5.18 requires descriptions and maps of future wastewater service areas and specific domestic treatment works necessary to meet anticipated 20 year needs. Wastewater management plans shall provide for cost-effective, environmentally sound wastewater management, including regional management where appropriate, and with certain exceptions shall serve future land uses shown in municipal or county master plans. Under N.J.A.C. 7:15-5.19, wastewater management plans may require connection guarantees and installation of collection sewers when individual residential septic systems or certain other small domestic treatment works are built in sewer service areas. N.J.A.C. 7:15-5.20 contains specifications for the text and graphics for wastewater management plans, and provides that environmental features maps are for informational, not regulatory, purposes. N.J.A.C. 7:15-5.21 prohibits overlap of wastewater management plan areas. N.J.A.C. 7:15-5.22 requires those who prepare wastewater management plans to seek comments and written statements of consent from specified parties. Lastly, N.J.A.C. 7:15-5.23 establishes submission schedules for wastewater management plans. Updated wastewater management plans shall be submitted at least once every six years from the date of the previous submission. Alternative schedules may be established by amendments or revisions to WQM Plans.

Social Impact

The Department expects that generally positive social impacts will result from the proposed readoption of this chapter as have been realized in the past. The simplified legal structure of the Statewide WQM Plan is easier to understand and implement than the rules existing prior to 1988. Systematic procedures for evaluating projects and activities for consistency with WQM Plans (N.J.A.C. 7:15-3.1 and 3.2) promote Plan implementation. The Department's ability to issue permits without issuing separate consistency determinations under N.J.A.C. 7:15-3.2(c)4 benefits some permit applicants because it facilitates faster permit processing. It also eliminates confusion caused when a consistency determination approved at one point in time becomes invalid due to regulatory or WQM plan changes between that time and the time at which an applicant applies for permits.

The general public benefits from WQM plan amendment procedures that allow public comment on proposed amendments and allow interested persons to propose their own amendments (N.J.A.C. 7:15-3.4). Applicants for WQM plan amendments benefit from streamlining and simplification of the plan amendment process through use of a 60 day time period for written statements of consent (N.J.A.C. 7:15-3.4(g)3 and 4). Special amendment procedures expedite permits for public schools, health care, and correctional facilities, and for treatment works on margins of depicted sewer service areas (N.J.A.C. 7:15-3.4(h)). The benefits of these timesaving provisions should be passed on to the general public through lower development costs.

Treatment works and wastewater management plan requirements in N.J.A.C. 7:15-4.3 and 7:15-5 result in more cost-effective, environmentally sound wastewater management, better integrated with municipal and county master plans. Insofar as wastewater management plans promote implementation of municipal master plans, such plans reinforce the

positive or negative social impacts of such master plans. Wastewater management plans assist State and local planning by identifying, on a regularly updated basis, existing and proposed sewerage facilities and sewer service areas in most of the State. The 20-year horizon for wastewater management plans, the requirement for updating them every six years, and the provisions for amending them minimize any limiting effects the plans might otherwise have on the land supply for uses that need sewer service.

The general public may experience some higher development costs. Over an extended period, however, the rules generally satisfy the need for proper wastewater management planning and serve to insure the proper long-term operation and maintenance of wastewater treatment plants, thereby providing a positive social benefit to the residents of the State. The Passaic Valley Sewerage Commissioners and many sewerage authorities, municipal authorities, joint meetings, and municipalities are required to periodically submit wastewater management plans (except where this duty is assumed by designated planning agencies or assigned to other parties with Department consent). The rules minimize the workload by establishing requirements for wastewater management plans that are much less detailed than the requirements for Wastewater Treatment Facilities Plans (required by Section 201 of the Federal Clean Water Act for recipients of Federal wastewater facility construction funds) prepared by many of these governmental units.

Economic Impact

The Department expects positive and negative economic impacts from the proposed re adoption. Treatment works and wastewater management plan requirements in N.J.A.C. 7:15-4.3 and 7:15-5 result in more cost-effective wastewater management. Insofar as wastewater management plans promote implementation of municipal and county master plans, wastewater management plans reinforce positive or negative economic impacts of such plans. The 20-year horizon for wastewater management plans, the requirement for updating them every six years, and the provisions for amending them should minimize any limiting effects the plans might otherwise have on the land supply for uses that require sewer service. Insofar as wastewater management plans deny sewer service to lands otherwise eligible for such service, wastewater management plans limit the land supply available for intensive uses that require sewer service, and affect the location of new development for such uses (by channeling development towards depicted sewer service areas with adequate sewerage capacity, and away from other locations). These limitations and alterations have complex effects on economic factors such as real property values and tax revenues, public service expenditures, and housing, labor, retail, and other markets.

The Passaic Valley Sewerage Commissioners and many sewerage authorities, municipal authorities, joint meetings, and municipalities are required to periodically submit wastewater management plans (except where this duty is assumed by designated planning agencies or assigned to other parties with Department consent). Most of these costs have already been incurred. The Department estimated in 1988 that the average cost of preparing a wastewater management plan was between \$5,000 and \$15,000 and that about 275 wastewater management plans would be prepared over five years in response to the proposal. The estimated total Statewide cost for preparing wastewater management plans was between \$1.4 million and \$4.1 million over five years, or between \$275,000 and \$825,000 on an annual average basis. The Department does not have updated cost estimates, but the 1988 cost estimates may have been low based on anecdotal evidence, with the most complicated plans costing on the order of \$60,000.

In addition, the Department requires about \$300,000 annually to administer the wastewater management plan program. After the initial five year planning cycle (with consideration of extensions), further costs are incurred to update each wastewater management plan at least once every six years. Future costs to wastewater management planning agencies and private interests are primarily limited to the preparation and processing of amendments and updates to the wastewater management plans under these rules. In most cases, the costs of preparing wastewater management plans are ultimately borne by sewer users and local taxpayers. Where developers choose to subsidize preparation of wastewater management plans by the planning agencies as a method for expediting plan preparation and adoption, the cost may be reflected in lower profits and wages in the building industry, in higher prices for new development, and in reduced land prices paid by the developers to landowners. However, the costs of preparing amendments to wastewater management plans (the cost most frequently assumed by developers) is very low relative to total development costs.

The Social Impact statement above discusses the anticipated social impacts of these rules on applicants for Department permits and WQM Plan amendments. These social impacts are mainly economic in nature and are noted here by reference; they include positive and adverse economic impacts on various parties. For example, some applicants for Department permits benefit economically when their projects are deemed to be "not consistent" or "consistent" with WQM plans under N.J.A.C. 7:15-4.2 (through reduced project delay costs and exemption from plan requirements). Conversely, the wastewater management plan requirements in N.J.A.C. 7:15-5.1 can have adverse economic impacts on some applicants for NJPDES permits (because their projects are prevented, delayed or otherwise made more expensive by such requirements). Over a five-year period, the rules should generally satisfy the need for wastewater management plans, however, and provide a general positive economic benefit. N.J.A.C. 7:15-4.5 provides that financial assistance for treatment works under the Clean Water Act or N.J.A.C. 7:22 may be awarded only to Wastewater Management Agencies identified in WQM Plans. Such identification is a routine process that generally creates no practical difficulties.

Environmental Impact

The Department expects generally positive environmental impacts from the proposed re adoption. Systematic procedures for evaluating projects and activities for consistency with WQM plans (N.J.A.C. 7:15-3.1 and 3.2) help to ensure that the environmental protection requirements in WQM plans are followed. Special consistency provisions (N.J.A.C. 7:15-4.2) expedite permits for treatment works upgrades to improve effluent quality, and for treatment works whose sole purpose is to abate existing pollution problems. The treatment works and wastewater management plan requirements in N.J.A.C. 7:15-4.3 and 7:15-5 should result in more environmentally sound wastewater management. To the extent that wastewater management plans promote implementation of municipal and county master plans, wastewater management plans reinforce positive or negative environmental impacts of such master plans.

Regulatory Flexibility Analysis

Some of the rules proposed for re adoption apply to many small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that seek Department permits, amendments to WQM Plans, or construction of domestic treatment works. The average cost to a small business of complying with the plan amendment procedures of this chapter is expected to be about \$200.00, plus the cost of preparing the proposed amendment where a public agency does not assume that cost. Most of the costs incurred under these rules are incurred by public agencies having wastewater management plan responsibility. All small business applicants for Department permits are subject to the provision in N.J.A.C. 7:15-3.1(a) that the Department shall not issue permits for projects or activities that conflict with WQM plans or this chapter. Some such applicants may need the services of professional engineers or other professionals to design acceptable projects and activities. Many such applicants are required to submit proposals for consistency determination review under N.J.A.C. 7:15-3.2, and need the services of professional engineers or planners to prepare such submissions.

Small businesses that seek construction of treatment works that are inconsistent with areawide WQM plans, or that apply for amendments to such plans for other reasons, have to submit information and undertake actions required of applicants by N.J.A.C. 7:15-3.4(g), or follow plan amendment procedures used by designated planning agencies. If a requested amendment requires preparation of a wastewater management plan under N.J.A.C. 7:15-5.1, the small business must arrange for an appropriate governmental unit to submit a wastewater management plan. Small businesses that seek construction of certain small domestic treatment works in sewer service areas will have to provide connection guarantees required by N.J.A.C. 7:15-4.4(b). Wastewater management plans may extend this guarantee requirement to construction of individual residential septic systems, and may require installation of collection system sewers for use when sewer service becomes available (N.J.A.C. 7:15-5.19). Such installation would require the services of professional engineers.

The Department has balanced the need to protect the public health, safety, and general welfare against the adverse economic impact of the rules on small businesses, and has determined that use of different regulatory approaches for small businesses may endanger the public health, safety and general welfare. Therefore, the rules do not include exemptions or other approaches specifically targeted at small business. However, to the extent that small businesses are more likely than large

businesses to seek construction of small treatment works that do not trigger requirements in N.J.A.C. 7:15-4.3 and 5.1, these sections will have less impact on small businesses than on large businesses. Also, as discussed in the Social Impact statement above, the rules include provisions that benefit many applicants for Department permits and WQM Plan amendments, including many small business applicants.

Full text of the proposed reoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:15.

(a)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Leasing of Atlantic Coast Bottom for Aquaculture Proposed Amendments: N.J.A.C. 7:25-24.7 and 24.9

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

Authority: N.J.S.A. 50:1-18 and 50:1-23 through 50:1-31.

DEP Docket Number: 33-94-06/391.

Proposal Number: PRN 1994-444.

Submit written comments, identified by the DEP Docket Number given above, by August 31, 1994 to:

Janis E. Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) is proposing to amend the rules governing the leasing of bottom on New Jersey's Atlantic Coast at N.J.A.C. 7:25-24 to increase the hydrographic survey fee from \$16.50 per corner to \$30.00 per corner. The fee change is intended to enable the Department to recover its costs for performing these underwater surveys required pursuant to N.J.S.A. 50:1-28. The Department is also proposing to eliminate the requirements for a hydrographic survey as a condition for transfers of existing leases unless the Atlantic Coast Section of the New Jersey Shell Fisheries Council ("Council") or the Department question the location and/or boundaries of the transferred parcel.

The proposed amendments were developed after consultation with the Council, the Division of Fish, Game and Wildlife, a committee of persons in the shellfish industry and members of the public attending various Council meetings. The amendments were approved by the Council on May 17, 1993 and were presented to the Marine Fisheries Council for information purposes on July 8, 1993.

Social Impact

The proposed amendments will have a positive social impact on the State's commercial clambers because they will enable the Department to lift the July 1992 moratorium upon the creation of new underwater leases and transfer of existing leases. The moratorium was necessitated by the lack of funding for Department surveying activities, without which such underwater leases cannot be created pursuant to N.J.S.A. 50:1-28 or transferred pursuant to N.J.A.C. 7:25-24.9. Increasing the survey fee to \$30.00 per corner will enable the Department to administer the lease program again by funding its actual equipment and personnel costs for surveys over the course of one year. Moreover, the proposed elimination of the requirement for surveys for transfers of existing leaseholds, except when either the Council or the Department questions the location or boundaries of the subject parcel and requests a survey, will have the positive social impact of reducing the time and complexity of the transfer process.

Economic Impact

The proposed amendments will have only a minor direct negative economic impact upon persons in the shellfish industry since the survey cost for the creation of new hydrographic leases is minute compared to the cost of developing, maintaining and harvesting such a leasehold. Conversely, the proposed amendments will have an indirect but positive

economic impact since the minimal expenditure for surveys will afford those in the shellfish industry the opportunity to create and transfer leaseholds for the first time since July, 1992.

The Department calculates that it will incur costs of \$604.00 per day of surveying, with an average of 20 corners surveyed per day. This cost includes salary for two persons, boat fuel, amortization of boat hull, engine and electronic survey equipment, and purchase of miscellaneous items such as survey buoys, concrete block, line, control markers and reference stations for each estuary. While the Department acknowledges that some surveys will be more difficult, and consequently, more expensive to perform than others, a uniform increase in fees for all surveys reduces the Department's administrative costs and still allows the Department to recoup its program costs over the course of the fiscal year.

The survey fees will be placed in an account within the Hunters' and Anglers' Fund dedicated specifically to survey activities.

These one-time survey fees will be offset, over time, by eliminating the need for surveys upon the transfer of existing leaseholds as is currently required under N.J.A.C. 7:25-24.9. The nominal annual lease fee of \$2.00 per acre (or per 100 linear feet) as set forth in N.J.A.C. 7:25-24.7 will remain unchanged.

Environmental Impact

The proposed amendments will have no negative environmental impacts since they do not in any way alter the current practices of the Council to grant or deny leasehold creation or transfer and merely allow a legal form of shellfish harvesting to continue. The amendments will not significantly alter the amount or type of shellfishing along New Jersey's Atlantic Coast and may have the beneficial effect of improving the condition of the substrate in some leaseholds. For example, leaseholders may plant shell on the lease bottom to improve the substrate for oyster culture.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. ("Act"), the Department has determined that these proposed amendments will not impose additional reporting, recordkeeping or other compliance requirements on small businesses and will, in fact, reduce compliance requirements as to most transfers of existing underwater leases. While it is increased, the corner survey fee is not a new requirement. As no new requirements are imposed, and the fee increase is needed to recoup Department costs unrelated to applicant/licensee business size, no exemptions or special provisions for small businesses are provided.

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

7:25-24.7 Hydrographic survey charges; annual lease fees

(a) Following approval of a lease of new ground by the Council and the Commissioner, the Bureau shall perform a hydrographic survey of the lease area described in the application to verify its locations and boundaries. Before the Department issues an executed lease to the applicant, the applicant shall reimburse the Bureau for the expense of the hydrographic survey at the rate of [\$16.50] **\$30.00** per corner. Failure to reimburse the Bureau within 30 days of the Council's approval of the lease will constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.

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

7:25-24.9 Lease transfers

(a) Leases may be transferred only with the approval of both the Council and the Commissioner and only under the following circumstances:

1.-3. (No change.)

4. An application for a lease transfer shall be placed on the agenda of the next regularly scheduled Council meeting for consideration. At that meeting, the Council will receive public comment on the transfer application and shall render a decision to deny the lease application or shall grant the transfer application subject to approval by the Commissioner. **A hydrographic survey of the lease area will be required only if the Council or the Department request at the Council meeting that the Bureau perform such a survey to verify the lease area location and/or boundaries;** and

5. Following approval of a transfer by the Council and the Commissioner[, the Bureau will perform a hydrographic survey of all

lease areas to be transferred to verify their location and boundaries] for which a hydrographic survey is requested by either the Council or the Department, the Bureau shall perform a hydrographic survey of the lease area described in the transfer application to verify its location and boundaries. Before the Department issues an executed lease to the new lessee, the new lessee shall reimburse the Bureau for the expense of the hydrographic survey at a rate of [\$16.50] \$30.00 per corner. Failure to reimburse the Bureau within 30 days of the Council's approval of the transfer will constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.

INSURANCE

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Mass Marketing; Licensing Requirements

Rule Pre-Proposal: N.J.A.C. 11:5-1.7

Authorized By: New Jersey Real Estate Commission,
Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6.

Pre-Proposal Number: PPR 1994-2.

Submit written comments by October 21, 1994 to:

Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
CN 328
Trenton, New Jersey 08625-0328

Take notice that the Real Estate Commission is considering proposing a rule that will clarify the definition of brokerage activity found in N.J.S.A. 45:15-3. A **public hearing** will be held at 10:00 A.M., Tuesday, October 18, 1994 in Rooms 219 and 220 of the Mary G. Roebling Building, 20 West State Street, Second Floor, Trenton, New Jersey, to enable the public to comment on the pre-proposal. Written comments may also be submitted to the Commission by October 21, 1994 at the address indicated above.

Specifically, the rule would address the issue of whether certain types of activity trigger the licensure requirement established at N.J.S.A. 45:15-1. As a result of evolving technology and the proliferation of various multimedia sources of information, such as computerized listing services and 800 number telephone services, the Commission has received numerous inquiries about whether businesses utilizing these types of services to secure and disseminate information on available real estate and/or on prospective purchasers of real estate need to be licensed as real estate brokers. Consequently, the Commission has recognized the need for adopting a rule indicating how the licensing law applies to such services.

The Commission believes that an individual who merely provides a medium in which others may place advertisements does not need to be licensed as a real estate broker, since such activity does not constitute soliciting for, or assisting or directing in the procuring of, prospects which does or is contemplated to result in a completed real estate transaction. N.J.S.A. 45:15-3.

In order to distinguish between pure marketing activity on the one hand and real estate brokerage activity requiring licensure on the other hand, the pre-proposed rule targets: (1) the extent to which the marketer collects information from prospects; (2) the extent to which the marketer tailors the format, selection or content of the information to be supplied to prospects based on the information the marketer has received; and (3) the manner in which that information is disseminated to others by the marketer.

Under the pre-proposed rule, if the marketer gathers information about a prospect's specific real estate needs, tailors the format, selection or content of the information to be supplied to that prospect to those specific needs, and then conveys to the prospect the tailored information on available real estate which purportedly corresponds to their specific needs, the marketer would be assisting or directing in the procuring of prospects, thereby triggering the licensure requirement imposed by N.J.S.A. 45:15-1 and 3. The Commission is concerned that by requesting

detailed information from prospects about their specific real estate preferences, and then supplying information on or directing prospects to certain properties based on those preferences, the marketer has expanded his role beyond one of being a mere conduit of information to one of actively assisting in the procuring of prospects.

If a marketer relays information back to the vendor about specific sales prospects who have responded to the vendor's advertisements, that marketer would also be engaged in real estate activity that would require licensure, because, again, the marketer would be assisting in the procuring of prospects, which constitutes brokerage. In other words, the marketer would be assuming more than the customarily passive role of being a mere conduit of information which pure advertisers fulfill.

The adoption of a rule on these issues will help eliminate the confusion that has existed on the part of persons, including newspaper publishers and radio stations, who provide marketing services through an interactive medium, such as an electronic newspaper or an 800 number telephone service. Under this type of marketing service an individual seeking information on available real estate may be asked, usually through a recording, basic information about the type of property they are seeking. Under the pre-proposal, if such information is limited to the physical features, preferred location and price range of the property sought and is used solely for prospects' convenience while using the service and not for further marketing purposes, these types of questions would not constitute individualized marketing that would require a broker's license. Rather, these questions would merely enable the user of the service to perform the same function as is performed by a prospect who visually scans a newspaper's real estate classified section, which generally is organized according to the municipalities in which the advertised properties are situated. That is, the prospect can locate specific advertised properties which may meet his or her particular needs without taking the time to visually or audibly scrutinize every listing contained in the entire real estate classified section of the printed newspaper or the entire database of the electronic newspaper.

The Commission will also address the question of whether live operators can solicit information from prospects in the same objective, non-advisory manner as would be done by an electronic mailbox or other automated system, or whether the use of live operators necessarily involves a mutual exchange of information between operator and prospect that would constitute soliciting for listings or prospects, or assisting or directing in the procuring of prospects, thereby triggering the licensing requirement of N.J.S.A. 45:15-3. It is the concern of the Commission that unlicensed individuals soliciting information from prospects may not be properly trained in real estate matters, including ethical standards, and would not be accountable to the Commission for their actions. The Commission encourages marketers who are currently using or anticipating the use of live operators in their marketing operation, as well as those who are using electronic media, to communicate to the Commission their opinions and ideas at the pre-proposal hearing and/or through the submission of written comments.

The pre-proposed rule would also permit a marketer to maintain an electronic mailbox service that interested individuals may call in order to be contacted by the vendor who placed an advertisement. So long as the marketer's employees do not have access to, nor accept or respond to the messages left by, individuals responding to the advertisements, this type of service would not trigger a licensure requirement because it is the functional equivalent of the buyer or seller (or seller's broker) contacting each other directly. Such a use of an electronic mailbox service is considered analogous to vendors distributing written flyers with a response card directing those interested to return the card to a post office box.

Under the pre-proposed rule, in the event that a person responds to the marketer rather than the vendor placing the advertisement, the marketer may not provide any information other than what appears in the advertisement and may not provide any information about any other properties. The Commission believes that to do so would be to actively assist in the procuring of prospects without a license, in violation of N.J.S.A. 45:15-3.

The Commission also believes that bona fide mass marketers should primarily receive compensation from vendors buying advertisements, rather than from individuals responding to the advertisements. Therefore, under the pre-proposal, the Commission will presume that a person who charges prospects more than a nominal fee is engaged in real estate brokerage rather than mere marketing. To overcome the presumption, the marketer must clearly demonstrate that the advertisements provided in exchange for a substantial payment from a prospect are not tailored,

nor represented to prospects as being tailored, to their specific real estate needs and that the entire marketing scheme satisfies the other criteria of subsection (b) of the pre-proposed rule. In order to be truly nominal, the fee must be separate and apart from the marketing activity itself, such as a reasonable cover or subscription price for a publication containing advertisements. The Commission believes that the pre-proposed rule is consistent with N.J.S.A. 45:15-17 and N.J.A.C. 11:5-1.32 which impose on residential rental referral agencies a licensure requirement and certain restrictions on the collection of fees.

Subsection (f) of the pre-proposed rule states explicitly that a person who sells the list of names of prospects shall be deemed to be engaged in brokerage activity, and therefore must be licensed. The Commission has consistently taken the position that such activity is clearly soliciting for prospective purchasers or assisting or directing in the procuring of prospects.

The Commission emphasizes that it is not the purpose of the pre-proposed rule to prohibit these marketing activities, but rather to clarify which types of activities require licensure. Through the pre-proposal process and hearing, the Commission hopes to produce a rule that will accommodate the real estate industry's need for an inexpensive and effective way of communicating real estate information to prospective buyers and the marketing industry's willingness to provide such services, while at the same time protecting the public from unlicensed individuals providing brokerage services in the guise of marketing services.

Full text of the pre-proposal follows:

11:5-1.7 Mass marketing, licensing requirements

(a) As used in this rule, the following terms or phrases shall have the meanings indicated:

1. "Individualized marketing" means gathering information on the specific needs of prospects, tailoring the format, selection or content of advertisements to those needs, and broadcasting or making available the tailored advertisements to those prospects by direct mail or otherwise.

2. "Marketer" means a person who publishes, broadcasts or communicates advertisements at the request of another or provides a medium for the publishing or broadcasting of advertisements.

3. "Mass marketing" means publishing, broadcasting or communicating advertisements in an indiscriminate manner, without regard to the specific needs of individual prospects and without tailoring the format, selection or contents of the advertisements to the specific needs of any particular prospect or prospects. An electronic newspaper or similar service which approximates, by means of an electronic medium such as a computer or telephone, the human act of visually scanning a written page for particular advertisements shall be considered mass marketing, if prospects using the service are asked to provide information about their general preferences and then provided with a selection of advertisements tailored to those general preferences, so long as:

i. The information requested is used solely for prospects' convenience while using the service and not for further marketing purposes, and

ii. The information requested is no broader in scope than the physical features sought, preferred location and price range.

4. "Prospect" means a person to whom advertisements are broadcast or made available, or who contacts the marketer or vendor by mail, telephonically, or otherwise for the purpose of obtaining information about real estate advertised by the marketer, or who otherwise responds to a specific advertisement.

5. "Vendor" means a person who directly or through an agent submits an advertisement for publication in any print media and/or for communication through or broadcast over any electronic media, including telephonically, or who contracts with a third party, other than a real estate licensee, to advertise the sale, exchange or rental of real property.

(b) In interpreting N.J.S.A. 45:15-3, a marketer of interests in real estate shall not be considered to be engaged in the business of a real estate broker and shall not be required to hold a real estate broker's license so long as:

1. The marketing activity constitutes mass marketing and not individualized marketing; and

2. The marketer does not provide to vendors the names or addresses of prospects or any other information about specific prospects or their real estate needs. An electronic mailbox service may be provided by the marketer to the vendor, so long as none of the marketer's employees, and no persons acting at the marketer's direction or on its behalf, have access to the electronic mailbox, and such employees or persons do not accept or respond to phone calls made by prospects to the electronic mailbox service; and

3. In the event that a prospect responds to the marketer rather than the vendor, the marketer does not provide any additional information to prospects other than what appears in the advertisements about which the prospect has inquired and does not provide, in response to such a communication, any information, by mail, telephonically or otherwise, about any other properties; and

4. The marketer's activity does not constitute the operation of a residential rental referral agency as set forth in N.J.S.A. 45:15-17 and N.J.A.C. 11:5-1.32.

(c) In providing advertisements to prospects, if the marketer charges prospects more than a nominal fee a rebuttable presumption will be created that the marketer is engaging in brokerage activity requiring licensure. The presumption can be overcome by the marketer demonstrating that:

1. The other provisions of this rule have been satisfied; and

2. The marketer does not offer, and does not represent to prospects as offering, tailored information based on prospects' specific needs.

(d) A reasonable cover or subscription price for a publication containing advertisements shall be considered a nominal fee for the purposes of this rule.

(e) Nothing in this section shall be construed to limit a licensee's responsibility to comply with the advertising rules set forth in N.J.S.A. 11:5-1.15.

(f) The sale or offering for sale of lists of names of prospects constitutes brokerage activity requiring licensure.

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Salesperson's License; Age Limit Qualifications for Corporate Licensing, Limited Partnership and General Partnership Licensing Examination Rules

Branch Office Compliance with N.J.A.C. 11:5-1.18, (Maintained Offices)

Criminal History Record Check

Proposed Amendments: N.J.A.C. 11:5-1.2, 1.4, 1.5, 1.19 and 1.29

Authorized By: New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1994-425.

Submit written comments by September 2, 1994 to:

Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
CN 328
Trenton, New Jersey 08625-0328

The agency proposal follows:

Summary

The Real Estate Commission is proposing technical amendments to the above-referenced rules. Many of the changes reflect changes to the real estate licensing law at N.J.S.A. 45:15-1 et seq. Others changes are necessary to clarify the existing rules in light of these changes in the law.

Proposed changes to N.J.A.C. 11:5-1.2 will reflect the new licensure requirement for real estate schools. Also, the term "age requirement"

instead of the term "age limit" in the section heading will more accurately describe the subject matter of subsection (a).

A proposed change to N.J.A.C. 11:5-1.4 will replace the word "qualified" with the word "licensed" to make this rule consistent with N.J.S.A. 45:15-9 and other sections of the licensing law. In addition, references to brokers of record of partnership licensees are being added to this rule. Pursuant to N.J.S.A. 45:15-9, like corporations, general partnerships may only be licensed as New Jersey real estate brokers if one of the partners is individually licensed as a broker to transact business in the name of and on behalf of the partnership. Similarly, limited partnerships may only be licensed as New Jersey brokers if their general partners are so licensed. N.J.A.C. 11:5-1.4 currently sets forth the standards of conduct and responsibility applicable to all "brokers of record," but its language was inexplicably limited to brokers of record of corporate licensees. The proposed amendment clarifies the Commission's intent that the same standards apply to brokers of record of partnership licensees.

Proposed changes to N.J.A.C. 11:5-1.5 will eliminate references to a written preclearance examination, since that descriptive term has been eliminated from the statutory section imposing the examination requirement (N.J.S.A. 45:15-10).

A proposed change to N.J.A.C. 11:5-1.19 will replace the phrase "branch license" in subsection (f) with the phrase "branch office license" to make the language consistent with the remainder of that rule and N.J.A.C. 11:5-1.18.

A proposed change to N.J.A.C. 11:5-1.29 will replace the term "controlling person" with "owner of a controlling interest" to make that term consistent with the licensing law (See N.J.S.A. 45:15-10.4) and other Commission rules. In addition, N.J.A.C. 11:5-1.29(c) has been revised to make its text more consistent with the language of N.J.S.A. 45:15-9 and more understandable. Pursuant to N.J.S.A. 45:15-12.4 a "controlling interest" is defined as "5% or more of the equity of a licensed corporation or of the ownership of a partnership."

Social Impact

Since the proposed amendments do not represent substantive changes to the Commission rules, the Commission does not anticipate that there will be any social impact on the public. However, the text of these amended rules should be easier to read and interpret in light of the amended licensing law.

Economic Impact

The proposed amendments will have a negligible economic impact, if any. The amendments may save licensees and others time and costs by eliminating any confusion that might be caused by uncorrected discrepancies between the terms used in the current regulations and those used in the amended licensing law.

Regulatory Flexibility Statement

The proposed amendments do not impose any additional requirements on real estate licensees, but rather are merely technical in nature. Therefore, a regulatory flexibility analysis is not required.

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

11:5-1.2 Salesperson's license; age [limit] requirement

(a) (No change.)

(b) Every applicant for licensure as a salesperson shall present with his/her application for licensure a certificate of satisfactory completion of a course of education in real estate subjects at a school [approved] **licensed** by the Commission [as prescribed under] pursuant to N.J.S.A. 45:15-10.1(a) and 10.4 and N.J.A.C. 11:5-1.28 [and N.J.A.C. 11:5-1.27], unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:25-10.2.

(c) An applicant must apply for and request the issuance of a salesperson's license not later than one year after the date of successful completion of the [prescribed] course **prescribed** at N.J.A.C. 11:5-1.27. Any person who fails to apply for the issuance of salesperson's license within the one year period shall be required to retake and successfully complete the prescribed course in real estate and the examination.

(d) (No change.)

(e) [On and after June 1, 1984 every] **Every** applicant shall present with his/her application for [licensure] examination evidence of satisfactory completion of a course of education in real estate sub-

jects prescribed under N.J.S.A. 45:15-10.1[(A)](a) and Sections 27 and 28 of this [Subchapter] **subchapter**, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2. Holders of a current school certificate which bears an issue date within one year as defined by (c)[,] above, will be permitted to take the salesperson's [exam] **examination** and secure a license, provided said certificate is in compliance with (c)[,] above.

(f) (No change.)

11:5-1.4 Qualifications for corporate, **limited partnership and general partnership** licensing

(a) In [interpretation of] **interpreting** N.J.S.A. 45:15-9, the following shall [control] **apply**:

1. The Commission will hold responsible the individual [licensed] broker or brokers [qualified] **licensed** to transact business in the name and on behalf of [the] a corporate or **partnership broker** licensee in accordance with the provisions of N.J.S.A. 45:15-9 for any actions of the [corporation] **corporate or partnership** licensee or its agents in the pursuit of its real estate brokerage business, which violate any of the provisions of the real estate statutes or the regulations promulgated thereunder.

2. Every real estate transaction in which a corporate or **partnership** licensee participates as a broker shall be under **the** supervision of a broker or brokers [qualified] **licensed** to transact business in the name and on behalf of the corporation or **partnership**

3. The broker [qualified] **licensed** to transact business in the name and on behalf of the corporate or **partnership** licensee, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the licensee, shall make certain that no such funds of others are disbursed or utilized without his or her express authorization and knowledge.

4. The provisions of this subsection do not apply to [brokers] **persons** licensed as broker-salespersons.

11:5-1.5 Examination rules

(a) In the [conduct] **administration** of examinations [of] for **licensure** as a real estate broker, broker-salesperson or salesperson [licensee], the following examination rules shall [prevail] **apply**:

[1. Examination papers shall be delivered to the examining room under seal and shall be opened by the examiner in the presence of the examinees.]

[2.]1. Examinees [will] **shall not** be permitted to refer to any notes, books, or memoranda.

[3.]2. The copying of questions or making of notes for personal use is strictly prohibited.

[4.]3. No examinee shall leave the examining room except at the discretion of the examiner.

[5.]4. The real estate [examination] **broker license and salesperson license examinations**, required by N.J.S.A. 45:15-10 to be taken and successfully passed by all applicants for a real estate broker, **broker-salesperson** or salesperson license before said license may be issued, shall be in the form of a multiple choice examination prepared by a testing service as designated by the Commission. Fees charged **applicants** to take the [testing service] real estate [salesperson and broker] examinations shall be considered service fees to be paid directly to the testing service separate and apart from any fee required by N.J.S.A. 45:15-9 to be paid to the [New Jersey Real Estate] Commission [along with a] at the time of the license application.

(b) [As provided under N.J.S.A. 45:15-10, examinations may be written or oral.] [Request] A request for an oral examination may be made if the applicant is blind, physically handicapped making it difficult to [write] **respond to the examination questions** or if there is an extreme language barrier. The request may be granted at the discretion of the Real Estate Commission.

11:5-1.19 Branch office compliance with N.J.A.C. 11:5-1.18 (Maintained offices)

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

(f) When a branch **office** license is issued to a broker it shall specifically set forth the name of the broker and the address of the branch office, and shall be conspicuously displayed at all times in

the branch office. The branch office shall also prominently display the name of the broker-salesperson licensee in charge as "office supervisor" and the names of all other broker-salespersons and the salespersons doing business at that branch office.

(g) (No change.)

11:5-1.29 Criminal history record check

(a) (No change.)

(b) The applicant, if a corporation or partnership, shall submit with its application for license New Jersey State Police Requests for Criminal History Record Information, and certified checks or money orders to pay for their processing, for each officer, director, partner, or [controlling person] **owner of a controlling interest.**

(c) [Upon request, licensees shall have impressions taken and submit them to the Commissioner on a New Jersey State Police fingerprint card, with a certified check or money order to pay for their processing, for any natural person licensee or any officer, director, partner or controlling person of any licensed corporation or partnership.] **The Commission may require an individual licensee or any officer, director, partner or owner of a controlling interest of a licensed corporation or partnership to complete and submit to the Commission a New Jersey State Police fingerprint card, and submit a certified check or money order in payment of the processing fee for the card.**

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Consumer Information Statement

Proposed New Rule: N.J.A.C. 11:5-1.43

Authorized By: New Jersey Real Estate Commission,
Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1994-426.

A public hearing will be held on this proposal on Tuesday, September 27, 1994 at 10:00 A.M. at:

Mary G. Roebing Building
20 West State Street
Conference Rooms 219 and 220—Second Floor
Trenton, New Jersey

Submit written comments by September 30, 1994 to:

Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
CN-328
Trenton, New Jersey 08625-0328

The agency proposal follows:

Summary

This proposed new rule is similar in purpose to a rule which was originally proposed on May 17, 1993 in 25 N.J.R. 1948(a). After reviewing the numerous comments on the original proposal received from real estate licensees and other interested parties and after further deliberation on the issue of consumer disclosure, the Commission has decided to make several substantive changes to the original proposal which has resulted in the current proposed rule. A public hearing was held before the full Commission on July 8, 1993 covering the original proposal. The record of that hearing may be inspected by contacting Robert J. Melillo at the address for public comments above.

Like its predecessor, the new proposed rule would require real estate licensees to give to their prospective clients or customers a copy of a Consumer Information Statement, the text of which is prescribed in subsection (h) of the rule. The statement describes the types of agency relationships a licensee may engage in when working as a real estate professional. The point in time at which licensees would be required to deliver the statement to prospective clients and customers is set out in detail in the rule. It is intended that the statement be delivered as early in the course of dealing between licensees and prospects as possible, and, in any event, no later than when a prospect begins to explore his or her specific real estate needs with the licensee.

The proposed rule also requires licensees to include a written acknowledgement that the Consumer Information Statement was previously delivered in all brokerage agreements, as well as in all offers, contracts and leases which the licensee prepares. Licensees may also choose to add an acknowledgement at the bottom of the Consumer Information Statement itself to be signed and dated at the time it is delivered to the prospect. Where contracts of sale are fully executed or a rental transaction is consummated, all documents containing an acknowledgement of delivery of the Consumer Information Statement to the parties are to be maintained as business records in accordance with N.J.A.C. 11:5-1.12(c) and (d).

The proposed rule also would require licensees to declare the type of agency relationship they intend to create with their principals in all brokerage agreements. Once services have been rendered, and an offer, contract or lease is presented to the principal, a similar declaration would appear in those documents. In that way, individuals would be given agency information not only at the start of their business relationship with licensees but also at the time a real estate transaction is entered into by the parties. Exclusive of this requirement, licensees may choose to include an agency declaration on the Consumer Information Statement itself at the time the statement is delivered to prospects.

The language of the proposed rule cautions licensees that the purpose of the Consumer Information Statement is to provide basic, introductory information to the public, not a comprehensive explanation of agency law. Moreover, in the case where a licensee intends to act as a dual agent, he or she should not presume that full compliance with the rule will constitute full and adequate disclosure for the purpose of obtaining the informed consent of the parties to act as a dual agent, to the satisfaction of a court of law or the Commission. For this reason, all licensees are encouraged to explore additional ways of explaining to their principals the nature of their business relationship.

Non-residential sale and lease transactions are totally exempt, and residential rental transactions with a specified term of less than 90 consecutive days are partially exempt from the disclosure requirements of this rule. However, residential rental listing agreements whose terms are for 90 consecutive days or more are not exempt from the disclosure requirements with respect to landlords, even if the tenancies to be sought are for terms of less than 90 days.

Social Impact

The adoption of this proposed new rule will have a favorable social impact upon the real estate buying, selling and leasing public. In recent years several studies have demonstrated that many buyers and sellers of real estate do not understand who a real estate licensee is representing as an agent in a typical residential transaction. Sellers have often believed that a licensee working with a buyer actually represented that buyer as their agent, when legally the licensee was working as a sub-agent of the seller, in cooperation with the seller's listing broker. Similarly, many buyers have mistakenly assumed that the licensee who showed them available properties and assisted them in the submission of an offer was representing them as an agent, when he or she was in fact operating as an agent of the seller. The intended effect of this rule is to educate the public about the various business relationships which real estate licensees may engage in. This will be done by requiring licensees to supply the prescribed "Consumer Information Statement" to prospective or actual buyers, sellers, lessors and lessees during the early stages of their dealing with these individuals. Moreover, by requiring a declaration of agency in all brokerage agreements and in all offers, contracts and leases prepared by licensees, the rule will help insure that members of the public will be adequately informed of the true nature of their relationship with the licensee's firm before they formally enter into a real estate agreement or transaction. By adopting this rule, the incidence of the problems which ensue from parties proceeding on the basis of erroneous assumptions about the capacity in which a licensee is acting in a given transaction will be reduced.

Economic Impact

The adoption of this proposed rule will have a substantial and beneficial economic impact upon members of the public who buy, sell and lease real estate through New Jersey real estate licensees. Buyers and lessees who acted upon a mistaken belief regarding the roles of real estate licensees in sale and lease transactions may have paid more than a seller or lessor would have accepted, believing that information they confided to the licensee assisting them would not be passed along to the other party. At the same time, many owners who employ licensees to represent them do not realize that when a licensee acts as an agent

of an owner, he or she has an absolute legal duty and fiduciary obligation to convey information about potential buyers to his or her principal. Clarifying the nature of agency relationships at an early stage in the course of dealings between licensees and the public will result in fewer statements being made based upon erroneous assumptions. The bargaining process between better-informed parties to real estate transactions is more likely to create a mutually beneficial result which will have a positive economic impact on all persons involved in real estate transactions. Further, the adoption of the new rule should reduce the potential for lawsuits against licensees based upon an aggrieved party alleging that he or she acted upon a mistaken belief as to the role of the licensee in the transaction.

Regulatory Flexibility Analysis

This proposed new rule imposes recordkeeping and compliance requirements upon the approximately 6,000 real estate brokerage firms licensed by the Commission, most of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. The requirements are that licensees provide the Consumer Information Statement as set forth in the rule, comply with the relationship disclosure provisions and maintain copies of Consumer Information Statements which contain an acknowledgement of delivery and all written agreements as business records. Because licensees are currently required by rule to maintain copies of their listing and brokerage agreements and of all offers, contracts and leases they prepare, pursuant to N.J.A.C. 11:5-1.12, it is estimated that any additional compliance costs to licensees will be minimal. In addition, it is only those licensees who choose to include an acknowledgement of its delivery on the Consumer Information Statement itself who must comply with the requirement that copies of such statements which have been signed by persons who become parties to fully executed contracts of sale or consummated rental transactions be maintained as business records. It is unlikely that any professional service will be needed to comply with these requirements.

Compliance costs will consist of duplicating the Consumer Information Statement forms and altering current brokerage agreement and offer, contract and lease forms to include the acknowledgement of receipt language and the text declaring what type of business relationship is intended or currently exists between the licensee and their principal. These costs will be determined to a certain extent by the volume of business a firm does, which may or may not correspond to the size of the firm. However, once the required language is incorporated in the forms and licensees adjust their brokerage presentations to include delivery of the Consumer Information Statement to prospective buyers or sellers, or lessors and lessees, consumer disclosure will impose a minimal burden on licensees' daily practice.

Because the rule is intended to serve as a means to educate the public, the public welfare would be endangered if an exemption were created for firms of a certain size, or smaller. Clearly, members of the public who deal with smaller firms may be just as confused and just as much in need of information about the roles of real estate licensees as agents as are persons who deal with larger firms.

Full text of the proposed new rule follows:

11:5-1.43 Consumer Information Statement

(a) As used in this section, the following terms or phrases shall have the following meanings indicated:

1. "Brokerage agreement" means a written agreement between a brokerage firm and a party describing the terms under which that firm will perform brokerage services as specified in N.J.S.A. 45:15-3. Brokerage agreements include, but are not limited to, sale and rental listing agreements, buyer-broker, lessee-broker, transaction broker, and dual agency agreements.

2. "Brokerage firm" means a licensed corporate, partnership or sole proprietor broker, and all individuals licensed with that broker.

3. "Informed consent to dual agency" means the written authorization by a party for the brokerage firm which represents them as their agent in a real estate transaction to also represent the other party to that transaction as an agent. Informed consent can only be obtained after the brokerage firm has disclosed to the consenting party all facts which might impact on that party's decision to authorize dual agency, including the extent of the conflicts of interests involved and the specific ways in which each consenting party will receive less than full agency representation from the dual

agent. In order to obtain informed consent it is also necessary for the licensee to first advise the consenting party of the alternatives to dual agency which are available to that party.

4. "Party" shall mean actual or prospective sellers, lessors, buyers or lessees of an interest in real estate.

5. "Short term rental" shall mean the rental of a residential property for not more than 90 consecutive days, under the terms of an oral rental agreement or written lease which contains a specific termination date. Month-to-month tenancies are not considered short term rentals.

6. "Transaction broker" shall mean a brokerage firm which works with both parties in an effort to arrive at an agreement on the sale or rental of real estate and facilitates the closing of a transaction, but does not represent either party, and has no agency relationship with either party to the transaction. The New Jersey Real Estate License Law, N.J.S.A. 45:15-1 et seq., and the administrative rules promulgated thereunder do not mandate that licensees must act as agents when rendering real estate brokerage services.

(b) Prior to acting as a dual agent, a brokerage firm must have the written informed consent of the parties to the transaction. It is not the purpose of (e) through (k) below to provide brokerage firms with a means through which they may secure evidence of having acquired the written informed consent of the parties to act as a dual agent.

(c) Licensees shall supply information with regard to their working relationship with parties to real estate transactions as provided in this section.

(d) Licensees shall comply with all requirements of this section when involved in:

1. Transactions which involve the sale of residential real estate containing one to four dwelling units or the sale of vacant one-family lots;

2. Residential lease transactions other than short term rentals. However, in short-term rental transactions, licensees shall include in all leases prepared by them a statement indicating that they are acting in the transaction either as an agent of the landlord, an agent of the tenant, a disclosed dual agent or a transaction broker; and

3. The securing of listing agreements which have terms of more than 90 days, even if the brokerage firm is retained to secure short-term rentals of the property which is the subject of the rental listing agreement.

(e) All licensees shall supply information on business relationships to buyers and sellers in accordance with the following:

1. With respect to buyers:

i. All licensees shall verbally inform buyers of the four business relationships described in this section prior to the first discussion at which a buyer's motivation or financial ability to buy is discussed.

ii. If the first such discussion occurs during a business meeting on the buyer's real estate needs, licensees shall deliver the written Consumer Information Statement to the buyers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the buyer of the four business relationships, deliver the written Consumer Information Statement to the buyer at their next meeting. However, if prior to their first business meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the buyer, the Consumer Information Statement shall be included with such material.

iii. In cases where there have been no discussions on motivation or financial ability to buy prior to the first showing, licensees shall deliver the statement no later than the first showing.

iv. Those licensees who intend to enter into a buyer-brokerage relationship with such persons shall deliver the Consumer Information Statement no later than the commencement of their buyer-brokerage agreement presentation.

2. With respect to sellers:

i. All licensees shall verbally inform sellers of the four business relationships described in this section prior to the first discussion at which the seller's motivation or desired selling price is discussed.

ii. If the first such discussion occurs during a business meeting on the seller's real estate needs, licensees shall deliver the written

Consumer Information Statement to the sellers prior to such a discussion. If the first such discussion is telephonic or in a social setting, licensees shall, after having verbally informed the buyer of the four business relationships, deliver the written Consumer Information Statement to the seller at their next meeting. However, if prior to their first business meeting after such a discussion, any material is mailed, faxed or delivered by the licensee to the seller, the Consumer Information Statement shall be included with such material.

iii. On unlisted properties, absent any discussions prior to their first showing of the property, all licensees shall deliver the statement no later than their first showing of the property.

(f) The purpose of (e) and (h) above is to require licensees to provide basic and introductory information to the public in a convenient and consistent manner. The information to be provided is not a comprehensive explanation of agency law.

(g) The statement as supplied by the Commission shall be reproduced and delivered by licensees as required in this section as a separate item, with no deletions or additions.

1. Brokerage firms may acknowledge delivery of the Statement by procuring the signature of the party to whom it was delivered and the date of delivery in the appropriate place at the bottom of the Statement.

2. Brokerage firms may also indicate on the Statement the capacity in which they intend to work with the party to whom they deliver the Statement.

3. Regardless of whether brokerage firms choose to include on the Statement the additional information referred to in (g)1 and 2 above, all brokerage firms, as is required by (k) below, shall:

- i. Indicate in all brokerage agreements the business relationship they intend to have with the other party to the agreement; and
- ii. Indicate in all offers, contracts, or leases prepared by licensees the business relationship the firm has with respect to the parties named in those documents.

(h) The mandatory text of the Consumer Information Statement to be delivered by licensees as provided in (e) above is as follows:

CONSUMER INFORMATION STATEMENT

1. AS A SELLER'S AGENT OR SUBAGENT, I REPRESENT THE SELLER AND ALL INFORMATION SUPPLIED TO ME BY THE BUYER WILL BE TOLD TO THE SELLER.

2. AS A BUYER'S AGENT, I REPRESENT THE BUYER AND ALL INFORMATION SUPPLIED TO ME BY THE SELLER WILL BE TOLD TO THE BUYER.

3. AS A DISCLOSED DUAL AGENT, I REPRESENT BOTH PARTIES. HOWEVER, I MAY NOT, WITHOUT EXPRESS PERMISSION, DISCLOSE THAT THE SELLER WILL ACCEPT A PRICE LESS THAN THE LISTING PRICE OR THAT THE BUYER WILL PAY A PRICE GREATER THAN THE OFFERED PRICE.

4. AS A TRANSACTION BROKER, I DO NOT REPRESENT EITHER THE BUYER OR THE SELLER. ALL INFORMATION I ACQUIRE FROM ONE PARTY MAY BE TOLD TO THE OTHER PARTY.

In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction. (In rental transactions, the terms "buyers" and "sellers" should be read as "tenants" and "landlords," respectively.)

There are several types of business relationships that are possible and you should understand these before a licensee provides specific assistance to you in buying or selling real estate. These are (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) transaction broker. Each of these relationships imposes certain legal duties and responsibilities on the licensee as well as on the seller or buyer represented. These four relationships are defined in greater detail below. Please read carefully before making your choice.

SELLER'S AGENT

A seller's agent **WORKS ONLY FOR THE SELLER** and has legal obligations, called fiduciary duties, to the seller. These include reasonable care, undivided loyalty, confidentiality and full disclosure. Seller's agents often work **with** buyers, but do not represent the buyers. However, in working with buyers a seller's agent must act honestly. In dealing with both parties, a seller's agent may not make any misrepresentations to

either party on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

Seller's agents include all persons licensed with the brokerage firm which has been authorized through a listing agreement to work as the seller's agent. In addition, other brokerage firms may accept an offer to work with the listing broker's firm as the seller's agents. In such cases, those firms and all persons licensed with such firms, are called "sub-agents". Sellers who do not desire to have their property marketed through sub-agents should so inform the seller's agent.

BUYER'S AGENT

A buyer's agent **WORKS ONLY FOR THE BUYER**. A buyer's agent has fiduciary duties to the buyer which include reasonable care, undivided loyalty, confidentiality and full disclosure. However, in dealing with sellers a buyer's agent must act honestly. In dealing with both parties, a buyer's agent may not make any misrepresentations on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

A buyer wishing to be represented by a buyer's agent is advised to enter into a separate written buyer agency contract with the brokerage firm which is to work as their agent.

DISCLOSED DUAL AGENT

A disclosed dual agent **WORKS FOR BOTH THE BUYER AND THE SELLER**. To work as a dual agent, a firm must first obtain the **informed written consent** of the buyer and the seller. Therefore, before acting as a disclosed dual agent, brokerage firms must make written disclosure to both parties. Disclosed dual agency is most likely to occur when a licensee with a real estate firm working as a buyer's agent shows the buyer properties owned by sellers for whom that firm is also working as a seller's agent or subagent.

A real estate licensee working as a disclosed dual agent must carefully explain to each party that, in addition to working as their agent, their firm will also work as the agent for the other party. They must also explain what effect their working as a disclosed dual agent will have on the fiduciary duties their firm owes to the buyer and to the seller. When working as a disclosed dual agent, a brokerage firm must have the express permission of a party to disclose confidential information to the other party. Such information includes the highest price a buyer can afford to pay and the lowest price a seller will accept and the parties' motivation to buy or sell. Remember, a brokerage firm acting as a disclosed dual agent will not be able to put one party's interests ahead of those of the other party and cannot advise or counsel either party on how to gain an advantage at the expense of the other party.

If you decide to enter into an agency relationship with a firm which is to work as a disclosed dual agent, you are advised to sign a written agreement with that firm which clearly states what that firm will and will not do to protect your interests and how and by whom that firm will be paid.

TRANSACTION BROKER

A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone. The New Jersey Real Estate Licensing Law does not require licensees to work in the capacity of an "agent" when providing brokerage services. A **TRANSACTION BROKER DOES NOT PROMOTE THE INTERESTS OF ONE PARTY OVER THOSE OF THE OTHER PARTY TO THE TRANSACTION**. Licensees with such a firm would be required to treat all parties honestly and to act in a competent manner, but they would not be required to keep confidential any information. A transaction broker can locate qualified buyers for a seller or suitable properties for a buyer. They can then work with both parties in an effort to arrive at an agreement on the sale or rental of real estate and perform tasks to facilitate the closing of a transaction. A transaction broker primarily serves as a manager of the transaction, communicating information between the parties to assist them in arriving at a mutually acceptable agreement and in closing the transaction, but cannot advise or counsel either party on how to gain an advantage at the expense of the other party. Owners considering working with transaction brokers are advised to sign a written agreement with that firm which clearly states what services that firm will perform and how it will be paid. In addition, any transaction brokerage agreement with a seller or landlord should

INSURANCE

specifically state whether a notice on the property to be rented or sold will or will not be circulated in any or all Multiple Listing System(s) of which that firm is a member.

YOU MAY OBTAIN LEGAL ADVICE ABOUT THESE BUSINESS RELATIONSHIPS.

THIS STATEMENT IS NOT A CONTRACT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

(END OF CONSUMER INFORMATION STATEMENT TEXT)

(OPTIONAL ACKNOWLEDGEMENT OF RECEIPT AFTER TEXT OF CIS)

FOR SELLERS AND LANDLORDS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation to sell or lease or my desired selling or leasing price with one of its representatives."

FOR BUYERS AND TENANTS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from (Name of Brokerage Firm) prior to discussing my motivation or financial ability to buy or lease with one of its representatives."

(i) A statement acknowledging receipt of the Consumer Information Statement shall be included in all brokerage agreements. In addition, all offers, contracts, or leases not exempt by this section which are prepared by licensees shall include the following statements:

By signing below the sellers (or landlords, as applicable) acknowledge that, prior to or at the first meeting at which their motivation to sell or their desired price was discussed, they received from a representative of **(the real estate firm participating in the transaction which first supplied the statement to the sellers)** a Consumer Information Statement as required by New Jersey Real Estate Commission rule N.J.A.C. 11:5-1.43.

By signing below the purchasers (or tenants, as applicable) acknowledge that, prior to or at the first meeting at which their motivation or financial ability to buy was discussed, they received from a representative of **(the real estate firm participating in the transaction which first supplied the statement to the purchasers)** a Consumer Information Statement as required by New Jersey Real Estate Commission rule N.J.A.C. 11:5-1.43.

(j) Copies of Consumer Information Statements on which receipt has been acknowledged, as set forth in (g)1 above, shall be maintained for six years as business records in accordance with N.J.A.C. 11:5-1.12(c) on transactions which result in fully executed contracts of sale or consummated rental transactions.

(k) Licensees shall disclose to consumers what type of brokerage services they will provide in the following manner:

1. Buyer-brokers shall verbally disclose to sellers that they are acting on behalf of a buyer prior to their first communication with the seller during which the seller's motivation to sell or desired price is discussed.

2. In all brokerage agreements, licensees shall include a declaration of agency indicating the regular business name of the broker with whom they are licensed and in what capacity they and their firm will operate as real estate licensees with respect to the other party to the brokerage agreement. The declaration of agency in all brokerage agreements shall contain, in print larger than the predominant size print in the writing, the following language:

PROPOSALS

I, _____, as an authorized representative of
(Name of licensee)

_____, intend, as of this time, to work with you as
(Name of firm)

(indicate one of the following)

- seller's agent only
- buyer's agent only
- seller's agent and disclosed dual agent if the opportunity arises
- buyer's agent and disclosed dual agent if the opportunity arises
- transaction broker

3. In all offers, contracts, or leases, including leases for short-term rentals, prepared by licensees as permitted by N.J.A.C. 11:5-1.16(g), licensees shall include the regular business name of the broker with whom they are licensed and a declaration of agency indicating in what capacity they and their firm are operating as real estate licensees in that real estate transaction. The declaration of agency in all offers to purchase or to lease property, including those made on contracts of sale or lease documents prepared by licensees, shall contain, in print larger than the predominant size print in the writing, the following language:

I, _____, as an authorized representative of
(Name of licensee)

_____, am working in this transaction as
(Name of firm)

(indicate one of the following:)

- seller's agent only
- buyer's agent only
- disclosed dual agent
- transaction broker

(l) Licensees shall disclose to other licensees what type of business relationship they have with the party with whom they have a brokerage agreement, and with any other parties with whom they may be working, in the following manner:

1. In all notices circulated through a Multiple Listing Service or otherwise to licensees with other firms, the listing broker shall indicate whether they are working as a seller's agent or as a transaction broker. On listings where the listing broker is operating as a seller's agent, such notices shall also state:

- i. Whether subagency is offered;
- ii. Whether the seller has authorized the sharing of the listing broker's compensation with cooperating subagents and/or transaction brokers and/or buyer/brokers; and
- iii. The amount of compensation offered to cooperating subagents and/or transaction brokers and/or buyer brokers.

2. When a licensee with a listing broker receives an inquiry about a particular property from any other licensee, the licensee with the broker shall, before providing any information to the inquiring licensee beyond general information previously circulated about the listing, verbally ascertain from the inquiring licensee the capacity in which that licensee is operating or intends to operate (buyer-broker, subagent, disclosed dual agent or transaction broker). Inquiries from other licensees in the listing broker's firm shall also be responded to as set forth in this subsection.

(m) In transactions where brokers represent a party and seek compensation for their brokerage services from a party to the transaction whom they do not represent, the agency relationship with the party they represent and the compensation arrangement shall also be disclosed to both parties as required by N.J.A.C. 11:5-1.38.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD**Small Employer Health Benefits Program Carriers Acting as Administrators for Small Employers****Proposed Amendment: N.J.A.C. 11:21-7.4**

Authorized By: New Jersey Small Employer Health Benefits Program Board, Maureen E. Lopes, Chair.

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51 and P.L. 1994, c.11.

Proposal Number: PRN 1994-448.

Submit written comments by July 25, 1994 to:

Kevin O'Leary, Executive Director
New Jersey Small Employer Health Benefits Program
20 West State Street, 10th Floor
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment is being promulgated in accordance with N.J.S.A. 17B:27A-51, which provides a special procedure whereby the Small Employer Health Benefits Program ("SEH") Board may adopt certain actions. Pursuant to this procedure, the Board is required to publish notice of its intended action in three newspapers of general circulation, which notice shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views regarding the intended action. Notice of the intended action also is required to be sent to affected trade and professional associations, carriers, and other interested persons who may request such notice.

Concurrently, the Board is required to forward the notice of the intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board must provide a minimum 20-day period for all interested persons to submit their written comments on the intended action to the Board. The Board may adopt its intended action immediately upon the close of the specified comment period by submitting the adopted action to the OAL. If the Board elects to adopt the action immediately upon the close of the comment period, it shall nevertheless respond to the comments timely submitted within a reasonable period of time thereafter. The Board shall prepare a report for public distribution, and publication by the OAL in the New Jersey Register. The report shall include the list of commenters, their relevant comments and the Board's responses. Due to the expedited nature of this process, a proposed rule may have been adopted before it appears as a proposal in the New Jersey Register.

The Board proposes amending N.J.A.C. 11:21-7.4 to address situations in which a small employer carrier provides stop loss or excess risk insurance for a small employer's self-funded health plan and an affiliate or subsidiary of the carrier acts as a third party administrator of the plan. The Board believes that N.J.S.A. 17B:27A-17 et seq. ("the SEH Act") was clearly intended to prevent a carrier from circumventing the SEH Act by having a role in both providing reinsurance to, and administering, a self-funded small employer plan that does not conform with the requirements of the SEH Act. As proposed, N.J.A.C. 11:21-7.4 would be amended to prohibit a carrier, its affiliates or subsidiaries, or other persons or entities with whom the carrier has a contractual relationship with respect to that small employer's self-funded plan, from providing administrative services and stop loss or excess risk insurance to a small employer's self-funded plan.

Social Impact

The proposed amendment to N.J.A.C. 11:21-7.4 will affect certain carriers that issue stop loss or excess risk insurance to cover self-funded small employer plans and provide third party administrator services for those plans through affiliates, subsidiaries, or third persons or entities with whom the carrier has a contractual relationship. Such carriers will be required to cease offering either the excess risk insurance or the third party administrator services to the small employers upon the effective date of the amended rule. To the extent the change in this rule affects existing contracts, it is the SEH Board's intention that the carrier be

permitted to continue the arrangement until the renewal date of the small employer's contract, not to exceed one year after the effective date of the final rule.

The amended rule will ensure the integrity of the small employer health insurance market, by prohibiting carriers from circumventing the various reforms enacted by P.L. 1992, c.162, P.L. 1993, c.162, and P.L. 1994, c.11 by providing both stop loss coverage and third party administrator services to a small employer.

Economic Impact

The proposed amendments to N.J.A.C. 11:21-7.4 will have an economic impact on certain carriers that issue stop loss or excess risk insurance to self-funded small employer plans and provide third party administrator services through affiliates, subsidiaries, or third persons with whom the carriers have contractual relationships. Such carriers will be required to stop offering such arrangements and cease renewing existing contracts on their first anniversary date occurring after the effective date of the amended rule. Such carriers may, instead, offer to small employers health benefits plans that conform with the SEH Act.

Small employers that contracted with a single carrier for both excess or stop loss coverage and third party administrative services may or not experience an economic impact as a result of the amended rule. Such employers may purchase reinsurance from a carrier and contract with a third party administrator that is not an affiliate, subsidiary, or party to a contract with that carrier. Such employers also may purchase small employer health benefits plans.

Regulatory Flexibility Statement

The proposed amendment to N.J.A.C. 11:21-7.4 is a clarification of an existing prohibition in the SEH Act and would prohibit a carrier from circumventing the insurance reforms by offering to small employers both excess or stop loss insurance and administrative services in conjunction with an affiliate, subsidiary, or person or entity with whom the carrier has a contractual relationship. As a prohibition on conduct, the proposed amendment does not require carriers to do anything and, therefore, does not impose an administrative or reporting burden on them.

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

11:21-7.4 Carriers acting as administrators for small employers

(a) A small employer carrier, **its affiliate or subsidiary, or entity or person with whom the small employer carrier has a contractual relationship with respect to a small employer's self-funded plan**, may act as administrator for a small employer's self-funded plan and shall not be considered to be acting in circumvention of N.J.S.A. 17B:27A-17 et seq. if:

1. The small employer's self-funded plan meets the definition of an employee welfare benefit plan at [26] **29** U.S.C. 1002(1) and is not a multiple employer welfare arrangement, in whole or in part, as defined at [26] **29** U.S.C. 1002(40); and

2. [The] **Neither the carrier nor its affiliate, subsidiary, nor an entity or person with whom the small employer carrier has a contractual relationship with respect to a small employer's self-funded plan**, [does not issue] issues stop loss or excess risk insurance to the small employer.

(b) A small employer carrier, **its affiliate or subsidiary, or an entity or person with whom the small employer carrier has a contractual relationship with respect to a small employer's self-funded plan**, may act as administrator for a self-funded plan for a group of small employers and shall not be considered to be acting in circumvention of N.J.S.A. 17B:27A-17 et seq., if:

1. The group of small employers meets the requirements of [26] **29** U.S.C. 1002[(4)](40)(B), establishing the criteria of what constitutes a control group single employer for the purposes of the [federal] Federal Employee Retirement Income Security Act; and

2. [The] **Neither the small employer carrier nor its affiliate, subsidiary, nor an entity or person with whom the small employer carrier has a contractual relationship with respect to a small employer's self-funded plan**, [does not issue] issues stop loss or excess risk insurance to the small employer.

(a)

SMALL EMPLOYER HEALTH BENEFITS PROGRAM**Nonstandard Health Benefit Plan Filings with the Commissioner: Form Filings and Requests to Withdraw Plan Forms****Informational Rate Filing Requirements Pursuant to the Small Employer Health Benefits Program Declaration and Approval of Reinsuring or Risk-Assuming Carrier Status****Withdrawals of Small Employer Carriers from the Small Employer Health Benefits Plan Market****Proposed New Rules: 11:21-11 and 16.7 and Exhibit BB, Parts 3 and 4****Proposed Amendments: N.J.A.C. 11:21-9.1, 9.2, 9.3, 9.4, 14.2, 14.4, 14.5, 16.2, 16.3, 16.4, Exhibit U, Parts 1 and 3, and Exhibit BB, Part 1**

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:27A-17 et seq., P.L. 1994, c.11.

Proposal Number: PRN 1994-445.

Submit written comments by August 31, 1994 to:

Donald Bryan, Acting Assistant Commissioner
Division of Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
20 West State Street
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

On April 4, 1994, P.L. 1994, c.11 ("Chapter 11") was enacted, amending the statutes, N.J.S.A. 17B:27A-17 et seq., which established the Small Employer Health Benefits ("SEH") Program. These proposed new rules and amendments are intended to set forth procedures and standards for effectuating some of the provisions applicable to carriers and associations, multiple employer arrangements and out-of-state trusts ("multiple group arrangements") arising under Chapter 11, as well as implementing some of the provisions applicable to the Department of Insurance ("Department").

Among other things, Chapter 11: (a) requires carriers and multiple group arrangements to reinstate health benefits plans issued prior to January 1, 1994 (that is, health benefits plans that were not designed by the SEH Board of Directors and approved by the Commissioner of Insurance pursuant to N.J.S.A. 17B:27A-33, or "nonstandard health benefits plans") upon the request of a small employer policy or contract holder, if such nonstandard health benefits plans were nonrenewed between March 1 and April 4, 1994, and if they are brought into compliance with N.J.S.A. 17B:27A-18, 19b, 22, 23, 24, 25 and 27; (b) requires carriers and multiple group arrangements to continue and renew nonstandard health benefits plans upon the request of a small employer for a period of time; (c) allows multiple group arrangements to continue issuing nonstandard health benefits plans to small employer members for a period of time; (d) requires that any nonstandard health benefits plan reinstated, continued or renewed be brought into compliance with certain provisions of N.J.S.A. 17B:27A-17 et seq. (namely, those provisions governing guaranteed issuance, guaranteed renewability, preexisting condition exclusions, continuation, participation and contribution requirements, and rates); (e) prohibits carriers and multiple group arrangements from withdrawing nonstandard health benefits plans without the prior approval of the Department; and (f) requires that all nonstandard health benefits plans renewed, continued or reinstated be filed with the Department.

Chapter 11 provides for a new period during which carriers may apply or re-apply to be a risk-assuming carrier, notwithstanding any previous affirmative or deemed election. It also continues to provide that carriers that affirmatively elect or are deemed to have elected to become reinsuring carriers during this new election period will be bound by this election for only two years, rather than five years.

Chapter 11 further allows for the sale of hospital confinement or other supplemental limited benefit insurance to small employers under certain circumstances. However, it requires that such insurance comply with the same rating requirements as apply to health benefits plans subject to N.J.S.A. 17B:27A-17 et seq.

Chapter 11 provides that the Department shall: (a) monitor compliance of carriers and multiple group arrangements in amending their nonstandard health benefits plans to conform with the specified provisions of N.J.S.A. 17B:27A-17 et seq.; and (b) not approve withdrawal of a nonstandard health benefits plan unless its retention presents a substantial threat to the financial condition of a carrier.

Additionally, in order to effectuate the provisions of Chapter 11, and coordinate with new rules and amendments promulgated by the SEH Board of Directors, the Department must amend certain of its other SEH Program-related rules. Among other things, the Department is proposing a new rule at 11:21-16.7, providing carriers that heretofore had filed an intention to withdraw from the small employer market an opportunity and method for "re-entering" the small employer market. The Department anticipates that with the changes brought about by P.L. 1994, c.11, certain carriers may desire to halt any withdrawal.

Proposed N.J.A.C. 11:21-11, Nonstandard Health Benefits Plan Filings with the Commissioner: Form Filings and Requests to Withdraw Plan Forms, sets forth procedures for submitting a request to withdraw a nonstandard health benefits plan form from the small employer market, and the standards for review of the request. It will be noted that the standards for requesting and reviewing a request to withdraw a nonstandard health benefits plan are substantially similar to those for requesting relief from other obligations under the SEH Program (see N.J.A.C. 11:21-15).

Proposed N.J.A.C. 11:21-11 also establishes criteria for making nonstandard health benefits plan form filings with the Department. The new rules include certifications of compliance that carriers and multiple group arrangements must submit, affirming that the nonstandard health benefits plans will be brought into compliance with the specified provisions of N.J.S.A. 17B:27A-17 et seq. The certifications are proposed as new Part 3 and Part 4 of Exhibit BB in the Appendix to the chapter. Proposed Exhibit BB, Part 3 is designed to be used when a nonstandard health benefits plan has previously been filed with the Department. Proposed Exhibit BB, Part 4 is designed to be used when a nonstandard health benefits plan has never been filed with the Department.

Proposed amendments to N.J.A.C. 11:21-9, Informational Rate Filing Requirements Pursuant to the Small Employer Health Benefits Program, are generally of two types. First, the proposed amendments expand the scope of applicability of the subchapter to nonstandard health benefits plans, and supplemental limited benefit insurance. Second, the proposed amendments attempt to coordinate the information to be filed with the restricted rating criteria authorized by Chapter 11, and specified by the SEH Board of Directors at N.J.A.C. 11:21-7.15. Additionally, the proposed amendments clarify that the same information is required to be submitted with respect to all riders which may be offered with those health benefits plans designed by the SEH Board of Directors.

Proposed amendments to N.J.A.C. 11:21-14, Declaration and Approval of Reinsuring or Risk-Assuming Carrier Status, specifically N.J.A.C. 11:21-14.2 and 14.4, implement procedures for carriers to make an election to be a risk-assuming or reinsuring carrier. The proposed amendments specify that an election made or deemed to have been made for reinsuring carrier status pursuant to the provisions of P.L. 1994, c.11, §6 will be binding for a two year period, effective beginning with the 1994 calendar year, notwithstanding any previous affirmative or deemed election. It should be noted that because the adoption of these proposed rules is likely to occur sometime after the end of the 60-day period specified at P.L. 1994, c.11, §6, the Department is accepting declarations and applications subsequent to the 60-day period, so long as such declarations are received no later than 30 days following the effective date of these proposed rule amendments (that is, within 30 days following the date that the adoption is published in the New Jersey Register).

Additionally, the proposed amendment to N.J.A.C. 11:21-14.5 revises the actuarial opinion requirement for the risk-assuming application.

Proposed amendments to N.J.A.C. 11:21-16.2, 16.3 and 16.4 are designed to better coordinate this subchapter with the concepts of Chapter 11, recognizing that nonstandard health benefits plans may continue to be in force, and in some instances marketed, for several more years. Additionally, amendments to N.J.A.C. 11:21-16.2 are intended to remove redundancies with N.J.A.C. 11:21-1. Thus, when common definitions

require amendments in the future, the Board and Department will not need to amend definitions in various places throughout the rules.

Proposed new N.J.A.C. 11:21-16.7 sets forth procedures and standards for the revocation of an intent to totally withdraw from the small employer market. The Department recognizes that with the enactment of Chapter 11—allowing carriers to continue servicing nonstandard health benefits plans, and to design their own riders (with certain limitations) for the health benefits plans established by the SEH Board of Directors—certain carriers that previously submitted an intent to withdraw may no longer desire to pursue their withdrawal action. The Department has no objection to a carrier halting its withdrawal so long as an affirmative written notice of that fact is provided to the Department, the carrier understands and agrees to abide by the requirements of N.J.S.A. 17B:27A-17 et seq. (including the requirement to issue the SEH Board's health benefits plans), and no small employer is treated in a discriminatory manner. Proposed N.J.A.C. 11:21-16.7 sets forth the requirement that carriers must certify that they will comply with N.J.S.A. 17B:27A-17 et seq., all amendments thereto and rules promulgated thereunder by both the SEH Board and the Department.

Amendments to Exhibit U, Parts 1 and 3 ("Reinsuring Carrier Declaration" and "Risk-Assuming Carrier Application," respectively) are being proposed to assure that the declaration and application forms properly reflect the proposed amendments to N.J.A.C. 11:21-14 and the provisions of Chapter 11.

Social Impact

These proposed new rules and amendments establish procedures for assuring orderly compliance with, and thereby implementing, many of the provisions of Chapter 11. Notwithstanding that Chapter 11 is intended to afford many protections to small employers, multiple group arrangements and carriers in the transition to a more standardized market with community rating, it may have created substantial confusion for the marketplace as well. These proposed new rules and amendments attempt to address some of these concerns.

The proposed new rules clarify which entities must comply with filing and withdrawal requirements, as well as those health benefits plans subject to such requirements. The proposed new rules also establish a procedure for revoking a market withdrawal, given changes in the law which may make the small employer market more attractive to carriers. These procedures are intended to allow carriers to remain in the market without penalty, but also to avoid allowing such carriers to manipulate their market populations in a manner adverse to other carriers and the consumer.

The proposed amendments establish a procedure allowing carriers to reconsider their status in relation to the SEH Program "reinsurance" mechanism, in light of changes in relevant provision in the law. This will benefit carriers. Further, the proposed new rules clarify procedures and standards for withdrawal of a specific health benefits plan, affording protections to carriers and consumers alike.

Economic Impact

These proposed new rules and amendments will have some economic impact upon carriers and multiple group arrangements, though the impact for most parties involved should be minimal. All carriers and multiple group arrangements will incur an administrative cost for filing their rates and health benefits plan certifications of compliance and the necessary plan amendments. These costs are unavoidable. Additionally, entities that elect to file for a reinsuring or risk-assuming election, a request to withdraw a nonstandard plan, or a request to withdraw from the small employer market will incur additional filing costs. The Department believes that the economic impact is not unduly burdensome or unwarranted.

Regulatory Flexibility Analysis

These proposed new rules and amendments do establish additional reporting requirements for carriers and multiple group arrangements, as set forth in the Summary above. All carriers and multiple group arrangements subject to these proposed new rules and amendments will incur additional costs for compliance, but, as stated under the Economic Impact above, the costs should be minimal, and essentially are unavoidable. It is not anticipated that outside professional services will be needed for compliance.

These proposed new rules and amendments may affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Notwithstanding that one or more carriers or multiple group arrangements may be small businesses, the Department is not inclined

to relax or otherwise propose different standards for such carriers or multiple group arrangements. The statutes, specifically Chapter 11, presume equal treatment of carriers and multiple group arrangements except in very specific circumstances, and those circumstances are not tied to the size of the carrier or multiple group arrangement, but rather, to certain policyholder rights and expectations, and organizational differences between the various affected entities. In any case, those specific circumstances are not directly affected by these proposed new rules or amendments, since the proposed amendments and new rules merely set forth procedures and standards for implementing various provisions of P.L. 1994, c.11. Different procedures and standards based upon business size would not promote legislative goals or administrative efficiency.

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

SUBCHAPTER 9. [CARRIER'S] INFORMATIONAL RATE FILING REQUIREMENTS [FOR] PURSUANT TO THE SMALL EMPLOYER HEALTH BENEFITS [PLANS] PROGRAM

11:21-9.1 Purpose and scope

(a) The purpose of this subchapter is to establish informational rate filing requirements and procedures [for carriers issuing or renewing small employer] **applicable to health benefits plans, including riders or endorsements, issued, renewed, reinstated or continued pursuant to [N.J.S.A. 17B:27A-25f] the Act, and to all supplemental limited benefit insurance delivered or issued for delivery to a small employer.**

(b) This subchapter applies to all carriers issuing, **renewing, reinstating or continuing** health benefits plans or **supplemental limited benefit insurance** [to small employers] pursuant to the Act.

11:21-9.2 Definitions

[(a)] Words and terms [defined at N.J.S.A. 17B:27A-17 and N.J.A.C. 11:21], when used in this subchapter, shall have the meanings as defined [by the Act or for the chapter] **at N.J.S.A. 17B:27A-17 or N.J.A.C. 11:21-1.2 unless defined below or the context clearly indicates otherwise.**

[1.] "Classification factor" means [any] a factor used [by the carrier] to vary rates based upon characteristics of the employee, employer or policyholder.

"**Health benefits plan**" means **any standard health benefits plan or nonstandard health benefits plan including any rider or endorsement thereto.**

"**Nonstandard health benefits plan**" means **a health benefits plan issued prior to January 1, 1994, which was in effect on February 28, 1994, and which has been reinstated, renewed or continued at the option of a small employer pursuant to the requirements of the Act.**

"**Nonstandard rider**" means **a rider or endorsement developed by a carrier to be offered with one or more of the standard health benefits plans.**

"**Plan**" means **a policy or contract form under which policies, contracts or certificates are issued evidencing benefits for expenses incurred or coverage of services rendered when referring to a type of health benefits plan.**

"**Standard health benefits plan**" means **a health benefits plan promulgated by the SEH Board subject to the review and approval of the Commissioner.**

"**Standard rider**" means **a rider or endorsement promulgated by the SEH Board to be offered with one or more of the standard health benefits plans.**

"**Supplemental limited benefit insurance**" means **coverage that is provided in addition to a health benefits plan, whether as a separate contract, a rider or an endorsement, on an indemnity nonexpense incurred basis, and includes, but is not limited to, a hospital confinement plan.**

11:21-9.3 Informational rate filing requirements for health benefits plans and supplemental limited benefit insurance issued or renewed between January 1, 1994 and January 1, 1997

(a) All carriers issuing **policies, contracts or certificates under standard health benefits plans [pursuant to the Act shall], including**

any standard or nonstandard rider option, on or before the 60th day following the effective date of N.J.A.C. 11:21-7.15, prior to issuing any policy, contract or certificate under such plan, shall file with the Commissioner an informational rate filing which shall include the following data:

- 1.-3. (No change.)
4. A certification signed by a member of the American Academy of Actuaries attesting to the accuracy and completeness of the information provided pursuant to (a)1, 2 and 3 above and of the following information which shall also be included:
 - i.-iv. (No change.)
 - v. For rates to be charged for [new business] policies, contracts or certificates issued or renewed on and after January 1, 1994 through December 31, 1995 [and upon the first anniversary date on and after March 1, 1994 of existing policies or contracts], a statement that the rating classification will not produce rates (for an individual and for each family status) for the highest rated group which are greater than 300 percent of rates (for an individual and for each family status) produced for the lowest rated group for each policy form (plan and deductible);
 - vi. For rates to be charged [beginning on the second policy or contract anniversary dates after the dates established in (a)4v above] for policies, contracts or certificates issued or renewed on or after January 1, 1996 through December 31, 1996, a statement that the rating classification will not produce rates (for an individual and for each family status) for the highest rated group which are greater than 200 percent of rates (for an individual and for each family status) produced for the lowest rated group for each policy form (plan and deductible option);
 - vii. For rates to be charged for policies, contracts or certificates issued or renewed on and after January 1, 1997, a statement that each policy form (plan and deductible option) is community rated for each rating tier (individual, husband/wife, parent/child(ren) and family).

Recodify existing vii. and viii. as viii. and ix. (No change in text.)

(b) All carriers issuing or renewing policies, contracts or certificates under a standard health benefits plan, including any standard or nonstandard rider option, after the sixtieth day following the effective date of N.J.A.C. 11:21-7.15, prior to issuing or renewing any policy, contract or certificate under such plan, shall file with the Commissioner an informational rate filing which shall include the data set forth in (a) above, except that the classification factors utilized in the calculation of a group's premium rate or rates pursuant to (a)4v and vi above shall be limited to age, gender and geography in accordance with N.J.A.C. 11:21-7.15.

(c) All carriers renewing policies, contracts or certificates under a nonstandard health benefits (or issuing policies, contracts or certificates under a nonstandard health benefits plan through an association, multiple employer arrangement or out-of-State trust) after the sixtieth day following the effective date of N.J.A.C. 11:21-7.15, prior to renewing (or issuing) any policy, contract or certificate under such plan, shall file with the Commissioner an informational rate filing which shall include the data set forth in (a) above, except that the classification factors utilized in the calculation of a group's premium rate or rates pursuant to (a)4v and vi above shall be limited to age, gender and geography in accordance with N.J.A.C. 11:21-7.15.

(d) All carriers issuing or renewing policies, contracts or certificates for supplemental limited benefit insurance on or before the sixtieth day following the effective date of N.J.A.C. 11:21-7.15 shall file with the Commissioner an informational rate filing in accordance with (a) above.

(e) All carriers issuing or renewing policies, contracts or certificates for supplemental limited benefit insurance after the sixtieth day following the effective date of N.J.A.C. 11:21-7.15 shall file with the Commissioner an informational rate filing in accordance with (a) above, except that the classification factors utilized in the calculation of a group's premium rate or rates pursuant to (a)4v and vi above shall be limited to age, gender and geography in accordance with N.J.A.C. 11:21-7.15.

[(b)(f)] Any carrier which seeks to change its rates for its [small employer group] health benefits plans or its supplemental limited benefit insurance shall, prior to the effective date of the revised rates, submit to the Commissioner an informational filing which shall include all of the data set forth in (a) above, except that any change in rates intended to occur after the sixtieth day following the effective date of N.J.A.C. 11:21-7.15 shall be filed in compliance with (b), (c) or (e) above, as appropriate.

11:21-9.4 Informational filing procedures

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

(d) If the informational filing is incomplete and not in substantial compliance with the requirements of N.J.A.C. 11:21-9.3, the Commissioner shall provide written notice to the carrier specifying the portions of the filing which are deficient and the information required to be submitted by the carrier. Upon receipt of notice from the Commissioner that the filing for any health benefits plan or supplemental limited benefit insurance is not in substantial compliance, no [insurance] contract, [or] policy or certificate shall [may] be entered into or renewed using the submitted rates. In such event, the carrier may enter into contracts utilizing the submitted rates only when] until the Commissioner has determined that the informational filing is in substantial compliance or complete, and has provided written notice of that fact to the carrier. If the Commissioner takes no action within 30 days of the carrier's submission of information in an effort to render the filing in substantial compliance, the filing shall be deemed to be in substantial compliance.

(e) (No change.)

SUBCHAPTER 11. NONSTANDARD HEALTH BENEFITS PLAN FILINGS WITH THE COMMISSIONER: FORM FILINGS AND REQUEST TO WITHDRAW PLAN FORMS

11:21-11.1 Purpose and scope

(a) This subchapter defines those health benefits plans that were in effect on December 31, 1993 which a carrier, association, multiple employer arrangement or out-of-State trust shall not withdraw with respect to small employer policy or contractholders prior to February 28, 1997, without the approval of the Commissioner in accordance with P.L. 1994, c.11, except as N.J.S.A. 17B:27A-23 may apply.

(b) This subchapter defines those health benefits plans which were in effect on December 31, 1993 and have been or will be renewed, continued or reinstated that shall be filed with the Commissioner for informational purposes in accordance with P.L. 1994, c.11, §3j.

(c) This subchapter establishes the procedures for making a request to the Commissioner to withdraw a nonstandard health benefits plan for reasons other than those specified at N.J.S.A. 17B:27A-23, and the standards for review and approval of the request.

(d) This subchapter establishes the procedures for making a complete informational filing of nonstandard health benefits plans with the Commissioner, and the standards for review of the filings submitted.

11:21-11.2 Definitions

Words and terms, when used in this subchapter, shall have the meanings as set forth in the Act and N.J.A.C. 11:21-1.2, unless defined below or the context indicates otherwise.

"Market" or "marketed" means to offer or have offered or advertised as available a nonstandard health benefits plan for initial purchase by small employers.

"Nonstandard health benefits plan" means a health benefits plan policy or contract form under which policies or contracts were issued on or before December 31, 1993 to small employers or to one or more employees of a small employer by virtue of the employment arrangement.

"Substantial threat to a carrier's financial condition" means that a carrier is in a hazardous financial condition as specified in N.J.A.C. 11:2-27, or that a carrier is financially impaired, meaning that a carrier, after the effective date of this subchapter, is not

insolvent, but is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations, or is placed under an order of receivership, rehabilitation or conservation by a court of competent jurisdiction.

"Withdraw" or "withdrawal" means a cancellation or nonrenewal initiated by a carrier, association, multiple employer arrangement or out-of-state trust of all inforce policies, contracts or certificates issued under a nonstandard health benefits plan.

11:21-11.3 Restricted withdrawal and marketing

(a) A carrier, association, multiple employer arrangement or out-of-State trust shall not withdraw a nonstandard health benefits plan before March 1, 1997 without prior approval of the Commissioner if there was one or more policies or contracts inforce under that nonstandard health benefits plan on December 31, 1993, and the nonstandard health benefits plan was marketed to small employers as of December 31, 1993, except as (b) below applies.

(b) A carrier may withdraw a nonstandard health benefits plan without obtaining prior approval pursuant to this subchapter if the carrier is effecting withdrawing from the small employer market in accordance with N.J.A.C. 11:21-16.

(c) A carrier shall not market a nonstandard health benefits plan subject to (a) above except as (d) below applies.

(d) An association, multiple employer arrangement or out-of-State trust shall not be required to market a nonstandard health benefits plan subject to (a) above; however, an association, multiple employer arrangement or out-of-State trust that does market a nonstandard health benefits plan to its members' employees and dependents shall offer coverage to all eligible employees and their dependents within the membership of the association, multiple employer arrangement or out-of-State trust, and in no instance shall actual or expected health status be used in determining membership.

11:21-11.4 Request to withdraw nonstandard health benefits plans

(a) A carrier may submit to the Commissioner a completed request to withdraw one or more nonstandard health benefits plan(s) at any time except that a carrier shall not:

1. Submit more than one request to withdraw at any one time, but may amend its request to withdraw, if necessary; or
2. Submit a request to withdraw while a request for relief pursuant to N.J.A.C. 11:20-11 or 11:21-15 is pending.

(b) A carrier may submit a single filing to request withdrawal of more than one nonstandard health benefits plan, but shall clearly specify each nonstandard health benefits plan for which a withdrawal is sought.

(c) A carrier shall submit five copies of each request to withdraw in loose leaf form, inserted into two-ring or three-ring binders, tabbed or otherwise indexed to correspond to the exhibits set forth below; and shall include:

1. A cover letter stating:
 - i. The name of the carrier, and the name, title, telephone number and telefax number of a contact person familiar with the filing to whom the Department may direct any additional questions;
 - ii. A clear specification of the nonstandard health benefits plan(s) which the carrier is seeking to withdraw, including the market name(s), form number(s), and the date(s) the form filing was approved by the Department, if any; and
 - iii. A statement of facts relied upon as the basis under which the request is sought, including the specific factor(s) upon which the Commissioner may find that there is a substantial threat to the carrier's financial condition, specifically using the criteria set forth in N.J.A.C. 11:2-27.3(a)1 to 29;

2. A detailed explanation, with supporting documentation, of the projected effect that fulfillment of the obligation not to withdraw the nonstandard health benefits plan(s) prior to March 1, 1997 would have on the immediate and long term financial condition of the carrier unless the request to withdraw is approved;

3. The most recent financial examination report, whether conducted by the carrier's state of domicile or other state;

4. A statement addressing whether the carrier is planning to modify its method of doing business in any way, including, but not limited to, new acquisitions or new restructuring;

5. If the carrier is a member of a holding company system:

- i. A list of all members of the holding company system;
- ii. A list of all intercompany transactions for the period beginning January 1 in the year of the filing to the date of the quarterly statement immediately preceding the date of the filing, in the format set forth in the statutory annual statement filed by the carrier; and
- iii. A copy of the registration statement filed pursuant to 17:27A-3 and the carrier's organizational chart;

6. An actuarial opinion attesting to the adequacy of reserves specifically for all accident and health lines of business, and for all lines of business which the carrier transacts, in the format of and satisfying all requirements for the actuarial opinion and memorandum required to be submitted as a part of the annual statement filed by the carrier (if the carrier is a health maintenance organization, the carrier shall obtain and file an actuarial opinion which complies with these requirements);

7. A report signed by the attesting actuary which includes, in summary form if necessary, all data utilized, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;

8. A copy of the annual statement of the carrier, including all accompanying exhibits, filed with this State immediately preceding the date of the request to withdraw;

9. Copies of all quarterly statements for the period beginning January 1 in the year of the filing to the quarterly statement immediately preceding the date of the filing;

10. Three-year financial projections beginning with the calendar year of the date of the filing assuming both that the request to withdraw is granted and that it is denied. The projections shall include the following:

- i. In summary form if necessary, all data utilized, and a complete explanation of methods and assumptions utilized and relied upon by the carrier in making the projections;
- ii. Results for the carrier's operations worldwide by line of business and for the carrier's operations in New Jersey only for health benefits plans issued, renewed, continued or reinstated pursuant to N.J.S.A. 17B:27A-17 et seq.;
- iii. Assumptions that the rate of assessments for the carrier in the three year projections shall be the same as the assessments received by the carrier in the year in which the request to withdraw is filed; and

iv. Projections of the carrier's operating results containing the information and in the format set forth in the following:

(1) For life and health insurers, the balance sheet and summary of operations exhibits of the statutory annual statement filed by the carrier;

(2) For property and casualty insurers, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the carrier;

(3) For health service corporations, hospital service corporations and medical service corporations, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the service corporation; and

(4) For health maintenance organizations, the balance sheet and statement of revenue, expenses and net worth of the annual statement filed by the health maintenance organization;

11. A description of any relief from obligations imposed by this State or any other state granted or in effect within the preceding 12 months, and the basis upon which such relief was granted;

12. A statement specifying the method (either cancellation or nonrenewal) to be used for the withdrawal, with a certification that the withdrawal shall comply with the standards of N.J.A.C. 11:21-11.6; and

13. Any other information the Commissioner may deem relevant to the consideration of the request.

(d) A carrier asserting that the Department's review of its request be evaluated on a specific basis (that is, pre-pooled, post-pooled, consolidated, or unconsolidated), shall submit a written statement which sets forth the specific reasons, with supporting documentation, if any, for which it believes evaluation on a specific basis is

appropriate to that carrier, and the specific reasons, with supporting documentation, if any, for which evaluation on other bases would be inappropriate.

(e) All requests to withdraw shall be accompanied by the following certification signed by the chief financial officer of the carrier: "I, (the signatory's name), hereby certify that the attached filing complies with all requirements set forth in N.J.A.C. 11:21-11.4 and that all of the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of (the company name)."

(f) All requests to withdraw shall be accompanied by a non-refundable filing fee of \$1,000, unless the carrier is in rehabilitation or conservation at the time of filing pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the carrier's state of domicile, and the submission includes a statement to that effect, and shall be filed with the Department at the following address:

SEH Program
Request to Withdraw Nonstandard Plans
Division of Financial Solvency
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625

(g) Carriers requesting to withdraw a nonstandard health benefits plan shall concurrently provide notice of the request to the SEH Program at the address specified at N.J.A.C. 11:21-1.3.

11:21-11.5 Review and approval of a request to withdraw

(a) The Department shall deny a request to withdraw if the request fails to substantially comply with the filing format and information requirements set forth in N.J.A.C. 11:21-11.4. The Department shall notify the carrier in writing that its request to withdraw is deficient on such grounds. The notice shall also set forth any information or other action required to cure the deficiency(ies). If the carrier intends to pursue its request to withdraw, the carrier shall submit the additional information specified or otherwise submit a filing in accordance with the format requirements specified in N.J.A.C. 11:21-11.4 within 15 days of receipt of the Department's notice of deficiency. Failure to submit within 15 days the required information shall result in the carrier's request being denied without prejudice.

(b) When the Commissioner determines pursuant to (c) below that the carrier is or would be placed in a financially impaired condition because of the requirement to continue servicing the nonstandard health benefits plan(s) specified in the request to withdraw, the Commissioner shall notify the carrier in writing that it may withdraw the specified nonstandard health benefits plan(s), subject to the standards of N.J.A.C. 11:21-11.6.

(c) The Commissioner shall find that there is a substantial threat to a carrier's financial condition if:

1. The carrier has been placed in rehabilitation or conservation pursuant to N.J.S.A. 17B:32-31 et seq., or such similar law of the carrier's state of domicile;
2. The Commissioner finds that the carrier is in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27; or
3. The Commissioner finds that a denial of the request to withdraw the specified nonstandard plan(s) would place the carrier in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27.

(d) If the Commissioner denies a carrier's request to withdraw made pursuant to the provisions of N.J.A.C. 11:21-11.4, the carrier may request a hearing on the Commissioner's determination within seven days from the date of receipt of such determination as follows:

1. A request for a hearing shall be in writing and shall include:
 - i. The name, address, and daytime telephone number of a contact person familiar with the matter;
 - ii. A copy of the Commissioner's determination;
 - iii. A statement requesting a hearing; and
 - iv. A statement describing in detail the basis for which the carrier believes that the Commissioner's denial is erroneous.
2. The Commissioner may, after receipt of a properly completed request for a hearing, provide for an informal conference between

the carrier and such personnel of the Department as the Commissioner may direct, to determine whether there are material issues of fact in dispute.

3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

i. In a matter which has been determined to be a contested case, if the Commissioner finds that there are no good-faith disputed issues of material fact and the matter may be decided on the documents filed, the Commissioner may notify the applicant in writing as to the final disposition on the matter.

ii. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) All data or information contained in the request to withdraw shall be confidential and shall not be subject to public disclosure or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., except for the following items which shall only be released upon written, specified request and following 10 days written notice by the Department to the carrier:

1. The cover letter naming the carrier and describing the request to withdraw;
2. The name, title, telephone number and telefax number of a person familiar with the filing;
3. The most recent financial examination report;
4. The list of members of holding company systems and intercompany transactions for the period preceding the date of the filing;
5. The annual statement filed immediately preceding the date of the filing; and
6. The non-refundable filing fee.

11:21-11.6 Standards for the process of withdrawal of a nonstandard health benefits plan either by cancellation or nonrenewal

(a) Carriers shall specify in their request to withdraw, as required by N.J.A.C. 11:21-11.4(c)12, whether they shall effect the withdrawal of the specified nonstandard health benefits plan(s), if the request is granted, through nonrenewal or cancellation of the policies, contracts or certificates issued under the nonstandard health benefits plan(s). A carrier shall effect its withdrawal through only one of the two methods.

(b) Carriers may elect to withdraw by nonrenewing policies, contracts or certificates at the time of the 12-month anniversary date of each such policy, contract or certificate, provided that:

1. Each policyholder, contractholder or certificateholder is given 60 days written notice prior to the date of the nonrenewal;
2. The notice specifies the reasons for the nonrenewal (that is, that withdrawal of the health benefits plan has been approved by the Commissioner pursuant to this subchapter);
3. The notice includes an offer to obtain coverage under the standard health benefits plans issued by the carrier if the policyholder, contractholder, or certificateholder is a small employer (unless the carrier has been granted relief by the Commissioner pursuant to 17B:27A-26) or specifies that coverage may be available under an individual health benefits plan if the policyholder, contractholder or certificateholder is not a small employer;
4. The notice contains the name, address and telephone number of the employee or agent of the carrier who may be contacted for assistance and information concerning the withdrawal;
5. Notice of the withdrawal is provided to the producer of record for each policy, contract or certificate within 60 days of the date that the request to withdraw is granted;
6. The withdrawal of the nonstandard health benefits plan shall be completed within 14 months of the date that the request to withdraw is granted; and
7. The nonstandard health benefits plan that is the subject of the request to withdraw shall not be offered by the carrier or through an association, multiple employer arrangement or out-of-State trust to any new small employer from the date that the request to withdraw is granted.

(c) A carrier may elect to withdraw by cancelling the policies, contracts or certificates issued under a nonstandard health benefits plans, provided that:

1. Each policyholder, contractholder or certificateholder is given no less than 60 days written notice prior to the date of the cancellation;

2. The notice specifies the reason for the cancellation;

3. The notice offers the opportunity to obtain coverage under the standard health benefits plans issued by the carrier if the policyholder, contractholder or certificateholder is a small employer (unless the carrier has been granted relief by the Commissioner pursuant to N.J.S.A. 17B:27A-26), or specifies that coverage may be available under an individual health benefits plan if the policyholder, contractholder or certificateholder is not a small employer;

4. The notice includes the name, address and telephone number of the employee or agent of the carrier who may be contacted for assistance and information regarding the withdrawal;

5. Notice of the withdrawal is provided to the producer of record for each policy, contract or certificate within 60 days of the date that the request to withdraw is granted;

6. The date of cancellation shall be uniform for all policyholders, contractholders and certificateholders under a nonstandard health benefits plan;

7. The date of cancellation of each nonstandard health benefits plan that is the subject of the request to withdraw shall be no later than six months following the date that the request to withdraw is granted; and

8. The nonstandard health benefits plan that is the subject of the request to withdraw shall not be offered to any new small employer by the carrier or through an association, multiple employer arrangement or out-of-State trust from the date that the request to withdraw is granted.

(d) At the time of the filing of the request to withdraw, a carrier shall specify which of the two methods it shall use, and shall include in the filing the notice that it will provide to its policyholders, contractholders, and certificateholders.

(e) At the time of the filing of the request to withdraw, the carrier shall specify the number of policies, contracts and certificates issued under each nonstandard health benefits plan that is the subject of the request to withdraw, the approximate number of lives covered under each such nonstandard health benefits plan, and the approximate number of small employers covered under each such nonstandard health benefits plan.

11:21-11.7 Other policyholder rights unaffected

Nothing in this subchapter shall be construed to contravene any rights of policyholders concerning cancellation requirements or obligations set forth in a policy or contract of a health benefits plan that is the subject of a request to withdraw.

11:21-11.8 Informational filing of nonstandard health benefits plans

(a) A carrier shall submit a Certification of Prior Filing and Compliance with P.L. 1994, c.11, as set forth in Part 3 of Exhibit BB of the Appendix to this chapter, incorporated herein as part of this subchapter, for all nonstandard health benefits plans continued, renewed or reinstated pursuant to P.L. 1994, c.11, if the carrier has previously submitted the nonstandard health benefits plans to the Commissioner for filing and the nonstandard health benefits plans were so filed.

(b) A carrier shall submit a Certification of Informational Filing and Compliance with P.L. 1994, c.11, as set forth in Part 4 of Exhibit BB of the Appendix to this chapter, incorporated herein as part of this subchapter, for all nonstandard health benefits plans continued, renewed or reinstated pursuant to P.L. 1994, c.11, if those nonstandard health benefits plans were not previously submitted to the Commissioner for filing.

(c) A separate certification shall be submitted for each nonstandard health benefits plan no later than 60 days following the effective date of this subchapter if any policy, contract or certificate under the nonstandard health benefits plan was renewed in 1994

prior to the effective date of this subchapter, or no later than 30 days after the date that the first policy, contract, or certificate under the nonstandard health benefits plan shall be first renewed after the effective date of this subchapter, whichever date is earlier.

(d) A certification submitted pursuant to this section shall not be filed by the Commissioner until it is complete.

1. The Commissioner shall notify a carrier when a certification is determined by the Commissioner to be deficient, specifying the reasons therefor in writing.

2. The Commissioner shall determine a certification to be deficient if the certification in any way deviates from the forms as set forth in the Appendix, fails to provide answers to any of the questions contained therein, or the form fails to be certified by a duly authorized officer of the carrier. A certification shall continue to be considered deficient until the carrier submits information satisfactory to the Department to render the certification complete.

3. A carrier shall submit the information necessary to cure any deficiency(ies) or incompleteness specified within 30 days of the date of the notice, or shall become subject to fine.

(e) The completed certification shall include all amendments necessary to bring the nonstandard health benefits plan into compliance with N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11. The amendments shall include all necessary language changes, and shall clearly indicate (for ease of reference) all additions and deletions in language necessary for both the nonstandard health benefits plan and any riders and endorsements which may have been issued with or for the nonstandard health benefits plan.

11:21-11.9 Penalty and fines

(a) A carrier failing to obtain prior approval of a withdrawal of a nonstandard health benefits plan in accordance with this subchapter, or initiating a withdrawal of a nonstandard health benefits plan that fails to conform with the requirements of N.J.A.C. 11:21-11.6 shall be subject to penalties and fines as follows:

1. The carrier shall offer to reinstate any and all policyholders, contractholders and certificateholders under each nonstandard health benefits plan, including any riders or endorsements which may have attached thereto, that is the subject of a violation under this subchapter; and

2. The carrier shall incur and remain liable for, until paid in full, a fine of \$1,000 per each policyholder, contractholder or certificateholder nonrenewed or cancelled.

(b) A carrier failing to submit any completed certification required by N.J.A.C. 11:21-11.8 shall be subject to payment of a fine not less than \$2,000 nor more than \$5,000 per violation.

(c) Carriers assessed penalties or fines may request a hearing in accordance with N.J.A.C. 11:21-11.5(d).

SUBCHAPTER 14. DECLARATION AND APPROVAL OF REINSURING OR RISK-ASSUMING CARRIER STATUS

11:21-14.2 Definitions

(a) (No change.)

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

...

"Permissive election" means that election which carriers may make to be a risk-assuming carrier or reinsuring carrier, notwithstanding any previous affirmative or deemed election, pursuant to P.L. 1994, c.11, and as specified at N.J.A.C. 11:21-14.4(b). The "permissive election period" is that period which runs from the effective date of N.J.A.C. 11:21-7.15 until the 60th day thereafter.

"Reinsuring carrier" means a small employer carrier issuing small employer health benefits plans on a guaranteed issue basis that has elected pursuant to N.J.S.A. 17B:27A-34 or P.L. 1994, c.11, §6 and this subchapter to be eligible for reimbursement of losses it may

incur under those small employer health benefits plans as well as to be responsible for payment of assessments for reimbursable losses incurred by other reinsuring carriers.

...
 "Risk-assuming carrier" means a small employer carrier issuing small employer health benefits plans that has elected and been approved by the Commissioner pursuant to N.J.S.A. 17B:27A-34 or P.L. 1994, c.11, §6 and this subchapter to cover risks on a guaranteed issue basis without being subject to assessments for net reimbursable losses of the SEH Program incurred by reinsuring carriers which total the first four percent or less of the aggregate premiums from [small employer] health benefits plans issued by reinsuring carriers, and is not eligible for reimbursement of any losses it may incur under its small employer health benefits plans.

"Statutory election period" means the period of time specified at N.J.S.A. 17B:27A-35b, or P.L. 1994, c.11, §6 with respect to elections made pursuant thereto, for which an election to be a reinsuring carrier is binding. The initial "statutory election period" is that period in which carriers [make] made their election on or before October 4, 1993, or within 30 days following the date that the Board [submits] submitted its Plan of Operation to the Commissioner, whichever date [is] was later, which election shall be effective for two years. The secondary "statutory election period" is that period authorized by P.L. 1994, c.11, §6, in which carriers make their permissive election which election shall be effective for two years. [The] Otherwise, the "statutory election period," which shall be binding for five years, is that period that shall be applicable to any reinsuring carrier election made on or after [October 5, 1993, or subsequent to the 30th day following the date that the Board submits its Plan of Operation to the Commissioner, whichever date is later] the initial or secondary statutory election period.

11:21-14.4 Declaration to be a reinsuring or risk-assuming carrier

(a) (No change.)

(b) A small employer carrier may make a permissive election pursuant to this subsection, notwithstanding either an affirmative or deemed filing by that carrier pursuant to (a) above. A small employer carrier that makes a permissive election pursuant to this subsection shall file a declaration with the Board and the Commissioner on or before the 30th day following the effective date of this subsection, stating whether the small employer carrier elects to operate as a risk-assuming carrier or as a reinsuring carrier for purposes of compliance with the Program.

1. Any small employer carrier that is disapproved as a risk-assuming carrier pursuant to its permissive election shall be deemed to have elected to operate as a reinsuring carrier as of the close of the permissive election period under this subsection.

2. Any carrier that is determined by the Department to have been a small employer carrier as of the close of the permissive election period under this subsection, which was not a small employer carrier at the time that the election pursuant to (a) above was required to be made, and that has not made an election before the close of the permissive election period under this subsection, shall be deemed to have elected to operate as a reinsuring carrier as of the final date of the permissive election period under this subsection.

3. A small employer carrier that has either affirmatively filed or has been deemed to have filed pursuant to (a) above that fails to submit a separate filing during the permissive election period, pursuant to this subsection, shall continue to be considered by the Board and the Commissioner to have filed pursuant to (a) above.

4. The statutory election period for any affirmative or deemed permissive election shall be deemed to begin on January 1, 1994.

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

11:21-14.5 Application to be a risk-assuming carrier

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

(c) Every carrier filing for risk-assuming carrier status shall complete in full the Risk-Assuming Application Form set forth in Exhibit U, Part 3 of the Appendix to this chapter, incorporated herein by reference.

1.-2. (No change.)

3. The Risk-Assuming Application Form shall be supported by an actuarial opinion [setting forth the assumptions and methodologies used to determine and certify] that the carrier's portfolio is of good and sufficient value, liquidity and diversity to assure the carrier's ability to meet its outstanding obligations as they mature [and that surplus is adequate in relation to the amount of liabilities]. As an alternative, the carrier may submit an actuarial opinion that complies with the Model Actuarial Opinion and Memorandum Regulation adopted by the National Association of Insurance Commissioners (Volume IV, Page 822-1, available by calling (816) 374-7259). A carrier need not submit the actuarial memorandum specified by the Model Actuarial Opinion and Memorandum Regulation for purposes of this subchapter.

4.-5. (No change.)

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

SUBCHAPTER 16. [STANDARDS AND PROCEDURES GOVERNING] WITHDRAWALS OF SMALL EMPLOYER CARRIERS FROM THE SMALL EMPLOYER HEALTH BENEFITS PLANS MARKET

11:21-16.2 Definitions

[The following words] Words and terms, when used in this subchapter, shall have the meanings set forth in the Act or at N.J.A.C. 11:21-1.3 unless defined below or [the following meanings] unless the context clearly indicates otherwise:

"Affiliate" or "affiliated company" means a carrier that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the carrier that initiates a withdrawal.

"Board" means the board of directors of the New Jersey Small Employer Health Benefits Program.

"Carrier" means any insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefits plans in this State. For purposes of this subchapter, carriers that are affiliated companies shall be treated as one carrier, except that any insurance company, health service corporation, hospital service corporation, or medical service corporation that is an affiliate of a health maintenance organization located in New Jersey or any health maintenance organization located in New Jersey that is affiliated with an insurance company, health service corporation, or medical service corporation shall treat the health maintenance organization as a separate carrier.]

"Cease doing business" for purposes of these rules means withdraw or withdrawal.

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

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

"Nonstandard health benefits plan" means a health benefits plan policy or contract form under which policies, contracts or certificates were issued on or before December 31, 1993 to small employers or to one or more employees of a small employer by virtue of the employment arrangement.

["Small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed at least two but no more than 49 eligible employees, the majority of whom are employed within the State of New Jersey. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer. Subsequent to the issuance of a health benefits plan to a small employer pursuant to the provisions of N.J.S.A. 17B:27A-17 et seq., and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of N.J.S.A. 17B:27A-17 et seq. which apply to a small employer shall continue to apply until the anniversary date of the health benefits plan next following the date the employer no longer meets the definition of a small employer.

"Small employer carrier" means any carrier that offers health benefits plans covering eligible employees of one or more small employers.

"Small employer health benefits plan" means a health benefits plan for small employers established by the SEH Program Board and approved by the Commissioner pursuant to N.J.S.A. 17B:27A-33.]

"State" means the State of New Jersey.

"Withdraw" or "withdrawal" means the cancellation on a date certain or the termination on the anniversary date of all in force nonstandard health benefits plans or small employer health benefits plans, or both as appropriate, issued to small employers without offering replacement with a small employer health benefits plan (or a nonstandard health benefits plan, if offered through an association, multiple employer arrangement or out-of-State trust that continues to market its nonstandard health benefits plans pursuant to P.L. 1994, c.11), except where such action is taken pursuant to N.J.S.A. 17B:27A-23a through d, f and g or is approved by the Commissioner in accordance with N.J.A.C. 11:21-11.

11:21-16.3 General provisions

(a) (No change.)

(b) No small employer carrier shall cancel, nonrenew, or terminate any nonstandard health benefits plan prior to February 28, 1997, except in accordance with N.J.S.A. 17B:27A-23a through d, f and g, or upon prior approval of the Commissioner in accordance with N.J.A.C. 11:21-11, unless the small employer carrier withdraws from the small employer market in New Jersey in accordance with the provisions of this subchapter.

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

[(c)](d) The notice of withdrawal to the Commissioner shall be sent to the attention of: SEH Withdrawal Notice, Division of Financial Solvency, New Jersey Department of Insurance, CN 325, Trenton, NJ 08625, and shall include an original and two copies of the following information:

1.-4. (No change.)

5. A statement specifying the date or dates upon which the [carrier shall terminate its] small employer health benefits plans and nonstandard health benefits plans, as applicable, [which] shall be terminated, specifying either:

i.-ii. (No change.)

6. The date upon which the carrier shall cease writing any new nonstandard health benefits plans (if through an association, multiple employer arrangement or out-of-State trust) or small employer health benefits plans, as applicable, which shall be no later than two months after the date the carrier has filed its notice with the Commissioner; and

7. A copy of the form of notice required pursuant to [(e)] (f) below, which is to be mailed to each affected small employer [to be effected by the carrier's withdrawal].

[(d)](e) The Commissioner shall review the notice of withdrawal to determine whether it complies with [(c)] (d) above and whether sufficient notice will be provided to policyholders. The Commissioner shall notify, in writing, the small employer carrier of any deficiencies and [shall advise the carrier of] the requirements which are necessary to bring it into compliance with N.J.S.A. 17B:27A-23 and this subchapter.

1. A carrier which submitted a notice to the Commissioner pursuant to N.J.S.A. 17B:27A-23e[(e)] prior to [the effective date of this subchapter] December 9, 1993 shall file the information requested in [(c)] (d) above, [within 60 days of the effective date of this subchapter] no later than February 7, 1994.

i. Where the carrier complies with [(d)1] (e)1 above, the carrier's notice to the Commissioner shall relate back to the date of the carrier's original submission to the Commissioner. Notwithstanding the date of notice to the Commissioner, a carrier shall provide at least six months written notice to a small employer that its contract or policy shall be cancelled on a date certain or terminated on the anniversary date.

ii. Where a carrier fails to file the supplemental information as required by [(d)1] (e)1 above, the date of notice to the Commissioner

shall be deemed to be the date upon which the carrier has filed with the Department all of the items set forth in [(c)] (d) above. Dates for all other notices required by this subchapter shall be calculated from this new date.

2. A carrier which has submitted its notice of intent to withdraw prior to [the effective date of this subchapter] December 9, 1993 shall comply with the notice requirements set forth at [(e), (f), (g) and (h)] (f), (g), (h) and (i) below, to which all other carriers must similarly comply, unless the Commissioner authorizes or specifies otherwise, to prevent undue hardship to either the carrier, the policyholders, or both.

Recodify existing (e) and (f) as (f) and (g) (No change in text.) [(g)](i) Simultaneous with its notice to the Commissioner, a withdrawing small employer carrier shall submit a notice to the [Plan Administrator of the Small Employer Health] Board at the address specified at N.J.A.C. 11:21-1.2, which:

1.-3. (No change.)

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

11:21-16.4 Restrictions on writings

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

(c) Any small employer carrier which withdraws from the small employer market shall cancel on a date certain or terminate on the anniversary date of all of its in force small employer health benefits plans and nonstandard health benefits plans in accordance with N.J.A.C. 11:21-16.3.

11:21-16.7 Revocation of a notice of intent to withdraw

(a) A carrier may revoke its notice of intent to withdraw, filed with the Commissioner pursuant to N.J.A.C. 11:21-16.3, prior to the date that its withdrawal is complete, by submitting a statement to the Department at the address specified at N.J.A.C. 11:21-16.3(d) and to the Board at the address specified at N.J.A.C. 11:21-1.2 revoking its notice of intent to withdraw. The revocation shall be signed by a duly authorized officer, and shall include the following:

1. A statement agreeing to reinstate any small employer that was cancelled, nonrenewed or terminated by the carrier pursuant to the provisions of N.J.S.A. 17B:27A-23e and this subchapter;

2. A statement agreeing that all policies and contracts under a nonstandard health benefits plans shall be brought into compliance with the provisions of N.J.S.A. 17B:27A-17 et seq., as required by P.L. 1994, c.11, no later than the first 12-month anniversary date of the policy or contract occurring after the sixtieth day following the effective date of N.J.A.C. 11:21-7.15;

3. A statement agreeing that a carrier shall not issue directly a nonstandard health benefits plan to a small employer, and a statement agreeing that any nonstandard health benefits plan which continues to be offered for issue to small employers by or through an association, multiple employer arrangement or out-of-State trust shall be offered to all small employer members of the association, multiple employer arrangement or out-of-State trust; and

4. A statement agreeing that the carrier shall comply with the requirement to offer small employer health benefits plans in accordance with the provisions of N.J.S.A. 17B:27A-17 et seq.

EXHIBIT U

PART 1

REINSURING CARRIER DECLARATION

(To be submitted to the SEH Program Board and the New Jersey Department of Insurance, Division of Financial Examinations, 20 West State Street, CN-325, Trenton, New Jersey 08625-0325, Attn: SEH Declaration.)

...

(Carrier Name) _____ elects to operate as a reinsuring carrier for purposes of complying with the Small Employer Health Benefits Program established pursuant to N.J.S.A. 17B:27A-17 et seq. In accordance with N.J.S.A. 17B:27A-35 and P.L. 1994, c.11, s.6, this election shall be binding:

a. for two calendar years from January 1, 1994 if this election is made, or deemed to have been made, prior to October 5, 1993, or within 30 days of the date the SEH Board submitted its Plan

of Operation to the Commissioner, whichever date is later, and this election has not been effectively revoked by submission of a Risk-Assuming Carrier Declaration and Application to the Department of Insurance on or before the 60th day following the effective date of N.J.A.C. 11:21-7.15, as provided for at N.J.A.C. 11:21-14.4(b), or

b. for two calendar years from January 1, 1994 if this election is made, or deemed to have been made, on or before the 60th day following the effective date of N.J.A.C. 11:21-7.15, as provided for at N.J.A.C. 11:21-14.4(b), or

[b.] c. if this election is made [on or] after [October 5, 1993 or after the 30th day following the submission of the Plan of Operation by the SEH Board to the Commissioner, whichever date is later,] the 60th day following the effective date of N.J.A.C. 11:21-7.15, as provided for at N.J.A.C. 11:21-14.4(b), for five calendar years from January 1 of the calendar year in which this election is made, if made on or before June 30 of the calendar year, or for five years from January 1 of the calendar year following the year in which this election is made, if the election is made subsequent to June 30 in a calendar year.

PART 3

RISK-ASSUMING CARRIER APPLICATION

(Submit to: SEH Declaration/Approval, NJ Department of Insurance, Division of Financial Examinations, 20 West State Street, Trenton, NJ 08625-0325.)

SECTION B (to be completed by all applicants)

1.-2. (No change.)

3. Is an actuarial [certification] opinion attached?

Yes ___ No ___

4. (No change.)

SECTION C (to be completed by all applicants)

Is any of the information contained in this application and/or attachments based upon data from one or more carriers other than the carrier(s) listed in Section A2 above?

Yes ___ No ___

If yes, please indicate the specific information based upon other carrier data.

___ a. Actuarial [certification] opinion

___ b. Experience data

___ c. Other

[_____]

_____]

If yes, please indicate the carrier(s) and their NAIC numbers, if applicable, whose data has been included in the information submitted (Attach additional pages if necessary, and place a checkmark here: ___.)

EXHIBIT BB

PART 1

CERTIFICATION OF COMPLIANCE WITH SMALL EMPLOYER HEALTH BENEFITS PLANS

[Submit] In accordance with N.J.A.C. 11:21-4.2, submit this form in triplicate to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and to the New Jersey Department of Insurance as follows: Attn: SEH Form Certification of Compliance, Division of Life and Health Actuarial Services, N.J. Department of Insurance, 20 West State Street, CN-325, Trenton, NJ 08625-0325.

1.-4. (No change.)

PART 3

CERTIFICATION OF PRIOR FILING AND COMPLIANCE WITH P.L. 1994, C.11

In accordance with N.J.A.C. 11:21-11.8(a), submit this form in triplicate to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and to the New Jersey Department of Insurance as follows: Attn: Nonstandard Plan Compliance (SEH), Division of Life and Health Actuarial Services, N.J. Department of Insurance, 20 West State Street, CN-325, Trenton, NJ 08625-0325.

1. INFORMATION ABOUT THE CARRIER AND RESPONDENT

Carrier's Name: _____

NAIC #: _____

Respondent's Name: _____

Respondent's Title: _____

Respondent's Address: _____

Respondent's Phone: _____ FAX: _____

2. NONSTANDARD HEALTH BENEFITS PLAN INFORMATION

(Submit the requested information with respect to one nonstandard health benefits plan form only. Use "NA" to indicate when a question or request is not applicable.)

a. Form identification number: _____

b. Form's market name: _____

c. Date filed (approved) by the Commissioner: _____

d. Specify which of the following have been approved with respect to this form, providing the most recent date that an approval was received for each:

Form amendment: _____

Rider form: _____

Endorsement form: _____

e. Has this nonstandard health benefits plan been marketed and sold by or through an association, multiple employer arrangement and/or out-of-state trust?

___ Yes ___ No

If yes, please specify the name(s) of the association, multiple employer arrangement and out-of-state trust and the number of policyholders or certificateholders constituting groups of 49 or fewer lives (including single lives) in each association, multiple employer arrangement or out-of-state trust:

___ Check here if additional pages are attached.

f. If marketed and sold through an association, multiple employer arrangement and/or out-of-state trust, will this nonstandard health benefits plan continue to be marketed and sold to new small employer members of the association, multiple employer arrangement and/or out-of-state trust?

___ Yes ___ No ___ NA

g. If marketed and sold through an association, multiple employer arrangement and/or out-of-state trust, is this the only manner by which this nonstandard health benefits plan is sold and marketed?

___ Yes ___ No ___ NA

If no, does the carrier market and sell the nonstandard health benefits plan through:

Agent force: ___ Yes ___ No

Direct sale: ___ Yes ___ No

h. Specify the number of policies, contracts or certificates inforce under this form by anniversary date (by month):

January: ___ July: ___
February: ___ August: ___
March: ___ September: ___
April: ___ October: ___
May: ___ November: ___
June: ___ December: ___

3. Attach the amendments made to the nonstandard health benefits plan that are necessary to comply with the provisions of N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11, and rules promulgated thereunder, specifically N.J.A.C. 11:21-3A.

4. CERTIFICATION

I, the undersigned, certify that this completed form, including additional pages attached hereto and incorporated herein, is true and accurate, and that I am an officer of the carrier duly authorized to submit this certification.

I certify that, in accordance with P.L. 1994, c.11, policies, contracts or certificates issued or renewed under this nonstandard health benefits plan have been and shall be brought into compliance with N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11, on their respective first anniversary dates occurring after the sixtieth day following the effective date of N.J.A.C. 11:21-7.15 and further, that in no instance shall any policies, contracts or certificates issued or renewed under this nonstandard health benefits plan fail to be in compliance as specified at P.L. 1994, c.11 any later than the 425th day following the effective date of N.J.A.C. 11:21-7.15.

I certify that, in accordance with N.J.A.C. 11:21-3A, no policy, contract or certificate shall be issued or renewed under this nonstandard health benefits plan through or by any associations, multiple employer arrangement or out-of-state trust after February 28, 1996.

I certify that, in accordance with N.J.A.C. 11:21-3A, no policy, contract or certificate reinstated, continued or renewed under this nonstandard health benefit plan by (Carrier's name) shall be renewed after February 28, 1996.

Date

Signature

Title

PART 4

CERTIFICATION OF INFORMATIONAL FILING AND COMPLIANCE WITH P.L. 1994, C.11

In accordance with N.J.A.C. 11:21-11.8(b), submit this form in triplicate to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and to the New Jersey Department of Insurance as follows: Attn: Nonstandard Plan Compliance (SEH), Division of Life and Health Actuarial Services, N.J. Department of Insurance, 20 West State Street, CN-325, Trenton, NJ 08625-0325.

1. INFORMATION ABOUT THE CARRIER AND RESPONDENT

Carrier's Name: _____

NAIC #: _____

Respondent's Name: _____

Respondent's Title: _____

Respondent's Address: _____

Respondent's Phone: _____ FAX: _____

2. NONSTANDARD HEALTH BENEFITS PLAN INFORMATION

(Submit the requested information with respect to one nonstandard health benefits plan form only. Use "NA" to indicate when a question or request is not applicable.)

a. Form identification number: _____

b. Form's market name: _____

c. Specify the reason(s) why this nonstandard health benefits plan was not submitted to the Department for filing prior to April 4, 1994:

___ Check here if additional pages are attached.

d. Has this nonstandard health benefits plan been marketed and sold by or through an association, multiple employer arrangement and/or out-of-state trust?

___ Yes ___ No

If yes, please specify the name(s) of the association, multiple employer arrangement and out-of-state trust and the number of policyholders or certificateholders constituting groups of 49 or fewer lives (including single lives) in each association, multiple employer arrangement or out-of-state trust:

___ Check here if additional pages are attached.

e. If marketed and sold through an association, multiple employer arrangement and/or out-of-state trust, will this nonstandard health benefits plan continue to be marketed and sold to new small employer members of the association, multiple employer arrangement and/or out-of-state trust?

___ Yes ___ No ___ NA

If yes, specify the final date that policies, contracts or certificates will be issued under this nonstandard health benefits plan: _____

f. If marketed and sold through an association, multiple employer arrangement and/or out-of-state trust, is this the only manner by which this nonstandard health benefits plan is sold and marketed?

___ Yes ___ No ___ NA

If no, does the carrier market and sell the nonstandard health benefits plan through:

Agent force: ___ Yes ___ No
Direct sale: ___ Yes ___ No

g. Specify the number of policies, contracts or certificates in force under this form by anniversary date (by month):

January: ___ July: ___
February: ___ August: ___
March: ___ September: ___
April: ___ October: ___
May: ___ November: ___
June: ___ December: ___

3. Attach the amendments made to the nonstandard health benefits plan that are necessary to comply with the provisions of N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11, and rules promulgated thereunder.

4. CERTIFICATION

I, the undersigned, certify that this completed form, including additional pages attached hereto and incorporated herein, is true and accurate, and that I am an officer of the carrier duly authorized to submit this certification.

I certify that, in accordance with P.L. 1994, c.11, policies, contracts or certificates issued or renewed under this nonstandard health benefits plan have been and shall be brought into compliance with N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11, on their respective first anniversary dates occurring after the sixtieth day following the effective date of N.J.A.C. 11:21-7.15 and further, that in no instance shall any policies, contracts or certificates issued or renewed under this nonstandard health benefits plan fail to be in compliance as specified at P.L. 1994, c.11 any later than the 425th day following the effective date of N.J.A.C. 11:21-7.15.

I certify that, in accordance with N.J.A.C. 11:21-3A, no policy, contract or certificate shall be issued or renewed under this nonstandard health benefits plan through or by any association, multiple employer arrangement or out-of-state trust after February 28, 1996.

I certify that, in accordance with N.J.A.C. 11:21-3A, no policy, contract or certificate reinstated, continued or renewed under this nonstandard health benefits plan by (Carrier's name) shall be renewed after February 28, 1996.

Date Signature
Title

LAW AND PUBLIC SAFETY
(a)

DIVISION OF CONSUMER AFFAIRS

Uniform Rules—Licensee Duty to Cooperate

Proposed New Rules: N.J.A.C. 13:45A-27

Authorized By: Emma C. Byrne, Director, Division of Consumer Affairs; Board of Accounting, John J. Meade, Executive Director; Acupuncture Examining Board, Morris W. Eugene, Assistant Executive Director; Board of Architects, Kevin B. Earle, Executive Director; Audiology and Speech-Language Pathology Advisory Committee, Marianne C. Kehoe, Executive Director; Board of Chiropractic Examiners, Kay McCormack, Executive Director; Board of Cosmetology and Hairstyling, Richard G. Griswold, Executive Director; Board of Dentistry, Agnes C. Clark, Executive Director; Board of Examiners of Electrical Contractors, Christine T. DiGregorio, Executive Director; Hearing Aid Dispensers Examining Committee, Morris W. Eugene, Assistant Executive Director;

Board of Marriage Counselor Examiners, Leslie Aronson, Executive Director; Board of Examiners of Master Plumbers, Christine T. DiGregorio, Executive Director; Board of Medical Examiners, Charles A. Janousek, Executive Director; Board of Mortuary Science, Maurice W. McQuade, Executive Director; Legalized Games of Chance Control Commission, William H. Yorke, Executive Officer; Board of Nursing, Sister Teresa L. Harris, R.N., M.S.N., Executive Director; Board of Optometrists, Susan H. Gartland, Executive Director; Board of Examiner of Ophthalmic Dispensers and Technicians, H. Lee Gladstein, Executive Director; Board of Pharmacy, H. Lee Gladstein, Executive Director; Board of Physical Therapy, Susan H. Gartland, Executive Director; Board of Professional Engineers and Land Surveyors, Arthur Russo, Executive Director; Board of Professional Planners, Kevin B. Earle, Executive Director; Board of Psychological Examiners, Leslie Aronson, Executive Director; Board of Public Movers and Warehousemen, Diane I. Romano, Executive Director; Board of Real Estate Appraisers, Kevin B. Earle, Executive Director; Board of Respiratory Care, Marianne C. Kehoe, Executive Director; Board of Social Work Examiners, Leslie Aronson, Executive Director; Board of Shorthand Reporting, John J. Meade; and Board of Veterinary Medical Examiners, Maurice W. McQuade, Executive Director.

Authority: N.J.S.A. 52:17B-122a; 45:2B-34; 45:2C-3; 45:3-3; 45:3B-24; 34:8-54; 45:9-41.23; 45:5B-6; 45:6-15.3; 45:6-50; 45:5A-6; 45:9A-7; 45:8B-13; 45:14C-7; 45:9-22.9; 45:7-38; 5:8-6; 5:8-79; 45:11-24; 45:12-4; 52:17B-41.13; 45:14-26.2; 45:14-36.1; 45:9-37.18; 45:8-58; 45:14A-4; 45:14B-13; 45:14D-6; 45:14F-8; 45:14E-7f; 45:15B-11; 45:15B-1; and 45:16-9.9.

Proposal Number: PRN 1994-440.

Submit written comments by August 31, 1994 to:
Audrey Weiner, Regulatory Analyst
Division of Consumer Affairs
124 Halsey Street, 7th Floor
P.O. Box 45027
Newark, New Jersey 07101

The agency proposal follows:

Summary

These proposed new rules are advanced by the Director of the Division of Consumer Affairs with regard to the Director's independent rulemaking and regulatory authority in relation to occupational board licensees (for example, hearing aid dispensers, public movers and warehousemen, employment and temporary help agencies), by the professional and occupational licensing boards located within the Division of Consumer Affairs and by the Legalized Games of Chance Control Commission. The rules impose upon all licensees the duty to cooperate with lawful investigative activity conducted for the purpose of determining whether violations of statutes or implementing regulations have occurred. A licensee's failure to cooperate, absent good cause or a bona fide claim of privilege, may be deemed an independent basis for a finding of professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) or cause within the meaning and intent of any other enabling act for the imposition of disciplinary sanctions including license suspension or revocation or the imposition of civil penalties and costs. The proposal details the specific grounds for the imposition of disciplinary sanctions at N.J.A.C. 13:45A-27.3 which, in general, include:

- 1. The failure to respond to an inquiry from a licensing board or agency regarding a complaint received concerning licensee conduct.
2. The failure to timely provide records related to licensee conduct.
3. The failure to attend any scheduled proceeding at which a licensee's appearance is directed.
4. The failure to timely respond or to provide information requested pursuant to the Uniform Enforcement Act (N.J.S.A. 45:1-18) or other applicable law.
5. The failure to provide access to any premises from which a licensed profession or occupation is conducted, to permit an examination of any goods, ware or item used in the rendering of services or to grant access to records, books or documents used or made in the practice of the profession or occupation.

6. The failure to make proper and timely response to a subpoena by way of appearance or document production.

7. The failure to provide timely notice of any change of address from that which appears on the most recently filed license renewal or application.

The proposed new rules further define the failure to comply with an order duly entered and served by a board or agency as professional or occupational misconduct thus allowing for the imposition of disciplinary sanctions. Finally, the new rules are consistent with both prior case law and previously adopted legislative policy in declaring a licensee's right to invoke the physician-patient, psychologist-patient, marriage counselor-client and social worker-client or patient privileges to be unavailable where the licensee's conduct or capacity is the subject of scrutiny in either an investigative inquiry or in a disciplinary proceeding. See *Dengrove v. State Board of Medical Examiners*, (unreported). (Docket No. A-1029-89T4) (App. Div. May 26, 1981) and N.J.S.A. 45:9-19.2. Where information otherwise subject to a claim of privilege is obtained by an agency, board or the Attorney General, the new rules impose the safeguard of confidentiality upon such information until otherwise ordered disclosed by the board or agency, the Office of Administrative Law in a contested case or by a court of competent jurisdiction.

Social Impact

These new rules are proposed to place licensees on notice that a duty exists to cooperate with licensing board or agency inquiries to determine whether statutory and regulation provisions have been violated. As such it is anticipated that investigations and disciplinary and enforcement proceedings will benefit from a greater clarity in the definition of certain basic fundamentals inhering within licensure and the relationship between a licensing board or agency and its licensees. It is also anticipated that the new rules will decrease the incidence of recalcitrant licensee conduct which tends to evade, thwart or unduly protract inquiries into and evaluations of licensee conduct. Accordingly, heightened efficiency and expedience during investigations and disciplinary proceedings may be anticipated, all to the benefit of responsible, law abiding licensees, law enforcement and the public at large.

Economic Impact

It is anticipated that the proposed new rules will have little or no economic impact upon the overall class of licensees regulated by the Director and the professional and occupational licensing boards and subagencies located within the Division of Consumer Affairs. The only anticipated adverse economic impact will be experienced by licensees choosing not to cooperate with their licensing board or agencies or the Attorney General, in which case the expenses normally incurred in defending law enforcement activity may be anticipated (for example, attorneys fees, litigation costs and lost time from practice). On the other hand, it is anticipated that the boards and agencies affected by the rules will have a newly articulated enforcement mechanism to be applied to recalcitrant licensees which in turn should yield savings to the board and agencies (and thereby to the regulated licensees) through increased efficiencies and the avoidance of unnecessary expenses occasioned by enforcement litigation. The new rules will not directly affect funding sources, except as noted that some savings, which are incapable of measurement, may be anticipated by virtue of the use of the rules' enforcement mechanism instead of initiating litigation in the courts to enforce agency and board demands to develop facts necessary to determine whether unlawful conduct has occurred. No adverse economic impact upon the public is anticipated.

Regulatory Flexibility Analysis

The proposed new rules impose no new reporting or recordkeeping requirements. The rules do articulate compliance requirements grounded upon the finding that inherent in licensure and engaging in pursuits which serve the public, a duty to cooperate with licensing authorities exists to make known information which is necessary for proper law enforcement decision making in order to effectively implement professional and occupational licensing statutes. Under the new rules, licensees, as required currently by enabling acts and the Uniform Enforcement Act, will be required to make information available during investigative inquiries and formal disciplinary proceedings, and failure to comply with proper demands may render a licensee subject to disciplinary sanctions. The new rules, consistent with prior case law, further makes clear the unavailability of certain privileges to licensees whose conduct is the focus of regulatory scrutiny. Where a privilege is not available to shield a

licensee's conduct from Board or agency scrutiny, the rules impose a duty to maintain information which is obtained and which is otherwise subject to the privilege in a confidential status.

The new rules will apply to all licensees of the boards and agencies covered by the rules and in the event that such licensees may be considered small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., neither professional services are likely to be required in order to comply with the rules' requirements nor are any initial or ongoing compliance costs anticipated. Given the fundamental nature of the rules, namely to clearly articulate a fundamental duty which inheres in licensure and to further define the relationship between a licensee and his or her licensing board or agency, it is neither necessary nor possible to minimize any adverse economic impact on those licensees who may be economically affected by application of the rules.

Full text of the proposed new rules follows:

SUBCHAPTER 27. UNIFORM REGULATION: LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD ORDERS

13:45A-27.1 Definition of "licensee"

(a) For the purpose of this subchapter, "licensee" shall mean any licensee, permittee or registrant of:

1. The Division of Consumer Affairs;
2. Any professional or occupational licensing board, or any committee, or other sub-agency thereof located within the Division;
3. The Division of Consumer Affairs, Office of Consumer Protection, Regulated, Business Section (Employment Agencies and Temporary Help Service Firms) pursuant to N.J.S.A. 34:8-24 et seq.; or
4. The Legalized Games of Chance Control Commission.

13:45A-27.2 Licensee's duty to cooperate in investigative inquiries

A licensee shall cooperate in any inquiry, inspection or investigation conducted by, or on behalf of, a board, the Director or the licensee's licensing agency into a licensee's conduct, fitness or capacity to engage in a licensed profession or occupation where said inquiry is intended to evaluate such conduct, fitness or capacity for compliance with applicable statutory or regulation provisions. A licensee's failure to cooperate, absent good cause or *bona fide* claim of privilege, may be deemed by the board, the Director, or the licensing agency to constitute professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) or the agency's enabling act and thus subject a licensee to disciplinary action pursuant to N.J.S.A. 45:1-21(h) or the agency's enabling act.

13:45A-27.3 Specific conduct deemed failure to cooperate

(a) The following conduct by a licensee may be deemed a failure to cooperate and, therefore, professional or occupational misconduct or other good cause or grounds for suspension or revocation of licensure:

1. The failure to timely respond to an inquiry to provide information in response to a complaint received concerning licensee conduct.
2. The failure to timely provide records related to licensee conduct.
3. The failure to attend any scheduled proceeding at which the licensee's appearance is directed. In the event that a licensee elects to retain counsel for the purpose of representation in any such proceeding, it shall be the licensee's responsibility to do so in a timely fashion. The failure of a licensee to retain counsel, absent a showing of good cause therefor, shall not require an adjournment of the proceeding.
4. The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 45:1-18 or other applicable law or to provide access to any premises from which a licensed profession or occupation is conducted. Included within this paragraph shall be the failure to respond to any demand for statement or report under oath, the failure to permit the examination of any goods, ware or item used in the rendition of the professional or occupational service and the failure to grant access to records, books or other documents utilized in the practice of the occupation or profession.

5. The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 45:1-18 or other applicable law unless the response to said question is subject to a *bona fide* claim of privilege.

6. The failure to make proper and timely response by way of appearance or production of documents to any subpoena issued pursuant to N.J.S.A. 45:1-18 or as may otherwise be provided by law.

7. The failure to provide to the Board, the Director or the licensing agency timely notice of any change of address from that which appears on the licensee's most recent biennial license renewal or application.

13:45A-27.4 Failure to comply with Board orders as professional or occupational misconduct

The failure of a licensee to comply with an order duly entered and served upon the licensee or of which the licensee has knowledge shall be deemed professional or occupational misconduct.

13:45A-27.5 Unavailability of privileges in investigative or disciplinary proceedings

In any investigative inquiry conducted pursuant to N.J.S.A. 45:1-18 or in any disciplinary proceeding conducted pursuant to N.J.S.A. 45:1-21, or as may otherwise be authorized by law, the physician-patient privilege, psychologist-patient privilege, marriage counsellor-client privilege and the social worker-client or patient privilege shall be unavailable. Any statements or records otherwise subject to a claim of the stated privileges which may be obtained by the Board, its agent or the Attorney General pursuant to N.J.S.A. 45:1-18 shall remain confidential and shall not be disclosed unless so ordered by a court of competent jurisdiction, the appropriate licensing board or the Office of Administrative Law in a contested case.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Items Included in Jockey's Weight

Proposed Amendment: N.J.A.C. 13:70-8.18

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1994-441.

Submit written comments by August 31, 1994 to:
Michael Vukceovich, Deputy Director
c/o New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 13:70-8.16, in the absence of specified conditions to the race, sets forth limitations as to the weight that a thoroughbred horse may carry in a race. N.J.A.C. 13:70-8.18 sets forth those items which are included as part of the jockey's weight and certain items which are not to be included in the weight computation. The rule in its present state, includes the jockey's clothing, boots, goggles, saddle and attachments, and number cloth as part of the jockey's weight. It excludes from the weight computation the whip, bridle, bit or reins, and the jockey's safety helmet.

The proposed amendment, in conformance with existing practice, would exclude the jockey's goggles and number cloth, as well as the horse's blinkers, from being calculated into the jockey's weight. The proposed amendment would also require the jockey's use of a safety vest, to weigh no more than two pounds and capable of providing shock absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association (BETA). The safety vest would not be included in the jockey weight calculation.

The proposed amendment also mandates that exercise riders, pony people and outriders wear a safety vest during the working out or otherwise training of a horse on a racetrack, training track or general stable area.

It should be noted that a separate but related amendment is being proposed with respect to N.J.A.C. 13:70-8.28, Overweight of jockey after race, elsewhere in this issue of the New Jersey Register.

Social Impact

The proposed amendment would not have any social impact to the public. However, track patrons would be informed that jockeys are wearing safety vests, which are not included as part of the jockey's weight. In that the safety vest will likely provide the jockeys and exercise riders with an additional measure of protection in the event of a fall or collision, the Racing Commission views the requirement as having a beneficial impact upon these classes of licensees.

Economic Impact

The proposed amendment would not have any economic impact on the general public. The safety vest requirement would, however, have a monetary impact on the jockeys since they would be required to purchase the vests, at a cost of approximately \$200.00 each. Similar costs might also affect exercise riders, pony people and outriders.

Regulatory Flexibility Analysis

The proposed amendment imposes no reporting or recordkeeping requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, certain jockeys, exercise riders, pony people or outriders may operate as or be affiliated with such small businesses and the safety vest requirement would impose compliance responsibilities with respect to such concerns. Potential cost is discussed in the Economic Impact above. In that the purpose of this aspect of the amendment is to enhance the safety of race participants, exercise riders, pony people and outriders uniform application without regard to business size is needed to most effectively meet that objective.

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

13:70-8.18 Items included in a jockey's weight; safety vest requirement

(a) A jockey's weight shall include his or her clothing, boots, [goggles,] saddle and its attachments, [number cloth] or any other equipment, except as specified. None of the following items shall be included in a jockey's weight:

1. Whip;
2. Bridle;
3. Bit or reins; [or]
4. Safety helmet[.];
5. **Blinkers;**
6. **Goggles;**
7. **Number cloth; and**
8. **Safety vest.**

(b) A safety vest shall be worn by all jockeys competing in race events. The safety vest shall weigh no more than two pounds and shall be designed to provide shock absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association (BETA).

(c) A safety vest shall be worn by all exercise riders, pony people, and outriders during the performance of their duties of working out or otherwise training a horse while on the racetrack, training track or general stable area. The vest shall be designed to provide shock absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association (BETA).

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Overweight of Jockey After Race

Proposed Amendment: N.J.A.C. 13:70-8.28

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1994-442.

Submit written comments by August 31, 1994 to:
 Michael Vukceвич, Deputy Director
 c/o New Jersey Racing Commission
 CN 088
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will increase the overweight, at which a jockey can weigh in, from two pounds to no more than four pounds over the weight at which he or she weighed out. This increase would allow for the additional two pounds of weight for the safety vest, which assuming adoption of a proposed amendment to N.J.A.C. 13:70-8.18 published elsewhere in this issue of the New Jersey Register, would be required to be worn by all jockeys.

Social Impact

The proposed amendment would not have any impact on society as a whole. The jockeys would benefit through the use of safety vests, which will likely provide added protection in the event of a fall or collision and will not count toward the imposed weight restriction.

Economic Impact

The proposed amendment would not have any economic impact on the general public. Although this proposed amendment would not have an economic impact on jockeys, for the reasons set forth in the economic impact statement to the proposed amendment to N.J.A.C. 13:70-8.18, that related amendment would have such an impact on them.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This amendment increases an overweight allowance. As set forth in the Regulatory Flexibility Analysis statement to the proposed and related amendment to N.J.A.C. 13:70-8.18, however, adoption of that amendment would impose compliance responsibilities on jockeys who operate as or are affiliated with small businesses.

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

13:70-8.28 Overweight of jockey after race

No jockey shall weigh in at more than [two] **four** pounds over the weight at which he **or she** weighed out, except insofar as said weight may have been affected by the elements.

TRANSPORTATION

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
 BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits
 Route U.S. 40**

Woodstown Borough, Salem County

Proposed Amendment: N.J.A.C. 16:28-1.6

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1994-433.

Submit comments by August 31, 1994 to:

William E. Anderson
 Manager
 New Jersey Department of Transportation
 Bureau of Traffic Engineering and Safety Programs
 1035 Parkway Avenue
 CN 613
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.6 to revise certain "speed limit" zones along Route U.S. 40 in Woodstown Borough, Salem County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a review of the existing zones within the Borough of Woodstown, it was determined by the Department's Bureau of Traffic Engineering and Safety Program that the existing rule indicates the school zone to be in zone 2 instead of zone 3 where it belongs. Therefore, the proposed amendment is necessary for proper enforcement of the existing school zone in Woodstown Borough, Salem County.

Appropriate signs shall be erected in areas where the speed limit zones have been changed.

Social Impact

The proposed amendment will establish the school "speed limit" zone along Route U.S. 40 in Woodstown Borough, Salem County, in the proper zone for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28-1.6 Route U.S. 40

(a) The rate of speed designated for the certain parts of State highway Route U.S. 40 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Salem County:

(1)-(2) (No change.)

(3) Woodstown [Boro] **Borough**:

(A) (No change.)

(B) Zone 2: 30 miles per hour between 100 feet west of Green Street and East Wilson Avenue[, except with a "25 MPH WHEN FLASHING" School Speed zone within the Woodstown High School zone] (approximate mileposts 10.41 to 10.86); thence

(C) Zone 3: 35 miles per hour between East Wilson Avenue and Kesswood Avenue, **except while "25 miles per hour when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours when passing through Woodstown High School zone** (approximate mileposts 10.86 to 11.20); **thence**

(D) (No change.)

(4)-(7) (No change.)

ii-iii. (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits**Route U.S. 9****Galloway Township, Atlantic County****Proposed Amendment: N.J.A.C. 16:28-1.41**

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1994-434.

Submit comments by August 31, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.41 to revise certain "speed limit" zones along Route U.S. 9 in Galloway Township, Atlantic County, for the efficient flow of traffic, the enhancement of safety, the well-being of the populace and to establish speed limit consistency along Route U.S. 9.

Based on a memorandum from the Regional Traffic Engineer, dated January 27, 1994, in which he advised that officials from Galloway Township in Atlantic County requested that the speed limit on Route U.S. 9 from mileposts 45.0 to 50.0 be resurveyed, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that revising certain "speed limit" zones along Route U.S. 9 were warranted. As a result of the revised speed limits, Zones 26, 27 and 28 in the City of Port Republic will now be known as Zone 25.

Appropriate signs shall be erected in areas where the speed limit zones have been changed.

Social Impact

The proposed amendment will establish a more consistent "speed limit" zone along Route U.S. 9 in Galloway Township, Atlantic County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28-1.41 Route U.S. 9

(a) The rate of speed designated for certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. (No change.)

2. For both directions of traffic in Atlantic County:

i.-v. (No change.)

vi. In Galloway Township:

(1) Zone 18: 40 miles per hour between the City of Absecon-Township of Galloway corporate line and East Brook Avenue-Old Shore Road (approximate mileposts 44.14 to 44.53); thence

[(2) Zone 19: 45 miles per hour between East Brook Avenue-Old Shore Road and Boice Road (approximate mileposts 44.53 to 45.56); thence

(3) Zone 20: 50 miles per hour between Boice Road and 1,418 feet north of Chanese Lane (at stream) (approximate mileposts 45.56 to 46.18); thence

(4) Zone 21: 45 miles per hour between 1,418 feet north of Chanese Lane (at stream) and 620 feet north of Sommers Town Lane except for 35 miles per hour when passing through the Oceanville School zone (mileposts 46.23 to 46.51) while "35 m.p.h. when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours (approximate mileposts 46.18 to 46.54); thence

(5) Zone 22: 40 miles per hour between 620 feet north of Sommers Town Lane and 1,225 feet north of Old Port Republic Road-Oyster Creek Road (Co. Rd. 618) (approximate mileposts 46.54 to 47.21); thence

(6) Zone 23: 50 miles per hour between Old Port Republic Road-Oyster Creek Road (Co. Rd. 618) and Smithville Boulevard (approximate mileposts 47.21 to 48.08); thence

(7) Zone 24: 45 miles per hour between Smithville Boulevard and Quail Hill Boulevard (approximate mileposts 48.08 to 48.30); thence

(8) Zone 25: 40 miles per hour between Quail Hill Boulevard and Old New York Road (Co. Rd. 610) (approximate mileposts 48.30 to 48.72); thence

(9) Zone 26: 45 miles per hour between Old York Road (Co. Rd. 610) and Smith Bowen Road (approximate mileposts 48.72 to 49.04); thence

(10) Zone 27: 50 miles per hour between Smith Bowen Road and the Township of Galloway-City of Port Republic line (approximate mileposts 49.04 to 51.34); thence]

(2) Zone 19: 45 miles per hour between East Brook Avenue-Old Shore Road and 600 feet north of Sommers Town Lane (approximate mileposts 44.53 to 46.54); thence

(3) Zone 20: 40 miles per hour between 600 feet north of Sommers Town Lane and 1,200 feet north of Old Port Republic Road-Oyster Creek Road (County Road 618) (approximate mileposts 46.54 to 47.21); thence

(4) Zone 21: 45 miles per hour between 1,200 feet north of Old Port Republic Road-Oyster Creek Road (County Road 618) and Quail Hill Road (approximate mileposts 47.21 to 48.30); thence

(5) Zone 22: 40 miles per hour between Quail Hill Road and Old New York Road (County Road 610) (approximate mileposts 48.30 to 48.72); thence

(6) Zone 23: 45 miles per hour between Old New York Road and Smith Bowen Road (approximate mileposts 48.72 to 49.04); thence

(7) Zone 24: 50 miles per hour between Smith Bowen Road and the Township of Galloway-City of Port Republic corporate line (approximate mileposts 49.04 to 51.34); thence

vii. In the City of Port Republic:

(1) Zone [28] 25: 50 miles per hour between the Township of Galloway-City of Port Republic line and the Garden State Parkway Interchange No. 48 (approximate mileposts 51.34 to 52.36).

(b) (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits
Route N.J. 94**

Knowlton Township, Blairstown Township and Frelinghuysen Township in Warren County and Fredon Township, Town of Newton, Hampton Township, Lafayette Township, Sparta Township, Hardyston Township, Hamburg Borough and Vernon Township in Sussex County

Proposed Amendment: N.J.A.C. 16:28-1.79

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 39:4-98.

Proposal Number: PRN 1994-427.

Submit comments by August 31, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.79 to establish revised "speed limit" zones along Route N.J. 94 in Knowlton Township, Blairstown Township and Frelinghuysen Township in Warren County, and Fredon Township, Town of Newton, Hampton Township, Lafayette Township, Sparta Township, Hardyston Township, Hamburg Borough and Vernon Township in Sussex County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon request of the local governments and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of revised "speed limit" zones along Route N.J. 94 were warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been changed.

Social Impact

The proposed amendments will establish revised "speed limit" zones along Route N.J. 94 for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the revised "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

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]):

16:28-1.79 Route 94

(a) The rate of speed designated for the certain part of State highway Route 94 described in this subsection shall be established and adopted as the maximum legal rate of speed:

[1. For both directions of traffic:

i. 35 miles per hour from the westerly end of Route 94 at Columbia to a point 1,600 feet west of the center line of Delaware-Warrington Road, Knowlton Township; thence

ii. 50 miles per hour to a point 600 feet east of the center line of Hainesburgh-Columbia Road; thence

iii. 35 miles per hour to a point 1,200 feet east of the center of Yards Creek Bridge, Hainesburgh; thence

iv. 50 miles per hour to a point 200 feet west of the center line of Main Street, Blairstown; thence

v. 40 miles per hour to the center of the New York, Susquehanna and Western Railroad overpass, at Blairstown; thence

vi. 50 miles per hour to a point 400 feet west of the center of the bridge of branch of Paulinskill, Marksboro; thence

vii. 35 miles per hour to a point 600 feet east of the center line of the road to Squires Corner, Marksboro; thence

viii. 45 miles per hour to a point 1,400 feet west of the Warren County-Sussex County line; thence

ix. 50 miles per hour to a point 1,800 feet west of the center line of the entrance to Newton Memorial Hospital; thence

x. 40 miles per hour to the intersection of Summit Avenue, Town of Newton, Sussex County; thence

xi. 30 miles per hour to the intersection of Spring Street:

(1) 30 miles per hour between Summit Avenue and Liberty Street; thence

(2) 25 miles per hour between Liberty Street and High Street—Park Place (Route U.S. 206 intervenes here).

xii. 45 miles per hour from the intersection of Route U.S. 206 and Route 94 (Morris Farms-Lafayette Road) to the northerly intersection of Route 15 (Route 15 regulation intervenes here);

xiii. In Sussex County:

(1) Lafayette Township: 45 miles per hour between the northernmost intersection of Route 15 and the Sparta Township corporate line (Mileposts 28.17 to 28.82).

(2) Sparta Township:

(A) 45 miles per hour between the Lafayette Township corporate line and 1100 feet south of Old Prospect School Road (Mileposts 28.82 to 31.06).

(B) 40 miles per hour between 110 feet south of Old Prospect School Road and the Hardyston Township corporate line (Mileposts 31.06 to 31.36).

(C) 35 miles per hour School speed Zone in zone 12 within the Sussex County Vocational School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

(3) Hardyston Township:

(A) 40 miles per hour between the Sparta Township corporate line and 450 feet north of the Sparta Township corporate line (Mileposts 31.36 to 31.4)

(B) 45 miles per hour between 450 feet north of the Sparta Township corporate line and North Church Road (Co. Rd. 631), (mileposts 31.4 to 33.07).

(C) 45 miles per hour between the Hamburg Borough-Hardyston Township line and 2,600 feet south of Old Coach Road (mileposts 35.92 to 36.78); thence

(D) 35 miles per hour between 2,600 feet south of Old Coach Road and the Hardyston Township-Vernon Township line (mileposts 36.78 to 37.11); thence

(4) Hamburg Borough:

(A) 35 miles per hour between the southernmost Hardyston Township-Hamburg Borough Corporate line and the northernmost Hamburg Borough-Hardyston Township Corporate line (mileposts 35.23 to 36.10); thence

(B) 50 miles per hour to a point 200 feet west of the N.Y.S. & W. Railroad overpass, Hamburg; thence

(C) 35 miles per hour to the intersection of Mountainview Street; thence

(5) Vernon Township:

(A) 35 miles per hour between the Hardyston Township-Vernon Township line and 1,000 feet north of Rudetown Road (County Road 517) (mileposts 37.11 to 38.57); thence

(B) 40 miles per hour between 1,000 feet north of Rudetown Road (County Road 517) and 400 feet south of Sand Hill Road (mileposts 38.57 to 39.87); thence

(C) 35 miles per hour between 400 feet south of Sand Hill Road and 600 feet north of Vernon Crossing Road (County Road 644) (mileposts 39.87 to 41.75); thence

(D) 45 miles per hour between 600 feet north of Vernon Crossing Road (County Road 644) and the New York State line (mileposts 41.75 to 45.71); thence

(E) 45 miles per hour to the New York State line;

(F) The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.

(6) Fredon Township:

(A) 35 miles per hour school speed zone in zone 9 within the Fredon Township school zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

2. For Counter Clockwise Directions of traffic:

i. 25 miles per hour between High Street-Park Place and Park Place-High Street.

3. In Frelinghuysen Township, Warren County:

i. 35 miles per hour School speed zone in zone 6, within Frelinghuysen Township School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.]

1. For both directions of traffic in Warren County:

i. Knowlton Township:

(1) Zone 1: 35 mph between the Commonwealth of Pennsylvania-State of New Jersey jurisdictional line and 1,400 feet south of Stark Road (approximate mileposts 0.19 to 0.72); thence

(2) Zone 2: 50 mph between 1,400 feet south of Stark Road and 600 feet north of Hainesberg River Road (approximate mileposts 0.72 to 2.49); thence

(3) Zone 3: 35 mph between 600 feet north of Hainesberg River Road and 2,300 feet north of Mount Pleasant Road (approximate mileposts 2.49 to 2.87); thence

(4) Zone 4: 50 mph between 2,300 feet north of Mount Pleasant Road and the Township of Blairstown-Township of Knowlton corporate line (approximate mileposts 2.87 to 3.92); thence

ii. Blairstown Township

(1) Zone 1: 50 mph between the Township of Knowlton-Township of Blairstown corporate line and 200 feet south of Main Street (approximate mileposts 3.92 to 8.78); thence

(2) Zone 2: 40 mph between 200 feet south of Main Street and 100 feet north of Hope Road (County Road 521) (approximate mileposts 8.78 to 9.42); thence

(3) Zone 3: 45 mph between 100 feet north of Hope Road (County Road 521) and the Township of Blairstown-Township of Frelinghuysen corporate line (approximate milepost 9.42 to 10.26); thence

iii. Frelinghuysen Township:

(1) Zone 1: 45 mph between the Township of Frelinghuysen-Township of Blairstown corporate line and Silver Lake Road (approximate mileposts 10.26 to 11.89); thence

(2) Zone 2: 35 mph between Silver Lake Road and 600 feet north of Spring Valley Road (approximate mileposts 11.89 to 12.20); thence

(3) Zone 3: 45 mph between 600 feet north of Spring Valley Road and the Township of Frelinghuysen-Township of Fredon corporate line except for 35 mph when passing through the Frelinghuysen Township School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours (approximate mileposts 12.20 to 15.04); thence

2. For both directions of traffic in Sussex County:

i. Fredon Township:

(1) 50 mph between the Township of Fredon-Township of Frelinghuysen corporate line and the Township of Fredon and the Town of Newton corporate line, except for 35 mph when passing through the Fredon Elementary School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 15.04 to 21.39); thence

ii. Town of Newton:

(1) Zone 1: 40 mph between the Township of Fredon-Town of Newton corporate line and Summit Avenue (approximate mileposts 21.39 to 21.95); thence

(2) Zone 2: 30 mph between Summit Avenue and Liberty Street (approximate mileposts 21.95 to 22.22); thence

(3) Zone 3: 25 mph between Liberty Street and High Street-Park Place (approximate mileposts 22.22 to 22.42) (Route U.S. 206 intervenes here).

3. For counterclockwise directions of traffic in Sussex County:

i. In the Town of Newton:

(1) 25 mph between High Street-Park Place and Park Place-High Street (approximate mileposts 22.42 to 22.61); thence (N.J. Route 94 mileposts 22.61 to 24.91 is under the jurisdiction of Route U.S. 206).

4. For both directions of traffic in Sussex County:

i. Hampton Township:

(1) 45 mph between Route U.S. 206 and the Township of Hampton-Township of Lafayette corporate line (approximate mileposts 24.91 to 25.64); thence

ii. Lafayette Township:

(1) 45 mph between the Township of Hampton-Township of Lafayette corporate line and the Township of Lafayette-Township of Sparta corporate line (approximate mileposts 25.64 to 28.61); thence

iii. Sparta Township:

(1) Zone 1: 45 mph between the Township of Lafayette-Township of Sparta corporate line and 1,130 feet south of Old Prospect School Road, except for 35 mph when passing through the Sussex County Vocational School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 28.61 to 30.83); thence

(2) Zone 2: 40 mph between 1,130 feet south of Old Prospect School Road and the Township of Sparta-Township of Hardyston corporate line (approximate mileposts 30.83 to 31.11); thence

iv. Hardyston Township:

(1) Zone 1: 40 mph between the Township of Sparta-Township of Hardyston corporate line and 700 feet north of Old Prospect School Road (approximate mileposts 31.11 to 31.20); thence

(2) Zone 2: 45 mph between 700 feet north of Old Prospect School Road and the southernmost Township of Hardyston-Borough of Hamburg corporate line (approximate mileposts 31.20 to 35.13); thence

v. Hamburg Borough:

(1) 35 mph between the southernmost Hamburg Borough-Hardyston Township corporate line and the northernmost Hamburg Borough-Hardyston Township corporate line (approximate mileposts 35.13 to 35.97); thence

vi. Hardyston Township continued:

(3) Zone 3: 45 mph between the northernmost Borough of Hamburg-Township of Hardyston corporate line and 2,600 feet south of Old Coach Road (approximate mileposts 35.97 to 36.83); thence

(4) Zone 4: 35 mph between 2,600 feet south of Old Coach Road and the Township of Vernon-Township of Hardyston corporate line (approximate mileposts 36.83 to 37.16); thence

v. Vernon Township:

(1) Zone 1: 35 mph between Hardyston Township-Vernon Township corporate line and 1,000 feet north of Rudetown Road (County Road 517) (approximate mileposts 37.16 to 38.62); thence

(2) Zone 2: 40 mph between 1,000 feet north of Rudetown Road (County Road 517) and 400 feet south of Sandhill Road (approximate mileposts 38.62 to 39.93); thence

(3) **Zone 3: 35 mph between 400 feet south of Sandhill Road and 600 feet north of Vernon Crossing Road (County Road 644) (approximate mileposts 39.93 to 41.85); thence**

(4) **Zone 4: 45 mph between 600 feet north of Vernon Crossing Road (County Road 644) and the New York State-State of New Jersey jurisdictional line (approximate mileposts 41.85 to 45.76).**

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Parking and Stopping
Route N.J. 88**

Lakewood Township, Ocean County

Proposed Amendment: N.J.A.C. 16:28A-1.44

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-428.

Submit comments by August 31, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.44 to establish no stopping or standing zones on Route N.J. 88 in Lakewood Township, Ocean County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Township of Lakewood who submitted a resolution, adopted on April 21, 1994, to establish no stopping or standing zones for the health, safety and welfare of the residents along Route N.J. 88 in Lakewood Township, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of no stopping or standing zones along Route N.J. 88 were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing restrictions zones along Route N.J. 88 in Lakewood Township, Ocean County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for the installation of appropriate parking restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.44 Route 88

(a) The certain parts of State highway Route 88 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.

[1. No stopping or standing, along both sides within the entire corporate limits of Point Pleasant Borough.

2. No stopping or standing in Lakewood Township along both sides beginning 150 feet west of the westerly curb line of New Hampshire Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue.

3. No stopping or standing in Lakewood Township, Ocean County:

i. Along the southerly side (Ocean Avenue):

(1) From a point 300 feet west of the prolongation of the westerly curb line of Lexington Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue;

ii. Along the southerly side (Main Street):

(1) From the easterly curb line of Route U.S. 9 to a point 90 feet easterly therefrom;

(2) From a point 90 feet east of the easterly curb line of Route U.S. 9 to a point 300 feet west of the prolongation of the westerly curb line of Lexington Avenue between the hours of 3:00 A.M. and 8:00 A.M. (except Sundays and legal holidays).

iii. Along the northerly side (Main Street):

(1) From the easterly curb line of Route U.S. 9 to a point 212 feet easterly therefrom:

(2) Between Railroad Avenue and Lexington Avenue;

(3) From a point 212 feet east of the easterly curb line of Route U.S. 9 to Railroad Avenue between the hours of 3:00 A.M. and 8:00 A.M. (except Sundays and legal holidays).

iv. Along the northerly side (Ocean Avenue):

(1) From a point 150 feet west of the westerly curb line of New Hampshire Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue.

4. No stopping or standing in Brick Township, Ocean County:

i. Along both sides:

(1) For the entire length within the corporate limits, including all ramps, service roads and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30.]

1. In Ocean County:

i. In Lakewood Township:

(1) Along the southerly side (eastbound);

(A) From the easterly curb line of Route U.S. 9 to a point 90 feet easterly therefrom (approximate mileposts 0.0 to 0.02); thence

(B) From a point 300 feet west of the prolongation of the westerly curb line of Lexington Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue (approximate mileposts 0.2 to 2.12).

(2) Along the northerly side (westbound);

(A) From the easterly curb line of Route U.S. 9 to a point 212 feet easterly therefrom (approximate mileposts 0.0 to 0.04); thence

(B) Between Lexington Avenue and Railroad Avenue (approximate mileposts 0.25 to 0.28); thence

(C) From a point 150 feet west of the westerly curb line of New Hampshire Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue (approximate mileposts 2.12 to 2.20).

ii. In Brick Township;

(1) Along both sides:

(A) For the entire length within the corporate limits, including all ramps, service roads and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in

areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30 (approximate mileposts 3.56 to 7.60).

iii. In Point Pleasant Borough;

(1) Along both sides:

(A) Within the entire corporate limits of Point Pleasant Borough (approximate mileposts 7.60 to 10.02).

(b) The certain parts of State highway Route 88 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

[1. In the Township of Lakewood, Ocean County:

i. No parking bus stops—7:00 A.M. to 2:00 P.M.—Sunday only:

(1) Along the eastbound side:

(A) Mid-block bus stop: From a point 90 feet east of the easterly curb line of Route U.S. 9 to a point 190 feet east of the easterly curb line of Route U.S. 9.

(2) Along the westbound (northerly) side:

(A) Far side bus stop: New Hampshire Avenue—Beginning at the westerly curb line of New Hampshire Avenue and extending 200 feet westerly therefrom.]

1. In Ocean County:

i. In Lakewood Township:

(1) Along the southerly side (eastbound):

(A) (Mid-block) From a point 90 feet east of the easterly curb line of Route U.S. 9 to a point 190 feet easterly therefrom; thence

(2) Along the northerly side (westbound):

(A) (Far side) Beginning at the westerly curb line of New Hampshire Avenue to a point 200 feet westerly therefrom.

(c) (No change.)

(d) The certain parts of State highway Route 88 described in this subsection shall be designated as "no parking" zones, where parking is prohibited at certain times and hours. In accordance with N.J.S.A. 39:4-199, permission is granted to erect the appropriate signs.

1. In Ocean County:

i. In Lakewood Township:

(1) Along the southerly side (eastbound):

(A) From a point 90 feet east of the easterly curb line of Route U.S. 9 to Clifton Avenue between the hours of 3:00 A.M. to 8:00 A.M. (except Sundays and legal holidays) (approximate mileposts 0.02 to 0.1).

(B) From the easterly curb line of Clifton Avenue to a point 300 feet west of the westerly prolongation of Lexington Avenue between the hours of 6:00 P.M. to 6:00 A.M. (approximate mileposts 0.1 to 0.2).

(2) Along the northerly side (westbound):

(A) From the westerly curb line of Lexington Avenue to Clifton Avenue between the hours of 6:00 P.M. to 6:00 A.M. (approximate mileposts 0.26 to 0.1).

(B) From Clifton Avenue to a point 212 feet east of the easterly curb line of Route U.S. 9 between the hours of 3:00 A.M. to 8:00 A.M. (except Sundays and legal holidays) (approximate mileposts 0.1 to 0.05).

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Parking and Stopping
Route 56**

Deerfield Township, Cumberland County

Proposed Amendment: N.J.A.C. 16:28A-1.98

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-446.

Submit comments by August 31, 1994 to:

William E. Anderson

Manager

New Jersey Department of Transportation

Bureau of Traffic Engineering and Safety Programs

1035 Parkway Avenue

CN 613

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.98 to establish no stopping or standing zone restrictions on Route 56 in Deerfield Township, Cumberland County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Township of Deerfield in a letter dated March 11, 1994, citing concerns of citizens about vehicles parking on Route 56 and obstructing the view of vehicles attempting to enter or cross Route 56 from side roads, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of no stopping or standing zone restrictions along Route 56 within the corporate limits of Deerfield Township, Cumberland County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing zone restrictions along Route 56 within the corporate limits of Deerfield Township, Cumberland County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for the installation of appropriate parking restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.98 Route 56

(a) The certain parts of State highway Route 56 described in this subsection shall be designated and established as "no stopping or

standing” zones where stopping or standing is prohibited at all times, except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing in Deerfield Township, Cumberland County:

[i. Along the eastbound (southerly) side, between Willow Street and Pine Street, including all ramps and connections under the jurisdiction of the Commission of Transportation.]

i. **Along both sides for the entire length within the corporate limits of the Township of Deerfield, including all ramps, service roads and connections under the jurisdiction of the Commissioner of Transportation.**

2.-4. (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Turn Prohibitions
Route N.J. 73**

Berlin Township, Camden County

Proposed Amendment: N.J.A.C. 16:31-1.17

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.

Proposal Number: PRN 1994-447.

Submit comments by August 31, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.17 concerning turning movements along Route N.J. 73 to effect “no left turn” in Berlin Township, Camden County. This amendment has been further recodified in compliance with the Department’s rulemaking format.

The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the Regional Traffic Engineer for Region IV based on personal observations of vehicles negotiating left turns where physical channelization exists that preclude this turning movement, and as part of the Department’s ongoing review of current conditions. The traffic investigation conducted by the Department’s Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the turning movement restriction along Route N.J. 73 in Berlin Township, Camden County was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish a “no left turn” restriction along Route N.J. 73 in Berlin Township, Camden County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the “Statewide Violations Bureau Schedule,” issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:31-1.17 Route 73

(a) Turning movements of traffic on the certain parts of State highway Route 73 described in this subsection are regulated as follows:

1. No left turn in Camden County.

i. **In Berlin Township:**

(1) **From southbound on Route N.J. 73 into the Amtrak entrance, located approximately 475 feet south of the centerline of the Pennsylvania-Reading Seashore Line—N.J. Transit railroad overpass (approximate milepost 16.00).**

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

2.-3. (No change.)

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Turn Prohibitions
Route U.S. 9**

Lakewood Township, Ocean County

Proposed Amendment: N.J.A.C. 16:31-1.29

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.

Proposal Number: PRN 1994-435

Submit comments by August 31, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.29 concerning turning movements along Route U.S. 9 to effect “no left turns” in Lakewood Township, Ocean County. The proposed amendment has been codified in compliance with the Department’s rulemaking format.

The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Township of Lakewood by a Resolution adopted on April 28, 1994, and by an investigation conducted by the Department’s Bureau of Traffic Engineering and Safety Programs that determined that left turn restrictions were needed in the interest of traffic safety. The traffic investigation concluded that the establishment of the turning movement restrictions along Route U.S. 9 were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish left turn restrictions along Route U.S. 9 in Lakewood Township, Ocean County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:31-1.29 Route U.S. 9

(a) Turning movements of traffic on certain parts of State highway Route U.S. 9 described herein in this subsection are regulated as follows:

1. In Ocean County:

i.ii. (No change.)

iii. Lakewood Township:

(1) **No left turn eastbound out of the driveways of the Lakewood Plaza to northbound onto Route U.S. 9 (approximate milepost 102.9).**

(2) **No left turn westbound out of the driveways of the Jamesway Plaza to southbound onto Route U.S. 9 (approximate milepost 102.9).**

OTHER AGENCIES**(a)****ELECTION LAW ENFORCEMENT COMMISSION****Continuing Political Committee, Political Party Committee, and Legislative Leadership Committee Reporting****Proposed New Rules: N.J.A.C. 19:25-9****Proposed Repeals: N.J.A.C. 19:25-10**

Authorized By: Election Law Enforcement Commission,

Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-6.

Proposal Number: PRN 1994-430.

A **public hearing** concerning this proposal will be held on Tuesday, September 20, 1994, at 10:00 A.M., at:

New Jersey Election Law Enforcement Commission
28 West State Street, 12th Floor
Trenton, New Jersey

To **reserve time to speak**, telephone the Commission offices at (609) 292-8700 by Friday, September 9, 1994.

Submit written comments by September 20, 1994 to:

Gregory E. Nagy, Esq., Legal Director
Election Law Enforcement Commission
CN-185

Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, the Commission) proposes new rules and repeals concerning the reporting requirements of continuing political committees, political party committees and legislative leadership committees.

This proposal is another step in the implementation of statutory changes made by Chapter 65 of the Laws of 1993, which made comprehensive amendments to "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. (hereafter,

"the Act"). Rules governing the establishment of continuing political committees, political party committees and legislative leadership committees were proposed on August 2, 1993 (25 N.J.R. 3429(b)) and were adopted on October 18, 1993 (25 N.J.R. 4753(a)).

Among the principal provisions in this proposal are:

1. A continuing political committee, a political party committee, or a legislative leadership committee (hereafter, collectively referred to as "reporting committees") must file quarterly reports of contributions, expenditures and all other transactions of its election fund. See N.J.A.C. 19:25-9.1.

2. In lieu of a quarterly report, a reporting committee may file a certified statement to the effect that the total amount to be raised or expended in a calendar year shall not exceed \$2,500. See N.J.A.C. 19:25-9.2.

3. The organizational treasurer of a reporting committee must file a written notice with the Commission of any contribution in excess of \$500.00 or aggregate contributions from a contributor that total in excess of \$500.00 received after the closing date of its most recent quarterly report and on or before the date of an election in which the committee has made or intends to make a contribution or expenditure. The report must be filed within 48 hours of the receipt of the contribution, except that the reporting committee may report together all such contributions on a single report to be filed no later than the 11th day before the election. A contribution in excess of \$500.00 received after the closing of the 11-day preelection report and on or before the date of the election must be reported on a 48-hour basis. See N.J.A.C. 19:25-9.3.

4. An organizational treasurer of a continuing political committee must make a report similar to those described in paragraph 3 above for an expenditure or aggregate expenditures of money or other thing of value in excess of \$500.00 in a primary or general election which is or are made, incurred or authorized after March 31 up to a date on or before the date of the primary election, or after September 30 up to a date on or before the date of the general election to support or defeat a candidate, or to aid the passage or defeat of a public question. See N.J.A.C. 19:25-9.4.

5. A continuing political committee that has ceased making contributions in elections may terminate its quarterly reporting requirement by making a final accounting of any funds used in an election, including the final disposition of any remaining balance. See N.J.A.C. 19:25-9.5.

6. The time and place for filing reports is described in N.J.A.C. 19:25-9.6.

These requirements reiterate or expand on statutory requirements contained in N.J.S.A. 19:44A-8(b) and (c).

Social Impact

The proposed new rules set forth the reporting requirements for continuing political committees, political party committees, and legislative leadership committees. Continuing political committees, commonly referred to as "political action committees," or "PACs," are associational entities that make contributions of \$2,500 or more in a calendar year in New Jersey elections (see N.J.S.A. 19:44A-3(n)). The term "political party committee" refers collectively to the State committees, county committees and municipal committees of major political parties (see N.J.S.A. 19:44A-3(p), defining the term "political party committee," and N.J.S.A. 19:1-1, defining the term "political parties"). The term "legislative leadership committee" means a committee established by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly (see N.J.S.A. 19:44A-3(s)).

The proposed rules implement statutory requirements for reporting committees contained in the Act, as amended by Chapter 65 of the Laws of 1993. The proposed new rules are therefore intended to enhance the salutary public purposes of the Act to ensure that there is full disclosure of the financial activity of these reporting entities. The Commission has ameliorated some of the reporting burdens created by the statute by permitting the filing of a certified statement in the event that contributions or expenditures in a calendar year do not exceed \$2,500 (see N.J.A.C. 19:25-9.2), and also by relaxing the 48-hour notice reporting requirement of contributions and expenditures over \$500.00 by allowing a collective report of such transactions no later than the 11th day before the election (see N.J.A.C. 19:25-9.3(b) and 9.4(b)). Reporting entities should note that any contribution or expenditure subject to 48-hour notice reporting received or made after the closing of the 11-day preelection report (for example, received or expended after the 13th day before the election) is still subject to the 48-hour notice requirement.

The Commission anticipates that the proposed new rules, as well as the statutory provisions they are based on, may result in some hardship for multi-state or national continuing political committees whose activities in New Jersey represent a minimal part of their overall finances but may exceed \$2,500 in a calendar year and thus trigger reporting requirements in the State. A report filed by such an out-of-State entity will consist almost entirely of contributions and expenditures that have no relevance to any New Jersey election. Therefore, such an out-of-State continuing political committee should consider establishing a separate subcommittee or account exclusively for New Jersey election activity, thus avoiding the necessity of filing reports that for the most part contain information not pertinent to any New Jersey election.

Economic Impact

The proposed rules are not expected to generate any additional compliance costs on continuing political committees, political party committees or legislative leadership committees observing the reporting requirements of the Act. To the extent that these proposed rules relax 48-hour notice reporting of contributions or expenditures by permitting a collective report of such transactions no later than the 11th day before an election (see N.J.A.C. 19:25-9.3(b) and 9.4(b)), they will reduce the economic burden generated by the statutory requirements.

Regulatory Flexibility Statement

The Commission's proposed new rules do not impose recordkeeping, reporting, or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose requirements on political committees, political party committees and legislative leadership committees. It is conceivable that small businesses may be employed to provide goods or services to reporting committees or their organizational treasurers, but the reporting and recordkeeping requirements generated by the proposed rules are solely on those reporting committees.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 19:25-10.

Full text of the proposed new rules follows:

SUBCHAPTER 9. CONTINUING POLITICAL COMMITTEE, POLITICAL PARTY COMMITTEE, AND LEGISLATIVE LEADERSHIP COMMITTEE REPORTING

19:25-9.1 Quarterly reports

(a) A continuing political committee, a political party committee, or a legislative leadership committee shall file quarterly reports of all contributions received, all expenditures made, and all other transactions of its election fund subject to reporting, which reports shall be due for filing and shall cover the following periods of time:

1. The first quarterly report shall be due for filing on April 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:01 A.M. of January 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:01 A.M. of April 1 of that calendar year;

2. The second quarterly report shall be due for filing on July 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:01 A.M. on April 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:01 A.M. of July 1 of that calendar year;

3. The third quarterly report shall be due for filing on October 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:01 A.M. on July 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:01 A.M. of October 1 of that calendar year; and

4. The fourth quarterly report shall be due for filing on January 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:01 A.M. on October 1 of the calendar year preceding the calendar year of the filing date and end with the reporting of transactions occurring before 12:01 A.M. of January 1 of the calendar year of the filing date.

(b) The initial quarterly report shall be filed for the calendar year quarter in which the continuing political committee, political party committee, or legislative leadership committee was established or required to be established, and, in the case of a continuing political

committee, quarterly reports shall continue to be filed in each calendar year quarter pursuant to (a) above until such time as a final quarterly report is filed pursuant to N.J.A.C. 19:25-9.5. A political party committee or a legislative leadership committee cannot terminate quarterly reporting requirements.

(c) The organizational treasurer shall file and certify the correctness of the quarterly report, and shall certify that no contributions have been received in violation of the contribution limits prescribed by the act.

19:25-9.2 Certified statement (Form A-3)

(a) There shall be no obligation to file the quarterly reports referred to in N.J.A.C. 19:25-9.1 on behalf of a continuing political committee, political party committee, or legislative leadership committee that files no later than January 15 of a calendar year a certified statement (Form A-3) to the effect that the total amount to be raised or expended in that calendar year shall not exceed \$2,500.

(b) In the event a continuing political committee, political party committee, or legislative leadership committee files a certified statement (Form A-3) pursuant to (a) above, and total expenditures exceed \$2,500 during the calendar year for which the statement was filed, the committee shall:

1. File a quarterly report pursuant to N.J.A.C. 19:25-9.1 on the date relevant to the calendar year quarter in which \$2,500 of expenditures was exceeded, and that quarterly report shall include all contributions received and all expenditures made from the beginning of the calendar year; and

2. Continue filing quarterly reports for the remainder of that calendar year, unless a final quarterly report is filed pursuant to N.J.A.C. 19:25-9.5.

(c) If a continuing political committee, political party committee, or legislative leadership committee, which has filed a certified statement for a calendar year pursuant to (a) above, receives during any calendar year quarter a contribution, or aggregate contributions from a contributor, that exceeds the sum of \$200.00, that committee shall file on the dates provided in N.J.A.C. 19:25-9.1 a report containing the following information:

1. The name and mailing address of the contributor;

2. The date the contribution was received;

3. The amount of the contribution, or if the contribution was other than money, a description of the contribution and its value as determined pursuant to N.J.A.C. 19:25-11.5; and

4. If the contributor was an individual, the occupation of the contributor and the name and mailing address of the individual's employer.

19:25-9.3 Contributions received immediately before an election

(a) An organizational treasurer of a continuing political committee, a political party committee, or a legislative leadership committee shall file a report or other written notice with the Commission of any contribution in excess of \$500.00, or any aggregate contributions from a contributor which total in excess of \$500.00, received after the closing date of its most recent quarterly report and on or before the date of an election in which the committee has made or intends to make any contribution or expenditure to aid or promote any candidate or the passage or defeat of any public question. The closing dates of quarterly reports are set forth in N.J.A.C. 19:25-9.1(a).

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of receipt of a contribution in excess of \$500.00, or within 48 hours of receipt of aggregate contributions from a contributor which total in excess of \$500.00, except that all such contributions or aggregate contributions received prior to 12:01 A.M. of the 13th day preceding the date of an election may be reported together on a report or written notice to be filed with the Commission no later than the 11th day before that election. A contribution or aggregate contributions from a contributor totaling in excess of \$500.00 received on or after 12:01 A.M. on the 13th day before the election must be reported within 48 hours of receipt.

(c) The report or written notice described in (a) above shall contain the following information:

1. The name of the recipient committee;
2. The date the contribution was received;
3. The amount of the contribution, or if the contribution was other than money, a description of the contribution and its value as determined pursuant to N.J.A.C. 19:25-11.5;
4. The name and mailing address of the contributor; and
5. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer.

(d) The report or written notice described in (a) above shall be signed by the organizational treasurer, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-9.4 Continuing political committee expenditures made immediately before a primary or general election

(a) An organizational treasurer of a continuing political committee shall file a report (Form E-3) of an expenditure of money or other thing of value in excess of \$500.00, or aggregate expenditures that total in excess of \$500.00, made, incurred or authorized in a primary or general election by the continuing political committee to support or defeat a candidate, or to aid the passage or defeat of a public question, which expenditure is, or aggregate expenditures are made, incurred or authorized after March 31 and on or before the day of the primary election, or after September 30 and on or before the day of the general election. The report shall contain:

1. The name of the continuing political committee making the expenditure;
2. The name and mailing address of the person, firm or recipient; or the name and mailing address of the organization to whom or which the expenditure was paid or given; and
3. The amount and purpose of the expenditure.

(b) The report or written notice described in (a) above shall be signed by the organizational treasurer and filed with the Commission within 48 hours of the making, authorizing or incurring of the expenditure, or aggregate expenditures, except that all expenditures or aggregate expenditures made, incurred or authorized before 12:01 A.M. on the 13th day preceding the date of a primary or general election may be reported together on a report or written notice to be filed no later than the 11th day before that election. A report of an expenditure or aggregate expenditures in excess of \$500.00 made, incurred or authorized on or after 12:01 A.M. on the 13th day preceding the date of a primary or general election shall be filed within 48 hours of receipt, and such a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-9.5 Termination of continuing political committee reporting

(a) A continuing political committee may certify a quarterly report as its final quarterly report and thereby terminate further quarterly reporting provided:

1. The continuing political committee has ceased making contributions to aid or promote any candidate, or to aid or promote the passage or defeat of any public question;
2. The final quarterly report makes a final accounting of any funds used or relating to aiding or promoting any candidate or the passage or defeat of any public question, including the final disposition of any remaining balance; and
3. The continuing political committee is dissolved.

(b) The chairperson and the organizational treasurer shall file and each certify the final quarterly report.

19:25-9.6 Time and place of filing reports

An original and two copies of all reports required to be filed must be received at the Commission offices no later than 5:00 P.M. on the date the report is due for filing in order to be deemed timely filed. A report submitted by United States mail postmarked on or before a filing date but not received until after 5:00 P.M. of the date the report is due for filing will not be deemed timely filed.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Procedure for Acceptance of Wire Transfers Proposed Amendment: N.J.A.C. 19:45-1.24A

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

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(g), 99 and 101.
Proposal Number: PRN 1994-431.

Submit written comments by August 31, 1994 to:
Seth H. Brilliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

N.J.A.C. 19:45-1.24A(g) presently provides that a patron must present identification credentials to the general cashier prior to the release of any wire transfer funds being utilized by the patron for a customer deposit.

This amendment would also permit casino licensees to utilize the same identification procedure now used for the exchange of counter checks and slot counter checks, that is, comparison of a computer generated facsimile of the patron's signature to the original, which in this instance would appear on the Customer Deposit Form. See N.J.A.C. 19:45-1.25(k)1 and 1.25A(b)1. The computer generated facsimile signature would be obtained as part of the patron's credit file, pursuant to N.J.A.C. 19:45-1.27.

Social Impact

This additional method of verifying a patron's identification may enable casino licensees to verify identification faster, and to process these transactions more efficiently, and without affecting the security of the funds or the operation of the casino cage.

Economic Impact

No economic impact is anticipated as a result of this amendment.

Regulatory Flexibility Statement

The proposed amendment will affect only casino licensees, none of which is a small business as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.24A Procedures for accepting, verifying and accounting for wire transfers

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

(g) Upon completion of the information required by (f)1 through 6 above, the cage supervisor who prepared the form shall obtain the signature required by (f)7 above on both copies of the Wire Transfer Acknowledgment Form, transmit the duplicate copy and any supporting documentation to the accounting department, and forward the original Wire Transfer Acknowledgment Form to:

1. (No change.)

2. The general cashier, if the funds are to be used to establish a cash deposit, who shall:

i. (No change.)

ii. Prepare a Customer Deposit Form in accordance with the provisions of N.J.A.C. 19:45-1.24, except that prior to the release to the patron of any funds credited to a cash deposit file by means of a wire transfer, [the patron shall be required to present identification credentials to the general cashier who shall examine the patron's identification credentials] **the general cashier shall verify the patron's identity by examining the patron's identification credentials or by comparing the patron's signature on the Customer Deposit Form to a computer generated facsimile thereof, obtained as part of the patron's credit file pursuant to N.J.A.C. 19:45-1.27, to insure**

that the patron is the patron recorded on the Wire Transfer Acknowledgment Form, and shall maintain documentation supporting that examination; and
 iii. (No change.)
 (h) (No change.)

(a)

**EXECUTIVE COMMISSION ON ETHICAL STANDARDS
 Executive Commission on Ethical Standards Rules
 Agency Codes of Ethics
 Proposed Amendment: N.J.A.C. 19:61-2.2**

Authorized By: Executive Commission on Ethical Standards,
 Rita L. Strmensky, Executive Director.
 Authority: N.J.S.A. 52:13D-21.
 Proposal Number: PRN 1994-436.

Submit written comments by September 1, 1994 to:
 Rita L. Strmensky, Executive Director
 Executive Commission on Ethical Standards
 28 West State Street, Rm. 1407
 CN 082
 Trenton, New Jersey 08625-0082

The agency proposal follows:

Summary

This proposed amendment to N.J.A.C. 19:61-2.2 requires that each State agency distribute the agency's code of ethics to each officer and employee and that each officer and employee sign a receipt indicating that he or she has received the Code, is responsible for reading the Code, and that he or she is bound by it. The proposed amendment also requires that each agency provide a notice to each officer and employee specifying from whom clarification of the Code can be sought.

The Executive Commission on Ethical Standards believes that all officers and employees should receive notice of the ethical standards to which they are held. The Commission has noted, however, that there is no uniform procedure throughout the principal departments and major agencies of the Executive branch of State government to ensure that each officer and employee receives a copy of the agency Code of Ethics. The proposed amendment imposes an affirmative obligation on each agency to distribute its code to all current and future officers and employees and to maintain a record of that distribution. To the extent practicable, the proposed amendment, by means of specifying language for a receipt to be signed by each officer and employee, creates an affirmative obligation on each officer and employee to read the Code of Ethics.

Social Impact

The effect of the proposed amendment is to provide a system under which each State officer and employee will receive notice of the standards of conduct that apply to him or her.

All agencies and officers and employees of the Executive branch of State government will be affected by this proposal. The Commission anticipates that there will be positive consequences to this amendment in that all officers and employees will be advised of the standards to which they are held and will be provided with the name of an individual from whom they can obtain clarification. All agencies will have records of such notification. Any negative reaction by agencies that may experience logistical difficulties with a distribution procedure will be offset by the positive benefits to the employees of the agencies.

It is anticipated that the proposed amendment will aid the Commission to more effectively administer and enforce the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., to the benefit of the public.

Economic Impact

The proposed amendment may have a small economic impact on State agencies because each agency must print or photocopy sufficient copies of its Code of Ethics for distribution.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There-

fore, a regulatory flexibility analysis is not necessary. The amendment provides for a procedure that requires State agencies to distribute the agency Code of Ethics to officers and employees and requires officers and employees to acknowledge receipt.

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

19:61-2.2 Agency codes of ethics

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

(c) Each agency shall put into place a distribution procedure to ensure that each current officer and employee and each new officer and employee receives a copy of the agency Code of Ethics. Each officer or employee shall sign a receipt indicating the date on which the Code was received and an acknowledgment that the officer or employee is responsible for reading the Code and is bound by it. The receipt shall be maintained in the officer's or employee's personnel file. Each copy of the Code of Ethics shall include a notice to the officer or employee that he or she can seek clarification of the Code's provisions from the agency's ethics liaison officer or from the Executive Commission on Ethical Standards. For the purposes of this subsection, "officer" and "employee" shall include State officers and employees and special State officers and employees as defined by the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.

HEALTH

(b)

**PUBLIC HEALTH COUNCIL
 State Sanitary Code
 Collection, Processing, Storage and Distribution of
 Blood
 Proposed Amendments: N.J.A.C. 8:8-8.3, 8.5 and 8.8**

Authorized By: Public Health Council, William Frascella, Jr.,
 O.D., Chairman.
 Authority: N.J.S.A. 26:1A-7 and 26:2A-7.
 Proposal Number: PRN 1994-415.

A **public hearing** concerning these proposed amendments will be held on Monday, September 12, 1994 at 1:30 P.M. at the following address:

Department of Health
 Room 106 (Auditorium)
 Health-Agriculture Bldg.
 Trenton, New Jersey

Submit written comments by September 12, 1994 to:
 Ann Marie Russell, Supervising Clinical Laboratory Evaluator
 Clinical Laboratory Improvement Service
 New Jersey Department of Health
 CN-360
 Trenton, New Jersey 08625-0360
 609-530-6150

The agency proposal follows:

Summary

Readoption with amendment of N.J.A.C. 8:8, Collection, Processing, Storage and Distribution of Blood was proposed in the February 22, 1994 New Jersey Register. The readoption was effective April 12, 1994 (see 26 N.J.R. 2025(a)); the amendments are being adopted in this issue of the New Jersey Register. During the process of publishing the proposal, portions of subchapter 8, which state the criteria required for the collection of blood, were inadvertently omitted. As a result, the Department is proposing amendments of N.J.A.C. 8:8-8.3, 8.5 and 8.8.

In general, the rules have been revised for clarity. A medical contingency plan has been required to include the need for this plan when transfusions are performed. This proposal deletes from that plan references to a mobile site, "unit," and "donor bleeding," replacing those terms with "facility" and "procedure." Additionally, the requirement for a unique sequential numeric or alphanumeric identifier has been relocated from subchapter 7 to N.J.A.C. 8:8-8.5(a). Subsection (c) has been added to N.J.A.C. 8:8-8.8, to differentiate the labeling of untested autologous blood from the labeling of homologous blood.

Social Impact

Human blood and blood components are used as a frequent and necessary therapeutic procedure in medical practice. Since blood is a biological fluid, the improper transfusion of this substance can lead to the spread of diseases such as AIDS and hepatitis. The potential for blood and blood components to transmit these diseases, especially AIDS, has caused great concern within the Department, the blood bank community and among users and recipients of these components.

The purpose of these rules is to assure that both donors and recipients are provided with safe conditions and that all blood and blood components are safe for human use. Institution of the requirements proposed should decrease the risk of transmitting transfusion-related diseases by standardizing the procedures blood banks use.

A beneficial effect of the rules should be to reassure the public and to restore the public's confidence in the blood supply. The proposed amendments further the goals of these rules.

Economic Impact

The proposed amendments will affect all entities that wish to initiate or presently perform activities related to blood banking in New Jersey. Currently, in New Jersey, 146 facilities are licensed as blood banks.

It is anticipated that the amendments will have little or no economic impact on these facilities, since the only additional requirement, development of a medical contingency plan for facilities that perform transfusions, will require no additional expenditures and the additional workload should be absorbed by existing staff.

Regulatory Flexibility Analysis

Facilities licensed as blood banks in the State include free-standing blood centers, hospitals, dialysis centers, home infusion companies and doctor's offices. Approximately 20 of the blood banks affected by the proposed amendments are small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments do impose recordkeeping and compliance requirements on such small businesses, as described in the Summary above. However, it is unlikely that increased capital costs or a need for outside professional services will arise from these rules. Current capital costs arise from personnel, documentation, and recordkeeping. No exemptions from these amendments or lesser requirements can be provided to small businesses due to the need for the establishment of minimum standards under which blood banks must operate to protect the safety of the State's blood supply.

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

8:8-8.3 Medical contingency plan

(a) Each location for collection of whole blood units or the transfusion of blood and blood components shall have a current medical contingency plan specific for that location which shall include:

1.-4. (No change.)

5. When a private physician [in the area of a mobile whole blood collection site] is providing medical coverage, personnel will be responsible for:

i. Notifying the physician of the location and telephone number of the [unit and that donor bleeding] **facility or recipient's home and the time that the procedure** is being initiated;

ii.-iii. (No change.)

(b) When a hospital in the area [of the mobile blood collection site] is providing medical coverage, personnel will be responsible for:

1. Notifying the hospital emergency room of the location and telephone number of the [unit] **facility and the hour [donor bleeding] the procedure** is being initiated;

2. (No change.)

[(c) Untested autologous blood collected from a donor/recipient, that has been tested in the last 30 days, shall not be labeled according to uniform labeling for homologous blood. It shall be labeled with:

1. A statement that it was collected from a donor known to be negative or positive to FDA required tests; and

2. The date that the autologous donor/recipient was tested.]

[(d)](c) A copy of the Medical contingency plan for each location must be maintained on file on the premises of each licensed blood bank for a period of not less than five years.

8:8-8.5 Method of blood and blood component collection

(a) **Immediately prior to collection of the blood or blood component, a unique sequential numeric or alphanumeric identification shall be placed on all material related to that donation, such as the blood component label, the donor medical history record and pilot tubes. This number shall identify all material related to the particular blood donation.**

Recodify existing (a)-(h) as (b)-(i) (No change in text.)

8:8-8.8 Labeling

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

(c) **Untested autologous blood collected from a donor/recipient, who has been tested in the last 30 days, shall not be labeled according to standards for uniform labeling of homologous blood. It shall be labeled as follows:**

1. **With a statement that the blood was collected from a donor known to be tested for FDA-required tests; and**

2. **The date that the donor recipient was tested.**

HUMAN SERVICES**(a)****DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual****Eligibility Effective Date and Applicant Responsibilities in the Application Process****Proposed Amendments: N.J.A.C. 10:69A-5.3, 5.6, 6.2 and 6.12**

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

Authority: N.J.S.A. 30:4D-20, 24.

Agency Control Number: 94-P-26.

Proposal Number: PRN 1994-424.

Submit comments by August 31, 1994 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services

Mail Code #26

CN 712

Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

The proposed amendments will clarify and delineate PAAD eligibility criteria previously open to wide interpretation. Less conflicts will arise and income will be more clearly defined.

The origin for the proposed amendments lies in the need for the rules to clearly identify and spell out certain eligibility and income criteria, beneficiary responsibility and the effective date of eligibility information. N.J.A.C. 10:69A-5.3(b)2, as proposed, clearly indicates that PAAD will not provide reimbursement for applications received after 90 days from the expiration date. N.J.A.C. 10:69A-5.6(c)1 and 7 will provide direction for both the applicant and PAAD when the applicant fails to receive their renewal application at the appropriate time. Proposed N.J.A.C. 10:69A-5.6(d)2v better defines the reasons for which a beneficiary must return his or her PAAD eligibility card. N.J.A.C. 10:69A-6.2(c)1vii, xiv, xv and xvii will more clearly define some of the types of income which must be included in determining PAAD eligibility. N.J.A.C. 10:69A-6.2(f), as amended, explains that ineligible applicants must repay benefits for the entire calendar year, if their income went over the eligibility limit during the year. Proposed N.J.A.C. 10:69A-6.2(j) clarifies and strengthens PAAD policy and procedures which provide that applicants who combine their income by filing joint income tax returns with their spouse must also combine their income for PAAD eligibility purposes under the joint income eligibility standard. Proposed N.J.A.C. 10:69A-6.2(k) spells out the fact that expenses are not to be considered in determining PAAD eligibility and that only gross income is to be used

for eligibility purposes (unless otherwise noted). Proposed N.J.A.C. 10:69A-6.2(1) provides for clarification concerning net losses for rental property or a business. Net losses simply means that there was zero income in that income category and that no offset of losses is allowed against other income.

With respect to the amendment concerning hearings at N.J.A.C. 10:69A-6.12, the Division is trying to insure that only contested cases are sent to OAL. Therefore, the Division is now requiring PAAD beneficiaries who request a hearing to indicate, in writing, the reason(s) for their request. The beneficiary must indicate some factual or legal basis for their request. If the beneficiary fails to establish a valid reason(s), their hearing request will be denied.

Social Impact

PAAD applicants and beneficiaries will have a better understanding of eligibility requirements. The amendments will provide a more detailed explanation of includable income for purposes of determining eligibility. Beneficiaries should be aware of these requirements and income limits when requesting a hearing.

These amendments do not impact on pharmaceutical providers. PAAD beneficiaries whose income is close to the eligibility limits will have to be alert to the repayment provisions. PAAD beneficiaries will have to be aware of the requirement to explain their reason(s) for requesting a hearing in more detail.

Economic Impact

PAAD beneficiaries are required to pay a \$5.00 co-payment per prescription. These amendments do not impact on pharmaceutical providers. The Division has an administrative process for receiving hearing requests and forwarding contested cases to the Office of Administrative Law (OAL). The Division has already budgeted the administrative expense of the hearing of contested cases.

Regulatory Flexibility Statement

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The amendments govern eligibility determination for the Pharmaceutical Assistance for the Aged and Disabled program, by a State agency rather than a private business establishment.

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

10:69A-5.3 Eligibility effective date

(a) (No change.)

(b) The Division shall conduct periodic redeterminations of the eligibility of PAAD beneficiaries. Generally, renewals of eligibility shall be conducted every two years. Renewals will be conducted annually in those instances when the PAAD beneficiary's income approaches the eligibility limits for a single person or married couple as defined in N.J.A.C. 10:69A-6.2.

1. (No change.)

2. Those beneficiaries required to renew annually or biennially must submit a valid renewal application 45 days prior to their expiration date to insure that their PAAD benefits continue uninterrupted; however, if beneficiaries are late in submitting their renewal applications, but apply within 90 days after the expiration date, their PAAD benefits will continue uninterrupted. If the renewal application is submitted more than 90 days after the expiration date, the eligibility effective date will be the date when a valid and completed renewal application is processed by the PAAD Bureau. **If the PAAD beneficiary is late in filing his or her renewal application by more than 90 days after the expiration date, the PAAD program shall not make reimbursement until the new eligibility period has been established.**

3. (No change.)

10:69A-5.6 Responsibilities in the application renewal process

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

(c) The applicant or beneficiary has the responsibility to:

1.-5. (No change.)

6. Complete his [/] or her renewal application in person if selected as part of a sample group by PAAD. PAAD eligibility will not be

renewed if the beneficiary refuses an in-person eligibility review[.]; and

7. If the application mailed by PAAD is lost in the mail, misplaced or not received due to the applicant's change of address, it is the applicant's responsibility to contact the PAAD Bureau for a new application within 60 days after the expiration date.

(d) The beneficiary has the responsibility to:

1. (No change.)

2. Return his or her eligibility card to the Bureau of Pharmaceutical Assistance to the Aged and Disabled whenever becoming ineligible due to one of the following:

i.-iv. (No change.)

v. When requested by the PAAD Bureau because required information to confirm eligibility was not submitted, or scheduled recovery payments are in arrears.

3. (No change.)

10:69A-6.2 Income standards

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

(c) All income from whatever source derived, is considered in determining eligibility for the purposes of PAAD. Jointly owned income sources will be allocated according to degree of ownership.

1. All income, taxable and nontaxable, is to be included. Examples of possible sources of income[,] (gross amounts unless otherwise noted)[,] are as follows:

i.-vi. (No change.)

vii. Interest **taxable and nontaxable**;

viii.-xiii. (No change.)

xiv. Annuities (**contributory and non-contributory**);

xv. Retirement benefits **including distribution from Individual Retirements Arrangements (IRA's)**;

xvi. Business income (net)[.];

xvii. **Fair market value of prizes and awards.**

2. (No change.)

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

(f) Since PAAD eligibility is based upon actual annual income, if the actual income for the current calendar year exceeds the PAAD income standard, the person will become ineligible for the entire calendar year **and shall be required to repay for all prescriptions from January 1 through December 31 of the calendar year.**

(g)-(i) (No change.)

(j) Applicants who combine their income by filing joint Federal and/or State income tax returns, must combine their income for PAAD eligibility purposes for the same time period and their eligibility determination shall be based on the joint income standard, except when (b)2 above applies.

(k) Medical or other expenses are not considered or deducted from gross income for PAAD eligibility purposes.

(l) Net losses in one income category shall not be used to offset income in another category.

10:69A-6.12 Appeal process

(a) When the Bureau of PAAD determines that an applicant is ineligible for benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to the Bureau of Pharmaceutical Assistance to the Aged and Disabled, Division of Medical Assistance and Health Services, CN 715, Trenton, New Jersey 08625-0715, within 20 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

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

(d) When the PAAD beneficiary requests a fair hearing, he or she shall clearly indicate the existence of a disputed question of fact or law arising from the requirements and standards of the rules and statutes of the PAAD program. If the beneficiary fails to establish a contested case, the PAAD bureau shall deny the hearing request.

1. Hearings are not intended to be informational or to provide a forum for the expression of public sentiment on PAAD actions or policies.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES
Manual of Requirements for Family Day Care
Registration

Proposed Amendments: N.J.A.C. 10:126-1.2, 2.2, 2.3, 2.4, 2.6, 3.2, 4.1, 4.2, 4.6, 4.8, 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9, 5.10, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.8, 6.9, 6.13, 6.18 and 6.20

Proposed New Rule: N.J.A.C. 10:126-1.4

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

Authority: N.J.S.A. 30:5B-16 et seq.

Proposal Number: PRN 1994-439.

Submit comments in writing by August 31, 1994 to:

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

The agency proposal follows:

Summary

The Division of Youth and Family Services (DYFS) in the Department of Human Services is authorized to regulate family day care sponsoring organizations and voluntarily registered family day care providers in New Jersey pursuant to N.J.S.A. 30:5B-16 et seq. The Division's Manual of Requirements for Family Day Care Registration (N.J.A.C. 10:126) constitutes rules that govern 16 family day care sponsoring organizations and some 4,200 voluntarily registered family day care providers throughout New Jersey. These rules were readopted without change on November 1, 1993, at 25 N.J.R. 4932(b). The previous rules expired on November 7, 1993, in keeping with the "sunset" provisions of Executive Order No. 66(1978) governing administrative regulations. Amendments to the readopted rules are now being proposed. No amendments were proposed when the previous rules expired because the Division was awaiting the outcome of pending legislation affecting the family day care registration program.

The New Jersey Family Day Care Provider Registration Law (N.J.S.A. 30:5B-16 et seq.) established a two-tiered system of voluntary regulation for family day care providers, who provide child care for up to five children in a private residence. Under the law, family day care providers are not required to register; but if they choose to register, they must comply with State requirements. The Division of Youth and Family Services inspects, approves and contracts with selected family day care sponsoring organizations to carry out the voluntary registration system in specific geographic areas (which may include one or more counties). In turn, each sponsoring organization is responsible for inspecting, registering and monitoring family day care providers to ensure their compliance with registration requirements, and providing technical assistance, training and consultation to providers to assist them in maintaining compliance.

The Division of Youth and Family Services is proposing a number of substantive amendments and minor technical changes to N.J.A.C. 10:126, the Manual of Requirements for Family Day Care Registration. The proposed amendments update, strengthen, clarify and improve the current rules to reflect the changing needs of family day care providers, parents of children attending family day care, and sponsoring organizations. In addition, the proposal includes amendments required as a result of recently enacted legislation (N.J.S.A. 40:55D-66.5 et seq., commonly known as the family day care zoning law, as amended by P.L. 1992, c.13 and P.L. 1993, c.350), which necessitates changes in some of the manual's existing rules as well as the adoption of some new rules.

The zoning law allows registered family day care homes to operate in all residential zones of a municipality and prohibits municipalities from adopting ordinances that preclude or restrict their operation. The law also modifies the definition of a family day care home, and limits the maximum number of children that can be cared for by a registered family day care provider.

When originally enacted on September 13, 1991, the zoning law required registered family day care providers and other adults living or working in the home to undergo and pay for Criminal History Record

Information (CHRI) fingerprint background checks. P.L. 1993, c.350, which was signed into law on December 29, 1993, repealed the CHRI provisions of the zoning law, and authorized DYFS Child Abuse Registry Information (CARI) background checks instead. The CARI provisions take effect 18 months after the law's enactment (June 29, 1995), to allow the Division time to establish procedures for conducting CARI background checks. Accordingly, the proposal does not contain any amendments reflecting the requirements for CARI checks, since these will be developed and adopted to correspond with the effective date of those requirements.

Amendments are proposed here to update and add definitions of terms; improve recordkeeping and reporting procedures; clarify procedures for provider applications, home inspections, training and appeals; clarify provisions for the maximum number of children permitted in the home; and strengthen provisions for home safety, supervision of children, and communicating with parents.

Specifically, several amendments are proposed to subchapter 1 (N.J.A.C. 10:126-1), General Provisions. The proposed amendments to definitions of terms at N.J.A.C. 10:126-1.2 add a definition of "alternate provider" as a person who shares child care responsibilities with a registered provider, and add definitions of "shall" and "should" to distinguish between provisions that must be met and those that are recommendations. The definition of "child" is changed to mean any person under 13 years of age, rather than 14 years as in the current rules, in order to parallel the definition in the Child Care Center Licensing Law, N.J.S.A. 30:5B-3. The definition of "family day care home" is modified in keeping with the above-cited family day care zoning law requiring the provider to reside in the home. The definition of "substitute provider" is clarified to indicate that the substitute may provide care in the home at times other than emergencies or provider illness. The definition of "chapter" is clarified.

Definitions of "cooperative agreement" and "fee" are deleted, as these were rendered unnecessary by the new law. The existing rules allow providers to care for children under cooperative agreements with parents for no fee, without counting these children toward the total number of children in care. The new law now only allows for such arrangements for the children of assistant or substitute providers.

The provisions for public access to records are moved to subchapter 1 at N.J.A.C. 10:126-1.4, from their current place in subchapter 2 at N.J.A.C. 10:126-2.6. This rearrangement will be helpful to family day care providers, who normally receive a "provider edition" of this manual containing only N.J.A.C. 10:126-1, 5 and 6, which contain all the rules providers are required to meet. The remaining subchapters (N.J.A.C. 10:126-2, 3 and 4) contain only the requirements for sponsoring organizations, and are available to providers on request. The rearranged section on public access to records at the new N.J.A.C. 10:126-1.4 contains proposed amendments that clarify several provisions and expand the list of confidential records to include medical records and disclosures of criminal convictions.

Several amendments are proposed to subchapter 2 (N.J.A.C. 10:126-2), Administration of Sponsoring Organizations. Provisions for action by the Division in case of imminent danger or hazard to children in a family day care home are deleted at N.J.A.C. 10:126-2.2(h), since these cases are addressed by provisions at N.J.A.C. 10:126-5.8. Further proposed amendments to subchapter 2 delete requirements for reporting certain diseases to the Department of Health (N.J.A.C. 10:126-2.3(c)), as this information is already reported by the patient's physician. Also deleted is the requirement for the sponsoring organization to report to the Bureau the number of inquiries from parents seeking family day care services (N.J.A.C. 10:126-2.4(a)3), as this function is now the responsibility of the Child Care Resource and Referral System in the Division of Family Development, Department of Human Services. Provisions are added at N.J.A.C. 10:126-2.4(a)2 to include records for alternate providers in the recordkeeping requirements. A new provision at N.J.A.C. 10:126-2.4(b)1 requires the sponsoring organization to report to the Bureau the names, addresses, and telephone numbers of all registered providers. Finally, as noted above, the provisions for public access to records are deleted here at N.J.A.C. 10:126-2.6, since they have been added and amended at N.J.A.C. 10:126-1.4.

In subchapter 3 (N.J.A.C. 10:126-3), Staff Requirements for Sponsoring Organizations, amendments are proposed at N.J.A.C. 10:126-3.2(a) and (d) to require the sponsoring organization director or administrator to designate a person to assume responsibility for managing the sponsoring organization in his or her absence.

In subchapter 4 (N.J.A.C. 10:126-4), Service Requirements for Sponsoring Organizations, provisions for evaluating and training providers (N.J.A.C. 10:126-4.1(c) and 4.2(a) and (c)) are amended to include evaluating and training alternate providers as well. Amendments are proposed to recommend, but not require, that sponsoring organizations encourage providers to secure telephone service when there is no telephone in the home (N.J.A.C. 10:126-4.1(e)), and to encourage providers to attend training in first aid and cardio-pulmonary resuscitation (CPR) (N.J.A.C. 10:126-4.2(h)). An amendment is also proposed to require the sponsoring organization to inform complainants of their right to remain anonymous when making a complaint about a registered provider (N.J.A.C. 10:126-4.6(a)). The requirement for sponsoring organizations to give providers a list of reportable communicable diseases is deleted at N.J.A.C. 10:126-4.8(c), since the need for reporting such diseases was previously eliminated in subchapter 2, as noted above.

Subchapter 5 (N.J.A.C. 10:126-5), Provider Registration and Operation Procedures, contains several proposed amendments to update and clarify these procedures. The proposed amendment at N.J.A.C. 10:126-5.1(a) requires the provider to reside in the family day care home, in keeping with recent legislation (N.J.S.A. 40:55D-66.5 et seq., as amended by P.L. 1992, c.13). The proposed amendments at N.J.A.C. 10:126-5.2(a) add relevant information and delete unnecessary material from the provider application provisions; require the provider to disclose on the application form any previous action against a Certificate of Registration; and give providers the option to be included on a list of registered providers to be made available to the public by the Bureau of Licensing. An amendment is proposed at N.J.A.C. 10:126-5.2(b) to require physical examinations for the alternate provider as well as the provider, and to require such examinations for both initial and renewal applicants for registration (such statements are currently required only for initial applicants). The proposed amendments at N.J.A.C. 10:126-5.2(c) require Mantoux tuberculosis tests for the alternate provider as well as the provider; specify that Mantoux tuberculosis tests must be no more than six months old; and permit applicants to receive a chest x-ray in lieu of a Mantoux tuberculosis test in cases of medical contraindication. The proposed amendment at N.J.A.C. 10:126-5.2(d) indicates that additional Mantoux tests may be required when recommended by the Department of Health. The proposed amendments at N.J.A.C. 10:126-5.2(e) require letters of reference to be no more than three years old, and require the alternate provider as well as the provider to submit references, medical reports and other information. The proposed amendments at N.J.A.C. 10:126-5.2(f) specify the procedures for inspecting those areas of the home used by enrolled children, and those areas not used by children. The proposed amendments at N.J.A.C. 10:126-5.2(g) require the alternate provider to attend the same pre-service training that is required for providers.

The proposed amendments at N.J.A.C. 10:126-5.3(e) and (f) clarify requirements for the provider to notify the sponsoring organization of changes in information on the application, and outline procedures the provider must follow upon a change of residence. The proposed amendments at N.J.A.C. 10:126-5.4(b) extends the total time that a provider may operate under temporary Certificates of Registration from the current limit of six months to a new limit of one year. The proposed amendments at N.J.A.C. 10:126-5.6(c) require the provider to document a physical examination when applying for renewal of the Certificate of Registration. The proposed amendments at N.J.A.C. 10:126-5.6(e) permit a provider to meet renewal training requirements by attending a total of six hours of in-service training during the three-year registration period, which is more flexible than the current requirement for three training sessions of two hours each.

The proposed amendments at N.J.A.C. 10:126-5.7(a) add to the grounds for denying, suspending, revoking or refusing to renew a Certificate of Registration, by stating that such actions may be taken if the provider fails to furnish the Division with records, or if the Division determines that children are at risk of harm. The proposed amendments at N.J.A.C. 10:126-5.7(b) indicate that such actions against a Certificate of Registration may be based on repeated instances of the same or different violations of this chapter. The proposed amendments at N.J.A.C. 10:126-5.7(c)2 and (f) prohibit the sponsoring organization's appeals committee from hearing appeals of actions based on Division investigations of alleged child abuse or neglect, or on criminal convictions. Instead, the provider in such a case must appeal directly to the Bureau. This amendment is necessary to maintain the provider's confidentiality.

The proposed amendments at N.J.A.C. 10:126-5.7(c)4 indicate that an action to deny, suspend, revoke or refuse to renew a provider's Certificate of Registration will take effect if the provider does not appeal the action. The proposed amendments at N.J.A.C. 10:126-5.7(e) update the description of the Division's appeal review process. The proposed amendments at N.J.A.C. 10:126-5.7(h) permit a provider's Certificate to remain in effect pending appeal when there is no risk to children. The proposed amendments at N.J.A.C. 10:126-5.7(j) place a ban on reapplication for one year after a provider's Certificate has been denied, revoked or refused for renewal.

The proposed amendments at N.J.A.C. 10:126-5.8(a) and (c) through (f) add provisions to indicate what actions the Division will take in case of an allegation of child abuse or neglect in a family day care home. The proposed amendments at N.J.A.C. 10:126-5.9(a) clarify the requirement for the provider to notify the Division of possible child abuse or neglect. The proposed amendments at N.J.A.C. 10:126-5.9(b) delete the requirement for the provider to report certain diseases to the sponsoring organization, and add requirements for the provider to report criminal convictions by the alternate provider, and a change of residence by the provider. The proposed amendment at N.J.A.C. 10:126-5.10(c) adds parental authorization for the child's use of a swimming pool to the list of children's records that the provider must maintain on file.

Subchapter 6 (N.J.A.C. 10:126-6), Safety, Health and Program Requirements for Providers, contains several amendments to clarify and strengthen these requirements. The proposed amendments at N.J.A.C. 10:126-6.1(a) and (b) clarify the provisions for the maximum number of children that may be cared for in specific age groups. The proposed amendments at N.J.A.C. 10:126-6.1(c) through (e) specify conditions for permitting the presence of additional children. The existing provisions permitting additional children to be served through a cooperative agreement with parents for no fee are replaced by provisions permitting additional children to be served under employment agreements with substitute, assistant or alternate providers, in keeping with recent legislation (N.J.S.A. 40:55D-66.5 et seq., as amended by P.L. 1992, c.13). Previously, children in care under cooperative agreements with parents for no fee were not counted toward the total number of children in care. The new law now only allows for such arrangements for the children of assistant or substitute providers (the rules include alternate providers in these provisions as well).

The chart at the existing N.J.A.C. 10:126-6.1(e) specifying the maximum numbers of children in specific age groups permitted in the home has been deleted in order to eliminate unnecessary information and make the provisions easier to understand. The intent of the existing chart is preserved, but is now explained in narrative form. The proposed amendments at N.J.A.C. 10:126-6.1(a) through (f) are slightly less restrictive than the existing rules, so that no provider will be required to drop children from care. Specifically, the amendments would permit the provider to care for two infants and two toddlers when no preschoolers are present; the existing rules limit the provider to two infants and one toddler in these circumstances. Certain other combinations of age groups prohibited under the existing rules would also be permitted. However, most of the existing limitations are preserved in the proposed amendments.

The proposed amendments at N.J.A.C. 10:126-6.2(a) add requirements for electrical service and control of rodent/insect infestation in the home, and delete the provision for reducing the maximum number of children permitted when there is no telephone in the home. The proposed amendments at N.J.A.C. 10:126-6.3(a) require the provider to post an emergency evacuation plan. The proposed amendment at N.J.A.C. 10:126-6.3(b) clarifies requirements for barriers on heating and cooling equipment. The proposed amendments at N.J.A.C. 10:126-6.4(a) clarify requirements for safe storage of toxic and dangerous items, and require weapons to be kept in locked storage. The proposed amendments at N.J.A.C. 10:126-6.5(a) through (c) strengthen requirements for water safety by specifying the number of persons who must supervise children using swimming and wading pools. The proposed amendments at N.J.A.C. 10:126-6.5(d) require written parental consent for pool use. A requirement has been added at N.J.A.C. 10:126-6.5(e) for children to wear helmets when riding bicycles, in keeping with the Bicycle Helmet Law, N.J.S.A. 39:4-10.1.

Further proposed amendments to subchapter 6 strengthen communication with parents by requiring providers to inform parents of all trips (N.J.A.C. 10:126-6.6(c)) and of children's exposure to communicable diseases (N.J.A.C. 10:126-6.8(c)). The proposed amendments at N.J.A.C. 10:126-6.9(a) and (d) clarify procedures for reporting injuries sustained

by children. N.J.A.C. 10:126-6.13 contains only minor technical amendments. The proposed amendments at N.J.A.C. 10:126-6.18(a) clarify requirements for supervision of waking and sleeping children. The proposed amendments at N.J.A.C. 10:126-6.18(b) specify the proportion of time that the provider must be present in the home. The proposed amendments at N.J.A.C. 10:126-6.18(c) require another registered provider or the alternate provider to assume responsibility for the home's operation when the provider is absent for six or more weeks. The proposed amendments at N.J.A.C. 10:126-6.18(d) indicate that the requirements for provider assistants apply to all assistants, whether or not the assistant's presence is required by this chapter. The proposed amendments at N.J.A.C. 10:126-6.18(e) prohibit the use of alcoholic beverages by any person in the provider's home when supervising or within sight of children, and prohibit smoking by any person in the home within sight of children. The proposed amendments at N.J.A.C. 10:126-6.18(f) through (i) prohibit children from being supervised by or released to a person who appears to be impaired by illness, drugs or alcohol use. The proposed amendments at N.J.A.C. 10:126-6.20(c) and (d) strengthen communication with parents by requiring the provider to tell parents the names of all persons caring for children, and to inform parents about smoking by anyone in the home.

Social Impact

These proposed amendments reflect substantive changes in the Manual of Requirements for Family Day Care Registration to update, strengthen, clarify and improve rules that affect some 4,200 voluntarily registered family day care providers, and 16 family day care sponsoring organizations that are contracted to assist the Division in carrying out the registration program. The amendments will benefit children enrolled in registered family day care homes by strengthening home safety, child supervision and communication with parents. Provisions for provider applications, home inspections, training, enforcement actions, appeals, recordkeeping and reporting have been clarified, making it easier for providers to understand and comply with the rules. Definitions of terms and provisions for maximum numbers of children have been updated to conform to recent legislation (N.J.S.A. 40:55D-66.5 et seq., as amended by P.L. 1992, c.13), enabling sponsoring organizations to carry out the registration program in a consistent manner throughout the State.

A positive social impact will result from the new requirement for documentation of physical examinations to be submitted upon renewal of the provider's registration. This new rule will help ensure that providers continue to be in general good health.

A positive social impact is expected as a result of the new provisions at N.J.A.C. 10:126-2.4 and 5.2 that enable the Division to make available to the public a list of registered providers who have chosen to be included in such a list. Parents seeking child care, as well as other interested individuals and organizations, will be able to contact registered providers more easily. Providers on the public list will be informed of relevant products, services and potential parent-consumers, while those who do not want to receive such information may choose not to be included in the list. In addition, the Division will be able to identify providers more quickly by having a complete statewide list of all registered providers.

Some sponsoring organizations have been reluctant to furnish the public with provider lists because of concern about competing businesses that want to solicit providers to serve the children of their clients. The sponsoring organizations want to be able to refer their own and corporate clients to these providers, without having the available spaces filled by competing businesses. Concerns have also been expressed that unrestricted availability of provider lists might expose providers and children to unscrupulous persons who seek access to these homes, a fear that the Division believes is not warranted. The proposal offers a compromise by allowing providers to choose whether to have their names and addresses made public, thus offering privacy to those who wish it.

It should be noted that the present rules allow for public review of provider records, in keeping with the Public Records Law (N.J.S.A. 47:1A-1 to 4). Any member of the public may examine provider records by visiting the sponsoring organization's office, thereby enabling parents to see reports of inspections and complaint investigations regarding the provider. These provisions offer valuable consumer protection, and will remain unchanged when the manual is revised. Records of all providers will be subject to this on-site public access, whether or not they choose to be included in lists available to the public.

The proposed amendments will impact those registered providers who currently care for children under cooperative agreements with parents for no fee, who up to now have not been counted toward the total

number of children in care. The recent change in the law now only allows for such arrangements for the children of assistant or substitute providers. As a result, some providers may be required to discontinue caring for children under cooperative agreements to avoid exceeding the new limit on the maximum number of children permitted in a registered home. Parents of these children may have to make other arrangements for their children's care. Approximately 400 registered providers provide this type of care for no fee. However, many of these providers are expected to be able to meet the new conditions that permit the children to remain in the home.

The proposed amendments will also impact those providers who do not reside in the family day care home, since the new law precludes such providers from registration. However, only a small number of providers in the State have been registered without actually residing in the home.

The proposed amendments clarifying the maximum numbers of children permitted in the home will have a positive social impact by making the rules easier to understand. Providers will be able to comply with the rules more easily, thereby ensuring that children can receive sufficient care and attention without overcrowding the family day care home.

Economic Impact

Most of the proposed amendments will have little or no economic impact on providers or sponsoring organizations. However, the new legislation discussed above and the associated amendments to the rules will have some economic impact.

The new limit on the number of children served will have a positive economic impact on providers who care for an assistant's or substitute's children, as they will be able to continue to care for these children while also serving five fee-paying children. Some providers who care for other children in cooperative agreements will be required to discontinue caring for them; however, the economic impact will be negligible since the providers have received no fee for their care. The revised limits on the numbers of children in specific age groups may, in a small number of circumstances, enable some providers to care for additional children, thus increasing their income. The new limits will not require any provider to drop fee-paying children from care.

The new definition requiring the provider to live in the home will result in a loss of income for those few providers who have been registered but use a residence other than their own to provide family day care. The Division will permit these providers to continue to be registered until their Certificates of Registration expire, so they will have time to adjust to the new requirement and to inform the parents of the children served.

The new requirement for documentation of physical examinations for providers when renewing their registration certificates may oblige some providers to pay for additional physician's examinations that are not now required. However, such costs would only apply once every three years and are not expected to be burdensome.

Some economic impact may result from the new rule requiring children to wear helmets when riding bicycles. Providers who offer bicycling activities must either purchase helmets or require parents to supply them. Some parents may need to buy a helmet for their child's use (already required under recent State law), but many parents will already have one and can use the same one for family day care. The provider can avoid any economic impact by providing other program options instead of bicycling activities.

The new provisions enabling the Division to make provider lists available to the public may have a positive economic impact on those providers who choose to be included in such lists. These providers may be contacted by prospective customers, including individual parents and organizations that refer parents to available child care resources. However, these provisions may have a negative economic impact on some sponsoring organizations that also operate family day care referral services. If providers accept children from other sources, there may be fewer spaces available for children of the sponsoring organization's clients, resulting in a possible reduction of corporate support for the sponsoring organizations. The Division believes the positive social impact (described above) of the provisions for public access to provider lists outweighs any negative economic impact the sponsoring organizations may experience.

Regulatory Flexibility Analysis

These proposed amendments will affect 16 family day care sponsoring organizations and some 4,200 registered family day care homes, all of which fall within the definition of a small business, as defined in the

Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As described in the Summary above, these proposed amendments update, strengthen, clarify and improve current rules, and also reflect provisions in recently enacted legislation that require the Division to make changes in its existing rules as well as to adopt new rules. These amendments will have a minor impact on the sponsoring organizations' administrative procedures. A small number of registered providers may be affected by the changes in the definition of a family day care home and the maximum number of children permitted in the home. The anticipated Economic Impact is discussed above. No capital expenditures or use of special professional services will be needed as a result of the proposed amendments. As all these regulated are small businesses, no lesser requirements or exceptions based on business size are provided.

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

10:126-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Alternate provider" means a person who shares child care responsibilities with a registered provider at the provider's residence and meets all applicable requirements, as specified in N.J.A.C. 10:126-5 and 6.

...
"Chapter" means the [requirements] rules contained in the Manual of Requirements for Family Day Care Registration, as specified in N.J.A.C. 10:126, which reflect provisions that constitute minimum baseline requirements below which no family day care sponsoring organization or registered family day care provider that is subject to the authority of N.J.S.A. 30:5B-16 et seq. is legally permitted to operate.

"Child" means any person under [14] 13 years of age.

["Cooperative agreement" means an agreement between a provider and a parent to exchange child care services in lieu of a fee for child care services.]

...
"Family day care home" means [a] the private residence of the family day care provider in which child care services are provided [for a fee] to no fewer than three and no more than five children at any one time for no fewer than 15 hours per week, except that the Division shall not exclude a family day care home with fewer than three children from voluntary registration.

...
["Fee for child care services" or "fee" means the payment of money or the provision of any service(s) other than child care, by the parent(s) of enrolled children, in exchange for family day care services.]

...
"Shall" denotes a provision of this chapter that a sponsoring organization or a family day care provider must meet to qualify for approval or a Certificate of Registration, respectively.

"Should" denotes a recommendation reflecting goals toward which a sponsoring organization or a family day care provider is encouraged to work.

...
"Substitute provider" means a person at least 18 years of age designated by the provider and approved by the sponsoring organization who is readily available to provide child care in the provider's home [in the event the provider becomes ill or encounters an emergency] when the provider can not be present.

10:126-1.4 Public access to records

(a) The Division shall make the following items in its files available for public review:

1. Correspondence between the Division and the sponsoring organization or other parties in matters pertaining to the Division's review and inspection of the sponsoring organization;
2. Inspection/violation reports, where applicable, reflecting results of Division inspections/reinspections of the sponsoring organization or of providers;

3. Forms and other standard documents used to collect routine data on the sponsoring organization and its program as part of its records of compliance with the Manual of Requirements;

4. Enforcement letters from the Division requiring abatement of violations of the Manual of Requirements;

5. Completed complaint investigation reports, except for child abuse/neglect investigations or other information restricted by the requirements of the State Child Abuse and Neglect law or other State law; and

6. Any other documents, materials, reports or correspondence that would normally be included as part of the public record.

(b) The sponsoring organization shall make the following items in its files available for public review:

1. Applications for Certificates of Registration and related materials/documentation;

2. Copies of temporary and regular Certificates of Registration;

3. Correspondence between the sponsoring organization and the provider or other parties in matters pertaining to the sponsoring organization's monitoring or registration of the provider;

4. Evaluation/monitoring reports, where applicable, reflecting the results of the sponsoring organization's evaluation/monitoring of the provider;

5. Forms and other standard documents used to collect routine data on the provider as part of the provider's record of compliance with the Manual of Requirements;

6. Enforcement letters from the sponsoring organization requiring abatement of violations of the Manual of Requirements;

7. Correspondence to the sponsoring organization from the Division regarding enforcement actions against the provider;

8. Chronological lists of events about the provider on compliance/enforcement matters;

9. Completed complaint investigation reports, except for child abuse/neglect investigations or other information restricted by the requirements of the State Child Abuse and Neglect Law or any other State law; and

10. Any other documents, materials, reports or correspondence that would normally be included as part of the public record.

(c) The Division and the sponsoring organization shall keep confidential and not part of the public record the following:

1. Records, reports or correspondence that pertain to child abuse/neglect investigations that are restricted from public access under the requirements of the State Child Abuse and Neglect Law or other State law;

2. Records, reports, correspondence or forms containing names and/or any other information pertaining to children, parents or providers that are restricted from public access under the State Child Abuse and Neglect Law;

3. Records, reports, correspondence or forms containing names of enrolled children and/or their parents;

4. Confidential information with regard to specific sponsoring organization personnel;

5. Memoranda and other internal correspondence between and among public agencies, including internal communication between the Division and the Office of the Attorney General;

6. Any items that deal with reports of inspections and/or complaint investigations that are still in progress;

7. Physician's statements and results of Mantoux tests or chest x-rays received from providers, applicants and others, as specified in N.J.A.C. 10:126-5.2(b) and (c);

8. Disclosures of criminal convictions received from providers, applicants and others, as specified in N.J.A.C. 10:126-5.2(a)10; and

9. Other material required by State law to be maintained as confidential.

10:126-2.2 Administrative responsibility

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

(h) Whenever the Division determines that a provider is operating in violation of any of the requirements of the Manual of Requirements, the Division will notify the sponsoring organization. In case of imminent danger(s) or hazard(s) to the health and safety of the children in the home, the Division may:

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1. Suspend the Certificate of Registration, as specified in N.J.A.C. 10:126-5.7; and

2. Institute a civil action, as specified in N.J.A.C. 10:126-5.8.]
10:126-2.3 Reporting requirements

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

[(c) The sponsoring organization shall notify the local health department in the provider's municipality of the occurrence of a reportable disease, as specified in Chapter 2 of the State Sanitary Code (N.J.A.C. 8:57-1.2). Such notification shall be made by the next working day after the sponsoring organization learns of the occurrence.]

[(d)](c) The sponsoring organization shall notify the appropriate regional office of the Division and the Bureau, verbally, of any of the following changes or events by the next working day after the sponsoring organization learns of their occurrence:

1.-3. (No change.)

4. Any criminal conviction(s) of the staff of the sponsoring organization or of a provider, **alternate provider**, substitute provider, provider assistant, or member of a provider's household;

5.-6. (No change.)

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

[(f) The sponsoring organization shall report statistical data, as specified in N.J.A.C. 10:126-2.4(a)3, to the Bureau upon request.]

10:126-2.4 Sponsoring organization records

(a) The sponsoring organization shall maintain in files located at its office the following records:

1. (No change.)

2. Records on providers:

i.-ii. (No change.)

iii. Health records received for the provider or applicant and the **alternate provider and provider assistant, if any**, as specified in N.J.A.C. 10:126-5.2(b)[1 and 2] **through (d)**;

iv. [References submitted by] **Letters of reference received for the provider or applicant and the alternate provider, if any**, [prior to the issuance of a Certificate of Registration,] as specified in N.J.A.C. 10:126-5.2[(b)3] (e);

v. (No change.)

vi. A written report of each visit by the sponsoring organization to the home of the [applicant/provider] **provider or applicant**, as specified in N.J.A.C. 10:126-4.1(c)5 and 4.7(d);

vii. A record of pre-service and in-service training sessions completed by the [applicant/provider] **provider or applicant and the alternate provider, if any**, as specified in N.J.A.C. 10:126-4.2(f);

viii.-x. (No change.)

[3.](b) **The sponsoring organization shall provide to the Bureau upon request:**

1. **A list of names, addresses and telephone numbers of all registered providers; and**

2. Statistical records, including[, but not limited to]:

i. The number of providers registered; **and**

ii. The number and ages of the children served; **and**].

iii. The number of inquiries made to the sponsoring organization by parents seeking family day care.]

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

[10:126-2.6 Public access to records

(a) The Division shall make the following items in its files available for public review:

1. Correspondence between the Division and the sponsoring organization or other parties in matters pertaining to the Division's review or inspection of the sponsoring organization;

2. Inspection/violation reports, where applicable, reflecting results of Division inspections/reinspections of the sponsoring organization or of providers;

3. Forms and other standard documents used to collect routine data on the sponsoring organization and its program as part of its records of compliance with the Manual of Requirements;

4. Enforcement letters from the Division requiring abatement of violations of the Manual of Requirements;

5. Completed complaint investigation reports, except for child abuse/neglect investigations or other information restricted by the requirements of the State Child Abuse and Neglect Law or other State law; and

6. Any other documents, materials, reports or correspondence that would normally be included as part of the public record.

(b) The sponsoring organization shall make the following items in its files available for public review:

1. Applications for Certificates of Registration and related materials/documentation;

2. Copies of temporary and regular Certificates of Registration;

3. Correspondence between the sponsoring organization and the provider or other parties in matters pertaining to the sponsoring organization's monitoring or registration of the provider;

4. Evaluation/monitoring reports, where applicable, reflecting the results of the sponsoring organization's evaluation/monitoring of the provider;

5. Forms and other standard documents used to collect routine data on the provider as part of the provider's record of compliance with the Manual of Requirements;

6. Enforcement letters from the sponsoring organization requiring abatement of violations of the Manual of Requirements;

7. Correspondence to the sponsoring organization from the Division regarding enforcement actions against the provider;

8. Chronological lists of events about the provider on compliance/enforcement matters;

9. Completed complaint investigation reports, except for child abuse/neglect investigations or other information restricted by the requirements of the State Child Abuse and Neglect Law or any other State law; and

10. Any other documents, materials, reports, or correspondence that would normally be included as part of the public record.

(c) The Division and the sponsoring organization shall keep confidential and not part of the public record the following:

1. Records, reports or correspondence that pertain to child abuse/neglect investigations involving enrolled children that are restricted from public access under the requirements of the State Child Abuse and Neglect law or other State law;

2. Records, reports, correspondence or forms containing names and/or any other information pertaining to children, parents or providers that are restricted from public access under the State Child Abuse and Neglect Law;

3. Records, reports, correspondence or forms containing names of enrolled children and/or their parents;

4. Confidential information with regard to specific sponsoring organization personnel;

5. Memoranda and other internal correspondence between and among public agencies, including internal communication between the Division and the Office of the Attorney General;

6. Any items that deal with reports of inspections and/or complaint investigations that are still in progress; and

7. Other material required by State law to be maintained as confidential.]

10:126-3.2 Types and responsibilities of staff

(a) Each sponsoring organization shall have an executive director or administrator who is responsible for the overall management and administration of the sponsoring organization's family day care registration program. **The executive director or administrator shall designate a person to assume this responsibility in his or her absence.**

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

(d) The executive director/administrator or designee shall ensure:

1.-8. (No change.)

10:126-4.1 Evaluation of family day care provider applicants

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

(c) The sponsoring organization's evaluation of each applicant shall include a review of:

1. (No change.)

2. Disclosures by the provider **or applicant**, [the provider assistant, if any,] the substitute provider [and], all members of the provider's

household who are at least 14 years old, and the provider assistant and the alternate provider, if any, of any criminal conviction(s), as specified in N.J.A.C. 10:126-5.2(a)10;

3. [References submitted by] Letters of reference received for the provider or applicant and the alternate provider, if any, as specified in N.J.A.C. 10:126-5.2[(b)3](e);

4. Health records submitted by the provider or applicant and by the alternate provider and provider assistant, if any, as specified in N.J.A.C. 10:126-5.2(b)[1 and 2] and (c);

5. (No change.)

6. Evidence showing that the applicant [has] and the alternate provider, if any, have completed pre-service training, as specified in N.J.A.C. 10:126-4.2.

(d) (No change.)

(e) The sponsoring organization should encourage and assist providers who do not have a working telephone in the home to secure telephone service.

10:126-4.2 Training of family day care providers

(a) The sponsoring organization shall provide six hours of pre-service training for each provider or applicant and alternate provider prior to the issuance of a regular Certificate of Registration.

(b) (No change.)

(c) The pre-service training session(s) for providers, applicants and alternate providers shall include group or individual instruction provided by persons with expertise in areas listed in (b) above, and may be supplemented by:

1.-3. (No change.)

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

(h) The sponsoring organization should encourage providers to attend training in first aid and cardio-pulmonary resuscitation.

10:126-4.6 Complaints and violations

(a) When the sponsoring organization receives a complaint of alleged violation(s) of the Manual of Requirements by a provider, other than child abuse/neglect, the sponsoring organization shall investigate the complaint and shall require the provider to abate any violations found. The sponsoring organization shall advise complainants that complaints may be made anonymously. The sponsoring organization's investigation shall include a visit to the home whenever such a visit is necessary to substantiate the complaint.

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

10:126-4.8 Technical assistance

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

(c) The sponsoring organization shall make the following information available to providers:

[1. A list of reportable communicable diseases;]

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

10:126-5.1 Provider eligibility

(a) A family day care provider, in order to be eligible for a Certificate of Registration, shall:

1.-2. (No change.)

3. Be in sufficient physical, mental and emotional health to care properly for children to be placed in the home; [and]

4. Reside in the family day care home; and

[4.]5. (No change in text.)

10:126-5.2 Application for registration

(a) [A family day care provider] An applicant for [a] an initial or renewal Certificate of Registration shall submit to the sponsoring organization a completed application form, which shall include[, but not be limited to]:

1. (No change.)

2. A statement [certifying] indicating:

i. The provider applicant [is], the alternate provider, if any, and the substitute provider are at least 18 years of age; and

ii. The provider assistant, if any, is at least 14 years of age; [and]

[iii. The substitute provider is at least 18 years of age;]

3.-4. (No change.)

[5. The number and ages of children presently in the provider applicant's care, if any;]

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

[7.]6. The name, address and telephone number of the provider assistant and the alternate provider, if any, and the substitute provider;

[8.]7. A statement from the provider applicant indicating that all pets are domesticated, free from disease, non-aggressive, and meet all applicable State and local codes or ordinances pertaining to the keeping of pets;

[9.]8. An indication as to whether the provider applicant wishes to be listed with either or both of the following:

i. [the]The New Jersey Child Care Resource and Referral System [to receive referrals]; and

ii. A list of registered providers that is available to the public through the Bureau;

9. A disclosure of information about and circumstances surrounding any previous denial, suspension, revocation or nonrenewal of a Certificate of Registration as a family day care provider in New Jersey or of a license, certificate or other approval as a family day care provider in any other state; and

10. A disclosure of the presence or absence of criminal convictions[, if any,] by the provider applicant, [the provider assistant, if any,] the substitute provider, [and] all members of the provider's household who are at least 14 years old, and the alternate provider and the provider assistant, if any.

i. Evidence of conviction of a crime, in itself, shall not automatically preclude an individual from serving as a provider, provider assistant, alternate provider or substitute provider, and shall not automatically result in denying[,] the application or revoking, suspending or refusing to renew the Certificate of Registration. Such determination shall be made on a case by case basis, in keeping with the provisions of the State Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq.) which provides that a person convicted of a crime may not be disqualified or discriminated against by a licensing authority unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which a license is sought.

ii. The provider shall notify the sponsoring organization by the end of the sponsoring organization's next business day of any criminal conviction(s) during the three-year registration period by the provider, [the provider assistant, if any,] the substitute provider, [and all members] a member of the provider's household who [are] is at least 14 years old, and the alternate provider and the provider assistant, if any.

(b) [The applicant shall return the completed application form along with:] An applicant for an initial or renewal Certificate of Registration shall also submit to the sponsoring organization [1. A] a physician's statement(s) for the applicant, the alternate provider and the provider assistant, if any, verifying the applicant, the alternate provider and the provider assistant are in good health, free from communicable disease and able to care for children. Such statement(s) shall be based on a medical examination conducted within the six months immediately preceding the submission of the application[;].

(c) An applicant for an initial Certificate of Registration shall also submit to the sponsoring organization written [2. Written] proof of the results of [one of the following] either (c)1 or 2 below for the applicant, the alternate provider and the provider assistant, if any[, and all other persons who care for children in the family day care home at least 15 hours per week]:

[i.]1. A Mantoux tuberculin skin test with five TU (tuberculin units) of PPD tuberculin, conducted within the six months immediately preceding the submission of the application; or

[ii.]2. A chest x-ray if the individual has had a previous positive Mantoux tuberculin test or has a medical contraindication that precludes a Mantoux test[; and]

(d) The provider, the alternate provider and the provider assistant shall obtain additional Mantoux tests when required by the Bureau based on a recommendation by the State Department of Health.

(e) An applicant for an initial Certificate of Registration shall also submit to the sponsoring organization one of the following, for both the applicant and the alternate provider, if any:

[3.]1. Two letters of reference, dated within three years immediately preceding the submission of the application, including at least one from a person who can attest to the [applicant's] individual's character, reputation and suitability to work with children[.]; or

2. The names, addresses and telephone numbers of at least two persons who can provide letters of reference upon request.

[(c)](f) The provider applicant shall: 1. Permit] permit and participate in an evaluation of the applicant's home by the sponsoring organization[; and]. The evaluation shall include:

1. Inspection of all rooms, furniture and equipment in areas designated for use by enrolled children; and

2. Access to all areas not designated for use by enrolled children, to observe whether any hazards to children exist.

(g) The provider applicant and the alternate provider, if any, shall attend [2. Attend] six hours of pre-service training provided by the sponsoring organization.

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

10:126-5.3 Issuance of a Certificate of Registration

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

(e) If it is necessary to change any [identifying] information noted on the application, other than a change of residence, after the Certificate of Registration has been issued, the provider shall advise the sponsoring organization in writing no later than [30] 15 calendar days after the change.

(f) If the provider changes residence:

1. The provider shall notify the sponsoring organization by the beginning of the sponsoring organization's next working day, as specified in N.J.A.C. 10:126-5.9(b)5;

2. The Certificate of Registration at the previous residence shall be void;

3. The provider shall submit a new application for registration to the sponsoring organization;

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

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

10:126-5.4 Issuance of a temporary Certificate of Registration

(a) (No change.)

(b) A temporary Certificate of Registration may be issued for a period not to exceed six months. The sponsoring organization may issue as many temporary Certificates of Registration as it deems necessary. However, [A] a provider shall not operate pursuant to [a] temporary [Certificate] Certificates of Registration for more than [six months] one year.

10:126-5.6 Renewal of a Certificate of Registration

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

(c) No later than 45 days prior to the expiration of the current Certificate of Registration, the provider shall submit to the sponsoring organization:

1. [a] A completed application form, as specified in N.J.A.C. 10:126-5.2(a)[.]; and

2. Physician's statement(s) for the provider, the alternate provider and the provider assistant, if any, as specified in N.J.A.C. 10:126-5.2(b).

(d) (No change.)

(e) Prior to the renewal of a Certificate of Registration, the provider shall:

1. Provide documentation of attendance at [three two-hour] six hours of in-service training [sessions], provided or approved by the sponsoring organization, during the last three-year registration period; or

2. (No change.)

10:126-5.7 Denials, suspensions, revocations, nonrenewals, and provider appeal procedures

(a) [A provider's Certificate of Registration may be denied, suspended, revoked or refused] The sponsoring organization may deny an application for a Certificate of Registration or suspend, revoke or refuse to renew a Certificate of Registration for good cause, including [but not limited to]:

1.-3. (No change.)

4. Refusal to furnish the sponsoring organization or Division with records; [or]

5. Refusal to permit a parent of an enrolled child or an authorized representative of the sponsoring organization or Division to gain admission to the family day care home during normal operating hours[.]; or

6. A determination by the Division's Institutional Abuse Investigation Unit or District Office that children in the home are at risk of harm.

(b) When a provider or applicant is found to be in violation of any of the provisions of (a) above, the sponsoring organization shall notify the provider or applicant of the violation(s) in writing and shall afford the provider or applicant an opportunity to abate the violation(s). If the provider or applicant fails to abate the violation(s), or commits [a subsequent] the same or another violation subsequently, the sponsoring organization may [propose to] deny[,] the application or suspend, revoke or refuse to renew the Certificate of Registration.

(c) When the sponsoring organization proposes to deny[,] an application or to suspend, revoke or refuse to renew a Certificate of Registration, the sponsoring organization shall give written notice to the provider or applicant, specifying the reason for such action, either by hand-delivery or by certified mail with return receipt requested.

1. The notice shall afford the provider or applicant an opportunity for a review before the sponsoring organization's appeals committee, except as specified in (c)2 below.

2. If the action specified in the notice is based on an investigation or substantiation by the Division of alleged child abuse or neglect, or on a criminal conviction, the sponsoring organization's appeals committee shall not review the matter, in keeping with the confidentiality requirements of the State Child Abuse and Neglect Law, N.J.S.A. 9:6-8.10a, and the rules of the Department of Law and Public Safety, as specified in N.J.A.C. 13:59-1.8. In such a case, the notice shall afford the provider or applicant an opportunity to appeal directly to the Bureau, which will follow the procedures specified in (f) below.

3. The notice shall advise the provider or [provider] applicant of the provisions specified in (d) to (g) below.

4. If the provider or applicant does not appeal to either the appeals committee or the Bureau, the action specified in the notice shall take effect.

(d) The sponsoring organization's appeals committee shall review within 15 days each appeal presented to it and shall afford the provider or applicant an opportunity to be heard. The appeals committee shall issue a written report of its findings to the provider or applicant within five working days after completing its review.

(e) If the provider or applicant is not satisfied with the sponsoring organization's appeals committee's findings, the provider or applicant may appeal to the Bureau, which will review the matter and, as appropriate, refer the matter through the Division to [the Division's Administrative Hearings Unit for transmittal to] the Office of Administrative Law [(OAL)] for an administrative hearing pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. [and N.J.S.A. 52:14F-1 et seq.]) and the Uniform Administrative Procedure Rules [of Practice] (N.J.A.C. 1:1).

(f) If the provider or applicant does not want the matter reviewed by the sponsoring organization's appeals committee, or if the action specified in the notice is based on an investigation or substantiation by the Division of alleged child abuse or neglect, or on a criminal conviction, the provider or applicant may appeal directly to the Bureau, which will review the matter and, as appropriate, refer the matter through the Division to [the Division's Administrative Hearings Unit for transmittal to] the Office of Administrative Law [(OAL)] for an administrative hearing.

(g) If the provider or applicant is not satisfied with the decision of the Division, the provider or applicant may appeal the final decision or action of the Division within 45 days from the date of service of the decision or notice of the action taken, to the Appellate Division of the Superior Court of New Jersey.

(h) As long as the Division determines that children are not at risk and no serious or imminent hazards exist, a provider who has requested an appeal, as specified in (d) through (f) above, shall continue to be registered until a final decision is rendered as a result of the appeal.

[(h)](i) If the provider's Certificate of Registration is suspended, revoked or [not renewed] refused for renewal, the sponsoring organization shall ensure that [the provider notifies] the parent of each enrolled child is notified in writing within 10 days of the action.

(j) An applicant whose application has been denied, or a provider whose Certificate of Registration has been revoked or refused for renewal, shall be prohibited from reapplying for registration for one year from the date of the denial, revocation or refusal to renew. After the one-year period has elapsed, the provider or applicant may submit a new application for registration.

10:126-5.8 [Court action] Special requirements to prevent child abuse and neglect

(a) When the Division determines that an imminent danger or hazard exists that threatens the health or safety of a child in a family day care home, the Bureau may direct the sponsoring organization to deny an application or to suspend, revoke, or refuse to renew a Certificate of Registration immediately.

(b) The Bureau may institute a civil action in a court of competent jurisdiction for injunctive relief to enjoin the operation of a family day care home for good cause, including[, but not limited to,] any imminent danger(s) or hazard(s) that threaten the health and safety of the children in the home.

(c) The Division, during the course of investigating an allegation of child abuse or neglect, may determine that corrective action is necessary to protect the children whenever:

1. The provider or another person in the home has been found by the Division to pose a risk of harm to children;

2. The provider or another person in the home has committed an act of child abuse or neglect, as substantiated by the Division; or

3. The provider or another person in the home has been convicted of an act of child abuse or neglect.

(d) Whenever the Division determines that such corrective action is necessary to protect the children in the home, the sponsoring organization shall ensure that the provider carries out the Division's recommendation for corrective action. Such corrective action may include:

1. Removal or suspension of the affected person from the home, or reassignment to other duties that do not involve contact with the children; or

2. Removal of the affected person from the home for a period of time extending from one hour prior to the arrival of the children until one hour after the children have left; or

3. Suspension of the provider's Certificate of Registration.

(e) Such removal, suspension or reassignment, as specified in (d) above, shall remain in effect until the results of the Division's investigation have been determined, and a final decision in the matter has been rendered by the Bureau.

(f) Substantiation of the child abuse or neglect allegation by the Division shall not, in itself, automatically result in the termination of the affected person from his or her position in the home, or in the denial, suspension, revocation or nonrenewal of the provider's Certificate of Registration, but shall constitute grounds for such action if the person's continued presence in the home would place the children at risk. Such determination shall be made by the Bureau after considering information provided by the provider, the affected person, the sponsoring organization, the Division's Institutional Abuse Investigation Unit and/or District Office, and law enforcement authorities, as applicable and available.

10:126-5.9 Provider reporting requirements

(a) The provider shall verbally notify the Division of Youth and Family Services, Office of Child Abuse Control (toll-free at 1-(800)-792-8610) or District Office immediately whenever there is reasonable cause to believe that a child has been or is being sub-

jected to any kind of child abuse/neglect by any person, pursuant to the State Child Abuse and Neglect Law (N.J.S.A. [9:68-9] 9:6-8.9, 8.10, 8.13 and 8.14).

(b) The provider shall report the following incidents to the sponsoring organization as soon as possible, but by no later than the beginning of the sponsoring organization's next working day:

1.-3. (No change.)

4. Any criminal conviction(s) of the provider, [the provider assistant, if any,] the substitute provider [or any], a member of the provider's household who is at least 14 years old, and the alternate provider and the provider assistant, if any, as specified in N.J.A.C. 10:126-5.2(a)10;

5. [Any occurrence of a reportable disease, as specified in the list of reportable diseases provided by the sponsoring organization] A change of residence by the provider; [or] and

6. (No change.)

10:126-5.10 Provider record requirements

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

(c) The provider shall maintain an individual record for each child in care. This record shall include:

1.-12. (No change.)

13. Authorization for the provider to transport an enrolled child, if applicable, as specified in N.J.A.C. 10:126-6.6(b); [and]

14. Authorization for a child to use a pool or other body of water, if applicable, as specified in N.J.A.C. 10:126-6.5(d); and

[14.]15. (No change in text.)

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

10:126-6.1 Maximum number of children

(a) [A] The provider shall be permitted to [enroll, for a fee,] care for no more than five children at any one time, except as specified in (d) to (f) below.

(b) When the provider is caring for infants or toddlers below two years of age, without a second caregiver present in the home, the following additional provisions shall apply:

1. The provider shall care for no more than three children below 15 months of age.

2. The provider shall care for no more than four children below two years of age, of whom no more than two children shall be below 15 months of age.

3. When the maximum number of infants or toddlers in (b)1 or 2 above is reached, the provider shall not care for any preschoolers between two and six years of age.

4. All children present who are below six years of age, including those who reside with the provider, alternate provider, substitute provider or provider assistant, shall be included in determining when a second caregiver shall be present.

5. The provider may care for children who are six years of age or older, in addition to the maximum numbers of infants or toddlers specified in (b)1 or 2 above, provided that no more than five children in total are present.

(c) Both the provider and the alternate provider, substitute provider or provider assistant shall be present whenever the provider is caring for more infants or toddlers than the maximum numbers specified in (b) above.

[(b)](d) As an exception to (a) above, [A] a provider may [serve additional] care for more than five children [as part of a cooperative agreement between parents or guardians for no fee, provided that no more than eight children in total are present in the home at any one time.] when all of the following conditions are met:

1. The additional children shall reside with the provider, the alternate provider, the substitute provider or the provider assistant;

2. The additional children not residing with the provider shall be served as part of an employment agreement between the provider and the alternate provider, the substitute provider and/or the provider assistant, when no payment for the care is being provided;

3. Both the provider and the alternate provider, the substitute provider or the provider assistant shall be present; and

4. No more than eight children in total shall be present.

[(c)](e) A provider [caring for children residing in the provider's home who are under six years of age may care for up to five children

for a fee, provided that no more than eight children in total are present in the home at any one time.] **may care for more than five children, without a second caregiver present in the home, when all of the following conditions are met:**

1. **The additional children shall reside in the provider's home;**
2. **No more than eight children in total shall be present; and**
3. **When infants or toddlers below two years of age are present, the provisions in (b) above shall be met.**

[(d)](f) Children residing in the provider's home who are six years of age or older shall not be [counted in the total number of children being cared for in the home] **included in the provisions specified in (a) to (e) above.**

[(e)] The provider shall care for no more than the following maximum numbers of children without a provider assistant:

Maximum Numbers of Children Permitted in the Home
Without a Provider Assistant
(No more than five children may attend for a fee)

Categories:	Infants		Toddlers		Pre-schoolers		School Agers
A total of:	2	and	1	and	0	and	5
A total of:	2	and	1	and	1	and	4
A total of:	2	and	1	and	2	and	3
A total of:	3	and	0	and	0	and	5
A total of:	0	and	4	and	0	and	4

Categories:	Infants		Toddlers		Preschoolers and School Agers Combined
A total of:	0	and	1	and	7
A total of:	0	and	2	and	6
A total of:	0	and	3	and	5
A total of:	0	and	0	and	8
A total of:	1	and	0	and	7
A total of:	1	and	1	and	6
A total of:	1	and	2	and	5
A total of:	2	and	0	and	6

1. Infants refers to children under 15 months of age, including children residing in the provider's home.
2. Toddlers refers to children aged 15 months to two years, including children residing in the provider's home.
3. Preschoolers refers to children aged two to six years, including children residing in the provider's home.
4. School Agers refers to children aged six to 14 years, excluding children residing in the provider's home.

(f) A provider assistant shall be present whenever the provider is caring for more children than the maximum numbers specified in each of the Infants, Toddlers, Preschoolers and School Agers categories in (e) above.

(g) Although a provider assistant may be present, the provider shall care for no more than the maximum numbers of children specified in (a) to (c) above.]

10:126-6.2 Physical environment

(a) The provider shall ensure that:

1.-7. (No change.)

8. Electricity is in service in the home;

9. Rodent and/or insect infestation in the home is controlled;

[8.]10. (No change in text.)

[9.]11. A working telephone is available in the home[: i]. If no working telephone is available in the home:

Recodify existing (1) and (2) as i. and ii. (No change in text.)

[(3)] The provider shall care for no more than three children under two years of age or four children at least two years of age;]

[(4)]iii. (No change in text.)

[(5)]iv. If the provider must leave the home to use the telephone, the children shall either accompany the provider or be supervised by [the substitute provider, the provider assistant, or] a person at least 14 years old.

10:126-6.3 Fire safety

(a) The provider shall have a written plan for the emergency evacuation of the children from the home, **which shall be posted in a prominent location when enrolled children are present.**

(b) The provider shall ensure that:

1.-2. (No change.)

3. All heating or cooling devices are adequately vented, protected by guards or barriers and kept clear of combustible materials;

4.-7. (No change.)

10:126-6.4 General safety

(a) The provider shall ensure that:

1. (No change.)

2. All [corrosive agents, insecticides, bleaches, detergents, polishes,] **items that may be hazardous to children, including medicines, poisonous plants, [and all] toxic substances, tobacco products, matches and sharp objects,** are stored out of the reach of children;

3. [Non-permanent safety] **Safety barriers** are installed to prevent children from falling from stairs, ramps, balconies, porches or elevated play areas;

4. All electrical outlets that are accessible to the children have protective covers; [and]

5. A working flashlight is available for emergency lighting[.]; and

6. All firearms, other weapons and ammunition are stored in locked areas out of the reach of children.

10:126-6.5 Outdoor space

(a) The provider shall ensure that[: 1. An] **an adequate, safe outdoor play area is available either adjacent to or within walking distance of the home[; and].**

[2. The provider, substitute provider, provider assistant, or a person at least 14 years old is supervising any children who use swimming pools and wading pools.]

(b) **Swimming pools, wading pools, hot tubs, whirlpools and natural bodies of water at the family day care home shall be physically inaccessible to children except when they are supervised as specified in (c) below.**

(c) **The following supervision requirements shall apply whenever enrolled children use a pool or other body of water at the family day care home or any other location:**

1. For pools and other bodies of water that are 24 inches or more in depth:

i. **One person at least 14 years old shall supervise up to two children.**

ii. **Two people at least 14 years old shall supervise three or more children.**

2. For pools and other bodies of water that are less than 24 inches in depth, one person at least 14 years old shall supervise all the children.

(d) **The provider shall obtain written consent from the parent(s) of each enrolled child before the child uses a pool or other body of water as specified in (c) above.**

(e) **The provider shall ensure that each child riding a bicycle wears a helmet, as specified in the State Bicycle Helmet Law, N.J.S.A. 39:4-10.1.**

10:126-6.6 Transportation and trips

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

(c) **The provider shall ensure that the parents of all enrolled children are informed when their children are taken on walks or trips away from the home.**

10:126-6.8 Sick children

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

(c) **The provider shall inform the parents of all enrolled children when any person in the home has one of the communicable diseases listed in the chart below:**

COMMUNICABLE DISEASES THAT REQUIRE NOTIFICATION TO ALL PARENTS

Respiratory Illnesses	Gastro-intestinal Illnesses	Contact Illnesses
Chicken Pox	Giardia Lamblia	Impetigo
German Measles	Hepatitis A	Lice
Hemophilus Influenzae	Salmonella	Scabies
Measles	Shigella	
Meningococcus		
Mumps		
Strep Throat		
Tuberculosis		
Whooping Cough		

10:126-6.9 Accident and injury to a child while in the provider's care

(a) When an accident or injury occurs to a child while in the provider's care, the provider shall take the necessary action to protect the child from further harm and arrange for any necessary emergency medical attention. The provider shall notify the child's parent(s):

1. Immediately in the event of [a serious] **an injury that requires professional medical attention**; or

2. By the end of the operating day, if the injury [is not serious] **does not require professional medical attention.**

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

(d) The provider shall maintain on file a record of accidents and injuries sustained by a child while under the provider's care [which require] **that receive professional medical attention.** The record shall include:

1.-3. (No change.)

(e) (No change.)

10:126-6.13 Food and nutrition

(a) (No change.)

(b) The provider shall ensure the provision of:

1.-2. (No change.)

3. Dinner for all children who:

i. to iii. (No change.)

[iv.]4. (No change in text.)

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

10:126-6.18 Supervision

(a) The provider shall be responsible for [directly] supervising the children **and ensuring their safety** at all times. **Children who are asleep shall be within hearing and easy access of the provider, alternate provider, provider assistant or substitute provider.**

(b) **The provider shall be scheduled to care for children at least 75 percent of the home's operating hours. When a provider and an alternate provider share child care responsibilities, the provider shall be scheduled to care for children at least 50 percent of the home's operating hours.**

[(b)](c) If the provider can not be present, the designated substitute **or the alternate provider, if any,** as specified in N.J.A.C. 10:126-5.2(a)[7] 6, shall assume the provider's responsibility for [direct] supervision of the children.

1. The substitute provider **and the alternate provider, if any,** shall be familiar with all applicable requirements of the Manual of Requirements.

2. **When the provider is absent for six or more consecutive weeks and enrolled children continue to receive care in the home, another registered provider or the alternate provider, if any, shall temporarily assume the provider's responsibility for operating the home.**

[(c)](d) When [the number of children in the home requires that] a provider assistant [be] is present, [as specified in N.J.A.C. 10:126-6.1(f),] the provider shall ensure that:

1.-4. (No change.)

(e) **No provider nor any other person in the home shall:**

1. **Consume alcoholic beverages when supervising children or within sight of children; or**

2. **Smoke within sight of children.**

(f) **No provider nor any other person shall supervise children when he or she:**

1. **Has a communicable disease or illness, as specified in the chart in N.J.A.C. 10:126-6.8(c); or**

2. **Appears to be physically, emotionally or mentally impaired, or appears to have a drug-induced or alcohol-induced condition that would endanger the health, safety or well-being of a child in the home.**

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

(h) **When a child's parent or person designated by the parent(s), as specified in (g)2 above, appears to be physically, emotionally or mentally impaired, or appears to have a drug-induced or alcohol-induced condition that would endanger the health, safety or well-being of the child, the provider shall:**

1. **Attempt to prevent the child's release to such an impaired individual; and**

2. **Attempt to contact the child's other parent or an alternate person authorized by the parent(s).**

(i) **The provider shall call the Division's Office of Child Abuse Control (toll-free at 1-(800)-792-8610) if:**

1. **The provider's attempts to prevent the child's release to an impaired person, as specified in (h)1 above, are unsuccessful; or**

2. **The provider's attempts to make alternative arrangements for the child's care, as specified in (h)2 above, are unsuccessful, and the provider can not continue to care for the child in the home.**

10:126-6.20 Communicating with parents

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

(c) **The provider shall inform each child's parent(s) of the [name] names of the provider assistant and the alternate provider, if any, the substitute provider [who will be called upon to care for the children when the provider is unavailable] and any other persons caring for children in the home.**

(d) The provider shall inform each child's parent(s) upon enrollment about:

1. [the] **The presence of pets in the home; and**

2. **Smoking by any person in the home.**

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

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

**OFFICE OF ADMINISTRATIVE LAW
LABOR
BOARD OF REVIEW
DIVISION OF UNEMPLOYMENT AND TEMPORARY
DISABILITY INSURANCE**

**Special Hearing Rules
Department of Labor Hearings**

**Joint Adopted New Rules: N.J.A.C. 1:12 and 1:12A
(and N.J.A.C. 12:20 and 12:18 Appendices)**

Proposed: June 6, 1994 at 26 N.J.R. 2174(a).

Adopted: July 11, 1994 by Jaynee LaVecchia, Director, Office of Administrative Law and Peter J. Calderone, Commissioner, Department of Labor.

Filed: July 18, 1994 as R.1994 d.406, **without change**.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g); 34:1A-3(e), 43:21-6(d)-(f), 43:21-10 and 43:21-17; and 43:21-25 et seq.

Effective Date: August 1, 1994.

Expiration Date: August 1, 1999, N.J.A.C. 1:12 and 1:12A;
July 18, 1999, N.J.A.C. 12:20;
March 5, 1998, N.J.A.C. 12:18.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed special rules was held on June 27, 1994, at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Douglas Childs, Appellate Specialist, presided at the hearing and received testimony. He responded to certain statements made during the course of testimony, and recommended that the rules be adopted as proposed.

Persons wishing to review the transcript of the hearing may contact Deirdre L. Webster, Regulatory Officer, Office of Regulatory Services, Department of Labor, CN 110, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

Oral and/or written comments were received from the following individuals and organizations: William F. Morley, Private Plan Hearing Officer, New Jersey Department of Labor and Barbara Hamtil, Prudential Insurance Company.

COMMENT: The private plan temporary disability cases are not claims for unemployment insurance, claims for disability during unemployment insurance or claims under the State plan. Rather, private plan temporary disability insurance is separate and distinct from unemployment insurance and State plan temporary disability insurance cases which are heard by the Board of Review. As a result, the rules governing private plan temporary disability hearings should be separate and distinct from those governing unemployment insurance and State plan temporary disability hearings.

RESPONSE: The proposed special rules separate the procedures governing unemployment insurance and State plan temporary disability hearings from those governing private plan temporary disability hearings. The rules clearly state that unemployment insurance and State plan temporary disability hearings under N.J.S.A. 43:21-50(b) heard by the Board of Review or the appeal tribunals are governed by N.J.A.C. 1:12 while private plan temporary disability hearings are governed by N.J.A.C. 1:12A.

COMMENT: Any definition of hearing officer found in N.J.A.C. 1:12A does not indicate that the hearing officer must meet civil service job specification requirements. It is recommended that the proposed definition be amended as follows: "Hearing Officer means a qualified New Jersey licensed attorney to hear and decide appeals concerning private plan disability benefits. In so doing, the hearing officer acts as agency head."

RESPONSE: It is understood that any individual appointed to a career title under N.J.S.A. 11A would be required to meet Department of

Personnel job specification requirements. The current title for a hearing officer is Appellate Specialist and this Department will enforce the civil service requirements for that title.

Full text of the adoption follows:

(N.J.A.C. 12:20 APPENDIX)
CHAPTER 12
SPECIAL HEARING RULES
UNEMPLOYMENT BENEFIT AND STATE PLAN
TEMPORARY DISABILITY CASES

SUBCHAPTER 1. HEARING APPLICABILITY

1:12-1.1 Applicability

The rules in this chapter shall apply to unemployment benefit cases and State plan temporary disability hearings under N.J.S.A. 43:21-50(b) heard by the Board of Review or the appeal tribunals of the Department of Labor pursuant to N.J.S.A. 43:21-1 (see also N.J.A.C. 12:20). Private plan temporary disability cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21-50(a) shall be conducted in accordance with N.J.A.C. 1:12A.

SUBCHAPTER 2. DEFINITIONS

1:12-2.1 Definitions

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

"Appeal tribunal" means the entity which conducts hearings and renders decisions concerning employer and employee appeals of decisions for unemployment benefits made at the local office level. In so doing, the appeal tribunal acts as agency head.

"Appellate body" means either the appeal tribunal, Board of Review or hearing officer which is conducting the proceeding.

"Board of Review" means the entity which conducts appeals of unemployment benefit determinations and State plan temporary disability claim determinations made by an appeal tribunal. In so doing, the Board of Review acts as agency head.

"Division" means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

SUBCHAPTERS 3 and 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12-5.1 Representation

(a) Any party may represent himself or herself or be represented by an attorney or non-attorney pursuant to N.J.S.A. 43:21-17 provided that such representation shall be at the party's expense.

(b) In any unemployment benefits proceeding and on any State plan temporary disability claim proceeding on an appeal before an appeal tribunal or the Board of Review, all fees for persons representing claimants shall be approved by the Board of Review after it receives submission of an authorization form.

(c) The amount of fees approved for persons representing claimants shall be discretionary with the Board of Review. In determining the amount of fees, the Board of Review shall at least consider the following factors:

1. The amount of time spent on the case;
2. The complexity of the case;
3. The services performed as noted on the authorization form or any other documentation to the Board of Review; and
4. The results achieved (that is, favorable or unfavorable).

(d) The Board of Review or any appeal tribunal, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey, the rules and regulations of the division, or the rules of the Board of Review.

ADOPTIONS

SUBCHAPTERS 6 through 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12-9.1 Notice of hearing

Written notices of the time and place of any hearing shall be mailed to the parties in interest at least five days before the date of hearing but a shorter notice may be given if not prejudicial to the parties.

1:12-9.2 Notice of telephone hearing

(a) The notice of telephone hearing shall at least contain the following:

1. That the parties have a right to object to a telephone hearing; and
2. Written instructions as to how the telephone hearing shall be conducted.

1:12-9.3 Adjournments

(a) Adjournments shall be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(b) Requests for adjournment of hearings scheduled before the appeal tribunal shall be made to the appeal tribunal which shall use its best judgment as to when adjournments of hearings shall be granted in order to secure all facts that are necessary and to be fair to the parties.

(c) Applications and requests for adjournment of hearings scheduled before the Board of Review shall be made at least 24 hours before the date of the scheduled hearing and shall be granted at the discretion of the Board of Review.

(d) All parties to an adjournment shall be responsible for giving prompt notice to their witnesses as to the adjournment.

SUBCHAPTER 10. DISCOVERY

1:12-10.1 Inspection of Division files

(a) In cases involving unemployment compensation benefits and State plan temporary disability claims, requests for the production or inspection of the records of the Division shall be addressed to the Board of Review.

(b) A request for the production or inspection of the Division's records shall be in writing and shall clearly state the nature of the information required and the reason therefor.

(c) Orders for the production or inspection of the records of the Division may be issued in any proceeding to the extent necessary for the proper presentation of the case.

(d) In all cases where an application to supply a party or his or her representative with information from the records of the Division is granted, the party shall be furnished with a copy of such information.

(e) Individuals may be assessed reasonable administrative costs for the copying of records and any other costs for obtaining information from the Board of Review.

(f) Following an appeal to the Appellate Division and upon direction of the Attorney General's office, the transcript of any proceeding which has been sound recorded shall be provided to all parties by the Board. Any request by an employer shall be accompanied by a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the Board or \$300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the Board. The Board shall bill the employer for any amount due for the preparation of the transcript and any hard copies or shall reimburse the employer for any overpayment.

(g) To obtain a copy of a sound recording of any proceeding, the requesting party must file a request with the executive secretary of the Board. Such a request is subject to approval by the Board. The requesting party shall notify all other parties of such a request. The request shall be accompanied by a reasonable payment of costs in the amount of \$15.00 for the initial copy of the sound recording and \$10.00 for any subsequent copy.

(h) No claimant shall be charged any fee of any kind in any proceeding under the Unemployment Compensation Law by the Board of Review.

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(i) No disclosure of information, obtained at any time from, and identifiable to, specific workers, employers or other persons for the proper administration of an appeal, shall be made directly or indirectly except as authorized by the Board of Review in accordance with N.J.A.C. 12:17-7.

SUBCHAPTER 11. SUBPOENAS

1:12-11.1 Subpoenas

Subpoenas to compel the attendance of witnesses and the production of records for any hearing on an appeal may be directed to be issued by a member of the Board of Review in cases appealed to the Board of Review, or by the appeal tribunal, in cases appealed to an appeal tribunal, only upon the showing of the necessity therefor by the party applying for the issuance for such subpoena.

1:12-11.2 Witness fees

(a) Witness fees at the rate of \$1.00 for each day of attendance upon a hearing in response to a subpoena ad testificandum and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

(b) Witness fees at the rate of \$2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon the presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

SUBCHAPTERS 12 and 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12-14.1 Public hearings

Hearings shall, in the absence of a showing of sufficient cause for a closed hearing, be open to the public.

1:12-14.2 Conduct of hearing

(a) The proceedings shall be fair and impartial and shall be conducted in such manner as may be best suited to determine the parties' rights.

(b) The appellate body shall open the hearing by ascertaining and summarizing the issue or issues involved in the appeal. The parties, their attorneys or representatives may examine or cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded the parties, which argument shall be made part of the record. Where a party is not represented, the appellate body shall give every assistance that does not interfere with the impartial discharge of its official duties. The appellate body may examine each party or witness to such extent as it deems necessary. All oral testimony shall be under oath or affirmation and shall be recorded.

(c) The appellate body may take such additional evidence as it deems necessary; provided, that in case such further evidence is taken, the parties shall be given proper notice of the time and place of such further hearing.

(d) The appellate body, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey or the rules and regulations of the Division.

1:12-14.3 Appeals hearings

(a) All appeals to the Board of Review may be heard upon the evidence in the record made before the appeal tribunal, or the Board of Review may direct the taking of additional evidence before it.

(b) In the hearing of an appeal on the record, the Board of Review may limit the parties to oral argument or the filing of written argument, or both. If, in the discretion of the Board of Review, additional evidence is necessary to enable it to determine the appeal, the parties shall be notified by the Board of Review of the time

and place such evidence will be taken. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issue.

(c) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of such additional evidence as the Board of Review may deem necessary. Such testimony shall be taken by the appeal tribunal in the manner prescribed for the conduct of hearings on appeals before appeal tribunals. Upon the completion of the taking of evidence by an appeal tribunal pursuant to the direction of the Board of Review, the claim or the issue involved in such claim shall be returned to the Board of Review for its decision upon the entire record, including the evidence before the appeal tribunal and such additional evidence and such oral argument as the Board of Review may permit before it.

(d) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of additional evidence and a decision or may remand for a new decision only.

1:12-14.4 Failure to appear

(a) If the appellant fails to appear for a hearing before an appeal tribunal, the appeal tribunal may proceed to make its decision on the record or may dismiss the appeal on the ground of nonappearance unless it appears that there is good cause for adjournment.

(b) If an appeal tribunal issued an order of dismissal for nonappearance of the appellant, the chief appeals examiner shall, upon application made by such appellant, within six months after the making of such order of dismissal, and for good cause shown, set aside the order of dismissal and shall reschedule such appeal for hearing in the usual manner. An application to reopen an appeal made more than six months after the making of such order of dismissal may be granted at the discretion of the chief appeals examiner.

1:12-14.5 Scheduling of telephone hearings

(a) A telephone hearing which means a hearing at which all parties, witnesses, representatives and attorneys appear via telephone may be conducted at the initiation of the Board of Review or the appeal tribunal or upon the request of any party with the consent of the Board of Review or appeal tribunal. Telephone hearings shall be subject to the rules governing hearings and appeals in this chapter, as well as the rules governing telephone hearings.

(b) The Board of Review or appeal tribunal, in its discretion, may initiate or schedule a telephone hearing:

1. When it appears from the record that a party or necessary witness is located more than 50 miles from the location from which the Board of Review or appeal tribunal will conduct the hearing;

2. When a party or witness cannot appear in person because of a physical, medical or other compelling reason; or

3. For good cause shown on a case by case basis with the approval of the Board of Review.

(c) Any party to an appeal may request a telephone hearing by contacting, immediately upon receipt of the notice of the scheduled in-person hearing, the Board of Review or appeal tribunal with reasons for the request to have a telephone hearing. Prior to the hearing, the requesting party shall provide written notice to all other interested parties of the request for the telephone hearing.

(d) The Board of Review or appeal tribunal shall exercise its discretion in granting or denying such requests and immediately notify the parties of its decision.

(e) Any party may object to a telephone hearing. Objections shall be made immediately upon receipt of the notice or request for a telephone hearing and shall:

1. Be in writing and received by the Board of Review or appeal tribunal reasonably in advance of the time scheduled for a telephone hearing; and

2. Set forth the reasons supporting the objections.

(f) The Board of Review or appeal tribunal may deny a party's objection to a telephone hearing if the Board of Review or appeal tribunal determines at least any of the following:

1. That the objecting party's intent is to purposely inconvenience the other party or delay the proceeding;

2. That a party or witness is more than 50 miles away; or

3. That a person is unable to appear in person because of physical, medical or other compelling reason.

(g) If the Board of Review or appeal tribunal accepts a party's objections to a telephone hearing, an in-person hearing shall be scheduled by the Board of Review or appeal tribunal.

1:12-14.6 Conduct of telephone hearing

(a) The Board of Review or appeal tribunal, at the inception of the hearing, shall advise all participants that the proceedings are being recorded.

(b) Any party who fails to appear at the scheduled telephone hearing shall meet the requirements of N.J.A.C. 1:12-18.4 before any reopening of the hearing shall be granted.

(c) The Board of Review or appeal tribunal shall permit the parties, attorneys or other representatives a reasonable opportunity to question any witness testifying via telephone for the purpose of verifying the identity of such witness.

(d) Any party that intends to offer documentary or physical evidence at the telephone hearing shall submit a copy of that evidence to the Board of Review or appeal tribunal immediately upon receipt of notice of the scheduled telephone hearing. Also, the requesting party shall provide timely notice of this request to offer evidence to all other interested parties.

1. Any evidence not submitted as required in this subsection may be admitted at the discretion of the Board of Review or the appeal tribunal provided that such evidence is submitted to the Board of Review or appeal tribunal and all other parties within 24 hours of the telephone hearing.

2. The other parties shall have 24 hours from the time of receipt of the evidence to properly respond to its admission and use.

3. Upon review of the evidence, the Board of Review or the appeal tribunal shall determine if the telephone hearing shall be continued.

(e) When the Board of Review or the appeal tribunal determines that a crucial document exists which is essential to the determination of the appeal, it shall make every effort to provide such document to the parties prior to the scheduled telephone hearing. If the document cannot be provided prior to the telephone hearing, the hearing may be postponed. If a document is disputed during the hearing, a continuance shall be granted to allow all parties an opportunity to review the document in question.

1:12-14.7 Disqualification of members of appeal tribunals

(a) No member of an appeal tribunal shall participate in the hearing of any appeal in which the member has an interest.

(b) Challenges to the interest of any member of an appeal tribunal may be heard and decided by the chief appeals examiner of the appeal tribunal, or, in the chief appeals examiner's discretion, referred to the Board of Review.

1:12-14.8 Hearing appeals on own motion

(a) Within the legal time limit for appeal following a decision by an appeal tribunal and in the absence of the filing by any of the parties to the decision of the appeal tribunal of a notice of appeal, the Board of Review, on its own motion, may remove such decision to itself and may either decide the case on the record below or may remand the decision to the appeal tribunal or may schedule a hearing before the Board of Review or order the parties to appear before it for a hearing on the claim or any issue involved therein.

(b) Such hearings shall be held only after five days' prior notice to the parties to the decision of the appeal tribunal, and shall be heard in the manner prescribed for the conduct of hearings before the Board of Review.

1:12-14.9 Case transfer on own motion

The Board of Review may, on its own motion, transfer any case pending before an appeal tribunal to another tribunal for hearing and decision.

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SUBCHAPTER 15. EVIDENCE

1:12-15.1 General rules

(a) All exhibits admitted into evidence shall be properly identified, appropriately marked and retained as part of the record.

(b) Hearsay evidence shall be admissible and accorded whatever weight the examiner deems relevant, appropriate, and reasonable under the circumstances. Notwithstanding the admissibility of hearsay evidence, the decision as rendered must be supported by sufficiently substantial and legally competent evidence to provide assurance of reliability and to avoid the fact or appearance of arbitrariness.

1:12-15.2 Stipulations

The parties to an appeal, with the consent of the appellate body, may stipulate in writing the facts involved. The appellate body may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence as it deems necessary to enable it to determine the appeal.

SUBCHAPTERS 16 and 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:12-18.1 Decisions of appeal tribunals

(a) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability claims and the reasons therefore shall be mailed to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

(b) The decision shall be in the following form:

1. The first section shall indicate the party appealing, the determination appealed from, the date of the decision, and the date of the initiation of the appeal. The appearances shall be noted.

2. The second section shall be a recital of the facts upon which the decision is based and shall be entitled "Findings of Fact." It shall include among all the pertinent facts the date the claim was filed.

3. The third section shall be entitled "Opinion" and shall contain the reasons for the decision.

4. The fourth section shall contain the "Decision." This shall be followed by the signature of the examiner. Each decision shall also indicate the date of hearing and mailing.

(c) Every decision of an appeal tribunal shall, immediately upon issuance, be transmitted to the executive secretary of the Board of Review for consideration. The Board shall forthwith determine whether or not the decision shall be allowed to stand.

1:12-18.2 Decisions of Board of Review

(a) Following the conclusion of proceedings on an appeal, the Board of Review shall forthwith announce its decision with respect to the appeal. The decision shall be in writing and signed by at least a majority of the Board of Review. It shall set forth the findings of fact of the Board of Review with respect to the matters appealed, its opinion and decision. A quorum of the Board of Review must be present when any decision is voted.

(b) If a decision of the Board of Review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision, which shall set forth the reasons why it fails to agree with the majority.

(c) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability claims shall be mailed by the Board of Review to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

1:12-18.3 Correction of determination

On application duly made or on its own motion, the appellate body may revise a determination of facts and the order, for the purpose of correcting clerical or typographical errors.

1:12-18.4 Reopening Board of Review decisions

(a) A party to a benefit claim may file a request for reopening of a Board of Review decision within 10 days after the day of mailing of such decision. The requesting party shall notify all other parties of such a request for reopening. Such request shall not act as a stay of proceedings in the case and shall not suspend the payment of benefits. Failure of the Board of Review to act upon a request for reopening within 20 days of the date on which it is filed shall constitute a denial thereof as of the expiration of that period. Additional time may be granted where fraud, newly discovered evidence, or other good cause is shown.

(b) Any party, including the appellant whose appeal resulted in any affirmation of the appeal tribunal decision on the record made by the appeal tribunal, may apply for reopening of the Board's decision. If such application is granted all parties will be notified if a new hearing is scheduled.

(N.J.A.C. 12:18 APPENDIX)

CHAPTER 12A

SPECIAL HEARING RULES

PRIVATE PLAN TEMPORARY DISABILITY INSURANCE CASES

SUBCHAPTER 1. HEARING APPLICABILITY

1:12A-1.1 Applicability

The rules in this chapter shall apply to private plan temporary disability insurance cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21-50(a) (see also N.J.A.C. 12:18). State plan temporary disability cases shall be heard by the Board of Review pursuant to N.J.S.A. 43:21-50(b), in accordance with N.J.A.C. 1:12.

SUBCHAPTER 2. DEFINITIONS

1:12A-2.1 Definitions

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

"Act" means the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq.

"Division" means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

"Hearing officer" means the individual assigned to hear and decide appeals concerning private plan temporary disability benefits. In so doing, the hearing officer acts as agency head.

SUBCHAPTERS 3. and 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12A-5.1 Representation

Any claimant or employer may represent himself or herself or be represented by an attorney or non-attorney pursuant to N.J.S.A. 43:21-17.

SUBCHAPTERS 6. through 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12A-9.1 Informal hearing

After the filing of a complaint, the Division shall conduct such investigations and informal hearings as may be necessary to determine the facts and settle the issues and, pending a disposition, a formal hearing shall not be scheduled.

1:12A-9.2 Notice of formal hearing

(a) If the issues raised by the complaint are not otherwise settled, they shall be referred to a hearing officer, who shall afford the interested parties thereto a reasonable opportunity for a full, fair and impartial hearing, in accordance with the procedure required under this chapter.

(b) Written notices of the time and place of any hearing shall be given to the claimant and employer, or their authorized represen-

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tatives, insurer or organization paying benefits, and all other parties in interest at least five days before the date of hearing, but a shorter notice may be given if not prejudicial to the parties.

(c) A party to whom a notice of appeal has been sent shall be ready and present with all evidence and necessary witnesses at the time and place specified and shall be prepared to dispose of all issues and questions involved in the proceeding.

(d) A notice of hearing may be served personally or by certified or registered mail or by telegram upon a party or his or her duly authorized representative.

SUBCHAPTER 10. DISCOVERY

1:12A-10.1 Inspection of records

(a) Orders for the production or inspection of records of the Division may be issued in any proceeding before the hearing officer, but only to the extent necessary for the purpose of the proceeding and to enable any party to the proceeding to fully discharge his or her obligation or safeguard his or her rights under the Act.

(b) A request for the production or inspection of records shall be addressed to the hearing officer, and shall state clearly the nature of the information desired and the reason therefor. The hearing officer may determine whether or not the request shall be granted and, if granted, inspection of the records may be allowed or a copy of the records furnished.

SUBCHAPTER 11. SUBPOENAS

1:12A-11.1 Issuance of subpoenas

(a) The hearing officer shall have the power to administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records.

(b) Subpoenas to compel the attendance of witnesses or production of records shall be issued by the hearing officer only upon the showing of the necessity therefor by the party applying for the issuance of such subpoena.

1:12A-11.2 Witness fees

(a) Witness fees at the rate of \$1.00 for each day of attendance upon a hearing in response to a subpoena to testify and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon presentation of a voucher signed by the individual entitled thereto and properly certified by a member of the hearing officer before whom the individual appeared as a witness.

(b) Witness fees at the rate of \$2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon the presentation of a voucher signed by the individual entitled thereto and properly certified by the hearing officer before whom the individual appeared as a witness.

SUBCHAPTERS 12 and 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12A-14.1 Conduct of hearings

(a) The hearing before the hearing officer shall be conducted in such order and manner as may provide a fair and impartial hearing to ascertain the facts and determine the rights of parties.

(b) At such hearing, evidence exclusive of ex parte affidavits may be produced by any party, but the hearing officer shall not be bound by the rules of evidence.

(c) The hearing officer shall open the hearing by ascertaining the facts and summarizing the issues involved on the record.

(d) Any individual who is a party, or an attorney or non-attorney representing a party, may examine or cross-examine witnesses, inspect documents and explain or rebut any evidence. The hearing officer may examine each party or witness to such extent as he or she deems necessary.

(e) Any number of proceedings before the hearing officer may be consolidated for the purpose of hearing when the facts and circumstances are similar in nature and the rights of any party will not be prejudiced thereby. Notice of such consolidation shall be given to the parties or their representatives.

(f) All testimony at a hearing shall be under oath or affirmation and recorded, but need not be transcribed unless the order on the disputed claim is to be reviewed.

(g) The hearing officer may take additional evidence as he or she deems necessary, provided the parties shall be given proper notice of the time and place of hearing.

(h) The parties may stipulate the facts and issues involved and based thereon the hearing officer may make a determination and an order disposing of the issues which shall be final and binding.

1:12A-14.2 Dismissal of complaint

(a) After due notice of the time and place of hearing or an adjourned hearing, if any party fails or neglects to appear, the issues may be decided upon the basis of the evidence available, the complaint may be dismissed or evidence may be taken from the parties and witnesses appearing and the case disposed of in accordance with such evidence. A complaint may be dismissed for failure to prosecute without good cause within a reasonable time. All parties shall be notified of the dismissal and the reasons therefor.

(b) Any complaint dismissed by reason of the failure to appear at a scheduled hearing or failure to prosecute may be reconsidered by the hearing officer provided good cause is shown for such failure and an application for reopening the proceeding is made within 10 days after mailing or notification of the order of dismissal.

(c) A pending complaint, with the approval of the hearing officer, may be withdrawn by the complainant, in writing, or orally at the time of hearing. All parties to the proceeding shall be notified of the withdrawal.

SUBCHAPTER 15. DECISIONS

1:12A-15.1 Rendition of decision

(a) Upon the completion of any hearing, the hearing officer shall promptly make a determination of facts, and a signed written order disposing of the issues presented, which shall be final and binding on the claimant, the employer, the insurer, the organization paying benefits and all other parties. The decision shall set forth a statement of the facts involved, the reasons and the order.

(b) A copy of such order shall be served upon each of the parties or their duly authorized representatives by registered mail, addressed to his or her last known address.

(c) The order of the hearing officer shall be final and benefits paid or denied in accordance with the order.

(d) Any appeal of the order shall be in accordance with the Rules of Court.

1:12A-15.2 Correction of determination

On application duly made or on his or her own motion, the hearing officer may revise a determination of facts and the order, for the purpose of correcting clerical or typographic errors.

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH DISEASE CONTROL PROGRAM

Livestock and Poultry Importation

Readoption: N.J.A.C. 2:3

Proposed: May 16, 1994 at 26 N.J.R. 1908(a).

Adopted: June 30, 1994 by the State Board of Agriculture,

Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Filed: July 7, 1994 as R.1994 d.399, **without change**.

Authority: N.J.S.A. 4:5-54 through 75.

Effective Date: July 7, 1994.

Expiration Date: July 7, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:3.

(b)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Readoption with Amendments: N.J.A.C. 2:76

Proposed: April 4, 1994 at 26 N.J.R. 1419(a).

Adopted: June 23, 1994 by State Agriculture Development

Committee, Arthur R. Brown, Jr., Chairperson.

Filed: June 28, 1994 as R.1994 d.393, **with a substantive change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:1C-5f.

Effective Date: June 28, 1994, Readoption;
August 1, 1994, Amendments.

Expiration Date: June 28, 1999.

Summary of Public Comments and Agency Responses:

COMMENT: The Burlington County Agriculture Development Board (CADB) conducted an extensive review of N.J.A.C. 2:76 and submitted comments concerning the following subchapters.

Subchapter 2. Agricultural Management Practices

N.J.A.C. 2:76-2.2 should be modified to require that the SADC conduct a public hearing to accept comment and advice with respect to a proposed agricultural management practice and that the SADC take action with respect to a proposed agricultural management practice within 60 days of the date of the public hearing.

Subchapter 3. Creation of Farmland Preservation Programs

N.J.A.C. 2:76-3.2 should not repeat definitions which have already been defined in N.J.A.C. 2:76-1.2. All definitions of terms applicable to all subchapters should be located in one section.

N.J.A.C. 2:76-3.3(a)3 and (a)4 are unclear. The regulation should provide that additional eligibility criteria adopted by an agricultural development board or the SADC be effective if adopted by written resolution or motion following a public hearing.

N.J.A.C. 2:76-3.5(c) states that "Any landowner intending to subdivide the subject lands shall advise the board prior to initiating such action (see N.J.A.C. 2:76-3.12)." In reviewing the deed restrictions, as listed in N.J.A.C. 2:76-3.12, it appears that the requirement to advise the board prior to initiating a subdivision has been omitted.

N.J.A.C. 2:76-3.5(e)1 states that "the land or owner(s) of the land in a farmland preservation program are eligible for the following: i. To apply, to the board to sell a development easement on the land . . ." This is no longer an associated benefit, as it was in the past because prior enrollment in a farmland preservation program is no longer required in order to sell a development easement. Therefore, this should be deleted. Additionally, N.J.A.C. 2:76-3.5(e)1 states "To use a farm

structure design as an acceptable minimum construction standard . . ." Since the referenced farm structure designs do not exist, this benefit should be removed or some agency, organization or person should be directed to develop them.

N.J.A.C. 2:76-3.9 should establish the procedure for the renewal of an eight year program. The SADC should define the term "practicability and feasibility" of a farmland preservation program so that all CADBs throughout the State apply the same standards to review of such programs. The SADC should also clarify if the farmland preservation program is being continued or reformed because N.J.A.C. 2:76-3.9(c) states that "if the board does not receive any notice to terminate the farmland preservation program within the one year period, the program shall **continue** for another eight year period . . ." (emphasis added). This may be construed as the same program is continuing, and therefore the same agreement form should be used. However, N.J.A.C. 2:76-3.9(e) states that the "reformation of a farmland preservation program must comply with provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 and all rules promulgated by the committee" (emphasis added). This appears to contradict N.J.A.C. 2:76-3.9(c) above, since the farmland preservation program must comply with current rules a new farmland preservation program is being created and the current agreement form should be used.

The intent of N.J.A.C. 2:76-3.10 should be clarified to see if it should remain in the regulations.

N.J.A.C. 2:76-3.12(a)1 should be modified to say ". . . and all other rules promulgated by the State Agriculture Development Committee, . . . and the county agriculture development board" (emphasis added). Additionally, agricultural use is defined to include the **disposal of farm waste** but the provision at (a)7 states that "No dumping or placing of trash or waste material shall be permitted . . ." Clarification is needed as these two restrictions appear to contradict one another.

N.J.A.C. 2:76-3.12(a)2 should make the certification applicable as of the date of execution of the agreement and that no nonagricultural uses were constructed on the property from the time the applicant filed the petition and the date of execution of the agreement.

N.J.A.C. 2:76-3.12(a)5 should state "any landowner intending to subdivide the subject lands shall advise the board prior to initiating such action" (see N.J.A.C. 2:76-3.5(c)).

N.J.A.C. 2:76-3.12(a)12ii and 13i refer to the housing of agricultural labor **employed on the premises**. The Burlington CADB recommends that this be changed to, **employed by the landowner or farm operator**.

N.J.A.C. 2:76-3.12(a)13 should be modified to state "The construction of any new building which shall serve as a residential use, regardless of its purpose, shall be prohibited except as follows, **but only following approval by the Grantee and the Committee**. This will assist construction code officials (CCOs) when they are asked to issue building permits. To indicate subparagraph (a)13iv "The above exceptions shall not be permitted unless jointly approved in writing by the Grantee and the Committee" may not be noticed. Experience has shown that once a CCO reads that an activity is permitted they may read no further.

Subchapter 4. Creation of Municipally Approved Farmland Preservation Programs

N.J.A.C. 2:76-4.2—see N.J.A.C. 2:76-3.2 comments.

N.J.A.C. 2:76-4.3—see N.J.A.C. 2:76-3.2 comments.

N.J.A.C. 2:76-4.4(d) should be changed to state that the board shall notify, by certified mail, not public notice. Public notice requires publication in a newspaper regarding the proposal. This is cumbersome and unnecessary.

N.J.A.C. 2:76-4.5(a) should be modified to require the municipal governing body have a public hearing prior to approving a petition to create a municipally approved farmland preservation program.

N.J.A.C. 2:76-4.5(d) states, "Subject to committee approval, the board may establish more stringent deed restrictions for the purpose of recognizing local conditions." It appears that the SADC has no right to review deed restrictions adopted by a CADB which are more stringent than those specified by the SADC because N.J.S.A. 4:1C-24 says that the agreement to reflect the existence of a farmland preservation program is between the property owner and the CADB.

Concerning N.J.A.C. 2:76-4.5(d), 4.6, 4.7, the review and approval of eight year farmland preservation programs by the SADC is a cumbersome and time consuming process which does not seem to yield a truly meaningful result. Since it appears that the statute provides no right to the SADC to approve or disapprove a farmland preservation

program (N.J.S.A. 4:1C-20 and 21 do not contemplate any SADC role in the creation of a farmland preservation program), we recommend the SADC cease this review process.

N.J.A.C. 2:76-4.8(a)1 states that the petition in its final form shall be filed and recorded. This should be deleted. The petition is an application form which has not been recorded in the past. Only the Agreement need be recorded.

At N.J.A.C. 2:76-4.9, if the SADC intends to continue its practice of having separate subchapters for non-municipally approved and municipally approved farmland preservation programs, this section should parallel N.J.A.C. 2:76-3.9.

N.J.A.C. 2:76-4.11(a)1 should be modified to say "... and all other rules promulgated by the State Agriculture Development Committee, ... and the County Agriculture Development Board." (emphasis added).

N.J.A.C. 2:76-4.11(a)2—see N.J.A.C. 2:76-3.12(a)2 comments.

N.J.A.C. 2:76-4.11—see N.J.A.C. 2:76-3.12(a)1 comments.

Subchapter 5. Soil and Water Conservation Project Cost-Sharing

N.J.A.C. 2:76-5.2—see N.J.A.C. 2:76-3.2 comments.

N.J.A.C. 2:76-5.4(a), (b) and (c) list the formula used to "determine the total eligible State soil and water cost-share funds ..." The SADC should determine if there is a reason to retain the use of the number 516.7 acres. We recommend that the acres required to be eligible for the maximum cost share be changed to 500.

N.J.A.C. 2:76-5.4(d) states, "... upon State Agricultural Development Committee approval, ..." The regulations should reflect the standard of review in order for the approval to be granted. If compliance to N.J.A.C. 2:90-2 and 2:90-3 is required, then this should be stated.

Subchapter 6. Acquisition of Development Easements

N.J.A.C. 2:76-6.2—see N.J.A.C. 2:76-3.2 comments.

N.J.A.C. 2:76-6.5(f) states, "The Committee's preliminary approval is not required for seven or fewer applications ..." The SADC is encouraged to review if limiting a County (without getting prior approval from the Committee) to seven applications is appropriate in light of the fact that not all available funds were expended during the previous funding round and funds may again be remaining after this year's confidential offers are opened. The CADB welcomes the opportunity to assist in creating a more effective methodology of distributing available SADC funding among the counties.

N.J.A.C. 2:76-6.5(g) requires that "The board shall submit a request for a grant for the purchase of a development easement to the Committee on or before the date appraisal work is authorized. ..." This regulation affects a County's ability to schedule the funding cycle. It should be deleted.

At N.J.A.C. 2:76-6.7(a)1 the regulations should provide for CADB adoption of county standards or requirements which exceed SADC standards.

N.J.A.C. 2:76-6.11(c)2 should state "the Committee shall give funding priority to offers with higher numerical values in any one county based on the applicant's final score." (emphasis added).

N.J.A.C. 2:76-6.11(d)3 indicates that "The Committee shall not provide any cost share funds for ancillary costs for development easement purchases." We recommend the SADC remove this from the regulations and once again cost share on ancillary costs. Ancillary costs to a county participating in the easement purchase program can represent a substantial percent of the costs incurred in attempting to deed restrict property, particularly in the counties where easement values are low. More counties could afford to conduct wetlands delineations, which result in a more effective appraisal process, if SADC cost share were available.

Additionally, the use of appraisals rather than a formula results in significant expense prior to the deed restriction of a property. These funds are lost when an application does not successfully proceed to closing. Reducing the costs prior to closing should be a focus of study for the SADC.

N.J.A.C. 2:76-6.13(a) should be modified to say "... subordinate their rights to the rights and privileges granted by the sale of the development easement to the grantee ..." (emphasis added).

N.J.A.C. 2:76-6.13(c) should be modified to say "Upon the purchase of the development by the grantee ..." (emphasis added).

N.J.A.C. 2:76-6.14 should be clarified. Recent discussions by the SADC reflected that the State cost share money would be distributed to the county in a lump sum. This contradicts N.J.A.C. 2:76-6.14(a)1 which states "... the State Comptroller shall retain in the fund an amount of money sufficient to pay the landowner ..." Additionally, N.J.A.C. 2:76-6.14(a)2 states "The landowner shall receive, annually, interest on

any unpaid balance remaining after the date of settlement." Again, this contradicts recent SADC discussion, where it was stated that the entitlement to the interest did not necessarily belong to the landowner.

N.J.A.C. 2:76-6.15(a)3 should be changed to make certification effective at the time of execution of the deed and that no nonagricultural uses were constructed on the property from the time the applicant filed the application and the time of execution of the deed.

N.J.A.C. 2:76-6.15(a)13ii should be modified to state "... for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed by the landowner or farm operator."

N.J.A.C. 2:76-6.15(a)14iii should contain the language stated in N.J.A.C. 2:76-6.17(c) regarding the number of RDSOs allocated to the property.

N.J.A.C. 2:76-6.15(a)15 states "... The land and its building which are affected may be sold collectively or individually ..." and "... no subdivision of the land shall be permitted without the joint approval in writing of the Grantee and the Committee." The regulation should provide for a preliminary subdivision review process which parallels that provided for in the Municipal Land Use Law (N.J.S.A. 40:55D-16.3.1).

N.J.A.C. 2:76-6.16(c)2i should be modified to state "Prime soils identified by the U.S.D.A., Soil Conservation Service; which are determined not to be wetlands" (emphasis added). Determination could rely on NJDEPE wetlands maps or may necessitate requiring wetlands delineations. This change is needed as many prime soils have a high water table and if prior to 1985, these lands have not been farmed, they may in fact be considered wetlands and not be available for agricultural production.

N.J.A.C. 2:76-6.16(d)2iii should be deleted as project areas are no longer scored by the SADC.

N.J.A.C. 2:76-6.16(e)2i and iv should be clarified. It is unclear what ordinances and densities should be considered to discourage conflicting nonagricultural development, and what constitutes municipal commitment to actively participate in the Agricultural Retention and Development Program.

N.J.A.C. 2:76-6.16(g) should be modified to state "... which the purchase would encourage the survivability of the land in productive agriculture ..." (emphasis added). Landowners no longer need to be in a municipally approved farmland preservation program in order to be eligible to apply to sell their development easements.

N.J.A.C. 2:76-6.17 should be moved in the regulations to directly follow the deed restrictions at N.J.A.C. 2:76-6.15.

N.J.A.C. 2:76-6.17(c) should be changed to state "... approved by the Grantee, the landowner shall prepare or cause to be prepared ..." (emphasis added). This change is necessary in the event the premises is sold. Additionally, it is inaccurate to call the document which reflects the exercising of a RDSO a "Corrective Deed of Easement" because the deed is not being changed. A more appropriate title is "Notice to Exercise a RDSO."

Subchapter 10. Appraisal Handbook Standards

N.J.A.C. 2:76-10.6(a)1iii states that appraisers should not consider the value of RDSOs allocated to the property. We recommend the regulations outline a method to determine the associated value of an RDSO as it relates to the use of comparable sales in establishing "after" value of farmland. Clearly, the existence of an RDSO on a farm affects the value a purchaser will pay for it. Without adjustments, the total price paid is being applied to only the acreage of the farm, thus artificially increasing the per acre value. There is no consistency between appraisers at this time regarding the value of a RDSO. This negatively impacts the appraisal process.

N.J.A.C. 2:76-10.6(c) states that the appraiser shall consider the effect of buildings and improvements when conducting the valuation. We recommend the regulations determine a method all appraisers must use to determine the value of improvements to provide consistency. Appraisal reports that have been accepted as complete by the SADC review appraiser contain 100 percent differences in value of improvements. This negatively impacts the appraisal process.

N.J.A.C. 2:76-10.7(a)3—See N.J.A.C. 2:76-10.6(c) comment.

N.J.A.C. 2:76-10.7(a)3ii should be modified to state "the appraiser shall adjust the comparable sales to include, but not limited to, the following: ..., and value of residential units and or RDSOs in the price of the comparable."

RESPONSE: The Burlington CADB presented some excellent comments and constructive recommendations to amend N.J.A.C. 2:76 to develop a more useful set of regulations to implement the Farmland Preservation Program. However, the comments received warrant a thor-

ough review by the SADC. It is evident that many of the comments presented will require substantive amendments which cannot be incorporated in the adoption of N.J.A.C. 2:76 without republication in the New Jersey Register as proposed amendments. Unfortunately, N.J.A.C. 2:76 is scheduled to expire on July 31, 1994, unless notification for readoption is received by the Office of Administrative Law by that date.

The SADC feels that it is critical to proceed with the readoption of N.J.A.C. 2:76 at this time with the proposed technical and substantive amendment. The SADC feels that it is important to maintain, and not delay, the current Agriculture Retention and Development program. Although the current rules may require clarification for consistency purposes, the current rules are functional and will serve the public while additional amendments are considered. Furthermore, a schedule will be developed to introduce proposed amendments to the respective subchapters based on the comments received from the Burlington CADB and others. This will allow the public the opportunity to comment on the proposed amendments.

N.J.A.C. 2:76-6 Acquisition of Development Easements

COMMENT: The Salem County Agriculture Development Board is not opposed to the proposed amendments at N.J.A.C. 2:76-6.15(a)7 which requires the landowner to obtain a farm conservation plan from the Soil Conservation District within one year of the recorded Deed of Easement. However, the Salem CADB is opposed to any proposal that would require that the plan be enforced beyond the current Soil Conservation District policy, for example, participation in various Federal loan programs.

RESPONSE: The proposed amendment at N.J.A.C. 2:76-6.15(a)7 is intended to provide the landowner with a planning tool to ensure that consideration is given to minimizing any negative impacts on the soil and water resources on the farm. Furthermore, the farm conservation plan will change based upon the landowner's agricultural operation.

The existing provisions at N.J.A.C. 2:76-6.15(a)7 already prohibit the landowner from allowing any activity on the premises which would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation or any other activity which would be detrimental to the continued agricultural use of the premises. The development of a farm conservation plan will help prevent a violation of the Deed of Easement provisions.

COMMENT: The Cape May County Agriculture Development Board expressed its support that the proposed amendment at N.J.A.C. 2:76-6.15(a)7, which requires property owners to obtain a farm conservation plan from the local Soil Conservation District within one year of the date of the fully executed Deed of Easement, is a good agricultural management practice that can only affect and maximize crop production.

RESPONSE: The SADC agrees with the Cape May CADB's comment.

COMMENT: The Cape May CADB expressed its concern that the proposed amendment at N.J.A.C. 2:76-6.5(h) which requires the board to submit an application containing a development easement acquired by the board and/or county to the SADC within three consecutive application rounds penalizes Cape May County in its preservation efforts, as no other private individual is restricted by a time frame in applying to the State program. The Cape May CADB feels a five consecutive application round would be more acceptable to accommodate any mitigating circumstances that would inhibit application.

RESPONSE: The SADC feels that the CADB/County has ample opportunity to complete the application process within three consecutive funding rounds from the date the CADB/County acquired a development easement. This limited time period helps ensure that the CADB/County will recapture a portion of its initial cost to acquire the development easement within a reasonable period of time. Furthermore, the three consecutive funding round limit prevents counties from expending excessive funds for the updating of appraisals for each funding round.

COMMENT: The Hunterdon County Agriculture Development Board supports the readoption of N.J.A.C. 2:76.

RESPONSE: As stated previously, the SADC will proceed with the readoption of N.J.A.C. 2:76 with the proposed technical and substantive amendments. A more thorough review of other public comments will warrant an independent review of each subchapter and to introduce proposed amendments as needed.

COMMENT: The Hunterdon CADB questioned the proposed amendment at N.J.A.C. 2:76-6.5(h) for clarification if the three consecutive funding rounds starts from the date of closing, or from the date of the initial submission to the SADC? The Hunterdon CADB also requested if this section applies to municipally acquired easements as well.

RESPONSE: The three consecutive funding round period begins from the date the CADB/County acquires the development easement. The proposal regarding the submission of an application to the SADC within three consecutive funding rounds only pertains to a development easement acquired by the CADB/County. A development easement acquired by a municipality pursuant to N.J.A.C. 2:76-6.3(b) is subject to the same review procedure as an application submitted by a landowner.

COMMENT: The Hunterdon CADB suggested a technical correction at N.J.A.C. 2:76-6.2 in the definition of "landowner" to read "easement [purchased] acquired pursuant to N.J.S.A. 4:1C-34." This ensures consistency with other sections in the regulations, such as N.J.A.C. 2:76-6.3(b).

RESPONSE: The SADC concurs that the definition of the word "Landowner" at N.J.A.C. 2:76-6.2 should be amended to conform with the statute and other sections of the regulations.

COMMENT: The Hunterdon CADB suggested that the proposed amendment at N.J.A.C. 2:76-6.15(a)7ii be revised to read, "Grantor's long term management of the farm shall conform with the objectives of the farm conservation plan." The Hunterdon CADB further stated that a landowner's management of the farm can be measured in terms of compliance with conservation practices, but unwritten long term objectives might be more difficult to evaluate.

RESPONSE: The SADC disagrees with the recommendation of the Hunterdon CADB that the "Grantor's long term management of the farm shall conform with the objectives of the farm conservation plan." The SADC's amendment requires that the grantor's long term objectives shall conform with the provisions of the farm conservation plan. Most importantly, the Grantor's long term objectives as they pertain to a particular agricultural operation must be reflected in revisions to the farm conservation plan. The plan contains the soil and water conservation practices which are needed for the specific type of agricultural operation.

The term "management" as suggested by the Hunterdon CADB may imply other business related decisions or a broader interpretation than the specific purposes of the farm conservation plan. Ultimately, the measure of compliance is the Grantor's conformance with the farm conservation plan.

COMMENT: The Burlington County Soil Conservation District (SCD) expressed its concern that the proposed amendment at N.J.A.C. 2:76-6.15(a) mandates that a landowner who has sold a development easement obtain a farm conservation plan from the local soil conservation district and be approved by that district. The Burlington SCD further noted that while the local districts have the technical and staff resources to carry out this mandated work, they are not provided with a funding source to cover the expenses which are incurred in providing this service. Consequently, the development of the farm plans may have to be given a low priority in the district's workload assessments. This situation could be easily remedied by the SADC providing a dedicated funding source to the local soil conservation district which would cover the expenses incurred in the development of a farm conservation plan.

RESPONSE: The proposed amendment at N.J.A.C. 2:76-6.15(a)7 allows the landowner one year from the date of the sale of the development easement to secure a farm conservation plan from the local soil conservation district. In reality, the local soil conservation district could be put on notice that a farm conservation plan would be needed on any application which has received final approval by the CADB. Generally, this would provide an additional six months notice to begin developing a farm conservation plan.

Furthermore, there would be a limited number of farms requiring conservation plans from each county under each annual funding round. In many instances, the farms already have a farm conservation plan which may only need to be updated or modified to meet the landowner's long term objectives. Lands which are permanently preserved should be viewed as a priority consideration to ensure that the soil and water resources on the farm are protected.

COMMENT: The Burlington SCD noted that upon acceptance by the SADC, a landowner may be eligible to receive soil and water conservation cost share assistance. This is a valuable and important aspect of the program which requires significant work and resources on the part of the local soil and water conservation district. However, once again there is not a dedicated funding source which would cover the district's expenses incurred in the processing of these soil and water conservation grants. It has been suggested by the SADC that the local district charge for these services. If this is in fact the SADC's position, it should be

stated within the readoption of these rules that the landowner may in fact bear some costs associated with the soil and water conservation grants and conservation plans.

Since it is within the scope of the SADC to mandate and administer the rules pursuant to the Farmland Preservation Bond Act, the SADC should be required to secure a funding source for local soil and water conservation districts which carry out certain responsibilities for the SADC.

RESPONSE: The Attorney General's Office has issued an opinion stating that the State bond funds do not permit the SADC to provide administrative costs to local soil conservation districts. It is the SADC's position that it will provide up to a 50 percent grant to landowners for legally permissible costs associated with approved soil and water conservation projects. If the SCDS have the authority to charge the landowner a fee for costs associated with soil conservation projects and the districts choose to charge fees, the SADC will reimburse the landowner up to 50 percent of the fees. Since the bond acts and the Agriculture Retention and Development Act permit such reimbursement, there is no need to enact regulations which provide for such payments.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:76.

Full text of the adopted amendments follows (addition to proposal indicated in boldface with asterisks *thus*; deletion from the proposal indicated in brackets with asterisks *[thus]*):

2:76-6.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

...
 "Landowner" means the record owner of the land, duly authorized contract purchaser of the land or record owner of the development easement *[purchased]* *acquired* pursuant to N.J.S.A. 4:1C-34.
 ...

2:76-6.3 Eligible applicants

(a) Any landowner that applies to the board in compliance with N.J.A.C. 2:76-6.4 and whose land is in a farmland preservation program, a municipally approved program or qualifies for differential property tax assessment pursuant to the Farmland Assessment Act of 1964 and which is included in an agricultural development area shall be eligible to sell a development easement on that land.

(b) Any person or organization acquiring a development easement, by purchase, gift or otherwise, may apply to sell that development easement to the board pursuant to N.J.S.A. 4:1C-34.

2:76-6.5 Preliminary board review

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

(h) An application consisting of a development easement acquired by the board and/or county must be submitted to the Committee within three consecutive application rounds.

1. The development easement acquired by the board and/or county shall at a minimum contain the restrictions found at N.J.A.C. 2:76-6.15(a) which were in effect at the time the development easement was acquired.

(i) In the event that the board grants preliminary approval to more than seven applications it shall forward to the Committee all such application(s) in excess of seven with its justifications for granting such approvals along with other information required in subsection (g) above.

2:76-6.7 Appraisals

(a) The procedure for conducting and reviewing appraisals shall be as follows:

1. (No change.)

2. The board in accordance with county procedures shall select two appraisers from the list adopted by the Committee to conduct independent appraisals of development easements or on lands that have received board and, where appropriate, Committee approvals;

3.-5. (No change.)

2:76-6.11 Final Committee review

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

(d) The Committee shall not authorize a grant for an amount greater than 80 percent of the Committee's certified fair market value of the development easement or the board and/or county's purchase price of the development easement, whichever is lower.

1.-3. (No change.)

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

2:76-6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land: "Grantor promises that the Premises shall be owned, used and conveyed subject to:

"1.-"6. (No change.)

"7. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises.

i. Grantor shall obtain within one year of the date of this Deed of Easement, a farm conservation plan approved by the local soil conservation district.

ii. Grantor's long term objectives shall conform with the provisions of the farm conservation plan.

"8.-"22. (No change.)

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

2:76-6.17 Residual dwelling site opportunity

(a) Upon a landowner's request, residual dwelling site opportunities may be allocated to the premises by the board only under the following conditions:

1. The overall gross density shall not exceed one residential unit per 100 acres. The board shall decrease the allocation in consideration of the following conditions:

i. (No change.)

ii. Proposed residential building(s) which have received preliminary and/or final approval from the municipality but have not yet been constructed; and

iii. (No change.)

2. (No change.)

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

(e) A request to exercise an RDSO shall be conducted in the following manner;

1.-2. (No change.)

3. Upon receipt of the application the board shall forward a copy of the application to the municipal governing body for advisory comments. The governing body may submit comments, if any, concerning the application to the board within 35 days of the receipt of the application.

Existing 3.-7. recodified as 4.-8. (No change in text.)

9. Upon the board's finding that the construction and use of the proposed residential unit is for agricultural purposes and that the residual dwelling site minimizes any adverse impact on the agricultural operation, the board shall condition its approval of the exercising of the residual dwelling site opportunity on the landowner or contract purchaser securing a building permit, to ensure that the construction of the residential unit is in compliance with all municipal ordinances.

10. The board's approval to exercise a residual dwelling site opportunity shall be valid for a period of three years from the date of approval. Extensions may be granted by the board for additional periods for at least one year but not to exceed a total extension of two years.

(f) (No change.)

BANKING**(a)****DIVISION OF REGULATORY AFFAIRS****Disqualification of Directors****Adopted Amendment: N.J.A.C. 3:6-15.2****Adopted New Rule: N.J.A.C. 3:11-7.11**

Proposed: August 16, 1993 at 25 N.J.R. 3586(b).

Adopted: June 28, 1994 by Elizabeth Randall, Commissioner,
Department of Banking.Filed: June 30, 1994 as R.1994 d.397, **without change**.

Authority: N.J.S.A. 17:1-8.1 and 17:9A-104.

Effective Date: August 1, 1994.

Expiration Date: March 1, 1996, N.J.A.C. 3:6;
July 18, 1999, N.J.A.C. 3:11.**Summary of Public Comments and Agency Responses:**

The Department received comments from the following persons:

1. Samuel J. Damiano, President, New Jersey Council of Savings
Institutions.2. James R. Silkensen, Executive Vice President, New Jersey Savings
League.**COMMENT:** We recommend that the regulation provide that a direc-
tor who is considered in default for 30 days in payment of an undisputed
obligation be notified that unless the matter is resolved within 10 days,
he or she shall cease to be a director.**RESPONSE:** The Department agrees that the bank or savings bank
should notify the director that he or she is in default and in danger
of being removed from the Board, and encourages depositories to include
such notice in their policies and procedures. However, statutory law
requires that the director of a bank be removed after 30 days regardless
of whether such notice is given. N.J.S.A. 17:9A-104. The Department
does not want to create such a condition for removal for savings banks
because it wants to maintain parity between banks and savings banks
in this regard.**COMMENT:** Since the risk of loss on real estate loans is low and
since 30 days is a short period, it is recommended that the rule be
changed so that a director who defaults for 90 days in payment of an
undisputed obligation which is fully secured by real estate shall cease
to be a director.**RESPONSE:** The Department does not necessarily agree that the risk
on real estate loans is low. Further, in order to increase confidence in
the industry, it is necessary that directors be removed when in default
for 30 days on all loans. Accordingly, no change is made.**Full text of the adoption follows:****3:6-15.2 Terms and conditions**

(a) A savings bank may permit its officers and managers and their
families and affiliates to become liable to the savings bank only under
the same terms and conditions and to the same degree of liability
as a bank permits its directors, officers or the corporations or
partnerships of the officers or directors of a bank to become liable
to a bank under the provision of Article 15 of The Banking Act
of 1948 (N.J.S.A. 17:9A-71 et seq.) and under N.J.S.A. 17:9A-104,
and the regulations issued pursuant to both.

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

3:11-7.11 Disqualification of directors

(a) A director of a bank who defaults for 30 days in payment
of an undisputed obligation to the bank shall cease to be a director,
and shall not be eligible for reappointment to the board until the
next annual meeting.

(b) For purposes of (a) above, the following obligations shall
constitute obligations of the director:

1. Obligations of the director; and

2. Obligations of a corporation or partnership which is controlled
by the director.

(c) A director controls a corporation when the director has the
power to directly or indirectly vote 25 percent or more of the voting
stock, has the ability to control in any manner the election of a

majority of the directors, or has the ability to exercise a controlling
influence over the management and policies of the corporation. A
director who is a general partner of a partnership controls that
partnership for purposes of this section.

COMMUNITY AFFAIRS**(b)****NEW JERSEY HOUSING AND MORTGAGE FINANCE
AGENCY****Return on Equity****Adopted Amendment: N.J.A.C. 5:80-3.2**

Proposed: March 7, 1994 at 26 N.J.R. 1186(a).

Adopted: June 30, 1994 by the New Jersey Housing and
Mortgage Finance Agency, Christiana Foglio, Executive
Director.Filed: July 6, 1994 as R.1994 d.398, **with substantive and
technical changes not requiring additional public notice or
comment** (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:14K-5g and 7a(6).

Effective Date: August 1, 1994.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:Three comments were received by the Agency from the following:
Terrence Blackburn, Edward Stanton, and James J. McGovern, III.**COMMENT:** The first two listed commenters had identical comments
concerning the application of certain aspects of the rules and suggested
that the rules be clarified in those areas.**RESPONSE:** The Agency has made several revisions to clarify the
rules, as explained below, in response to the comments. The technical
changes address each of the questions raised by the commenters.N.J.A.C. 5:80-3.2(b)1 is being modified to eliminate the reference to
N.J.A.C. 5:80-30.2, which contains a definition for residual receipts. The
definition of residual receipts establishes the amount of surplus cash a
project has. The change includes the substance of the definition in these
rules and clarifies the amount of surplus cash that a project must have
in order to qualify for the increase. The modification makes it clear that
the three month (senior projects) operating reserve (six months for
family projects), can be comprised of any project funds after deducting
certain reserve and escrow accounts and known expenses.N.J.A.C. 5:80-3.2(b)3 is being added to make it clear that a sponsor
only needs to meet the surplus cash criteria for obtaining an increased
rate of return once, at the time of application.N.J.A.C. 5:80-3.2(c) provides that an increased rate of return is
prospective only. This section is being modified to clarify that "prospec-
tive" includes the year in which the sponsor applies and qualifies.N.J.A.C. 5:80-3.2(c)4 was modified to eliminate the requirement of
including the processing fee within the mortgage amendments. This is
a one-time fee which will be paid before the mortgage is amended. It
should not be part of the mortgage amendments.**COMMENT:** Mr. McGovern, an attorney representing a nonprofit
general partner of one of the limited partnerships owning an Agency
financed project, expressed opposition to the rules. The commenter felt
that the increased rate of return provided a windfall to the limited
partners of the partnership who had entered into a limited partnership
agreement with the nonprofit general partner. The nonprofit general
partner felt that the proposed amendments failed to provide them with
any say in the change in the rate of return.**RESPONSE:** The Agency's regulations always provided a maximum
rate of return of eight percent. All sponsors, including the sponsor in
which the commenter is an owner, was entitled to earn an eight percent
return when they obtained financing from the Agency. Some sponsors
voluntarily choose to restrict their rate of return, through their
partnership agreement, to less than eight percent. The Agency did not
impose such lesser rates but simply memorialized the sponsors agreed
upon rate within the mortgage documents. The Agency's intent in propos-
ing the amendments was not to interfere with the existing provisions
of limited partnership agreements which may have rates of return at
less than eight percent. Nor are the amendments intended to compel

sponsors with rates less than eight percent to raise them to eight percent. It is an option which is available to them provided they meet the criteria contained in the rules. Whether sponsors apply for the increase is a matter to be decided amongst the partners pursuant to the terms of their partnership agreement. If the partners amend their agreement to permit an increase up to eight percent and qualify for the increase, the Agency will approve the increase. If the partners do not amend their agreement and choose to retain the lesser rate, the Agency accepts that determination and will not impose the eight percent rate, simply if the project meets the criteria. Accordingly, the nonprofit general partner is not being cut out of the process. They continue to maintain whatever rights they have under their partnership agreement. The Agency will only act on this matter in response to a request from the partnership owning the project. Whether or not the partnership takes the steps required under its partnership agreement to seek an increased rate is a matter to be decided by the partners, pursuant to the terms of the partnership agreement.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

5:80-3.2 Housing projects prior to January 17, 1984

(a) For all eligible loans for Housing Projects made by the Agency prior to January 17, 1984, the rate of return on its investment in the housing project, as determined by the Agency ("stated equity"), which can be paid or earned by the Housing Sponsor of the property and improvements or its principals or stockholders shall not exceed eight percent per year on a cumulative but not compounded basis. This restriction shall apply for the full term of the Agency's loan and shall apply to return on investment earned or received upon construction and rehabilitation of the housing or from the operations of the housing or upon the sale, assignment or lease of the housing subject only to the applicable provisions, if any, of the Agency's regulations concerning the sale of projects owned by nonprofit sponsors and transfer of ownership interests.

(b) Housing Sponsors who have agreed to an annual rate of return of less than eight percent may request an increase in the rate to a maximum of eight percent upon meeting the following criteria:

1. The housing project has *[residual receipts, as defined at N.J.A.C. 5:80-3.2 or a reserve of the Development Cost Escrow]* ***funds, including Development Cost (DCE) or Community Development (CDE) Escrows operating, savings and investment accounts and all other funds, accounts and escrows of the project,*** of an amount equal to three months of operating expenses (for senior citizens projects) or six months of operating expenses (for family projects) which includes debt service and reserve payments of the Agency-approved annual budget in effect at the time of the request and ***after deducting the following:**

- i. Debt service arrearages;
- ii. Current unpaid invoices;
- iii. Fully-funded tax, insurance, reserve for repair and replacement and all other escrow accounts except the DCE and CDE;
- iv. The amount of anticipated or proposed repairs or capital improvements; and
- v. Any other current obligation of the project.*

2. The housing project has been current in all escrow and debt service payments for the three fiscal years prior to the request.

3. The requirements at (b)1 and 2 above need only be met at the time the sponsor seeks approval of the increased rate of return. Once the sponsor qualifies and receives approval of the increased rate of return, future distributions of return on equity shall be governed by the rules at N.J.A.C. 5:80-3.4.

(c) Housing Sponsors who meet the criteria in (b) above, shall be granted an increase in the annual rate of return, up to eight percent, subject to the following conditions:

1. The increased rate of return shall be prospective only ***which includes the year in which the sponsor applies*;**
2. Payment of a \$3,500 processing fee;
3. Payments of the increased return on equity shall be subject to this subchapter; and
4. Amendments will be made to the appropriate mortgage documents to reflect the conditions in (c)1 ***[through]* *and* 3 above.**

EDUCATION

(a)

STATE BOARD OF EDUCATION

Pupil Transportation

Readoption with Amendments: N.J.A.C. 6:21

Proposed: May 16, 1994 at 26 N.J.R. 1997(a).

Adopted: July 11, 1994 by State Board of Education, Leo Klagholtz, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 11, 1994 as R.1994 d.404, 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. 18A:1-1, 18A:4-15, 18A:39-21 and 18A:7D-18.

Effective Date: July 11, 1994, Readoption;
August 1, 1994, Amendments.

Expiration Date: July 11, 1999.

Summary of Public Comments and Agency Responses:

The Department received written comments from the Cinnaminson Board of Education; Alexander Saharic, Manager, Safety and Health, Jersey Central Power and Light Company; and James Shoop, Passaic Board of Education during the proposal public comment period May 16, 1994 to June 15, 1994.

The New Jersey State Board of Education held a public testimony session on June 15, 1994 at the State Board Conference Room, Department of Education, 225 East State Street, Trenton, New Jersey, at which the proposed readoption with amendments for N.J.A.C. 6:21 was on the agenda. No individuals reserved time to speak at the testimony session.

COMMENT: One commenter suggested that the language contained in N.J.A.C. 6:21-15.1(a) which addresses the opening of bids should be amended to read "Announcement shall be made in the presence of any parties bidding or their agent who are then and there present." The commenter felt that this revision would make it clear that parties bidding are not required to be present.

RESPONSE: The current language of N.J.A.C. 6:21-15.1(a) does not require bidding parties to be present at the time bids are opened. However, to avoid any confusion, the Department has included language which states that the bids will be unsealed in the presence of those in attendance.

COMMENT: One commenter felt that the retirement of the vehicles covered in N.J.A.C. 6:21-1.4 should be extended to 15 years or that the date of registration rather than the date of manufacture be used to determine the retirement date.

RESPONSE: The retirement provisions for vehicles set forth in N.J.A.C. 6:21-1.4 conform to the New Jersey Division of Motor Vehicle Services law. To extend the retirement of these vehicles from 12 to 15 years or to change the date used to determine retirement would require a change in statute by the Legislature.

COMMENT: One commenter felt that State statute or Federal motor vehicle safety standards should be comprehensive regarding the specifications for wheelchairs used for pupil transportation.

RESPONSE: While the Department agrees with the commenter that standards should be developed for the design of wheelchairs, the National Highway Traffic Safety Administration has the responsibility for researching and developing such standards. The National Highway Traffic Safety Administration and the National Standards Committee which will meet in May 1995 plan to address Wheelchair Standards. Thus, it would not be appropriate for the Department to incorporate such a change in N.J.A.C. 6:21 at this time. The Department will consider adopting a standard once they have completed their work.

COMMENT: One commenter felt that N.J.A.C. 6:21-6 should allow districts to purchase used buses without retrofitting them to current year school bus standards.

RESPONSE: The school bus standards contained in N.J.A.C. 6:21-6 apply only to newly manufactured buses with a June, 1993 or later chassis manufacture date. Retrofitting used buses to current standards is not required.

COMMENT: One commenter felt that the statute should be revised to eliminate nonpublic school aid in lieu of transportation payments to a per pupil basis. Payment should be per household.

RESPONSE: Any changes relative to nonpublic school transportation aid which is governed by N.J.S.A. 18A:39-1, would require legislative action.

COMMENT: One commenter recommended that the standard contained in N.J.A.C. 6:21-6B.45(a) should include window stops to limit their opening or screens to cover the window should be required. The commenter felt that this would prevent students from putting their head or arms out of the window.

RESPONSE: The Department does not believe that the window opening requirements contained in N.J.A.C. 6:21-6B.45 should be below the National Standard of nine inches. The Department believes that the reduction of the window exit space would prolong emergency evacuation in the event of a serious accident which could endanger students.

The use of window screens has been a topic of discussion by the Department. Such discussion have raised concerns regarding the ability of screens to meet Federal motor vehicle safety standards and the possibility of increased danger to students if broken glass cannot exit the window openings. The Department will continue to research new window designs in order to reduce the possibility of injury caused by students placing their extremities out of windows.

COMMENT: One commenter suggested that N.J.A.C. 6:21-11.3 be amended to include an awareness section about not sticking extremities out of windows due to impact/crushing hazards.

RESPONSE: Classroom safety education is not mandated by law. Boards of education currently provide safety training according to their board policy. The Department of Education has prepared a school bus safety curriculum guide for district use which includes emergency exit procedures, the proper use of seat belts, and the appropriate behavior while riding in the school bus which addresses the type of training the committee suggested.

Summary of Changes Upon Adoption:

N.J.A.C. 6:21-15.1(a) has been changed to clarify that bids be unsealed and that their contents be publicly announced in the presence of those who are in attendance. Such revision removes the current confusion as to whether or not the bidding parties must be present at the time bids are unsealed.

Full text of the reoption can be found in the New Jersey Administrative Code at N.J.A.C. 6:21.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with ***[thus]***):

6:21-1.1 General requirements

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

(c) All forms prescribed by the Commissioner of Education referred to in this chapter are available in the office of the county superintendent of schools, and at the Bureau of Pupil Transportation, Department of Education, 240 West State Street, CN 500, Trenton, New Jersey 08625.

(d) It is recommended that district boards of education and school bus contractors acquaint themselves with the procedures described in the Department of Education Policies and Procedures Manual for Pupil Transportation to ensure efficiency in the implementation of a pupil transportation program. This manual is available for review at the transportation office of the district board of education, the office of the county superintendent of schools and the Bureau of Pupil Transportation.

6:21-1.2 Accident reporting

(a) Every school bus driver shall immediately inform the principal of the receiving school and the school business administrator of the district board of education providing for the transportation following an accident which involves an injury, death or property damage. The driver shall also complete and file the Preliminary School Bus Accident Report prescribed by the Commissioner of Education.

(b) In addition to the Preliminary School Bus Accident Report, the driver of a school bus involved in an accident resulting in injury or death of any person, or damage to property of any one person

in excess of \$500.00 shall within 10 days after such accident complete and file a Motor Vehicle Accident Report in accordance with N.J.S.A. 39:4-130.

(c) (No change.)

6:21-2.7 Certification of attendance

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

(e) Upon request, the district board of education shall send to the county superintendent of schools the Private School transportation Summary.

(f) A district board of education shall not be required to pay aid in lieu of transportation when the Request for Payment of Transportation Aid voucher is received after the close of the fiscal year.

6:21-4.1 Capacity

(a) The number of pupils assigned to a seat may not exceed the gross seating length in inches divided by 15. Application of the foregoing formula shall not result in the approval of a school vehicle with a seating capacity in excess of 54.

1. Vehicles manufactured as 58 passenger elementary school vehicles owned by a district board of education or contractor prior to December 18, 1989 may be utilized until retirement.

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

SUBCHAPTER 5. STANDARDS FOR SCHOOL BUSES MANUFACTURED JULY 1985 THROUGH MAY 1993

6:21-5.1 School bus standards; incorporated by reference

(a) The State Board of Education authorizes the use of Standards for School Buses and Operations, National Minimum Standards for School Buses, 1985 Revised Edition, which are issued as recommendations of the Tenth National Conference on School Transportation. These standards are divided into sections covering definitions, chassis standards and body standards. The purpose is to define school buses, minimum chassis and body standards and assign responsibility for providing the defined equipment. The 1985 revised edition of Standards for School Buses and Operations covering definitions and school bus chassis and body standards, are incorporated by reference and hereby adopted as a rule and supplemented by standards established by N.J.A.C. 6:21-5.2, 5.3 and 5.4. These standards apply to vehicles with a chassis manufacture date of July, 1985 through May, 1993.

1. This document is available for review at the Bureau of Pupil Transportation, Division of Administration and Finance, New Jersey Department of Education, 240 West State Street, Trenton, New Jersey 08625, or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.

2. This document may be purchased from the National Safety Council, 444 North Michigan Avenue, Chicago, Illinois 60611.

6:21-5.2 Chassis standards supplement to the 1985 National Minimum Standards

(a) The parking brake shall hold the vehicle stationary, or to a limit of traction of the braked wheels, on a 20 percent grade under any condition of legal loading and on a surface free from snow, ice and loose material.

(b) When applied, the parking brake shall remain in an applied position with the capability set forth in (a) above, despite exhaustion of the source of energy used for the application or leakage of any kind.

(c) A parking brake lever shall be mounted to the right of the driver on Types C and D buses and in a position that is easily accessible. On Types A and B buses, the parking brake lever may be mounted to the left of the driver.

(d) The parking brake shall be equipped with an on or off warning device.

(e) The hood may be painted National School Bus Yellow low luster yellow or flat black. The wheels may be black, gray, silver or white. The grille shall be chrome or National School Bus Yellow.

(f) An exhaust system shall not exit under any operating window of a bus.

(g) Type A school bus fuel tank(s) shall be according to the manufacturers' standard.

(h) Buses shall be equipped with dual horns of standard make. Each horn shall be capable of producing a complex sound in a band of audio frequencies between approximately 250 and 2,000 cycles per second and each having a total sound level of 110 decibels within these frequency limits. Sound shall be measured at a point on the axis of the horn, three feet from the exit of the horn.

(i) All gauges and instruments must be appropriately identified.

(j) A telltale light, plainly visible to the driver, shall be installed to give a positive indication of the operation of the stop lights.

(k) A transmission shifting control pattern shall be affixed to a point convenient to the driver.

(l) There shall be a detent on the automatic transmission shift level to insure that the transmission cannot accidentally move from neutral to a drive gear without driver effort.

(m) School buses not equipped with a park position on the shift control selector for automatic or semi-automatic transmissions shall be equipped with a heavy duty parking brake.

6:21-5.3 Bus body standards supplement to the 1985 National Minimum Standards

(a) Except for Type A vehicles, the minimum clearance of all aisles shall be 12 inches.

(b) When a bus is equipped with air doors or other air operated assemblies, excluding windshield wipers, an additional air tank is needed for the operation of those assemblies.

(c) The emergency door shall be designed to be opened from the inside and outside of the bus and shall be equipped with a fastening device which may be quickly released, but is designed to offer protection against accidental release. Control of the fastening device from the driver's seat shall not be permitted.

(d) The emergency door fastening device shall be equipped with a suitable electric plunger-type switch connected with a buzzer located in the driver's compartment. The switch shall be enclosed in a metal case, and wires leading from the switch shall be concealed in the bus body. The switch shall be installed so that the plunger contacts the farthest edge of the slide bar in such a manner so that any movement of the slide bar will immediately close the circuit on the switch and activate the buzzer.

(e) The emergency door may be equipped with a locking system which incorporates an interlocking electrical circuit that prevents the bus from being started while the emergency door is locked.

(f) The words "Emergency Door" shall be applied to the emergency door, both inside and outside, and shall be in red letters at least two inches high.

(g) The hot water heater system in a Type A vehicle shall be according to the manufacturers' standard.

(h) The owning or operating organization name shall be conspicuously identified in letters at least three inches high, located on each longitudinal side of the exterior of the bus. Such identification shall be completely horizontal and below the window line.

(i) No advertisement of any kind shall be exhibited either on the interior or exterior of the school bus, with the exception that the manufacturer's and vendor's trade name(s) shall be permitted to be exhibited on the bus.

(j) Types A and B buses shall install incandescent signal lamps.

(k) Types C and D buses shall use either the incandescent or strobe lamps.

(l) Interior lamps shall be provided which adequately illuminate the aisle and step-well.

(m) All lamps and their installation shall be of a type approved by the Director of the Division of Motor Vehicles.

(n) If strobe lamps are utilized, the front and rear signal lamps on each school bus shall be equipped with eight electronic strobe lamps, four red and four amber, working in an automatic integrated system. The warning lamps shall be of a type approved by the Director of the Division of Motor Vehicles.

1. Eight Par 46 sealed beam type strobe lamps shall be utilized.

2. The solid-state strobe power supply shall provide the electrical power to energize the sealed beam flash tubes. The power supply shall energize the lamps at a combined alternating flash rate of

120-128 flashes per minute. The power supply shall be fully enclosed in a metal environment container with a minimum metal wall thickness of 0.060 inch.

3. The power supply shall be fully enclosed within the bulkhead.

(o) Types B, C and D school buses shall have two exterior convex type mirrors mounted forward, one to the left side and one to the right of the driver. Each mirror shall be a minimum of six by six inches overall, rectangular in shape and shall have a minimum 21 inch to a maximum 30 inch radius of curvature on the convex. Each mirror shall be firmly supported and adjustable to give the driver a clear view of the left rear wheels and the immediate adjacent area, and the right rear wheels and the immediate adjacent area.

1. Type A school buses shall have two exterior clear view rearview mirrors mounted forward, below eye level, one to the left and one to the right of the driver and each mirror shall be firmly supported and adjustable to give the driver a clear view past the left rear and right rear of the vehicle. Outside rearview mirrors, as a minimum, shall be four inches wide by six inches high.

(p) Mirror mounting brackets shall be affixed to the bus so as to be securely fastened to the structural frame members of the bus body, or shall be affixed to the existing exterior rearview mirror mounting brackets.

(q) The convex type mirrors shall not be a part of or attached to the exterior rearview mirrors.

(r) The convex type mirror head and the rearview mirror head shall be mounted so as to have a minimum of two inches distance between the two mirrors.

(s) Cross over mirrors shall have a minimum measurement of six and one-half inches at the base.

(t) The size of the interior mirror on Type A school buses shall be according to manufacturers' standard.

(u) The floor covering in Type A school buses shall be either one-half exterior plywood securely fastened to the floor of the school bus in the passenger compartment, tapered to the forward level, or 14 gauge smooth steel floor.

(v) Rub rails shall be attached at each body post, sedan doors and all other upright structural members.

(w) All seats shall be forward facing.

(x) The tailpipe shall terminate up to a maximum of two inches beyond the rear bumper.

(y) Glass in all side and rear windows shall be of AS-2 or better grade. Equivalent plastic AS-4 or better, may only be used in side windows of the bus.

(z) The windshield shall have a horizontal gradient band starting slightly above the line of a driver's vision and gradually decreasing in light transmission to 20 percent or less at the top of the windshield. Glass in the windshield shall be of AS-1 grade.

(aa) The wheelhousing shall be attached to floor sheets in such a manner to prevent any dust, water, or fumes from entering the body. The wheelhousing shall be constructed of 16-gauge steel.

6:21-5.4 Standards supplement to the 1985 National Minimum Standards for buses used to transport special needs students

(a) If a ramp device is installed, it shall have a non-skid surface and be securely stored and protected from the elements when not in use.

1. The ramp must have at least three feet of length for each foot of incline.

(b) Seat belts or other suitable restraints shall be installed for each passenger including those seated in wheelchairs.

(c) Each door shall be equipped with a device that will actuate a visual or audible signal located in the driver's compartment when the door is not securely closed and the ignition is in the "on" position.

(d) Any aisle leading from a wheelchair position to the emergency or exit door shall be a minimum width of 30 inches.

SUBCHAPTER 6. STANDARDS FOR BUSES USED FOR PUPIL TRANSPORTATION MANUFACTURED JUNE, 1993 OR THEREAFTER

6:21-6.1 Scope and purpose

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

(d) The rules established in N.J.A.C. 6:21-6, 6A, 6B and 6C shall apply to buses with a June, 1993 or later chassis manufacture date unless otherwise noted. Buses manufactured prior to this date shall comply with the rules in effect when the bus was manufactured or converted.

6:21-6A.9 Engine fire extinguishers

Buses may be equipped with a fire extinguisher system for the engine compartment.

6:21-6B.30 Seat belt for driver and students

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

(c) Buses with a chassis manufacturer date of October, 1992 or thereafter shall be equipped with seat belts and 28 inch high back seats in accordance with P.L. 1992, c.92.

(d) Buses equipped with seat belts shall also contain a belt cutter for use in an emergency. The belt cutter shall be designed to prevent injury during use and secured in a safe location.

6:21-6C.2 Aisle

The aisle leading to emergency and power lift doors from a wheelchair position shall be a minimum width of 30 inches.

6:21-10.3 Parent transporting his or her own child or children

(a) A parent under contract with a district board of education to transport only his or her own child or children will not be required to possess a bus driver's license, to use a vehicle registered as a school bus, or to comply with the health examination prescribed for employees of the district board of education.

6:21-11.1 Requirements for drivers of school buses

(a) (No change.)

(b) Drivers of school vehicles equipped with seat belts shall be required to wear them whenever the vehicle is in motion.

(c) Drivers shall hold a valid Commercial Driver License with appropriate endorsement(s) issued by the Division of Motor Vehicles.

6:21-11.3 Emergency exit drills from school buses

(a) Schools shall organize and conduct emergency exit drills at least twice within the school year for all pupils who are transported to and from school.

1. All other students shall receive school bus evacuation instruction at least once within the school year.

(b) The school bus driver and bus attendant/aide shall participate.

(c) (No change.)

6:21-12.2 General provisions

(a) (No change.)

(b) The district board of education shall adopt a policy addressing the transportation of these groups. The policy shall require groups seeking the use of school buses to pay all or part of any costs incurred by the district board of education in permitting such use. The costs shall include, but not be limited to, the costs of fuel, driver salaries, insurance, and depreciation.

(c) The use of school buses by these groups requires the approval of the district board of education and shall not interfere with the transportation of school pupils.

(d) Buses shall be operated only by a person having a valid commercial driver license with appropriate endorsement(s) issued by the New Jersey Division of Motor Vehicles.

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

(g) District boards of education using buses for the transportation of these groups shall file proof of insurance coverage for such transportation with their county superintendents of schools. Insurance coverage shall include liability for bodily injury and property damage in the amount of \$1,000,000 combined single limit per occurrence.

6:21-13.1 General requirements

(a) The district board of education shall designate a committee, official or employee to prepare the specifications for each route or contract for which proposals are sought. A copy of the specifications shall be submitted to the county superintendent of schools prior to advertisement for bids. The specifications and advertisement for bids shall be approved and authorized by formal action of the district board of education.

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

(d) Specifications shall protect against discrimination in accordance with P.L. 1975, c.127 (N.J.S.A. 10:5-31 et seq.).

6:21-13.2 Prescribed transportation bid specifications

(a) The district board of education shall prepare transportation bid specifications to include, but not be limited to the requirements of this chapter.

(b) (No change.)

(c) A route is a selected or an established course of travel by a vehicle with definite stops for the purpose of loading and unloading students. Transportation routes should be arranged so that the buses will transverse the highways which serve the largest number of pupils within a reasonable time limit and at a minimum cost. Subject to exceptions, such as educationally handicapped pupils, buses are not required to leave the main route to pick up elementary pupils residing within 1½ miles of the route and high school pupils residing within two miles of the route. The district board of education shall reserve the right, with the approval of the county superintendent of schools, to change the route. If any change of route results, adjustment in the contract price shall be made in accordance with the bid. The basis for any adjustment will be the separate and distinct per mile, per vehicle or per pupil increase/decrease cost included in the bid.

(d) (No change.)

(e) A route for the transportation of special education pupils shall be described listing each bus stop, the schedule for arriving and departing and the vehicle capacity. The statement "the direction of the vehicle from the last stop shall be along the safest most direct route to the destination" shall be included. In addition, language shall be included which will require the successful bidder to submit to the district board of education within 10 days of the start of the contract, a description of the actual streets traveled.

(f) The bid specifications shall include:

1. A copy of the school calendar;
2. A copy of the prescribed questionnaire form;
3. A provision for emergency closings;
4. Conditions for cancellation of contracts;
5. The limits of liability insurance;
6. The type(s) of bonding required;

7. Except for per pupil bids, a statement which clearly prohibits the commingling of students unless authorized to do so by the district board of education through the joint transportation agreement process;

8. The need for specialized equipment if applicable;

9. Restrictions due to student classification, if applicable;

10. A statement that all equipment shall meet current specifications in accordance with Federal and State law, the rules of the State Board of Education, and any additional specifications of the district board of education;

11. A statement that all contractors shall comply with current applicable New Jersey Statutes, regulations, and policies and procedures of the district board of education governing pupil transportation;

12. A bid sheet which will be required to be submitted by bidders to the district board of education. The bid sheet shall include a provision to request bids on a per route basis for regular, nonpublic and in-district handicapped students and on a per route, per vehicle, per pupil, per mileage basis for the transportation of out-of-district handicapped students;

13. The bid sheet shall include a separate provision to request adjustments to the contract on a per mile basis for public and

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nonpublic regular and in-district handicapped routes and on a per mile, per pupil, per vehicle basis for out-of-district special education transportation contracts;

14. The bid sheet shall include a separate provision to request bulk/combo bids, if applicable;

15. A requirement for submission of an affidavit of noncollusion;

16. A requirement for submission of a stockholder's disclosure statement;

17. A provision for the acceptance of bulk/combo bids, if applicable;

18. A statement that bids are to be placed in a sealed envelope and plainly marked "TRANSPORTATION BID FOR ROUTE OR CONTRACT NO. _____, SCHOOL DISTRICT OF _____" and presented to the board in session, authorized committee, designated official or employee of the board.

6:21-14.1 Bidder guarantee

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

(d) The amount to be deposited shall be a minimum of five percent of the bid, but in no case may the certified check, cashier's check or bid bond exceed \$50,000.

(e) (No change.)

(f) Except for the three lowest bidders, the bidder guarantee shall be returned within 10 days after the opening of the bids (Saturdays, Sundays and holidays excepted).

6:21-14.3 Corporate surety bond

(a) (No change.)

(b) Contracts and renewals shall be accompanied by a corporate surety bond for the total annual amount of the contracts. Bonding for multi-year contracts shall be submitted each year in the annual amount of the contract or may be for such amount in excess of the proportionate annual amount as the district board of education shall determine. Contracts awarded on a per diem basis shall be bonded in the per annum amount based on the actual number of days transportation is required by the school calendar or, at the discretion of the district board of education, may be in the per annum amount based on 180 days.

(c) (No change.)

6:21-14.4 Personal surety bond

(a) (No change.)

(b) Contracts and renewals shall be accompanied by a personal surety bond for the total annual amount of the contracts. Bonding for multi-year contracts shall be submitted each year in the annual amount of the contract or may be for such amount in excess of the proportionate annual amount as the district board of education shall determine. Contracts awarded on a per diem basis shall be bonded in the per annum amount based on the actual number of days transportation is required by the school calendar or, at the discretion of the district board of education, may be in the per annum amount based on 180 days.

(c) (No change.)

(d) If it shall be necessary to substitute a bondsperson, the contractor shall promptly furnish the same information for the new bondsperson as required for the original bondsperson on the prescribed questionnaire form accompanying the bid.

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

6:21-15.1 Responsibility of district board of education

(a) District boards of education shall have the option of annually bidding all transportation contracts or awarding annual extensions of an original contract. However, no contract for the transportation of pupils to and from school shall be made, when the amount to be paid during the school year for such transportation shall exceed the bid threshold limit and have the approval of the county superintendent of schools, unless the district board of education making such contract shall have first publicly advertised for bids. Such advertisement shall be published once in a newspaper circulating in the district at least 10 days prior to the date fixed for receiving proposals for such transportation. All bids shall be advertised with the time and place fixed to each advertisement for submission of proposals to the district board of education. No proposal shall be

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opened previous to the hour designated in the advertisement and none shall be received thereafter. The board or designated official shall unseal bids in the presence of *[the parties bidding]* *those in attendance* and publicly announce the contents.

(b) (No change.)

(c) It is recommended that the district boards of education keep a list of the names of all persons who take copies of the specifications.

(d) (No change.)

(e) The bid specifications must be definite, precise and impose common standards.

(f) The bid specifications and any revisions to the bid specifications shall be furnished to all prospective bidders and shall not restrict competitive bidding.

(g) Variations from the bid specifications as prescribed by the State Board must be reasonable and are subject to review by the Commissioner and the State Board of Education.

(h) When bid specifications are purposely formed to deter rather than to invite genuine competition, an award to the intentionally favored bidder shall be set aside.

6:21-15.2 Responsibility of the bidder

(a) The bidder shall submit the bid on the bid sheet contained in the bid specifications. Bids shall be made on a per route basis for regular, nonpublic and in-district handicapped pupils or on a per route, per vehicle, per pupil, per mileage basis for the transportation of out-of-district handicapped pupils.

(b) The bids shall include a separate cost for adjusting the contract as follows:

1. (No change.)

2. On a per mile, per pupil, per vehicle basis in accordance with the bid specifications for out-of-district special education routes.

(c) The bids shall include a separate cost for an attendant/aide on a per diem basis as required by the bid specifications.

(d) The bid submitted to the district board of education shall also include the following:

1. A certificate of liability insurance;

2. Affirmative action documents in accordance with P.L. 1975 c. 127;

3. (No change.)

4. The completed questionnaire form as prescribed by the Commissioner of Education; and

5. An affidavit of noncollusion.

(e) A bid bond, cashier's or certified check as required by the bid specifications shall accompany the bid.

(f) A surety (performance) bond shall be required equal at least to the amount of one year of the contract. In the case of contracts for more than one year, the bond may be for such amount in excess of the proportionate annual amount as the board shall determine.

(g) Bids are to be placed in a sealed envelope and plainly marked "TRANSPORTATION BID FOR ROUTE OR CONTRACT NO. _____ SCHOOL DISTRICT OF _____" and presented to the board in session, authorized committee, designated official or employee of the district board of education.

6:21-15.3 (Reserved)

6:21-15.6 Receiving and opening bids

(a) Unless the proposals are to be received in a meeting of the district board of education, a committee, officer, or employee of the district board of education must be designated to receive the proposals at a time and place designated by the district board of education and included in the advertisement for bids. At the time and place so designated and advertised, the district board of education or any committee, officer, or employee designated by the district board of education to do so, shall receive the proposals and proceed to unseal them and publicly announce their contents in the presence of the bidders or their agents. No proposals shall be opened previous to the hour designated in the advertisement and none shall be received thereafter.

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

ADOPTIONS

6:21-16.1 Rules

- (a) (No change.)
- (b) Each contract or renewal submitted to the county superintendent of schools shall be accompanied by:
 - 1.-5. (No change.)
 6. Affirmative action documentation;
 7. A stockholders' disclosure statement with original contracts; and
 8. A completed noncollusion affidavit with original contracts.
- (c) Non-bid contracts between a district board of education and a parent or guardian, transporting only his or her own child or children shall be accompanied by:
 1. A certified copy of the minutes of the district board of education authorizing the contract;
 2. A certificate of Insurance; and
 3. A copy of a valid driver's license and vehicle registration.
- (d)-(f) (No change.)

6:21-16.3 Rules constitute part of contract

- (a) (No change.)
- (b) If any person operating a school bus under contract with a district board of education shall fail to comply with any of the rules governing pupil transportation, the district board of education shall immediately notify such person in writing of his or her failure to comply.
 - (c) (No change.)
 - (d) If, after due notice and hearing, the district board of education shall determine that a breach of contract exists, it may call upon the bondsperson or surety company, as the case may be, to perform the contract or to reimburse the district board of education for any financial loss resulting from the breach of the contract, and may annul the contract.
 - (e) (No change.)

6:21-16.4 Term of contract

- The district board of education shall indicate the term of the contract not exceeding four years.
1. Beginning in the second year, a multi-year contract may be increased annually by a maximum of 7½ percent of the original yearly contract amount.
 - (b) (No change.)

6:21-16.5 Awarding contracts

- (a) (No change.)
- (b) The contract shall be awarded to the lowest responsible bidder by formal action of the district board of education in a public meeting. The district board of education is not authorized to delegate its power to enter into a transportation contract.
- (c)-(g) (No change.)

6:21-16.7 Quoted contracts

- (a) (No change.)
- (b) Quoted contracts may be issued for unanticipated to and from school transportation services provided the following requirements are met.
 1. At least three quotations shall be sought and documented;
 - 2.-5. (No change.)

6:21-16.8 Renewing contract

- (a) Annual extensions of an original contract, approved by the county superintendent of schools, are permitted provided:
 - 1.-2. (No change.)
 3. There is no increase in the annual amount of the contract to the district board of education or the increase in the original contractual base amount as a result of such extension does not result in an "effective increase" of more than 30 percent regardless of the fact that the route description has changed or an aide has been added or removed, except in cases where a student rider is newly assigned to a route during the school year and extra mileage is necessary. Any such arrangement shall be approved by the county superintendent of schools and shall be bid for the next school year. The original contract base amount is the original contract amount plus any adjustments in accordance with the terms of the contract made by addenda during the original year.

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4. The school destination shall remain the same as the original contract. Destination is defined as the physical location of the original school(s).

(b) When it is necessary to change the bus type, an immediate rebid of a contract renewal is not required. Any such change shall be approved by the district board of education and shall be bid for the next school year.

6:21-16.9 Addendum

- (a) (No change.)
- (b) An addendum to contract/contract renewal shall be submitted on the prescribed Contract Addendum form to the county superintendent of schools for approval within 30 days of board approval.
 - (c) (No change.)
 - (d) A certified copy of the minutes of the district board of education authorizing the adjustment shall accompany the Contract Addendum form when submitted to the County Superintendent of Schools.

6:21-16.10 Transferring contracts and contract renewals

- (a)-(c) (No change.)
- (d) The assignment between the district board of education and the purchaser shall not become effective until the purchaser provides:
 - 1.-2. (No change.)
 3. A stockholders' disclosure statement;
 4. Affirmative action documentation; and
 5. An affidavit of noncollusion.
- (e) The prescribed "Pupil Transportation Contract Transfer Agreement" shall be completed for each contract/multi-contract.
- (f) Certified board minutes approving the transfer of the contract must accompany the "Pupil Transportation Contract Transfer Agreement" when it is submitted to the County Superintendent for approval.

6:21-16.11 Joint transportation agreements

- (a) (No change.)
- (b) Whenever in the judgment of the county superintendent of schools transportation of pupils could be more economically accomplished by joint transportation, he or she may order such joint transportation, assign the administration to one district board of education as host and prorate the cost to the joining district boards of education.
 - (c) (No change.)
 - (d) The "host" district board of education will be responsible for initiating the joint agreement and insure that when transportation is provided by contracted services, contracts meet the requirements for approval by the County Superintendent of Schools.
 - (e)-(f) (No change.)
 - (g) Joint agreements issued between district boards of education in the same county shall be sent to the county superintendent for approval within 60 days of the agreement.
 - (h) Joint agreements issued between district boards of education in different counties shall be sent to the county superintendents for approval within 90 days of the agreement.

6:21-17.1 General provisions

- (a) (No change.)
- (b) Insurance shall be obtained through a company authorized to insure in New Jersey and shall cover the district board of education as an additional named insured.
- (c)-(f) (No change.)

6:21-18.2 Division of Motor Vehicles inspection

- (a)-(c) (No change.)
- (d) Parents who transport only their own child or children under contract with a district board of education are not required to utilize a vehicle registered as a school bus.

(a)

STATE BOARD OF EDUCATION**Pupil Assistance Committees; Intervention and Referral Services for General Education Pupils****Adopted Repeal and New Rules: N.J.A.C. 6:26**

Proposed: May 16, 1994 at 26 N.J.R. 2004(a).

Adopted: July 11, 1994 by State Board of Education, Leo

Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 11, 1994 as R.1994 d.403, **without change**.

Authority: N.J.S.A. 18A:1-1 and 18A:4-15.

Effective Date: August 1, 1994.

Expiration Date: August 1, 1999.

Summary of Public Comments and Agency Responses:

The Department of Education received written comments from four commenters during the proposal comment period ending June 15, 1994. Written comments were received from Ms. Jean Paashaus, from Summit, New Jersey; Mr. William D. Bauman, Principal, Rutherford High School; James V. McLaughlin, Supervisor of Special Services, Kenilworth Public Schools; and Joseph L. Jakubowski, Director of Special Services, Upper Freehold Regional School District.

The New Jersey State Board of Education held a public testimony session on June 15, 1994, at which time the above-captioned rule was on the agenda. Public testimony was provided by Ms. Connie Greene, Director of Program Development for the Genesis Prevention Program, Union Hospital. The following are the comments received and the department's responses:

COMMENT: One commenter recommended that "policies" be included in the title of subchapter 2, because school boards generally vote on policy, not procedures. Additionally, policies should be included in the heading of N.J.A.C. 6:26-2.1 and the first sentence following the heading of N.J.A.C. 6:26-2.1.

RESPONSE: The Department disagrees. District boards of education may adopt procedures, as well as policies, in support of school programs. The rules are designed to represent minimum standards for districts to establish procedures for intervention and referral services in each building. Therefore, board adoption of building procedures in conformance with the rules achieves this purpose.

COMMENT: One commenter recommended that the rules require written parental consent, rather than the lesser standard of parent involvement, in the district's intervention and referral services. The respondent argues that the written consent rights provided for parents under the special education regulations should be extended to these rules. Written parental consent would place a check and balance on both an expanding school bureaucracy and excessive psychological testing.

RESPONSE: The Department disagrees. The due process rights provided for parents in the special education rules do not apply to services for pupils in the general education program. District staff regularly make adjustments to accommodate the learning needs of general education pupils.

These rules do not require diagnostic or psychological evaluations. The intent of the rules is to increase coordination of existing resources within the general education program and build the capacity to assist pupils with learning and behavior problems, rather than diagnosing and classifying them.

COMMENT: The respondent is concerned that using the term "outcomes" obscures the means schools will use to attain desired student behaviors.

RESPONSE: The Department disagrees. The term "outcome" is used to ensure that schools' intervention and referral plans produce specific results. Identifying desired outcomes provides direction for planning and evaluating student improvement. These rules do not regulate the educational strategies recommended in the intervention and referral plans.

COMMENT: The commenter supports the repeal of the Pupil Assistance Committee (PAC) rules (N.J.A.C. 6:26) which duplicate existing pupil personnel and administrative services. Secondary schools already have such procedures in place.

RESPONSE: The Department agrees with the need to repeal the Pupil Assistance Committee rules (N.J.A.C. 6:26). The proposed new rules will allow each district to use existing procedures or develop procedures to

meet specific building needs for intervention and referral services. The proposed new rules should not impose an additional burden on schools with strong building-based pupil personnel services.

COMMENT: Three commenters indicated that the elements that contributed to successful implementation of the School Resource Committee pilot program will not be adopted by schools without regulations requiring schools to use collaborative problem solving teams, such as the PAC. Without the requirement for PACs, schools will continue to see high classification rates and growing special education budgets.

RESPONSE: The Department disagrees. While the need for schools to provide assistance to pupils experiencing learning problems in their classes has not lessened, comments from educators since the PAC rules were adopted have indicated that the existing rules are too prescriptive. The proposed rules maintain the intent of providing intervention and referral services to regular education students, while allowing greater flexibility in the development of school-based procedures.

COMMENT: The repeal of the PAC rules runs counter to the continuing mandates in N.J.A.C. 6:28 for schools to conduct a series of interventions prior to a child study team referral.

RESPONSE: The Department disagrees. The proposed new rules support N.J.A.C. 6:28 by ensuring that each school building will have procedures to provide these intervention and referral services.

Full text of the adoption follows:

**CHAPTER 26
INTERVENTION AND REFERRAL SERVICES FOR
GENERAL EDUCATION PUPILS**

SUBCHAPTER 1. GENERAL PROVISIONS**6:26-1.1 Purpose**

The purpose of these rules is to provide standards for the district boards of education for the delivery of intervention and referral services for pupils in the general education program.

SUBCHAPTER 2. DISTRICT PROCEDURES**6:26-2.1 District procedures**

(a) District boards of education shall establish and implement procedures in each school building for the delivery of intervention and referral services for pupils who are experiencing difficulties in their classes and who have not been determined to be in need of special education programs and services pursuant to N.J.S.A. 18A:46-18.1 et seq. and N.J.A.C. 6:28 by September 1994. The district shall:

1. Identify pupils in need, and plan and provide for appropriate intervention or referral services and/or referral to school and community resources, based on desired outcomes;
2. Identify the roles and responsibilities of the building staff who participate in planning and providing intervention and referral services;
3. Provide support, guidance, and professional development to school staff who identify and refer pupils and to school staff who participate in planning and providing intervention and referral services;
4. Actively involve parents or guardians in the development and implementation of intervention and referral plans;
5. Coordinate the access to and delivery of school services for identified pupils;
6. Coordinate the services of community-based social and health provider agencies; and
7. Review and assess the effectiveness of the services provided in achieving the outcomes identified in the intervention and referral plan.

HEALTH

(a)

PUBLIC HEALTH COUNCIL

State Sanitary Code

Collection, Processing, Storage and Distribution of Blood

Adopted Amendments: N.J.A.C. 8:8

Proposed: February 22, 1994 at 26 N.J.R. 1057(a).

Adopted: June 13, 1994 by the Public Health Council,

William Frascella, Jr., O.D., Chairman.

Filed: June 16, 1994 as R.1994 d.350, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:1A-7 and 26:2A-7.

Effective Date: August 1, 1994.

Expiration Date: April 12, 1999.

Since the Department needed more time to evaluate and review comments received during the comment period before final adoption, N.J.A.C. 8:8 was readopted effective April 12, 1994 without the amendments proposed in the February 22, 1994 New Jersey Register (see 26 N.J.R. 2025(a)). The Department has asked for and received further comment and is now proceeding with adoption of the amendments. Furthermore, as a result of discussions with the regulated community, the Department has decided to retain the long standing requirement that a physician or a registered nurse be available on-site to provide emergency care during blood donations, because the regulated community felt strongly that this requirement should be maintained.

Summary of Hearing Officer Recommendations and Agency Responses:

The public hearing was held on March 14, 1994. Two members of the public offered comment. The hearing officer was Samuel D. Thompson, Ph.D., Director, Clinical Laboratory Improvement Service, who recommended that comments be accepted at the meeting without response by the Department so that the comments could be reviewed by staff and responses formulated. The oral presentations offered at the public hearing have been combined with the written comments, which follow. The hearing record may be reviewed by contacting Susan Eates, Department of Health, CN 360, Trenton, New Jersey 08625.

Summary of Public Comment and Agency Responses:

The Department of Health heard two presentations at the public hearing and received nine written responses, some with several comments, for a total of 17 comments to the proposed readoption with amendments. Sixteen of the comments were received from or on behalf of licensed blood banks, or their associations. One comment was from a practitioner of hematology/oncology at a licensed blood bank. While most of the comments were related to the amendments to the readoption, three comments were in response to unchanged rules.

The following persons either submitted written comments or presented comments at the public meeting during the comment period.

1. Blood Banking Committee of the New Jersey Pathology Society Members: Leonard I. Boral, M.D., Newark Beth Israel Medical Center, Newark; Marvin Lessig, D.O., Christ Hospital, Jersey City; Elliot A. Krauss, M.D., Medical Center at Princeton, Princeton.
2. Bernard Grossman, M.D., Trenton
3. Ali Daneshvar, M.D., Atlantic City Medical Center, Atlantic City
4. Ranie Koshy, M.D., North Jersey Blood Center, East Orange
5. Lillian de Paredes, M.D., Hackensack Medical Center
6. James F. Crispen, M.D., Sera-Tec Biologicals, North Brunswick
7. Hany Kamel, M.D., American Red Cross, Philadelphia
8. Lyda Sue Cunningham, M.A., R.N., Dover General Hospital, Dover
9. Mercy Kuriyan, M.D., New Jersey Blood Services, New Brunswick
10. Oral presentations at the public meeting were given by Elliott A. Krauss, M.D., Medical Center at Princeton, Princeton and John P. Sheehan, M.D., Bayshore Community Hospital

COMMENT: Several comments stated that the wording in the rules implied that the blood bank director would be responsible for approving every person who would be involved in the administration of blood and blood components (N.J.A.C. 8:8-10.2(a)2) and for assuring the correct

administration of blood and blood components (N.J.A.C. 8:8-2.1(a)), resulting in an inappropriate shift of these responsibilities from nursing to blood banks.

RESPONSE: The Department agrees that this shift in responsibility is inappropriate and has changed all references in the rule related to the blood bank director's responsibility for the administration of blood and blood components to delete the director's responsibility for the nursing staff.

COMMENT: One commenter objected to use of the word "prophylactic" throughout the rule, since the use of the term might encourage the prophylactic use of blood and blood components.

RESPONSE: The Department agrees with this comment and has deleted all reference to the use of blood and blood components for prophylactic purposes from the rule. The Department had included the term in the proposal, since it appeared in the authorizing legislation, which was enacted in 1963. However, since the prophylactic use of blood and blood components is no longer considered acceptable medical practice, these references have been removed.

COMMENT: Several commenters stated that the requirement for a traceable, nonchangeable identification number in subchapters 9 and 10 in the rules would be problematic, since situations exist where the identification number must change.

RESPONSE: The Department's purpose in proposing these changes was to ensure that recipients of blood and blood components be positively identified from collection of their blood specimen, through compatibility testing, issue and administration of blood. It has been the Department's experience during inspections that, in many instances, when the identification number changes the new number can not be positively linked with the patient. Since the Department's primary concern is with the traceability of the identification number to the patient, the requirement for a nonchangeable number has been deleted; however, blood banks will be required to document all identification numbers used to establish the positive identification of the blood bank recipient.

COMMENT: Several commenters stated that hepatitis should remain a reportable disease for transfusion-associated-hepatitis, and that there should be appropriate follow-up by the State Department of Health to prevent transmission of this infection to other blood recipients.

RESPONSE: Historically blood banks have been required to report to the State cases of transfusion-associated-hepatitis (N.J.A.C. 8:57 Reportable Diseases), donors with negative hepatitis tests, that have been implicated in transfusion-associated cases (N.J.A.C. 8:8-5.2(b)1), and donors with positive hepatitis tests for HBsAg (N.J.A.C. 8:8-5.2(b)2).

Since so few donors with negative hepatitis tests, that were implicated in transfusion-associated-hepatitis cases, were found to, in fact, be sources of hepatitis infection, the Department has decided to discontinue this reporting requirement. However, this amendment does not affect the other two reporting requirements in N.J.A.C. 8:57 and N.J.A.C. 8:8-5.2(b)2.

COMMENT: Several commenters questioned the CPR certification requirements listed in the rules at N.J.A.C. 8:8-2.2(c)1ii, stating that the requirements were more stringent than, or contradicted, the American Heart Association standards for CPR certification.

RESPONSE: The Department has changed the requirements to agree with accepted national standards, such as the American Heart Association and the American Red Cross.

COMMENT: Several commenters requested clarification of the word "transfusionist" in N.J.A.C. 8:8-2.2. One of these commenters thought that the rule should state the qualifications of the transfusionists in N.J.A.C. 8:8-2.2(b)2, but emphasized that, if the transfusionist was specified as a nurse, it would be inappropriate for a blood bank supervisor to oversee nursing practice.

RESPONSE: The Department has revised N.J.A.C. 8:8-2.2 to address the commenters concerns regarding the use of the word "transfusionist" and supervision of the transfusionist. Except in out-of-hospital transfusions, where the person performing the transfusion is required to meet emergency care personnel qualifications specified in N.J.A.C. 8:8-2.2(c), the Department has chosen not to specify the qualifications of the transfusionist, since each professional board is responsible for determining which of their members can perform this type of procedure.

Also in response to this comment, the Department has chosen to revise N.J.A.C. 8:8-2.2(a), to delete the requirement that the blood bank supervisor supervise all functions related to the transfusion of blood. The Department has taken this position since the blood bank supervisor's

training is limited to the preparation of blood and blood components for transfusion and does not encompass clinical issues that would be necessary to administer a transfusion.

COMMENT: One commenter stated that the wording proposed in N.J.A.C. 8:8-8.3(c)1 should be changed from, "it was collected from a donor known to be negative or positive to FDA required tests" to "it was collected from a donor known to be tested for FDA required tests." This commenter stated that the presence of the autologous donor/patient name next to a label that stated whether the donor was positive or negative to FDA required tests would make this information accessible to bedside visitors or others whose unauthorized visualization of such information would violate Federal and State confidentiality laws.

RESPONSE: The Department has changed this wording to agree with the commenter's proposal.

COMMENT: One commenter was strongly opposed to the proposed requirement in N.J.A.C. 8:8-8.10(e)3, which does not allow "crossover" (transfusion) of blood collected from an autologous donor/patient to a patient other than the original donor/patient. The commenter cited lack of available blood for trauma cases, no convincing published study validating a difference in the safety of blood collected from an autologous donor versus a volunteer donor and no logical difference in the safety of autologous versus volunteer blood donors for reasons to continue to allow "crossover."

RESPONSE: When the use of autologous blood first became prevalent, it was thought that blood and blood components that were not used for the original patient/donor should be "crossed over" and used as a source of blood in the routine blood supply. In practice, this has not proven to be the case, for a number of reasons. One of the primary reasons that this has not occurred is that, since autologous donors donate blood for themselves, they are not required to meet the medical history requirements for a routine donation. Consequently, many autologous donations were from donors that could not meet the requirements for a routine donation. To be able to use this blood for a routine donation, after it was determined that the autologous donor was not going to use his or her blood, the blood bank had to determine, on a case-by-case basis, whether the donor could meet routine donation requirements. In many situations, since the donor's history was ambiguous, these donors could not be used. Blood banks throughout the State indicated that only one to 20 percent of their autologous donor population met the criteria for "crossover." This, coupled with the fact that the process was complicated and prone to error, lead the blood banks on a national and State level to discontinue the practice, so that now it is the standard of practice in the State and throughout most of the country not to "crossover." While the Department's primary reason for prohibiting crossover was to ensure that unsafe blood would not be released into the blood supply, it was also aware at the time that these rules were proposed that this prohibition would have no significant impact on the available blood supply. For these reasons, the Department has chosen not to revise the rule to agree with the commenter.

COMMENT: One commenter stated that in N.J.A.C. 8:8-8.10(e)4, the Department should not allow the transfusion to the patient/donor of "Autologous Use Only" blood and blood components that confirm positive to tests for antibodies to Human Immunodeficiency Viruses (HIV-1/HIV-2) or Hepatitis B Surface Antigen (HBsAg), since collection and distribution of this blood poses a risk of exposure to health care personnel handling the blood.

RESPONSE: The prohibition of the reinfusion of a patient/donor's own blood is a complex issue and has been considered in the past. The Department has chosen not to make this change. Many issues are involved in allowing or prohibiting the reinfusion of blood and blood components that confirm positive to infectious disease tests. While the commenter's major concern is the safety of the health care worker, this must be balanced with the safety and the legal rights of the patient. Since this type of blood component is required to be labeled with a biohazard label, the health care worker is being notified of the blood units potential to transmit an infectious disease. This fact, coupled with the fact that health care workers use universal precautions, or treat all blood and blood products as if they were capable of transmitting disease, should minimize the risk of transmission of disease to the health care worker.

COMMENT: One commenter questioned the need to require, in N.J.A.C. 8:8-8.10(h), that all satellite bags collected from "Autologous Use Only" donors be labelled "Autologous Use Only" immediately prior to or at the time of collection, once the State prohibits "crossover," as indicated in these rules.

RESPONSE: These rules were proposed because it has been determined during inspections that plasma recovered from "Autologous Use Only" blood continues to be erroneously sold as "Recovered Plasma" even though it is not acceptable for this purpose, and must either be reinfused to the patient/donor or destroyed. This error has continued to occur, even though blood banks in the State do not "cross over". Labeling all satellite bags with "Autologous Use Only" immediately prior to or at the time of collection will permanently label this component and alert all future personnel that handle the plasma of its "Autologous Use Only" status. Consequently, the Department has chosen not to revise the rule.

Agency Note: The Department solicited information on the merits of the retention or deletion of the self-deferral requirement or confidential unit exclusion (CUE) requirement at N.J.A.C. 8:8-6.5(g).

COMMENT: Commenters from the New York Health Department and the New Jersey/Pennsylvania region stated that their data indicate that use of the CUE procedure eliminated donors with the potential to transmit HIV infection.

RESPONSE: Since the donor pool in these three states is very similar and in some cases donors from one state donate in the other, the Department has decided to retain the CUE requirement in N.J.A.C. 8:8-6.5(g), even though there is a national trend to make the CUE procedure optional.

Summary of Agency-Initiated Changes:

The following technical changes have been made to correct the format of the rule or clarify it.

1. In N.J.A.C. 8:8-1.2, Definitions, the word "Chapter" has been changed to "chapter."

2. In N.J.A.C. 8:8-2.2(b) the word "transfusion" has been added for clarity, since the rule relates to both donor and transfusion personnel.

3. In N.J.A.C. 8:8-1.3(g), the word "nonsurgical" and in N.J.A.C. 8:8-12.3(c), the words "a nonsurgical situation exists which could not", have been added to clarify the rule. Discussions with the regulated community indicated that, without these words, it would be impossible to distinguish when a facility would be required to obtain a blood bank license in an emergency situation.

4. In N.J.A.C. 8:8-8.2(d), an error has been corrected. The word "collection" has been changed to the word "transfusion" in order to reflect the requirements in N.J.A.C. 8:8-12.2(d).

5. Additionally the requirement that donor personnel responsible for determining donor suitability demonstrate their familiarity with donor eligibility standards to the satisfaction of the blood bank director has been moved from N.J.A.C. 8:8-2.2(c)1i to (b)3.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

8:8-1.1 Compliance

(a) Persons operating blood banks in this State shall meet the qualifications and conduct blood banks in conformity with N.J.S.A. 26:2A-2 et seq. and all rules in this chapter.

(b) Failure to comply with N.J.S.A. 26:2A-2 et seq. and with this chapter shall be cause for revocation of license and imposition of penalties as prescribed by N.J.S.A. 26:2A-2 et seq.

8:8-1.2 Definitions

For the purpose of this *[Chapter]* *chapter*, the terms listed below shall be defined and interpreted as follows:

"Accident" means a non-preventable occurrence.

...
 "Blood bank" means any facility involved in the handling of human blood, blood component or products and which participates in any of the following operations: collection, processing, donor or recipient testing, storage, distribution, and administration of blood and blood components for therapeutic *[or prophylactic]* purposes.

"Blood components" means those preparations that are separated from whole blood and are intended for use as final products for therapeutic *[or prophylactic]* purposes, for further manufacturing, or as products used for in vitro testing.

...

"Code of Federal Regulations" means the current Code of Federal Regulations, as amended and supplemented, Title 21, parts 600 through 640.

"Collection" means the procedure for obtaining blood by donor or recipient phlebotomy.

...
"Error" means a preventable occurrence.

...
"Hemapheresis" means the process of separating freshly drawn whole blood into various blood components and products, some of which are retained while the remainder are reinfused into the donor.

"HIV-1" means the Human Immunodeficiency Virus type 1.

"HIV-2" means the Human Immunodeficiency Virus type 2.

...
"Homologous or allogeneic donation" means the collection of blood or blood components for subsequent transfusion to a recipient other than the donor.

...
"Mobile unit" means a moveable, transient unit that is used to collect blood from donors not at the blood bank site.

"Standards of the American Association of Blood Banks" means the current standards, as amended and supplemented, of the American Association of Blood Banks, National Office, 8101 Glenbrook Rd., Bethesda, MD 20814-2749.

8:8-1.3 Licensure

(a) Application for an initial license to conduct a blood bank, as required under the provisions of N.J.S.A. 26:2A-2 et seq., commonly known as the Blood Bank Licensing Act and this chapter, shall be made on forms provided for that purpose by the State of New Jersey.

(b) A blood bank license shall be obtained whenever any function related to the collection, processing, storage, distribution or the administration of blood and blood components is performed.

(c) A separate blood bank license shall be obtained for each permanent location of a blood bank even if the blood bank is owned and operated by another licensed blood bank of the same or different name.

(d) (No change in text.)

(e) Amendments to the license shall be as follows:

1. A license renewal shall be obtained 30 days prior to a change in the location or the name of the blood bank.

2. The Department shall be notified in writing, 30 days prior to a change, whenever the ownership, corporate structure, director, and/or services of a blood bank change.

(f) The blood bank shall perform only those services, related to this chapter for which they specifically request and receive licensure. In the case of new services, written approval shall be received from the Department prior to initiating the new service.

(g) Blood and blood components for therapeutic *[or prophylactic]* purposes shall only be distributed to a New Jersey licensed blood bank unless a ***nonsurgical*** situation exists *[where it cannot]* ***which could not*** be anticipated *[that]* ***and*** blood and blood components *[will be]* ***are*** necessary on an emergency basis to treat a life-threatening situation ***as specified in N.J.A.C. 8:8-12.3(c)***.

(h) (No change in text.)

8:8-1.4 Inspection

(a) (No change.)

(b) Reports of inspections of blood banks made by the Office of Biologics may be accepted for purposes of approving and issuing renewal of licenses.

8:8-1.5 Proficiency testing

(a) (No change.)

(b) Records of all proficiency testing results shall be maintained, including results and interpretations.

(c) Proficiency test results shall be periodically reviewed and evaluated by the blood bank director.

8:8-1.6 through 8:8-1.8 (No change.)

SUBCHAPTER 2. PERSONNEL

8:8-2.1 Blood bank director

(a) The blood bank director shall administer the blood bank as follows:

1. The director shall be responsible and shall have authority for all procedures and policies relating to all phases of donor and recipient testing as well as the collection, processing, storage, ***and*** distribution *[and administration]* of all blood and blood components. ***Procedures and policies for the administration of blood and blood components shall be established in consultation with the blood bank director.***

2. The director shall be responsible for compliance with N.J.S.A. 26:2A-2 et seq. and the rules set forth in this chapter.

3. The director shall not individually serve as director or co-director of more than three blood banks, laboratories or one health system. If the blood bank is an integral part of the clinical laboratory, this shall be considered one facility.

4. The director shall spend an adequate amount of time in the blood bank to direct and supervise the technical performance of the staff. The director shall be readily available for personal or telephone consultation.

5. The director shall be responsible for the employment of qualified blood bank personnel, their in-service training and their adherence to established policies and procedures.

6. (No change.)

(b) Qualifications ***of the blood bank director shall be as follows:***

1. The blood bank director shall be a physician licensed to practice medicine in the State of New Jersey. The physician requirement shall be waived for industrial manufacturers, brokers and facilities licensed to transfuse in emergency situations only (see N.J.A.C. 8:8-12.3).

2. The blood bank director shall have four years of full time experience and/or training appropriate to the services provided by the blood bank, as described in (b)3 below.

3. Appropriate experience shall include^{*},^{*} but shall not be limited to:

i. Evaluation of donor suitability;

ii. (No change in text.)

iii. Blood and blood component collection, preparation, storage, processing and distribution; and

iv. Administration of blood and blood components for therapeutic ***[or prophylactic]*** purposes.

8:8-2.2 Donor and/or transfusion related personnel

(a) The blood bank shall have one or more supervisors who under the general direction of the blood bank director supervise all functions related to the collection*[transfusion]* of blood and blood components, and in the absence of the blood bank director are responsible for proper performance of these procedures.

(b) General provisions for donor^{*}/transfusion^{*} related personnel are:

1. Each blood bank during the collection or transfusion of blood shall have a responsible individual on the premises who, according to N.J.A.C. 8:8-2.2(c), shall be qualified to provide emergency care ***and in out-of-hospital transfusion situations performs the transfusion*.**

2. An adequate number of ***[phlebotomists or transfusionists]*** ***personnel*** shall be available.

3. All other personnel associated with donor or transfusion related functions shall be suitably trained and supervised in the performance of their prescribed tasks. ***Donor personnel responsible for determining donor suitability shall demonstrate their familiarity with donor eligibility standards to the satisfaction of the director of the blood bank.***

(c) Donor or transfusion emergency care personnel qualifications shall be as follows:

1. (No change.)

^{*}[i. Has demonstrated his or her familiarity with donor or transfusion recipient eligibility standards to the satisfaction of the director of the blood bank;]^{*}

*[ii.]*i.* Has taken an eight hour course in cardiopulmonary resuscitation (CPR) *[within three years]* *for health care providers* and holds a current CPR certification.
(d)-(e) (No change.)

8:8-2.3 Blood bank personnel

(a) The blood bank shall have one or more supervisors who under the general direction of the blood bank director supervise technical personnel, perform tests requiring special skills, and in the absence of the director shall be responsible for proper performance of all blood bank procedures.

(b) There shall be a sufficient number of properly qualified technical personnel to meet volume and complexity of technical procedures performed by the blood bank.

(c) The blood bank supervisor shall meet the requirements of N.J.A.C. 8:44 or possess a Specialist in Blood Banking (SBB) with two years experience subsequent to graduation. The two years of experience shall be waived if the individual was a blood bank supervisor prior to obtaining the SBB.

SUBCHAPTER 3. FACILITIES, EQUIPMENT AND CONTAMINATED MATERIAL

8:8-3.1 Facilities and equipment

(a) Quarters, environment, and equipment shall be provided to maintain safe and acceptable standards for handling of human blood and blood components.

(b) Blood donor facilities shall consist of at least a waiting room, private screening area for donor questioning, bleeding area, donor recovery area, lavatory facilities and the proper equipment for collection and immediate storage of blood.

(c) The blood bank shall also provide a processing laboratory as follows:

1. (No change.)
2. All laboratory tests required for proper donor blood processing, not performed by the collecting facility, shall be referred to a laboratory or blood bank licensed by the Department or certified by the Health Care Financing Administration (HCFA), if out-of-State.

8:8-3.2 (No change.)

SUBCHAPTER 4. MANAGEMENT

8:8-4.1 Quality control and quality assurance

(a) All blood banks shall have quality control and quality assurance programs which shall be in compliance with these rules, and shall be sufficiently comprehensive to ensure that blood and blood components, reagents and equipment perform as expected.

(b) The quality control and the quality assurance programs shall include at least the following:

1. Written procedures that include all policies and procedures developed for use;
2. (No change.)
3. Evidence of periodic evaluation of reagents and equipment including the date of performance;
4. Evidence of periodic evaluation of blood and blood components in accordance with, whichever is more stringent, the current Code of Federal Regulations and/or the current Standards of the American Association of Blood Banks;
5. Evidence of periodic evaluation to determine that policies and procedures are appropriate and are followed;
6. Evidence of daily review of computer maintained error correction records by the blood bank director or supervisor.
- 7.-8. (No change in text.)

8:8-4.2 Procedures

- (a)-(b) (No change.)
- (c) The actual test procedures used shall coincide with the manufacturers' current product insert or written documentation from the manufacturer.
- (d) The most current edition of the manufacturer's product inserts shall be available.
- (e)-(f) (No change in text.)

8:8-4.3 Documented review

(a) When blood or blood components are collected and/or prepared, a key person in the operation of the blood bank shall conduct a documented review prior to the release and final labelling of blood and blood components to ensure that blood from unsuitable donors shall not be distributed for transfusion or further manufacture. If this function is performed by computer, validation of the computer program, as outlined in N.J.A.C. 8:8-5.1(d), shall be performed. This review procedure shall be in writing and the procedure shall include tracking of all collected and/or prepared blood and blood components, to assure that:

- 1.-4. (No change.)
 5. If required tests are performed by the blood bank, the testing is performed correctly and properly interpreted as determined by at least the following criteria:
 - i.-ii. (No change.)
 - iii. Test results on the machine printout can be traced to the worklist;
 - iv.-vi. (No change.)
 6. If required tests are performed by personnel outside the blood bank, the criteria used to determine a final reactive or nonreactive result coincides with the blood bank's own policy of interpreting results used to discard blood and blood components for transfusion; and
 7. That all blood and blood components from donations that have positive or questionable test results are quarantined until their final disposition is determined or they are destroyed.
- (b) (No change.)

8:8-4.4 Errors and accidents

(a) If an error occurs and any component prepared from a unit improperly tested, not tested, or tested properly but improperly interpreted for ABO or infectious diseases is labeled and released for transfusion, fractionation, reagent production, research or other use, immediate effort shall be made to locate and quarantine all components until satisfactory resolution occurs.

(b) If an accident occurs and any component is released, which is not suitable for transfusion, fractionation, reagent production, research or other use, immediate effort shall be made to locate and destroy all components.

(c) If a whole blood unit or any blood component has been transfused prior to recognition of the error or accident, the medical director of the blood collection facility shall be immediately notified and shall take immediate appropriate action to resolve the problem. If the error or accident has resulted in the transfusion of blood or blood components that could result in infectious disease or other harmful consequences, appropriate medical staff from the collection facility shall notify the patient/recipient's hospital blood bank director who shall document that the patient/recipient's physician is notified of the error or accident and advised that it is his or her responsibility to notify the patient/recipient, or his/her representative, of the error. Thorough and complete documentation shall be made as to these actions.

SUBCHAPTER 5. RECORDS AND REPORTING REQUIREMENTS

8:8-5.1 Records

- (a)-(b) (No change.)
- (c) Worklists or loadlists that list the sequence of specimens tested shall be prepared prior to testing.
- (d) (No change in text.)
- (e) If records are maintained on computer systems, the following apply:
 - 1.-3. (No change.)
 4. Written procedures shall be available for describing each of the blood bank's methods for performing requirements in (e)1 through 3 above.
 5. The computer shall automatically note, at the time of correction, when corrections are made to verified results.

6. The computer record shall maintain the original verified entry and it shall show the corrected entry with automatic notation of date, time and person making the change.

7. Records maintained on computer shall comply with all requirements of this chapter.

8. The computer shall list donor collection records by the sequential donor numeric or alphanumeric identifier.

(f) The records shall:

1. (No change.)

2. Make it possible to trace a unit of any blood or blood component by a sequential numeric or alphanumeric identifier from source (donor collection facility) to final disposition (for example transfused, shipped, autoclaved);

3. (No change.)

4. Be made available on forms provided by the Department for the purpose of preparing the State's Statistical Summary of Blood Use report annually by January 31, of each year; and

5. (No change.)

(g) (No change in text.)

(h) If computers are used, an alternate method shall be available and used which allows access to the information required in (g) above in the case of computer failure.

(i) Records shall include at least the following:

1. Donor records:

i. An annual record of each unit of blood and blood component, listed by sequential numeric or alphanumeric identifier, as to its source bank and final disposition;

ii. to x. (No change.)

xi. Reissue records, including records of proper temperature maintenance; and

xii. A system that relates a donor with each previous donation.

2. Recipient records shall include:

i. An alphabetical file of the recipient and all units administered;

ii. Each recipient's ABO and Rh type available for immediate reference for at least the past 12 months;

iii. Patients known to have significant unexpected antibodies, adverse reactions to transfusion and/or difficulty in blood grouping and typing available for immediate reference for at least the past five years;

iv. (No change.)

v. Test results, interpretations and release or issue date for compatibility testing;

vi. (No change.)

3. to 5. (No change.)

6. A data sheet for each cytopheresis procedure and the following information recorded: volume of blood processed; anticoagulants given; duration of procedure; volume of product; drugs given; identity of the donor; any reactions that occurred and how they were treated and any other information necessary to ensure the proper preparation of the component and the safety of the donor.

7. Quality control and quality assurance records, including but not limited to: periodic evaluation of personnel, blood and blood components, reagents, equipment, including dates of performance; test performed; observed results; interpretations; identification of personnel performing the test; any appropriate correction action taken; and review by supervisor and/or director.

8. to 10. (No change.)

11. A method to identify persons performing each significant step in collecting, processing, compatibility testing and distributing blood or blood components; and

12. Shipping records from the blood distributor with written documentation that indicates that, at the time of blood and blood component receipt, components listed on the shipping record were verified as received.

8:8-5.2 Reporting requirements

(a) Transfusion reactions shall be reported as follows:

1. (No change.)

2. Any fatal transfusion reaction shall be reported by telephone by the next working day of the event, with written follow-up on forms provided by the Department within 10 days of occurrence.

(b) Transfusion associated AIDS shall be reported as follows:

1. Any known or presumed case of transfusion associated AIDS brought to the attention of a blood bank shall be reported to the Department within 10 days on forms provided for this purpose.

2. (No change.)

(c) Errors, as outlined in N.J.A.C. 8:8-4.4(a), that result in the availability of unsuitable blood and blood components for transfusion or distribution, shall be reported to the Department within 10 days of recognition of the error.

(d) Errors that result in the wrong blood or blood component being transfused, regardless of harm to the recipient, shall be reported to the Department within 10 days of recognition of the error.

CHAPTER 6. CRITERIA FOR DONOR SELECTION

8:8-6.1 (No change.)

8:8-6.2 Medical history; physical examinations; bleeding limitations

Medical history, physical examinations, and bleeding limitations of the donor shall be consistent with, whichever is more stringent, the most recent Code of Federal Regulations or the most recent Standards of the American Association of Blood Banks. If necessary, these documents may be reviewed at the Department of Health, Clinical Laboratory Improvement Services, Princess South, Princess Road, Building 17F, Lawrenceville, New Jersey.

8:8-6.3 Donor selection

(a) through (b) (No change.)

(c) Before blood or blood components are issued for distribution, permanent deferral records, which include reason for deferral for donor past medical history and all tests required in N.J.A.C. 8:8-7.2. Testing shall be reviewed to determine if the blood and blood components meet all the requirements for homologous use. Blood and blood components which do not meet these requirements can not be used for homologous transfusion.

8:8-6.4 Information provided to the donor

(a) Consent shall be obtained in writing from the prospective donor after the procedure has been explained in terms the donor can understand and after the donor has had an opportunity to ask questions and refuse consent. Consent shall include information on significant risks of the procedure and tests performed to reduce the risks of infectious disease to the recipient.

(b) through (c) (No change.)

8:8-6.5 AIDS screening requirements

(a) through (c) (No change.)

(d) The collecting agency shall ensure that all blood and blood components collected in New Jersey, including those obtained from hemapheresis, be screened for HIV-1 and HIV-2 as specified in N.J.A.C. 8:8-7.2. Laboratory tests not performed by the collecting facility shall be referred to a blood bank or laboratory licensed to perform HIV testing by the Department or, if out-of-State, certified by the Health Care Financing Administration (HCFA) to perform HIV testing. It shall be the responsibility of the receiving blood bank to assure that any blood brought in from out-of-State sources shall be tested for HIV types 1 and 2. If the blood is used for homologous transfusion, it shall be tested as all other blood and blood components.

(e) Blood and blood components that are positive, as currently defined by the Department, to serologic tests for HIV types 1 and 2 or collected from a donor known to be positive to serologic tests for HIV types 1 and 2 shall either be discarded or used for research purposes only.

(f) through (k) (No change.)

SUBCHAPTER 7. BLOOD AND BLOOD COMPONENTS

8:8-7.1 General criteria

(a) through (d) (No change.)

(e) The preparation of all blood and blood components shall be consistent with, whichever is more stringent, the Code of Federal Regulations, as amended or supplemented, or the Standards of the American Association of Blood Banks, as amended or supplemented.

If necessary, these documents may be reviewed at the Department of Health, Clinical Laboratory Improvement Services, Princess Road, Bldg. 17F, Lawrenceville, New Jersey.

8:8-7.2 Testing

- (a) (No change in text.)
- (b) FDA licensed reagents shall be used for screening tests, if they are available.
- (c) Required infectious disease testing includes a serologic test for syphilis (STS), Hepatitis B Surface Antigen (HBsAg), antibody to Hepatitis C Virus (HCV), Hepatitis B Core Antibody (HBcAb), antibody to Human Immunodeficiency Virus type 1 (HIV-1), antibody to Human Immunodeficiency Virus type 2 (HIV-2), antibody to Human T-Lymphotropic viruses I/II (HTLV I/II) and Alanine aminotransferase (ALT).
- (d) Testing shall be performed as required in N.J.A.C. 8:8-4.2 and comply with this chapter.
- (e) The blood or blood components shall not be used for therapeutic *[or prophylactic]* purposes unless results of test(s) are clearly negative or in the case of ALT testing within acceptable established limits except where delay occasioned by testing may result in a serious threat to the health and well-being of the recipient.
- (f) (No change in text.)
- (g) (No change in text.)
- 1. (No change in text.)
- 2. The ABO type of each blood donation shall be determined by testing the red cells of the donor using known Anti-A and Anti-B sera, and by testing the serum or plasma for expected antibodies using known A1 and B red blood cells. The two methods of testing shall be recorded and be in complete agreement before any label or release can be effected for the unit of blood.
- 3. (No change in text.)
- 4. Previous records of ABO type shall not serve as identification of units, subsequently given by the same donor. New determinations shall be made for each collection.
- (h) (No change in text.)
- 1.-3. (No change in text.)
- (i) (No change in text.)
- 1.-2. (No change in text.)
- 3. (No change in text.)
- (j) (No change in text.)
- (k) (No change in text.)

SUBCHAPTER 8. COLLECTION OF BLOOD

8:8-8.1 General criteria

- (a) Blood banks wishing to employ the techniques set forth in this subchapter shall file their protocol and a request in writing to the Department, prior to initiation of this service.
- (b) (No change.)

8:8-8.2 Donor's emergency care

- (a) through (b) (No change.)
- (c) This rule shall not waive the requirements for physicians' attendance at a location where plasmapheresis is being performed in an opened system.
- (d) If home *[collections]* ***transfusions*** are performed, a second responsible person shall be available on the premises to help with emergency situations.

8:8-8.3 Medical contingency plan

- (a) Each location for collection of whole blood units or the transfusion of blood and blood components shall have a current medical contingency plan specific for that location which shall include:
 - 1. through 5. (No change.)
 - (b) (No change.)
 - (c) Untested autologous blood collected from a donor/recipient, that has been tested in the last 30 days, shall not be labeled according to uniform labeling for homologous blood. It shall be labeled with:
 - 1. A statement that it was collected from a donor known to be negative or positive to FDA required tests; and
 - 2. The date that the autologous donor/recipient was tested.
- *[(c)]*(d)* (No change in text.)

8:8-8.9 (No change.)

8:8-8.10 Autologous collection/transfusion

- (a) Blood banks wishing to employ the techniques set forth in this section shall file their protocol and a request in writing to the Department, prior to initiation of the service.
- (b) through (d) (No change.)
- (e) Donor processing for autologous transfusion shall be as follows:
 - 1. through 2. (No change.)
 - 3. "Crossing over" shall not be allowed.
 - 4. Blood and blood components that test positive or abnormal and are transfused to the donor/recipient shall be labelled with a Biohazard label.
- (f) Criteria for donation shall be as follows:
 - 1. through 2. (No change.)
 - 3. The hemoglobin concentration of patient-donor shall be no less than 11 gms. per dl. The packed cell volume, if substituted, shall be no less than 33 percent.
 - 4. through 5. (No change.)
- (g) Pretransfusion testing of blood and blood components for autologous transfusion shall be subject to the following:
 - 1. through 3. (No change.)
 - (h) *[If donor qualifications for autologous donations vary from homologous criteria]* ***If "Autologous Use Only" blood is drawn***, all satellite bags shall be labeled "Autologous Use Only" immediately prior to or at the time of the collection.

8:8-8.11 Directed donation

- (a) Blood banks wishing to employ the techniques set forth in this section shall file their protocol and a request in writing to the Department, prior to initiating the procedure.
- (b) through (d) (No change.)

8:8-8.12 Perioperative autologous transfusion

- (a) Facilities initiating the perioperative autologous transfusion procedure shall notify the Department in writing within 30 days.
- (b) Standards of the American Association of Blood Banks related to perioperative procedures, as amended or supplemented, shall be followed.

8:8-8.13 (No change.)

8:8-8.14 Routine plasmapheresis

- (a) Blood banks wishing to employ these techniques shall file a request in writing with the Department, including their protocol and other relevant details, prior to initiation of the procedure.
- (b) (No change.)
- (c) The procedures used shall meet with the approval of the Department and shall include as a minimum the following requirements:
 - 1. (No change.)
 - 2. A licensed physician on the premises shall supervise the performance of these procedures, including the reinfusion of red cells. This requirement may be waived for plasmapheresis procedures using a closed system subject to the following conditions:
 - i. A request for a waiver shall be submitted in writing to, and approved by, the Department;
 - ii. N.J.A.C. 8:8-8.2, Donor's emergency care, shall be strictly followed;
 - iii. Donor emergency care personnel, as required under N.J.A.C. 8:8-2.2(c), shall be on the premises; and
 - iv. A contingency plan to assure that a physician is available for emergency purposes during the procedure shall be in use. The physician response time shall be no longer than 15 minutes.
 - 3. through 12. (No change.)

8:8-8.15 Cytapheresis

- (a) Blood banks wishing to employ these techniques shall file their protocol and a request in writing with the Department, prior to initiation of the procedure.
- (b) (No change.)
- (c) The procedures used shall meet with the approval of the Department and shall comply with all requirements of this chapter.

(d) (No change in text.)

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

4. A contingency plan to assure that a physician is available for emergency purposes during the procedure shall be in use. The physician response time shall be no longer than 15 minutes.

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

1.-2. (No change in text.)

8:8-8.16 (No change.)

SUBCHAPTER 9. RECIPIENT BLOOD TESTING

8:8-9.1 General provisions

(a) The requirements in this section shall apply to both hospital and out-of-hospital transfusion of blood for therapeutic *[or prophylactic]* purposes.

(b) (No change in text.)

(c) The recipient's first and last names and a traceable, *[nonchangeable]* identification number are required. ***If more than one identification number is needed to establish the positive identification of the recipient, all the numbers shall be documented on all blood bank documents used for recipient testing.***

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

(f) The sample for compatibility testing shall be:

1. (No change.)

2. Labeled with at least the recipient's first and last names, traceable*[, nonchangeable]* identification number, the identity of the person drawing the sample and the date the sample was drawn;

3. through 4. (No change.)

(g) Testing of the recipient's blood shall include at least the following:

1. Determination of ABO type:

i. ABO typing shall be performed on each sample of recipient blood as in N.J.A.C. 8:8-7.2.

ii. (No change.)

2.-5. (No change.)

8:8-9.2 Suspected transfusion reactions

Each blood bank and transfusion service shall have a system for detecting and evaluating suspected adverse reactions to transfusion in accordance with current Standards of the American Association of Blood Banks. All suspected transfusion reactions shall be evaluated promptly.

8:8-9.3 (No change in text.)

8:8-9.4 Urgent requirement for blood

(a) (No change.)

(b) The following standards shall apply to urgent situations:

1.-4. (No change.)

5. Required tests should be completed promptly.

6. The identification number required in N.J.A.C. 8:8-9.1 and N.J.A.C. 8:8-10.1 shall be traceable. *[Nonchangeable numbers are not required.]*

SUBCHAPTER 10. ISSUE AND ADMINISTRATION OF BLOOD AND BLOOD COMPONENTS FOR TRANSFUSION

8:8-10.1 Issue of blood

(a) A blood transfusion request form indicating the recipient's name, traceable*[, nonchangeable]* identification number, and ABO and D types shall be completed for each unit of donor blood or component.

(b) (No change.)

(c) At the time the blood or blood component is released from the blood bank for transfusion, the person receiving the blood shall present a written request with sufficient information for the positive identification of the recipient. At a minimum the recipient's first and last names, traceable*[, nonchangeable]* identification number and the date of transfusion shall be required. The blood bank shall write the unit number and the type of component issued on the request slip.

(d) (No change.)

8:8-10.2 Administration of blood and blood components

(a) Identification of the recipient and the blood container shall be as follows:

1. (No change.)

2. At the bedside, immediately prior to transfusion, two qualified individuals *[(one qualified by a State Professional Board as a transfusionist and the other determined to be qualified by the blood bank director)]* ***(whose qualifications are determined and verified by the medical institution or the transfusing facility in consultation with the blood bank director)*** shall check and match all information identifying the container with identifying information on the person of the intended recipient. If the information does not match, the initiation of transfusion shall be suspended until the discrepancy is adequately investigated and resolved.

3. At the bedside, immediately after the identifying information in N.J.A.C. 8:8-10.2(a)2. is matched, and before the transfusion is initiated, the two qualified individuals that checked this information shall sign the transfusion form to attest that this information was checked and that it matched.

4. (No change.)

(b) Blood transfusions shall be conducted as follows:

1. through 3. (No change.)

4. Irradiation of blood shall be consistent with current acceptable standards of the American Association of Blood Banks or current guidelines issued by the Food and Drug Administration, whichever is more stringent.

8:8-10.3 (No change.)

SUBCHAPTER 11. STORAGE OF BLOOD

8:8-11.1 through 11.6 (No change.)

8:8-11.7 Expiration dates of blood and blood components

(a) (No change.)

(b) Expiration dates shall be in accord with the Code of Federal Regulations, as amended or supplemented.

8:8-11.8 (No change.)

SUBCHAPTER 12. OUT-OF-HOSPITAL TRANSFUSIONS

8:8-12.1 General provisions

(a) Any facility that issues blood and blood components to an Out-of-Hospital Transfusion (OOHT) service shall be a blood bank licensed in accordance with this chapter to perform "Transfusion Services" and "Processing (Routine)".

(b) The OOHT service and the New Jersey licensed "Transfusion Service" shall have a written agreement that specifies the division of responsibilities for assuring compliance with this chapter. If the OOHT service performs no function other than transfusion of the blood, the New Jersey licensed transfusion service shall agree in this written document to perform recipient testing required in N.J.A.C. 8:8-9.1 and N.J.A.C. 8:8-9.2, and to provide technical consultation when necessary.

(c) Blood banks wishing to employ the techniques set forth in this subchapter shall file their protocol and a request in writing with the Department, prior to initiation of the procedure.

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

8:8-12.2 Out-of-hospital transfusions (OOHT)

(a) Out-of-hospital transfusions (OOHT) shall be done under medical supervision, and the patient shall be observed during the transfusion and for an appropriate time thereafter for suspected adverse reactions. Specific instructions concerning possible adverse reactions shall be provided in writing for the patient.

(b) (No change.)

(c) OOHT services shall be licensed to transfuse blood and blood components, in accordance with this chapter.

(d) (No change.)

(e) The procedures used shall comply with N.J.A.C. 8:8-4, Management, N.J.A.C. 8:8-5, Records and Reporting Requirements, N.J.A.C. 8:8-10.2, Administration of blood and blood components, and N.J.A.C. 8:8-11.1, 8:8-11.4 and 11.8, Storage of blood.

(f) Blood banks functioning only as OOHT services shall also comply with N.J.A.C. 8:8-2, Personnel, N.J.A.C. 8:8-3.2, Contaminated material, N.J.A.C. 8:8-7.1(a), (b) and (d), Blood and blood components, and N.J.A.C. 8:8-9.1, Recipient blood testing.

8:8-12.3 Out-of-hospital transfusions (OOHT) in emergency situations

(a) Facilities not routinely using blood and blood components for therapeutic *[or prophylactic]* purposes that can anticipate that they may use them on an emergency basis to treat a life-threatening situation, shall be licensed as outlined in *N.J.A.C.* 8:8-1.3, Licensure.

(b) The facilities described in (a) above shall comply with N.J.A.C. 8:8-5, Records and Reporting Requirements, N.J.A.C. 8:8-9, Recipient Blood Testing and N.J.A.C. 8:8-10.1, Administration of blood and blood components.

(c) If *[a situation exists in which it cannot]* ***a nonsurgical situation exists, which could not*** be anticipated *[that]* ***and*** blood or blood components for therapeutic *[or prophylactic]* purposes are necessary on an emergency basis to treat a life-threatening situation, a licensed blood bank shall be permitted to release blood and blood components to an entity not licensed as a blood bank provided that:

1. The attending physician shall attest in writing to the existence of the emergency and the licensed blood bank shall maintain this documentation as required in 8:8-5.1, Records.

2. N.J.A.C. 8:8-9, Recipient Blood Testing and N.J.A.C. 8:8-10.1, Administration of blood and blood components are followed.

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Legal Services Legal Services

Adopted Amendments: N.J.A.C. 10A:6-2.2 and 2.7

Proposed: June 6, 1994 at 26 N.J.R. 2188(a).

Adopted: July 11, 1994 by William H. Fauver, Commissioner,
Department of Corrections.

Filed: July 11, 1994 as R.1994 d.410, **without change.**

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

Effective Date: August 1, 1994.

Expiration Date: October 27, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10A:6-2.2 Inmate legal services

(a) Inmate legal services which permit inmates access to the courts shall include the following:

1.-3. (No change.)

4. Provision of supplies, such as pens and paper, when needed;

5. Use of typewriters to the extent that they are available and/or operable;

Recodify existing 5.-7. as 6.-8. (No change in text.)

10A:6-2.7 Legal services

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

(c) Typewriters to the extent that they are available and/or operable may be provided for inmate use in the inmate law library area and in Close Custody Units.

LABOR

(b)

UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

Temporary Disability Benefits Hearings

Adopted Repeals: N.J.A.C. 12:18-2.41 through 2.48

Adopted Amendments: N.J.A.C. 12:18-2.6 through 2.38

Proposed: June 6, 1994 at 26 N.J.R. 2195(b).

Adopted: July 11, 1994 by Peter J. Calderone, Commissioner,
Department of Labor.

Filed: July 18, 1994 as R.1994 d.407, **without change.**

Authority: N.J.S.A. 43:21-25 et seq.

Effective Date: August 1, 1994.

Expiration Date: March 5, 1998.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed repeals and amendments was held on June 27, 1994, at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Douglas Childs, Appellate Specialist, presided at the hearing and received testimony. He responded to certain statements made during the course of testimony and recommended that the rules be adopted and proposed.

Persons wishing to review the transcript of the hearing may contact Deirdre L. Webster, Regulatory Officer, Office of Regulatory Services, Department of Labor, CN 110, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

Oral and/or written comments were received from the following individuals and organizations: William F. Morley, Private Plan Hearing Officer, New Jersey Department of Labor, and Barbara Hamtil, Prudential Insurance Company.

COMMENT: The private plan temporary disability cases are not claims for unemployment insurance, claims for disability during unemployment insurance or claims under the State plan. Rather, private plan temporary disability insurance is separate and distinct from unemployment insurance and State plan temporary disability insurance cases which are heard by the Board of Review. As a result, the rules governing private plan temporary disability hearings should be separate and distinct from those governing unemployment insurance and State plan temporary disability hearings.

RESPONSE: The proposed special rules separate the procedures governing unemployment insurance and State plan temporary disability hearings from those governing private plan temporary disability hearings. The rules clearly state that unemployment insurance and State plan temporary disability hearings under N.J.S.A. 43:21-50(b) heard by the Board of Review or the appeal tribunals are governed by N.J.A.C. 1:12 while private plan temporary disability hearings are governed by N.J.A.C. 1:12A.

COMMENT: Any definition of hearing officer found in N.J.A.C. 1:12A does not indicate that the hearing officer must meet civil service job specification requirements. It is recommended that the proposed definition be amended as follows: "Hearing Officer means a qualified New Jersey licensed attorney to hear and decide appeals concerning private plan disability benefits. In so doing, the hearing officer act as agency head."

RESPONSE: It is understood that any individual appointed to a career title under N.J.S.A. 11A would be required to meet Department of Personnel job specification requirements. The current title for hearing officer is Appellate Specialist and this Department will enforce the civil service requirements for that title.

Full text of the adoption follows:

12:18-2.6 Appeals

(a) If the claim of any employee under a private plan is denied, in whole or in part, by an employer, insurer or organization paying

benefits or, if he or she shall be unable to agree with the employer, insurer or organization paying benefits as to benefits thereunder, such claimant may appeal from such determination or denial.

(b) A complaint, which shall constitute an appeal, shall be filed by the claimant, in person or by mail, with the Division, within one year after the beginning of the period for which benefits are claimed. Upon receipt thereof, the Division shall conduct an investigation and such informal hearings as it may deem necessary to determine the facts and settle the issues.

12:18-2.38 Appeal process

(a) The appeal procedures for private plan temporary disability cases are found at N.J.A.C. 1:12A and are appended at the end of this chapter.

(b) A complaint, which shall constitute an appeal, shall be filed by a person claiming benefits under an approved private plan, on a form and in a manner prescribed setting forth the information required.

(a)

BOARD OF REVIEW

Board of Review Rules

Readoption: N.J.A.C. 12:20

Adopted Amendments: N.J.A.C. 12:20-1.2, 3.1, 4.3 and 5.5

Adopted Repeals: N.J.A.C. 12:20-2.3, 3.3, 3.4, 4.1, 4.4 through 4.7, 5.1 through 5.4, and 6.1 through 6.8

Adopted Repeals and New Rules: N.J.A.C. 12:20-3.2 and 4.2

Proposed: June 6, 1994 at 26 N.J.R. 2196(a).

Adopted: July 11, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: July 18, 1994 as R.1994 d.408, **without change**.

Authority: N.J.S.A. 34:1A-3(e), 43:21-6(d) through (f), 43:21-10 and 43:21-17.

Effective Date: July 18, 1994, Readoption;

August 1, 1994, Amendments, Repeals and New Rules.

Expiration Date: July 18, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed repeals and amendments was held on June 27, 1994, at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Douglas Childs, Appellate Specialist, presided at the hearing and received testimony. He responded to certain statements made during the course of testimony and recommended that the rules be adopted as proposed.

Persons wishing to review the transcript of the hearing may contact Deirdre L. Webster, Regulatory Officer, Office of Regulatory Services, Department of Labor, CN 110, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

Oral and/or written comments were received from the following individuals and organizations: J. Robert White, Director, Office of Field Support, New Jersey Department of Labor, William F. Morley, Private Plan Hearing Officer, New Jersey Department of Labor, and Barbara Hamtil, Prudential Insurance Company. No comments were received with respect to the proposed repeals and amendments. However, comments were received with respect to the other proposals on the agenda, namely, the proposed hearing rules for the Board of Review and Temporary Disability and the proposed repeals and amendments for the temporary disability rules.

COMMENT: The private plan temporary disability cases are not claims for unemployment insurance, claims for disability during unemployment insurance or claims under the State plan. Rather, private plan temporary disability insurance is separate and distinct from unemployment insurance and State plan temporary disability insurance cases which are heard by the Board of Review. As a result, the rules governing private

plan temporary disability hearings should be separate and distinct from those governing unemployment insurance and State plan temporary disability hearings.

RESPONSE: The proposed special rules separate the procedures governing unemployment insurance and State plan temporary disability hearings from those governing private plan temporary disability. The rules clearly state that unemployment insurance and State plan temporary disability hearings under N.J.S.A. 43:21-50(b) heard by the Board of Review or the appeal tribunals are governed by N.J.A.C. 1:12 while private plan temporary disability hearings are governed by N.J.A.C. 1:12A.

COMMENT: Any definition of hearing officer found in N.J.A.C. 1:12A does not indicate that the hearing officer must meet civil service job specification requirements. It is recommended that the proposed definition be amended as follows: "Hearing Officer means qualified New Jersey licensed attorney to hear and decide appeals concerning private plan disability benefits. In so doing, the hearing officer act as agency head."

RESPONSE: It is understood that any individual appointed to a classified title under N.J.S.A. 11A would be required to meet Department of Personnel job specification requirements. The current title for a hearing officer is Appellate Specialist and this Department will enforce the civil service requirements for that title.

COMMENT: As proposed, N.J.A.C. 12:20-3.1(h) would mean that any claim which is denied and not appealed would remain technically an open claim. Since the Department would have the burden of proof as to "actual receipt" by the claimant of an initial denial notification, all evidence of record would have to be maintained indefinitely in the event of a late appeal. Consideration should be given to establishing a reasonable period of time when administrative finality is reached. Otherwise, the Department may be forced to defend its decisions far into the future which could have significant impact on administrative and trust fund costs.

RESPONSE: The Department of Labor retains unemployment insurance and temporary disability records for four years. Thereafter, the records are transferred to the State Warehouse. It is inconceivable that a claimant would attempt to file a "late appeal" beyond the four year time period. However, in the event that a claimant would file an appeal beyond this period, the good cause provisions of N.J.A.C. 12:20-3.1(i) would apply.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:20.

Full text of the adopted amendments and new rules follows:

SUBCHAPTER 1. ORGANIZATION OF BOARD OF REVIEW

12:20-1.1 Membership

The Board of Review shall consist of three members appointed by the Assistant Commissioner who is responsible for the administration of the Unemployment Compensation Law and subject to the provisions of N.J.S.A., Title 11A, and the supplements and amendments thereto, from Department of Personnel eligible lists.

12:20-1.2 Officers

(a) The Board of Review shall elect one of its members as chairperson and one as vice-chairperson to serve at the pleasure of the Board.

(b) The Board of Review may appoint a secretary to serve at the pleasure of the Board.

12:20-1.3 Duties

(a) (No change.)

(b) The chairperson of the Board of Review shall convoke and preside at all meetings of the Board of Review.

(c) The vice-chairperson shall perform the duties of the chairperson during any period of the latter's absence or incapacity.

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

SUBCHAPTER 2. ORGANIZATION OF APPEAL TRIBUNALS

12:20-2.1 Membership

Appeal tribunals shall consist of a single member who shall be a salaried examiner appointed by the Director subject to the

provisions of N.J.S.A., Title 11A, and supplements and amendments thereto, from Department of Personnel lists.

12:20-2.2 Duties

It shall be the duty of the appeal tribunals to hear and decide disputed benefit claims, including appeals from determinations with respect to demands for refunds of benefits under N.J.S.A. 43:21-16(d) of the Unemployment Compensation Law of New Jersey.

SUBCHAPTER 3. APPEALS TO APPEAL TRIBUNALS

12:20-3.1 Presentation of appealed claims

(a) Any written statement, including a facsimile, filed within the time for appeals allowed by law, which sets forth the fact that a party to a determination made by the division is aggrieved thereby or dissatisfied therewith shall be deemed to be an appeal.

(b)-(g) (No change.)

(h) An appeal shall be considered on its merits if it is filed within seven days of delivery. Delivery of notification of an initial determination means actual receipt of the determination by the claimant or any interested party to the appeal.

(i) A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

12:20-3.2 Appeal process

The appeal procedures for cases before the Appeal Tribunals are now be found at N.J.A.C. 1:12 and are also appended at the end of this chapter.

SUBCHAPTER 4. APPEALS TO BOARD OF REVIEW

12:20-4.1 Presentation of appeals

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

(f) (No change in text.)

(g) An appeal shall be considered on its merits if it is filed within 10 days of notification or mailing. Notification of a decision means actual receipt of a decision by the claimant or any interested party to the appeal.

(h) A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

12:20-4.2 Appeal process

The appeal procedures for cases before the Board of Review are found at N.J.A.C. 1:12 and are also appended at the end of this chapter.

12:20-4.3 (No change in text.)

SUBCHAPTER 5. GENERAL RULES FOR BOTH APPEAL STAGES

12:20-5.1 (No change in text.)

(a)

DIVISION OF PROGRAMS

Application and Review Process for Additional Unemployment Benefits Under the Workforce Development Partnership Act; Overpayments

Adopted Amendment: N.J.A.C. 12:23-5.9

Proposed: June 6, 1994 at 26 N.J.R. 2198(a).

Adopted: July 11, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: July 11, 1994 as R.1994 d.409, **without change.**

Authority: P.L. 1992, chapters 43 through 49 (N.J.S.A. 34:15D-1 et seq.).

Effective Date: August 1, 1994.

Expiration Date: April 4, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Hearing Officer's Recommendations and Agency's Responses:

A public hearing on the proposed amendment was held on June 20, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, Regulatory Officer, was available to preside at the hearing and to receive testimony. However, no one appeared to give testimony on the proposed amendment. As a result, the hearing officer recommended that the amendment be adopted as proposed. The public hearing record may be reviewed by contacting Deirdre L. Webster, Regulatory Officer, External and Regulatory Affairs, Office of the Commissioner, Department of Labor, CN 110, Trenton, NJ 08625-0110.

Full text of the adoption follows:

12:23-5.9 Overpayments

Overpayments of additional unemployment benefits during training improperly paid for any reason shall be recovered by the Department in accordance with N.J.S.A. 43:21-16.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ARCHITECTS; STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Notice of Administrative Correction Depiction of Existing Conditions on Site Plan

Adopted Amendments: N.J.A.C. 13:27-6.2 and 13:40-7.2

Take notice that the Office of Administrative Law has discovered an error in the notices of adoption for the above-referenced adopted amendments, published in the July 5, 1994 New Jersey Register at 26 N.J.R. 2794(a) and 2796(a), respectively. The list of commenters on each proposal was omitted from the notice of adoption. The commenters on the currently proposed amendments were as follows:

James E. Dulny, P.L.S.

Karl G. Gleissner, P.L.S.

Mark Husik, Executive Director, New Jersey Society of Professional Land Surveyors

Barry Jones, P.P., P.L.S., Office Manager, Albert A. Fralinger, Jr., P.A.

Irving E. Kinney, Jr., P.L.S.

Frederick B. Loede, Jr., P.L.S.

Linda Marks, P.L.S., P.P.

Vincent Rigelon, Jr., P.L.S., P.P.

Richard F. Smith, Jr., P.L.S.

Nicholas Wunner, P.E., P.L.S.

This notice is published in accordance with N.J.A.C. 1:30-2.7.

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF COSMETOLOGY AND HAIRSTYLING**

Fee Schedule

Adopted Repeal and New Rule: N.J.A.C. 13:28-5.1

Proposed: May 16, 1994 at 26 N.J.R. 1947(a).
 Adopted: June 29, 1994 by the Board of Cosmetology and Hairstyling, Joseph Dugan, President.
 Filed: July 13, 1994 as R.1994 d.415, **without change**.
 Authority: N.J.S.A. 45:5B-6.
 Effective Date: August 1, 1994.
 Expiration Date: May 14, 1998.

The Board of Cosmetology and Hairstyling afforded all interested parties an opportunity to comment on the proposed repeal and new rule, N.J.A.C. 13:28-5.1, concerning fees.

A notice of proposal appeared in the New Jersey Register on May 16, 1994 at 26 N.J.R. 1947(a), and copies of the published proposal were forwarded to the Star Ledger, the Trenton Times and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Cosmetology and Hairstyling, Post Office Box 45003, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the official 30 day comment period which ended on June 15, 1994, the Board received one letter in response to the proposal from Paul Ferrara, President of Hair Fashion Institute.

Mr. Ferrara stated that a licensing fee increase for students is unacceptable, pointing out that the majority of students are young adults with limited income and that students must also pay for two medical examinations within one year. Mr. Ferrara made the following alternative suggestions to help the State meet expenses:

1. Raise the schools' renewal licensing fees based on enrollment.
2. Charge a student teacher temporary license fee.
3. Charge vocational schools for registration the same.
4. Allow graduating students to be exempt from the physical examination if their last examination was within one year of application.
5. Increase fees in all other areas.
6. Allow schools to issue student registration numbers thereby enabling the state to reduce its costs of mailing, staffing, etc.
7. Eliminate student registration numbers completely and replace them with Social Security Numbers.

In response, the Board states that it has been and remains sensitive to the impact of rising fees upon students. Specifically, the Board discussed this impact at length during the budget review process and considered alternative fee structures that might lessen the impact upon students. The Board is confident that the fee structure proposed is both reasonable and necessary to enable the Board to comply with its statutory obligation to raise funds that meet, but do not exceed, Board operating expenses.

However, the Board appreciates the commenter's suggestions for alternative methods to meet expenses and will take them under advisement to determine whether they may feasibly be implemented to keep student costs at a minimum.

Full text of the adoption follows:

13:28-5.1 Fee schedule

- (a) The following fees will be charged by the Board:
- | | |
|--|---------|
| 1. Student permit | \$ 5.00 |
| 2. Student registration card | 5.00 |
| 3. Temporary permit | 20.00 |
| 4. Examination fee (includes application fee) | 40.00 |
| 5. Initial license fee (individual) | |
| i. If paid during the first year of a renewal cycle | 36.00 |
| ii. If paid during the second year of a renewal cycle | 18.00 |
| 6. Biennial license renewal (individual) | 36.00 |
| 7. Shop license application fee (includes shop inspection fee) | 75.00 |
| 8. Initial license fee (shop) | |
| i. If paid during the first year of a renewal cycle | 80.00 |

- | | |
|--|--------|
| ii. If paid during the second year of a renewal cycle | 40.00 |
| 9. Biennial license renewal (shop) | 80.00 |
| 10. School License application fee (includes school inspection fee) | 125.00 |
| 11. Initial license fee (school) | |
| i. If paid during the first year of a renewal cycle | 180.00 |
| ii. If paid during the second year of a renewal cycle | 90.00 |
| 12. Biennial license renewal (school) | 180.00 |
| 13. Annex classroom application fee (if not submitted with school application) | 125.00 |
| 14. Initial license fee (annex classroom) | |
| i. If paid during the first year of a renewal cycle | 240.00 |
| ii. If paid during the second year of a renewal cycle | 120.00 |
| 12. Biennial license renewal (annex classroom) | 240.00 |
| 13. Endorsement (plus license fee) | 50.00 |
| 14. Late fee (up to 180 days) | 15.00 |
| 15. Restoration fee (plus license fee) (after six months to five years) | 40.00 |
| 16. Duplicate license | 15.00 |

(b)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PROFESSIONAL PLANNERS**

Depiction of Existing Conditions on a Site Plan

Adopted Amendment: N.J.A.C. 13:41-4.2

Proposed: March 7, 1994 at 26 N.J.R. 1221(a).
 Adopted: June 17, 1994 by the Board of Professional Planners, Shirley M. Bishop, President.
 Filed: June 30, 1994 as R.1994 d.394, **without change**.
 Authority: N.J.S.A. 45:14A-4.
 Effective Date: August 1, 1994.
 Expiration Date: July 17, 1995.

Summary of Public Comments and Agency Responses:

Ten letters expressing support for this joint proposal were received. One of the 10 commenters asked whether the rules pertain to New Jersey licensees and suggested amendments requiring the survey to be the product of a New Jersey licensee. In response, the Board states that it has authority only over New Jersey licensees and therefore this rule, as all other Board rules, pertains only to New Jersey licensees. The Board has no authority to require that the reviewing governmental body accept surveys only from New Jersey licensees. The commenters were as follows:

- James E. Dulny, P.L.S.
- Karl G. Gleissner, P.L.S.
- Mark Husik, Executive Director, New Jersey Society of Professional Land Surveyors
- Barry Jones, P.P., P.L.S., Office Manager, Albert A. Fralinger, Jr., P.A.
- Irving E. Kinney, Jr., P.L.S.
- Frederick B. Loede, Jr., P.L.S.
- Linda Marks, P.L.S., P.P.
- Vincent Rigelon, Jr., P.L.S., P.P.
- Richard F. Smith, Jr., P.L.S.
- Nicholas Wunner, P.E., P.L.S.

Full text of the adoption follows:

13:41-4.2 Depiction of existing conditions on a site plan

(a) Survey: showing existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations, and easements: By a land surveyor.

1. Survey information may be transferred to the site plan if duly noted as to the date of the survey, by whom, and for whom. A signed and sealed copy of the survey must be submitted to the reviewing governmental body with the site plan submission.

(b) (No change.)

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PUBLIC MOVERS AND
WAREHOUSEMEN**

Public Movers and Warehousemen

Readoption with Amendments: N.J.A.C. 13:44D

Proposed: May 2, 1994 at 26 N.J.R. 1758(a).

Adopted: June 8, 1994 by State Board of Public Movers and Warehousemen, Thomas Quicksell, President.

Filed: June 30, 1994 as R.1994 d.395, **without change**.

Authority: N.J.S.A. 45:14D-1 et seq., specifically 45:14D-6.

Effective Date: June 30, 1994, Readoption;

August 1, 1994, Amendments.

Expiration Date: June 30, 1999.

Summary of Public Comments and Agency Responses:

No public comments were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:44D.

Full text of the adopted amendments follows:

13:44D-1.1 Words and phrases defined

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

...
 "Public mover" means any person who engages in or holds him or herself out to the general public as engaging in the transportation of household goods, office goods or special commodities by motor vehicle for compensation in intrastate commerce between points in this State, including the moving of household goods, office goods or special commodities from one location to another at a single address, and any person who engages in the performance of accessorial services.
 ...

13:44D-2.1 License to engage in the business of public moving and/or storage

(a) No license to engage in the business of public moving and/or storage shall be issued or remain in effect unless the applicant owns or leases pursuant to a long-term lease at least one moving vehicle and unless there shall be on file with the Board:

1.-4. (No change.)

(b) The initial license shall be issued to a qualified applicant if it is found that the applicant is fit, willing and able to perform the service of a public mover and/or warehouseman, to conform to the provisions of the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq., and pays the required fee. Requests for the renewal of a license shall be on such forms as may be specified by the Board and accompanied by the required renewal fee.

(c) All licenses issued by the Board shall expire on September 30 of each year or such other date as may from time to time be designated.

(d) (No change.)

(e) A duly certified copy of the license issued by the Board shall be carried on each truck, tractor, trailer or semitrailer or combination thereof at all times when the vehicle is being used in the performance of moving and/or storage devices.

(f) A decal issued by the Board indicating that the public mover and/or warehouseman is licensed in this State shall be displayed on the driver's side door of each power unit registered and performing intrastate moving and/or storage services, including all vehicles used by an owner/operator on contract to a public mover.

13:44-2.2 Change of address, business name or telephone number

(a) A licensed public mover and/or warehouseman shall notify the Board in writing of any change of address or business name

from that currently registered with the Board and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of address or business name.

(b) A licensed public mover and/or warehouseman shall notify the Board in writing of any change of business telephone number from that currently registered with the Board. Such notice shall be given not later than 30 days following the change of telephone number.

13:44D-2.3 Designation of agent

(a) No public mover and/or warehouseman shall operate under a license and until there has been filed with the Board, on the specified form, a designation of agent, street address and municipality upon whom service of process, notices and/or orders may be made pursuant to N.J.S.A. 45:14D-1 et seq.

(b) (No change.)

(c) The Board shall be notified immediately upon change of designated agent.

13:44D-2.5 Advertising

(a) All advertising by licensees shall include the licensee's:

1. Full licensed name;
2. License number; and
3. New Jersey business address and phone number.

13:44D-3.1 Tariffs

(a) Every public mover and/or warehouseman shall file with the Board a tariff or tariffs indicating the rates, charges, classification ratings, and terms and conditions of the public mover and/or warehouseman. A copy of the tariff filed with the Board shall be kept open for public inspection in all offices and facilities of Board licensees where a request for moving and/or storage services may be made. The tariff shall be readily accessible to the public at all times during normal business hours and whenever requested by any person the tariff shall be produced for immediate inspection. No regulated services shall be rendered unless specifically provided for in the tariff.

(b) The tariff shall be filed with the Board no more often than on a semiannual basis, with the first filing to be received by the Board no later than April 1 and the second no later than October 1. Filings made promptly and accepted by the Board will become effective as of May 1 and November 1 respectively. If a mover chooses not to change his or her tariff at any given filing period, the previously filed tariff shall remain in effect. All tariffs shall conform to the following requirements:

1.-2. (No change.)

3. The tariff shall be of a loose-leaf style;

4.-7. (No change.)

8. No exception to these requirements shall be permitted without prior written approval of the Board.

(c) (No change.)

(d) Corrections in the filed tariff shall only be permitted during the period between the filing date and the effective date and shall be subject to the written approval of the Board.

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

13:44D-4.6 Occupational misconduct

(a) A public mover shall be deemed to have engaged in occupational misconduct within the meaning of N.J.S.A. 45:14D-7(f) if said public mover engages in conduct including, but not limited to, the following:

1.-3. (No change.)

(b) (No change.)

13:44D-4.8 Warehousing

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

(e) A public mover and/or warehouseman shall not store the goods of a shipper engaged in an intra-state move in an out-of-State warehouse.

(f) A building, any part of which is being used for the storage of goods, shall meet all state and local building and fire codes.

(a)

**DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION**

**Home Improvement Practices
Security Protection Devices**

Adopted Amendment: N.J.A.C. 13:45A-16.1

Proposed: April 18, 1994 at 26 N.J.R. 1605(a).

Adopted: June 14, 1994 by James F. Mulvihill, Assistant Attorney General in Charge, Division of Consumer Affairs.

Filed: June 30, 1994 as R.1994 d.396, **without change**.

Authority: N.J.S.A. 56:8-4.

Effective Date: August 1, 1994.

Expiration Date: November 9, 1995.

Summary of Public Comments and Agency Responses:

No public comments were received.

Full text of the adoption follows:

13:45A-16.1 Definitions

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

“Home improvement” means the remodeling, altering, painting, repairing, or modernizing of residential or non-commercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, security protection devices, central heating and air-conditioning equipment, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, aluminum siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or noncommercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or non-commercial property.

TRANSPORTATION

(b)

**DIVISION OF RIGHT OF WAY
BUREAU OF RELOCATION SERVICES AND
PROPERTY MANAGEMENT**

Relocation Assistance

Readoption: N.J.A.C. 16:6

Proposed: May 16, 1994 at 26 N.J.R. 1958(a).

Adopted: June 24, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning.

Filed: July 8, 1994 as R.1994 d.400, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-27, 27:7-72 through 27:7-88 and the Uniform Transportation Replacement Housing and Relocation Act (P.L. 1972, c.47 as amended by P.L. 1989, c.50, effective March 14, 1989).

Effective Date: July 8, 1994.

Expiration Date: July 8, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:6.

(c)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL
AID**

**BUREAU OF ELECTRICAL ENGINEERING
Bureau of Electrical Engineering Rules**

Readoption with Amendment: N.J.A.C. 16:26

Proposed: May 2, 1994 at 26 N.J.R. 1764(a).

Adopted: June 7, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: July 8, 1994 as R.1994 d.401, **without change**.

Authority: N.J.S.A. 27:1A-5 and 27:1A-6.

Effective Date: July 8, 1994, Readoption;
August 1, 1994, Amendment.

Expiration Date: July 8, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:26.

Full text of the adopted amendment follows:

**CHAPTER 26
BUREAU OF ELECTRICAL ENGINEERING
SUBCHAPTER 1. (No change in text.)**

(d)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL
AID**

**BUREAU OF TRAFFIC ENGINEERING AND SAFETY
PROGRAMS**

Speed Limits

Route N.J. 37

**Lakehurst Borough, Manchester Township, Dover
Township, Island Heights Borough, Berkeley
Township and Seaside Heights Borough in Ocean
County**

Adopted Amendment: N.J.A.C. 16:28-1.5

Proposed: May 16, 1994 at 26 N.J.R. 1958(b).

Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: June 24, 1994 as R.1994 d.381, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: August 1, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28-1.5 Route 37

(a) The rate of speed designated for the certain parts of State highway Route 37 described in this section shall be established as the maximum legal rate of speed:

1. For both directions of traffic:

i. 50 mph within the corporate limits of Lakehurst Borough, Manchester Township, Dover Township, Island Heights Borough, Berkeley Township and Seaside Heights Borough in the County of Ocean (approximate mileposts 0.00 to 13.42).

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

**Route U.S. 46, including Route U.S. 1, 9 and 46
Town of Dover, Morris County**

Adopted Amendment: N.J.A.C. 16:28-1.10

Proposed: May 16, 1994 at 26 N.J.R. 1960(a).
Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 24, 1994 as R.1994 d.382, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
Effective Date: August 1, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28-1.10 Route U.S. 46, including Route U.S. 1, 9 and 46
(a) The rate of speed designated for the certain parts of State highway Route U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1.-3. (No change.)
4. For both directions of traffic:
i.-x. (No change.)
xi. In the Town of Dover, Morris County:
(1) (No change.)
(2) Zone 22: 35 mph between the bridge over Central Railroad and Perry Street, except for 25 mph when passing through the East Dover Middle School zone (Belmont Avenue to Trenton Street) while 25 mph "WHEN FLASHING" signs are operating during recess or while children are going to or leaving school, during opening or closing hours (approximate mileposts 38.18 to 39.14); thence
(3) Zone 23: 40 mph between Perry Street and the Rockaway Township line (George Street), (approximate mileposts 39.14 to 39.50); thence
(A)-(B) (No change.)
xiii.-xiv. (No change.)
5.-6. (No change.)
(b) (No change.)

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

**Route U.S. 46, including Route U.S. 1, 9 and 46
Washington Township, Morris County**

Adopted Amendment: N.J.A.C. 16:28-1.10

Proposed: May 16, 1994 at 26 N.J.R. 1959(a).
Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 24, 1994 as R.1994 d.383, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
Effective Date: August 1, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28-1.10 Route U.S. 46 including Route U.S. 1, 9 and 46
(a) The rate of speed designated for the certain parts of State highway Route U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic:
i.-v. (No change.)
vi. Zone eight: 30 mph between the Musconetcong River (Warren County-Morris County line) and 180 feet west of Old Mine Road (approximate mileposts 21.82 to 21.93); thence
vii. Zone nine: 35 mph between 180 feet west of Old Mine Road and Mine Brook Bridge (approximate mileposts 21.93 to 22.48)
2.-6. (No change.)
(b) (No change.)

(c)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

**Route U.S. 9
Berkeley Township and Pine Beach Borough in
Ocean County**

Adopted Amendment: N.J.A.C. 16:28-1.41

Proposed: May 16, 1994 at 26 N.J.R. 1960(b).
Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 24, 1994 as R.1994 d.385, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
Effective Date: August 1, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28-1.41 Route U.S. 9
(a) (No change.)
(b) The rate of speed designated for the certain parts of State highway Route U.S. 9 (and excluding Garden State Parkway Authority sections) described in this subsection shall be established as the maximum legal rate of speed for both directions of traffic:
1.-18. (No change.)
19. 45 mph in Berkeley Township between the Lacey Township-Berkeley Township corporate line (Cedar Creek) and Center Boulevard (approximate mileposts 83.94 to 85.65); thence
20. 40 mph between Center Boulevard and Lawrence Avenue (approximate mileposts 85.65 to 86.67); thence
21. 35 mph in Berkeley Township and Pine Beach Borough between Lawrence Avenue and the Berkeley Township, Pine Beach Borough and Beachwood Borough corporate line (Mizzen Avenue) (approximate mileposts 86.67 to 89.45); thence
Recodify existing 21.-32. as 22.-33. (No change in text.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

**Route U.S. 206 including U.S. 206 and U.S. 130
Chester Borough, Chester Township, Mount Olive
Township and Roxbury Township, Morris County**

Adopted Amendment: N.J.A.C. 16:28-1.72

Proposed: May 16, 1994 at 26 N.J.R. 1961(a).

Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: June 24, 1994 as R.1994 d.386, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: August 1, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28-1.72 Route U.S. 206, including U.S. 206 and U.S. 130

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

(d) The rate of speed designated for the certain parts of State highway Route U.S. 206 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. (No change.)

ii. Morris County:

(1) (No change.)

(2) Chester Borough, Chester, Mount Olive and Roxbury Townships, Morris County:

(A) Zone 5: 50 mph in Chester Borough from 1,100 feet north of Route 24 (Main Street) to the Chester Township-Mount Olive Township corporate line. (approximate milepost 87.10 to 89.50); thence

(B) Zone 6: 45 mph between the Chester Township-Mount Olive Township corporate line and Netcong-Flanders Road (approximate milepost 89.50 to 92.17); thence

(C) Zone 7: 50 mph in Mount Olive Township, Roxbury Township between Netcong-Flanders Road to Route I-80, Route 183 and Route U.S. 206 Interchange (approximate mileposts 92.17 to 95.61); thence

(3) Roxbury Township, Netcong Borough and Mount Olive Township, Morris County; Stanhope Borough and Byram Township, Sussex County:

(A) Zone 8: 55 mph (also part Route I-80) in Roxbury Township from Route I-80, Route 183, and Route U.S. 206 Interchange extending through Netcong Borough, Mount Olive Township and into Stanhope Borough and Byram Township to Route 183.

(4) Stanhope Borough and Byram Township, Sussex County:

(A) Zone 9: 50 mph from Route 183 to Acorn Street.

(5) Byram Township:

(A) Zone 10: 40 mph from Acorn Street to Waterloo Road-Brookwood Road; thence

(B) Zone 11: 45 mph between Waterloo Road-Brookwood Road and Johnson Boulevard (approximate mileposts 98.71 to 100.61); thence

(6) Byram Township and Andover Borough, Sussex County:

(A) Zone 12: 50 mph between Johnson Boulevard and 1,260 feet south of the D.L. and W. Railroad Overpass (approximate mileposts 100.61 to 102.71).

(7) Andover Borough:

(A) Zone 13: 40 mph from 1,260 feet south of the D.L. and W. Railroad (main line) overpass to Maple Avenue; thence

(B) Zone 14: 30 mph from Maple Avenue to 100 feet north of Route 517; thence

(C) Zone 15: 40 mph from 100 feet north of Route 517 to the Andover Borough-Andover Township line; thence

(8)-(12) (No change.)

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Route N.J. 45

**West Deptford and Deptford Townships, Woodbury
Heights Borough and the City of Woodbury,
Gloucester County**

Adopted Amendment: N.J.A.C. 16:28-1.96

Proposed: May 16, 1994 at 26 N.J.R. 1962(a).

Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: June 24, 1994 as R.1994 d.387, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: August 1, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28-1.96 Route 45

(a) The rate of speed designated for the certain parts of State highway Route N.J. 45 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. (No change.)

ii. In Gloucester County:

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

(4) West Deptford and Deptford Townships; Woodbury Heights Borough and the City of Woodbury:

(A)-(B) (No change.)

(C) Zone 3: 40 mph between Evergreen Avenue (County Road 650) and Stuart Street in Woodbury Heights Borough and the City of Woodbury (approximate mileposts 24.82 to 25.11); thence

(D) Zone 4: 30 mph between Stuart Street and Carpenter Street in the City of Woodbury (approximate mileposts 25.11 to 25.40); thence

(E) Zone 5: 25 mph between Carpenter Street and Hunter Street in the City of Woodbury (approximate mileposts 25.40 to 25.95); thence

(F) Zone 6: 30 mph between Hunter Street and Hessian Avenue in the City of Woodbury and West Deptford Township (approximate mileposts 25.95 to 26.94); thence

(G) Zone 7: 45 mph between Hessian Avenue and the West Deptford Township-Westville Borough corporate line (approximate mileposts 26.94 to 27.78); thence

(5) (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Route N.J. 31

Clinton Township, Hunterdon County

Adopted Amendment: N.J.A.C. 16:28-1.106

Proposed: May 16, 1994 at 26 N.J.R. 1963(a).
 Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
 Filed: June 24, 1994 as R.1994 d.388, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
 Effective Date: August 1, 1994.
 Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28-1.106 Route 31

(a) The rate of speed designated for State highway Route 31 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1. (No change.)
2. Hunterdon County:
 - i.-viii. (No change.)
 - ix. Clinton Township:
 - (1) Zone 1: 50 mph between the northerly Readington Township-Clinton Township corporate line and Payne Road (approximate mileposts 27.3 to 28.8); thence
 - (2) Zone 2: 55 mph between Payne Road and Country Club Road (approximate mileposts 28.8 to 31.65); thence
 - (3) Zone 3: 50 mph between Country Club Road and the Clinton Township-southerly Town of Clinton corporate line (approximate mileposts 31.65 to 32.7).
- x.-xiv. (No change.)
3. (No change.)

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Restricted Parking and Stopping

Route N.J. 33

Manalapan Township, Monmouth County

Adopted Amendment: N.J.A.C. 16:28A-1.23

Proposed: May 16, 1994 at 26 N.J.R. 1963(b).
 Adopted: June 24, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
 Filed: June 24, 1994 as R.1994 d.384, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.
 Effective Date: August 1, 1994.
 Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28A-1.23 Route 33

(a) The certain parts of State Highway Route 33 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs will be erected.

1.-8. (No change.)

9. No stopping or standing in Manalapan Township, Monmouth County:

i. Along both sides:

(1) From the Manalapan Township-Millstone Township corporate line to Route N.J. 33 (Business) (approximate mileposts 21.10 to 24.34).

(b) (No change.)

(c)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Restricted Parking and Stopping

Route N.J. 33 (Business)

Manalapan Township, Monmouth County

Adopted New Rule: N.J.A.C. 16:28A-1.113

Proposed: May 16, 1994 at 26 N.J.R. 1964(a).
 Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
 Filed: June 24, 1994 as R.1994 d.391, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.
 Effective Date: August 1, 1994.
 Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28A-1.113 Route 33 (Business)

(a) The certain parts of State highway Route 33 (Business) described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected:

1. No stopping or standing in Manalapan Township, Monmouth County:

i. Along both sides:

(1) From the intersection of Route N.J. 33 and Route N.J. 33 (Business) to the Manalapan Township-Freehold Township corporate line (approximate milepost 24.34 on Route N.J. 33 to milepost 1.11 on Route N.J. 33 (Business)).

(a)**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID****BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS****Limited Access Prohibition****Route 18 Freeway**

Wall Township, Neptune Township, Neptune City, Ocean Township, Tinton Falls Borough, Colts Neck Township, Freehold Township, Marlboro Township in Monmouth County and Old Bridge Township in Middlesex County

Adopted New Rule: N.J.A.C. 16:30-7.6

Proposed: May 16, 1994 at 26 N.J.R. 1965(a).

Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: June 24, 1994 as R.1994 d.389, **without change**.

Authority: N.J.S.A. 27:1A-1, 27:1A-5, 27:1A-44, 39:4-197(b), 39:4-81 and 39:4-199.1.

Effective Date: August 1, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:30-7.6 Route 18 Freeway

(a) The use of the completed parts of Route 18 Freeway in both directions shall be limited to certain classes of traffic, beginning at milepost 1.4 in Wall Township to include the corporate limits of Neptune Township, Neptune City, Ocean Township, Tinton Falls Borough, Colts Neck Township, Freehold Township, Marlboro Township in Monmouth County and ending in Old Bridge Township at Milepost 30.85 in Middlesex County. The use of the aforesaid Route 18 Freeway by the following classes of traffic is prohibited:

1. Pedestrians, except park areas, rest areas, walks and crossings specifically designated by the Commissioner for that purpose;

2. Animals led, ridden or driven except on leash where pedestrians are permitted;

3. Non-motorized vehicles.

(b)**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID****BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS****Limited Access Prohibition****Route N.J. 42 Freeway**

Washington Township and Deptford Township in Gloucester County and Runnemede Borough, Gloucester Township and Bellmawr Borough in Camden County

Adopted New Rule: N.J.A.C. 16:30-7.7

Proposed: May 16, 1994 at 26 N.J.R. 1964(b).

Adopted: June 23, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: June 24, 1994 as R.1994 d.390, **without change**.

Authority: N.J.S.A. 27:1A-1, 27:1A-5, 27:1A-44, 39:4-197(b), 39:4-81 and 39:4-199.1.

Effective Date: August 1, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:30-7.7 Route 42 Freeway

(a) The use of the following sections of the Route N.J. 42 Freeway in both directions shall be limited to certain classes of traffic:

1. For northbound traffic:

i. Beginning at milepost 6.22 in Washington Township to include the corporate limits of Deptford Township in Gloucester County, Runnemede Borough and Gloucester Township in Camden County and ending at milepost 14.28 in Bellmawr Borough in Camden County.

2. For southbound traffic:

i. Beginning at milepost 14.28 in Bellmawr Borough to include the corporate limits of Runnemede Borough and Gloucester Township in Camden County and Deptford Township in Gloucester County and ending at milepost 6.36 in Washington Township in Gloucester County.

(b) The use of the sections of the Route N.J. 42 Freeway in (a) above by the following classes of traffic is prohibited:

1. Pedestrians, except park area, rest areas, walks and crossings specifically designated by the Commissioner for that purpose;

2. Animals led, ridden or driven, except on leash where pedestrians are permitted; and

3. Non-motorized vehicles.

OTHER AGENCIES**(c)****CASINO CONTROL COMMISSION****Accounting and Internal Controls****Temporary Investment of Annuity Jackpot Trust Funds****Adopted Amendment: N.J.A.C. 19:45-1.40B**

Proposed: May 16, 1994 at 26 N.J.R. 1996(a).

Adopted: July 6, 1994 by the Casino Control Commission, Joseph A. Papp, Executive Secretary.

Filed: July 11, 1994 as R.1994 d.405, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(f), 70(l), 99 and 100.

Effective Date: August 1, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement supported adoption of the proposal, and Grete Bay Hotel and Casino, Inc. (Sands Hotel and Casino) indicated it did not object to the proposal.

RESPONSE: Accepted.

Full text of the adoption follows:

19:45-1.40B Jackpot payouts in the form of an annuity

(a) For purposes of this section, the phrase "annuity jackpot" refers to any slot machine jackpot offered by a casino licensee or group of casino licensees pursuant to which a patron wins the right to receive cash payments at specified intervals in the future. No annuity jackpot shall be permitted unless it provides for the payment of fixed amounts at fixed intervals. In addition, no annuity jackpot shall be permitted unless it expressly prohibits the winner from encumbering, assigning or otherwise transferring in any way his or her right to receive the future cash payments, except as permitted by (k)2i below, and except for a transfer to the estate of the winner upon his or her death. A casino licensee or group of casino licensees may, with the prior approval of the Commission, terminate all future payments to a winner who attempts to encumber, assign or otherwise transfer the right to receive future payments in violation of this prohibition.

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

(g) Upon the deposit of the payments received in accordance with (f) above, the trustees may invest such proceeds in United States Treasury notes, bonds or bills or in shares of mutual funds which invest only in such Treasury securities. The term of any such investment shall not exceed 90 days and shall not interfere with the ability of the trust to make any annuity jackpot payout when due. If an investment authorized by this subsection is made by the trustees, the Annuity Deposit Log shall contain, at a minimum, the following information for each investment:

1. The date of purchase or sale;
 2. The purchase or sale price;
 3. A description of the investment; and
 4. The signature of the person making the entry.
- Recodify existing (g)-(j) as (h)-(k) (No change in text.)

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL REGULATION

Coastal Permit Program Rules Enforcement

Adopted New Rules: N.J.A.C. 7:7-8

Proposed: May 2, 1994 at 26 N.J.R. 1745(a).

Adopted: July 8, 1994 by Robert C. Shinn, Commissioner, Department of Environmental Protection.

Filed: July 11, 1994 as R.1994 d.413, 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. 12:5-1 et seq., 13:1D-1 et seq., 13:19-1 et seq., and 13:9A-1 et seq.

DEPE Docket Number: 21-94-03/428.

Effective Date: August 1, 1994.

Expiration Date: June 24, 1999.

Summary of Public Comments and Agency Responses:

A public hearing was held on Tuesday, May 17, 1994 at the Department's hearing room at 401 East State Street in Trenton, New Jersey. Irene Kropp, Administrator of the Office of Enforcement Coordination, served as hearing officer. Administrator Kropp recommended that the proposed rules be adopted, with the changes described in the responses to comments below and in the Summary of Agency-initiated Changes below. The Department accepts the recommendation. The record of the public hearing may be inspected, or obtained upon payment of the Department's usual charges for copying, by contacting Janis E. Hoagland, Esq., Office of Legal Affairs, Department of Environmental Protection, 401 East State Street, CN 402, Trenton, New Jersey 08625-0402.

Two people attended the public hearing. One person submitted comments at the hearing. Two commenters submitted written comments during the comment period, which closed June 1, 1994. The persons who commented on the proposal being adopted herein are as follows:

- (1) Gregory Delozier, State Legislative Director, New Jersey Association of Realtors
- (2) Michael Fink, President, New Jersey Builders Association
- (3) George Marinakis, P.E., Executive Director, Cape May County Utilities Authority

The following is a summary of the comments received and the Department's responses. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. COMMENT: The commenter would like the Department to pursue only civil and not civil administrative enforcement actions. The commenter believes the imposition of civil administrative penalties and the subsequent use by the Department of the monies from such penalties would provide an incentive to the Department to seek more enforcement actions. (1)

RESPONSE: The determining factor for whether the Department seeks enforcement action is whether or not a violation of an act, rule, permit or order has occurred. The method by which the Department may impose any penalty and the disposition of the monies is not a consideration in determining if an enforcement action will be taken.

2. COMMENT: The commenter suggested that the Department provide a potential reduction greater than 50 percent under N.J.A.C. 7:7-8.5 for small property owners who have committed minor violations of the Coastal Area Facilities Review Act (CAFRA). The commenter would prefer that no penalty at all be assessed for minor violations. (1)

RESPONSE: In determining the base penalties for violations, the Department considers the area of disturbance and the degree of environmental harm caused by the violation. See N.J.A.C. 7:7-8.5(d) and (e). For small property owners with a minor violation, the rule provides that a civil administrative penalty could be assessed as low as \$500.00. If certain mitigating factors apply, that amount could be reduced by half. See N.J.A.C. 7:7-8.5(f). The rule also allows the Department, in its discretion, to reduce the penalty to as low as \$125.00 if the Department determines that there are additional mitigating factors. Anything lower would not serve the necessary deterrent function of a penalty.

3. COMMENT: The commenter requests that the Department explain the meaning of "purpresture" as used in N.J.A.C. 7:7-8.1. (2)

RESPONSE: The term "purpresture" has been taken directly from the authorizing statute (N.J.S.A. 12:5-6(a)) and must be presumed to have the meaning normally ascribed that term under law.

4. COMMENT: The commenter commends the Department for the flexibility that is provided in N.J.A.C. 7:7-8.3 and especially for the discretion to settle the civil administrative penalty assessment. (2)

RESPONSE: The Department appreciates the commenter's support.

5. COMMENT: The commenter objects to the point allocation system for each special area or resource as found in N.J.A.C. 7:7-8.5. Specifically, the commenter suggests that the rule be modified such that if the same area of violation is classified as more than one special area, only one point be assessed. (2)

RESPONSE: The point system under the penalty assessment provision at N.J.A.C. 7:7-8.5(d) takes into account the environmental harm caused by the violator. The degree of environmental harm is addressed, in part, by increasing the penalty if the violation occurs in a special area or impacts certain resources. Special areas or resources warrant protection from unauthorized development because of the environmental importance of these areas. If an area of violation happens to be classified as more than one special area, this would indicate a greater environmental sensitivity and hence justify a higher penalty assessment.

6. COMMENT: The commenter commends the Department for its approach in substantially reducing the penalty in N.J.A.C. 7:7-8.5(f) for those situations where a complete application is submitted within 30 days of receipt of the notice of violation and a permit is subsequently obtained for the unauthorized activity without the need of any modification, mitigation or restoration. The commenter believes that the Department's issuance of the permit after the fact indicates the relatively insignificant impact that the activity will have on the environment. (2)

RESPONSE: The Department appreciates the commenter's support.

7. COMMENT: The commenter objects to N.J.A.C. 7:7-8.5(g) which allows the increase of a penalty based upon such things as compliance history of the violator, the deterrent effect of the penalty and any other extenuating or aggravating circumstances. The commenter believes that these factors are too vague and give the Department too much discretion within a set of rules that are supposed to limit discretion by setting forth a matrix. (2)

RESPONSE: Although this subsection provides the Department some flexibility to take into account attenuating and mitigating factors, any adjustment made to the penalty must be reasonably related to those factors. For example, the purpose of a civil administrative penalty is, among other things, to deter violations. If a violator is a repeat offender, it is apparent that the penalty did not serve as a deterrent. Therefore, a subsequent penalty may have to be assessed at a higher amount which is calculated to achieve future compliance. It is important to note that under N.J.A.C. 7:7-8.5(g) the Department may decrease a penalty, if appropriate, based on the listed mitigating factors.

8. COMMENT: The commenters request that the Department delete N.J.A.C. 7:7-8.6. N.J.A.C. 7:7-8.5 already provides for a full range of penalty options, including the maximum penalty assessment of \$25,000 per day as authorized by CAFRA, and already affords the Department a wide range of flexibility and discretion in arriving at an appropriate penalty assessment after giving due consideration to the factors outlined therein. The commenters see no purpose for, and are opposed to, the incorporation of the discretionary procedures outlined in N.J.A.C. 7:7-8.6 and urge the Department to delete this entire section. (2) and (3)

RESPONSE: The Department agrees with the commenter in that N.J.A.C. 7:7-8.5 does provide the Department with the necessary flexibility.

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ty and discretion in arriving at the appropriate penalty assessment. N.J.A.C. 7:7-8.5(g) provides the Department the discretion to adjust the penalty assessment for violations of N.J.A.C. 7:7-2.1, that is, violations resulting from a failure to obtain a permit for regulated activities. Proposed N.J.A.C. 7:7-8.6 provides for the same discretionary adjustment of penalty assessments for violations of N.J.A.C. 7:7-2.1 in addition to providing discretionary adjustment of penalty assessments for all other violations of N.J.A.C. 7:7 and N.J.S.A. 13:9-1 et seq. Since the provision in both N.J.A.C. 7:7-8.5 and 8.6 are duplicative regarding the Department's discretionary ability to adjust penalty assessments for violations of N.J.A.C. 7:7-2.1, the Department is amending N.J.A.C. 7:7-8.6 on adoption to provide that N.J.A.C. 7:7-8.6 is applicable only to violations other than those resulting from failure to obtain a permit for regulated activities pursuant to N.J.A.C. 7:7-2.1 and N.J.S.A. 13:19-1 et seq. Since the penalty assessment under N.J.A.C. 7:7-8.5 cannot be applied to any violations of N.J.S.A. 13:19-1 et seq., N.J.A.C. 7:7 or any order or permit issued pursuant thereto, other than failure to obtain a permit for a regulated activity, N.J.A.C. 7:7-8.6 is not being deleted.

9. COMMENT: The commenter suggests that although the heading of N.J.A.C. 7:7-8.5 appears to limit the application of this section to the determination of civil administrative penalties for failure to obtain a CAFRA permit, it appears to be the Department's intent, in accordance with N.J.A.C. 7:7-8.3(d), to utilize this provision in assessing civil administrative penalties for other types of violations of N.J.S.A. 13:19-1 et seq., such as non-compliance with the specific terms of a CAFRA permit. The commenter suggests that this be clarified within the rule. (3)

RESPONSE: The Department does not intend to use N.J.A.C. 7:7-8.5 in the determination of civil administrative penalties for violations other than the failure to obtain a CAFRA permit. As explained in the response to Comment 8 above, the Department will utilize N.J.A.C. 7:7-8.6 to assess a civil administrative penalty for violations other than failure to obtain a CAFRA permit and has amended N.J.A.C. 7:7-8.6 to clarify this intent. The provision in N.J.A.C. 7:7-8.3(d), which deals with the Department's ability to settle any civil administrative penalty assessed, is applicable to civil administrative penalties assessed under both N.J.A.C. 7:7-8.5 and 8.6.

10. COMMENT: The commenter is concerned that "technical" violations which do not result in any environmental degradation could result in the assessment of a relatively significant penalty in accordance with the procedures outlined in N.J.A.C. 7:7-8.5. The commenter discusses as an example the late submittal of a report or test data which, as the commenter understands the proposed rule, would result in a minimum penalty of \$375.00. This would result, the commenter states, because the mitigating penalty component provided for under N.J.A.C. 7:7-8.5(f) would not apply and the only reduction allowable would be 25 percent pursuant to N.J.A.C. 7:7-8.5(g). The commenter requests that the Department reconsider the application of the procedures as currently outlined in N.J.A.C. 7:7-8.5 to minor technical violations. (3)

RESPONSE: The Department does not intend to use N.J.A.C. 7:7-8.5 in the determination of civil administrative penalties for violations other than the failure to obtain a CAFRA permit. As explained in the response to Comment 8 above, the Department will utilize N.J.A.C. 7:7-8.6 to assess a civil administrative penalty for violations other than failure to obtain a CAFRA permit. It was the intent of the Department to structure N.J.A.C. 7:7-8.6 so that violations causing similar environmental harm and involving similar conduct by the violator would yield consistent penalties as would be assessed pursuant to N.J.A.C. 7:7-8.5. As such, the Department is amending the penalty matrix in N.J.A.C. 7:7-8.6(d) to reduce the minimum penalty that may be assessed to \$125.00 to be consistent with the minimum penalty that may be assessed pursuant to N.J.A.C. 7:7-8.5. Additionally, contrary to the commenter's characterization of N.J.A.C. 7:7-8.5(g), the Department notes that that section allows the Department to reduce a penalty by up to 75 percent of the base penalty; that is, the assessed penalty cannot be reduced to less than 25 percent of the amount determined according to N.J.A.C. 7:7-8.5(e).

11. COMMENT: The commenter suggests that lower civil administrative penalties be assessed against homeowners. The commenter states that pursuant to N.J.A.C. 7:7-8.6, the Department may impose a penalty of up to \$5,000 for a minor, unintentional violation. The commenter also suggests that the Department incorporate language into the final rule that includes economic hardship and the financial inability to pay as mitigating circumstances to further decrease penalty assessments. (3)

RESPONSE: It is the intention of the Department in these rules to ensure that the penalties assessed, while fair, are tailored to the actual

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or potential for environmental harm and the seriousness of the conduct of the violator. As such, the Department has structured penalties such that small infractions will be met with proportional sanctions and remedies. Thus, as noted in response to Comment 2, for a small property owner with a minor violation, N.J.A.C. 7:7-8.5 provides that a civil administrative penalty could be assessed as low as \$500.00. If certain mitigating factors apply, that amount could be reduced by half. N.J.A.C. 7:7-8.5 would also allow the Department, in its discretion, to reduce the penalty to as low as \$125.00 if the Department determines that there are mitigating factors. For violations other than failure to obtain a permit, the Department will assess civil administrative penalties pursuant to N.J.A.C. 7:7-8.6. Moreover, consistent with longstanding Department policy, economic hardship and ability to pay are not factors taken into consideration when assessing a penalty because inability to pay bears no relationship to the seriousness of the offense or the conduct of the violator *Gem Car Wash v. DEPE*, 93 N.J.A.R.2d. (EPE) 234 (August 20, 1993). Nor does inability to pay mitigate the seriousness of a violation or the conduct of the violator. It is important, particularly for the purposes of deterrence, that the penalty formally assessed be commensurate with the nature of the violation, unattenuated by the incidental circumstance of a violator's present inability to pay. *Ibid.*

12. COMMENT: The commenter states that the proposals for enforcement penalties regarding the Waterfront Development Act and the Wetlands Act of 1970 appear to be acceptable given the enforcement provisions provided for in those statutes. (3)

RESPONSE: The Department appreciates the commenter's support.

Summary of Agency-Initiated Changes:

The following technical changes are being made on adoption to correct printing errors.

In N.J.A.C. 7:7-8.4(a), the word "an" has been added and the word "of" has been changed to "at." In N.J.A.C. 7:7-8.4(a)4, the period has been changed to a semicolon.

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 8. ENFORCEMENT

7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, pursue the remedies specified in 1 through 4 below. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:7-8.2;
2. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:7-8.13;
3. Levy a civil administrative penalty in accordance with N.J.A.C. 7:7-8.5 or 7:7-8.6; and/or
4. Bring an action for a civil penalty in accordance with N.J.A.C. 7:7-8.7.

(b) Any development or improvement enumerated in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., shall be deemed to be a purpresture, a public nuisance and a violation of N.J.S.A. 12:5-1 et seq. and shall be abated in the name of the State by one or more of the following actions:

1. The issuance of an administrative order in accordance with N.J.A.C. 7:7-8.2;
2. The commencement of a civil action by the Department in Superior Court for injunctive or other appropriate relief in accordance with N.J.A.C. 7:7-8.13; and/or
3. The levying of an administrative penalty by the Department in accordance with N.J.A.C. 7:7-8.10 and 8.11.

(c) The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter

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and inspect any building or place for the purposes of ascertaining compliance or noncompliance with any codes, rules and regulations of the Department.

7:7-8.2 Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7-8.4. After the hearing and upon finding that a violation has occurred, the Department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

(b) Any development or improvement commenced or executed in violation of the Waterfront Development Act, N.J.S.A. 12:5-1 et seq., may be abated by the State by the issuance of an administrative order by the Commissioner specifying that there has been a violation of the provisions of this section, or any applicable rule, regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation. Procedures to request a hearing on an administrative order issued pursuant to this subsection are contained in N.J.A.C. 7:7-8.11.

7:7-8.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To assess a civil administrative penalty under N.J.S.A. 13:19-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order or permit violated;
2. Concisely state the alleged facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and the fact that interest may be due in accordance with (c) below; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.4, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(b), a notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
3. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(c), a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial; or
4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty,

at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey. Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if:

1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within 30 days of the date that payment is due; or

2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within 30 days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.5 or 8.6 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:7-8.5(g)4, 8.6(g)5 or 8.8(h)6;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.5(f)1i or 8.6(g)3, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

4. Any other terms or conditions acceptable to the Department.

7:7-8.4 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 for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To request an adjudicatory hearing to contest *an* administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 13:19-1 et seq., the violator shall submit the following information in writing to the Department *[of]* *at* Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request*[*]**;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

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(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7-8.5 Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.A.C. 7:7-2.1.

(b) Each violation of N.J.A.C. 7:7-2.1 shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within the table in (e) below by determining the number of points pursuant to (d) below. The civil administrative penalty shall be the amount within the table in (e) below, unless adjusted pursuant to (f) and/or (g) below.

(d) The Department shall determine the number of points assigned to each violation by summing the points according to (d)1 through 3 below.

1. Conduct of violator:

Minor	1 point
Moderate	2 points
Major	3 points

i. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

ii. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

iii. Minor shall include any other conduct not included in (d)1i or ii above.

2. Area of disturbance in square feet (sf):

Less than or equal to 270 sf	1 point
271 sf to 5,000 sf	2 points
5,001 sf to 10,000 sf	3 points
10,001 sf to 20,000 sf	4 points
Greater than 20,000 sf	5 points

The Department shall determine the area of disturbance as that area which was actually disturbed as a result of the violation.

3. Unauthorized activity conducted in special area or resources: Each special area or resource involved—1 point

The Department shall assess one point for each special area or resource, as defined in N.J.A.C. 7:7E-3, in which the unauthorized activity occurred.

(e) The table of civil administrative base penalties is as follows:

Points	Base Penalty
1-3	\$ 500
4	\$ 1,000
5	\$ 5,000
6	\$10,000
7	\$15,000
8	\$20,000
9	\$25,000

(f) The Department shall adjust the amount of the base penalty assessed pursuant to (e) above based upon the mitigating penalty component as calculated in (f)1i or ii below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in (f)1i or ii below to obtain the mitigating penalty component. Where neither mitigating factor in (f)1i or ii below applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to (e) above, unless adjusted pursuant to (g) below.

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Mitigating Factor

Multiplier

i. Where the nature, timing and effectiveness of any measures taken by the violator to remove the unauthorized development and to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Department; or

0.50

ii. Where a complete application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained for the unauthorized development without the need of any modification, mitigation or restoration.

0.50

2. To obtain the civil administrative penalty, the Department shall subtract the mitigating penalty component calculated pursuant to (f)1 above, where applicable, from the base penalty.

(g) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (e) or, where applicable, (f) above based upon any or all of the factors listed in (g)1 through 4 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 25 percent of the penalty pursuant to (e) above, or more than the statutory limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 13:19-1 et seq., rules, permit or order occurred;
3. The deterrent effect of the penalty; and/or
4. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.6 Civil administrative *penalty* *penalties* *determination* for *violations of* N.J.S.A. 13:19-1 et seq. (CAFRA) *other than failure to obtain a permit for regulated activities*[-discretionary]*

(a) *Notwithstanding N.J.A.C. 7:7-8.5, the* *The* Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq.* *other than those violations addressed under N.J.A.C. 7:7-8.5*. The Department shall assess penalties under this section in lieu of N.J.A.C. 7:7-8.5 when N.J.A.C. 7:7-8.5 is not applicable to the violation *for when, because of the specific circumstances of a violation, the Department in its discretion believes that the penalty amount under N.J.A.C. 7:7-8.5 would not serve a deterrent function as required by N.J.S.A. 13:19-1 et seq]*.

(b) Each violation of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) *Notwithstanding N.J.A.C. 7:7-8.5, the* *The* Department may assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (g) below.

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$20,000– \$25,000	\$15,000– \$20,000	\$10,000– \$15,000
	Moderate	\$15,000– \$20,000	\$10,000– \$15,000	\$ 5,000– \$10,000
	Minor	\$10,000– \$15,000	\$ 5,000– \$10,000	*\$[500]*125*– \$ 5,000

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(e) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health or the environment;

2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health or the environment; or

3. Minor seriousness shall apply to any violation not included in (e)1 or 2 above.

(f) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any other conduct not included in (f)1 or 2 above.

(g) The Department may, in its discretion, adjust the amount determined pursuant to (d), (e) and (f) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (d) above, on the basis of any or a combination of the factors listed in (g)1 through 5 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number and frequency of violation(s) by the violator;
3. The measures taken by the violator to mitigate the effects of the current violation;
4. The deterrent effect of the penalty; and/or
5. Any other extenuating, mitigating or aggravating circumstances.

7:7-8.7 Civil penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) Any person who violates the provisions of N.J.S.A. 13:19-1 et seq., any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., an administrative order or a court order issued pursuant to N.J.S.A. 13:19-1 et seq., or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:7-8.3, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(b) Any penalty established pursuant to this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:19-1 et seq.

7:7-8.8 Civil administrative penalties for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$1,000 for each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq.

(b) Each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty within the matrix in (e) below by:

i. Determining the seriousness of the violation pursuant to (f) below; and

ii. Determining the conduct of the violator pursuant to (g) below.
2. The civil administrative penalty shall be the amount within the matrix in (e) below, unless adjusted pursuant to (h) below.

(e) The matrix of civil administrative penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$1,000	\$900	\$750
	Moderate	\$900	\$700	\$500
	Minor	\$750	\$500	\$250

(f) The seriousness of the violation shall be determined according to the category of activity regulated under N.J.A.C. 7:7-2.3, as follows:

1. Minor: Four or fewer pilings;
2. Moderate: Docks 100 square feet or less, breakwaters 40 linear feet or less or other similar structures;
3. Major: All other structures or activities; or those violations defined as minor or moderate which have a permanent adverse effect on a special area as defined in N.J.A.C. 7:7E-3.

(g) The Department shall determine the conduct of a violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate shall include any unintentional but foreseeable act or omission by the violator;
3. Minor shall include any other conduct not included in (g)1 or 2 above.

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (d) above based upon any or all of the factors listed in (h)1 through 6 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 50 percent of the penalty determined pursuant to (d) above, or more than the statutory limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 12:5-1 et seq., or rules promulgated, or permits issued pursuant to N.J.S.A. 12:5-1 et seq. occurred;
3. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of the violation from the Department or where a complete permit application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained in accordance with N.J.S.A. 12:5-1 et seq., the assessed penalty may be reduced by 50 percent;
4. Where a permit is obtained in accordance with N.J.S.A. 12:5-1 et seq. without the need of any modification, mitigation or restoration and has not been considered under (h)3 above;
5. The deterrent effect of the penalty; and/or
6. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.9 Civil administrative penalty for continuing violation of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

The Department may assess an additional penalty of not more than \$100.00 for each day during which a violation continues after receipt of an administrative order from the Department pursuant to N.J.A.C. 7:7-8.2(b).

7:7-8.10 Procedures for assessment, settlement and payment of civil administrative penalties pursuant to N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To assess a civil administrative penalty under N.J.S.A. 12:5-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment shall:

1. Identify the section of the statute, rule or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed; and

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4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.11.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order.

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.11, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or

2. If the Department denies the hearing request, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or

3. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.8 and 8.9 according to the factors identified in (c)1 through 4 below. No such factor constitutes a defense to any violation:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.8 and 8.9, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; and/or

4. Any other terms or conditions acceptable to the Department.

7:7-8.11 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 for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 12:5-1 et seq., 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. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 21 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

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(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7-8.12 Civil penalties for violations of N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)

(a) Any person who violates any order by the Department, or violates any provisions of N.J.S.A. 13:9A-1 et seq., shall be subject, upon order of a court, to a civil penalty of not more than \$1,000.

(b) Any penalty ordered as provided in this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:9A-1 et seq.

7:7-8.13 Civil actions for violations of N.J.S.A. 13:19-1 et seq. (CAFRA), N.J.S.A. 12:5-1 et seq. (Waterfront Development), and N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)

(a) The Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq. and 12:5-1 et seq. or any regulation, rule, permit, or order adopted or issued by the Department pursuant to any of these acts, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;

2. Assessment against the violator for any costs incurred by the Department in removing, correcting or terminating the violation of any provision of any of the acts, or any regulation or rule adopted, or permit or order issued, by the Department pursuant to any of these acts, for which the action under this section may have been brought; and/or

3. A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

(b) For violations of N.J.S.A. 13:19-1 et seq., the Department may institute an action or proceeding in the Superior Court for the assessment against the violator for any costs incurred by the Department in terminating the adverse effects upon the land, or upon water or air quality, resulting from any violation of any provision of N.J.S.A. 13:19-1 et seq., or any rule promulgated or any permit or order issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., for which the action under this section may have been brought.

7:7-8.14 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof, and to this end, the provisions of this subchapter are declared to be severable.

(a)

DIVISION OF FISH, GAME AND WILDLIFE FISH AND GAME COUNCIL

1994-1995 Game Code

Adopted Amendments: N.J.A.C. 7:25-5

Proposed: May 16, 1994 at 26 N.J.R. 1913(b).

Adopted: July 8, 1994 by the Fish and Game Council,
Cole Gibbs, Chairman.

Filed: July 11, 1994 as R.1994 d.412, 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. 13:1B-29 et seq.

DEPE Docket Number: 23-94-04/449.

Effective Date: August 1, 1994.

Operative Date: August 6, 1994.

Expiration Date: February 15, 1996.

On May 16, 1994 the Fish and Game Council (Council) proposed various amendments to N.J.A.C. 7:25-5. These amendments pertained to general hunting season dates, pheasant hunting, semi-wild hunting preserves, turkey hunting areas and permit quotas, beaver trapping quotas, trap tags, buckshot, slug and rifle use, use of corrective lenses for hunting, non-toxic shot, Canada goose hunting permits, bonus deer tags, deer decoys, adjustments in deer season lengths, bag limits, method of take and permit quotas as well as modifications in deer management zones and permit application procedures. Secondary notice was achieved by mailing press releases to 200 newspapers, posting copies of the rule proposal including summaries of the amendments and notice of the public hearing in Division field offices and mailing copies of summaries of the proposed amendments to 15 interested organizations and delivering notice of the public hearing to the Atlantic City Press and the Newark Star Ledger. Thirty-one written comments and petitions containing the names of 234 individuals were received by the end of the comment period. A public hearing was held by and before the Fish and Game Council (Council) on June 7, 1994. Thirteen commenters presented oral comments. Comments were received from Jim DeStefano of the New Jersey Trappers Association, Rita Cileo, Ben Crimando and Stuart Chaifetz of the New Jersey Animal Rights Alliance, Richard D. Gardner of the Warren County Board of Agriculture, George P. Howard of the Hunterdon Federation of Sportsmen's Clubs, Martin Papson of the Pines Rod and Gun Club, Louis Leiszner of the New Jersey Sportsmen's Association, Walter Lang of the Sure Shot Gun Club, Robert Fenton of Coastal Furtakers, Eric Gaupp of the Atlantic County Federation of Sportsmen's Clubs and the Germania Gun Club, Peter Rapetti of the Atlantic County Federation of Sportsmen's Clubs and the Antler Gun Club, Lois Russell of the Watchung Reservation Awareness Group, Captain L.A. Farr of the Department of the Navy, Lakehurst Naval Air Engineering Station, Barry Sullivan of the National Park Service, Delaware Water Gap National Recreation Area, Douglas G. McCouch of the Janvier Deer Club, Jack Fairhurst of the Hickory Gunning Club, Harold G. Conover of the Bayview Gun Club, Stephen J. George of the New Jersey Farm Bureau, Leo Galley of the Atlantic County Federation of Sportsmen's Clubs, John Abbondanza, Anthony Chorda, Frank J. Brazaitis, Terry Wespestod, Manuel V. Cerca, Sam Race, Steve Colao, Don Gaupp, William Weber, Sr., Walter Finy, Jr., Emery R. Stuckel, John Jensen, Stan Grillo, Elmer Kienzle, Louis Schairer, R.A. Weyl, Frank Burns, Carl Allen, John Obuchowski, William Obuchowski, Timothy Obuchowski, Robert Ramsey, Robert DePersia and Vincent D. Cerca. Petitions signed by 234 individuals were also received during the comment period. The public hearing record may be inspected or a copy obtained upon payment of the Department's nominal copying charges, by contacting Janis E. Hoagland, Department of Environmental Protection and Energy, Office of Legal Affairs, 401 East State Street, CN 402, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

General Comments

COMMENT: Jim DeStefano, Director of the New Jersey Trappers Association, expressed support for the 1994-95 Game Code and amendments in their entirety.

RESPONSE: The Council appreciates the support expressed by the New Jersey Trappers Association.

COMMENT: George P. Howard, Legislative Chairman for the Hunterdon County Federation of Sportsmen's Clubs, expressed support for the 1994-95 Game Code and amendments with the one exception pertaining to N.J.A.C. 7:25-5.27(b) (see section below).

RESPONSE: The Council appreciates the support expressed by Mr. Howard and the Hunterdon County Federation of Sportsmen's Clubs.

COMMENT: Timothy Obuchowski, John Obuchowski and William Obuchowski, independent sportsmen, expressed support of the amendments to the 1994-95 Game Code.

RESPONSE: The Council appreciates the support expressed by these individuals.

COMMENT: Ben Crimando, Stuart Chaifetz and Rita Cileo of the New Jersey Animal Rights Alliance expressed opposition to hunting in general. Mr. Crimando also indicated that he wants to have deer trapped and transferred from Watchung Reservation, Union County, and indicated that this alternative would be much cheaper (\$200.00 per deer) than hunting. Mr. Chaifetz also indicated that he wanted alternatives to hunting included in the Game Code and that the restriction on hunting within 450 feet of occupied buildings or school playgrounds was inadequate, citing an incident in which a shotgun slug hit a school in Warren

County, New Jersey during the 1993-94 firearm deer season. Ms. Cileo also indicated that she supports Assembly Bill A-1125; attributes violence in New Jersey to young people who take up hunting; the information distributed by the Division is propaganda; the Division's wildlife management approach is destructive; Monmouth Battlefield State Park was littered with beer cans and deer entrails by hunters and that a pro-hunting advertisement in an unidentified newspaper was paid for by bow hunters.

Lois Russell of the Watchung Reservation Awareness Group, expressed concern regarding poaching at Watchung Reservation, Union County, and questioned why the Division was sending unidentified, pro-wildlife management brochures to schools that cost the taxpayers money.

RESPONSE: The Council is legally mandated by N.J.S.A. 13:1B-29 et seq. to manage wildlife throughout the State of New Jersey, including public lands, as a renewable resource and to maximize the benefits derived from this resource, including the taking of game species, while minimizing negative impacts. Annual promulgation of amendments to the Game Code by the Council is essential to meet its responsibilities by adjusting seasons, bag limits and methods of taking according to the best scientific information available. The Council recognizes that comments received in opposition to hunting, including hunting in State and county parks, represent the philosophy of people opposed to killing animals including recreational hunting and hunting as a management tool.

The deer hunt at the Watchung Reservation was authorized by and paid for by the County of Union. Therefore, costs associated with the Watchung Reservation hunt are not relevant to the Council's adoption of the 1994-95 Game Code.

The New Jersey Division of Fish, Game and Wildlife (Division) is planning to implement a Community Based Deer Management Plan for controlling locally overabundant or nuisance deer populations, particularly in urban/suburban areas of northeastern New Jersey. This plan is anticipated to include alternative deer population control measures in areas not accessible for hunting and to reestablish traditional or controlled hunting in areas which can be safely and effectively hunted.

Prohibition of hunting within 450 feet of buildings or school playgrounds, as provided for by N.J.S.A. 23:4-16, has generally been successful in preventing accidents and damage to property; however, amendments to N.J.A.C. 7:25-5.23 have been included which should further enhance safe hunting. For example, these amendments require hunters using slugs to have adjustable sights or scopes on their shotguns and require hunters who must wear corrective lenses when operating a motor vehicle to also wear them while hunting.

There is no evidence that Monmouth Battlefield State Park was littered with beer cans by hunters. Field surveys conducted soon after the January special permit deer hunts did not reveal littering by hunters. Additionally, the surveys indicated that deer entrails from legally harvested deer were generally removed from public view by hunters as recommended in information packets distributed with shotgun permit season permits.

The Council's adoption of the 1994-1995 Game Code is not relevant to concerns over private individuals or groups who may place pro-hunting advertisements in newspapers.

The fact that poaching may take place at Watchung Reservation, Union County, is not relevant to the Game Code amendments; however, knowledge of illegal activities should be brought to the attention of the park police and the Division.

The Division does provide various informational material to schools. However, since the commenter did not identify the schools or the literature received, the Division/Council can not provide further comment except to point out that any informational materials provided by the Division to the public would be paid for from its dedicated funds from the sale of hunting and fishing licenses and not from the general fund.

COMMENT: Stephen J. George, President of the New Jersey Farm Bureau, on behalf of the Farm Bureau, commented on various amendments as indicated in applicable sections below and expressed the following general comments: farmers in the State continue to sustain an unacceptably high level of crop damage due to surplus populations of wildlife; the system of reporting deer damage requires revision; Division staff attendance at County Board of Agriculture meetings is very useful and should continue; the Division exhibits minimal interest in the concept of paying for excessive wildlife damage to farmers, homeowners or commercial establishments; the regulatory changes require a substantial

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public education program; control of deer on leased land continues to be a problem and other states provide landowners more control in the management of wildlife on their property.

RESPONSE: The Council considers wildlife damage to agricultural crops, residential/commercial landscaping and home gardens when developing the annual amendments to the Game Code. The Council acknowledges that the reporting of wildlife damage by agriculturalists may be incomplete; however, it points out that deer populations are being reduced in all major agricultural zones, regulations for controlling and mitigating nuisance wildlife exist, the Division offers technical and material assistance through its Wildlife Control Unit, and the Council and the Division have sought to expand hunting as a wildlife control tool whenever practical and feasible. The Council and the Division remain committed to facilitating communication with the agricultural community, including sending representatives to County Board of Agriculture meetings on a periodic basis. The Division does not have the financial resources to pay for wildlife damage and it is unlikely that funds will be available from other sources. Lease arrangements between landowners and farmers, including the leasing of hunting rights, are beyond the control of the Council and the Division. The Division also notes, although some states do have programs which may provide more control of hunting to landowners, that landowners in New Jersey play an important role in proper wildlife management because they control hunter access. The Council and the Division acknowledge that educating farmers, sportsmen and the general public regarding changes in the annual hunting regulations is a substantial task, but points out the information is disseminated through news releases, the New Jersey Fish and Wildlife Digest, the New Jersey Register, public contact with Division personnel, special permit application instructions, season date and bag limit cards, outdoor columns and publications, license agents, Division offices and other sources. Many of the comments from the Farm Bureau not specific or relevant to the proposed amendments will be addressed in a separate manner independent of the Code amendment process, including subsequent meetings between the Farm Bureau and Division and Council representatives.

N.J.A.C. 7:25-5.2(a), 5.3(a), 5.4(a) and 5.5(a)

COMMENT: Frank J. Brazaitis, independent sportsman, requested extra days of small game hunting to compensate for days lost due to the extension of permit shotgun season during January.

RESPONSE: Amendments to the 1994-95 Game Code call for extension of the small game season by four to seven days, which compensates for the extension of the permit shotgun season in several zones.

N.J.A.C. 7:25-5.7(m)

COMMENT: Stephen J. George, President of the New Jersey Farm Bureau, on behalf of the Farm Bureau, expressed support for a longer turkey season and expansion of the turkey hunting area in northeastern New Jersey, and Monmouth and Middlesex Counties.

RESPONSE: The Council appreciates the support for expansion of turkey hunting areas. However, based on available information, the Council was unable to propose a longer season; therefore, the season duration was not increased by the proposed amendments to the 1994-95 Game Code.

N.J.A.C. 7:25-5.9(c)

COMMENT: Stephen J. George, President of New Jersey Farm Bureau, on behalf of the Farm Bureau, expressed support for liberalization of the beaver trapping season.

RESPONSE: The Council appreciates the support expressed by Mr. George and the New Jersey Farm Bureau for this proposed amendment.

N.J.A.C. 7:25-5.13(i)

COMMENT: Stephen J. George, President of New Jersey Farm Bureau, on behalf of the Farm Bureau, expressed support for requesting a season for resident geese.

RESPONSE: The Council appreciates the support expressed by Mr. George and the New Jersey Farm Bureau for this amendment which authorizes issuance of goose hunting permits, if a late season for Canada geese is established by Federal regulations.

N.J.A.C. 7:25-5.18(a)

COMMENT: Stephen J. George, President of New Jersey Farm Bureau, on behalf of the Farm Bureau, indicated that not allowing the extension of the woodchuck hunting season to year-round was counter to Farm Bureau policy.

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RESPONSE: The Council did not consider a proposed amendment to the 1994-95 Game Code dealing with extension of the woodchuck season because no prior request to consider an extension of the season was received. However, the Council will consider such a request in future proposals. The Council would point out that N.J.A.C. 7:25-5.21(a) provides for property owners and occupants of dwellings suffering damage to control woodchuck by lawful procedures at anytime in most areas of the State.

N.J.A.C. 7:25-5.23(c)

COMMENT: Rita Cileo, Mercer County Coordinator for the New Jersey Animal Rights Alliance, expressed unspecified concern regarding the proposed amendment to restrict ammunition used for deer hunting at Monmouth Battlefield State Park to No. 4 or No. 000 buckshot or slugs.

RESPONSE: The amendment which only applies to Monmouth Battlefield State Park was proposed to alleviate concerns of possible archeological site contamination from buckshot larger than No. 4 and smaller than No. 000 expressed by the Friends of Monmouth Battlefield and the State Park Service during 1993. Buckshot in the size proposed to be prohibited was reported to have been used at the Battle of Monmouth during the Revolutionary War. The amendment may be a minor inconvenience and require additional expenditures for some participants who would normally use buckshot between the No. 4 and No. 000 sizes.

N.J.A.C. 7:25-5.23(a)

COMMENT: Louis A. Leiszner, independent sportsman, indicated that he was opposed to changing the regulations on rifles and missiles allowed for woodchuck hunting. He indicated that light weight bullets for rifles greater than .25 caliber were hard to get or unavailable in some calibers, and that light weight, high speed bullets were just as dangerous as heavier grain bullets due to ricochet. Anthony Choida, independent sportsman, indicated that he was opposed to the proposed restrictions. Manuel V. Cerca, independent sportsman and owner of a gun dealership, expressed that he was opposed to the proposed amendment, indicating that woodchuck hunters hunt on private land with landowner permission; woodchuck hunters have an outstanding safety record; match grade ammunition for .30 caliber rifles is not available; .22 rimfire ammunition ricochets more than larger caliber ammunition, and the provision threatens ownership of weapons such as .30 caliber rifles. Vincent D. Cerca, independent sportsman, expressed that he was opposed to the amendment indicating that there are few firearm accidents; there are few bullets of 100 grains or less available for larger caliber rifles; the bullet weight restriction would be hard to enforce; woodchuck hunting is only allowed on private land, and woodchuck hunting provides the only rifle hunting opportunity in New Jersey. Stephen J. George, President of the New Jersey Farm Bureau, on behalf of the Farm Bureau, expressed opposition to tightening the ability to use rifles for woodchucks by requiring smaller ammunition.

RESPONSE: The Council proposed the change to remove from use heavier grain bullets which generally have high impact energy and are commonly used for hunting big game while allowing lighter bullets which are considered safer and adequate for the use of hunting woodchuck. Ammunition for rifles of .25 caliber or smaller, suitable for woodchuck hunting, is readily available. The Council recognizes that bullets of weights of 100 grains or less and match quality ammunition may not be readily available for many rifle calibers of greater than .25 caliber, and that this amendment may impact on some individuals who hunt woodchuck. Smaller, faster bullets often disintegrate upon impact, thus reducing the potential for ricochet. The amendment does not threaten ownership of rifles of .25 caliber or larger. The Council recognizes the outstanding safety record of woodchuck hunters and the fact that most woodchuck hunting is conducted on private lands; however, as evidenced by this amendment, it promotes making woodchuck hunting even safer, consistent with the goals of the Council. The Council believes that enforcement of this amendment will not be any more difficult than other missile or weapon regulations. The Council is aware that woodchuck hunting provides the only modern rifle hunting opportunity in New Jersey.

N.J.A.C. 7:25-5.23(q)

COMMENT: Richard D. Gardner, President of Warren County Board of Agriculture, on behalf of the Board; Sam Race, independent sportsman; and Stephen J. George, President of the New Jersey Farm Bureau, on behalf of the Bureau expressed opposition to requiring

adjustable sights, peep sights or scopes on shotguns when slugs are used for deer hunting. Mr. Race also indicated that many hunters who use shotgun slugs in traditional shotguns without rifle sights are reasonably expert and accurate; there is no assurance that better accuracy, effectiveness or safety will be achieved; there has been no evaluation of the potential economic impact upon hunters who may have to purchase new equipment in order to use slugs; and that there are hunters that choose to use a combination of buckshot and slug for deer hunting.

RESPONSE: The Council proposed this change to achieve better accuracy and to provide for a more effective and safer deer hunting firearm for most users. The Council recognizes that there are some hunters who use slugs in shotguns with bead sights that have achieved a high degree of accuracy and expertise, and that there is no assurance that adjustable sights, peep sights or scopes will eliminate all safety concerns. Since deer hunters have the option of using buckshot and many slug users already have firearms which meet the sight/scope requirement, most sportsmen will not have to purchase new equipment to continue deer hunting and the overall impact of this change will be minimal. Information collected at deer check stations from 1978 through 1984 indicates that only 5.0 to 5.5 percent of successful deer hunters used a combination of buckshot and slugs.

N.J.A.C. 7:25-5.23

COMMENT: Terry Wespestod, independent sportsman, expressed opposition to restricting shotgun slugs to 2.75 inch shells.

RESPONSE: There is no amendment to the 1994-95 Game Code dealing with restricting shotgun slugs to 2.75 inches shells.

N.J.A.C. 7:25-5.24(d)

COMMENT: Steve Colao, independent sportsman, supports the amendment authorizing deer decoys for bow hunting, but favors Statewide authorization or use on private property. Stephen J. George, President of the New Jersey Farm Bureau, on behalf of the Farm Bureau, expressed support for the amendment.

RESPONSE: The Council authorized the use of deer decoys on an experimental basis and restricted use to specific deer management zones in order to assess the impact on hunter success rates and the deer harvest. Future regulations involving deer decoys will be based upon results and an evaluation of the results observed in 1994-95.

N.J.A.C. 7:25-5.25(b)

COMMENT: Stephen J. George, President of the New Jersey Farm Bureau, on behalf of the Farm Bureau, expressed support for expansion of the bonus tag program.

RESPONSE: The Council appreciates the support for this amendment.

N.J.A.C. 7:25-5.27(b)

COMMENT: Don Gaupp; William L. Weber Sr; Douglas G. McCouch, Secretary of Janvier Deer Club; Emery R. Stuckel; John Jensen; Stan Grillo; Elmer Kienzle; Louis A. Schairer; R.A. Weyl; Jack Fairhurst, Hickory Gunning Club; Frank H. Burns; Harold G. Conover, President of Bayview Gun Club; Walter Lang Jr, Sure Shot Gun Club; Eric Gaupp, Atlantic County Federation of Sportsmen's Clubs, Recording Secretary; Leo Galley, Atlantic County Federations of Sportsmen's Clubs, Corresponding Secretary and independent sportsman; Peter Rapetti, President of Atlantic County Federation of Sportsmen's Clubs and member of Antler Gun Club; and, Carl Allen expressed support of the amendment to the 1994-95 Game Code which would make second tags valid on the date of issuance during the six-day firearm season, indicating that the amendment would enhance recreational opportunity and the fellowship of hunting together, improve compliance with bag limit regulations, have no impact on the overall buck harvest and that the precedent for allowing the harvest of more than one deer per day was already established during the permit deer seasons in some special areas. Several pages of petitions containing the names and addresses of 234 individuals were also submitted supporting the amendment. Martin Papson, Pines Rod & Gun Club; Lewis A. Leiszner; Vincent Cerca, and George P. Howard, Legislative Chairman of Hunterdon County Federation of Sportsmen's Clubs were opposed to the amendment. Mr. Howard also indicated that the amendment would decrease the individual hunter success rate for the six-day firearm season which has been declining and that law enforcement efforts as they relate to illegal multiple kills especially among club or group hunters would be severely inhibited.

Stephen J. George, President of the New Jersey Farm Bureau, on behalf of the Farm Bureau, indicated disappointment in the limited use of the six-day firearm season for controlling deer.

RESPONSE: The Council in further review of the proposed amendment finds that the amendment may not be fair to the majority of the participants in terms of an equitable distribution of the deer resource. The Council notes that with a success rate of only 10 percent as indicated in Mr. Howard's comments, it may indeed be unfair to permit an already successful hunter to take a second deer on the first day of the season when the vast majority have not taken a first. The Council also notes that the support for this proposed amendment generally came from portions of three central/southern counties, particularly from hunt clubs and that comments received by Council representatives attending County Federation of Sportsmen's Clubs meetings in the northern counties indicated considerable opposition in the northern half of the State. The Council also agrees that the proposed amendment may inhibit law enforcement efforts concerning illegal multiple buck kills especially as they relate to club or group hunters. The Council concludes that the amendment as proposed is not in the best interest of the majority of the participating sportsmen or the efforts of law enforcement. Therefore, the present provision of N.J.A.C. 7:25-5.27(b) for second tags to be valid beginning on the day after issuance will be retained and the amendment proposed withdrawn based on comments received and further review by the Council.

The extensive expansion of the Hunters Choice Area in northeastern New Jersey and issuance of a bonus deer tag to hunters who take an antlerless deer first in Zones 13 and 36, Hunters Choice Areas, will increase the antlerless deer harvest and deer population control efforts. The Council must consider recreational and deer management objectives, including the recreational opportunities provided by the six-day season, the overall antlerless deer harvest objective, sportsmen opposition to antlerless deer hunting during the six-day firearm season and additional factors when contemplating expansion of antlerless deer hunting during the six-day firearm season.

N.J.A.C. 7:25-5.28(d)

COMMENT: John Obuchowski; William Obuchowski; Timothy Obuchowski; Robert S. Ramsey and Robert DePersia, independent sportsmen, and L.A. Farr, Captain United States Navy and Commanding Officer for Lakehurst Naval Air Engineering Station, support changing the bag limit of the first week of the permit muzzleloader season in Zone 53, Lakehurst Naval Air Engineering Center, to deer of either-sex and any age from adult bucks only during the first segment of the permit muzzleloader season.

RESPONSE: The Council appreciates the support for this amendment. The amendment is consistent with the deer management objective for the area and will enhance efforts to achieve the proper antlerless deer harvest.

N.J.A.C. 7:25-5.28, 5.29 and 5.30

COMMENT: Barry Sullivan, New Jersey District Ranger on behalf of Delaware Water Gap National Recreation Area, expressed support for the Zones 1 and 4 boundary change which representatives of the area had requested. He also noted that the Zone 4 description was incomplete and that clarifying language should be adopted.

Stephen J. George, President of the New Jersey Farm Bureau, on behalf of the Farm Bureau, expressed support for more flexible and increased bag limits and season lengths, and deletion of the notarization requirement for farmer deer permit applications.

Richard D. Gardner, President, Warren County Board of Agriculture, submitted a roster/bulk deer permit proposal from farmer Roger A. Woolf which was endorsed by the Board. The proposal calls for modification of permit issuance procedures and bag limit changes for the permit bow and permit shotgun seasons. It would allow a farmer to obtain and distribute permits, and collect permit fees. It would also exempt individuals from bag limits and would allow extra deer to be taken.

RESPONSE: The Council appreciates the support for the Zones 1 and 4 boundary change indicated by Delaware Water Gap National Recreation Area representatives, and the season, bag and notarization changes indicated by New Jersey Farm Bureau. The Council will clarify the description of Zone 4.

The Council notes that there was no proposed amendment to the 1994-95 Game Code which provides for a roster or bulk deer permit or other permit issuance procedures mentioned by Mr. Gardner. However, there is an ample number of permits available for applicants in most zones, and provisions exist in N.J.A.C. 7:25-5.32(b) which provide

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for the issuance of additional shotgun and muzzleloader season permits for specific farms within over-subscribed zones. Exemption of individuals from bag limits conflicts with the need to regulate the deer harvest and provide for specific antlerless harvest levels. Factors such as permit demand, management strategy, hunter success rates, antlerless deer quotas, season length and bag limits are incorporated in the existing permit system and regulations. No procedures or regulations currently exist which would allow farmers to collect permit fees or issue permits.

N.J.A.C. 7:25-5.29

COMMENT: John E. Abbondanza, representing the Italian American Sportsmen's Club, expressed opposition to extending the permit shotgun season by four days during January in applicable zones, because he felt that the deer population was being over harvested.

RESPONSE: The 1994-95 shotgun permit season, permit quotas, deer quotas, season lengths and bag limits are consistent with the zone management objectives and remain an integral part of the either-sex seasons structure necessary for achieving antlerless harvest objectives on a zone basis. The permit shotgun season was extended by four days in some zones in order to achieve specific antlerless deer harvest objectives. Permit shotgun season lengths are based on permit quotas, deer quotas, bag limits, hunter success rates, and demand for permits. The Council recognizes that some sportsmen may want deer populations maintained at higher levels in many zones; however, factors including deer damage to agricultural crops, loss of habitat, the incidence of deer-auto accidents, and damage to residential gardens and landscaping require that deer populations be reduced or stabilized in many zones.

Summary of Agency-Initiated Changes:

1. Three typographical errors are corrected herein:

In the Shotgun Permit Season, Permit Quota found under N.J.A.C. 7:25-5.29(k) a typographical error was corrected by Council. Zone 33 was listed with a permit quota of 1,355 which was corrected to 135 as proposed by Council and is in conformity with the total number of Statewide shotgun permits as found under N.J.A.C. 7:25-5.29(k).

In the Deer Management Zone description found under N.J.A.C. 7:25-5.29(p)4 the boundary description as proposed for Zone 4 was unclear due to a typographical omission. The Council corrected the omission by the inclusion of the omitted boundary lines (roads) in conformity with the boundary descriptions for adjacent Zones 1 and 5 which were correctly described.

In the Bow Permit Season Permit Quotas found under N.J.A.C. 7:25-5.30(k) a typographical error indicated a permit quota of 250 instead of the 230 proposed by Council for Zone 45. The permit quota was corrected by Council which is in conformity with the total number of Statewide bow permits found in N.J.A.C. 7:25-5.30(k).

2. In further review of the proposed amendment concerning the possession and use of lead shot in hunting waterfowl, coot, snipe, rail and gallinules as found in N.J.A.C. 7:25-5.14(a) and (b), the Council determined that the appropriate shell and steel shot size necessary for hunting coot, snipe, rail and gallinules may not be available this year. Without this shot, participants would be unable to hunt as permitted by the proposed amendment. Therefore, the Council withdraws the proposed amendment and retains the existing rule which allows lead shot use for these species prior to the opening of the regular waterfowl season.

3. In the bow and arrow general provisions found under N.J.A.C. 7:25-5.24(d) pertaining to the use of deer decoys, the proposed amendment to permit the use of deer decoys in 12 zones was correctly included. However, some language remained which is contradictory to the proposal. Therefore, the Council clarifies this language to conform with the amended portion of N.J.A.C. 7:25-5.24(d) and N.J.A.C. 7:25-5.23(o), and paragraph 17 of the Summary to the proposal. In addition, a minor printing error was corrected in N.J.A.C. 7:25-5.24(d).

4. Based on the comments received and for the reasons provided in the Summary of Public Comments and Agency Responses, the Council withdrew the proposed amendment as found in N.J.A.C. 7:25-5.27(b) and retained the present provision that second tags are valid beginning on the day after issuance during the six-day firearm deer season.

5. The duration of the muzzleloader rifle permit season found under N.J.A.C. 7:25-5.28(d) erroneously lists Zone 54 as having muzzleloader rifle season dates of November 12-19, 1994 (first segment) and December 12-16, 19-31, 1994 (second segment). The Council proposed only December 12-16, 19-31, 1994 as the season dates. Therefore, the Council clarifies the season dates for Zone 54 to conform with proposed N.J.A.C. 7:25-5.28(k) and 5.28(l) which correctly indicate the duration of the muzzleloader rifle season for Zone 54.

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6. In the shotgun permit season bag limit found under N.J.A.C. 7:25-5.29(c) Zone 56 was amended from a three deer bag limit to a six deer bag limit; however, it was necessary to change the language in this section to clarify that Zone 56 has a two deer per day per permit daily bag limit, consistent with paragraph 33 of the Summary to the proposal and N.J.A.C. 7:25-5.29(d) which identify Zone 56 as having a three day season, which with a six deer limit, would indicate a two deer per day bag limit.

7. The duration of the shotgun permit season found under N.J.A.C. 7:25-5.29(d)3 correctly deleted Zone 22 from the three day season of December 14, 15, and 16, 1994. The paragraph, however, fails to indicate Zone 22 as having a seven day season as indicated in paragraph 33 of the Summary to the proposal. In order to clarify the language of this section consistent with the Summary, Zone 22 is corrected to reflect a seven day season. In N.J.A.C. 7:25-5.29(k) a typographical error in the Season Dates Code numbers of the 1994 Shotgun Permit Season Permit Quotas lists Zone 22 as an 11 day season (represented by code number 4). The Council corrects the date code to reflect a seven day season (correctly represented by code number 2) on December 14, 15, and 16, 1994 and January 20, 21, 27, and 28, 1995.

8. The duration of the shotgun permit season found under N.J.A.C. 7:25-5.29(d)2 erroneously lists Zone 27 as having a seven day season. The intended season for Zone 27 is an 11 day season as currently proposed in N.J.A.C. 7:25-5.29(d)4 and 5.29(m). To correct this error, the Council is deleting Zone 27 from the seven day season section of the Code, N.J.A.C. 7:25-5.29(d)2.

9. In the Shotgun Permit Season Permit Quotas found under N.J.A.C. 7:25-5.29(k) the Season Date Code for Zone 51 was deleted (bracketed) due to a typographical error when it should have remained unchanged indicating a three day season of December 14, 15 and 16, 1994. The dates are now correctly listed by Council in conformity with N.J.A.C. 7:25-5.29(d)3 which indicates the correct duration of the season.

10. In the Bow Permit Season Permit Quotas found under N.J.A.C. 7:25-5.30(k) the permit quotas for Zones 6, 11, and 20 were deleted (bracketed) due to typographical error when they should have remained unchanged indicating 1200, 1035, and 400 permits respectively. The permit quotas are now correctly listed by Council in conformity with the total number of Statewide bow permits listed under N.J.A.C. 7:25-5.30(k).

11. The proposed dates of the Great Swamp Permit Season found under N.J.A.C. 7:25-5.29(m)6 and 7:25-5.31(c) are November 28, 29, 30 and December 1, 2, 1994 or as may otherwise be designated by the U.S. Fish and Wildlife Service. The Council has subsequently been advised by the U.S. Fish and Wildlife Service, the administering authority for the Great Swamp Wildlife Refuge, that the shotgun permit season for the area (Zone 38) must be limited to November 29, and 30 and December 1, and 2, 1994. Therefore, the Council deleted November 28, 1994 from the proposed Permit Shotgun Season at the Great Swamp Wildlife Refuge and reduced the season limit from 10 to eight deer in N.J.A.C. 7:25-5.29(c) and 5.31(f) since the daily bag limit is two deer per permit.

The Council also noted that the total number of Great Swamp shotgun permits found under N.J.A.C. 7:25-5.31(f) was 500, not 600 as in the current rule. Therefore, the permit quota was corrected to 500 in conformity with the proposed amendment found in N.J.A.C. 7:25-5.29(k) which provides for 500 permits.

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 5. 1994-95 GAME CODE

7:25-5.1 General provisions

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

(c) This Code, when adopted and when effective, shall supersede the provisions of 1993-94 Game Code.

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

7:25-5.2 Pheasant—Chinese ringneck (*Phasianus colchicus torquatus*), English or blackneck (*P. c. colchicus*), Mongolian (*P. mongolicus*), Japanese green (*Phasianus versicolor*); including mutants and crosses of above

(a) The duration for the male pheasant season is November 12 to December 4, 1994 inclusive, and December 12, 1994 through January 7, 1995 except closed during the permit shotgun deer season

in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December 3, 1994 and December 12, 1994 through March 31, 1995 except closed on November 11, 1994 and during the permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May and the Lakehurst Naval Air Warfare Center and on all wildlife management areas is November 12 to December 3, 1994 inclusive, and December 12, 1994 through February 20, 1995 except closed during the permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) if declared open.

(e) The hours for hunting pheasants on November 12, 1994 are 8:00 A.M. to ½ hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to ½ hour after sunset.

(f) Hen Pheasants: In the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County South of Rt. 70, and in the Counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic, and Cape May, and the Lakehurst Naval Air Warfare Center and on all State Fish and Wildlife Management Areas, the daily bag limit shall be two pheasants of either sex. Unlawful to take or attempt to take female pheasants elsewhere or to have female pheasants in possession afield other than in areas above described.

(g) Nothing contained in this section shall preclude properly licensed and permitted persons between 10 and 15 years of age from hunting pheasants on the Saturday before the opening of the pheasant season on selected wildlife management areas or portions thereof, if such activity is authorized by the Division. Hunting hours, application procedures, permit quotas and the form of the permit shall be determined by the Division.

(h) The season for properly licensed semi-wild preserves is November 12, 1994 to March 15, 1995 inclusive. The Director with approval of the Council may extend the pheasant season on licensed semi-wild preserves for a period not to exceed 20 days.

(i) (No change in text.)

7:25-5.3 Cottontail rabbit (*Sylvilagus floridanus*), black-tailed jack rabbit (*Lepus californicus*), white-tailed jack rabbit (*Lepus townsendii*), European hare (*Lepus europeus*), chukar partridge (*Alectoris graeca*), and quail (*Colinus virginianus*)

(a) The duration of the season for the hunting of cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge and quail is November 12 through December 3, 1994, inclusive, and December 12, 1994 to February 20, 1995 except closed during the permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) if declared open.

(b) The duration of the season for the hunting of the animals enumerated by (a) above for properly licensed persons engaged in falconry is September 1 to December 3, 1994 inclusive, and December 12, 1994 through March 31, 1995 except closed on November 11, 1994 and during the permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section are as follows: November 12, 1994, 8:00 A.M. to ½ hour after sunset. On all other days for which hunting for these animals is legal, the hours are sunrise to ½ hour after sunset.

(e) The quail and chukar partridge season for properly licensed semi-wild preserves is November 12, 1994 to March 15, 1995 in-

clusive. The Director with approval of the Council may extend the quail and chukar partridge season on licensed semi-wild preserves for a period not to exceed 20 days.

(f) (No change.)

7:25-5.4 Ruffed grouse (*Bonasa umbellus*)

(a) The duration of the season for the hunting of grouse is October 8 through December 3, 1994, inclusive, and December 12, 1994 to February 20, 1995 except closed during the permit shotgun deer season in those management zones on the prescribed dates that the season is open and excluding any extra deer permit season day(s) that is declared open.

(b) (No change.)

(c) The hunting hours for ruffed grouse are sunrise to ½ hour after sunset, with the exception of November 12, 1994 when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.5 Eastern gray squirrel (*Sciurus carolinensis*)

(a) The duration of the season for the hunting of squirrels is October 8 through December 3, 1994, inclusive, and December 12, 1994 to February 20, 1995 except closed during the permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit season day(s) if declared open.

(b) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry is September 1 to December 3, 1994, inclusive, and December 12, 1994 through March 31, 1995, except closed during the permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) Hunting hours for squirrels are sunrise to ½ hour after sunset, with the exception of November 12, 1994 when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(e) (No change.)

7:25-5.7 Wild turkey (*Meleagris gallapavo*)

(a) The duration of the Spring Wild Turkey Gobbler hunting season includes five separate hunting periods of four, five or 10 days each. The hunting periods for all hunting areas shall be:

1. Monday, April 24, 1995—Friday, April 28, 1995
2. Monday, May 1, 1995—Friday, May 5, 1995
3. Monday, May 8, 1995—Friday, May 12, 1995
4. Monday, May 15, 1995—Friday, May 19, 1995; Monday, May 22, 1995—Friday, May 26, 1995
5. Saturday, April 29, 1995; Saturday, May 6, 1995; Saturday, May 13, 1995 and Saturday, May 20, 1995.

(b)-(g) (No change.)

(h) Wild Turkey Hunting Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, address, 1995 firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-22, 1995, inclusive. Applications received after February 22 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for 1995, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4.-6. (No change.)

(i) Special Farmer Spring Turkey Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any other information requested thereon. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-22, 1995. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

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- 4. (No change.)
- (j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1995 Spring Turkey Hunting Season Permit Quotas are as follows:

1995 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	120	600	Sussex
2	140	700	Sussex, Warren
3	80	400	Sussex, Warren
4	120	600	Sussex, Warren, Morris
5	120	600	Sussex
6	200	1,000	Sussex, Passaic, Bergen
7	200	1,000	Sussex, Morris, Passaic
8	120	600	Warren, Hunterdon
9	80	400	Warren, Hunterdon, Morris
10	70	350	Essex, Middlesex, Morris, Somerset, Union
11	80	400	Middlesex, Mercer, Hunterdon, Somerset
12	90	450	Mercer, Middlesex, Monmouth
14	70	350	Burlington, Ocean, Mercer, Monmouth
15	55	275	Burlington, Camden, Atlantic
16	70	350	Burlington, Atlantic, Ocean, Cape May, Cumberland
20	130	650	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
Total	1,795	8,975	

*Applied to each of the five hunting periods (A, B, C, D, E) in all areas:

- A. Monday, April 24, 1995-Friday, April 28, 1995
- B. Monday, May 1, 1995-Friday, May 5, 1995
- C. Monday, May 8, 1995-Friday, May 12, 1995
- D. Monday, May 15, 1995-Friday, May 19, 1995
Monday, May 22, 1995-Friday, May 26, 1995
- E. Saturday, April 29, 1995; Saturday, May 6, 1995; Saturday, May 13, 1995 and Saturday, May 20, 1995

(l) (No change.)

(m) Turkey Hunting Areas are located as follows:

1.-9. (No change.)

10. Turkey Hunting Area No. 10: That portion of Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, and Union Counties lying within a continuous line beginning at the intersection of Routes 206 and 80; then east along Route 80 to its intersection with Route 287; then north along Route 287 to its intersection with Route 202; then north and east along Route 202 to the New York State line; then east along the west shore of the Hudson River to Upper New York Bay; then south along the shore of Upper New York Bay to the Kill Van Kull; then west along the north shore of the Kill Van Kull to Newark Bay; then west across Newark Bay to its confluence with the Arthur Kill; then south along the west shore of the Arthur Kill to its intersection with Route 440; then west along Route 440 to its intersection with Route 287; then north along Route 287 to its intersection with Route 206; then north along Route 206 to the point of beginning.

11. (No change.)

12. Turkey Hunting Area No. 12: That portion of Mercer, Middlesex and Monmouth Counties lying within a continuous line beginning at the intersection of Route 1 and Route 106, then north and east along Route 1 to its intersection with Route 287; then south and east along Routes 287 and 440 to its intersection with the Arthur Kill at Perth Amboy; then south along the west shore of the Arthur Kill to Raritan Bay, then south and east along the shore of Raritan Bay to Sandy Hook; then north along the east shore of Sandy Hook Bay to the tip of Sandy Hook; then south along the Atlantic Ocean to Belmar and Route 38; then west along Route 38 to its intersection with Route 195; then west along Route 195 to its intersection with Route 524; then north along Route 524 to its intersection with Route 206; then north along Route 206 to the point of beginning.

Recodify existing 12.-17. as 13.-18. (No change in text.)

7:25-5.8 Mink (*Mustela vison*), muskrat (*Ondatra zibethicus*) and nutria (*Myocaster copus*) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, 1994 through March 15, 1995, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, 1994 through March 15, 1995, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, 1995, inclusive.

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

7:25-5.9 Beaver (*Castor canadensis*) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be January 15 through February 11, 1995, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications shall be received in the Trenton office during the period November 15-December 15, 1994. Applicants may apply for only one beaver trapping permit and shall provide their 1994 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-9, Zone 2-7, Zone 3-3, Zone 4-6, Zone 5-4, Zone 6-18, Zone 7-4, Zone 8-2, Zone 9-4, Zone 10-6, Zone 11-4, Zone 12-4, Zone 13-0, Zone 14-1, Zone 15-0, Zone 16-4, Zone 17-4, Zone 18-2. Total 82. Successful applicants must trap with a valid, current trapping license.

(d) Special Site Specific Permit: During the initial application period, applicants may also apply for one special site specific beaver permit. The total number of permits available shall not exceed 18. Site specific permits will be issued for specific locations or properties where the Division has determined that beaver damage or nuisance problems exist. A random drawing will be held to determine permit

holders; however, applicants unsuccessful in obtaining the special permit as set forth at (c) above will be given first opportunity. Permits will be valid only during the beaver trapping season.

(e) (No change.)

(f) A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than February 18, 1995.

(g)-(i) (No change.)

7:25-5.10 River otter (*Lutra canadensis*) trapping

(a) (No change.)

(b) The duration of the trapping season for otter shall be January 15 through February 11, 1995, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications shall be received in the Trenton office during the period November 15—December 15, 1994. Only one application per person may be submitted for trapping otter and applicants shall provide their 1994 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—7, Zone 2—7, Zone 3—2, Zone 4—3, Zone 5—2, Zone 6—9, Zone 7—3, Zone 8—6, Zone 9—3, Zone 10—4, Zone 11—5, Zone 12—2, Zone 13—14, Zone 14—7, Zone 15—12, Zone 16—4, Zone 17—2, Zone 18—5. Total 97. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses shall be taken to a beaver-otter check station at dates specified on the otter permit and, in any case, no later than February 18, 1995, where a pelt tag will be affixed and the carcass surrendered.

(f)-(i) (No change.)

7:25-5.11 Raccoon (*Procyon lotor*), red fox (*Vulpes vulpes*), gray fox (*Urocyon cinereoargenteus*), Virginia opossum (*Didelphis virginiana*), striped skunk (*Mephitis mephitis*), long-tailed weasel (*Mustela frenata*), short-tailed weasel (*Mustela erminea*), and coyote (*Canis latrans*) trapping only

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season is 6:00 A.M. on November 15, 1994 to March 15, 1995, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, 1995 to March 15, 1995, inclusive.

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

7:25-5.12 General trapping

(a) All traps set or used in this State must bear a durable and legible tag with the name and address of the person setting, using and maintaining the traps. The Division may issue a trap identification number to licensed trappers which may be used in lieu of a name and address.

(b)-(j) (No change.)

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds including waterfowl, be set by Federal regulation which would include the date of November 12, 1994, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) A person shall not take, attempt to take, hunt for or have in possession, any migratory game birds including waterfowl, except at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the 1994-95 hunting season. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the 1994-95 hunting season.

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

(h) Hunting hours for waterfowl shall be those hours that are prescribed by the Department of the Interior, United States Fish and Wildlife Service for the 1994-95 hunting season.

(i) A special canvasback permit shall be required to hunt canvasback ducks, and a special swan permit shall be required to hunt swans, if the appropriate prescribed special season is established by Federal regulations. If a special season for canvasback ducks is established by Federal regulations, the special canvasback hunting area shall be that portion of the State south of Routes 287 and 440 (Perth Amboy), east of the Garden State Parkway and north of Route 36 (Long Branch) and that portion of the State south of Route 88 (Bay Head), east of the Garden State Parkway and north of Route 72 (Ship Bottom). If a special season for swan is established by Federal regulations, the special swan hunting area shall be the counties of Burlington, Cumberland and Salem. A special September Canada goose hunting season permit shall be required to hunt Canada geese, if the appropriate prescribed special season is established by Federal regulations. If a special September Canada goose hunting season is established by Federal regulations, the special September Canada goose hunting area shall be that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Parkway to its intersection with Route 70; then west on Route 70 to its intersection with Route 206; then south on Route 206 to its intersection with Route 54; then south on Route 54 to its intersection with Route 40; then west on Route 40 to its intersection with the New Jersey Turnpike; then south on the Turnpike to the Delaware State boundary line; then north on the Delaware State boundary to its intersection with the Pennsylvania State boundary; then north on the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary. A special late season Canada goose hunting season permit shall be required to hunt Canada geese if the appropriate prescribed special season is established by Federal regulations. The special late season Canada goose hunting areas shall be that portion of the State established by Federal regulations.

(j)-(l) (No change.)

(m) A person shall not take or attempt to take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November 12, 1994. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the 1994-95 Game Code.

15. With shotgun shells loaded with pellets larger than No. 4 fine shot except those persons engaged in hunting waterfowl may use nothing larger than T (.200 inch) steel shot and nothing larger than the shot size authorized by Federal regulations for other forms of non-toxic shot;

16.-19. (No change.)

(n) Seasons and bag limits are as follows:

1. Mourning dove (*Zenaida macroura*) are protected. There will be no open season on these birds during 1994-95.

2. Rail and gallinule season and bag limits are as follows:

- i. The duration of the season for hunting clapper rail (*Rallus longirostris*), Virginia rail (*Rallus limicola*), sora rail (*Porzana carolinensis*), Virginia rail (*Rallus limicola*), sora rail (*Porzana carolinensis*), Virginia rail (*Rallus limicola*), sora rail (*Porzana carolinensis*).

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lina) and common gallinule or moorhen (*Gallinula chloropus*) is September 1 through November 9, 1994 inclusive.

ii. (No change.)

(o) Woodcock zones and hunting hours are as follows:

1.-2. (No change.)

3. Hunting hours for Woodcock are sunrise to sunset except on November 12, when the hunting hours are 8:00 A.M. to sunset.

(p)-(s) (No change.)

7:25-5.14 Special regulation limiting use of shotguns and shotgun shells containing lead pellets

(a) No person shall have in possession or use in hunting waterfowl and coot or any snipe, rail or gallinules ***after the regular season for hunting waterfowl commences*** any shotgun shell containing lead shot or lead pellets or have in possession or use any shotgun containing lead shot in New Jersey, including all territorial waters.

1. Only shotgun shells containing steel pellets not larger than T (200 inch) or other non-toxic shot not larger than the shot authorized by Federal regulations and only shotguns containing steel pellets or other non-toxic shot authorized by Federal regulations shall be used for hunting waterfowl*, coot, snipe, rail or gallinules*.

(b) A person found in possession of any of the following items at (b)1 to 3 below, while hunting for, pursuing, taking, or attempting to take waterfowl, coot or any snipe, rail or gallinule ***after the regular waterfowl season commences*** is in violation of this section. Each violation shall constitute an additional, separate and distinct offense subjecting the person to a penalty of \$20.00 for each offense.

1.-3. (No change.)

(c) (No change.)

7:25-5.15 Crow (*Corvus spp.*)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August 8, 1994 through March 18, 1995 inclusive, except closed during the permit shotgun deer season in those management zones on the prescribed dates that the season is open.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to ½ hour after sunset, except on November 12, 1994 when the hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.17 Raccoon (*Procyon lotor*) and Virginia opossum (*Didelphis virginiana*) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October 1, 1994 to one hour before sunrise on March 1, 1995. The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind during the six day firearm deer season and the permit shotgun deer season in those management zones on the prescribed dates that the season is open and including any extra permit deer season day(s).

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, 1994 and from March 1 to May 1, 1995. The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (*Marmota monax*) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State is March 11 through September 30, 1995. Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

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

7:25-5.19 Red fox (*Vulpes vulpes*) and gray fox (*Urocyon cinereoargenteus*) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Bow and Arrow Only—October 1 through November 11, 1994.

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2. Firearm or Bow and Arrow—November 12, 1994 through February 20, 1995 except closed during the six day firearm deer season and the permit shotgun deer season in those management zones on the prescribed dates that the season is open and also excluding any extra permit deer season day(s) if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of October 1—November 11, 1994. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he must cease all hunting immediately.

(c) The hours for hunting fox are 8:00 A.M. to ½ hour after sunset on November 12, 1994 and on other days from sunrise to ½ hour after sunset.

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

7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May 1 to August 31, inclusive, except on portions or various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November 11, 1994.

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

7:25-5.23 Firearms and missiles, etc.

(a) Except when legally engaged in deer hunting during the prescribed firearm deer seasons no person shall have in his or her possession in the woods, fields, marshlands or on the water any shell or cartridge with missiles of any kind larger than No. 4 fine shot. This shall not preclude a properly licensed person from hunting woodchuck with a rifle during the woodchuck season. For hunting woodchuck, center-fire rifles of .25 caliber or smaller or rim-fire rifles may be used. Center-fire rifles larger than .25 caliber may also be used provided that the bullets used do not exceed 100 grains in weight. All center-fire rifle ammunition used in hunting woodchucks must be hollow point soft point or expanding lead core bullets. All rim-fire rifle ammunition used in hunting woodchuck must be hollow point or soft point type. Also excepted is the use of a muzzleloading rifle, .36 caliber or smaller, loaded with a single projectile during the prescribed portion of the squirrel season in designated areas. Waterfowl hunters may possess and use shotgun shells loaded with T (.200 inch) steel fine shot or smaller or forms and sizes of other non-toxic shot authorized by Federal regulations and properly licensed persons hunting for raccoon or opossum with hounds or engaged in trapping for furbearing animals may possess and use a .22 caliber rifle and raccoon, or opossum or legally trapped furbearing animals other than muskrat.

(b) (No change.)

(c) No person shall use in hunting fowl or animals of any kind, any shotgun capable of holding more than three shells at one time or that may be fired more than three times without reloading. No person shall use in hunting or trapping of any kind, a rifle loaded with more than three cartridges. No person shall have in his or her possession while deer hunting on Monmouth Battlefield State Park any shell or cartridge with missiles of any kind other than shotgun slugs or No. 4 buckshot or No. 000 buckshot.

(d) (No change.)

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east

bank of the Delaware River to the New York State line; then east along the New York State line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their current firearm hunting license may hunt for squirrels between October 8-November 11, 1994 and January 23-February 20, 1995 using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December 5-10, 1994 inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead, lead alloy or copper slug only or a shotgun not smaller than 20 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead, lead alloy or copper slug or the 12, 10, 16 or 20 gauge buckshot shell. Shotgun shells containing a single spherical projectile may not be possessed or used in deer hunting. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license or a person legally engaged in hunting woodcock from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than T (.200 inch) steel shot or other forms and sizes of non-toxic authorized by Federal regulations during the shotgun deer seasons). A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his or her trap line.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the 1994 six day firearm deer season and the permit muzzleloader rifle deer season.

2.-5. (No change.)

(g)-(n) (No change.)

(o) No person shall hunt with the aid of a deer decoy, except during the fall bow, special permit bow and winter bow seasons in deer management Zones 9, 13, 21, 23, 24, 36, 37, 39, 40, 42, 49 and 52. Any person while carrying or moving deer decoys in the woods and fields for the purpose of hunting and property licensed shall wear a cap of fluorescent hunters orange or some other garment containing at least 200 square inches of fluorescent orange material which shall be visible from all sides. No person shall hunt for deer with the aid of an electronic calling device or any device which projects a beam of light upon the target.

(p) (No change.)

(q) No person shall carry or possess a shotgun and any shotgun slug in the woods and fields or on the water while hunting unless he or she has in possession a shotgun which has adjustable open iron or peep sights or a scope affixed. No person shall use any shotgun containing shotgun slugs for the purpose of hunting unless it has adjustable open iron or peep sights or a scope affixed.

(r) Persons required by law to wear corrective lenses to operate a motor vehicle shall wear corrective lenses when hunting with a bow or a firearm of any kind.

(s) (No change in text.)

7:25-5.24 Bow and arrow, general provisions

(a) (No change.)

(b) No person shall use a bow and arrow for hunting, during the firearm deer permit seasons in those deer management zones on the prescribed dates the season is open, on any additional Permit Deer Season Day(s) if declared open, or during the Six-Day Firearm Deer Season, except when the bow deer season runs concurrent with the firearm deer seasons. Bow and arrow hunting is not permitted between ½ hour after sunset and ½ hour before sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

(c) During the season for taking deer, or turkey with bow and arrow (as listed elsewhere in this subchapter), all arrows used for taking deer or turkey must be fitted with an edged head of the following specifications:

1. (No change.)

2. Minimum length—None.

3.-5. (No change.)

(d) No person shall hunt deer with the aid of a deer decoy except during the fall bow, winter bow *[nd]* *and* special permit bow seasons in deer management Zones 9, 13, 21, 23, 24, 36, 37, 39, 40, 42, 49 and 52. No person shall hunt for deer with *[the aid of a deer decoy,]* an electronic calling device or any device which projects a beam of light upon the target.

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

7:25-5.25 White-tailed deer (*Odocoileus virginianus*) fall bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from October 1—November 11, 1994, inclusive; except in Zones 1, 4, 18, 21 and 24 only deer with antlers at least three inches long may be taken from October 1-21, 1994. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

(b) Bag Limit: Two deer of either sex, except as noted in (a) above and (b)1 below. Only one deer may be taken in a given day. Deer shall be tagged immediately with completely filled in "transportation tag" and shall be transported to a deer checking station before 8:00 P.M. E.S.T. on the day killed. Upon completion of registration of first deer, one valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued which will allow this person to continue hunting and take one additional deer of either sex during the current fall bow deer season. The second tag shall not be valid on the day of issuance and all registration requirements apply.

1. In deer management Zones 2, 5-15, 17, 19, 20, 22, 25, 27-29, 33, 35, 36, 39-42, 47-51 and 63, one additional deer may be taken by any properly licensed hunter who harvests an antlerless deer first in these zones, exclusively. A "New Jersey Bonus Deer Permit and Transportation Tag" will only be issued for the purpose of this provision at deer check stations located in or within 15 miles of these zones. The New Jersey Bonus Deer Permit and Transportation Tag will be issued in addition to the New Jersey Second Deer Permit and Transportation Tag. The transportation portion of this tag is completed and affixed to the deer immediately upon killing by the hunter. All other deer registration requirements apply. A deer of either sex and any age may be taken with a bonus deer permit in any zone where the fall bow season is open, except as noted in (a) above where only antlered deer may be taken. This bonus deer tag shall not be valid on the day of issuance and is not transferable. Persons possessing both a bonus tag and second tag may not take more than one deer per day.

2. (No change.)

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

7:25-5.26 White-tailed deer winter bow season (either-sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from January 2-31, 1995 inclusive, except closed

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in zones open for shotgun permit season when authorized. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

7:25-5.27 White-tailed deer six-day firearm season

(a) Duration for this season will be December 5-10, 1994 inclusive with shotgun or muzzleloader rifle, exclusively.

(b) Bag Limit: Two deer, with antler at least three inches long; except in those zones designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either sex and (b)1 below. Only one deer may be taken in a given day per person on a regular firearm hunting license. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" zones, exclusively, during the current, six-day firearm season. The second tag shall *not* be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded, this deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."

1. Hunters that take an antlerless deer on their first tag in the designated hunter's choice deer management zones listed in (d) below will be eligible for a bonus deer tag. The bonus tags shall be valid on the date of issuance and will be good for a deer of either sex and any age in Zones 13 and 36 or an antlered deer in other zones open for six day firearm season. The New Jersey bonus deer tag will be issued in addition to the New Jersey second deer tag at designated check stations located in or within 15 miles of the hunter's choice zones.

(c) This season shall be open only to holders of a valid and current firearm hunting license which contains an attached six-day firearm season transportation tag or a proper and valid second tag or a proper and valid bonus tag. If the anticipated harvest of deer has not been accomplished during this season, additional days of deer hunting may be authorized by the Director, with the approval of the Council. Such authorization and dates thereof shall be announced by press and radio.

(d) Hunter's Choice zones include: Deer management Zones 13 and 36, as described in N.J.A.C. 7:25-5.29(p).

(e) Hunting Hours: December 5-10, 1994, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T. with shotgun or muzzleloader rifle.

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

7:25-5.28 White-tailed deer muzzleloader rifle permit season

(either sex)

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

(c) Bag Limit: Two deer of either sex and any age per permit, except in Zones 37 and 52 where the limit shall be one deer with antlers at least three inches long during the first season segment and one deer of either sex and any age during the second season segment. Only one deer may be taken in a given day per permit. Deer shall be tagged immediately with the muzzleloader rifle permit season permit "transportation tag" completely filled in, and shall be transported to a checking station before 7:00 P.M. E.S.T. on the

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day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow the person to continue hunting and take one additional deer of either sex during the current muzzleloader rifle permit season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Said deer shall be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded, said deer shall be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". It is unlawful to attempt to take or continue to hunt for more than the number of deer permitted.

(d) Duration of the muzzleloader rifle permit season is December 12, 13, 17, 19-31, 1994 in Zones 1-36, 41-51, 55, 57, 58, 61, 63 and 65; November 12-19, 1994 (first segment) and December 12-16, 19-31, 1994 (second segment) in Zones 37*[,] *and* 52 *[and 54]*; *December 12-16, 19-31, 1994 in Zone 54;* December 12-31, 1994 in Zone 39; November 26-December 3, 1994 (first segment) and December 12-31, 1994 (second segment) in Zone 53; or any other time as determined by the Director. There is no season in the following Zones 38, 40, 56, 59, 60, 62, and 64. Legal hunting hours shall be sunrise to ½ hour after sunset E.S.T.

(e)-(g) (No change.)

(h) Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses may apply by detaching from their hunting license the stub marked "Special Deer Season 1994" signing as provided on the back, and sending the stub, together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

v. Other Division field offices.

2.-3. (No change.)

4. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 15—September 10, 1994 inclusive. Applications postmarked after the September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5.-7. (No change.)

(i) Farmer Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. Properly completed application forms will be accepted in the Trenton office during the period of August 1 to 15. There is no fee required, and all qualified applicants will receive a farmer muzzleloader rifle permit season permit, delivered by mail.

4.-5. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1994 Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

1994 MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1994	Permit Quota 1994	Portions of Counties Involved
1	1	208	510	Sussex
2	1	163	630	Sussex
3	1	138	870	Sussex, Passaic, Bergen
4	1	244	630	Sussex, Warren
5	1	394	1,650	Sussex, Warren
6	1	159	800	Sussex, Morris, Passaic, Essex
7	1	212	775	Warren, Hunterdon
8	1	303	1,620	Warren, Hunterdon, Morris, Somerset
9	1	48	280	Morris, Somerset
10	1	302	1,050	Warren, Hunterdon
11	1	118	500	Hunterdon
12	1	236	1,125	Mercer, Hunterdon, Somerset
13	1	47	275	Morris, Somerset
14	1	107	500	Mercer, Somerset, Middlesex, Burlington
15	1	173	500	Mercer, Monmouth, Middlesex
16	1	150	568	Ocean, Monmouth
17	1	81	290	Ocean, Monmouth, Burlington
18	1	59	280	Ocean
19	1	86	440	Camden, Burlington
20	1	75	400	Burlington
21	1	115	600	Burlington, Ocean
22	1	45	215	Burlington, Ocean
23	1	218	1,000	Burlington, Camden, Atlantic
24	1	118	465	Burlington, Ocean
25	1	186	700	Gloucester, Camden, Atlantic, Salem
26	1	258	950	Atlantic
27	1	134	625	Salem, Cumberland
28	1	133	500	Salem, Cumberland, Gloucester
29	1	139	490	Salem, Cumberland
30	1	58	155	Cumberland
31	1	14	65	Cumberland
32	1	15	46	Cumberland
33	1	44	130	Cape May, Atlantic
34	1	163	620	Cape May, Cumberland
35	1	190	765	Gloucester, Salem
36	1	6	60	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	2	96	335	Burlington (Fort Dix Military Reservation)
38		0	0	Morris (Great Swamp National Wildlife Refuge)
39	3	13	25	Monmouth (Earle Naval Weapons Station)
40		0	0	Monmouth (Earle Naval Weapons Station— Waterfront)
41	1	84	400	Mercer, Hunterdon
42	1	18	80	Atlantic
43	1	60	200	Cumberland
44	1	30	65	Cumberland
45	1	79	255	Cumberland, Atlantic, Cape May
46	1	91	325	Atlantic
47	1	33	175	Atlantic, Cumberland, Gloucester
48	1	47	250	Burlington
49	1	4	20	Burlington, Camden, Gloucester
50	1	33	220	Middlesex, Monmouth
51	1	47	225	Monmouth, Ocean
52	2	25	110	Ocean (Fort Dix Military Reservation)
53	4	11	45	Ocean (Lakehurst Naval Engineering Center)
54	5	1	6	Morris (Picatinny Arsenal-ARRAD Com)
55	1	16	75	Gloucester
56		0	0	Atlantic (Forsythe National Wildlife Refuge)
57	1	4	40	Atlantic (Forsythe National Wildlife Refuge)
58	1	5	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59		0	0	Salem (Supawna National Wildlife Refuge)
60		0	0	Hunterdon (Round Valley Recreation Area)
61	1	18	75	Atlantic (Atlantic County Parks)

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62		0
63	1	41
64		0
65	1	32
Total		<u>5,927</u>

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0	Monmouth (Fort Monmouth)
200	Salem
0	Monmouth (Monmouth Battleground State Park)
125	Gloucester
<u>24,380</u>	

(l) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be December 12, 13, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 1994.

2. Indicates the season dates will be November 12-19, 1994 (first segment); and, December 12-16, 19-31, 1994 (second segment).

3. Indicates the season dates will be December 12-31, 1994.

4. Indicates the season dates will be November 26—December 3, 1994 (first segment) and December 12-31, 1994 (second segment).

5. Indicates the season dates will be December 12-16, 19-31, 1994.

(m) Permit quotas in zones 37, 39, 52-54, 57, 58, 61 and 62 are contingent upon approval by appropriate land management agencies for those zones.

(n) Muzzleloader rifle permit season permits not applied for by September 10 will be reallocated to shotgun and bow permit season applicants.

7:25-5.29 White-tailed deer shotgun permit season (either sex)

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

(c) The season bag limit per permit shall be one deer of either sex and any age with a shotgun permit season permit in Zones 1, 3, 4, 18, 21, 23, 30, 31, 37, 43, 52, 53, 55 and 65; two deer of either sex and any age with a shotgun permit season permit in Zones 2, 6, 15-17, 19, 20, 22, 25, 26, 28, 29, 33, 34, 44, 46, 48, 51, 54, and 64; three deer of either-sex and any age with a shotgun permit season permit in Zones 5, 7-14, 27, 35, 36, 39, 41, 42, 47, 49, 50, 59, 60, 61, and 63; six deer of either sex and any age in Zones 56, 57 and 58; and *[10]* *eight* deer of either sex and any age in Zone 38. Only one deer may be taken in a given day per permit except in Zones 38*, 56* and 64 where the limit is two deer in a given day per permit.

(d) Duration of the permit shotgun deer season is from sunrise to ½ hour after sunset E.S.T. on the following dates:

1. December 14, 1994, in Zones 1, 3, 4, 18, 21, 23, 30, 31, 43, 55 and 65.

2. December 14, 15 and 16, 1994 and January 20, 21, 27 and 28, 1995 *[n]* *in* Zones 2, 5, 6, 7, 8, 10, 11, 12, 15, 17, *22,* 25, *[27,]* 28, 29, 35, 42, 48 and 61.

3. December 14, 15 and 16, 1994 in Zones 16, 19, 20, 22, 33, 34, 44, 46, 51, 56 and 60.

4. December 14, 15 and 16, 1994 and January 20-28, 1995 in zones: 9, 13, 14, 27, 36, 41, 47, 49, 50 and 63.

5. December 17, 1994 in Zones 37 and 52.

6. November 28, 29, 30 and December 1, 2, 1994 in Zone 38.

7. December 17, 1994 and January 14 and 28, 1995 in Zone 39.

8. January 7, 1995 in Zone 53.

9. December 17, 1994 and January 21, 1995 in Zone 54.

10. December 5, 6, 7, 14, 15, and 16, 1994 in Zones 57 and 58.

11. December 5, 6 and 7, 1994 (first segment), December 14, 15, and 16, 1994 (second segment), January 19, 20, 21, 1995 (third segment) and January 26, 27, 28, 1995 (fourth segment) in Zone 59.

12. January 20, 1995 (first segment), January 21, 1995 (second segment), January 27, 1995 (third segment) and January 28, 1995 (fourth segment) in Zone 64.

13. (No change.)

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

(g) Permits for shotgun permit season consist of back display which includes a "deer transportation tag" or proper and valid second tag. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license in the case of a shotgun permit season permit, and without the license in the case of the farmer shotgun permit season permit. The "deer transportation tag" portion of the permit must be completely filled out, and affixed to the deer immediately upon killing. This completely filled in "deer transportation tag" allows

legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either sex during this season must transport this deer to an authorized checking station by 7:00 P.M. E.S.T. on date killed to secure the legal "possession tag." The possession of a deer of either sex after 7:00 P.M. E.S.T. on the date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has been concluded said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession." For deer management zones where the shotgun permit season is more than one day and the bag limit is two deer, a second valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued upon registration of the first deer. This permit will allow this person to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open the following day(s) or on any additional days that shotgun permit season hunting is authorized. For deer management zones where the shotgun permit season is three days or more and the bag limit is three deer, a third "New Jersey Permit and Transportation Tag" will be issued upon registration of the second deer. This permit will allow this hunter to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open or on any additional days that shotgun permit season hunting is authorized. For Deer Management Zone 38 (Great Swamp National Wildlife Refuge) where the shotgun permit season is five days and the bag limit is 10 deer, an additional valid and proper "New Jersey Permit and Transportation Tag" will be issued which will allow the permittee to take two deer per day per permit. Permittees will be able to continue hunting on the following designated season dates after registration of deer and issuance of appropriate tags. For deer management Zones 57 and 58 (Forsythe National Wildlife Refuge) where the season is six days and the bag limit is one deer per day per permit, additional valid and proper "New Jersey Permit and Transportation Tags" will be issued at designated check stations upon registration of deer, which will allow the permittee to take up to a maximum of six deer. Permittees will be able to continue hunting on the following designated season dates after registration of deer and issuance of appropriate tags. For deer management Zone 64 (Monmouth Battlefield State Park) where the season is one day per segment and the bag limit is two deer per permit (and day), an additional valid and proper "New Jersey Permit and Transportation Tag" will be issued to the permittee, directly from the Division.

(h) Shotgun Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked "Special Deer Season 1994," signing as provided on the back, and sending the stub, together with the permit applied for and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-6. (No change.)

(i) Farmer Shotgun Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. Properly completed application forms will be accepted in the Tren-

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ton office during the period of August 1 to 15. There is no fee required, and all qualified applicants will receive a farmer shotgun permit season permit, delivered by mail.

- 4. (No change.)
- (j) (No change.)

(k) The Deer Management Zone Map on file at the Office of Administrative Law and is available from that agency or the Division. The 1994 Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

1994 SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1994	Permit Quota 1994	Portions of Counties Involved
1	1	103	616	Sussex
2	2	615	1,829	Sussex
3	1	67	604	Sussex, Passaic, Bergen
4	1	100	627	Sussex, Warren
5	2	2,522	4,319	Sussex, Warren
6	2	397	934	Sussex, Morris, Passaic, Essex
7	2	1,085	1,842	Warren, Hunterdon
8	2	2,569	4,164	Warren, Hunterdon, Morris, Somerset
9	4	327	960	Morris, Somerset
10	2	1,203	2,363	Warren, Hunterdon
11	2	705	1,212	Hunterdon
12	2	1,277	2,580	Mercer, Hunterdon, Somerset
13	4	385	960	Morris, Somerset
14	4	984	1,392	Mercer, Somerset, Middlesex, Burlington
15	2	513	1,090	Mercer, Monmouth, Middlesex
16	3	95	500	Ocean, Monmouth
17	2	371	712	Ocean, Monmouth, Burlington
18	1	5	120	Ocean
19	3	200	649	Camden, Burlington
20	3	69	225	Burlington
21	1	24	238	Burlington, Ocean
22	*[4]**2*	74	225	Burlington, Ocean
23	1	35	349	Burlington, Camden, Atlantic
24	19	0	0	Burlington, Ocean
25	2	344	974	Gloucester, Camden, Atlantic, Salem
26	3	73	345	Atlantic
27	4	663	840	Salem, Cumberland
28	2	176	442	Salem, Cumberland, Gloucester
29	2	414	784	Salem, Cumberland
30	1	30	147	Cumberland
31	1	7	74	Cumberland
32		0	0	Cumberland
33	3	42	*[1,355]*	*135* Atlantic
34	3	89	371	Cape May, Cumberland
35	2	431	1,105	Gloucester, Salem
36	4	32	129	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	5	17	79	Burlington (Fort Dix Military Reservation)
38	6	241	500	Morris (Great Swamp National Wildlife Refuge)
39	7	81	97	Monmouth (Earle Naval Weapons Station)
40		0	0	Monmouth (Earle Naval Weapons Stations—Waterfront)
41	4	483	741	Mercer, Hunterdon
42	2	60	115	Atlantic
43	1	9	86	Cumberland
44	3	15	39	Cumberland
45		0	0	Cumberland, Atlantic, Cape May
46	3	41	177	Atlantic
47	4	82	239	Atlantic, Cumberland, Gloucester
48	2	276	682	Burlington
49	4	31	53	Burlington, Camden, Gloucester
50	4	281	540	Middlesex, Monmouth
51	*3*	83	315	Monmouth, Ocean
52	5	9	52	Ocean (Fort Dix Military Reservation)
53	9	14	47	Ocean (Lakehurst Naval Engineering Center)
54	8	47	34	Morris (Picatinny Arsenal—ARRAD Com)
55	1	2	25	Gloucester, Atlantic
56	3	14	20	(Forsythe National Wildlife Refuge)
57	10	20	40	Atlantic (Forsythe National Wildlife Refuge)

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58	10	16	50
59	11	99	100
60	3	7	120
61	2	21	85
62		0	0
63	4	346	458
64	12	88	135
65	1	11	50
Total		<u>18,438</u>	<u>38,734</u>

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Burlington, Ocean (Forsythe National Wildlife Refuge)
Salem (Supawna National Wildlife Refuge)
Hunterdon (Round Valley Recreation Area)
Atlantic (Atlantic County Parks)
Monmouth (Fort Monmouth)
Salem
Monmouth (Monmouth Battleground State Park)
Gloucester, Camden

(l) Shotgun permit season permits not applied for by September 10, 1994 may be reallocated to muzzleloader rifle, permit season applicants.

(m) The Season Dates Code referred to in the table in (k) above is as follows:

1. Indicates one day shotgun permit season—December 14, 1994.
2. Indicates seven-day shotgun permit season—December 14, 15 and 16, 1994 and January 20, 21, 27 and 28, 1995.
3. Indicates three-day shotgun permit season December 14, 15 and 16, 1994.
4. Indicates an 11-day shotgun permit season December 14, 15 and 16, 1994 and January 20-28, 1995.
5. Indicates a one-day shotgun permit season December 17, 1994.
6. Indicates a *[five-day]* ***four day*** shotgun permit season November 28, 29, 30 and December 1 and 2, 1994.
7. Indicates a three-day shotgun permit season December 17, 1994 and January 14 and 28, 1995.
8. Indicates a two-day shotgun permit season December 17, 1994 and January 21, 1995.
9. Indicates a one-day shotgun permit season January 7, 1995.
10. Indicates a six-day shotgun permit season December 5, 6, 7, 14, 15 and 16, 1994.
11. Indicates four, three-day shotgun permit season segments—December 5, 6 and 7, 1994 (first segment); December 14, 15 and 16, 1994 (second segment); January 19, 20 and 21, 1995 (third segment) and, January 26, 27 and 28, 1995 (fourth segment).
12. Indicates four one-day shotgun permit season segments—January 20, 1995 (first segment); January 21, 1995 (second segment); January 27, 1995 (third segment) and January 28, 1995 (fourth segment).

(n)-(o) (No change.)

(p) Deer Management zones are located as follows:

1. Zone No. 1: That portion of Sussex County lying within a continuous line beginning at the intersection of Rt. 521 (River Rd.) and Mashipacong Rd.; then west along the northern boundary of the Delaware Water Gap National Recreation Area to the east bank of the Delaware River; then north along the east bank of the Delaware River to the New York State line; then east along the New York State line to Rt. 519; then south along Rt. 519 to its intersection with Rt. 206 at Branchville; then northwest along Rt. 206 to the intersection with Rt. 560; then west along Rt. 560 to the intersection with Ridge Rd.; then north on Ridge Rd. to the intersection with Rt. 646; then east on Rt. 646 to the intersection with Rt. 645 in Hainesville; then north on Rt. 645 to the intersection with Rts. 206 and 521; then north on Rts. 206 and 521 to Montague; then north on Rt. 521 (River Rd.) to the intersection with Mashipacong Rd., the point of beginning. The island of Mashipacong lying in the Delaware River is included in this zone.

2.-3. (No change.)

4. Zone No. 4: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Rt. 521 (River Road) and ***New*** Mashipacong Road; then running ***south along Rt. 521 to the intersection with*** Rt. 206 in Montague; then south on Rt. 206 to the intersection with Rt. 645 ***(Layton-Hainesville Road)***; then south on Rt. 645 to the intersection with Rt. 646 in Hainesville ***(Jagger Road)***; then west on Rt. 646 ***(Jagger Road)*** to the intersection with Ridge Road; then south on Ridge Road to the intersection with Rt. ***560 (Dingman's Bridge Road)***; then southeast along Rt. 560 to the intersection with Rt. ***206***; then south on Rt. 206 to the intersection with the base of the Kittatinny

Ridge at Culvers Inlet; then southwest along the ***east*** base of the Kittatinny Ridge to the Delaware River at the Delaware Water Gap north and west of Quarry Road; then north along the east bank of the Delaware River to the northern park boundary of the Delaware Water Gap National Recreation Area; then east along the northern park boundary of the Delaware Water Gap National Recreation Area to Rt. 521 (River Road), the point of beginning. Namonock, Minisink, Depew, Tocks, Poxono and Labar Islands in the Delaware River are included in this zone.

5. (No change.)

6. Zone No. 6: That portion of Morris, Sussex, Passaic and Essex Counties lying within a continuous line beginning at the intersection of Rt. 80 and Rt. 517 at Allamuchy; then northeast along Rt. 517 to its intersection with Rt. 23 at Franklin; then southeast along Rt. 23 to its intersection with Rt. 80; then west along Rt. 80 to the point of beginning at Allamuchy. Picatinny Arsenal (Zone 54) is excluded from Zone 6.

7.-8. (No change.)

9. Zone No. 9: That portion of Morris County lying within a continuous line beginning at the intersection of Rt. 206 and Rt. 80 near Netcong; then east along Rt. 80 to its intersection with Rt. 46 at Denville; then east on Rt. 46 to its intersection with Rt. 511 near Boonton Reservoir; then south on Rt. 51 to its intersection with Rt. 202 at Morristown; then southwest along Rt. 202 to the point of beginning at Bedminster; then east on Rt. 46 to the intersection with Rt. 10 in Ledgewood; then east on Rt. 10 to the intersection with Morris Tpk.; then east and south on Morris Tpk. to Calais Rd.; then west on Calais Rd. to Combs Hollow Rd.; then south Combs Hollow Rd. to Calas Rd.; then south on Calais Rd. to Mountain Ave. in Mendham; then south and east on Mountain Ave. to Hilltop Rd. (Rt. 525); then south on Rt. 525 to the intersection with Rt. 78; then west on Rt. 78 to the intersection with Rt. 206 near Pluckemin; then north on Rt. 206 to the intersection with Rt. 80 in Netcong, the point of beginning.

10.-11. (No change.)

12. Zone No. 12: That portion of Somerset, Hunterdon and Mercer Counties lying within a continuous line beginning at the intersection of Rts. 31 and 22 at Clinton; then east on Rt. 22 to its intersection with Rt. 206 at Somerville; then south along Rt. 206 to its intersection with Rt. 546 at Lawrenceville; then west on Rt. 546 to its intersection with Rt. 31 at the Pennington traffic circle; then north along Rt. 31 to the point of beginning at Clinton. That portion of Round Valley Recreation Area designated as open to deer hunting (Zone 60) is excluded from Zone 12.

13. Zone No. 13: That portion of Morris, Somerset and Union Counties lying within a continuous line beginning at the intersection of Rts. 22 and 206 at Somerville; then north on Rt. 206 to the intersection with Rt. 78 near Pluckemin; then east on Rt. 78 to the intersection with Rt. 525; then north on Rt. 525 to Mountain Ave. in Mendham; then north and west on Mountain Ave. to Calais Rd.; then north on Calais Rd. to Combs Hollow Rd., then north on Combs Hollow Rd. to Calais Rd.; then east on Calais Rd. to Morris Tpk.; then north and west on Morris Tpk. to Rt. 10; then west on Rt. 10 to Rt. 46 in Ledgewood; then west on Rt. 46 to the intersection with Rt. 80 near Netcong; then east on Rt. 80 to the intersection with Rt. 511; then south on Rt. 511 to the intersection with Rt. 24 in Morristown; then southeast along Rt. 24 to its intersection with Rt. 82; then southwest along Rt. 82 to its intersection with Rt. 22; then southwest along Rt. 22 to the point of beginning at Somerville. The Great Swamp National Wildlife Refuge (Zone 38) is excluded from Zone 13.

14.-15. (No change.)

16. Zone No. 16: That portion of Monmouth and Ocean Counties lying within a continuous line beginning at the intersection of Rt. 537 and Rt. 571 near Holmeson; then southeast on Rt. 571 to the intersection with Rt. 547; then northeast on Rt. 547 through Farmingdale to the intersection with Tinton Falls Rd.; then north on Tinton Falls Rd. to the intersection with Rt. 33 and Rt. 34; then north on Rt. 34 to the intersection with the fenced boundary of the Earle Naval Weapons Depot property; then westward along the fenced border of the Earle Depot to the intersection with Rt. 33; then west along Rt. 33 to the intersection with Rt. 537 in Freehold; then southwest on Rt. 537 to the intersection with Rt. 571 near Holmeson, the point of beginning.

17. Zone No. 17: That portion of Mercer, Monmouth, Burlington and Ocean Counties lying within a continuous line beginning at the intersection of the New Jersey Turnpike and the Mercer County line near Yardville; then north along the Turnpike to the intersection with Interstate 195; then east along Interstate 195 to the intersection with Rt. 537 near Holmeson; then southwest along Rt. 537 to the intersection Hawkin Road (Prosperstown-Colliers Mills Road: Rt. 640); then southeast along Hawkin Road (Prosperstown-Colliers Mills Road: Rt. 640) to the intersection with Colliers Mills Road; then west along Collier Mills Road to the intersection with Woodruff Rd.; then southwest along Woodruff Rd. to the intersection with Rt. 539; then southeast along Rt. 539 to the border of Fort Dix Military Reservation; then westward along the Fort Dix Military Reservation boundary to Rt. 545 near Wrightstown; then northwest along Rt. 545 to the intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with the Mercer County line near Yardville, the point of beginning.

18. Zone No. 18: That portion of Ocean County lying within a continuous line beginning at the intersection of Rt. 530 and the Garden State Parkway at South Toms River; then west along Rt. 530 to the intersection with Rt. 70; then west along Rt. 70 to the border of Fort Dix Military Reservation; then northward along the Fort Dix Military Reservation boundary to the northernmost intersection of the Fort Dix Military Reservation border and Rt. 539; then northwest along Rt. 539 to the intersection with Woodruff Rd.; then northeast along Woodruff Rd. to the intersection with Colliers Mills Road; then east along Colliers Mills Road to the intersection with Hawkin Road (Prosperstown-Colliers Mills Road: Rt. 640); then northwest along Hawkin Road (Prosperstown-Colliers Mills Road: Rt. 640) to the intersection with Rt. 537 near Prosperstown; then northeast along Rt. 537 to the intersection with Rt. 571 near Holmeson; then southeast along Rt. 571 to the Garden State Parkway; then south along the Garden State Parkway to the point of beginning near South Toms River.

19.-25. (No change.)

26. Zone No. 26: That portion of Atlantic and Burlington Counties lying within a continuous line beginning at the intersection of Rts. 40 and 54 near Buena; then southeast on Rt. 40 (40-322) to its intersection with Rt. 575; then northeast on Rt. 575 to its intersection with Moss Mill Road (Alt. Rt. 561); then east on Alt. Rt. 561 to its intersection with Oyster Creek; then east along the south bank of Oyster Creek to Great Bay; then north along the west shore of Great Bay to its intersection with the Mullica River; then northwest along the south bank on the Mullica River to its intersection with Rt. 563 at Green Bank; then north on Rt. 563 to its intersection with Rt. 542, then west on Rt. 542; to its intersection with Nescochague Creek at Pleasant Mills; then south along the west bank of Nescochague Creek to Nescochague Lake; then southwest along the western bank of Nescochague Lake to its intersection with Hammonton Creek; then westward along Hammonton Creek to its intersection with Rt. 30 (White Horse Pike), near Hammonton; then south on Rt. 30 to its intersection with Rt. 559 (Weymouth Rd.); then south on Rt. 559 to its intersection with the Atlantic City Expressway; then northwest along the Atlantic City Expressway to its intersection with Eighth Street; then southwest along Eighth Street to its intersection with Rt. 322 (Black Horse Pike); then northwest along Rt. 30 to its intersection with Rt. 54; then southwest along Rt. 54 to its intersection with Rt. 40 at Buena, the point of

beginning. The Atlantic County Park System (Zone 61) and the Edwin B. Forsythe National Wildlife Refuge (Zone 57) are excluded from Zone 26.

33. Zone No. 33: That portion of Atlantic County lying within a continuous line beginning at the intersection of Rts. 40 and the Great Egg Harbor River at Mays Landing; then south along the east bank of the Great Egg Harbor River to Rt. 651 (Jeffers Landing Road); then northeast along Rt. 651 to its intersection with Rt. 559 (Mays Landing-Somers Point Road); then north along Rt. 559 to its intersection with Schoolhouse Road; then north on Schoolhouse Road to its intersection with Rt. 575 (English Creek Avenue); then northeast along Rt. 575 to its intersection with Rt. 40; then west on Rt. 40 to its intersection with the Great Egg Harbor River at Mays Landing, the point of beginning. The Atlantic County Park System (Zone 61) is excluded from Zone 33.

34. Zone No. 34: That portion of Cumberland and Cape May Counties lying within a continuous line beginning at the intersection of Rt. 47 and Rt. 548 in Port Elizabeth; then east on Rt. 548 to its intersection with Rt. 49; then northwest on Rt. 49 to its intersection with the Tuckahoe River at Head of the River; then eastward along the Tuckahoe River and Atlantic-Cape May County line to Great Egg Harbor Bay; then continuing eastward along the Atlantic-Cape May County line to the Atlantic Ocean at the Great Egg Harbor Inlet; then southeast along the Atlantic Ocean to Delaware Bay; then north and west along the east bank of Delaware Bay to the Maurice River; then north along the east bank of the Maurice River to Port Elizabeth and Rt. 548, the point of beginning.

35.-41. (No change.)

42. Zone No. 42: That portion of Atlantic County lying within a continuous line beginning at the intersection of Moss Mill Road (Alt. Rt. 561) and Rt. 575 in Galloway Township; then southwest along Rt. 575 to its intersection with Rt. 40; then southeast along Rt. 40 to its intersection with Rt. 575 (English Creek Avenue); then south along Rt. 575 to its intersection with Schoolhouse Road; then southeast along Schoolhouse Road to its intersection with Rt. 559 (Mays Landing-Somers Point Road); then continuing southeast along Rt. 559 to its intersection with Rt. 651 (Jeffers Landing Road); then south along Rt. 651 to its intersection with the Great Egg Harbor River and the Egg Harbor Township line; then south along the Egg Harbor Township line to the Atlantic-Cape May County line in Great Egg Harbor Bay; then eastward along the Atlantic-Cape May County line to its intersection with the Atlantic Ocean at the Great Egg Harbor Inlet; the northeast along the Atlantic Ocean to Great Bay; then west along the south shore of Great Bay to the confluence of Oyster Creek; then west along the south bank of Oyster Creek to Oyster Creek Road (Alt. Rt. 561); then west along Alt. Rt. 561 to its intersection with Rt. 575 in Galloway Township, the point of beginning. The Edwin B. Forsythe National Wildlife Refuge (Zones 56 and 57) is excluded from Zone 42.

43.-45. (No change.)

46. Zone No. 46: That portion of Atlantic County lying within a continuous line beginning at the intersection of Rt. 49 and the Tuckahoe River at Hunter's Mill; then southeast along Rt. 49 to its intersection with the Tuckahoe River at Head of River; then eastward along the Tuckahoe River (Atlantic-Cape May County line) to Great Egg Harbor Bay and the Egg Harbor Township line; then northwest along the Egg Harbor Township Line to the Great Egg Harbor River; then northwest and north along the west bank of the Great Egg Harbor River to its intersection with Rt. 40 at Mays Landing; then west on Rt. 40 to its intersection with Rt. 552; then west on Rt. 552 to its intersection with the Tuckahoe River at Milmay; then south along the east bank of the Tuckahoe River to its intersection with Rt. 49 at Hunter's Mill, the point of beginning. The Atlantic County Park System (Zone 61) is excluded from Zone 46.

47.-49. (No change.)

50. Zone No. 50: That portion of Monmouth and Middlesex Counties lying within a continuous line beginning at the intersection of the New Jersey Turnpike and Rt. 522 near Jamesburg, then southeast on Rt. 522 to the intersection with Rt. 537 at Freehold; then southwest on Rt. 537 to the intersection with business Rt. 33;

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then east on Rt. 33 to the intersection with the western edge of the fenced boundary of the Earle Naval Weapons Depot; then north and east along the fenced boundary of the Earle Naval Depot to the intersection of County Route 38 (Wayside Road) and Rt. 547 at the most eastern point of the fenced boundary of Naval Weapons Station—Earle; then north on Rt. 547 and to the intersection with the Garden State Parkway; then north on the Garden State Parkway to the intersection with Rt. 36 near Eatontown; then east on Rt. 36 to the Atlantic Ocean; then north along the Atlantic coastline to the Raritan Bay; then south and west along the shore of Raritan Bay to the Raritan River; then continuing west along the south bank of the Raritan River to the intersection with the New Jersey Turnpike; then southwest along the New Jersey Turnpike to the intersection with Rt. 522, the point of beginning. Monmouth Battlefield State Park, Zone 64, and Naval Weapons Station Earle, Zones 39 and 40, and Fort Monmouth, Zone 62, are excluded from this zone.

51. Zone No. 51: That portion of Monmouth and Ocean Counties lying in a continuous line beginning at the intersection of Rt. 547 and Rt. 571 near Lakehurst; then southeast along Rt. 571 to the intersection with the Garden State Parkway; then south on the Garden State Parkway to Rt. 37 near Toms River; then east Rt. 37 to the Atlantic Ocean; then north along the Atlantic coastline to the intersection with Rt. 36 in Long Branch; then west on Rt. 36 to the intersection with the Garden State Parkway near Eatontown; then south on the Parkway to the intersection with Rt. 547; then south on Rt. 547 to the intersection with county route 38 (Wayside Road) at the eastern fenced boundary of Naval Weapons Station—Earle; then south along the eastern fenced boundary of Naval Weapons Station—Earle to the intersection with Rt. 34; then south on Rt. 34 to the intersection with Tinton Falls Rd. and Rt. 33; then south on Tinton Falls Rd. to the intersection with Rt. 547 (Asbury Rd.); then south on Rt. 547 through Farmingdale to the intersection with Rt. 571, the point of beginning.

52.-65. (No change.)

7:25-5.30 White-tailed deer bow permit season (either sex)

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

(c) Bag Limit: Two deer of either-sex and any age per permit except as indicated in (c)1 below. Only one deer may be taken in a given day per permit. Deer shall be tagged immediately with the bow and arrow, permit "transportation tag" completely filled in, and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And

Transportation Tag" (Second Tag) will be issued which will allow the person to continue hunting and take one additional deer of either sex during bow permit season, provided the season is open on the following day. The second tag shall not be valid on the day of issuance and all registration requirements apply.

1. In deer management Zones 39, 40 and 59, one additional deer of either sex and any age may be taken by any properly licensed hunters who harvests an antlerless deer first in these zones, exclusively. A "New Jersey Bonus Deer Permit and Transportation Tag" will be issued in addition to the New Jersey Second Deer Permit and Transportation Tag at designated check stations. The bonus deer tag is not valid on the day of issuance and shall only be valid in the applicable permit bow season zone. Bonus tags are not transferable. Only one deer may be taken per day. All deer tagging and registration requirements apply.

(d) Duration of the bow permit season is from November 12—December 3, 1994 in Zones 1-23, 25-37, 41-55, 58, 59, 61, 63, 65; and November 12, 1994—December 31, 1994 in Zones 13, 36, 39, 40 or any other time as determined by the Director. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

(e)-(g) (No change.)

(h) Bow Permit Season Permits shall be applied for as follows:

1. Only holders of valid bow and arrow licenses including juvenile bow license holders may apply by detaching from their bow hunting license the stub marked special deer season 1994, signing as provided on the back, and sending the stub together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-8. (No change.)

(i) Farmer Bow Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. Properly completed application forms will be accepted in the Trenton office during the period of August 1 to 15. There is no fee required, and all qualified applications will receive a farmer permit bow season permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1994 Bow Permit Season Quotas (Either Sex) are as follows:

BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest		Permit Quota 1994	Portions of Counties Involved
		1994	1994		
1	1	101		725	Sussex
2	1	128		1,350	Sussex
3	1	64		1,200	Sussex, Passaic, Bergen
4		51		625	Sussex, Warren
5	1	207		2,550	Sussex, Warren
6	1	70		*1,200*	Sussex, Morris, Passaic, Essex
7	1	112		1,365	Warren, Hunterdon
8	1	272		2,860	Warren, Hunterdon, Morris, Somerset
9	1	66		800	Morris, Somerset
10	1	136		1,700	Warren, Hunterdon
11	1	102		*1,035*	Hunterdon
12	1	190		2,260	Mercer, Hunterdon, Somerset
13	2	78		950	Morris, Somerset
14	1	100		1,200	Mercer, Somerset, Middlesex, Burlington
15	1	105		1,100	Mercer, Monmouth, Middlesex
16	1	51		780	Ocean, Monmouth
17	1	39		460	Ocean, Monmouth, Burlington
18	1	36		400	Ocean
19	1	60		580	Camden, Burlington
20	1	34		*400*	Burlington

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21	1	38	500	Burlington, Ocean
22	1	27	255	Burlington, Ocean
23	1	78	850	Burlington, Camden, Atlantic
24		0	0	Burlington, Ocean
25	1	60	575	Gloucester, Camden, Atlantic, Salem
26	1	71	600	Atlantic
27	1	60	735	Salem, Cumberland
28	1	38	500	Salem, Cumberland, Gloucester
29	1	61	630	Salem, Cumberland
30	1	21	150	Cumberland
31	1	3	70	Cumberland
32	1	4	30	Cumberland
33	1	11	125	Atlantic
34	1	65	500	Cape May, Cumberland
35	1	108	1,000	Gloucester, Salem
36	2	25	230	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	1	4	120	Burlington (Fort Dix Military Reservation)
38		0	0	Morris (Great Swamp National Wildlife Refuge)
39	2	8	60	Monmouth (Earle Naval Weapons Station)
40	2	28	60	Monmouth (Earle Naval Weapons Station—Waterfront)
41	1	54	580	Mercer, Hunterdon
42	1	6	80	Atlantic
43	1	17	150	Cumberland
44	1	7	45	Cumberland
45	1	20	*[250]* *230*	Cumberland, Atlantic, Cape May
46	1	32	250	Atlantic
47	1	14	160	Atlantic, Cumberland, Gloucester
48	1	39	475	Burlington
49	1	4	50	Burlington, Camden, Gloucester
50	1	45	675	Middlesex, Monmouth
51	1	29	475	Monmouth, Ocean
52	1	3	35	Ocean (Fort Dix Military Reservation)
53	1	3	35	Ocean (Lakehurst Naval Engineering Center)
54	1	6	32	Morris (Picatinny Arsenal—ARRAD Com)
55	1	3	90	Gloucester
56		0	0	Atlantic (Forsythe National Wildlife Refuge)
57		0	0	Atlantic (Forsythe National Wildlife Refuge)
58	1	4	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59	1	15	35	Salem (Supawna National Wildlife Refuge)
60		0	0	Hunterdon (Round Valley Recreation Area)
61	1	7	75	Atlantic (Atlantic County Parks)
62		0	0	Monmouth (Fort Monmouth)
63	1	37	315	Salem
64		0	0	Monmouth (Monmouth Battleground State Park)
65	1	12	160	Gloucester, Camden
Total		<u>3,069</u>	<u>34,527</u>	

(l) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be November 12—December 3, 1994.

2. Indicates the season dates will be November 12, 1994 to December 31, 1994.

(m) Permit quotas for zones: 37, 39, 40, 52-54, 57, 58 and 61 are contingent upon approval by the appropriate land management agencies for these zones.

(n) (No change.)

7:25-5.31 White-tailed deer permit shotgun season permit (either sex), Great Swamp National Wildlife Refuge (Zone 38)

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

(c) Duration of the Great Swamp Permit Shotgun Season permit shall be from sunrise to ½ hour after sunset on the following dates: November *[28,]* 29, 30 and December 1, 2, 1994 or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d) Bag Limit: *[ten]* *eight* deer of either sex and any age, may be taken with a Great Swamp Permit Season Permit. Two deer may be taken in a given day.

(e) (No change.)

(f) Method: The taking of *[10]* *eight* deer of either sex and any age with a Great Swamp (Zone 38) permit shotgun season permit will be permitted in designated areas of the Great Swamp National Wildlife Refuge. Total of *[600]* *500* Great Swamp shotgun permit season permits will be issued. Daily hunter quotas, hunt procedures and hunting methods in this area shall be provided by the United States Fish and Wildlife Service.

(g)-(i) (No change.)

7:25-5.34 Controlled hunting—hunting restrictions on wildlife management areas

(a) No wildlife management areas have been selected for limited hunter density for the 1994-95 season. However, hunting with firearms shall be prohibited on November 11, 1994 on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

(a)

ENVIRONMENTAL REGULATION—HAZARDOUS WASTE REGULATION PROGRAM

Hazardous Waste Identification and Listing; Removal of K053-K059 and K074 from the List of Hazardous Waste from Specific Sources

Adopted Amendments: N.J.A.C. 7:26-8.2 and 8.14

Proposed: April 4, 1994 at 26 N.J.R. 1464(a).
 Adopted: July 6, 1994 by Robert C. Shinn, Jr., Commissioner,
 Department of Environmental Protection.
 Filed: July 11, 1994 as R.1994 d.411, **without change**.
 Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.
 DEPE Docket Number: 16-94-02/279.
 Effective Date: August 1, 1994.
 Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

On April 4, 1994 at 26 N.J.R. 1464(a) the Department of Environmental Protection (Department) proposed amendments to the hazardous waste regulations at N.J.A.C. 7:26-8.2 and 8.14 to delete from the listing of hazardous waste certain wastestreams generated during leather tanning and finishing and titanium dioxide production and to add an exemption from hazardous waste regulation for wastes which fail the toxicity characteristic for the presence of trivalent chromium, provided the waste contains exclusively or nearly exclusively trivalent chromium and its subsequent management is in a non-oxidizing environment. The Department received written comments from one commenter, John Wittenborn of Collier, Shannon, Rill and Scott, during the public comment period which closed May 9, 1994.

COMMENT: Collier, Shannon, Rill and Scott, on behalf of Elmo American Production Company (formerly American Leather Manufacturing Company), fully supports the proposed amendment and views it as a reasonable and positive step which will enable all leather tanning and finishing facilities to compete equitably, yet still ensure that the waste is managed in a manner protective of human health and the environment.

RESPONSE: The Department appreciates the commenter's support of the proposed amendment.

Full text of the adoption follows:

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-27. (No change.)

28. Wastes which fail the test for the toxicity characteristic because chromium is present or are listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15 due to the presence of chromium, which do not fail the test for the toxicity characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

- i. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
- ii. The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
- iii. The waste is typically and frequently managed in non-oxidizing environments.

29. Specific wastes which meet the standards of (a)28i, ii and iii above (so long as they do not fail the test for the toxicity characteristic, and do not fail the test for any other characteristic) are:

- i. Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.
- ii. Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.
- iii. Buffing dust generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/

wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

iv. Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

v. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

vi. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

vii. Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

viii. Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.

7:26-8.14 Hazardous waste from specific sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
...			
Inorganic Chemicals			

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(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Transportation Services

Adopted Amendments: N.J.A.C. 10:50-1.2, 1.3, 1.4, 1.6, 1.7 and 2.2

Proposed: April 4, 1994 at 26 N.J.R. 1425(a).
 Adopted: July 8, 1994 by William Waldman, Commissioner,
 Department of Human Services.
 Filed: July 8, 1994 as R.1994 d.402, **without change**.

Authority: N.J.S.A. 30:4D-6b(15); 30:4D-7, 7a, b and c; 30:4D-12; 42 CFR 431.53 and 440.170(a).

Effective Date: August 1, 1994.
 Operative Date: August 15, 1994.
 Expiration Date: February 27, 1996.

Summary of Public Comments and Agency Responses:

The Department received a significant number of comments pertaining to the proposed amendments, a public notice that appeared in New Jersey newspapers on March 11, 14 and 15, 1994, and a Request For Proposal (RFP) dated April 6, 1994, issued by the Division of Purchase and Property of the New Jersey Department of Treasury. The comments include form letters, petitions, and individual letters from Medicaid recipients; letters from livery service providers and their employees; and letters from other health care providers and concerned individuals.

Comments concerning the public notice and the RFP are included in this summary in order to fully present, and respond to, all issues of concern that relate directly and indirectly to the adopted amendments. Information concerning the public notice and the RFP was included in the summary of the proposed amendments at 26 N.J.R. 1425(a), April 4, 1994.

Comments are summarized in this adoption in the following order: form letters, petitions, comments pertaining to the public notice, comments pertaining to the RFP, and individual comments from Medicaid recipients, providers, and other (miscellaneous) individuals. Department responses follow individual comments in certain instances and a collective response is provided following issues and concerns that are similar in nature.

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The Department is not publicly identifying the names and addresses of commenters who identified themselves as Medicaid recipients in order to protect their privacy, in accordance with the rule governing confidentiality of records, N.J.A.C. 10:49-9.4.

COMMENT: The Department received 346 form letters dated April 19, 1994, delivered to the Department by a representative of the United Medical Transportation Association, Inc. (UMTA). The form letters pertain to the group ride reimbursement policy in the RFP that makes a distinction between ridership entities.

The form letters are individually signed by clients "... at a Methadone Maintenance Facility in (Essex or Hudson) County", indicating that Section 4.11.9 of the RFP discriminates against Medicaid recipients who are transported to methadone maintenance clinics. The form letters indicate: "It is potently prejudicial that we be treated differently from other Medicaid recipients who are similarly situated. Lower mode is a necessity to all Medicaid recipients."

RESPONSE: The Federal Department of Health and Human Services requires that the State of New Jersey provide "reasonable and necessary" transportation to Medicaid recipients. The Department feels that it is reasonable to expect fully ambulatory Medicaid recipients who require frequent, daily rides to/from a drug treatment center to meet a vehicle curbside, near their homes and travel on a group basis. The group ride reimbursement policy, as reflected in the RFP, is not discriminatory because transportation services are not being downgraded, limited, or denied. Groups of Medicaid recipients may thus be accommodated by drug treatment centers, which results in a controlled scheduling situation for recipients and transportation providers.

The Department is proceeding with the development of a State-contracted, administrative system in Essex and Hudson Counties, including a group ride reimbursement policy, which will continue to provide Medicaid recipients with necessary transportation services for the purpose of obtaining a Medicaid-covered service.

COMMENT: The Department received 98 form letters (undated) from Medicaid recipients in Passaic County. The commenters indicate that they are "... very pleased with the medical transportation providers ...". The commenters "... strongly recommend the continuation of the existence of the system and strongly reject any other type of service."

RESPONSE: The Department's decision to replace livery service as a fee-for-service system of transportation was based on a complete review of all areas of Medicaid-reimbursed transportation services. The Department will substitute, in place of livery service, an administrative system which includes both county welfare agency transportation in 19 counties and a State-contracted system reimbursed as an administrative cost in Essex and Hudson Counties.

COMMENT: The Department received 48 form letters dated April 25, 1994, prepared on letterhead of C.L. Treadwell Livery Service, East Orange, New Jersey. The 48 form letters are individually signed by Medicaid recipients "... transported to a medical facility ... for therapy and medication." The commenters indicate: "If not for lower mode transportation, I would not be able to get there."

The Department received seven form letters (undated), prepared on letterhead of Finest Medical Transportation, Jersey City, New Jersey. The seven form letters are individually signed by Medicaid recipients, indicating: "We need the transportation. We need our current providers to stay."

RESPONSE: The Department recognizes the continuing need for Medicaid-reimbursed transportation services to enable Medicaid recipients to obtain Medicaid-covered services. Accordingly, the Department intends to continue to provide Medicaid recipients with transportation services that are appropriate to their medical needs.

COMMENT: The Department received three petitions (similar) containing a total of 71 signatures, apparently from Medicaid recipients, and dates ranging from April 12, 1994 to May 2, 1994.

The petitions address the proposed cessation of Medicaid transportation livery service and express strong disagreement with the proposed replacement of livery service by an administrative system. The petitions indicate that the administrative system will not be workable for all persons in need of livery service and will be costly to operate; small businesses will close and recipients will not be able to obtain medical services.

RESPONSE: The replacement of livery service by an administrative system, which will include both county welfare agency transportation in 19 counties and a State-contracted system reimbursed as an administrative cost in Essex and Hudson Counties, will provide transportation

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services to Medicaid recipients when needed for the purpose of obtaining a Medicaid-covered service.

It is anticipated that the administrative system will result in a reduction in overall Department transportation costs while retaining access by Medicaid recipients to necessary transportation services for the purpose of obtaining Medicaid-covered services.

Some small businesses may close as a result of the elimination of livery service. However, currently enrolled livery service providers may continue to provide transportation to non-Medicaid recipients (private pay) and may be qualified to bid on the State-contracted system in Essex and Hudson Counties. Currently enrolled livery providers may also participate in the Medicaid program as providers of other modes of transportation service, such as ambulance and invalid coach service, if they meet the Department's provider enrollment criteria as indicated at N.J.A.C. 10:50-1.3.

Agency Note: The following comment pertains to the previously described public notice:

COMMENT: Letter (undated) from Elferry Pruitt, President, Pruitt/Henderson Transportation, Inc., Newark, New Jersey. The commenter indicates that members of United Medical Transportation Association (UMTA) have made significant progress in cleaning up and ridding the industry of the basic corruption that existed in the past. The commenter indicates that many young minority individuals are making sacrifices by working hard and honestly within the system. The commenter indicates that the proposal will cost the State a tremendous amount of money because welfare, unemployment and insurance will increase.

Agency Note: The following comments pertain to the previously described RFP:

COMMENT: Letter dated April 26, 1994, from Alice Williams, Office Manager for Smith and Williams Transportation Company, protesting the proposed bidding system. The commenter indicates that "... if there are only two or three companies chosen they will not be able to handle the clients that are now being transported, not to mention the influx of new clients that need our services." The commenter asks that the State "... please reconsider any changes in this provider system and think of the impact it will have on the poorest of our clients."

Letter dated April 25, 1994, from Sharon Roberson, a health care provider, indicating that it is unethical to take away the medical providers because it will lead to unemployment and will adversely affect families. The commenter indicates that no one provider will be able to handle the proposal (RFP). As a taxpayer, the commenter "... sees this as a plot to keep minorities from moving up in society, because over half of the medical transportation companies in Essex and Hudson County are owned and operated by minority."

Letter dated April 25, 1994, from Frederick C. Davis, who is "... appalled and disturbed by the recent news of delivery services in the community." The commenter expresses his opinion that it will be impossible for any one company to handle the needs of the thousands of Medicaid recipients who need medical transportation in the urban community.

Letter dated April 30, 1994, from Mohamed Elbasyouny, Orchid Limousine, Carteret, New Jersey. The commenter, a Medicaid-enrolled provider and owner of Orchid Limousine, indicates that there is not adequate information or enough time to research the information to make a bid that would be logical. The commenter is of the opinion that the State should reconsider closing the livery companies. Instead, the State should look for ways to improve the current system to alleviate the fraud and problems. The commenter indicates that the bidder who receives the contract will fail.

RESPONSE: The Department intends to select, as a result of the bid evaluation process, a contractor(s) who is/are capable of serving the Medicaid-related transportation needs (meeting the demand) of the Medicaid recipients in Essex and Hudson Counties.

The Department agrees that significant progress has been made in improving the integrity of the current livery service program. Program integrity issues will continue to be a high priority for the Agency under the State-contracted system reimbursed as an administrative cost in Essex and Hudson Counties. The State-contracted system will have an enhanced system of monitoring and quality control to ensure compliance with all Medicaid program requirements.

As indicated at the Bidder's Conference on April 22, 1994, minority business owners are encouraged to bid on the RFP.

COMMENT: Ten Medicaid recipients indicate that transportation services are needed so that medical services may continue to be obtained at doctors' offices, clinics, hospitals, etc.

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Eleven Medicaid recipients attest to the high quality and dependable service provided by Mavericks Transportation, Supreme Transportation, Yousif's Livery Service, Safe Medical Livery, Smith and Williams Transportation, and Slater's Transportation Service. The commenters express appreciation for the trustworthy, safe service provided by the companies, indicating that an injustice would result if the services are discontinued because the service is needed in order for Medicaid recipients to keep medical appointments.

Letter dated May 2, 1994, from an individual who was recently laid off by Slater's Transportation and is now a Medicaid recipient. The Medicaid recipient asks for sympathy for Medicaid recipients who are not in need of an ambulance or invalid coach but are unable to take public transportation, those who have no money and depend on livery service for timely and safe transportation, those who have chronic illnesses and require frequent, daily treatment, and those who are dependent on reliable livery services such as Slater's Transportation.

Letter dated May 2, 1994, from Rhonda W. Rapps, Psy.D., Warren, New Jersey. The commenter, a licensed psychologist in private practice in Somerset County, expresses concern that transportation service provided by the local department of social services is poor in quality and the number of drivers and vehicles is inadequate to handle all the Medicaid recipients who need medical services. The commenter reports that private transportation companies are providing reliable and efficient transportation for Medicaid recipients who do not have automobiles, are not licensed drivers, and/or do not have relatives or friends who can bring them to appointments.

Three "concerned drivers" (David Smith, of Smith & Williams Transportation; Marcus Solomon, of Mavericks Transportation; and one person who remained anonymous) indicate that Medicaid recipients need transportation services in order to obtain necessary medical care.

Letter (undated) from Dawn Woods, a resident of Hillside, New Jersey, expressing concern for the customers who rely on the transportation companies that will be forced to go out of business. "These customers have built a personal relationship with their regular drivers and are completely satisfied with the services."

Letter dated April 26, 1994, from Michael A. Ferruggia, Executive Director, Interfaith Hospitality Network for the Homeless of Essex County, Inc., Maplewood and Orange, New Jersey. The commenter expresses concern that the State must continue to fund medical transportation for the poor and needy in Essex County and elsewhere. The commenter attests to the exemplary service provided by Mr. Richard Lee, owner of Supreme Transportation, who provides daily transportation service (not Medicaid reimbursed) to homeless families to and from their shelter sites. The commenter is deeply concerned that the poor and elderly will be denied access to medical care, which will lead to additional costs.

Letter dated April 26, 1994, from Sherie Hinnant, an employee in the health care field, writing "... in protest to the transportation services that have been forced to stop service provisions to those indigent persons they serve due to inadequate payment procedures." The commenter reports that "... monumental problems ..." will result and the children of recipients, innocent victims, will suffer the most.

Letter dated April 25, 1994, from Minister Richard Brown, concerning the importance of having medical livery service for the purposes of transporting recipients to detox clinics, transporting recipients who are very ill and cannot ride on public transportation, setting an example for the young to not sell or use drugs.

Two anonymous "concerned citizens" express a need to keep livery transportation services because of the great many people who depend upon the service to obtain medical services.

RESPONSE: Concern that Medicaid recipients will be denied necessary transportation is not well-founded. Medicaid programs are required by Federal regulations to provide transportation to enable Medicaid recipients to obtain medical services.

The Department intends to continue to provide Medicaid recipients with necessary transportation services that are appropriate to their medical needs. Ambulatory Medicaid recipients who do not need assistance or supervision en route will continue to be provided with transportation services through the State-contracted system in Essex and Hudson Counties or the county welfare agencies. While exercising its regulatory discretion to shift from a medical service reimbursed on a fee-for-service basis to an administrative cost system, the Department recognizes its responsibility to ensure transportation for Medicaid recipients for the purpose of obtaining Medicaid-covered services. The new

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system will adequately ensure that in Essex and Hudson Counties, which currently account for approximately 90 percent of all livery claims, recipients will be able to obtain transportation when necessary.

In the remaining 19 counties, Medicaid recipients may make arrangements with their respective county welfare agency/board of social services to obtain services provided by taxi, train, bus, and other public conveyances, as indicated in N.J.A.C. 10:50-1.6(o), through the administrative transportation system currently in place.

COMMENT: Letter dated March 30, 1994, from Peterpaul & Corcoran, Attorneys at Law, Springfield, New Jersey. The commenter represents United Medical Transportation Association (UMTA) and its members, Smith & Williams Transportation, Bennett's Transportation, Inc., Sunmedico Transit Corp., 1st Rate Transportation Company, Mavericks Transportation, Inner-City Transit Corp., Yousif Transportation, Amaker & Porterfield Medical Transportation, Pruitt & Henderson Medical Transportation, Treadwell Livery Service, Inc., Safe Medical Livery, Babi Medical Transportation, Sara Medical Transportation, Inc., Sinnar Medical Livery, Mom Care Medical, Finest Medical Transportation, R&B Transportation, Smith Transportation, and Slater's Transportation.

The commenter, on behalf of the previously listed UMTA members, indicates opposition to the proposal to terminate the current fee-for-service livery system. Concern is expressed for livery providers, who represent minority owned small businesses, as well as Medicaid recipients in the community who need transportation services to obtain necessary medical treatment. The commenter indicates that the bidding system favors large corporations in areas of Essex and Hudson County which contain cities earmarked as enterprise zones. According to the commenter, this is contrary to the public policy of the State which seeks to encourage minority owned small businesses.

RESPONSE: The Department recognizes the continuing need for Medicaid-reimbursed transportation services to enable Medicaid recipients to obtain Medicaid-covered services. Accordingly, the Department intends to continue to provide Medicaid recipients with transportation services that are appropriate to their medical needs.

The Department disagrees with the commenter's allegation that the bidding system favors large corporations in areas of Essex and Hudson County which contain cities earmarked as enterprise zones. As indicated previously, minority business owners were encouraged to bid on the RFP during the Bidder's Conference on April 22, 1994. The RFP contains provisions for small companies to join together and submit a bid in a contractor/subcontractor relationship.

COMMENT: The commenter, Peterpaul & Corcoran, indicates that a State-level hearing is required pursuant to statutory authority because the proposed change would impact the ability of the companies to service recipients, resulting in the termination, reduction or suspension of benefits. The commenter indicates that the Department should have submitted a draft text of the proposed change, pursuant to N.J.A.C. 1:30-3.2(b)2 (which provides for a "pre-proposal").

RESPONSE: Providers are not entitled to a hearing concerning the public notice on the proposed rules and there is no legal requirement that the Department use the Office of Administrative Law's pre-proposal process (see N.J.A.C. 1:30-3.2(b)3). As indicated in N.J.A.C. 10:49-9.10 and 10:49-10, Fair Hearings, a Medicaid recipient may be granted a hearing if an agency action results in non-eligibility, denial, termination, reduction or suspension of a claim for medical assistance. The Department, however, intends to continue to provide Medicaid recipients with transportation services that are appropriate to their medical needs.

COMMENT: The commenter, Peterpaul & Corcoran, asks consideration for the continuation of the current fee-for-service system, permitting companies who are in compliance with existing rules and regulations to continue, with the help of the UMTA.

RESPONSE: The Department has considered this option and is proceeding with an administrative system which includes both county welfare agency transportation in 19 counties and a State-contracted system reimbursed as an administrative cost in Essex and Hudson Counties, as a replacement for livery service.

Under a fee-for-service system, a Medicaid program is required to enroll all providers who meet the requirements for Program participation. The cost of ensuring the integrity of the current livery service program was a critical factor in the Agency's decision to eliminate the current fee-for-service system.

COMMENT: Letter (undated) from Mavericks Transportation, Orange, New Jersey, expressing concern for "... the overwhelming amount of people who are ill and need transportation who at times cannot make

it out of their (sic) home without being assisted." As an employer, the commenter is also concerned about his employees and their families who depend on their jobs, indicating: "It would be a great injustice to see them out of a job when they have their all to keep the business going; even when we were not being paid by the State for weeks they all united together still transporting."

Letter (undated) from Yousif Hashim, owner/operator of Yousif's Medical Livery, who feels that "... cessation of the livery providers will hurt and kill what we have all strived for in having our own business ... as well as the citizens of the great State of New Jersey who use this transportation."

Letter (undated) from a representative of Supreme Transportation, Newark, New Jersey. The commenter expresses concern for the passengers which are transported by his company, "... the overwhelming amount of people who are ill and need transportation who at times cannot make it out of their homes without being assisted." The commenter also expresses concern, as an employer, for his employees and their families who are dependent upon their jobs. The commenter opposes the bidding system which will require clients who are transported to methadone clinics to meet in groups of six at specific points of origin.

Two letters dated May 1, 1994, from FF&CA Enterprises, Inc., express strong disagreement with the proposed replacement of livery service by an administrative system. The commenters, Frances Fleeton and Carolyn Anderson, indicate that the administrative system will not be workable for all persons in need of livery service and will be costly to operate. The commenters indicate that "about 40" small business providers will close and recipients will not be able to obtain medical services. The commenters indicate that their life savings and pension have been used to start a livery service company.

Letter (undated) from Marcellene Crowley, Administrator, Slater's Transportation Services, Jersey City, New Jersey. The commenter voices opposition to the bidding system, indicating that she is a female, minority, small business owner in Hudson County, who employs 20 persons. The commenter points out that the 20 persons who will be displaced represent Jersey City residents who were previously unemployed, on welfare, veterans and parolees.

The commenter, Marcellene Crowley, submitted undated letters from Duane A. Spence and Jimmy J. Saltos, recently laid off by Slater's Transportation. Mr. Spence indicated that Slater's Transportation is an honest African-American company that gave him the chance to provide for his family in a legal manner. Mr. Saltos attests to the honesty of Slater's Transportation and blames the State for putting his personal and financial life in disarray.

Nine commenters express concern for the financial hardship that would occur and the impact on families if employees of livery companies lose their jobs. The nine commenters include Medicaid recipients, and previously named employees of livery companies and their spouses, and a minister.

Letter dated April 29, 1994, from Robert A. Braswell, Past President, Bronze Shields, Inc., Newark, New Jersey. The commenter, a Newark resident and community activist, asks for a fair and open hearing so that all views can be reviewed and a viable solution worked out. If a hearing is not granted, the proposed changes will cause a loss of jobs, economic loss to the area, client dissatisfaction, and loitering by clients in designated pick-up/drop-off points.

RESPONSE: As indicated in a previous response, providers are not entitled to a hearing concerning this rulemaking. The Department anticipates that the impact of the adopted amendments on Medicaid recipients

who need transportation services in order to obtain Medicaid-covered services will be minimal.

The Department does not agree that welfare, unemployment, and insurance will increase under the State-contracted system. Currently enrolled livery service providers may participate in the Medicaid program as providers of other modes of transportation service, such as ambulance and invalid coach service, if they meet the Department's provider enrollment criteria as indicated at N.J.A.C. 10:50-1.3.

Currently enrolled livery service providers may continue to provide transportation to non-Medicaid recipients (private pay) and may be qualified to bid on the State-contracted system in Essex and Hudson counties. As indicated in a previous response to a similar comment, the RFP contains provisions for small companies to join together and submit a bid in a contractor/subcontractor relationship.

Full text of the adoption follows:

10:50-1.2 Definitions

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

...

"Provider" means air ambulance (fixed wings) service, ground ambulance service, and invalid coach service.

...

10:50-1.3 General policies for participation

(a) The approval process for becoming a transportation service provider is as follows:

1.-3. (No change.)

Recodify 8.-9. as 4.-5. (No change in text.)

(b) (No change.)

10:50-1.4 Services covered by the New Jersey Medicaid Program

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

10:50-1.6 Reimbursement policy

(a) (No change.)

(b) Mileage for ground ambulance service and invalid coach service is measured by odometer from the point at which the recipient enters the vehicle to the point at which the recipient exits the vehicle.

(c) (No change.)

Re-number existing (e) through (p) as (d) through (o) (No change in text.)

10:50-1.7 Transportation certification

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

(c) The vehicle recognition number (ground ambulance and invalid coach) that corresponds to the vehicle used to provide the respective transportation service shall be entered on the "Transportation Claim" (Form MC-12) in Item 18 (REMARKS) when submitting hard copy claims to the Division's Fiscal Agent for ground ambulance and invalid coach service.

10:50-2.2 HCPCS procedure codes and maximum fee schedule

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

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

SITE REMEDIATION PROGRAM

Notice of Change of Address for Obtaining Guidance Document for the Remediation of Contaminated Soils

Take notice that effective July 1, 1994, the Guidance Document for the Remediation of Contaminated Soils may be obtained by writing or calling:

New Jersey Department of Environmental Protection
Maps and Publications Sales Office
Bureau of Revenue
CN 417
Trenton, NJ 08625
609-777-1038/609-777-1039

Due to the volume of requests received for the guidance document since the Department first announced its availability in June 1994 (see 26 N.J.R. 2479(b)), the Department finds it necessary to charge \$5.25 to defray the cost of reproduction and handling. A check payable to "Treasurer, State of New Jersey" should be submitted with the request for the guidance document to the above address.

Copies of the document may also be reviewed at the state library depositories and the DEP Information Resource Center (609-984-2249).

Written comments may be submitted until September 30, 1994 to:

Janine MacGregor
Department of Environmental Protection
Site Remediation Program
CN 413
Trenton, NJ 08625-0413

(b)

POLICY AND PLANNING

Notice of Public Workshops on Air Pollution Control

Take notice that the Department of Environmental Protection will hold a workshop on Tuesday, August 9, 1994 for the purpose of providing an opportunity for members of the public, including businesses, to obtain information about the Federal Maximum Achievable Control Technology (MACT) standards for Hazardous Air Pollutants (HAPS) pursuant to Section 112 of the Clean Air Act.

The public workshop will be held in the Department of Environmental Protection's Public Hearing Room, 401 E. State Street—1st floor, in Trenton, New Jersey. The general session will be held from 10:00 A.M. until 12:00 noon. Concurrent individual workshops are scheduled from 1:00 to 4:00 P.M. The morning session will provide an overview of the Federal program and explain the process by which the MACT standards were developed. It will also cover general scheduling and compliance issues as well as the interface between the Federal standards and New Jersey's program. The afternoon session will consist of concurrent workshops regarding the specific MACT standards for the following: chromium electroplating, degreasers, commercial sterilizers and magnetic tape manufacturing.

Workshop participation is open to all interested persons. Any person who plans to participate should register in advance by contacting Denise Fiorello, Bureau of Air Quality Evaluation at (609) 633-1110.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast 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 Northeast Water Quality Management (WQM) Plan.

This amendment proposal was submitted by Paul P. Darmofalski, P.E. on behalf of the property owners. The amendment would update the Pequannock, Lincoln Park and Fairfield Sewerage Authority (Authority) Wastewater Management Plan (WMP) to include Block 110, Lot 21 in Montville Township, Morris County, within the sewer service area of the Authority's sewage treatment plant (discharge to the Pompton River). This property will be subdivided into two lots for construction of two single family homes (with a total wastewater flow of 600 gallons per day). Each home will require individual pumping facilities to tie into the Authority's sewer system in Lincoln Park Borough. As part of this amendment, the Authority's WMP area will be expanded to include this additional service area.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Northeast WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Land and Water Planning, CN 423, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEPE address cited above with a copy sent to Mr. Paul P. Darmofalski, 86 Newark-Pompton Turnpike, Riverdale, New Jersey 07457. 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 persons 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 Dr. Van Abs 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.

(d)

OFFICE OF LAND AND WATER PLANNING Amendment to the Lower Delaware Water Quality Management Plan Public Notice

Take notice that on June 22, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Delaware Water Quality Management Plan was adopted by the Department.

Minor modifications to the amendment were made during the comment period to clarify the amendment proposal. These changes, being minor, do not effectively destroy the value of the public notice. In addition, all affected local governing bodies have consented to the changes.

This amendment was submitted by the Cumberland County Department of Planning and Development (CCDPD) as the wastewater management planning agency for Cumberland County. The amendment adopts the Cohansy River Basin Wastewater Management Plan (WMP) portion of the Cumberland County WMP. The WMP identifies a planning area entirely covering seven municipalities including Bridgeton City, Shiloh Borough, Greenwich, Fairfield, Hopewell, Stow Creek, and Upper

HUMAN SERVICES

Deerfield Townships, and two parcels in Deerfield Township being the Cumberland County Technical Education Center and the Cumberland County Solid Waste Facility Complex. Upon adoption of this Plan, planning responsibility would remain with the CCDPD.

The WMP identifies an expansion to the sewer service area of the Cohansey River Basin Wastewater Treatment Plant (WTP) into additional areas of Fairfield, Hopewell, and Upper Deerfield Townships and Shiloh Borough. In addition, this WTP will serve the Cumberland County Technical Education Center in Deerfield Township and the already permitted trucked connection of the Cumberland County Solid Waste Facility Complex. The Cumberland County Utilities Authority (CCUA) had previously studied the expansion of sewer service into Fairfield, Hopewell, and Upper Deerfield Townships and Shiloh Borough as part of their 201 Facilities Planning; however, sewer extension into Fairfield and Hopewell Townships and Shiloh Borough was never formally approved under the Facilities Plan. A revision to the Lower Delaware WQM Plan which identified all properties in Hopewell and Fairfield Townships presently receiving service from the CCUA was recently adopted by the NJDEPE. The proposed service area expansion to the Cohansey WTP will bring the projected wastewater planning flow need to 4.852 million gallons per day (MGD). This projected need is below the 7.0 MGD design capacity of this WTP.

The following new or expanded wastewater treatment plants have been identified: Seabrook Brothers & Sons in Upper Deerfield with a projected wastewater planning flow of 3.0 MGD and Optopics Laboratories in Fairfield Township with a wastewater planning flow of 0.01 MGD. Other existing wastewater discharges with no proposed changes to their volume of discharge have been identified as areas to be served by on-site subsurface sewage disposal systems with design capacities >2,000 gallons per day (gpd) and <20,000 gpd.

The following wastewater treatment facilities will be abandoned upon connection to the Cohansey WTP: Cumberland County Technical Education Center in Deerfield, the Hopewell Crest and Barrett Run Schools in Hopewell, the Shiloh School in Shiloh Borough, and the Gouldtown and Fairton Schools in Fairfield Township.

All other areas within the WMP planning area which have not been designated as sewer service area of a specific wastewater treatment facility have been identified as areas to be served by subsurface sewage disposal systems with wastewater planning flows less than 2,000 gpd (for example, individual septic systems fall into this category). These designations have been based on local municipal zoning or master plans.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under federal or State statutes or rules.

HUMAN SERVICES

(a)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Availability of Draft 1995-97 State Plan of the Developmental Disabilities Council

Take notice that the New Jersey Developmental Disabilities Council announces the availability of a draft of its 1995-97 State Plan for public

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comment on August 1, 1994. The State Plan is the document discussing and listing those activities to be carried out by the Council in the interest of developing and promoting a consumer- and family-centered, comprehensive service system for people with developmental disabilities and their families.

Comments will be taken until September 9, 1994. The document is available until September 2, 1994. To request a copy of the State Plan draft for comment, write on your organization's letterhead to:

Rachel A. Hickson, Planner
NJ Developmental Disabilities Council
CN 700, 32 West State Street
Trenton, NJ 08625

Or, fax your request on your organization's letterhead to (609) 292-7114. Please note that telephone requests cannot be accepted.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Notice of Contract Carrier Applicant

Take notice that C. Richard Kamin, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed for a Contract Carrier Permit:

CONTRACT CARRIER (NON-GRANDFATHER)
Donald L. McKeever, Inc.
80 Sterling Street
Franklin, NJ 07416

Protests in writing and verified under oath may be presented to the Director, Division of Motor Vehicles, 225 E. State St., CN 162, Trenton, NJ 08666, (August 21, 1994) following the publication of an application.

OTHER AGENCIES

(c)

CASINO CONTROL COMMISSION

Notice of Hourly Fee Rates

Take notice that, in accordance with N.J.A.C. 19:41-9.4(e), the Casino Control Commission has determined that the following hourly fee rates shall apply for the efforts of the Commission and the Division of Gaming Enforcement on matters directly related to each casino applicant or licensee and on matters directly related to the issuance or renewal of a casino hotel alcoholic beverage license (N.J.A.C. 19:41-9.7(b)), effective July 1, 1994: \$75.00 per hour for professional staff members of the Commission; \$39.00 per hour for inspection staff members of the Commission; and \$75.00 per hour for professional staff members of the Division.

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 June 6, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1994 d.1 means the first rule filed for 1994.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MAY 16, 1994

NEXT UPDATE: SUPPLEMENT JUNE 20, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
25 N.J.R. 3277 and 3582	August 2, 1993	26 N.J.R. 879 and 1178	February 22, 1994
25 N.J.R. 3583 and 3884	August 16, 1993	26 N.J.R. 1179 and 1272	March 7, 1994
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993	26 N.J.R. 1739 and 1904	May 2, 1994
25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
25 N.J.R. 4981 and 5382	November 15, 1993	26 N.J.R. 2167 and 2510	June 6, 1994
25 N.J.R. 5383 and 5728	December 6, 1993	26 N.J.R. 2511 and 2692	June 20, 1994
25 N.J.R. 5729 and 6084	December 20, 1993	26 N.J.R. 2693 and 2828	July 5, 1994
26 N.J.R. 1 and 280	January 3, 1994	26 N.J.R. 2829 and 3102	July 18, 1994
26 N.J.R. 281 and 520	January 18, 1994	26 N.J.R. 3103 and 3230	August 1, 1994
26 N.J.R. 521 and 878	February 7, 1994		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1-11.1	Subpoenas
1:10-1.1, 14.2, 14.3	Family Development hearings: reproposal
1:12	Department of Labor hearings
1:12A	Department of Labor hearings
1:13A-11.1	Subpoenas
1:14-10	BRC ratemaking hearings: discovery
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process
1:14-10	Board of Regulatory Commissioners ratemaking hearings: discovery

Most recent update to Title 1: TRANSMITTAL 1994-2 (supplement April 18, 1994)

AGRICULTURE—TITLE 2

2:3	Livestock and poultry importation
2:5	Quarantines and embargoes on animals
2:6	Animal health: biologics for diagnostic or therapeutic purposes
2:32-2.1, 2.7, 2.9, 2.27	Sire Stakes Program conditions
2:33	Agricultural fairs
2:69-1.11	Commercial values of primary plant nutrients
2:71-2.2, 2.4, 2.5, 2.6	Jersey Fresh Quality Grading Program: cut flowers, fresh market tomatoes
2:76	Agriculture Development Committee
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements

Most recent update to Title 2: TRANSMITTAL 1994-3 (supplement May 16, 1994)

BANKING—TITLE 3

3:1-2.17, 2.25, 2.26	Closing of branch offices
3:1-4.5	Governmental unit deposit protection: public funds exceeding 75 percent of capital funds
3:1-6.6	Department examination charges
3:1-12.2	Multiple party deposit accounts: administrative correction
3:4-3	Banking institutions: sale of alternative investments
3:6-15.2	Disqualification of savings bank directors
3:11	Investments
3:11-7.11	Disqualification of bank directors
3:13-5	Mutual holding companies
3:22	Insurance premium finance companies
3:32-3	Mutual holding companies
3:38-5.3	Mortgage referrals by real estate agents
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period

PROPOSAL NOTICE (N.J.R. CITATION)

DOCUMENT NUMBER

ADOPTION NOTICE (N.J.R. CITATION)

26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
26 N.J.R. 1744(b)		
26 N.J.R. 2174(a)	R.1994 d.406	26 N.J.R. 3154(a)
26 N.J.R. 2174(a)	R.1994 d.406	26 N.J.R. 3154(a)
26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
26 N.J.R. 3(a)		
26 N.J.R. 883(a)		
26 N.J.R. 2513(a)		

26 N.J.R. 1908(a)	R.1994 d.399	26 N.J.R. 3159(a)
26 N.J.R. 1908(b)		
25 N.J.R. 4985(a)		
26 N.J.R. 1181(a)	R.1994 d.271	26 N.J.R. 2256(a)
26 N.J.R. 285(a)		
26 N.J.R. 1560(a)	R.1994 d.312	26 N.J.R. 2568(a)
26 N.J.R. 2831(a)		
26 N.J.R. 1419(a)	R.1994 d.393	26 N.J.R. 3159(b)
25 N.J.R. 4697(a)		

26 N.J.R. 883(b)	R.1994 d.318	26 N.J.R. 2779(a)
26 N.J.R. 2832(a)		
26 N.J.R. 1560(b)		
25 N.J.R. 5733(a)		
25 N.J.R. 3586(b)	R.1994 d.397	26 N.J.R. 3163(a)
26 N.J.R. 1909(a)	R.1994 d.377	26 N.J.R. 2892(a)
25 N.J.R. 3586(b)	R.1994 d.397	26 N.J.R. 3163(a)
26 N.J.R. 1213(a)	R.1994 d.373	26 N.J.R. 2892(b)
26 N.J.R. 2697(a)		
26 N.J.R. 1213(a)	R.1994 d.373	26 N.J.R. 2892(b)
26 N.J.R. 6(a)		
26 N.J.R. 884(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		

Most recent update to Title 3: TRANSMITTAL 1994-3 (supplement May 16, 1994)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)

PERSONNEL—TITLE 4A

4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.6	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.9	Make-up examinations	26 N.J.R. 1183(a)	R.1994 d.285	26 N.J.R. 2256(a)
4A:4-2.15, 5.2	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-4.8	Non-selection of eligible in same rank	26 N.J.R. 2697(b)		
4A:6-1.1, 1.8, 1.10, 1.21A	Family and medical leave	26 N.J.R. 1183(b)		
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.3, 3.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:8-2.1	Layoff rights	26 N.J.R. 2182(a)		
4A:8-2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		

Most recent update to Title 4A: TRANSMITTAL 1994-3 (supplement May 16, 1994)

COMMUNITY AFFAIRS—TITLE 5

5:15	Emergency shelters for the homeless	26 N.J.R. 1421(a)	R.1994 d.324	26 N.J.R. 2779(b)
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:23-1.4	Uniform Construction Code: administrative change	_____	_____	26 N.J.R. 2779(c)
5:23-2.5	Uniform Construction Code: increase in dwelling size	26 N.J.R. 1910(a)		
5:23-2.23, 4.20	UCC: testing of backflow preventers	26 N.J.R. 1911(a)		
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)	R.1994 d.323	26 N.J.R. 2780(a)
5:23-5.19	UCC: elevator inspector HHS requirements	26 N.J.R. 1912(a)		
5:23-8.10	Asbestos Hazard Abatement Subcode: asbestos safety technician	26 N.J.R. 2183(a)		
5:23-10.1, 10.3, 10.4	Radon Hazard Subcode: schools and residential buildings in tier one areas	26 N.J.R. 2704(a)		
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
5:25A-1.3, 2.1, 2.5, 2.6	FRT plywood roof sheathing failures: alternative claim procedures	26 N.J.R. 2706(a)		
5:34-7.2, 7.5, 7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 2707(a)		
5:37	Municipal, county and authority employees deferred compensation plans	26 N.J.R. 2708(a)		
5:60	Displaced Homemaker Programs: eligibility for grants-in-aid	26 N.J.R. 1622(b)	R.1994 d.311	26 N.J.R. 2568(c)
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)	R.1994 d.398	26 N.J.R. 3163(b)
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)	R.1994 d.300	26 N.J.R. 2569(a)
5:80-9.14, 9.15	Housing and Mortgage Finance Agency: rent increases for projects without Federal rent subsidies and for low/market rate projects	26 N.J.R. 1188(a)	R.1994 d.301	26 N.J.R. 2570(a)
5:80-23.7, 23.9	Housing Incentive Note Purchase Program: fees; subordinate financing	26 N.J.R. 9(a)	R.1994 d.302	26 N.J.R. 2571(a)
5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)	R.1994 d.303	26 N.J.R. 2572(a)
5:91-1.3, 14	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:92-1.1, 1.3	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:93-3.6, 5.6	New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development	26 N.J.R. 2514(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:6	Veterans' programs and services: policies and procedures	26 N.J.R. 530(a)	R.1994 d.295	26 N.J.R. 2572(b)

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EDUCATION—TITLE 6

6:5-2, App. 6:21	Department of Education: organizational rule	Exempt	R.1994 d.333	26 N.J.R. 2784(a)
6:26	Pupil transportation	26 N.J.R. 1997(a)	R.1994 d.404	26 N.J.R. 3164(a)
	Intervention and referral services for general education pupils	26 N.J.R. 2004(a)	R.1994 d.403	26 N.J.R. 3170(a)
6:28-2.10, 3.6, 4.3	Special education	26 N.J.R. 1422(a)	R.1994 d.334	26 N.J.R. 2787(a)
6:30	Adult education programs	26 N.J.R. 884(b)	R.1994 d.286	26 N.J.R. 2257(a)
6:30-2.1	Adult basic skills programs: professional staff certification	26 N.J.R. 2184(a)		
6:39	District evaluation	26 N.J.R. 1423(a)	R.1994 d.335	26 N.J.R. 2788(a)
6:70	Library network services	26 N.J.R. 2184(b)		

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7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)	R.1994 d.337	26 N.J.R. 2789(a)
7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)	R.1994 d.379	26 N.J.R. 2920(a)
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)	R.1994 d.349	26 N.J.R. 2930(a)
7:1G-2.1, 3.1	Community Right to Know: EPA list of regulated substances for accidental release prevention; hazardous substance reporting threshold	26 N.J.R. 2833(a)		
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7	Coastal Permit Program	26 N.J.R. 917(a)	R.1994 d.276	26 N.J.R. 2413(a)
7:7	Coastal Permit Program	26 N.J.R. 918(a)	R.1994 d.378	26 N.J.R. 2934(a)
7:7	Coastal Permit Program: extension of comment period	26 N.J.R. 1561(a)		
7:7-8	Coastal Permit Program: enforcement	26 N.J.R. 1745(a)	R.1994 d.413	26 N.J.R. 3188(a)
7:7E	Coastal zone management	26 N.J.R. 943(a)	R.1994 d.380	26 N.J.R. 2990(a)
7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:7E-3.43	Coastal zone management: administrative correction regarding special urban areas	26 N.J.R. 1561(b)		
7:7E-8.12	Coastal zone management: notice of clarification	26 N.J.R. 1561(c)		
7:9-1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:9A	Individual subsurface sewage disposal systems	26 N.J.R. 2715(a)		
7:10	Safe Drinking Water Act rules	26 N.J.R. 2720(a)		
7:11-2.1-2.4, 2.9, 2.10, 2.13	Delaware and Raritan Canal—Spruce Run/Round Valley Reservoirs System: sale of water	25 N.J.R. 5742(a)	R.1994 d.306	26 N.J.R. 2595(a)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)	R.1994 d.307	26 N.J.R. 2598(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)	R.1994 d.338	26 N.J.R. 2791(a)
7:13-7.1	Flood plain redelineation of Pascack and Fieldstone brooks in Montvale	26 N.J.R. 2834(a)		
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)	R.1994 d.256	26 N.J.R. 2459(a)
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)	R.1994 d.277	26 N.J.R. 2461(a)
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: waiver of Executive Order No. 66(1978) expiration date	_____	_____	26 N.J.R. 2462(a)
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:23	Flood Control Bond Grants	26 N.J.R. 1334(a)	R.1994 d.308	26 N.J.R. 2599(a)
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-5	1994-95 Game Code	26 N.J.R. 1913(b)	R.1994 d.412	26 N.J.R. 3193(a)
7:25-6	1995-96 Fish Code	26 N.J.R. 2835(a)		
7:25-6.5	Fish Code: administrative correction regarding trout fishing areas	_____	_____	26 N.J.R. 3082(a)
7:25-18.1	Flounder management	26 N.J.R. 1885(a)	R.1994 d.339	26 N.J.R. 2792(a)
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	26 N.J.R. 1652(a)		

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7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-8.2, 8.14	Hazardous waste from specific sources: removal of K053 through K059 and K074 from list	26 N.J.R. 1464(a)	R.1994 d.411	26 N.J.R. 3211(a)
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16.1, 16.1A, 16.2-16.6, 16.8-16.11, 16.13, 16.16-16.22, 16.26, 16.27, 17.1, 17.3, 17.4, 23.1-23.7, 25.1, 25.7	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-15.1, 15.4	Enhanced Inspection and Maintenance (I/M) program	25 N.J.R. 5400(a)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-21.1-21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)		
7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.2, 3.10	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27B-3.1, 3.10	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27B-4.1, 4.5-4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)		
7:61-3.15, 3.16	Board of Commissioners of Pilotage: Drug Free Workplace Program	26 N.J.R. 2238(a)		
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HEALTH—TITLE 8				
8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 2025(a)	R.1994 d.350	26 N.J.R. 3171(a)
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill-patient summaries (inpatient)	26 N.J.R. 10(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:33L	Home Health Agency Policy Manual	26 N.J.R. 1065(a)	R.1994 d.279	26 N.J.R. 2266(a)

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8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)		
8:38-1-3	Health Maintenance Organizations	26 N.J.R. 1624(a)	R.1994 d.365	26 N.J.R. 2896(a)
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
8:42A	Licensure of alcoholism treatment facilities	26 N.J.R. 1625(a)	R.1944 d.366	26 N.J.R. 2896(b)
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)		
8:43H	Licensure of rehabilitation hospitals	26 N.J.R. 1628(a)	R.1994 d.367	26 N.J.R. 2896(c)
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reporting of blood lead levels	26 N.J.R. 294(b)	R.1994 d.275	26 N.J.R. 2270(a)
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:59	Worker and Community Right to Know Act rules	26 N.J.R. 2888(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:65-10.1, 10.2	Controlled dangerous substances	26 N.J.R. 1630(a)	R.1993 d.325	26 N.J.R. 2792(b)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a), 364(b))	25 N.J.R. 2802(b)	R.1994 d.245	26 N.J.R. 2094(c)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b))	25 N.J.R. 4844(a)	R.1994 d.246	26 N.J.R. 2095(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a))	26 N.J.R. 13(b)	R.1994 d.247	26 N.J.R. 2096(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b))	26 N.J.R. 1190(b)	R.1994 d.370	26 N.J.R. 2901(a)
8:71	Interchangeable drug products	26 N.J.R. 1821(a)	R.1994 d.368	26 N.J.R. 2897(a)
8:71	Interchangeable drug products	26 N.J.R. 1822(a)	R.1994 d.369	26 N.J.R. 2898(a)
8:71	Interchangeable drug products	26 N.J.R. 2723(a)		
8:91	Health Access New Jersey	26 N.J.R. 2007(a)		

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9:4-1.7	Curriculum coordinating committee	26 N.J.R. 1751(a)		
9:11-2, 3, 4	Graduate EOF financial eligibility; Martin Luther King Physician-Dentist Scholarship; C. Clyde Ferguson Law Scholarship	26 N.J.R. 1932(a)		
9:18	Implementation of Higher Education Facilities Trust Fund Act	26 N.J.R. 1486(a)	R.1994 d.304	26 N.J.R. 2579(a)

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10:17	Child placement rights	26 N.J.R. 1563(a)		
10:18	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)	R.1994 d.392	26 N.J.R. 2902(a)
10:31	Mental Health Screening and Screening Outreach Programs	26 N.J.R. 1424(a)	R.1994 d.291	26 N.J.R. 2271(a)
10:37-5.37-5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:37-6.1-6.4, 6.8, 6.9, 6.25, 6.26, 6.30-6.33, 6.37, 6.38, 6.58, 7.1-7.9	Repeal (see 10:37D)	26 N.J.R. 1277(a)		
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)	R.1994 d.336	26 N.J.R. 3082(b)
10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:43	Division of Developmental Disabilities: determination of need for guardian	26 N.J.R. 2838(a)		
10:48-1	Division of Developmental Disabilities: appeal procedure	26 N.J.R. 1280(a)		
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
10:48-4	Division of Developmental Disabilities: public hearing and reopening of comment period regarding management of waiting lists for services	26 N.J.R. 2756(a)		
10:49-14.1	Medicaid benefits: recovery from estates of payments correctly made	26 N.J.R. 2757(a)		
10:49-17.5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)		
10:50-1.2, 1.3, 1.4, 1.6, 1.7, 2.2	Transportation services for Medicaid recipients	26 N.J.R. 1425(a)	R.1994 d.402	26 N.J.R. 3211(b)
10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for other Uncompensated Care component	26 N.J.R. 2239(a)		
10:52-8.2	Manual for Hospital Services: payments for beds for mentally ill and developmentally disabled clients	26 N.J.R. 2241(a)		

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10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)		
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
10:60-1.3	Home Care Services: accreditation of private duty nursing agencies	26 N.J.R. 2840(a)		
10:60-1.4	Covered home health services: administrative correction	_____	_____	26 N.J.R. 2285(a)
10:60-5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)		
10:65-1.1, 1.2, 1.4, 1.5, 1.7, 1.8, 2.1, 2.2, App. H	Pediatric medical day care services	26 N.J.R. 1427(a)		
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only: eligibility computation amounts	26 N.J.R. 1754(a)		
10:81	Public Assistance Manual	26 N.J.R. 1573(a)		
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)		
10:81-11.9	Public Assistance Manual: \$50 disregarded child support payment	26 N.J.R. 1937(a)		
10:82	Aid to Families with Dependent Children (AFDC)	26 N.J.R. 1584(a)		
10:85	General Assistance Manual	26 N.J.R. 2757(b)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:95	Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program	26 N.J.R. 2242(a)		
10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs (recodified to 10:18)	25 N.J.R. 5749(a)	R.1994 d.392	26 N.J.R. 2902(a)

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10A:1-10.2	Request to conduct research projects: administrative correction	_____	_____	26 N.J.R. 2581(a)
10A:3-5.7	Strip search of inmates	26 N.J.R. 1937(b)	R.1994 d.374	26 N.J.R. 2903(a)
10A:4-4.1	Inmate prohibitions: failure to keep scheduled appointment	26 N.J.R. 1287(a)	R.1994 d.264	26 N.J.R. 2285(b)
10A:6-2.2, 2.7	Inmate legal services: use of typewriters	26 N.J.R. 2188(a)	R.1994 d.410	26 N.J.R. 3178(a)
10A:20-4.20, 4.21, 4.22, 4.45	Community release programs	26 N.J.R. 1757(a)	R.1994 d.340	26 N.J.R. 2792(c)
10A:20-4.20, 4.21, 4.22, 4.45	Community release programs	26 N.J.R. 1938(a)	R.1994 d.340	26 N.J.R. 2792(c)
10A:31-1.3, 8.4, 8.6	Adult county correctional facilities: strip and body cavity searches	26 N.J.R. 2841(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)	R.1994 d.392	26 N.J.R. 2902(a)
10A:71-3.15, 3.16	State Parole Board: parole hearings	26 N.J.R. 2189(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-3.51	State Parole Board: interstate corrections compact and serving time out-of-State cases	26 N.J.R. 1191(a)	R.1994 d.272	26 N.J.R. 2285(c)
10A:71-7.16, 7.16A	Parole Board panel action: establishment of parole release date upon revocation of parole for technical violations	26 N.J.R. 2516(a)		
10A:71-8.2	State Parole Board: eligibility for Certificate of Good Conduct	26 N.J.R. 1193(a)	R.1994 d.273	26 N.J.R. 2287(a)

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11:1-7	Medical malpractice reporting requirements	26 N.J.R. 1433(a)		
11:3-2A	Automobile Full Insurance Underwriting Association: deferral of payment of residual bodily injury claims	26 N.J.R. 898(a)	R.1994 d.274	26 N.J.R. 2287(b)
11:3-2B	Market Transition Facility of New Jersey: suspension of claims payments	26 N.J.R. 1393(a)	R.1994 d.261	26 N.J.R. 2283(a)
11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
11:3-20.6	Private passenger automobile insurers: reporting financial disclosure and excess profits	26 N.J.R. 1938(b)		
11:3-28.2, 28.14-28.17	Unsatisfied Claim and Judgment Fund: uninsured motorists case assignment procedures	26 N.J.R. 2190(a)		
11:3-29.2, 37.10	Automobile insurance PIP coverage: application of medical fee schedules to acute care hospitals and other facilities	25 N.J.R. 4706(a)		
11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)		

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11:3-32	Automobile and motor vehicle insurers: certification of compliance with mandatory liability coverages	26 N.J.R. 1939(a)		
11:5-1.15, 1.23	Real Estate Commission: discriminatory conduct prohibitions	26 N.J.R. 729(a)	R.1994 d.266	26 N.J.R. 2581(a)
11:5-1.28	Real Estate Commission: requirements for preclicensure schools and instructors	26 N.J.R. 730(a)	R.1994 d.267	26 N.J.R. 2581(b)
11:5-1.44	Real Estate Commission: collection of licensee Social Security numbers	26 N.J.R. 735(a)	R.1994 d.268	26 N.J.R. 2585(a)
11:5-2.5	Real Estate Commission: access to commission records	26 N.J.R. 736(a)	R.1994 d.269	26 N.J.R. 2585(b)
11:5-4.9	Real Estate Commission: temporary suspension of license	26 N.J.R. 737(a)	R.1994 d.270	26 N.J.R. 2586(a)
11:15	Group self-insurance	26 N.J.R. 2518(a)		
11:15-2	Joint insurance funds for local governmental units	26 N.J.R. 2725(a)		
11:17-3, 5.1-5.4, 5.6, 5.7	Professional qualifications of insurance producers	26 N.J.R. 1289(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	26 N.J.R. 2195(a)		
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)		
11:20-9.6	Individual Health Coverage Program: Good Faith Marketing Report	26 N.J.R. 2737(a)	R.1994 d.352	26 N.J.R. 2904(a)
11:21-2.5	Small Employer Health Benefits Program Board: structure and meetings	26 N.J.R. 1940(a)	R.1994 d.319	26 N.J.R. 2587(a)
11:21-3.2, 4.1, 6.3, 7.15, Exh. A-F	Small Employer Health Benefits Program: enrollment, permissible rate classification factors, optional benefit riders	26 N.J.R. 2843(a)		

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LABOR—TITLE 12

12:16-13.7	Unemployment Insurance and Disability Insurance Financing: magnetic media wage reporting	26 N.J.R. 2863(a)		
12:18-2.6, 2.38, 2.41-2.48	Temporary Disability Benefits appeal hearings	26 N.J.R. 2195(b)	R.1994 d.407	26 N.J.R. 3178(b)
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review regarding unemployment benefits appeals	26 N.J.R. 2196(a)	R.1994 d.408	26 N.J.R. 3179(a)
12:23-1, 2	Workforce Development Partnership Program: application and review process for customized training services	26 N.J.R. 2770(a)		
12:23-5.9	Workforce Development Partnership Program: overpayments of additional unemployment benefits	26 N.J.R. 2198(a)	R.1994 d.409	26 N.J.R. 3180(a)
12:23-7	Workforce Development Partnership Program: occupational safety and health training services	26 N.J.R. 2774(a)		
12:41-1.2, 1.14	Job Training Partnership Act: non-criminal complaints and appeals	26 N.J.R. 2864(a)		
12:56-6.1, 7.5, 7.6	Wage and Hour compliance: limousine operators	26 N.J.R. 94(a)		
12:100	Safety and Health Standards for Public Employees	26 N.J.R. 2776(a)		
12:195-1.9	Carnival-amusement rides: inspection fees	26 N.J.R. 2520(a)		
12:235-9.4	Workers' Compensation: appeals regarding discrimination complaints	26 N.J.R. 1591(b)		
12:235-9.4	Workers' Compensation: extension of comment period regarding discrimination complaint determinations	26 N.J.R. 2777(a)		
12:235-14.7	Uninsured Employer's Fund: attorney fees	26 N.J.R. 2199(a)		

Most recent update to Title 12: TRANSMITTAL 1994-3 (supplement May 16, 1994)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-1	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: reopening of comment period regarding allocation of direct loan assistance	26 N.J.R. 1434(a)		

Most recent update to Title 12A: TRANSMITTAL 1994-2 (supplement May 16, 1994)

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13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 1297(a)		
13:4	Housing discrimination	26 N.J.R. 1942(a)		
13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)		
13:13	Housing discrimination	26 N.J.R. 1942(a)		
13:18-1.5–1.9, 1.12, 1.15	Division of Motor Vehicles: overweight oceanborne containers	26 N.J.R. 2521(a)		
13:19	Division of Motor Vehicles: Driver Control Service	26 N.J.R. 2738(a)		
13:19-1.1	Division of Motor Vehicles: applicability of administrative hearings	26 N.J.R. 2522(a)		
13:19-10, 12, 13	Driver Control Service rules: waiver of Executive Order No. 66(1978) expiration date	_____	_____	26 N.J.R. 2905(a)
13:20-34.2, 34.3	Division of Motor Vehicles: license plates' identifying marks	26 N.J.R. 1487(a)	R.1994 d.314	26 N.J.R. 2587(b)
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:21-6.1, 6.2, 6.3, 7.1, 7.2, 7.3, 7.4, 8.1, 8.2, 8.4, 16	Division of Motor Vehicles: permits, licenses, nondriver IDs	26 N.J.R. 2522(a)		
13:21-24	Division of Motor Vehicles: defensive driving courses	26 N.J.R. 1592(a)	R.1994 d.347	26 N.J.R. 2793(a)
13:23	Division of Motor Vehicles: driving schools	26 N.J.R. 1299(a)	R.1994 d.294	26 N.J.R. 2588(a)
13:24	Division of Motor Vehicles: equipment for emergency and other specified vehicles	26 N.J.R. 2865(a)		
13:25-1.1, 2.1, 2.2, 3.1, 3.3	Division of Motor Vehicles: motorized bicycle permits and licenses	26 N.J.R. 2522(a)		
13:27-5.8, 8.15	Board of Architects: licensure examination fees	26 N.J.R. 1490(a)	R.1994 d.315	26 N.J.R. 2588(b)
13:27-6.2	Board of Architects: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)	R.1994 d.321	26 N.J.R. 2794(a)
13:27-6.2	Board of Architects: administrative correction regarding depiction of existing conditions on a site plan	_____	_____	26 N.J.R. 3180(b)
13:28-5.1	Board of Cosmetology and Hairstyling: fee schedule	26 N.J.R. 1947(a)	R.1994 d.415	26 N.J.R. 3181(a)
13:29-1.6, 1.7	Board of Accountancy: applications for original examination and for reexamination	26 N.J.R. 1217(a)	R.1994 d.316	26 N.J.R. 2589(a)
13:30-8.18	Board of Dentistry: licensee continuing education	26 N.J.R. 1948(a)		
13:31-1.3	Board of Examiners of Electrical Contractors: licensing examination	26 N.J.R. 1218(a)	R.1994 d.331	26 N.J.R. 2795(a)
13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)		
13:31-1.10	Board of Examiners of Electrical Contractors: duty of licensee to return pressure seal	26 N.J.R. 1594(a)	R.1994 d.332	26 N.J.R. 2795(b)
13:31-1.11, 1.16	Board of Examiners of Electrical Contractors: fee schedule; requirement of ID card defined	26 N.J.R. 2742(a)		
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:34-1.1	Board of Marriage Counselor Examiners: examination fee	26 N.J.R. 1301(a)	R.1994 d.287	26 N.J.R. 2293(a)
13:35	Board of Medical Examiners rules	26 N.J.R. 2526(a)		
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)		
13:35-3.12	Board of Medical Examiners: licensure of physicians with post-secondary educational deficiencies	26 N.J.R. 2742(b)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.10	Board of Medical Examiners: licensee testimonial advertisements	26 N.J.R. 1219(b)	R.1994 d.329	26 N.J.R. 2795(c)
13:35-6.13	Board of Medical Examiners: administrative correction regarding fee schedule	_____	_____	26 N.J.R. 2589(b)
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)	Expired	
13:36	Board of Mortuary Science rules	26 N.J.R. 2536(a)		
13:36-7.1	Board of Mortuary Science: handling and embalming bodies dead of infectious or contagious disease	26 N.J.R. 1302(a)	R.1994 d.288	26 N.J.R. 2293(b)
13:37-12.1	Board of Nursing: fees for certification of nurse practitioner	26 N.J.R. 1490(b)	R.1994 d.317	26 N.J.R. 2589(c)
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)	R.1994 d.289	26 N.J.R. 2293(c)
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:39	Board of Pharmacy rules	26 N.J.R. 1596(a)	R.1994 d.351	26 N.J.R. 2905(b)
13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1	Board of Pharmacy: pharmacy technicians	26 N.J.R. 2743(a)		
13:39-10.2, 11	Board of Pharmacy: sterile admixture services in retail pharmacies	26 N.J.R. 1303(a)		
13:39A-2.3	Board of Physical Therapy: public forum on direct supervision of physical therapist assistants	26 N.J.R. 1604(a)		
13:40-7.2	Board of Professional Engineers and Land Surveyors: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)	R.1994 d.322	26 N.J.R. 2796(a)
13:40-7.2	Board of Professional Engineers and Land Surveyors: administrative correction regarding depiction of existing conditions on a site plan	_____	_____	26 N.J.R. 3180(b)
13:40A-2A.3	Board of Real Estate Appraisers: certification as residential appraiser	26 N.J.R. 902(a)		
13:41-4.2	Board of Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)	R.1994 d.394	26 N.J.R. 3181(b)
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44	Board of Veterinary Medical Examiners: practice standards	26 N.J.R. 1951(a)		
13:44D	Board of Public Movers and Warehousemen: licensee standards	26 N.J.R. 1758(a)	R.1994 d.395	26 N.J.R. 3182(a)
13:44D-2.2, 2.6	Board of Public Movers and Warehousemen: licensee mailing address and permanent place of business	26 N.J.R. 2745(a)		
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.2	Board of Chiropractic Examiners: patient records and cessation of practice	26 N.J.R.2866(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:44E-2.14	Board of Chiropractic Examiners: administrative correction regarding referral of patients to physical therapists	_____	_____	26 N.J.R. 2590(a)
13:44G-5.1, 5.2, 5.3	Board of Social Work Examiners: licensure and certification	26 N.J.R. 1604(b)	R.1994 d.320	26 N.J.R. 2590(b)
13:45A-16.1	Home improvement practices: security protection devices	26 N.J.R. 1605(a)	R.1994 d.396	26 N.J.R. 3183(a)
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47C	Weights and measures: general commodities	26 N.J.R. 1761(a)	R.1994 d.330	26 N.J.R. 2796(b)
13:48	Charitable fund raising	26 N.J.R. 2746(a)		
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:72-2.11, 4.10	Racing Commission: casino simulcasting and cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2546(a)		
13:75	Violent Crimes Compensation Board: practice and procedure	26 N.J.R. 1491(a)	R.1994 d.364	26 N.J.R. 2805(b)

Most recent update to Title 13: TRANSMITTAL 1994-5 (supplement May 16, 1994)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14:0 14:18-3.24	Intrastate dial-around compensation: preproposal Cable television: late fees and charges	25 N.J.R. 4586(a) 26 N.J.R. 105(a)		
Most recent update to Title 14: TRANSMITTAL 1994-3 (supplement May 16, 1994)				
ENERGY—TITLE 14A				
Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)				
STATE—TITLE 15				
15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		
15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		
Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)				
PUBLIC ADVOCATE—TITLE 15A				
Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)				
TRANSPORTATION—TITLE 16				
16:1A	Administration, organization and management of the Department of Transportation	Exempt	R.1994 d.348	26 N.J.R. 2797(a)
16:6	Relocation assistance and right-of-way acquisition	26 N.J.R. 1958(a)	R.1994 d.400	26 N.J.R. 3183(b)
16:26	Bureau of Electrical Engineering	26 N.J.R. 1764(a)	R.1994 d.401	26 N.J.R. 3183(c)
16:28-1.5	Speed limit zones along Route 37 in Ocean County	26 N.J.R. 1958(b)	R.1994 d.381	26 N.J.R. 3183(d)
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Washington Township	26 N.J.R. 1959(a)	R.1994 d.383	26 N.J.R. 3184(b)
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Dover	26 N.J.R. 1960(a)	R.1994 d.382	26 N.J.R. 3184(a)
16:28-1.18	Speed limit zones along Route 34 in Aberdeen and Matawan	26 N.J.R. 1765(a)	R.1994 d.353	26 N.J.R. 2912(a)
16:28-1.25	Speed limit zones along Route 23 in Franklin Borough, Sussex County	26 N.J.R. 2749(a)		
16:28-1.41	School zone along U.S. 9 in Lower Township, Cape May County	26 N.J.R. 1765(b)	R.1994 d.354	26 N.J.R. 2913(a)
16:28-1.41	Speed limit zones along U.S. 9 in Ocean County	26 N.J.R. 1960(b)	R.1994 d.385	26 N.J.R. 3184(c)
16:28-1.67	Speed limit zones along U.S. 202 in Somerset County	26 N.J.R. 1316(b)	R.1994 d.262	26 N.J.R. 2299(a)
16:28-1.69	Speed limit zones along U.S. 130, including parts of I-295, U.S. 30 and U.S. 206 in Salem County	26 N.J.R. 1766(a)	R.1994 d.362	26 N.J.R. 2913(b)
16:28-1.72	Speed limit zones along U.S. 206, including U.S. 206 and 130, in Morris County	26 N.J.R. 1961(a)	R.1994 d.386	26 N.J.R. 3185(a)
16:28-1.96	Speed limit zones along Route 45 in Gloucester County	26 N.J.R. 1962(a)	R.1994 d.387	26 N.J.R. 3185(b)
16:28-1.106	Speed limit zones along Route 31 in Clinton Township	26 N.J.R. 1963(a)	R.1994 d.388	26 N.J.R. 3186(a)
16:28-1.132	Speed limit zones along Route 47 in Middle Township	26 N.J.R. 1767(a)	R.1994 d.361	26 N.J.R. 2913(c)
16:28-1.132	Speed limit zones along Route 47 in Dennis Township, Cape May	26 N.J.R. 2867(a)		
16:28-1.182	Speed limits along Wyckoff Mills Road in Howell Township	26 N.J.R. 1767(b)	R.1994 d.358	26 N.J.R. 2914(a)
16:28-1.183	Speed limits along Frontage Road in Union Township, Hunterdon County	26 N.J.R. 1768(a)	R.1994 d.359	26 N.J.R. 2914(b)
16:28A-1.22	No stopping or standing zones along Route 31 in East Amwell Township	26 N.J.R. 1768(b)	R.1994 d.363	26 N.J.R. 2914(c)
16:28A-1.23	No stopping or standing zones along Route 33 in Manalapan Township	26 N.J.R. 1963(b)	R.1994 d.384	26 N.J.R. 3186(b)
16:28A-1.25	No stopping or standing zones along Route 35 in Berkeley Township	26 N.J.R. 2749(b)		
16:28A-1.28	Restricted parking and stopping along Route 40 in Hamilton Township, Atlantic County	26 N.J.R. 1769(a)	R.1994 d.360	26 N.J.R. 2914(d)
16:28A-1.33	Parking restrictions along Route 47 for entire length	26 N.J.R. 2867(b)		
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.57	No stopping or standing along U.S. 206 in Mount Olive	26 N.J.R. 2200(a)		
16:28A-1.113	No stopping or standing zones along Route 33 (Business) in Manalapan Township	26 N.J.R. 1964(a)	R.1994 d.391	26 N.J.R. 3186(c)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships	26 N.J.R. 908(a)	R.1994 d.263	26 N.J.R. 2299(b)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-7.3	Limited access prohibition along Route 55 Freeway in Cumberland, Salem, and Gloucester counties	26 N.J.R. 1769(b)	R.1994 d.355	26 N.J.R. 2915(a)
16:30-7.6	Limited access prohibitions along Route 18 Freeway in Monmouth and Middlesex counties	26 N.J.R. 1965(a)	R.1994 d.389	26 N.J.R. 3187(a)
16:30-7.7	Limited access prohibitions along Route 42 Freeway in Gloucester and Camden counties	26 N.J.R. 1964(b)	R.1994 d.390	26 N.J.R. 3187(b)
16:31-1.1	Left turn prohibition on U.S. 206 at Valley Road in Hillsborough Township	26 N.J.R. 2547(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:31-1.3	Turn prohibitions on Route 46 in Mount Olive Township, Morris County	26 N.J.R. 1771(a)	R.1994 d.356	26 N.J.R. 2915(b)
16:31-1.8	Turn prohibitions on Route 47 in the City of Vineland, Cumberland County	26 N.J.R. 1770(a)	R.1994 d.357	26 N.J.R. 2915(c)
16:31-1.22	Turn prohibitions along U.S. 130 in Burlington and Mercer counties	26 N.J.R. 2870(a)		
16:31-1.35	U turn prohibitions along Route 42 in Gloucester County	26 N.J.R. 2750(a)		
16:31-1.36	Turn prohibitions along U.S. 40/322 in Egg Harbor Township	26 N.J.R. 2871(a)		
16:45	Construction control	26 N.J.R. 2547(b)		
16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L	State Highway Access Management Code	26 N.J.R. 2549(a)		
16:47-4.13	State Highway Access Management Code: administrative correction	_____	_____	26 N.J.R. 2299(c)
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53	Autobuses	26 N.J.R. 1606(a)	R.1994 d.346	26 N.J.R. 2798(a)
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:56	Airport safety improvement aid	26 N.J.R. 1607(a)	R.1994 d.372	26 N.J.R. 2916(a)
16:82	Examination and duplication of NJ TRANSIT records	26 N.J.R. 2871(b)		

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TREASURY-GENERAL—TITLE 17

17:1-1.16	State-administered retirement systems: lost pension checks	26 N.J.R. 2200(b)		
17:1-4.32	Workers' Compensation: reduction of retirement allowance	26 N.J.R. 2201(a)		
17:2-1.4	Public Employees' Retirement System: replacement of member-trustee who declines to serve	25 N.J.R. 5113(a)	R.1994 d.259	26 N.J.R. 2299(d)
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:9-4.2, 8.3, 9.1	State Health Benefits Program: continued coverage under voluntary furlough program	26 N.J.R. 2202(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
17:16-20.2	State Investment Council: permissible international investments by State-administered pension funds	26 N.J.R. 2751(a)		
17:16-62.11	State Investment Council: Common Pension Fund A realized appreciation	26 N.J.R. 1771(b)	R.1994 d.326	26 N.J.R. 2798(b)
17:16-63.11	State Investment Council: Common Pension Fund B realized appreciation	26 N.J.R. 1772(a)	R.1994 d.327	26 N.J.R. 2798(c)
17:16-67.11	State Investment Council: Common Pension Fund D realized appreciation	26 N.J.R. 1772(b)	R.1994 d.328	26 N.J.R. 2798(d)

Most recent update to Title 17: TRANSMITTAL 1994-3 (supplement May 16, 1994)

TREASURY-TAXATION—TITLE 18

18:1	Organization of Division of Taxation	26 N.J.R. 2752(a)		
18:2-3.9	Payment of taxes by Electronic Funds Transfer	26 N.J.R. 1612(a)	R.1994 d.305	26 N.J.R. 2591(a)
18:7-15.1-15.5	Corporation Business Tax: urban enterprise zone credits	26 N.J.R. 2203(a)		

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TITLE 19—OTHER AGENCIES

19:2	South Jersey Transportation Authority: rules of operation; Atlantic City Expressway	26 N.J.R. 1966(a)		
19:3, 3A, 4, 5	Hackensack Meadowlands Development District rules	26 N.J.R. 1970(a)		
19:9-1	Turnpike Authority: traffic control	26 N.J.R. 337(a)		
19:10	Public Employment Relations Commission: definitions, service, construction	26 N.J.R. 2205(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:25-1.7, 6.5-6.9	ELEC: permissible uses of candidate funds	26 N.J.R. 2753(a)		
19:31-8.2, 8.3	Hazardous Discharge Site Remediation Fund	26 N.J.R. 1612(b)	R.1994 d.375	26 N.J.R. 2918(a)
19:31-8.7, 8.9	Hazardous Discharge Site Remediation Fund: administrative correction	_____	_____	26 N.J.R. 2462(b)
19:31-9	New Jersey Boat Industry Loan Guarantee Fund	26 N.J.R. 1613(a)	R.1994 d.376	26 N.J.R. 2919(a)

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TITLE 19 SUBTITLE K--CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40	General provisions	26 N.J.R. 2564(a)		
19:40-1.2	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:40-1.2	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)		
19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)		
19:41-1.4	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:41-1.5A, 1.8, 1.9	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-5.6, 5.6A	Business entity disclosure forms	26 N.J.R. 1437(a)	R.1994 d.296	26 N.J.R. 2591(b)
19:41-6.1-6.5	Statements of compliance	26 N.J.R. 1319(a)		
19:41-7.1A, 7.1B, 7.7	Applications for issuance of employee licenses or registration and natural person qualification	26 N.J.R. 1321(a)	R.1994 d.280	26 N.J.R. 2474(a)
19:41-7.2A	Applicant identification for license or registration	26 N.J.R. 2565(a)		
19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)		
19:41-9.4	Division of Gaming Enforcement: hourly fee for efforts associated with sports events matters	_____	_____	26 N.J.R. 2476(a)
19:42-3.6	Casino licensee application requirements; renewal of casino license	26 N.J.R. 1615(a)	R.1994 d.341	26 N.J.R. 2798(e)
19:43-5, 11	Casino licensee application requirements; renewal of casino license	26 N.J.R. 1615(a)	R.1994 d.341	26 N.J.R. 2798(e)
19:43-6.1-6.9	Casino hotel facility requirements	26 N.J.R. 1206(a)	R.1994 d.342	26 N.J.R. 2801(a)
19:43-6.2, 7, 9.1, 10.1, 14.1	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:43-9.5	Applications for issuance of employee licenses or registration and natural person qualification	26 N.J.R. 1321(a)	R.1994 d.280	26 N.J.R. 2474(a)
19:43-14.2	Casino simulcasting facility: advertising prohibitions	26 N.J.R. 1209(a)	R.1994 d.281	26 N.J.R. 2476(b)
19:44-2.6, 2.7, 5.1	Gaming schools	26 N.J.R. 1617(a)	R.1994 d.343	26 N.J.R. 2803(a)
19:44-5.2, 8.3, 8.6	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:45-1	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:45-1.1	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33, 1.46-1.51	Keno	26 N.J.R. 2218(a)		
19:45-1.1, 1.9B, 1.24, 1.26, 1.27, 1.29	Use of cash complimentary gifts	26 N.J.R. 2212(a)		
19:45-1.1, 1.25	Exchange of annuity jackpot checks	26 N.J.R. 2211(a)		
19:45-1.1, 1.37A	Electronic transfer credit system: temporary adoption of new rule and amendments	_____	_____	26 N.J.R. 2478(b)
19:45-1.1, 1.37A, 1.39	Electronic transfer credit systems at slot machines; progressive slot machines	26 N.J.R. 2214(a)		
19:45-1.1, 1.41A	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)		
19:45-1.3, 1.10, 1.11, 1.14, 1.32, 1.34	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:45-1.17, 1.42	Transportation of slot cash storage boxes, slot drop buckets and drop boxes	26 N.J.R. 1440(a)	R.1994 d.297	26 N.J.R. 2594(a)
19:45-1.17, 1.42	Temporary storage of slot cash storage boxes and slot drop boxes	26 N.J.R. 2213(a)		
19:45-1.18, 1.46	Use of match play coupons in craps	26 N.J.R. 1441(a)	R.1994 d.298	26 N.J.R. 2594(b)
19:45-1.24A	Wire transfer fees	26 N.J.R. 2215(a)		
19:45-1.25	Exchange of counter checks	26 N.J.R. 1994(a)		
19:45-1.25	Repurchase of cash equivalents by patrons	26 N.J.R. 2216(a)		
19:45-1.36	Recording of bill changer entries	26 N.J.R. 2217(a)		
19:45-1.40B	Temporary investment of annuity jackpot trust funds	26 N.J.R. 1996(a)	R.1994 d.405	26 N.J.R. 3187(c)
19:45-1.42, 1.43	Slot drop procedures	26 N.J.R. 1621(a)	R.1994 d.344	26 N.J.R. 2804(a)
19:45-1.43	Count room procedure	26 N.J.R. 1209(b)	R.1994 d.282	26 N.J.R. 2476(c)
19:45-1.46	Inventory of coin coupons	26 N.J.R. 1322(a)		
19:46-1.1, 1.2, 1.4, 1.5	Gaming chips and plaques	26 N.J.R. 1441(b)		

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19:46-1.5, 1.6, 1.20, 1.26, 1.33-1.36	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:46-1.5, 1.20, 1.33	Keno	26 N.J.R. 2218(a)		
19:46-1.10, 1.16, 1.19, 1.20	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:46-1.13B, 1.19	Pai gow poker: automated shuffling devices and dealing shoes	26 N.J.R. 344(a)	R.1994 d.224	26 N.J.R. 1853(b)
19:46-1.13F, 1.17, 1.19	Double Down Stud	26 N.J.R. 1323(a)		
19:46-1.19	Dealing shoes	26 N.J.R. 1622(a)	R.1994 d.345	26 N.J.R. 2805(a)
19:47-1.3, 1.9	Use of match play coupons in craps	26 N.J.R. 1441(a)	R.1994 d.298	26 N.J.R. 2594(b)
19:47-2.5, 2.6, 5.2, 8.5	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:47-3.5, 4.4, 7.5	Shuffle and cut of the cards in baccarat-punto banco, baccarat-chemin de fer, minibaccarat	26 N.J.R. 1210(a)	R.1994 d.283	26 N.J.R. 2477(a)
19:47-15	Keno	26 N.J.R. 2218(a)		
19:47-17	Double Down Stud	26 N.J.R. 1323(a)		
19:49-2.3, 2.4	Gaming schools	26 N.J.R. 1617(a)	R.1994 d.343	26 N.J.R. 2803(a)
19:50-1.4, 1.5, 2.2, 3.1, 3.6	Casino simulcasting facility: alcoholic beverage control	26 N.J.R. 1211(a)	R.1994 d.284	26 N.J.R. 2477(b)
19:51	Persons doing business with casino licensees	26 N.J.R. 1212(a)	R.1994 d.258	26 N.J.R. 2478(a)
19:51-1.1, 1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:51-1.3, 1.8	Gaming schools	26 N.J.R. 1617(a)	R.1994 d.343	26 N.J.R. 2803(a)
19:51-1.3A, 1.3B	Application for initial casino service industry license and license renewal	26 N.J.R. 2886(a)		
19:53-1.2, 5.5, 5.7	Disbursement credit for goods and services with certified MBEs and WBEs; commercial buyers	26 N.J.R. 785(a)		
19:54-1.6	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:54-1.8, 1.10	Annual gross revenue tax examinations; tax deficiency penalties and sanctions	26 N.J.R. 1994(a)		
19:55-2.11, 4.10	Simulcasting of horse races: cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2566(a)		
19:65-1.2, 2.2, 2.4-2.11, 6.1, 6.2	Hotel development and corridor region projects	25 N.J.R. 4476(a)		
19:65-2.5	Approval criteria for hotel development projects	25 N.J.R. 5455(a)		

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